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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS,
CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL
RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the Special Rapporteur on violence against
women, its causes and consequences, Yakin Ertürk***

Addendum

**15 YEARS OF THE UNITED NATIONS SPECIAL RAPPORTEUR
ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND
CONSEQUENCES (1994-2009) - A CRITICAL REVIEW****

* The report was submitted late in order to reflect the most recent information.

** Owing to its length, the report is circulated as received, in the language of submission only.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Acknowledgements		4
List of acronyms		5
I. INTRODUCTION	1 - 6	6
II. BACKGROUND AND SCOPE OF THE MANDATE	7 - 27	7
A. Definition and scope of violence against women	10 - 15	9
B. Mandate and work methods of the SRVAW	16 - 27	11
III. KEY AREAS OF FOCUS	28 - 61	15
A. Domestic violence	30 - 36	15
B. Trafficking and migration	37 - 41	18
C. Armed conflict	42 - 52	21
D. Reproductive rights, HIV/AIDS and violence against women	53 - 61	25
IV. COMPLIANCE, IMPLEMENTATION AND ACCOUNTABILITY	62 - 84	30
A. Legal framework	63 - 65	30
B. Due diligence	66 - 71	31
C. Accountability for actions of non-State actors	72 - 77	34
D. Indicators, data collection and research studies	78 - 84	37
V. CONCEPTUAL GAINS	85 - 111	39
A. Beyond law and order	86 - 88	39
B. From victimization towards empowerment	89 - 94	41
C. Sexuality and violence	95 - 100	43
D. Demystifying cultural discourses	101 - 106	46
E. Intersectionality of discrimination and continuum of violence	107 - 111	49

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
VI. POTENTIAL AND CHALLENGES	112 - 130	52
A. Standards setting in relation to empowerment approaches	114 - 115	53
B. Combining sexual rights with sexual wrongs	116 - 117	54
C. Applying intersectionality	118 - 123	55
D. Fuller coverage of areas addressed by the mandate	124 - 130	57
VII. CONCLUSION	131	61

Annex

Country visits by the Special Rapporteur on Violence against Women, its causes and consequences, as of 1 January 2009	62
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List of acronyms

APWLD:	Asia Pacific Forum on Women, Law and Development
CEDAW:	Convention on the Elimination of All Forms of Discrimination against Women
CESCR:	Committee on Economic, Social and Cultural Rights
CHR:	Commission on Human Rights
CSW:	Commission on the Status of Women
DEVAW:	Declaration on the Elimination of Violence against Women
DPKO:	Department of Peacekeeping Operations
ICC:	International Criminal Court
ICESCR:	International Covenant on Economic, Social and Cultural Rights
ICTR:	International Criminal Tribunal for Rwanda
ICTY:	International Criminal Tribunal for the Former Yugoslavia
IDP:	internally displaced person
MONUC:	Organization Mission in the Democratic Republic of the Congo
NGO:	non-governmental organization
OHCHR:	Office of the United Nations High Commissioner for Human Rights
PFA:	[Beijing] Platform for Action
SR:	Special Rapporteur
SRVAW:	Special Rapporteur on Violence against Women
UNHCR:	United Nations High Commissioner for Refugees
VAW:	violence against women

I. INTRODUCTION

1. The establishment of the Special Rapporteur on Violence against Women (SRVAW) mandate and the appointment of an incumbent in 1994 was part of a series of developments that finally accorded explicit recognition to violence against women (VAW) as a human rights concern within the United Nations. Thirteen years after the coming to force of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) - the “Women’s International Bill of Rights” - the expert committee monitoring the convention adopted general Recommendation 19 in 1992, thus filling a major gap in the convention. In 1993, at the Vienna Conference, the international community officially recognized VAW as a human rights violation, and the same year the General Assembly adopted the Declaration on the Elimination of Violence against Women (DEVAW). These developments set the stage for the creation of a special mechanism to monitor VAW worldwide.

2. On 4 March 1994, the Commission on Human Rights (CHR) adopted a resolution for “integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women”, appointing a Special Rapporteur on VAW, including its causes and consequences.¹ The creation of this mechanism and the scope of its mandate was a hard-won victory for women’s rights movements globally. With the victory came the onerous responsibility upon the SRVAW for covering a vastly neglected and obstacle-ridden legal terrain - that of developing legal doctrines for distinct forms of gender-based violence faced by women, including those that are cognizant of the multilayered violations of women, to examine communications and make recommendations for eliminating violence as well as its root causes. The SRVAW has fulfilled this daunting role through consultations and cooperation with governments; United Nations bodies/agencies and other special mechanisms; women’s groups/non-governmental organizations (NGOs); academicians; and research institutes.

3. This review aims to take stock of the achievements of 15 years of work on the VAW mandate, which has produced an impressive collection of 14 annual reports, 32 country mission reports, 11 communication reports comprising many communications to and from governments, and several other pieces of research.² Given the quantum of work and its significance, a review provides an opportunity to consolidate the main achievements, and the space to reflect upon the gains and the potential for future progress and directions of the mandate. The expansive coverage by the mandate and the complexity and interconnections among the concerns and categories of violence make it difficult to undertake a comprehensive review - and this exercise does not aim to be one. Rather, it is selective in terms of its focus on the substantive achievements of the mandate and the challenges before it.

¹ E/CN.4/RES/1994/45. Two experts have since held the office of the SRVAW: Radhika Coomaraswamy, a Sri Lankan lawyer, who served three terms of office (three years each), June 1994-July 2003; and Yakin Ertürk, a Turkish sociologist, who will have served two terms by August 2009 (August 2003-August 2009). A new mandate holder is expected to be nominated during the course of 2009.

² The figures include reports already published, or reports on missions already conducted by 1 December 2008.

4. Yakin Ertürk, the current SRVAW, initiated this study, with the objective of reviewing the work of the SRVAW, highlighting the conceptual shifts in the VAW mandate since its inception, and assessing the lessons learned as well as remaining challenges in combating VAW. A further objective is to assess the extent to which such issues as reproductive health and rights, poverty, migration, internally displaced persons (IDPs), women refugees, trafficking, aging, and adolescent girls have been addressed by the mandate, so as to propose some ideas on how best to integrate those issues into future work within the context of the VAW mandate. It is hoped that this study can also serve as a frame of reference for the next SRVAW, governments, civil society and United Nations agencies in their initiatives to move forward in the struggle against VAW.

5. The study involved a desk review and an analysis of the annual/thematic reports, the country mission reports, the communications sent to governments, and statements from the former and current SRVAWs delivered by a consultant who worked under Ertürk's supervision and guidance, with support from UNFPA and the office of the United Nations High Commissioner for Human Rights (OHCHR).³

6. This report structures the review into seven parts: Part I introduces the review; Part II provides a general introduction to the mandate and its scope; Part III examines the key areas of VAW covered by the mandate; Part IV discusses tools developed by the mandate to facilitate compliance, implementation and accountability; Part V takes stock of the conceptual advances made by the mandate in relation to the human rights of women; Part VI looks at the challenges and potential that remain to be considered by the mandate in the future; and Part VII is a conclusion. The various parts of this report overlap somewhat, given the interconnections they share. For example, Part IV, on implementation, also discusses issues that arise in Part III in relation to key areas covered by the mandate; and elements of conceptual gains, although independently discussed in Part V, are also partially subsumed in Part III. While some amount of repetition is inevitable due to such overlaps, the structure adopted for this review aims to minimize them, in order to distinguish and classify the broad achievements of the mandate over the past 15 years and suggest potential areas of attention.

II. BACKGROUND AND SCOPE OF THE MANDATE

7. The progression in recognition of women's human rights within the United Nations has been slow, beginning with addressing civil and political exclusions/restrictions during the early periods of the organization and moving on to women's integration into development in the 1960s, then on to addressing sex discrimination in public and private arenas - within the family, employment, development, health, education and the State - in the late 1970s, as embodied in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁴ Although women did gain a comprehensive bill of rights through CEDAW, the

³ An earlier draft was circulated to a number of experts, including the former SRVAW, who have had sustained engagement with the mandate.

⁴ On gender blindness of the human rights discourse, see Hilary Charlesworth, "Human Rights as Men's Rights", in *Women's Rights, Human Rights: International Feminist Perspectives*, ed. Julie Peters and Andrea Wolper (London: Routledge, 1995), 103-113. For a comprehensive

treaty did not explicitly name violence against women (VAW) until 1992 in its General Recommendation 19 on VAW, thereby reading gender-based violence into several of the treaty's substantive provisions. This was largely motivated by the sustained global campaign of the 1980s led by the women's movements on VAW, and was followed by the recognition of women's rights as human rights at the 1993 World Conference on Human Rights, in Vienna.⁵ The gains for women at the Vienna conference also included a blueprint for strengthening and integrating women's human rights within the United Nations, spurring developments towards the creation of the mandate.

8. The Vienna Declaration and Programme of Action noted that "the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights".⁶ Further, the document emphasized that the elimination of VAW in all areas of life, the public and the private, was central to the attainment of women's human rights.⁷ Accordingly, the document outlined the steps necessary for the realization of these goals, including that the human rights of women should be "integrated into the mainstream of United Nations system - wide activity"⁸ - through the treaty monitoring bodies, through the effective use of existing procedures, and through the creation of new procedures to "strengthen implementation of the commitment to women's equality and the human rights of women".⁹ Towards this end, the recommendations for a new mechanism on VAW and an Optional Protocol to CEDAW were endorsed, leading to the creation of the mandate and the appointment of the Special Rapporteur on Violence against Women (SRVAW) in 1994, and the adoption of the optional protocol to CEDAW in 1999 and its coming to force in 2000.

9. While the focus of this review is the work of the SRVAW since its creation, it is important to keep in mind the work of other international or regional mechanisms and agencies - notably, in addition to the CEDAW Committee, the Commission on the Status of Women (CSW), the

feminist critique of international law, see Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Huntington, N.Z.: Juris Publishing, 2000).

⁵ Women's movements from around the world held the Tribunal on Violations of Women's Human Rights at the World Conference on Human Rights in Vienna in 1993, to claim moral and legal authority of human rights in seeking justice for women. This event was part of a larger worldwide campaign by women's movements to draw attention to VAW and seek explicit recognition of women's rights as human rights by the United Nations and within international human rights. "Women Testify: A planning guide for popular Tribunals and hearings", Centre for Women's Global Leadership (2005).

⁶ A/CONF.157/23 (12 July 1993), part I, para. 18.

⁷ *Ibid.*, part II, para. 38.

⁸ *Ibid.*, part II, para. 37.

⁹ *Ibid.*, part II, para. 40.

General Assembly, the Secretary-General and the Security Council, United Nations agencies, and regional human rights mechanisms such as the Inter-American Commission on Human Rights, the African Commission on Human and People's Rights, and the Council of Europe. Many of these entities have indeed addressed aspects of VAW and interrelated issues pertaining to women's status in various reports, resolutions and other documents, often reflecting issues discussed by the SRVAW.

A. Definition and scope of violence against women

10. CEDAW General Recommendation 19 on VAW views gender-based violence as a form of discrimination that constitutes a serious obstacle in the enjoyment of human rights and fundamental freedoms by women, and addresses intersections of gender-based violence with the different substantive areas covered by the articles of CEDAW.¹⁰ It defines gender-based violence as “violence directed against a woman because she is a woman or which affects a woman disproportionately. It includes physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”. Accordingly, it calls upon State parties to address and report on VAW within the substantive framework of CEDAW.

11. The Declaration on the Elimination of Violence against Women (DEVAW) provides a more comprehensive framework on VAW in terms of definition, scope, obligations of the State, and the role of the United Nations.¹¹ It defines VAW to mean “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”. DEVAW further outlines the scope of private and public to include violence in the family, violence in the community, and violence perpetrated or condoned by the State, wherever it occurs.

12. In their reports, the Special Rapporteurs have further elaborated upon these forms of violence as follows:

- Violence in the family - such as domestic violence; battering; marital rape; incest; forced prostitution by the family; violence against domestic workers and the girl-child (non-spousal violence, violence related to exploitation); sex-selective abortion and infanticide; traditional practices such as female genital mutilation; dowry-related violence; and religious/customary laws
- Violence in the community - such as rape/sexual assault; sexual harassment; violence within institutions; trafficking and forced prostitution;¹² violence against women migrant workers; and pornography

¹⁰ CEDAW/C/1992/L.1/Add.15.

¹¹ A/RES/48/104 (23 February 1994).

¹² The term “forced prostitution” used here corresponds with the terminology of DEVAW and the reports of the SRVAW, E/CN.4/1995/42, E/CN.4/1996/53 and E/CN.4/1997/47.

- Violence perpetrated or condoned by the State - such as gender-based violence during armed conflict; custodial violence; violence against refugees and internally displaced persons (IDPs); and violence against women from indigenous and minority groups

13. Ertürk also suggested adding the “transnational arena”, which, due to globalization and increased transnational processes, has emerged as a fourth level where women are encountering new vulnerabilities.¹³

14. Different forms of violence continued to be addressed and elaborated upon in the documents adopted in the years that followed. For instance, the Beijing Platform for Action (PFA) - by including, among its 12 critical areas of concern, VAW, along with women and armed conflict, and the human rights of women - specified various forms of sexual assault on women that were not specifically mentioned in DEVAW. These include systematic rape and forced pregnancy during armed conflict, sexual slavery, forced sterilization and forced abortion, female infanticide, and prenatal sex selection.¹⁴ The review of the implementation of the PFA that took place at the 23rd special session of the General Assembly, in 2000, clearly demonstrated that VAW had become a priority issue on the agenda of many member States. The outcome document of the special session on Beijing +5 went a step further in calling for the criminalization of VAW, punishable by law. Paragraph 69 (c) states that governments shall “treat all forms of violence against women and girls of all ages as a criminal offence punishable by law, including violence based on all forms of discrimination”. The document also calls for the taking of measures to address VAW resulting from prejudice, racism and racial discrimination, xenophobia, pornography, ethnic cleansing, armed conflict, foreign occupation, religious and anti-religious extremism, and terrorism.¹⁵

15. DEVAW and other documents pay specific attention to the increased risk of violence against women on account of marginalized status, location or context. Resolutions on the mandate of the SRVAW have likewise addressed forms of VAW on various grounds, thereby reinforcing this approach.

¹³ See Ertürk’s first report to the CHR, “Integration of the human Rights of Women and the Gender Perspective: Violence against Women”, E/CN.4/2004/66. This issue will be further developed in Ertürk’s last report on “Political Economy of Women’s Human Rights”, to be presented in 2009 as document A/HRC/11/6.

¹⁴ Beijing Declaration and Platform for Action, A/CONF.177/20 (1995), paras. 114-115; and A/CONF.177/20/Add.1 (1995).

¹⁵ “Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action”, A/RES/S-23/3 (2000).

B. Mandate and work methods of the SRVAW

16. The Universal Declaration of Human Rights and all other international human rights treaties and instruments, including CEDAW and DEVAW, guide the mandate of the SRVAW.¹⁶ The SRVAW's work is structured on the basis of the substantive framework set out in DEVAW, listing distinct forms of violence as discussed in the preceding section.

17. The methods of work set out in the mandate are (a) to seek and receive information on VAW, its causes and consequences, from governments, intergovernmental bodies, women's groups, and United Nations agencies/mechanisms/treaty bodies, and to respond effectively to such information; (b) to recommend measures, ways and means at national, regional and international levels towards the elimination of VAW and its causes, and to remedy its consequences; and (c) to work closely with other special mechanisms created by the Commission on Human Rights (and since 2006 by the Human Rights Council), and bodies within the United Nations.¹⁷

18. The mandate holder interacts with a wide range of stakeholders engaged with eliminating VAW, including governments, United Nations bodies/agencies/special mechanisms, civil society organizations and academia; receives communications and complaints; conducts and reports on country missions; and produces annual reports. All of this allows the SRVAW to identify and express concerns over trends in women's human rights violations and develop legal standards and doctrines.

19. With regard to seeking and receiving information, the mandate holder, as part of her engagement with the civil society, also interacts with women's groups, non-governmental organizations (NGOs) and academia. In this respect, regional consultations with women's groups and organizations have become an integral part of the SRVAW's working methods. The Asia Pacific regional consultations - organized by the Asia Pacific Forum on Women, Law and Development (APWLD), initiated during Radhika Coomaraswamy's tenure as SRVAW, and further developed during the tenure of the second SRVAW - have become institutionalized and a routine annual event with the aim of supporting the mandate and providing a forum for communication of regional concerns.¹⁸ Both Coomaraswamy and Ertürk have held this to be a model forum, encouraging other regions to replicate such consultations. As a result, regional

¹⁶ E/CN.4/RES/1994/45, para. 7.

¹⁷ Paraphrased from E/CN.4/RES/1994/45, para. 7 (a), (b) and (c). By virtue of A/HRC/RES/7/24, the mandate is now required to make an oral presentation to the Commission on the Status of Women.

¹⁸ The mandate holders have participated annually in regional consultations in the Asia Pacific organized by the Asia Pacific Forum for Women, Law and Development, Chiang Mai, Thailand. From 1995-2002, consultations were held in Colombo, Sri Lanka, in August of each year. Thereafter they were held in October 2003 in New Delhi, in July 2004 in Jakarta, in October 2005 in Bangkok, in September 2006 in Ulaan Baatar, in September 2007 in Manila, and in October 2008 in New Delhi.

consultations have begun to be organized in Africa, Central Asia and Europe to communicate region-specific concerns to the SRVAW, and to enable civil society actors to use the mandate more effectively in responding to problems confronting women in their respective regions.¹⁹

20. The annual reports are particularly good resources in providing a normative framework for addressing distinct forms of gender-based violence, an analysis of the causes and consequences of violence, and an elaboration of the role of the State as well as regional and international stakeholders in combating violence in the public and private domains. They are also important for informing policy and shaping the advancement of women's human rights standards in international law.²⁰

21. Coomaraswamy dedicated her annual reports to discussing in detail the three broad categories of VAW in the family, in the community, and perpetrated or condoned by the State, in addition to violence in specific contexts. Coomaraswamy indicated in her last report that the first decade of the mandate emphasized standards setting and awareness, and that the next decade should focus on strategies for a more effective implementation. Ertürk, in her first report, "towards an effective implementation of international norms to end VAW", identified this as her starting point. She prioritized issues of intersectionality and obstacles in advancing women's human rights.

¹⁹ An African Regional Consultation was organized by the Geneva Institute for Human Rights in Khartoum in September 2004; a Central Asian Consultation in Almaty, Kazakhstan, was organized by Equitas, a Canadian NGO, in December 2005; a European Regional Consultation was organized by the National Alliance for Women's Organizations (NAWO) in London in January 2007; a consultation was organized for women from Georgia, Armenia, and Azerbaijan by Equitas in May 2007 in Tbilisi; another was organized in Saint Petersburg for the Eastern European and Central Asian countries by the NGO ANNA in September 2008; and another was organized in Nairobi by the Urgent Action Fund-Africa and Rights and Democracy for the Great Lakes and the Horn of Africa in December 2008.

²⁰ The themes of the annual reports are: preliminary report (1995); violence against women in the family (1996); violence against women in the community (1997); violence perpetrated or condoned by the State (1998); a follow-up report on violence against women in the family (1999); trafficking in women, women's migration and violence against women (2000); violence against women perpetrated or condoned by the State during times of armed conflict (2001); cultural practices in the family that are violent towards women (2002); international, regional and national developments in the area of violence against women, 1994-2002 (2003); towards an effective implementation of international norms to end VAW (2004); intersections of violence against women and HIV/AIDS (2005); the due diligence standards a tool for elimination of VAW (2006); intersections between culture and VAW (2007); and indicators on VAW and State response (2008). The next thematic report, to be presented in 2009, will be on the subject of political economy and violence against women. A research study by Debora Singer on women asylum-seekers ("A Last Resort? Women Asylum Seekers and the UNSRVAW", December 2006, Executive Summary, Asylum Aid) found that the annual reports hold immense potential to support and inform policy, whereas the country reports were greatly useful in supporting claims of women asylum-seekers.

22. The mandate holders have also sought the assistance of experts to undertake comprehensive research to complement themes covered by annual reports, such as in relation to domestic violence, trafficking and indicators of VAW and State response to violence.²¹ Each of the annual reports of the SRVAW reflects the extent to which the mandate draws upon various stakeholders, through consultations with NGOs, review of research studies, and questionnaires sent to governments and United Nations agencies.

23. The country mission reports address the comprehensive status of VAW, grounding the analysis of violence in relation to a specific country, illustrating the particularistic aspect of the problems and identifying protection gaps and the nature of risks relevant to the context, and making detailed recommendations based on these.²²

24. The VAW mandate receives individual complaints, and responds to all reliable and credible information regarding alleged cases of VAW. A standard reporting format is available on the website of the office of the United Nations High Commissioner for Human Rights (OHCHR) to facilitate submission of individual complaints. The SRVAW communicates the case to the government, through allegation letters (when the human rights violation has allegedly already taken place) or urgent appeals (when alleged violations are time-sensitive in terms of involving loss of life, life-threatening situations, or either imminent or ongoing damage of a very grave nature to victims), to seek clarification or appeal, or to secure protection for the victim. Such communication is premised on the obligation of the State to prevent, protect, compensate and punish VAW in the family, in the community and by the State. The governments are expected to respond to allegation letters within two months and to urgent appeals as soon as possible.²³ The mandate therefore serves a pivotal role in the development of human rights law

²¹ The report on violence in the family was accompanied by a “Framework for Model Legislation on Domestic Violence”, E/CN.4/1996/53/Add.2; the annual report on trafficking in women, women’s migration and violence against women (E/CN.4/2000/68) acknowledges in its notes research assistance from a variety of sources; the annual report on indicators is backed by a research study titled “The Next Step: Developing Transnational Indicators on Violence Against Women”, A/HRC/7/6/Add.5.

²² There will have been 33 country missions conducted by the end of the term of the current Special Rapporteur. Of these, 15 were undertaken by the first mandate holder, Radhika Coomaraswamy, and 18 will have been undertaken by the second mandate holder, Yakin Ertürk, by the end of her tenure. The Appendix provides the list of countries visited and the year in which the missions were undertaken.

²³ Manual of Operations of the Special Procedures of the Human Rights Council August 2008, paras. 43-48, available at: <http://www2.ohchr.org/english/bodies/chr/special/index.htm>. The manual offers guidelines for procedures used by Special Rapporteurs. See Communications reports for summaries of communications sent and government responses as follows: A/HRC/7/6/Add.1, A/HRC/4/34/Add.1, E/CN.4/2006/61/Add.1, E/CN.4/2005/72/Add.1 and E/CN.4/2003/75/Add.2.

regarding women, in addition to serving as a mechanism of last resort for accountability or protection for many women worldwide, particularly because access to special mechanisms is not contingent on ratification of any treaty law or reservations in respect thereto, nor is its role activated upon a periodic reporting cycle.

25. As part of the Special Procedures of the Commission on Human Rights and, since 2006, the Human Rights Council, the SRVAW has annual reporting obligations. Since 2004, the SRVAW has been mandated to make an annual oral presentation to the General Assembly. In addition, Resolution 7/24 of March 2008 (paragraph 12) mandates the SRVAW to make an annual oral presentation to the Commission on the Status of Women, which Ertürk had been lobbying for since the beginning of her tenure. The mandate also interacts with and responds to concerns raised within the United Nations, as it did in relation to integrating gender dimensions of the HIV/AIDS pandemic, contributing to the development of the Secretary-General's "In-depth Study on all Forms of Violence against Women" (A/61/122/Add.1), and to the development of indicators on VAW with the Group of Friends of the Chair, established to support work done by the United Nations Statistical Commission. Likewise, the mandate undertakes work jointly with other special mechanisms²⁴ and recommends ways and means of integrating the issue of VAW within the United Nations human rights system. The mandate has also interacted with other regional bodies and mechanisms, such as the Special Rapporteur on Women's Rights of the African Commission on Human and People's Rights, the European Parliament's Rapporteur on Women's Rights in Turkey, and the Council of Europe.

26. In discussing the distinct forms or contexts of violence, both SRVAWs have consistently been attentive towards the intersectional and compounded risks experienced by women due to marginalized status or context. Intersectionality, discussed in detail in Part V of this report, is borne out in the work and the work methods of the mandate. The majority of the communications issued by the SRVAWs have been undertaken jointly with one or more special mechanisms, bringing to bear upon the State the range of violations that intersect in a given situation.²⁵

27. CEDAW General Recommendation 19 and DEVAW specify that States should "refrain from engaging in violence against women", directly or through their agents, and "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons".²⁶

²⁴ See part V, Subpart E, of this Report - Intersectionality of Discrimination and Continuum of Violence.

²⁵ The majority of the communications of the SRVAW are sent jointly with other special mechanisms; only a very small fraction of these are sent singly. See footnotes 181 and 182 in part V, Subpart E, of this report, for data on joint and single communications, as well as the thematic mechanisms with which SRVAWs have collaborated with regard to communications.

²⁶ DEVAW (A/RES/48/104), articles 4 (b) and (c).

The concept of due diligence has been developed and used by the SRVAWs as a key principle to hold States legally accountable for the prevention, investigation and punishment of violations by non-State actors. As will be discussed in Part IV, the use of the concept has considerably changed the nature of State obligations with respect to preventing VAW in particular.

III. KEY AREAS OF FOCUS

28. This section looks at key areas that exacerbate violence examined by the mandate. It must be stated at the outset that the two mandate holders have examined additional forms of violence or contexts in their reports beyond what is covered in this section. The selectivity here is based on themes that have received independent and fuller attention in annual reports along with elaboration in the country mission reports. The areas that have not been discussed independently in this part - for example, concerns relating to women refugees and internally displaced persons (IDPs) - have instead been subsumed under other areas here. Further, although culture has received independent attention in two annual reports, it is not covered in this section and instead is taken up in Part V, on conceptual shifts, so as to avoid repetition on the subject.

29. The creation of a special mechanism on violence against women (VAW) has enabled the dynamic development of human rights standards that are responsive to contemporary challenges and emerging issues with respect to gender-based violence. The value of the mandate must be understood in the context of the historic, endemic and structural nature of VAW, as well as the history of gender blindness within domestic and international law. As a result, the forms of violence and contexts elaborated upon in this section are generally discussed, along with an examination of women's status and gender inequality in society, patriarchal structures, and socio-economic frameworks/policies that exacerbate or condone VAW.

A. Domestic violence

30. The two broad categories addressed by the mandate in relation to violence in the family are that of domestic violence and culturally justified practices that are violent to or subordinate women. In the context of domestic violence, the contribution of the mandate has been to expand the concept of State obligation to develop protection for women in diverse family forms; to develop State obligation beyond prosecution of private actors to encompass protection from violence, including provision of legal support and health, safety, and shelter requirements for the survivor; and to develop the obligation to prevent VAW by addressing its root causes. The scope of State obligation breaks the private/public dichotomy by addressing the linkages of illegal private conduct with public policy and State structures.

31. With regard to family violence, Radhika Coomaraswamy has noted that despite the "neutrality" of the term, it must be defined by the broad range of women's experiences of violence within familial relationships that establish it as primarily gendered violence perpetrated by men against women.²⁷ Conventionally, State protection with respect to domestic violence has been construed as covering only spousal violence, due to the limitations arising from institutional definitions of the family. Earlier on in the mandate, the report on violence in the family stressed

²⁷ E/CN.4/1995/42, paras. 120-122; and E/CN.4/1996/53, paras. 23, 62 and 63.

the need to redefine the concept of family as the first step towards addressing domestic violence. By bringing to bear the wide-ranging experiences of women into international law, the mandate adopted a subjective definition of the family based on individual bonds of nurturance and care, to encompass “difference and plurality” of family forms rather than institutional, State-based definitions.²⁸ The definition of the family has been expanded by the mandate to encompass intimate-partner and interpersonal relationships, including non-cohabitating partners, previous partners and domestic workers. This has allowed inclusion of “wives, live-in partners, former wives or partners, girl-friends (including girl-friends not living in the same house), female relatives (including but not restricted to sisters, daughters, mothers) and female household workers” to be recipients of State protection.²⁹

32. Emphasizing the need to reject the narrow institutional definition of the family, the Special Rapporteur on Violence against Women (SRVAW) explained that upholding dominant norms of the family despite the empirical realities of diverse family forms serves to sanction violence against women transgressing traditional roles within and outside the home.³⁰ Taking stock of the impact in the decade following the mandate’s recognition of diverse family forms, Yakin Ertürk noted that “attention has focused, albeit insufficiently, on violence against women by family members and intimate partners; the situation of domestic workers, who are employed in the private household setting, has been largely ignored in research, policy and standard-setting”.³¹

33. The mandate has applied international standards of equality and non-discrimination, in the context of marriage and the family, upholding the right to privacy, sexual health (including sexual orientation) and reproductive rights within the context of family. In doing so, the mandate has rejected conventional critiques judging interventions to address oppressive family forms as being anti-family.³² In applying rights holistically within the domain of the family, the SRVAW “intentionally [departed] from traditional definitions of domestic violence, which address violence perpetrated by intimates against intimates, or equate domestic violence with woman-battering”.³³ The Secretary-General’s study on VAW reinforced the principle that protection from domestic violence must extend to a broad range of interpersonal relationships within the family.³⁴

²⁸ E/CN.4/1996/53, paras. 24-25.

²⁹ “A Framework for Model Legislation on Domestic Violence”, E/CN.4/1996/53/Add.2., part II, Subpart B, para. 7.

³⁰ E/CN.4/1999/68, paras. 6-9.

³¹ E/CN.4/2004/66, para. 41.

³² E/CN.4/1999/68, paras. 6-18.

³³ E/CN.4/1996/53, para. 28.

³⁴ “In-depth Study on All Forms of Violence against Women: Report of the Secretary-General” (2006), A/61/122/Add.1.

34. The addendum to the report on violence in the family³⁵ set out a framework for model legislation on domestic violence to assist States in meeting their human rights obligations in the private sphere. The model law proposed by the SRVAW comprised civil and criminal remedies, in addition to mandating coordinated emergency and non-emergency support services, and training of police, counselors and the judiciary to ensure implementation of the law.³⁶ The State obligations envisaged to address VAW go beyond enactment of laws, criminalization of violence and protection from it. In further reports, stress has also been placed on the broader obligations of the State towards violence prevention through public policies and public education.³⁷ The sustained attention to all dimensions of State obligations towards addressing domestic violence has given impetus to legislative advocacy and enactment of special legislation on the subject in various countries.³⁸ By 2006, 89 States were reported to have legislation addressing domestic violence; of these, 60 states had specific domestic-violence laws, seven had violence laws, and about 20 had draft legislations on domestic violence in various stages of development.³⁹ In the mission reports on many countries - for example, Brazil and the Russian Federation - the SRVAW highlighted the necessity of enactment of a specific law on domestic violence, along with the provision of coordinated services and the strengthening and sensitization of existing State structures. The SRVAWs also caution in their mission reports that the State initiatives should not be urban-centric but available across regional and ethnic disparities.

35. In her treatment of domestic violence, Ertürk has ruptured the public/private dichotomy by expanding State accountability beyond private actors for private acts of violence, by calling upon the State to address external pressures that bear upon particular groups because of their status, ethnicity or context, and that exacerbate domestic violence. In this regard, contexts such as stigma-laden and flawed HIV/AIDS policies, occupation, racism, socio-economic marginalization and restrictive immigration policies have been held to constitute the external environments that exacerbate domestic violence. Accordingly, the HIV/AIDS report outlines the State's obligation to counter stigma, VAW and gender inequality in its HIV/AIDS prevention policies to combat the enhanced discrimination and violence that HIV-positive women experience within the family.⁴⁰

36. Similarly, in the case of the Occupied Palestinian Territories (OPT), the SRVAW noted the importance of ensuring State commitment to women's rights through the development of a

³⁵ E/CN.4/1996/53/Add.2.

³⁶ E/CN.4/1996/53/Add.2, parts IV-VII.

³⁷ E/CN.4/2006/61 and A/61/122/Add.1 (2006).

³⁸ For impact of the model law on domestic violence advocacy in the Asia Pacific, see "Standpoint Viewpoint: Guidelines for Regional Consultations with the UNSRVAW", Asia Pacific Forum for Women, Law and Development (2003).

³⁹ A/61/112/Add.1 (2006), para. 318, box 11.

⁴⁰ E/CN.4/2005/72.

secular democratic state, increased political representation of women, and enactment of laws on non-discrimination, equality, sexual assault, domestic violence, honour crimes and the need to end occupation.⁴¹ In the context of Sweden, where, despite a strong gender-equality framework, domestic violence and under-representation of women in senior positions of private enterprises prevailed, the SRVAW noted that the equal opportunities agenda had yet to address the deep-rooted causes of gender hierarchy, or to respond to the protection gaps for specific women's groups, such as Saami women; women with disabilities; women from an immigrant, refugee or asylum background; young women; and women in the sex sector. The recommendations emphasized the need to address root causes, including avoidance of gender and cultural stereotypes in the media.⁴² With regard to the Netherlands, the SRVAW drew attention to the application of the gender mainstreaming approach, which resulted in gender-neutral State responses to domestic violence, as well as the cultural essentialist responses to violence among immigrant communities.⁴³ The particularization of domestic violence among non-Western immigrants as a cultural problem was held to be problematic, as it discounted the relationship of socio-economic disadvantage and restrictive immigrant policies to domestic violence.

B. Trafficking and migration

37. The mandate's work on trafficking has significantly shifted the way in which the issue had conventionally been framed, in terms of de-linking it from prostitution, bringing out its linkages with migration, and putting human rights of the trafficked women in the centre of approaches to trafficking. The report on violence in the community places trafficking in the context of movement of persons within and across borders from South to North, as well as from impoverished and conflict-ridden areas of the South to areas with a concentration of capital and employment in the South, in the wake of reduced controls of exports and imports in the globalized market.⁴⁴

38. Trafficking was earlier linked exclusively to prostitution, but patterns in the past two decades have shown that trafficking serves forced and/or bonded labour, including within the sex trade, forced marriage and other slavery-like practices. In view of the absence of international consensus on approaches to trafficking, including among non-governmental organizations (NGOs), and the incompatibility of existing definitions with contemporary trends, Coomaraswamy proposed a definition and set out the human rights obligations in relation to trafficking. The SRVAW's definition makes trafficking conditional upon the occurrence of

⁴¹ Country mission report on the OPT, E/CN.4/2005/72/Add.4.

⁴² Country mission report on Sweden, A/HRC/4/34/Add.3.

⁴³ Country mission report on the Netherlands, A/HRC/4/34/Add.4.

⁴⁴ E/CN.4/1997/47. See also the country mission report on Poland for linkage of unemployment and other socio-economic causes with increased vulnerability of women in small towns and villages to trafficking, E/CN.4/1997/47/Add.1.

non-consensual transportation for the purpose of slavery-like practices or forced labour.⁴⁵ The country mission reports on Guatemala and the Netherlands note that trafficking of women and children is primarily for sexual exploitation, as well as, to a lesser extent, for forced labour.⁴⁶ The report on Coomaraswamy's mission to Bangladesh, Nepal and India examined trafficking for forced marriage, sex work, forced begging, organ harvesting and camel jockeying.⁴⁷

39. The thematic report on the subject discusses in depth the legal, social and economic dimensions, as well as the violations and discrimination linked to the movement of women.⁴⁸ The interlinkages of trafficking and migration with macroeconomic policies and with armed conflict are woven into two other reports on separate themes: "Economic and Social Policy and Its Impact on Violence against Women", and the subsequent report on "Violence against Women perpetrated and/or Condoned by the State during Times of Armed Conflict (1997-2000)".⁴⁹ In view of the fact that movement of labour has been driven by macroeconomic policies that shape both contemporary forms of trafficking and migration, the SRVAW's definition proposes making trafficking conditional only upon consent and purpose of transport, rather than legality or illegality of transport. This approach views trafficking as one violation rather than the total sum of a continuum of violations experienced by trafficked women in the course of movement.

40. Approaches that restrict movement or forcibly rescue, detain, rehabilitate and repatriate trafficked persons, including performing forced and non-confidential HIV testing, have been viewed by both mandate holders as treating trafficked persons as criminals and violating their human rights. Accordingly, the mandate has been critical of migration and immigration policies of sending and receiving countries that restrict free movement, of the criminalization of work in the sex sector, and of detention and deportation that curtails the victims' human rights and further penalizes the trafficked persons. Drawing attention to violations resulting from restrictions on free movement, the country mission report on the Netherlands notes that trafficking victims are housed in penal institutions rather than shelters for domestic violence

⁴⁵ E/CN.4/2000/68, para. 13, page 9 - Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons:

- (i) By threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of:
- (ii) Placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i).

⁴⁶ Country mission reports on Guatemala, E/CN.4/2005/72/Add.3; and the Netherlands, A/HRC/4/34/Add.4.

⁴⁷ Country mission report on Bangladesh, Nepal and India, E/CN.4/2001/73/Add.2.

⁴⁸ E/CN.4/2000/68.

⁴⁹ E/CN.4/2000/68/Add.5, and E/CN.4/2001/73 at para. 53, respectively.

victims during their period of stay. It further notes that the country allows a three-month period for trafficked victims to recover; the extension of this period is contingent on the victim's cooperation with law enforcement. Such a condition discounts that victims fear reporting, as it results in deportation, public shame on return to their home country, or retaliation by traffickers. The state obligations developed by Coomaraswamy in her thematic report on trafficking place importance upon recognition and protection of human rights of trafficked women in terms of labour rights, migrant workers' rights (including through the implementation of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families),⁵⁰ free movement and agency, while recommending strong action against and protection from trafficking, in combination with protection of human and labour rights of women in the sex sector.

41. The mandate holders have succeeded in influencing international standards on trafficking, although gaps remain in terms of harmonizing different positions among international, regional and national approaches, cooperation among States, and implementation. For instance, Coomaraswamy engaged in a dialogue with member States with regard to the definition of trafficking included in the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime" (2000). The Protocol, however, has been critiqued by the mandate for its law-and-order approach to trafficking, while compliance with the office of the United Nations High Commissioner for Human Rights (OHCHR) "Recommended Principles and Guidelines on Human Rights and Human Trafficking" has been recommended, as it upholds the human rights of trafficked women.⁵¹ The Commission on Human Rights (CHR) also created a new special mechanism on trafficking in 2004 to focus on "the human rights aspects of the victims of trafficking in persons, especially women and children".⁵² Further, the Special Rapporteur on Torture has expanded the definition of torture to include trafficking as a form of torture in the private sphere.⁵³ Despite the above developments, Ertürk noted that more progress is needed to comprehensively address trafficking from a human rights and gender perspective, which requires the full implementation of the OHCHR Recommended Principles and Guidelines, a rethinking of restrictions on legal migration, legal protection under national and international labour law regardless of legality of status, and removal of gender bias in law that makes the immigration status of women contingent on their being "dependent" spouses.⁵⁴

⁵⁰ On 1 October 2008, 39 States were parties to the Convention.

⁵¹ E/2002/68/Add.1.

⁵² E/CN.4/DEC/2004/110.

⁵³ A/HRC/7/3.

⁵⁴ E/CN.4/2006/61, para. 95.

C. Armed conflict

42. Although sexual brutality, enslavement, forced prostitution and forced pregnancy have marked armed conflicts across the globe, these crimes have long remained invisible in international criminal and humanitarian law. Viewed as an unfortunate outcome of war, rather than crimes, they have been popularly explained in terms of aberrant behaviour by men under harsh conditions of war and separation from their families and communities. Studies of rape in war, however, prove the contrary. The wartime slavery of “comfort women”, and the conflicts in Darfur, the Democratic Republic of the Congo (DRC), Liberia, Rwanda and the former Yugoslavia, as well as accounts of scores of other conflicts around the world, conclusively demonstrate that sexual violence is not an outcome of war, but that women’s bodies are an important site of war, which makes sexual violence an integral part of wartime strategy.

43. Feminist analysis has explained the linkage between patriarchal notions of female sexual purity with honour and VAW.⁵⁵ These values attached to female sexuality legitimize sexual regulation of “one’s” women, and the sanctioning of sexual violence against transgressors as well as women belonging to the “other”.⁵⁶ Coomaraswamy has reiterated this position in relation to sexual violence during armed conflict.

44. Ertürk also has established a strong link between wartime violence and patriarchal gender hierarchies. In her mission report on the Democratic Republic of the Congo, the SRVAW cautions against addressing sexual violence associated with war in isolation from gender-based discrimination that women experience in times of “peace”.⁵⁷

45. In this context, it is important that the law addressing sexual violence in armed conflict recognizes the violence for what it is, and addresses the barriers posed by notions of female sexuality rather than reinforcing them. Commenting on the partial and problematic references in international law, the first SRVAW has observed: “Until recently, violence against women in armed conflict has been couched in terms of ‘protection’ and ‘honour’. Article 27 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War treats violence against women as a crime of honour rather than as a crime of violence. By using the honour paradigm, linked as it is to concepts of chastity, purity and virginity, stereotypical concepts of femininity have been formally enshrined in humanitarian law. Thus, criminal sexual assault, in both national and international law, is linked to the morality of the victim. When rape is perceived as a crime against honour or morality, shame commonly ensues for the victim, who

⁵⁵ See Nira Yuval-Davis, *Gender and Nation* (London: Sage publications, 2000).

⁵⁶ See Yakin Ertürk, “Considering the Role of Men in Gender Agenda Setting: Conceptual and Policy Issues”, in *Feminist Review* (2004), 78:3-21.

⁵⁷ Country mission report on the DRC, A/HRC/7/6/Add.4, Summary.

is often viewed by the community as ‘dirty’ or ‘spoiled’. Consequently, many women will neither report nor discuss the violence that has been perpetrated against them. The nature of rape and the silence that tends to surround it makes it a particularly difficult human rights violation to investigate.”⁵⁸

46. Coomaraswamy’s report on violence perpetrated or condoned by the State documents the range of violations perpetrated during armed conflict by State and non-State actors such as the army, the militia, the peacekeeping forces and the armed opposition groups.⁵⁹ The absence of explicit recognition of gender-based violence in armed conflict has historically and in recent times contributed to impunity for widespread, systematic sexual brutality against women. In her report, the SRVAW noted the slow evolution towards partial recognition of gender-based crimes in international humanitarian law - to begin with, through terminology of morality/honour,⁶⁰ moving to limited recognition of sexual violence to the extent of rape,⁶¹ and then to the inclusion of rape within the scope of torture through expansive interpretation.⁶²

47. Significant steps were later taken by the international community - in particular through the work of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY), in the wake of systematic use of sexual violence in the conflict in the former Yugoslavia and the genocide in Rwanda - to accord explicit recognition and sanction appropriate procedures to address gender-based violence within the scope of war crimes, crimes against humanity, and components of the crime of genocide and torture. Despite these encouraging developments, the challenges of securing explicit recognition remained in the preparatory process of drafting the Rome Statute of the International Criminal Court (ICC), under way in 1998, when Coomaraswamy’s first report on the subject was released. The SRVAW expressed concern that the drafting of the Rome Statute had not fully incorporated developments from the two ad hoc tribunals in relation to gender-based crimes in conflict, and that much of the gender-specific language remained contentious.⁶³ The report further strongly recommended that the ICC “explicitly incorporate provisions on violence against women, both

⁵⁸ E/CN.4/1998/54, para. 11.

⁵⁹ E/CN.4/1998/54.

⁶⁰ Art. 27 of the 1949 Geneva Convention.

⁶¹ Additional Protocols I and II to the Geneva Conventions in 1977 relating to “Protection of Victims of International Armed Conflicts” and “Protection of Victims of Non-International Armed Conflicts”, respectively.

⁶² In 1992, the Special Rapporteur on Torture defined rape as a form of torture, bringing it explicitly within the scope of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Later, the ICTR and ICTY indicted individuals for rape as a form of torture.

⁶³ E/CN.4/1998/54, part I, Subpart C, paras. 85-89.

substantively and procedurally”,⁶⁴ thereby reinforcing efforts of the Women’s Caucus for Gender Justice, which was advocating for inclusion of explicit gender-based crimes in the statute, and also incorporate procedural, evidentiary and structural arrangements supporting its full integration.⁶⁵ In this regard, the SRVAW pursued justice for gender-based crimes during war through steadfast efforts, including country missions, to seek acknowledgement of legal responsibility for military sexual slavery during World War II by Japan.⁶⁶ Similarly, the SRVAW made recommendations to remedy the lack of capacity of the office of the prosecutor and the Sexual Assault Team to actively prosecute sexual violence perpetrated during the conflict in Rwanda. In addition to the focus on prosecutions of sexual violence in their mission reports, both SRVAWs also addressed the status of women in post-conflict and peace processes, notably in relation to the status of survivors of violence, women in detention, the operations of the United Nations agencies, the United Nations High Commissioner for Refugees (UNHCR) and the reconciliation processes.⁶⁷

48. The entry into force of the ICC Statute on 1 July 2002 marked a historic advancement for gender justice in terms of explicit inclusion of gender-based crimes, in line with the recommendations of the SRVAW’s report on VAW during armed conflict.⁶⁸ While lauding this as a landmark victory, the report documents the continuing nature and magnitude of VAW in armed conflict, as well as the continuum of VAW in developments triggered by armed conflict, such as migration, forced displacements or trafficking; and the invisibility of women in post-conflict processes, such as reconstruction, peacebuilding and accountability through truth and reconciliation processes. Despite the advancements in recognition of VAW in armed conflict, the SRVAW drew attention to the implementation gaps that remained at the international level at the time, including those in relation to the ICTR and ICTY.⁶⁹

49. Regarding violence against women in armed conflict, as refugees, IDPs, or residents in areas occupied by foreign military bases, peacekeeping forces, or humanitarian workers, the SRVAW recommended increasing the representation of women “in all institutions of the United Nations and at all levels of decision-making, including as military observers, police, peacekeepers, human rights and humanitarian personnel in United Nations field-base

⁶⁴ Ibid., part I, Subpart E.

⁶⁵ The Women’s Caucus for Gender Justice worked through the preparatory process leading to the adoption of the Rome Statute to ensure integration of gender crimes and perspectives, and continues to work to ensure gender parity within the ICC.

⁶⁶ Mission to the Democratic People’s Republic of Korea, the Republic of Korea and Japan, E/CN.4/1996/53/Add.1.

⁶⁷ Mission reports on Rwanda, E/CN.4/1998/54/Add.1; El Salvador, E/CN.4/2005/72/Add.2; Guatemala, E/CN.4/2005/72/Add.3; and the DRC, A/HRC/7/6/Add.4.

⁶⁸ E/CN.4/2001/73.

⁶⁹ E/CN.4/2001/73, paras. 41-43.

operations ...”,⁷⁰ in ceasefire and peace negotiations, and in formulation of repatriation and resettlement plans. Further, her recommendations included investigation and action against abuses by peacekeepers, impact studies on women and armed conflict, the creation of an international body for protection of IDPs, responses to IDPs in terms of camp layout, and humanitarian aid to incorporate women’s security and other needs.⁷¹ Specifically, on the responsibilities of peacekeeping forces, Ertürk expressed concerns in her country report on the DRC⁷² over a “pattern of sexual exploitation” by the United Nations peacekeeping forces in the DRC, contrary to standards set by the department of peacekeeping operations (DPKO) of the United Nations Secretariat, which prohibit any solicitation of prostitution, regardless of the age or consent of the person solicited. She noted that while some important measures had been taken by the Secretary-General and the DPKO in recent years, some troop contingents within the United Nations organization mission in the Democratic Republic of the Congo (MONUC) nevertheless failed to address allegations of sexual exploitation and abuse with due diligence. She also regretted that at the time of writing, the United Nations was still lacking a mechanism to provide victims of sexual exploitation and abuse with adequate compensation. She recommended that the United Nations give the Office of Internal Oversight Services the capacity to investigate all allegations of sexual exploitation and misconduct of peacekeeping forces, to collect forensic evidence that could be used in a court of law and, where allegations are substantiated, to ensure that the victim receives compensation from MONUC or relevant troop-contributing countries. She also called for a transparent process of prosecution of the perpetrators, preferably through court hearings in the country where the crime has been committed.

50. Since the adoption of the Rome Statute, the mandate holders have continued to pursue accountability for sexual violence and gender-based crimes in situations of armed conflict, among IDPs, and in relation to peace and reconstruction processes through country missions, bringing out the exacerbated impact of armed conflict when combined with patriarchy, ethnic and racial marginalization, poor status of women, and the absence of gender equality in legislation and State processes. The mission to the OPT evinces the combined impact of occupation and patriarchy on women, bringing to the surface, on the one hand, the gendered impact of restricted movement, house demolitions, detention, injuries and loss of life on women; and on the other, the consequences of heightened pressure and the humiliation of occupation on Palestinian men, in terms of increased control and aggression over women, through domestic violence and honour crimes.⁷³

51. The mission to the Russian Federation covers the situation of women in the North Caucasus in the context of the regional demand for autonomy and Russian military operations to combat terrorism. It reveals the multiple forms of VAW resulting from military operations, armed conflict and patriarchy - in relation to the private sphere, as IDPs, and as targets of

⁷⁰ Ibid., para. 114.

⁷¹ Ibid., paras. 114-135.

⁷² A/HRC/7/6/Add.4.

⁷³ Country mission report on the OPT, E/CN.4/2005/72/Add.4.

counter-terrorism.⁷⁴ In the context of the DRC, the country mission report brings out the magnitude and extreme sexual brutality perpetrated upon women and its devastating consequences in conditions of continued armed conflict; the existence of multiple armed groups; armed civilians; low social, economic and educational status of women; gender discrimination in law; and the State security and justice sectors that are marked by inefficiency and a lack of independence and capacity.⁷⁵

52. The sustained attention to VAW in armed conflict within and outside the United Nations has resulted in two noteworthy resolutions by the Security Council. In 2000, Resolution 1325 on women, peace and security acknowledged the impact of war on women, and emphasized the need to include women in conflict resolution and peace processes for achievement of sustainable peace. In 2008, Resolution 1820 recognized rape as a weapon of war and a threat to international security, noting that “women and girls are particularly targeted by the use of sexual violence including as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group.” While these developments have succeeded in prioritizing attention to efforts towards cessation of sexual violence in armed conflict, much remains to be accomplished in terms of compliance, implementation and accountability.

D. Reproductive rights, HIV/AIDS and violence against women

53. The mandate has paid consistent attention to the impact of health and population policies on women’s reproductive rights and their linkages with VAW. Three thematic reports are particularly significant for the purpose of this discussion, as they focus on the intersections among VAW, reproductive rights and HIV/AIDS.⁷⁶ In addition, country mission reports discuss reproductive health consequences and the psychosocial impact of VAW during conflict and in peacetime, covering issues of reproductive health services, sex education for adolescents, child sexual abuse, confidentiality of HIV testing, the need for sensitive medico-legal procedures, and

⁷⁴ Country mission report on the Russian Federation, E/CN.4/2006/61/Add.2.

⁷⁵ Country mission report on the DRC, A/HRC/7/6/Add.4.

⁷⁶ “Policies and Practices that Impact Women’s Reproductive Rights and Contribute to, Cause or Constitute Violence against Women” is the subject of E/CN.4/1999/68/Add.4. Reproductive rights policies are also addressed in the report on violations resulting from economic and social policies, E/CN.4/2000/68/Add.5. The report on “Intersections of Violence against Women and HIV/AIDS”, E/CN.4/2005/72, discusses issues of health, reproductive rights and access to health care.

health-care services for victims of VAW.⁷⁷ Differential health status, differential access to health care, and coercive measures such as forced sterilization have also been addressed in the context of intersections between race and gender, and their impact on indigenous and migrant women.⁷⁸

54. The report on policies and practices that impact women's reproductive rights and contribute to, cause or constitute VAW⁷⁹ sets out the legal framework defined by governments at the International Conference on Population and Development (1994) and the Fourth World Conference on Women (1995), together with relevant provisions of treaty law, in particular CEDAW. Reproductive health includes sexual health, and reproductive rights entail recognition of women's "basic right ... to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence ...".⁸⁰ This entitlement is reinforced and expanded to recognize the right of women to have control over their sexuality.⁸¹

55. The legal framework on the right to sexual and reproductive health has been summarized by the Special Rapporteur on the Right to Health as comprising, on the one hand, freedom from violence and discrimination, and on the other, entitlements to reproductive health, maternal and childcare services; access to information; emergency obstetric services; family planning; safe, legal, accessible abortions; and voluntary and confidential testing, counselling and treatment of HIV/AIDS, sexually transmitted diseases, and breast and reproductive system cancers. The entitlements also include access to underlying determinants of health such as education, female literacy and empowerment.⁸² The legal framework clearly establishes that the primary duty bearer responsible for securing the freedoms and entitlements is the State. The State has been

⁷⁷ In relation to reproductive health issues in the context of conflict, see reports on Rwanda, E/CN.4/1998/54/Add.1; Sierra Leone, E/CN.4/2002/83/Add.2; and the DRC, A/HRC/7/6/Add.4. In relation to health-care services during "peacetime" for trafficked women in Poland, see E/CN.4/1997/47/Add.1; for victims of domestic violence in Brazil, see E/CN.4/1997/47/Add.2; for curtailment of reproductive health issues arising from criminalization of abortion and inadequate sex education in El Salvador and Guatemala, see E/CN.4/2004/66/Add.2 and E/CN.4/2005/72/Add.2.

⁷⁸ A/CONF.189/pC.3/5, part V.

⁷⁹ E/CN.4/1999/68/Add.4.

⁸⁰ Report of the ICPD, A/CONF.171/13, para. 7.3.

⁸¹ "The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence." Report of the fourth World Conference on Women, A/CONF.177/20, para. 96.

⁸² E/CN.4/2004/49. See also Paul Hunt and Judith Bueno de Mesquita, "The Right to Sexual and Reproductive health", Human Rights Centre, University of Essex.

vested with the obligation of dismantling obstacles, providing protections and enabling prevention, in addition to provision of services and care designed to meet the needs of all women, including those who are vulnerable and marginalized.

56. Coomaraswamy classified policies and practices that have an impact on women's reproductive rights, or constitute or contribute to VAW in two categories.⁸³ The first relates to the reproductive health consequences of violence against women, and the second, to violations resulting from State action/inaction. In the first part of the report, she brought out the health dimensions of the distinct forms of gender-based violence covered by the mandate, including rape, domestic violence, forced prostitution/trafficking, and cultural practices such as child marriage/early childbearing and sex-selective abortion/female infanticide. The SRVAW observed that each of these acts constitutes violence in and of itself, in addition to inflicting serious reproductive, sexual, physical, psychological and health-related long-term harm to women. Accordingly, the obligation of the State to be duly diligent so as to prevent, investigate and punish VAW includes the fulfilment of reproductive rights, in addition to guaranteeing other rights and freedoms.

57. The second category of violations related to reproductive rights pertains to violence occurring directly and indirectly as a result of State action/inaction in the context of reproductive health policy.⁸⁴ Direct State action that violates women's reproductive rights arises from coercive population policies and measures of population control, coerced sterilization of women from marginalized ethnic populations, criminal sanctions against all forms of abortions and contraception, and inadequate sex education for adolescents. Such State policies and measures infringe upon women's liberty, security and life. State inaction that contributes to the violation of women's reproductive rights results from the neglect of the State obligation to address structural subordination of women and dominant notions of sexuality that impose norms of chastity and honour upon them. Measures that aim to counter subordination of women and prevent violence include women's empowerment and development of security and self-determination. The SRVAW has noted that a lack of effective policies based on reliable data to meet minimum core obligations, State failure to prevent maternal mortality, non-provision of contraceptive information/family planning services that recognize and enable women's sexual autonomy, and State failure to address physical and psychological abuse perpetrated by health-care providers all amount to violence resulting directly or indirectly from State policies. This report is significant for highlighting grave human rights consequences to women due to State policies and actions that are guided by imperatives other than the protection of women's reproductive rights. The country mission report on El Salvador expresses concern with regard to the criminalization of therapeutic abortion and abortion following rape - which increases the economic and social hardships on women, especially poor women, who lack options for dealing with unwanted

⁸³ In terms of these two categories, see E/CN.4/1999/68/Add.4, part II, paras. 15-78, which structures the General Findings on policies and practices that impact women's reproductive rights and contribute to, cause or constitute VAW.

⁸⁴ See also "Economic and Social Policy and Its Impact on Violence against Women", E/CN.4/2000/68/Add.5.

pregnancies - and the lack of sexual and reproductive health education for adolescents.⁸⁵ In the context of armed conflict and widespread sexual violence and slavery, the country report on Sierra Leone recommends better access to health care, the development of a strategy for prevention of HIV/AIDS, and the prioritization of the needs of female victims of sexual violence, including through fistula surgery and psychosocial support.⁸⁶

58. The report on HIV/AIDS has brought out the magnitude of the human rights tragedy borne by women and girls resulting from the neglect of their right to sexual and reproductive health. The SRVAW has drawn attention to the importance of prioritizing sexual and reproductive health and HIV/AIDS prevention for women, particularly in contexts of armed conflict, trafficking and sexual exploitation - as in the country reports on Bangladesh, Nepal and India, and Sierra Leone.⁸⁷ The significance of this concern becomes evident in the context of the strikingly higher prevalence of HIV/AIDS among girls and young women compared with their male counterparts in many countries,⁸⁸ in spite of which the HIV/AIDS policies and programmes have been slow and neglectful of incorporating, let alone prioritizing, gender approaches in prevention and control.⁸⁹

59. The report on the “Intersections of Violence against Women and HIV/AIDS”⁹⁰ is also located in the context of the Declaration of Commitment on HIV/AIDS by the General Assembly⁹¹ and the call by the CHR emphasizing the linkage between advancement of women and girls and reversal of the pandemic.⁹² The SRVAW’s report is a step towards integration of HIV concerns in relation to VAW in pursuance of the call of the CHR to all mandate holders for such integration within their mandates.⁹³ Using the framework of “root

⁸⁵ Country mission report on El Salvador, E/CN.4/2005/72/Add.2

⁸⁶ Country mission report on Sierra Leone, E/CN.4/2002/83/Add.2.

⁸⁷ Country mission reports on Bangladesh, Nepal and India, E/CN.4/2001/73/Add.2; and Sierra Leone, E/CN.4/2002/83/Add.2.

⁸⁸ See E/CN.4/2004/49, in which the Special Rapporteur on the Right to Health notes: “Six thousand young people aged 15-24 years become infected with HIV daily. In sub-Saharan Africa and South Asia, about 65 per cent of young people living with HIV/AIDS are female.”

⁸⁹ For neglect and denial of decision makers in affected countries to take notice of linkages between sexual and gender-based abuses to higher HIV/AIDS prevalence among girls and young women, see “Human Rights Watch, policy paralysis: A Call for Action on HIV/AIDS-Related Human Rights Abuses against Women and Girls in Africa” (December 2003).

⁹⁰ E/CN.4/2005/72.

⁹¹ A/RES/S-26/2 (2 August 2001).

⁹² E/CN.4/RES/2004/27.

⁹³ E/CN.4/RES/2003/47.

causes” of VAW and multilayered vulnerabilities that compound the experience of discrimination, Ertürk has outlined the continuum of gendered discrimination and violence cutting across the private and public domains in the context of HIV/AIDS. This report demonstrates the linkage among unequal power relations, VAW and increased vulnerability of women to contracting HIV, thereby explaining the increasing numbers of women living with HIV/AIDS. Gender inequality results in sexual assault, women’s lack of information, disempowerment and an inability to negotiate safe sex, thus increasing women’s vulnerability to contracting HIV/AIDS. Similarly, situations of armed conflict, trafficking, criminalization of prostitution and commercial exploitation of prostitution make women more vulnerable to sexual abuse and increase their inability to seek redress. Women’s disempowerment resulting from patriarchy is exacerbated by disadvantages of class, refugee, migrant, conflict situation and other marginalized status, increasing their risk of contracting HIV/AIDS. The SRVAW’s report outlines how gender inequality shapes the additional and specific forms of stigma borne by women upon contracting the virus. For instance, it increases the experience of stigma and results in desertion and impoverishment within the family and the community, in terms of social ostracism, withdrawal of family/community care, disentitlement from succession and property rights, and, in many cases, violence. Moreover, HIV/AIDS further impedes women’s access to health care and justice.

60. As women’s vulnerability to contracting HIV/AIDS and the nature of violations pursuant to contracting HIV/AIDS are linked to unequal gender relations, sexuality and notions of masculinity, Ertürk has stressed the need for States to acknowledge and act upon the interlinkages between the “twin pandemics” HIV/AIDS and VAW. In this context, the SRVAW has highlighted the need for addressing gender discrimination to challenge structural inequality between men and women in all policies and programmes as part of the effort to combat HIV/AIDS, in order to make a difference in women’s lives and mitigate the disproportionate risks and violations they experience in this context.⁹⁴

61. The annual report by the SRVAW on this theme places value on approaches that target vulnerable groups, but stresses the imperative of integrated approaches to combating AIDS that target gender inequality. The mandate has stressed the necessity of prevention through tackling root causes of gender inequality, pointing to the need for approaches that enable sexual and reproductive autonomy, empowerment of women’s capacities, and transformation of conditions that cause inequality. The recommendations emphasize non-discrimination and human rights through laws, programmes, and trainings; improvements in health care to ensure access; voluntary confidential HIV testing; care for survivors of sexual violence; affordable generic drugs; demilitarization; and research for HIV prevention. They also stress the importance of human rights standards, international cooperation, and funding to reverse the trend of the feminization of the HIV/AIDS epidemic.

⁹⁴ Statement by Yakin Ertürk at the International Women’s Summit: Women’s Leadership on HIV and AIDS, Nairobi, 4-7 July 2007. All statements of the SRVAWs are available at <http://www2.ohchr.org/english/issues/women/rapporteur/index.htm>.

IV. COMPLIANCE, IMPLEMENTATION AND ACCOUNTABILITY

62. The focus in the first decade of the mandate was on securing recognition for distinct forms of violence against women (VAW) and their causes, and outlining legal doctrines and State obligations in relation to them. These have been critical to granting visibility to the continuum of violence through the public and private spheres, highlighting the distinction and the commonalities between VAW in peacetime and during conflict, and to establishing linkages of VAW with power structures, including macroeconomic policies. The final report of Radhika Coomaraswamy, marking the end of her tenure as SRVAW in 2003, reflected on the strides made in terms of recognition and, to some extent, in relation to creating implementation tools,⁹⁵ while noting the gaps that remain, particularly with reference to implementation. The first report of Yakin Ertürk, submitted in 2004 on assuming the SRVAW office, emphasized implementation and accountability as priority areas of the mandate, particularly in relation to non-State actors. The SRVAW has focused on clarifying emerging forms and contexts of violence, as well as tools and frameworks that facilitate implementation. This section looks at the mandate's contribution in facilitating compliance and accountability through legal frameworks, definitions, and expansion of the due diligence standard in relation to VAW, as well as through the value of indicators, impact studies and research in informing State responses to VAW.

A. Legal framework

63. Introducing terminology to name wrongs that reflect women's experiences of violence has helped push the boundaries of gender blindness and bias in international law. The focus during the first decade of the mandate was on distinct forms of VAW within the framework of international law. Drawing upon research studies, women's experiences, documentary evidence and comparative legal approaches, the SRVAW set out to define the parameters of specific wrongs and propose legal frameworks and responses to address distinct forms of violence. As part of developing legal frameworks, the SRVAW has assessed prevalent legal responses, pointed out gaps, and proposed substantive, procedural and evidentiary changes to correct these.

64. Standards setting in law has been vital to defining offences and State responsibility in relation to respecting, protecting and fulfilling women's human rights. The previous section of this report covered the key forms and contexts of violence in relation to which legal doctrines were elaborated by the SRVAW. Naming the various forms of violence within the family, the community, in armed conflict, and perpetrated by the State has accorded recognition to each form of violence, attaching international human rights standards and State obligations with regard thereto. As discussed in the previous section, standards setting with respect to domestic violence, sexual violence in armed conflict, trafficking and migration has been a very significant step towards facilitating State accountability in these areas. The naming of the State as a duty bearer for prevention and investigation of, protection from, and redress and compensation for wrongs committed by the State, its agents, and non-State actors through the principle of due diligence has been an important advancement in international law regarding women.

⁹⁵ While the mandate paid greater attention in the first decade to recognition of forms, causes and consequences of VAW, it also contributed to implementation through the model framework for domestic violence law and recommendations to engender the Rome Statute.

Recommendations with respect to procedural and evidentiary norms, especially in the context of sexual assault, crimes against humanity and war crimes, have contributed significantly to standards setting with regard to addressing VAW.

65. The mandate's identification of specific groups of women has helped grant recognition to women who face multiple risks/violations, as well as to greater barriers to justice due to marginalization arising from grounds such as status or location in systems of inequality in addition to gender. This has helped create recognition for the compounded effects of more than one form of discrimination, and has emphasized the need for solutions that respond to aggravated forms of discrimination. For instance, the SRVAWs have consistently stressed the recognition of the multilayered discrimination and higher risk of violence faced by migrant domestic workers, asylum-seekers facing persecution on account of gender, refugee women, migrant women and women living with HIV/AIDS, along with drawing attention to the additional barriers to justice due to illegal status, non-citizen status, poverty, displacement, unfamiliarity with local language and systems, or stigma. The intersectional framework allows for differentiated State responses and the need for measures that correspond to the additional risks and greater barriers to justice. The recommendations of the SRVAWs concerning State obligations are important in this regard.

B. Due diligence

66. The due diligence standard has been crucial in developing State responsibility for violence perpetrated by private actors in the public and private arenas. It imposes upon the State the responsibility for illegal acts that are not directly committed by the State or its agents, but by private actors on account of State failure to take sufficient steps to prevent the illegal acts from occurring. Likewise, once an illegal act has occurred, the State's inaction and failure to investigate prosecute or punish the act perpetrated by a private actor amounts to neglect of the State obligation to be duly diligent. The due diligence standard has long been part of international law⁹⁶ and was incorporated into general Recommendation 19 of CEDAW,⁹⁷ and later DEVAW, to expand State accountability to include VAW by private actors (in addition to State actors) in the private or public sphere, thus placing upon the State the duty to prevent, investigate, punish and provide compensation for all acts of VAW wherever they occur.

67. The extent to which a State is duly diligent is assessed through the steps it takes in relation to each level of accountability. As elaborated by the SRVAW in her report on due diligence,⁹⁸ the obligation to prevent VAW includes specific recognition by way of ratification of relevant treaties and enactment of special legislation, going beyond penal responses so as to ensure positive action by the State, through policies, programmes, creation of special mechanisms such

⁹⁶ Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, 29 July 1988, Series C: Decisions and Judgments, No. 04.

⁹⁷ CEDAW General Recommendation 19 stipulates that "States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".

⁹⁸ See the report on due diligence, E/CN.4/2006/61.

as ombudspersons/commissions, public education campaigns, sensitization of agencies engaged with operationalizing women's rights programmes, or collection of data to assess the de facto status of the problem. Protection requires the State to establish or promote institutional arrangements that provide services vital to respond to VAW, such as counselling, shelter, health care, crisis support, restraining orders, and financial aid to victims of violence, ensuring their accessibility to women from marginalized groups. Punishment is measured in terms of action taken by various State agencies in relation to investigating and prosecuting cases of violence or abuse, observance of the rule of law, convictions and sentencing.

68. While the fulfillment of due diligence requires treating law as “part of a broader effort that encompasses public policies, public education, services and violence prevention”,⁹⁹ the SRVAW has also emphasized that each of the interventions must in fact be effective and responsive. Responsiveness requires data collection to ensure that interventions are designed to respond to the context of violations, and monitoring of the interventions' impact. For instance, a law does not fulfill the requirement of due diligence if it exempts domestic violence under certain conditions,¹⁰⁰ or if it is gender-neutral.¹⁰¹ In relation to high levels of VAW, including murder and disappearance of a large number of young, single, migrant women, the SRVAW held that the negligence and indifference of the State authorities led to a majority of the cases being unsolved and no convictions, thereby leading to denial of protection and justice to women.¹⁰² Similarly, it has been held that the State failure to prosecute or punish a perpetrator of domestic violence for more than 15 years after the start of an investigation amounted to condoning the violence.¹⁰³ With regard to obstacles faced in the search for justice for women who have been victims of violent crimes, the SRVAW referred to the decision of the Inter-American Court of Human Rights asking for public recognition of the State's responsibility in the denial of justice and in ensuring that the perpetrators are brought to justice.¹⁰⁴

69. Combating VAW requires not only gender-competent responses, but the “adoption of multifaceted strategies” to effectively prevent and combat the “multiplicity of forms of violence against women ... that ... frequently occurs at the intersection of different types of

⁹⁹ “In-depth Study on All forms of Violence against Women: Report of the Secretary-General” (2006), A/61/122/Add.1, para. 292.

¹⁰⁰ In E/CN.4/2006/61, para. 40, the SRVAW cited Ukrainian legislation on domestic violence whereby a woman is liable to be arrested if she provokes violence through “victim behaviour”.

¹⁰¹ The gender-neutral terms of the law were critiqued by the SRVAW in the country mission report on the Netherlands, A/HRC/4/34/Add.4.

¹⁰² Country mission report on Mexico, E/CN.4/2006/61/Add.4.

¹⁰³ By the Inter-American Court of Human Rights in *Maria Da Penha Maia Fernandes v. Brazil*, Case 12.051, 16 April 2002, as cited in A/61/122/Add.1, para. 267.

¹⁰⁴ Country mission report on Guatemala, E/CN.4/2005/72/Add.3, on the Inter-American Court of Human Rights in *Myrna Mack v. Guatemala*, Case 10.636, 5 March 1996.

discrimination”.¹⁰⁵ In this regard, the SRVAW observed that the higher degree of violence against migrant women in Mexico and their increased vulnerability to violence was linked to the law that barred undocumented migrant women from accessing State authorities.¹⁰⁶ Similarly, the SRVAW observed that the law excluding undocumented immigrant women from accessing State shelters for domestic violence in the Netherlands exposed them to arrest, created an obstacle to accessing justice, and made them vulnerable to a range of violations.¹⁰⁷

70. An important contribution of Ertürk in relation to the due diligence standard has been to emphasize the two neglected areas - the State duty to prevent VAW and to compensate its victims. The responsibility to “prevent” has the potential of involving the State in actively intervening in and transforming social and material structures that are at the root of VAW. In this context, the SRVAW has emphasized the value of altering the intrinsic nature of the State to make it less patriarchal. The SRVAW has explained that State action, symbolized through judicial or prosecutorial action, embodies “consequential effects in that condemnation of patriarchy can lead to changes in socio-cultural norms, as well as intrinsic effects in that prosecutors or judges can be considered to be the ‘mouthpieces’ of society, and strong statements condemning violence against women made on behalf of society through the judiciary or the prosecutorial services will make that society less patriarchal”.¹⁰⁸ The SRVAW’s suggestions are echoed in feminist writings, which purport that in relation to assessing the effectiveness of prosecutorial action in terms of its ability to transform the intrinsic nature of the State, such State action not only must fulfill “consequential” values that enable punishment of batterers, increased safety of victims and prevention of domestic violence, but must also achieve “intrinsic” values, in terms of sending a symbolic message that domestic violence is a crime that the society will not tolerate.¹⁰⁹ For a State action to realize such an intrinsic value, it must not be a one-off instance of condemnation, but in fact it must systematically engage with domestic violence and condemn it so as to characterize the State as having values that lessen patriarchy. State action, as a consequence, helps lessen the patriarchal nature of society - that is to say, it “realizes certain kinds of values that are independently relevant to the project of ending domestic violence”.¹¹⁰

71. In addition, the SRVAW has emphasized the duty of the State to compensate the consequence of violence. Ertürk notes that this not only includes but goes beyond access to legal remedies and rehabilitative and support services, possibly involving “financial damages for any physical and psychological injuries suffered, for loss of employment and educational

¹⁰⁵ E/CN.4/2006/61, para. 16.

¹⁰⁶ Country mission report on Mexico, E/CN.4/2006/61/Add.4.

¹⁰⁷ Country mission report on the Netherlands, A/HRC/4/34/Add.4.

¹⁰⁸ E/CN.4/2006/61, para. 90.

¹⁰⁹ Michelle Madden Dempsey, “Towards a Feminist State: What Does ‘Effective’ Prosecution of Domestic Violence Mean?” in *The Modern Law Review* (2007), 70(6):908-935.

¹¹⁰ *Ibid.*

opportunities, for loss of social benefits, for harm to reputation and dignity as well as any legal, medical or social costs incurred as a consequence of the violence”.¹¹¹ She points out that the State must provide reparations to compensate financial and other forms of loss so as to fulfill the demands of restorative justice.

C. Accountability for actions of non-state actors

72. The due diligence standard has enabled the extension of the State accountability to prevent, protect and punish actions beyond those of State agents, thereby covering actions of private actors in the private sphere. However, conventional approaches to due diligence have been limited to extending accountability of the State to acts of violence by private actors within the family and the community. This approach has severely limited the State’s capacity to meet challenges posed by the influence exerted on women’s lives by non-State actors operating, as described by the SRVAW, from below and above the State. The SRVAW has indeed classified identity politics movements that trump cultural justifications to limit women’s rights as non-State actors operating “below the State”, and actors within the transnational arena whose actions often affect women adversely as those operating “above the State”.¹¹² In light of the serious challenges to women’s rights posed by these two levels of non-State actors, the mandate has recommended widening the application of due diligence to include their actions within the ambit of the responsibility to prevent, protect and punish.

73. The two mandate holders have drawn attention to the impact of social and economic policies as well as the relationship of political economy to women’s human rights.¹¹³ In this context, the mandate holders have addressed transnational players through various reports that call for revisiting the conventional parameters of due diligence in light of “global restructuring” so as to include transnational actors and solutions within the ambit of due diligence.¹¹⁴

¹¹¹ E/CN.4/2006/61, para. 84.

¹¹² This classification is proposed in the report on due diligence, E/CN.4/2006/61. It is nonetheless acknowledged that corporations are also organs of society and as such are subject to national laws and regulations. The classification of businesses as being “above the State” pertains more to influential transnational corporations than to national enterprises, and remains context-specific.

¹¹³ These concerns have been expressed through various reports: E/CN.4/1999/68/Add.4, E/CN.4/2000/68/Add.5 and E/CN.4/2006/61. The forthcoming report on political economy and violence against women, which will be presented to the Human Rights Council in 2009, will also address these concerns while examining the tension caused between women’s economic and social rights and the prevailing macro-economic policy environment, as well as the tension caused by the dichotomization of political/civil rights and economic/social rights, which characterizes the latter not as entitlements but as aspirations.

¹¹⁴ E/CN.4/2006/61, paras. 69-73.

74. Regarding powerful non-State actors, the mandate has expressed the need to go beyond responding to violations and develop the duty to prevent violations. The mandate has emphasized the need to ensure accountability for actions of independent but powerful sources of authority that have an impact on women's rights as being particularly important in the context of the shrinking domain of State authority.¹¹⁵ In relation to addressing the influence of non-State actors from below the State, the report on due diligence recommends developing the generalized obligation of the State to prevent violence. As part of this obligation, the SRVAW has stressed operationalizing, as per the Beijing Platform for Action, women's empowerment by the State at the individual level and engaging in "cultural negotiation" at the community level. The latter has been defined as State support of women's initiatives at the community level so as to challenge and demystify myths around misogynous cultural discourses within the community. The SRVAW has stressed the value of women's voices in relation to hegemonic interpretations of culture and prescriptions of identity politics that undermine women's autonomy and their human rights. Women's leadership, the SRVAW has explained, will surface heterogeneity and competing interests within communities, and as a consequence will question hegemonic voices and representations of culture by identity politics movements.¹¹⁶ This approach seeks to question and rupture patriarchal monopoly of culture from below by addressing unequal power relations within the community. It is shaped by the perspective that the threat to women's human rights comes from the monopoly over the interpretation and representation of culture by the powerful few rather than from culture per se. As a consequence, State engagement in women's empowerment and cultural/societal transformations is central to challenging and changing hegemonic patriarchal structures and practices. The prevention approach is the more sustainable, focusing on change, whereas the State obligation to protect and punish remains relevant in combating violations.¹¹⁷

75. Both mandate holders have also expressed concern about the protection gaps in relation to the influence of non-State actors operating in society, and often also extraterritorially on the lives of people, and in particular their gendered impact on women. Although the contexts of globalization and conflict and post-conflict situations are varied, they represent sectors of growing influence by a multiplicity of State and non-State actors in territories beyond their domicile, thereby escaping the net of accountability afforded by conventional legal frameworks and mechanisms in domestic arenas. The non-State actors with transnational influence have not

¹¹⁵ E/CN.4/2006/61, paras. 56-99. See also Yakin Ertürk, "The Due Diligence Standard: What Does It Entail for Women's Rights?" in *Due Diligence and Its Application to Protect Women from Violence*, ed. Carin Benninger-Budel (Leiden, Netherlands: Brill/Martinus Nijhoff Publishers, 2008), 27-46.

¹¹⁶ E/CN.4/2006/61, paras. 85-86; and E/CN.4/2003/75, para. 70.

¹¹⁷ The State obligation to protect and punish culturally justified violations is elaborated upon in E/CN.4/2002/83, and in E/CN.4/2003/75, paras. 67-69.

only affected governance, market changes or movements of people, but have also challenged conventional notions of territoriality, sovereignty and duty bearers with respect to human rights compliance by bringing into play a multiplicity of normative systems in each context.¹¹⁸

76. The SRVAWs have discussed the issue of non-State responsibility with respect to transnational corporations in conjunction with their increased power over macroeconomic decision-making in the process of global restructuring, which has favored liberalization and privatization of States at the national level. In this regard, they have emphasized that economic changes are not an outcome of the market forces alone, nor do they function independently of social dynamics. Rather, they are shaped by political and social structures, such that the allocation of resources and distribution of income and opportunities are constituted to reinforce existing power relations.¹¹⁹ The forthcoming and last annual report of the current SRVAW will note that the enjoyment of human rights by women is contingent on a material basis of society sustained by the prevailing power relations, pointing to the necessity of aligning the economy with human rights policies through State and self-regulatory mechanisms.¹²⁰ The SRVAW has recommended gender impact studies, inclusion of gender as part of corporate responsibility, and the institutionalization of codes of conduct incorporating human rights within corporations or as part of social responsibility of corporations, rather than complete reliance upon State conditionality - for that is contingent upon not just a strong State, but one that is also committed to women's human rights.¹²¹

77. The need for accountability of transnational corporations and other business enterprises has been further elaborated upon by John Ruggie, the Special Representative to the Secretary-General on this theme. A survey of governments and Fortune Global 500 firms on their human rights and management practices conducted by the Special Representative¹²² shows that States rarely make trade and investment treaties conditional upon human rights, and that most criminal laws, despite their limitations, do not allow prosecution of legal persons or extraterritorial jurisdiction. Likewise, few corporations have human rights policies that go beyond labour rights, non-discrimination, freedom of association and forced/child labour restrictions, and these are rarely applicable beyond employees and a few others on the top of the value chain. In this context, the Special Representative recommended a policy framework that subjects business and corporate actors to the duty to respect human rights, and that emphasizes the State obligation to protect people from the actions of non-State actors and ensure access to

¹¹⁸ See Andrew Clapham, *Human Rights Obligations of Non-State Actors* (New York: Oxford University Press, 2006).

¹¹⁹ These issues will be elaborated upon in the forthcoming annual report of the SRVAW on the theme of political economy and women's rights, to be published in 2009.

¹²⁰ E/CN.4/2004/66, paras. 40-45.

¹²¹ E/CN.4/2006/61, paras. 94-105.

¹²² A/HRC/4/35/Add.3.

remedies.¹²³ The SRVAW's recommendations regarding gender impact studies provide a gender focus into the Special Representative's recommendations for impact assessment, and creates space for arguing for integration of gender concerns into business activities, as well as for the integration of human rights in all processes and programmes of corporations and the availability of redress mechanisms.

D. Indicators, data collection and research studies

78. Laws, State policies and programmes regarding women are often not based on actual data or research studies, resulting in a disjuncture between State responses and the prevalent patterns of violations/violence. To assess State compliance in relation to violence in the family, Coomaraswamy sought information from governments inter alia, on national plans and statistics on domestic violence, and noted that erroneous linkages were made by States among domestic violence, alcoholism and drugs, instead of linkages with patriarchal ideology, resulting in misdirected responses and resources.¹²⁴ Reporting on the extent to which reproductive rights are violated through policies derived from imperatives extraneous to women's needs, the SRVAW noted that "all too often, State policies derive from the perceived moral requirements of the community, or even the needs and priorities of the health profession, rather than a careful epidemiological and social assessment of women's health needs".¹²⁵ Similarly, the effect of gender blindness undermines women's human rights - such as in the absence of a gender focus in relation to HIV/AIDS prevention and control, or rehabilitation and reconstruction initiatives for refugees and internally displaced persons (IDPs). The relevance of indicators, sex-disaggregated data and gender impact studies is part of the obligation to comply with human rights standards, and is the basis for formulating State responses and monitoring the extent of State compliance.

79. Uninformed legislative activity or tokenistic responses cannot amount to compliance with the due diligence obligation of the State to prevent, investigate and punish. The recommendations of the SRVAW have repeatedly stressed research studies, sex-disaggregated data, linkages and coordination with non-governmental organizations (NGOs), and gender impact studies, to inform State action and to design responses that are evidence-based and correspond to women's needs. In taking stock of the progress made by the mandate at the end of her tenure in 2003 as the SRVAW, Coomaraswamy pointed to the gap in implementation of the standards set for addressing VAW. While charting the future direction of the mandate at the start of her tenure as the SRVAW, Ertürk observed that the difficulty in measuring compliance by States arose due to failure by the States to undertake "gender analysis in order to accurately assess how, why, and under what circumstances specific forms of violence are perpetrated", and further, due to the lack of "measurable and comparable indicators of gender justice ... and a complex set of disaggregated data that captures the interlinkages of multiple forms of

¹²³ A/HRC/8/5.

¹²⁴ E/CN.4/1999/68, para. 31.

¹²⁵ E/CN.4/1999/68/Add.4, para. 68.

discrimination that lead to violence against women in diverse contexts”.¹²⁶ The SRVAW recommended “gender budgeting” and development of indicators to monitor VAW and State responses to it.¹²⁷

80. Acting upon these recommendations, the Commission on Human Rights (CHR) called upon the SRVAW to recommend proposals for indicators on VAW and on measures taken by the States to eliminate it,¹²⁸ following which the SRVAW undertook extensive research on trans-national indicators and based her annual report on that research. The General Assembly further requested that, building on the work of the SRVAW, the United Nations Statistical Commission propose possible indicators on VAW,¹²⁹ and the Secretary-General’s study reiterated the importance of knowledge tools such as data on the nature, prevalence and incidence of all forms of violence as part of State responsibility to eliminate VAW.¹³⁰

81. The annual report dedicated to indicators on VAW and State response¹³¹ views indicators as part of the State’s human rights obligations, as they ensure that interventions aimed at combating VAW are based on accurate empirical data, and as a consequence are effective and responsive to prevailing patterns of violence. Similarly, in country mission reports, the Special Rapporteurs consistently reminded States of the need to collect sex-disaggregated data, and to map and examine patterns of violence and their causes in order to understand the prevalence and specific forms of violations.

82. In her report on indicators, the SRVAW further notes that indicators help make data accessible for non-specialist decision makers, and enable interventions and their impact to be open to public scrutiny. The SRVAW clarifies, however, that although indicators are necessary, they cannot substitute for qualitative and quantitative research, which are necessary to complement indicators.

83. The research study titled “The Next Step: Developing Transnational Indicators on Violence Against Women” examines proposals, perspectives and debates on indicators, and sets out the value and objectives of transnational indicators, while acknowledging the limitations of indicators per se and the limitations of transnational indicators in particular, in view of the need for context-specific variations.¹³² The annual report of the SRVAW on this theme draws upon

¹²⁶ E/CN.4/2004/66, paras. 62 and 65.

¹²⁷ Ibid., paras. 73 (h) and (i).

¹²⁸ E/CN.4/RES/2004/46, para. 25.

¹²⁹ A/RES/61/143, para. 18.

¹³⁰ A/61/122/Add.1, para. 185.

¹³¹ A/HRC/7/6.

¹³² A/HRC/7/6/Add.5.

this study and points to gaps in knowledge in relation to forms of violence other than intimate-partner violence, as well as gaps in transnational studies on various responses to VAW (such as help-lines, shelter and advocacy).

84. The report calls for formulating common indicators on VAW, and proposes a set of indicators to measure VAW (outcome indicators) and State responses to it. These consist of institutional/structural indicators, which pertain to States' international commitments, including ratification of CEDAW and plans of action on VAW; and process indicators, which pertain to access to justice and reporting, including victims' protection, prevention and training. The report further recommends that the proposal be carried forward within the United Nations by an expert working group through technical manuals, pilots, and revisions based on the pilots, with concurrent steps and assistance on management of data systems at the national level.

V. CONCEPTUAL GAINS

85. There has been a general tendency in human rights work to treat violence against women (VAW) largely within a welfare/humanitarian paradigm, or to view women as "poor victims" in need of protection.¹³³ In addition, with the adoption of the "harmful traditional practices" agenda by the United Nations in the 1980s, VAW came to be associated with traditional societies, thus de-linking the problem from structural inequalities inherent in existing gender relations.¹³⁴ The VAW mandate has contributed significantly to the growth of human rights jurisprudence beyond such narrow conceptual understandings of the problem. The conceptual shifts experienced since the inception of the mandate have not only broadened the understanding of VAW, but have accordingly compelled revisiting international and domestic laws and State responsibility. This section identifies some of the major conceptual shifts in the understandings of VAW.

A. Beyond law and order

86. One of the most significant aspects of the mandate is its requirement to examine not only VAW but also "its causes and consequences", and to recommend measures, ways and means, at the national, regional and international levels, "*to eliminate violence against women and its causes, and to remedy its consequences*" (emphasis added).¹³⁵ This has enabled the SRVAWs to question approaches that treat violations in isolation from the overall subordination of women within a patriarchal system. Until recently, a welfare/humanitarian paradigm has dominated the work of States as well as civil society on VAW. States have typically responded to the problem within a law-and-order framework, thereby prioritizing prosecutorial procedures as foreseen in the criminal law. This has meant not only overlooking the gendered specificities in the way

¹³³ See report on the due diligence standard, E/CN.4/2006/61; and Yakin Ertürk, "The Due Diligence Standard: What does It entail for Women's Rights?" in *Due Diligence and Its Application to Protect Women from Violence*, ed. Carin Benninger-Budel (Leiden, Netherlands: Brill/Martinus Nijhoff Publishers, 2008), 27-46.

¹³⁴ A/HRC/4/34, paras. 32-34.

¹³⁵ E/CN.4/RES/1994/45.

women experience violence, particularly in the private sphere, but also focusing on the harm done rather than addressing the systematic nature in which VAW takes place. Departing from the conventional approaches, the SRVAW mandate accentuated the need to understand the underlying causes of VAW so as to work towards preventing violence from occurring in the first place.

87. The “causes and consequences” dimension of the mandate expands the human rights scrutiny past symptoms of gender inequality that become manifest as distinct forms of violence to look at structural and ideological causes that underlie the problem beyond the injury caused. Further, it views VAW as an outcome of gender discrimination that shapes social, economic, cultural and political structures, rather than being independent of them.¹³⁶ As a consequence, the State is obligated not merely to protect against violence, but rather to eliminate its “causes” - that is, gender discrimination at structural, ideological and operational levels - as well as to bear the responsibility for addressing its consequences. This marks a radical departure from the traditional notions of State responsibility towards addressing VAW.

88. The inquiry into “root causes” implicates ideology, structures and systems on which the institutions of the family, the community, the market and, indeed, the State are founded. The recurring reference in the works of the SRVAWs to “unequal power relations” as the root cause explains that this inequality is sustained through dominant norms regulating women’s sexuality, and notions of masculinity that sanction violence and control over women. For instance, the high rates of VAW in Mexico were contextualized by the SRVAW in the country mission report in relation to gender discrimination in machista cultures that institutionalize women’s subordination in the family and the community, and that sanction the use of violence to uphold double standards in male and female sexuality.¹³⁷ Likewise, in the country mission report on the Russian Federation, the SRVAW highlighted the resulting changes in the transition from a socialist economy to a market economy, and the disproportionate impact on women of wage cuts, wage arrears, unemployment, and reduction in access to health care and education.¹³⁸ Such an approach recasts gender-based violence as a logical outcome of unequal social, cultural and economic structures, rather than as a social aberration or a “law-and-order” problem, implicating the State structures (of which the law is a part) in reinforcing the root causes and thereby sustaining conditions for gender-based violence. For this reason, the mandate cites several examples of gendered legal provisions and State policies while discussing VAW - such as a narrow definition of rape based on patriarchal considerations, exemption of marital rape, discriminatory family law provisions, culture-based justification of various forms of VAW, and policies on abortion, family planning, sterilization and reproductive health that undermine women’s reproductive rights and sexual autonomy.

¹³⁶ See CEDAW art. 1 and General Recommendation 19.

¹³⁷ Country mission report on Mexico, E/CN.4/2006/61/Add.4.

¹³⁸ Country mission report on the Russian Federation, E/CN.4/2006/61/Add.2.

B. From victimization towards empowerment

89. While the recognition of women's human rights owes much to the international campaign to highlight VAW, feminist writers¹³⁹ have rightfully critiqued the VAW mandate arguing that exclusive reliance on violence in claiming rights casts women as victims who must be rescued, prompting responses that may be imperialist, protectionist or charity-based. They argue that the responses are not concerned with the complex analysis of power and materiality that underlie subjugation and dominance, nor are they grounded in recognition of women's human rights. Rather, the responses and remedies reinforce stereotypes, often that of the disempowered and brutalized Third World woman as the authentic victim, such as the victim of dowry violence or honour crimes, and essentializes Third World societies as backward.

90. Yakin Ertürk has responded to the critics arguing that the victimization approach to the VAW mandate is a result of short-sighted interpretations and treatment of violence as an isolated phenomenon as indicated above, rather than being inherent to the mandate itself. She further argues that the United Nations mandate for the elimination of VAW entails tackling the root causes of the problem at all levels, from the home to the transnational arena. Such a call is also inherent in the prevention obligation of the due diligence standard. Therefore, perceived within such a framework, the "violence against women agenda" intrinsically challenges aspects of everyday life that are taken for granted, and necessitates a shift of focus from a victimization-oriented approach to one of empowerment. The former sees women as weak, vulnerable and in need of protection, whereas in the latter approach, women are seen to be subjected to violence not because they are vulnerable, but because of a gender order that privileges male violence through the normative and institutional formations of societies. This gender order has historically been resisted and reacted to through women's individual and collective agency. In the process, traditional patriarchy has slowly but systematically been ruptured at different paces in various parts of the world. Applying a human rights perspective to violence has created a momentum for breaking the silence around violence, and for connecting the diverse struggles across the globe. Today, a life free of violence is increasingly accepted as an entitlement rather than merely a humanitarian concern.

91. The SRVAW has placed increasing emphasis on the "causes" of VAW and the responsibility to redress causes. This responsibility is based on the recognition that "violence is not an isolated incident targeting vulnerable women but a systematically used tool of patriarchal control to ensure that 'women stay in their place'. Therefore the agenda for the elimination of VAW is not about victimization but rather about the empowerment of women to overcome and

¹³⁹ See, for instance, Ratna Kapur, "The Tragedy of Victimisation Rhetoric", in *Erotic Justice: Law and the New Politics of Postcolonialism* (London: The glass house press, 2005), 95-136. See also Uma Narayan, "Essence of Culture and a Sense of History: A feminist Critique of Cultural Essentialism", in *Hypatia* (1998), 2(13):86-106.

eventually change patriarchal hierarchies”.¹⁴⁰ Over the past few years, the mandate has called for greater attention towards addressing “causes” by making empowerment of women central to State responsibility for eliminating VAW.

92. The mandate has always included education, health and gender equality requirements within the scope of its recommendations, and more recently has increased emphasis on these interventions as part of the due diligence obligation of the State to prevent VAW. Accordingly, country mission reports place greater emphasis on the role of the State in ensuring gender equality frameworks, bringing in attitudinal change, proactively ensuring women’s participation and decision-making, and undertaking programmes with a strong focus on promoting women’s empowerment and agency - in addition to recommendations directed at context- specific forms of violence.

93. The shifts are evident particularly in relation to culturally justified violence and trafficking, where the mandate has stressed developing agency of women through empowerment initiatives that respond to gender inequality along with other relevant axes of oppression. For instance, in the country mission to the Netherlands, the SRVAW drew attention to the socio-economic disparities between immigrant and native Dutch women, and to the vulnerability faced by immigrant women because of their status to essentialized notions of culture on honour crimes and female genital mutilation (FGM) that increasingly stigmatize immigrant communities. Existing State responses addressing violence specific to immigrant women have involved tightening of immigration policy and requirements aimed at social and cultural integration of immigrants, while neglecting their socio-economic marginalization. Rather than promoting and supporting women’s empowerment and agency, the State responses have further marginalized the immigrants while normalizing the discrimination and violence faced by mainstream native women, creating a binary of the oppressed immigrant woman versus the emancipated Dutch woman.¹⁴¹ The SRVAWs’ recommendations in response to the challenges posed by cultural identity politics stress the need to prevent violence at the level of the individual woman through empowerment of women - through securing rights and access to justice, health-care and support services; and at the level of the community - through facilitating and encouraging women’s participation and cultural negotiation so as to dismantle monolithic representations of culture.¹⁴² In the case of Turkey, in order to empower women, the SRVAW called on State compliance with its laws in realizing obligatory primary education for all women, monitoring educational quality and outcomes, and promoting alternative visions of customs that are compatible with gender equality.¹⁴³

¹⁴⁰ Yakin Ertürk, “Violence against Women: From Victimization to Empowerment”, paper presented at ESCAP forum titled “Where’s the Power in Women’s Empowerment?” held in Bangkok, 4 August 2008.

¹⁴¹ Country mission report on the Netherlands, A/HRC/4/34/Add.4.

¹⁴² E/CN.4/2006/61.

¹⁴³ Country mission report on Turkey, A/HRC/4/34/Add.2.

94. In relation to trafficking, the approach proposed is grounded in developing women's agency and protecting their human rights - through making migration legal for women, removing immigration restrictions and law-and-order responses where movement and stay is illegal, protecting labour and migrant workers' rights (including those relating to the sex sector), and further stressing the State obligation to help in recovery and skill building, thus promoting women's choices rather than detention and deportation approaches.¹⁴⁴ While the approaches promoting empowerment and agency need to be developed further, they must be combined with affirmation of rights and freedoms, particularly with regard to the more contentious areas, such as sexuality. The shift towards empowerment and agency is transformative and a step towards addressing "root causes" of violence.

C. Sexuality and violence

95. The root cause of VAW as noted by the mandate lies in unequal power relations between men and women that are founded upon differential gender-based norms. The mandate has consistently explained that the ideological basis sustaining unequal gender relations derives from the dominant notions of women's sexuality and of masculinity that establish dual moral standards for women and men.¹⁴⁵ The mandate holders have shown how the control of female sexuality is central to the normative systems at the social, cultural and State levels, thereby reinforcing and reproducing unequal power relations that justify VAW. The SRVAW has examined ways in which female sexuality is controlled in the law, in the family, in the community and in armed conflict, clarifying its linkages with different forms of VAW.

96. The SRVAW has critiqued norms based on chastity and honour that underpin laws and social norms, explaining how such values legitimize proprietorial control over women's sexuality by men in the family and the community.¹⁴⁶ The SRVAW further explains the linkage of honour with the fear of violence or actual violence perpetrated upon women for real and perceived sexual transgressions in peacetime. By extension, this ideology of honour is deployed during armed conflict to perpetrate systematic sexual violence against women belonging to the other community/nation as a means of humiliating the opposition and as part of genocidal violence. Further, identity politics movements based on culture view women as markers/custodians of community identity and honour, placing upon them the burden of conforming to the notions of the ideal woman, integral to which is normative sexuality.¹⁴⁷

¹⁴⁴ E/CN.4/2000/68.

¹⁴⁵ See E/CN.4/1995/42, paras. 58-62; E/CN.4/1997/47, para. 8; E/CN.4/2002/83; E/CN.4/2003/75; and E/CN.4/2004/66.

¹⁴⁶ A/CONF.189/PC.3/5, paras. 117-131.

¹⁴⁷ E/CN.4/2002/83 and E/CN.4/2006/61.

97. In relation to the law, the SRVAW has observed that dominant notions of female sexuality have shaped protectionist approaches in international humanitarian law¹⁴⁸ and domestic penal codes. Rape and sexual assault laws that refer to women's chastity, closure of rape cases upon marriage with the rapist, non-criminalization of marital rape, adultery laws, and restrictions regarding relationships outside ethnic, religious or class boundaries are ways of policing women's sexuality.¹⁴⁹ The SRVAW has been critical of moral and patriarchal foundations of laws on rape and sexual assault that are reflected in restrictive definitions of rape, and that place value on corroboration and previous sexual history of the rape survivor.

98. The mandate holders have noted that all forms of gender-based violence are "often used as an instrument to control female sexual behaviour"¹⁵⁰ in ways that cast women as male property or punish women who transgress the sexual norms. Through the country missions and the communications, the mandate holders have responded to retribution for women's expressions of reproductive and non-reproductive sexual activity, as well as for expressions of heterosexual and non-heterosexual sexuality.¹⁵¹ The SRVAW has issued communications in respect to information received regarding detention of women in police stations on grounds of sexual orientation and the resulting risk of torture and sexual violence to them in custody,¹⁵² and in respect of arrest, detention and torture of transgendered persons;¹⁵³ similarly, a communication was issued to express concern for the physical security and access to justice for a man who had undergone sex-change surgery.¹⁵⁴ Many of the communications to governments by the mandate holders have been in relation to honour crimes committed by family members, or to the action/inaction of the State with regard to stoning, flogging or death by hanging of women for suspected premarital sex, for adultery, for failing to prove rape, and for acts deemed incompatible with chastity - in one case involving a minor raped by her brother, and another of a teenage girl with psychosocial disabilities.¹⁵⁵

¹⁴⁸ Such as responses focusing on protecting women's chastity or honour and based on views that women are inherently vulnerable, as opposed to addressing the underlying and structural conditions for violence. See E/CN.4/1998/54, paras. 8-114.

¹⁴⁹ E/CN.4/1995/42, paras. 58-62; and E/CN.4/1997/47, paras. 8 and 34.

¹⁵⁰ E/CN.4/1995/42, para. 58.

¹⁵¹ E/CN.4/1997/47, para. 8; E/CN.4/1999/68; E/CN.4/2002/83, para. 102; and E/CN.4/2005/72, para. 27.

¹⁵² E/CN.4/2003/75/Add.2, para. 228.

¹⁵³ A/HRC/4/34/Add.1, paras. 448-454.

¹⁵⁴ E/CN.4/2005/72/Add.1, paras. 232-236.

¹⁵⁵ For examples regarding honour crimes, see E/CN.4/2003/75/Add.2, paras. 150-151 and 229-230. For adultery and failure to prove rape, see E/CN.4/2004/66/Add.1, paras. 99-102 and 146-147; E/CN.4/2003/75/Add.2, paras. 148-149 and 201-203; and E/CN.4/2001/73/Add.1,

99. The SRVAWs have consistently referred to the linkage between culturally justified VAW and control of female sexuality, observing that women's emotional and sexual expression is seen to destabilize the unequal social order.¹⁵⁶ Alongside the notions of female sexuality are notions of masculinity that valorize violence in and of itself, as an expression of male sexuality, and as a means of conflict resolution.¹⁵⁷ The country mission reports on El Salvador and Mexico contextualize violence in relation to the machista culture that subordinates women and sanctions double standards regarding male and female sexuality.¹⁵⁸ Similarly, the report on Turkey contextualizes violence in relation to the conceptions of honour that view sexual transgressions by women as stains on the family honour, deserving of punishment even by death as a means of upholding patriarchal privilege.¹⁵⁹

100. The observations of the mandate have not been limited to violations alone, but have also endorsed rights, such as the inclusion of same-sex unions within the expanded definition of the family,¹⁶⁰ and have reaffirmed reproductive and sexual rights.¹⁶¹ While calling attention to the Cairo language that "all human beings have a right to a safe and satisfying sex life", Radhika Coomaraswamy has also noted that "gender-based violence ... is particularly acute when combined with discrimination on the basis of sexual orientation or change of gender identity. Violence against sexual minorities is on the increase and it is important that we take up the challenge of what may be called the last frontier of human rights".¹⁶²

paras. 41-42. For imposition of stringent dress code by the State and punishment for adultery by minors and by a teenage girl with psychosocial disabilities, see E/CN.4/2005/72/Add.1, paras. 209-212 and 221-222.

¹⁵⁶ Statement of the SRVAW at the fifty-eighth session of the Commission on Human Rights, 10 April 2002.

¹⁵⁷ E/CN.4/1995/42, para. 64; E/CN.4/2002/83, paras. 105-108; and E/CN.4/2004/66, para. 35.

¹⁵⁸ Country mission reports on El Salvador, E/CN.4/2005/72/Add.2; and Mexico, E/CN.4/2006/61/Add.4.

¹⁵⁹ Country mission report on Turkey, A/HRC/4/34/Add.2.

¹⁶⁰ E/CN.4/1999/68.

¹⁶¹ Conclusion of the keynote statement by SRVAW Yakin Ertürk, "Changing Attitudes to Combat Violence against Women", Council of Europe Campaign to Combat Violence against Women, Including Domestic Violence, Madrid, 27 November 2006.

¹⁶² Statement by the SRVAW to the Commission on Human Rights, fifty-eighth session, 10 April 2002.

D. Demystifying cultural discourses

101. Culture-based identity politics has been considered by the mandate holders to pose one of the most serious challenges to women's human rights.¹⁶³ They have addressed challenges arising from cultural relativist assertions that reject universality of human rights, particularly with regard to women's equality, as well as cultural essentialist approaches that view some cultures as being inherently misogynist. Cultural discourses are a significant source of diverse normative systems that shape power relations between men and women, while the common values across societies have helped develop human rights law reflecting universality and shared culture. Despite the shared values that human rights largely embody, colonial histories, deepening political and economic inequalities and divisions between and among nations have polarized societies, particularly in the post-September 11 times. These divisions and inequalities have coalesced with patriarchy to provide fertile ground for cultural discourses. Cultural discourses are manifested in international law,¹⁶⁴ on the one hand, by resorting to cultural justification to resist women's rights, and through references to primordial and hegemonic interpretations of culture. On the other hand, they are visible in the cultural essentialist targeting of "traditional societies" in the global South that are perceived as harmful to women. Over the period of 15 years and several reports - in particular the three annual reports,¹⁶⁵ two of which deal with this theme specifically - the VAW mandate has contributed to a paradigm shift in the way cultural discourses are addressed and considered within a human rights framework.

102. The shift in the responses to cultural discourses by the mandate is evident primarily at two levels: first, through rejection of the term "harmful traditional practices" and instead adoption of the term "harmful practices" in relation to cultural practices in the family that violate women's rights;¹⁶⁶ and second, through debunking the monolithic static representations of culture (by both cultural relativists and cultural essentialists) to call for State participation in validating alternative and non-hegemonic interpretations of culture by women and encouraging cultural negotiation. The harmful cultural practices framework was developed particularly in relation to traditional cultures in the context of CEDAW. Article 5 (a) of CEDAW calls for modification of "social and cultural patterns of conduct ... with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". General Recommendation 21 of the CEDAW Committee elaborated on this problem in relation to traditional cultures only, observing that practices based on "custom, religious beliefs or the

¹⁶³ E/CN.4/2002/83, E/CN.4/2004/66, E/CN.4/2006/61 and A/HRC/4/34.

¹⁶⁴ Madhu Mehra, "Women's Equality and Culture in the Context of Identity Politics", in *Journal of Comparative Law* (2007), JCL 2:2. For a fuller discussion on cultural and gender essentialism, selectivity and power in which claims of cultural preservation are embedded, see Uma Narayan, "Essence of Culture and a Sense of History: A Feminist Critique of Cultural Essentialism", in *Hypatia* (1998), 2(13):86-106.

¹⁶⁵ E/CN.4/2002/83, E/CN.4/2006/61 and A/HRC/4/34.

¹⁶⁶ E/CN.4/2002/83 and A/HRC/4/34.

ethnic origins of particular groups of people [in certain countries] permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security".¹⁶⁷

103. The first annual report of the mandate retains the terminology of "traditional practices" to document culturally derived forms of VAW in the family, such as FGM, son preference, discriminatory nutritional and health care for girls, and early marriage and discrimination in traditional laws.¹⁶⁸ The subsequent report on the theme, titled "Cultural Practices in the Family that Are Violent towards Women",¹⁶⁹ reflects the shift to "harmful practices". While the report is alert to the challenges posed by cultural identity politics, the predominant focus remains on practices from the Southern cultures,¹⁷⁰ inadvertently reinforcing global identity politics - "othering" the traditional/primitive South from the modern/progressive North. The report proposes a two-pronged approach to defining State obligation in relation to modification of such harmful practices, distinguishing practices that amount to torture from those that are essentially discrimination. It views cultural practices that involve pain and suffering and violation of physical integrity as amounting to torture under customary international law, attaching to such practices strict penal sanctions and maximum international scrutiny regardless of ratification of CEDAW or reservations made thereto. With regard to discriminatory practices such as unequal family/succession laws, polygamy or unequal divorce rights, the report discusses a range of approaches adopted by various countries to correspond to the diversity of contexts, which ultimately aim towards attitudinal change so that social transformation is led by the community itself. In this context, the obligations of State parties to CEDAW as well as those under due diligence are relied upon, citing examples to address discrimination, such as the notion of progressive realization of rights as recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and further developed by the Committee on Economic, Social and Cultural Rights (CESCR); protection of core minimum rights elaborated upon by CESCR; and the right to choose traditional law or opt out of it.¹⁷¹ The recommendations emphasize the need for education and health services for women.

104. The report on this theme titled "Intersections between Culture and Violence against Women" addresses cultural discourses from the standpoint of inequalities and subjectivities within culture and cultural groups, so as to promote empowerment, agency and contestation by women within the domain of culture.¹⁷² This report acknowledges the biases and shortcomings

¹⁶⁷ CEDAW General Recommendation 21, para. 16.

¹⁶⁸ E/CN.4/1995/42, paras. 143-171.

¹⁶⁹ E/CN.4/2002/83.

¹⁷⁰ One exception to this is the inclusion of harm resulting from cosmetic surgery and eating disorders due to stringent beauty standards - E/CN.4/2002/83, para. 96.

¹⁷¹ E/CN.4/2002/83, paras. 9, 65-69 and 119.

¹⁷² A/HRC/4/34.

of the “traditional cultural practices” approach in terms of “othering” Southern cultures, essentializing them as being harmful to women, while treating violence in non-Southern cultures as individualized aberrations and projecting women from traditional cultures as being uniformly victimized.¹⁷³ Instead, it locates culture within the equality framework as part of addressing discrimination in the private arena, so as to facilitate women’s participation, decision-making and representation within the domain of culture. Such an approach allows the unmasking of patterns of “domination” within rather than “difference” among cultures, to question hegemonic interpretations of culture, and it directs attention towards the patriarchal, political and economic interests within and outside the community that gain from static, homogenous and monolithic representations. In doing so, it also seeks to debunk culture-based discourses as being cultural manifestations of a universal patriarchal culture, with its roots in gender inequality rather than in cultural expressions of people in diverse social settings and standings.

105. The SRVAW has been critical of State-supported hegemonic interpretations of religion to debunk cultural relativism, and equally critical of State approaches that essentialize certain cultures as inherently violent and discriminatory towards women. In the country mission report on Afghanistan, the prevalence of child and forced marriages, the criminalization of “running away from home”, and the labeling of a wide range of behaviours as “adultery” in the law demonstrate that tribal rules are wrongly passed off as sharia to enforce compliance.¹⁷⁴ The country mission report on Iran states that the “ruling clergy, in their reading of the sharia that shapes both the attitudinal as well as the institutional structures, have tended towards conservative, gender-biased interpretations”, noting the impact of such interpretations on women’s vulnerability to violence in public and private spheres. The report further notes the existence of a plurality of interpretations, such as the debates in the political arena between the hardliners and the reformists, and the contribution of women’s organizations in reinterpreting the Koran from a women’s perspective.¹⁷⁵ As part of this shift in approach to culture, the SRVAW has questioned cultural relativist arguments used to justify VAW, as well as cultural essentialism underlying State action or inaction regarding women from marginalized communities. For instance, the country mission report on Mexico critiques the view that VAW is an inherent part of indigenous culture, in relation to the multiple violations faced by indigenous women from rural areas due to ethnicity and poverty.¹⁷⁶

106. Noting state complicity in according importance to such hegemonic voices, the SRVAW specifies that the due diligence responsibility of the State must include not only legislative, investigative and judicial reform to end impunity, but also empowerment approaches to build women’s capacities and to facilitate the questioning of hegemony within cultures by women. With regard to Ghana, for instance, Ertürk noted that although there were laws against FGM,

¹⁷³ Ibid., paras. 20-21 and 46-50.

¹⁷⁴ See “Situation of Women and Girls in Afghanistan”, A/58/421; and country mission report on Afghanistan, E/CN.4/2006/61/Add.5.

¹⁷⁵ Country mission report on Iran, E/CN.4/2006/61/Add.3.

¹⁷⁶ Country mission report on Mexico, E/CN.4/2006/61/Add.4.

trokosi (ritual servitude) and sexual abuse of girls, culture continued to be invoked to sustain these forms of violence. She recommended, therefore, public denouncement of violence, and the need to engage traditional authorities in public dialogue on women's rights and secure their compliance on women's rights under the Constitution; to increase the appointments of women in district assembly and law enforcement bodies; and to undertake awareness raising.¹⁷⁷ This approach has helped develop understanding in relation to the State obligation to prevent VAW through transformatory processes based on women's empowerment and encouragement of "cultural negotiation" discussed under accountability of non-State actors earlier in this report.

E. Intersectionality of discrimination and continuum of violence

107. The representations of women and violence by the SRVAWs have been cognizant of the multiple layers of discrimination that combine to heighten the vulnerability of women and their experience of violence, and that most typically result in a continuous chain of violence for marginalized women.¹⁷⁸ This marks a departure from the flat narratives of gender-based violence that tend to homogenize the diverse experiences of women, as well as from approaches that tend to fragment the experience of each individual woman. The intersectional approach has been used as an integral analytical tool in the work methods of the mandate, while also providing a conceptual paradigm that allows us to see the universality in VAW without losing sight of the particularities in women's experiences. In the same vein, the continuum approach makes visible the linkages between violence in different contexts, such as in peace and in war.

108. The SRVAW has consistently adopted an intersectional framework to demonstrate how "multiple systems of discrimination and hegemony" result in three categories of discrimination: "targeted", such as in armed conflict against women of the "other" community; "compounded", in which an amalgam of gender and minority/marginalized group membership bars women from opportunities that would otherwise be available to them; and "structural", whereby State policies intersect with structural discrimination to increase the degree of marginalization of women based on gender, race, poverty or migrant status.¹⁷⁹ Applying this framework, Coomaraswamy has shown how gender interacts with poverty and race to make African- American and Hispanic women in the United States face disproportionate levels of criminalization, more severe sentencing, over-representation in prisons, and abuse.¹⁸⁰ This framework has helped not only to draw attention to the experiences, violations and structural barriers faced by women on the margins, but also to design legal standards and State accountability in response to the particular kind of discrimination constituted in a given context.

¹⁷⁷ Country mission report on Ghana, A/HRC/7/6/Add.3.

¹⁷⁸ Resolution 7/24 of the Human Rights Council and the Durban Review document (September 2008) confirm intersectionality as a mandatory prism for human rights analysis and inquiry.

¹⁷⁹ A/CONF.189/PC.3/5, paras. 28-31.

¹⁸⁰ Country mission report on the United States, E/CN.4/1999/68/Add.2.

109. Intersectionality is also demonstrated by work methods in terms of the joint communications, country visits and reports undertaken by the SRVAW with other special procedures. Only a small fraction of the total number of communications issued by the SRVAW annually are sent singly; the bulk of the communications are sent jointly with other special mechanisms.¹⁸¹ During the past two years, a large majority of the joint communications have been sent with the special thematic mechanisms on torture, human rights defenders, trafficking, and freedom of opinion and expression,¹⁸² “indicating a convergence between diverse forms of

¹⁸¹ In 2004, the SRVAW sent 102 joint communications and 12 others alone (total of 114); in 2005, the SRVAW sent 77 joint communications and 10 alone (total of 87); in 2006, the SRVAW sent 80 joint communications and three alone (total of 83); in 2007, the SRVAW sent 55 joint communications and seven alone (total of 62); from 1 January to 1 December 2008, the SRVAW sent 65 joint communications and 12 others alone (total of 77). The data per year does not fully correspond to the figures mentioned in communications reports. This is because a period of 60 days is allowed for the governments to reply to allegation letters, as a result of which communications cannot be made public before the expiration of 60 days; if this period overlaps with the time when the SRVAW submits her report to the HRC, such communications do not get published in the year they are sent, and are instead reflected in the report due in the following year.

¹⁸² A/HRC/7/6/Add.1 reports that in 2007, 52 out of 59 communications (88 per cent) were sent jointly with other mandate holders of the Human Rights Council as follows: the Special Representative of the Secretary-General on the Situation of Human Rights Defenders (24); the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (24); the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (9); the Special Rapporteur on the Human Rights of Migrants (8); the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography (7); the Special Rapporteur on Trafficking in Persons, especially in Women and Children (7); the Working Group on Arbitrary Detention (5); the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People (5); the Special Rapporteur on Adequate housing as a Component of the Right to an Adequate Standard of Living (4); the Special Rapporteur on the Independence of Judges and Lawyers (3); the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (3); the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (2); the Special Rapporteur on Freedom of Religion or Belief (2); the Independent Expert on Minority Issues (1); and the Special Rapporteur on the Right to Food (1).

A/HC/4/34/Add.1 reports that 80 out of 83 communications (96 per cent) sent in 2006 were sent jointly with other mandate holders of the Human Rights Council as follows: the Special Representative of the Secretary-General on the Situation of Human Rights Defenders (22); the Special Rapporteur on Trafficking in Persons, especially in Women and Children (18); the Special Rapporteur on the Sale of Children, Child prostitution and Child pornography (17); the Special Rapporteur on the Independence of Judges and Lawyers (13); the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (8); the Working group on Arbitrary Detention (8); the Special Rapporteur on the Human Rights of Migrants (5); the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People (4); the Special Rapporteur on Contemporary forms of Racism,

human rights violations experienced by women and more conventional forms of violations. This also signals an erosion of the public/private sphere dichotomy used for so long to exclude violence against women from public concern and scrutiny”.¹⁸³ In addition to conducting joint visits,¹⁸⁴ the SRVAW has participated in joint work or submissions upon the initiative of the Human Rights Council, such as with the group of experts on Darfur¹⁸⁵ and the group of special procedures mandated to make recommendations for technical cooperation to the Democratic Republic of the Congo,¹⁸⁶ or for other bodies, such as the Preparatory Committee for the Durban Review Conference.¹⁸⁷ In addition, the SRVAW has benefited from cooperation with treaty bodies - in particular from the work of CEDAW, by using, among other things, its general recommendations and concluding observations after consideration of reports of State parties, case law, and inquiry into situations of grave or systematic violations of women’s rights under the Optional Protocol.¹⁸⁸

110. The SRVAW has noted that “integrating an intersectional approach to gender analysis will enhance the analytical capacity of gender analysis in better identifying the multiple forms of discrimination and link State accountability for human rights under various treaty bodies”.¹⁸⁹ Notably, such an approach makes visible the continuum of violence and discrimination that captures more fully the consequences of intersectional discrimination. The SRVAW has applied this in relation to female refugees and internally displaced persons (IDPs), to formulate

Racial discrimination, Xenophobia and Related Intolerance (3); the Special Rapporteur on Freedom of Religion or Belief (1); the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living (1); and the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (1).

¹⁸³ A/HRC/4/34/Add.1, para. 8.

¹⁸⁴ Joint mission to East Timor of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Asma Jahangir, the Special Rapporteur on the Question of Torture, Nigel Rodley, and SRVAW Radhika Coomaraswamy, in November 1999; joint mission to Moldova of SRVAW Yakin Ertürk and the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, in July 2008; joint follow-up visit to Turkey, in cooperation with the European Parliament’s Rapporteur on Women’s Rights in Turkey, Emine Bozkurt, in October 2008.

¹⁸⁵ See A/HRC/6/7.

¹⁸⁶ A/HRC/RES/7/20. A joint report was presented to the Human Rights Council in March 2009.

¹⁸⁷ A/CONF.211/PC/WG.1/5.

¹⁸⁸ See country mission report on Mexico, E/CN.4/2006/61/Add.4, referring to CEDAW inquiry in Mexico.

¹⁸⁹ E/CN.4/2004/66, para. 73 (f).

recommendations to secure protection for them during flight, in refugee camps, and in relation to redress and prosecutions for violations; and further, to recommend inclusion of gender for purposes of seeking asylum on grounds of persecution.¹⁹⁰ In relation to trafficking, the SRVAW notes that “trafficking is fuelled by poverty, racism and sexism”,¹⁹¹ highlighting the violations arising during the course of trafficking as a result of restrictions and illegalities created by migration and immigration policies and denial of labour rights.

111. The significance of this conceptual shift is evident in the centrality given to the concerns of marginalized women in the mandate of the SRVAW, instead of subsuming their heightened experience of discrimination under a generic singular form of discrimination - gender, race or poverty.

VI. POTENTIAL AND CHALLENGES

112. The violence against women (VAW) mandate has covered considerable ground in its 15 years of existence, and its function remains as crucial today as it was at the time of its creation. It has been a dynamic medium through which experiences of violations of women, many of which were marginalized and invisible in the domain of international law, have found recognition and a place within the framework of human rights realization. However, even as some forms of violation and marginalization become visible, many remain invisible, sensitive or contentious areas of recognition within women’s human rights. Gender inequality still exists, and alongside progressive developments and victories that inspire the struggle for women’s rights, newer developments coalesce with historic inequalities to deepen disparities, vulnerabilities and subordination, exposing many women to a constellation of violations.¹⁹² In particular, the growing militarization, the security agenda since September 11, and the conservative political trends that agenda has fuelled will continue to pose serious challenges to women and to human rights in general.

113. The mandate of the SRVAW must continue to meet future challenges, some of which arise in relation to the work accomplished and others in relation to emerging issues. Some of the advances made - such as the use of cultural discourses in their relativist and their essentialist forms - will remain contested and will continue to pose challenges. In less contested areas of advancement, implementation, compliance and prevention remain predominant areas that the mandate must continue to address. This section looks at challenges and potentials, paying more

¹⁹⁰ See E/CN.4/1995/42, E/CN.4/1998/54 and E/CN.4/2001/73.

¹⁹¹ E/CN.4/1997/47.

¹⁹² This phrase is borrowed from *Constellations of Violence: Feminist Interventions in South Asia*, ed. Radhika Coomaraswamy and Nimanthi Perera-Rajasingham (New Delhi: Women Unlimited, 2008). The essays reflect upon the gains of macro policies and international conventions on VAW while drawing attention to the limitations of universal understandings of violence in capturing or making visible the nuances and differences in understandings of power and violence, as well as the contingent nature of negotiations and struggles in varied local contexts.

attention to issues arising in relation to the work accomplished thus far. This discussion, therefore, is intended to be indicative of the continuing role of the mandate even in relation to the issues it covers substantially, in addition to its role regarding emerging areas within human rights law and practice.

A. Standards setting in relation to empowerment approaches

114. The concepts of empowerment and agency are interconnected, as the former constitutes a necessary condition for exercising agency and has an impact on power relations between women and men. The mandate holders have asserted in nearly all the annual and country mission reports, and more recently in public statements,¹⁹³ the need for the State to support the social, cultural, economic and political empowerment of women. Ertürk's recommendations in various contexts are indicative of the types of interventions that can be categorized as facilitating empowerment. In relation to violence in the public and private spheres against women in Ghana, some of which are culturally justified, the recommendations include support for social, political and economic empowerment of women. Similarly, in relation to the mission in Turkey, the recommendations include promotion and endorsement of advancement of women, with an emphasis on gender equality and education. In relation to the Netherlands and Sweden, the SRVAW indicated the need to enhance the gender equality and institutional framework so as to integrate and involve marginalized constituencies within it. Ending impunity for VAW, according to a joint statement by several Special Rapporteurs, is not simply a matter of enacting and enforcing criminal laws, but also of empowering women through access to critical resources and justice.¹⁹⁴ The statement notes that women's ability to protect themselves and access remedies entails the realization of their socio-economic rights, such as those regarding housing, land, property and inheritance. Empowerment has been elaborated upon in inclusive terms to encompass interventions dealing with education, legal literacy, skill training and access to productive resources. In relation to culture, empowerment strategies recommended by the SRVAW stress recognizing and facilitating women's initiatives to contest, reinterpret debate and negotiate cultural norms and practices within the community.

¹⁹³ See, for instance, statement of the SRVAW at the sixtieth session of the Commission on Human Rights, Item 12 (a) (5 April 2004); press statement by the SRVAW, jointly with Louise Arbour, the United Nations High Commissioner for Human Rights, on the International Day for the Elimination of Violence Against Women (2005); statement of the SRVAW at the second session of the Human Rights Council (2006); statement at the sixty-first session of the General Assembly (25 October 2006); keynote statement on "Changing Attitudes to Combat VAW" at the conference launching the Council of Europe Campaign to Combat VAW, Madrid (29 November 2006); "International Legal obligations with Respect to the provision of Support Services to Women Victims of Violence" at the Council of Europe Conference on Support Services for Women Victims of Violence (6-7 December 2007); and statement at the seventh session of the Human Rights Council (14 March 2008).

¹⁹⁴ Press statement titled "United Nations Independent Experts Demand End to Impunity for VAW" by Yakin Ertürk, SRVAW; Sigma Huda, Special Rapporteur on Trafficking in Persons, especially Women and Children; and Miloon Kothari, Special Rapporteur on Adequate Housing - International Women's day, 8 March 2007.

115. While there is enough elaboration on the types of interventions that lead to empowerment, there remains a need for clarity and operationalization on the approaches to take with respect to such interventions that will constitute empowerment, as contained, for instance, in the Beijing Platform for Action, or on the indicators that help determine whether in fact an intervention is likely to lead to empowerment. For example, would micro credit programmes or skill trainings as separate single interventions advance empowerment, or would they have to be implemented in conjunction with education that is free of gender stereotypes and accessible to women and girls? In view of the fact that protectionist, honour-based and welfare-oriented approaches are commonly adopted in State-run programmes regarding women, there is a concern about the value of such interventions in relation to empowerment. The need to distinguish empowerment from protectionist approaches within various contexts will help clarify empowerment approaches that counter disadvantages specific to women on the intersections of two or more axes of discrimination. In the context of effective approaches to support women's empowerment, the SRVAW has referred to the minimum measures outlined by CEDAW for governments to address root causes.¹⁹⁵ Greater attention to and emphasis on the interlinkages between empowerment and CEDAW can bring clarity on this matter. Further work on developing indicators on VAW and State response to it can also help set criteria to determine approaches that advance empowerment beyond the ability to cope, to an ability to change.

B. Combining sexual rights with sexual wrongs

116. By placing protectionist legal responses relating to women's sexuality at one end of the spectrum that contains egregious forms of sexual violence, the mandate has forced a radical questioning of the conceptualization of sexuality and a rethinking of protectionist approaches in law that are often viewed as benign. Although the mandate has identified dominant notions of female sexuality and masculinity as critical causes of gender-based violence, it has yet to reconceptualize sexuality or to suggest transformatory approaches in this regard. Yet the prevention/empowerment/agency approach to elimination of VAW requires going beyond addressing sexual violence and discrimination due to sexuality, towards articulation of positive rights in relation to sexuality.

117. Radhika Coomaraswamy has noted that responding to the challenge regarding sexuality is the last frontier of human rights. It has been argued that this challenge requires moving beyond condemning regulation of female sexuality through an exclusive focus in VAW on sexual wrongs, such as rape, child sexual abuse, sexual assault and sexual harassment. In this regard, it has been noted that "if we fail to pursue a more radical and affirmative strategy on matters related to sex we will fail to adequately address the sexual harms women continue to experience".¹⁹⁶ Further, Coomaraswamy has pointed out that a focus on sexual wrongs and

¹⁹⁵ See presentation by the SRVAW at the panel discussion during the fifty-first session of the Commission on the Status of Women, on "Elimination of All Forms of Discrimination against Women: Follow-up to the Secretary-General's In-depth Study at the National and International Levels" (1 March 2007).

¹⁹⁶ Ratna Kapur, "Overview of VAW in the Asia-pacific - Looking Back, Moving Forward" (unpublished paper), Regional Consultation with UNSRVAW organized by Asia Pacific Forum for Women, Law and Development, Pegasus, Colombo, Sri Lanka (30-31 August 2002).

regulation will only perpetuate sexual stereotypes, sexism and orthodoxies that reinforce the control over female sexuality - ideologies that underscore gender inequality. The need to shift beyond sexual wrongs to sexual rights has been explained as: “The ability to say ‘no’ to what one does not desire is hugely conditioned on the capacity to recognize, delight in, and respond to one’s desire to say ‘yes’, free of limiting stereotypes and with knowledge of the implications for one’s safety and contentment.”¹⁹⁷ Although sexual health is a part of reproductive rights, sexual rights are distinct from reproductive rights, “since many of the expressions of sexuality are non-reproductive”¹⁹⁸ and include “the right of all persons to express their sexual orientation, with due regard for the well being and rights of others, without fear of persecution, denial of liberty or social interference”, and require further attention in the context of human rights.¹⁹⁹ The scope of sexual rights is much broader than sexual health or reproductive rights, and is not specific to women alone. Thus it needs to be developed in terms of respect, protection and fulfillment within human rights law by more than one body or mechanism in the United Nations system, in order to move beyond its current violation-centered boundaries to fully challenge gender inequality. However, the SRVAW, in cooperation with the Special Rapporteur on the Right to Health, has a distinct role to play in this development given the causal link with the mandate.

C. Applying intersectionality

118. The mandate has consistently drawn attention to the imperative of applying intersectional approaches to identify and address the effects of multiple systems of discrimination operating simultaneously, rather than address each form of discrimination in isolation of the other.²⁰⁰ This approach has helped make visible the concerns of marginalized women, as well as contexts that heighten the risks and vulnerability of women to violence, as discussed earlier in this report.

119. In 2001, the SRVAW called for urgent action “to be taken at both the national and international levels to raise awareness of the multiple nature of discrimination experienced by marginalized women and to mainstream an intersectional or more holistic approach ... at a theoretical level and addressed at a practical level”. Towards this end, the SRVAW

¹⁹⁷ Judith Levine’s formulation in a presentation titled “Girl Lured off the Internet”, in the Seminar on Sexuality, Gender, Health and Human Rights (25 October 1999), Columbia School of Public Health, as referenced by Alice M. Miller, “Sexual but Not Reproductive: Exploring the Junction and Disjunction of Sexual and Reproductive Rights”, in *Health and Human Rights* (2000), 4(2):68-109.

¹⁹⁸ E/CN.4/2004/49, para. 55.

¹⁹⁹ Paul Hunt and Judith Bueno de Mesquita, “The Rights to Sexual and Reproductive health”, Human Rights Centre, University of Essex.

²⁰⁰ Also refer to CERD Recommendation XXV, contained in document A/55/18, annex V, para. 2, note 17, which states: “The consequences of intersectional discrimination may remain unaddressed by prevailing human rights approaches because the specific problems or conditions created by intersectional discrimination are often subsumed within one category of discrimination, such as race or gender discrimination.”

recommended the development of appropriate evaluation and implementation strategies aimed at the elimination of gender-based racial discrimination, and called upon the States to “collect, compile and disseminate data according to race and gender”, instead of the conventional practice of collecting data according to only race or gender, which renders invisible the distinct form of racial discrimination against women.²⁰¹ In relation to the United Nations system, the SRVAW made similar recommendations and proposed the need to: “(a) develop new methodologies, reporting procedures and evaluating tools to identify and address the effects of multiple forms of discrimination ...; [and] (b) Address the intersection of gender and race in the design and implementation of policies and programmes of the United Nations system in social, economic, political and other domains.”²⁰²

120. While the development of methods, reporting procedures and evaluation tools for implementing and monitoring intersectionality remains to be undertaken, the need to apply intersectional approaches to emerging areas in women’s human rights is a continuing one as well. The gender- based dimensions of new treaties and declarations that have come into force need attention to ensure that their application in relation to women is not delayed. Just as the SRVAWs helped elaborate gender-based violence in terms of race and gender in addition to HIV/AIDS, the mandate would need to take the lead in relation to VAW and indigenous peoples as well as disability, the two recent areas of developments in international human rights law.

121. Article 44 of the United Nations Declaration on the Rights of Indigenous Peoples (2007) emphasizes that all the rights and freedoms recognized in the Declaration are equally guaranteed to male and female indigenous individuals. The Declaration further calls upon the States to take effective measures and, where appropriate, special measures to ensure continuing improvement of the economic and social condition of indigenous peoples, with particular attention to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.²⁰³ Notably, it also calls upon States to take measures to ensure that indigenous women and children enjoy full protection and guarantees against all forms of violence and discrimination.²⁰⁴ Clearly, the SRVAWs’ work in relation to violence in the family and the community, in relation to culture, and in relation to the impact of economic, social and reproductive health policies requires contextualization to indigenous women to ensure that this Declaration is applied with reference to its intersection with gender-based violence, and keeping in mind indigenous women’s right to be free from violence and discrimination while furthering indigenous peoples’ collective rights.

²⁰¹ A/CONF.189/PC.3/5, para. 202. See also A/CONF.211/PC/WG.1/5, presented at the second substantive session of the Durban Review Conference, October 2008.

²⁰² A/CONF.189/PC.3/5, para. 208.

²⁰³ A/RES/61/295, art. 21.

²⁰⁴ *Ibid.*, art. 22.

122. The Convention on the Rights of Persons with Disabilities (2007)²⁰⁵ covers gender within its substantive scope to the extent of recognizing that women and girls with disabilities are often at greater risk of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation; and further, that women are subject to multiple discrimination. It calls upon States to ensure women's advancement and empowerment. Yet again, the distinct forms of these violations and their dimensions and impact in relation to various kinds of disability needs elaboration, as do State obligations to enable the treaty to address gender-specific concerns. Although this is within the mandate of the new Committee on the Rights of Persons with Disabilities, the SRVAW could contribute to it significantly to ensure that the serious and often invisible nature of the abuse and the impunity attached to it are addressed, and that nuances of empowerment approaches in relation to disability are augmented. Similarly, the mandate can make a significant contribution through closer work and collaboration with treaty bodies to develop the gender dimensions in various themes and areas, such as with the Committee on Migrant Workers and the CEDAW Committee in relation to migrant women.

123. Other violations persist that would warrant further attention by the SRVAW. Although gender dimensions of conflict situations are covered, those pertaining to disaster management and humanitarian relief remain in need of elaboration. In addition, violence specific to elderly women or adolescent girls, women who are victims of caste-based discrimination,²⁰⁶ and women who are migrants, refugees or non-citizens needs to be highlighted. Intersectionality sets out a wide canvas for the SRVAW to work on, as no matter how much ground is covered, issues and contexts that need attention will remain, given the overlapping and interconnectedness of issues, discriminations and structures of power.

D. Fuller coverage of areas addressed by the mandate

124. The mandate has paid attention to many forms of violence as well as aspects of implementation in its annual reports, discussed in the previous sections of this report. Apart from the issues that are covered as independent themes, the mandate has dealt with several other issues that have been subsumed within the themes of the annual reports, under country mission reports, and as subjects of communications to governments. There remains a need for consolidating and giving fuller attention to issues that find dispersed mention in various reports. In this regard, health and reproductive rights, women refugees and asylum-seekers, institutional mechanisms, and aspects related to implementation are flagged for attention.

²⁰⁵ A/RES/61/106.

²⁰⁶ In a joint contribution to the Durban Review Process, the SRVAW expressed her concerns regarding the numerous complaints she was receiving about violence perpetuated against women on the grounds of caste, as highlighted in her communications with governments; see A/CONF.211/PC/WG.1/5.

1. Health and reproductive rights

125. Reproductive rights, discussed earlier in this report, have been the subject of several reports,²⁰⁷ including country mission reports. Differential health status among women from particular racial groups, due to differential access to health-care services and coercive reproductive health measures that target such groups, resulting in forced sterilization and higher maternal and infant mortality, have also been addressed partially by the mandate in relation to indigenous women.²⁰⁸ Likewise, health services for victims of domestic and sexual violence have been a recurring concern in various annual and country reports.²⁰⁹ Although reproductive health has been a recurrent theme in relation to its interconnections with certain contexts, such as armed conflict, trafficking, HIV/AIDS and State policies, it appears dispersed and, as a result, its effect is diluted in terms of standards setting.²¹⁰ In addition, reproductive rights have been addressed predominantly in relation to adult women, leaving work to be done regarding the concerns of the girl-child, adolescents and the elderly. It is equally necessary that health issues other than reproductive health also be addressed, particularly from a life cycle approach, including concerns related to differentiated access to health services on grounds of age, marital status, ethnicity, HIV/AIDS, or rural or urban location. Issues of sex education, reproductive health or abuse by health-care providers are systemic, and their linkages with gender-based violence need to be consolidated in the interest of standards setting.

2. Violence in the context of migration, displacement, and asylum

126. The concerns of migrant, internally displaced and refugee women have been dealt with by the mandate holders in the contexts of armed conflict and trafficking. The concerns raised have been mostly in relation to violations that occur once the woman has become a refugee and is in flight or within camps. Likewise, the mandate has addressed asylum claims regarding communications and complaints received from women asylum-seekers to follow up on these

²⁰⁷ See E/CN.4/1999/68/Add.4, E/CN.4/2000/68/Add.5 and E/CN.4/2005/72.

²⁰⁸ A/CONF.189/PC.3/5. See also country mission report on the United States, E/CN.4/1999/68/Add.2, for health-care services to women prisoners, including reproductive health services; for maternal mortality, mental health and general health care among refugee women, see report on Pakistan and Afghanistan, E/CN.4/2000/68/Add.4.

²⁰⁹ For health services for victims of VAW, see report on Brazil, E/CN.4/1997/47/Add.2. For medico-legal procedures in respect of sexual violence, see report on South Africa, E/CN.4/1997/47/Add.3. For psychological and medical support for trauma and sexual violence following armed conflict, see reports on Rwanda, E/CN.4/1998/54/Add.1; Sierra Leone, E/CN.4/2002/83/Add.2; and the DRC, A/HRC/7/6/Add.4.

²¹⁰ For health services in relation to trafficking, sex work and HIV/AIDS, see report on Poland, E/CN.4/1997/47/Add.1; for reproductive rights violations arising from criminalization of abortion and denial of sex education, see report on El Salvador, E/CN.4/2005/72/Add.2.

with the governments.²¹¹ While the mandate has shown that violations based on gender are often life-threatening, work remains to be done to establish gender as independent grounds for claiming asylum as a refugee. Although gender-based violations pursuant to becoming a refugee must continue to be addressed, urgent attention needs to be paid to gender as grounds for becoming a refugee or an asylum-seeker.²¹² Mindful of the protection gap in relation to gender as grounds for seeking asylum within the Refugee Convention, the United Nations High Commissioner for Refugees (UNHCR) in 2002 adopted guidelines on “Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention” and has since been encouraging States to give adequate importance to gender elements in examining asylum claims.²¹³ However, much remains to be done in this regard, and it would seem important for the mandate to dedicate a thematic report on these concerns for standards setting, providing an analysis of trends, and addressing aspects of “gender guidance, fast track asylum determination procedure, internal flight alternative, detention, forced removal and destitution”.²¹⁴

3. Institutions and mechanism for monitoring and addressing VAW

127. Despite advances in the creation of tools to enable and enhance compliance, such as standards setting, indicators, and expansion of accountability for non-State actors, implementation continues to pose a serious challenge, which the mandate must continue to address by developing clarity on various dimensions of implementation.

128. In this regard, it is desirable to give greater emphasis and clarity to national and international mechanisms that must monitor and facilitate compliance. At the national level, the value of independent and autonomous mechanisms such as ombudspersons, machineries on women, observatories and national human rights institutions needs more emphasis. Based on the observations of the SRVAWs in mission reports, the mandate may want to clarify and stress the role of national human rights institutions with regard to gender-based violence regardless of the existence of a women-specific body, and the need for autonomous bodies to play a stronger monitoring role in relation to VAW. While the mandate has given some attention to autonomous

²¹¹ Eight women asylum-seekers who used the mechanism of the SRVAW from 1997 to 2006, mostly to prevent deportation to their country of origin, have been discussed in “A Last Resort? Women Asylum-Seekers and the UNSRVAW” by Debora Singer, a report by the Refugee Women’s Resource Project at Asylum Aid (December 2006).

²¹² Despite women suffering violations because of their gender, the Refugee Convention does not include gender as one of the grounds on which an individual can claim asylum. Some countries, such as Australia, Canada, the United Kingdom and the United States, recognize sexual abuse, forced marriage, forced abortion and FGM as amounting to persecutions in order to accept gender-based asylum claims on grounds of Particular Social Group. However, gender is not specific grounds within the Refugee Convention. See Singer, *op. cit.*

²¹³ See also “Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response”, UNHCR (May 2003).

²¹⁴ Recommendations in Singer, *op.cit.*, 46-47.

bodies in the country mission reports,²¹⁵ consolidated standards setting in relation to such mechanisms at the domestic level remains to be done - particularly to encourage inclusion of gender-based concerns, and to strengthen the autonomy and role of these institutions/mechanisms.

4. Women's groups and human rights defenders

129. The mandate has taken note of the valuable role of non-governmental organizations (NGOs), civil society groups and women's movements, as well as the constraints and controls under which they work in different contexts.²¹⁶ In light of State controls that limit women's movements', freedom of association, autonomy or expression in many contexts, as well as threats by non-State actors to women human rights defenders, it would be important for the mandate to reinforce State responsibility towards enabling and protecting NGOs and women human rights defenders.²¹⁷ The affirmation of civil society actors in eliminating violence and monitoring State obligations is an important part of implementing the agenda of the mandate. The State obligation to ensure space, independence and security to women human rights defenders and women's groups/movements is vital to the fulfillment of the due diligence obligations of the State, and to promote cultural negotiation strategies recommended by the mandate. International mechanisms for the protection of women human rights defenders working in conflict zones need to be developed and strengthened to ensure immediate and effective response when national-level mechanisms fail.

5. International follow-up and implementation

130. At the international level, strategies and steps need to be put in place to ensure follow-up and implementation of the mandate's recommendations. At present, there is no means of ensuring that the recommendations in the country mission reports are implemented or integrated into the programme of the government, a United Nations agency or other international agencies

²¹⁵ For references to the status of national mechanisms, see country mission reports on Poland, E/CN.4/1997/47/Add.1; South Africa, E/CN.4/1997/47/Add.3; Bangladesh, Nepal and India, E/CN.4/2001/73/Add.2; Afghanistan, A/58/421 and E/CN.4/2006/61/Add.5; El Salvador, E/CN.4/2005/72/Add.2; Guatemala, E/CN.4/2005/72/Add.3; and Algeria, A/HRC/7/6/Add.2.

²¹⁶ For observations on the role of NGOs, see country mission reports on Brazil, E/CN.4/1997/47/Add.2; Poland, E/CN.4/1997/47/Add.1; South Africa, E/CN.4/1997/47/Add.3; Rwanda, E/CN.4/1998/54/Add.1; Indonesia and East Timor, E/CN.4/1999/68/Add.3; Cuba, E/CN.4/2000/68/Add.2; Pakistan and Afghanistan, E/CN.4/2000/68/Add.4; Bangladesh, Nepal and India, E/CN.4/2001/73/Add.2; Afghanistan, A/58/421 and E/CN.4/2006/61/Add.5; El Salvador, E/CN.4/2005/72/Add.2; OPT, E/CN.4/2005/72/Add.4; Iran, E/CN.4/2006/61/Add.3; Russian Federation, E/CN.4/2006/61/Add.2; Mexico, E/CN.4/2006/61/Add.4; Sweden, A/ERC/4/34/Add.3; Turkey, A/HRC/4/34/Add.2; and Algeria, A/HRC/7/6/Add.2.

²¹⁷ In this regard, the Special Representative of the Secretary-General on Human Rights Defenders has emphasized that women human rights defenders face greater risks to particular forms of violence, including restrictions and prejudice; see A/HRC/4/37, paras. 98-104.

working in the country.²¹⁸ Attention towards developing systems and processes that ensure follow-up through planning, budgeting and resource allocation for international agencies, including the United Nations, is required in the future as part of facilitating compliance and accountability. In this regard, Ertürk has emphasized the need to complement the VAW mandate with a sustainable funding source from which funds can be channelled to the implementation of the recommendations made following official country visits. She has made a concrete proposal to this effect, which is under consideration.²¹⁹

VII. CONCLUSION

131. The challenge before the Special Rapporteur on Violence against Women has been and will remain immense, knowing that no matter how much the mandate advances the standards, conceptual understanding and tools for implementation and accountability in relation to VAW, the problem will persist - given how inextricably it is linked to other areas of subordination, disparities and discrimination. The role of the mandate is invaluable as the forum that can make visible hidden violations, lend support to and communicate the voices of the most vulnerable women, and act as a channel to access justice and accountability where national systems of justice are not well developed or when they fail to respond. The unfortunate fact remains that, for the most part, VAW continues to be perpetrated with impunity, access to justice is riddled with obstacles, and accountability remains elusive within the domestic realm. As a special mechanism, the mandate commands expertise, independence, concerted thematic focus, an ability to engage directly through country visits, ongoing accessibility to victims, and an advocacy role in identifying implementation gaps.²²⁰ Thus, the mandate will continue to serve a pivotal role in the development of human rights law with respect to women, and in their protection.

²¹⁸ Statement by Yakin Ertürk, SRVAW, at the SIDA Conference on Gender Based Violence, Stockholm (12 September 2008).

²¹⁹ Statement by Yakin Ertürk, SRVAW, at the sixty-third session of the General Assembly (2008).

²²⁰ United Nations General Assembly, "In Larger Freedom: Towards Development, Security and Human Rights for All", A/59/2005/Add.3, para. 101.

Annex

Country visits by the Special Rapporteur on Violence against Women, its causes and consequences, as of 1 January 2009

Country	Symbol number of the report
Moldova (July 2008)	A/HRC/11/6/Add.4
Tajikistan (May 2008)	A/HRC/11/6/Add.3
Saudi Arabia (February 2008)	A/HRC/11/6/Add.2
Democratic Republic of the Congo (July 2007)	A/HRC/7/6/Add.4
Ghana (July 2007)	A/HRC/7/6/Add.3
Algeria (January 2007)	A/HRC/7/6/Add.2
Netherlands (July 2006)	A/HRC/4/34/Add.4
Sweden (June 2006)	A/HRC/4/34/Add.3
Turkey (May 2006)	A/HRC/4/34/Add.2
Afghanistan (July 2005)	E/CN.4/2006/61/Add.5; A/58/421
Mexico (February 2005)	E/CN.4/2006/61/Add.4
Russian Federation (December 2004)	E/CN.4/2006/61/Add.2
The Islamic Republic of Iran (February 2005)	E/CN.4/2006/61/Add.3
Darfur region of the Sudan (September 2004)	E/CN.4/2005/72/Add.5
Occupied Palestinian Territories (June 2004)	E/CN.4/2005/72/Add.4
Guatemala (February 2004)	E/CN.4/2005/72/Add.3
El Salvador (February 2004)	E/CN.4/2005/72/Add.2
Colombia (November 2001)	E/CN.4/2002/83/Add.3
Sierra Leone (August 2001)	E/CN.4/2002/83/Add.2
Bangladesh, Nepal and India (November 2000)	E/CN.4/2001/73/Add.2
East Timor (November 1999)	A/54/660
Pakistan and Afghanistan (September 1999)	E/CN.4/2000/68/Add.4

Country	Symbol number of the report
Haiti (June 1999)	E/CN.4/2000/68/Add.3
Cuba (June 1999)	E/CN.4/2000/68/Add.2
Indonesia and East Timor (November 1998)	E/CN.4/1999/68/Add.3
United States of America (June 1998)	E/CN.4/1999/68/Add.2
Liechtenstein (April 1998)	E/CN.4/1999/68
Rwanda (September 1997)	E/CN.4/1998/54/Add.1
South Africa (October 1996)	E.CN.4/1997/47/Add.3
Brazil (July 1996)	E.CN.4/1997/47/Add.2
Poland (May 1996)	E.CN.4/1997/47/Add.1
Democratic People's Republic of Korea, Republic of Korea and Japan (July 1995)	E/CN.4/1996/53/Add.1
