

FOR FURTHER READING

The UN Mandate for the Elimination of Violence against Women: Standards, Instruments and Guidelines for Its Effective Use

By Yakin Ertürk¹

Introduction: International Human Rights Mechanisms

Ending violence against women has become an overall policy for the United Nations (UN). However, within the Special Procedures of the Human Rights Council (HRC),² a Special Rapporteur on violence against women, its causes and consequences (SRVAW) is specifically mandated to examine and monitor issues related to violation of women's rights.³ The Special Procedures constitute an important dimension of the human rights system, and they include special rapporteurs, representatives of the Secretary General (SG), independent experts and working groups,⁴ all playing a critical role in promoting human rights and rapidly responding to allegations of rights violations. Special Procedures mandates are the most directly accessible of the international human rights mechanisms. They are designed to monitor and report publicly on human rights with respect to thematic issues (thematic mandates) or on the human rights situation in a particular country (country mandates), including during times of crisis. At the end of 2010, there were 41 Special Procedures mandates (33 thematic mandates and eight mandates relating to countries or territories) with a total of 55 mandate holders.

Special Procedures mandate holders are independent experts serving on a voluntary basis in their personal capacity. They are not UN staff members and do not receive compensation. They are selected from among candidates with diverse backgrounds, are from different countries and are appointed for a maximum term of 6 years. Each SR mandate holder is legally classified as an "expert on mission" as per the 1946 Convention on Privileges and Immunities of the UN.

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1. Professor of Sociology and member of the European Committee for the Prevention of Torture (CPT).
 2. In June 2006, the Human Rights Council replaced the Commission on Human Rights which was established under the Economic and Social Council (ECOSOC) in 1946.
 3. In 2010, after years of lobbying by the global women's movement, the Working Group on the issue of discrimination against women in law and in practice was established, thus strengthening the Special Procedures with respect to the rights of women.
 4. The different titles given to the mandates are simply a result of negotiation. While most of the incumbents of the mandates are selected by the HRC, some are appointed by the UN Secretary General. For details on the mandates and mandate holders, see [http:// www.ohchr.org](http://www.ohchr.org), *United Nations Special Procedures—Facts and Figures 2010*

Most are serviced by the Special Procedures Division of the Office of the High Commissioner for Human Rights (OHCHR) in Geneva.⁵

While the mandates of the Special Procedures mechanisms may vary, the work usually involves fact-finding country visits, annual thematic reports relevant to the mandate, press releases on specific matters of concern and communications on alleged violation of human rights to the government concerned. Reports concerning activities of mandate holders are submitted to the Human Rights Council and/or to the GA annually.⁶

Reports of Special Procedures mandate holders are an invaluable source for civil society advocacy and lobbying, awareness-raising about injustices and discriminatory practices around the world, holding governments accountable for human rights violations or inaction with respect to specific circumstances, promoting policy change in particular areas of concern and in contributing to relevant academic debates. The complaints or communications mechanism of the Special Procedures, when effectively used, is particularly significant in allowing individuals and groups to seek redress for the human rights violations they experience.⁷

This unique mechanism is not sufficiently known and utilized by victims and human rights defenders, particularly with respect to violations of women's rights. This essay aims to provide an overview of the SRVAW mandate and provide some guidelines with respect to its effective use in enhancing the efforts to combat violence against women (VAW).

The Mandate of the Special Rapporteur on Violence against Women, Its Causes and Consequences

In 1993, following the Conference on Human Rights in Vienna, which recognized that VAW is a human rights violation, the General Assembly (GA) adopted the Declaration on the Elimination of Violence against Women.⁸ After a decade of lobbying, this was a hard-won victory for the global women's movement. Although the Declaration is not a binding document, it is the first and only international document defining VAW and identifying state obligation towards its elimination.⁹ According to the Declaration:

5 The post of the High Commissioner was created by the General Assembly in 1993.

6 Reports may be accessed at <http://www.ohchr.org>.

7. Despite its critical role in promoting and protecting human rights, the work of Special Procedures mandates are constrained by lack of resources, of follow up mechanisms and of cooperation from states.

8 Until recently, VAW was regarded as a private matter not deserving of public scrutiny. As a result, despite attempts during the drafting of CEDAW in the 1970s, VAW could not be included among its articles. Adoption of General Recommendation 19 in 1992 by the CEDAW Committee, which defines VAW as a form of discrimination, subsequently filled this gap. In 1973, VAW was officially accepted as a human rights violation by the Vienna Conference, and the GA adopted the Declaration on the Elimination of VAW that same year.

9 The 1993 Declaration remains the only global normative framework with respect to VAW. There are, however, binding regional instruments. In this respect, the Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence, opened for signature on 11 May 2011 in Istanbul, is noteworthy due to its potential universal applicability.

...(T)he term “violence against women” means 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 in private life (Article 1).

States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should ... 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 (Article 4c).

On 4 March 1994, the UN Commission on Human Rights with its resolution 1994/45 established the post of Special Rapporteur (SR) on violence against women, its causes and consequences to oversee the implementation of the Declaration and undertake overall monitoring of women’s rights in public and private spheres of life in all Member States of the UN.¹⁰ Although the primary responsibility of ensuring the human rights of all persons lies with the States, the SR also addresses non-state actors and responds to allegations of violations committed by private individuals and increasingly by international organizations and corporations.¹¹

The SRVAW is required to perform three main tasks: (i) conduct official fact-finding country visits; (ii) prepare annual reports on in-depth analysis of relevant thematic issues; and (iii) receive and transmit confidential communications. The role of local and global non-governmental organizations is critical for the SR in fulfilling each of these responsibilities. In this respect, civil society actors provide information on the human rights situation in a particular country, share research and analysis, hold direct consultations with the SR,¹² disseminate her work and advocate and lobby for the implementations of the rapporteur’s recommendations. There is mutual benefit in the engagement between the SR and civil society actors. NGOs and academics, while contributing to the mandate, can also utilize the human rights protection the mandate provides.

Among the responsibilities of the SR, the communications procedure is of particular importance. It provides for the SR’s direct intervention in a credible allegation of a human rights violation. Despite its unique potential, this mechanism is not exploited fully by women. To familiarize victims of violence and human rights defenders working in the field of women’s rights of its

10 Three experts have since held the office of the SRVAW: Radhika Coomaraswamy, a Sri Lankan lawyer (June 1994-July 2003); Yakin Ertürk, a Turkish sociologist (August 2003-August 2009); and Rashida Manjoo, a South African lawyer, who presently holds the mandate.

11 See for example the SR’s report on the Democratic Republic of Congo, where she addressed the violations of rights allegedly by UN peacekeeping troops (A/HRC/7/6/Add4).

12 Consultations with regional NGOs have become an integral part of the SR’s work. NGOs provide important input into the SR’s work by highlighting regional and national specificities. They also allow civil society actors to become familiarized with opportunities the mandate offers in advancing their national and regional initiatives. The consultations in the Asia Pacific region, organized by APWLD, have become a routine aspect of the rapporteur’s annual activities. Occasional consultations have also been undertaken with NGOs in other regions.

potential and methods of use, this essay continues with a closer focus on the communications procedure.

Communications Mechanism

Under this procedure, the SRVAW is able to receive individual complaints on violence against women, its causes and consequences from individuals, non-governmental organizations, including women's organizations, intergovernmental and treaty bodies, specialized agencies, other special rapporteurs responsible for various human rights questions and governments. The SR can respond effectively to such information.

In determining the admissibility of the complaint, the SR refers to the definition of VAW as contained in the UN Declaration on the Elimination of Violence against Women. In this respect, a broad understanding of violence beyond "harm done" informs the SR's approach. In this sense, the SR's work is not only reactive but more so preventive.

Upon receipt of reliable and credible information regarding allegations of VAW, the SR transmits urgent appeals and/or allegation letters to the relevant State, seeking clarification, verification and action for redress. Allegations may concern the experience of one or more individuals or a general prevailing situation, legislation, policy or practice condoning and/or perpetrating violence against women.

The transmission of allegations to a particular country could be the beginning of a constructive dialogue with the State concerned about enhancing women's human rights, and provides an opportunity for redress for violation of human rights that may otherwise remain invisible and unspoken. The complaint mechanism of the SRVAW differs significantly from that under the CEDAW Optional Protocol and that of CSW. Unlike the former, access to the mechanism of the SRVAW is not contingent either on ratification of any treaty or reservation in respect thereto, or on the requirement to exhaust domestic remedies before submitting a complaint. Likewise, unlike the latter, the SR is able to intervene directly in the case itself rather than merely deriving patterns and trends from the complaints received. As such, the SRVAW mandate serves as a mechanism of last resort for accountability and protection for women.

Depending upon the nature of the complaint, the SR may send either an urgent appeal or an allegation letter.

Urgent Appeals

Urgent transmissions may be sent by the Special Rapporteur to concerned governments when reliable and credible information is received concerning cases which involve an imminent threat, or fear of threat, to a woman's right to personal integrity or to her life. When transmitting urgent actions, the SR appeals to the government concerned to ensure effective protection of those under threat or at risk of violence.

Allegation Letters

For those communications that do not require urgent action but relate to violations that already occurred and/or to general patterns of violations—including the legal framework and its application with regard to violence against women — the SR may send allegation letters requiring governments to clarify the substance of the allegations received.

Submission of a Complaint

The SRVAW has provided a standard reporting form for submitting allegations, which may be accessed at <http://www2.ohchr.org/english/issues/women/rapporteur>. Although it is not essential that the form is used in transmitting the complaint, it is important to provide as much information as possible. If the government concerned is a party to human rights treaties (CEDAW or others), it would be helpful to indicate the specific rights as per the treaty that have been violated.

Complaints regarding a specific case when submitted by a third party must ensure the consent of the victim. This is important because while the petitioner's identity is kept confidential, the victim's identity must be disclosed in order for the government to react on the case. If the complaint is regarding a policy, law or practice which affects women in general or women in a specific group, “who,” “how,” and “why” need to be explained clearly. Submissions that involve violations committed by private individuals or groups (rather than government officials) need to indicate how the State failed to exercise due diligence to prevent, investigate, punish, and ensure compensation for the violations. In this respect the following information may be included: whether there is a law which addresses the violation; if there is, what deficiencies are in the law or its practice; the practice of registration of complaints or their investigation and prosecution, etc.

Submissions may contain documentation of the case, such as copies of medical records, newspaper articles, copies of law articles or judicial decisions, statements by government authorities regarding policies, views about the case or similar cases, statements of lawyers, doctors or other experts concerning the case, photographs and/or other relevant documents. The complaint with its attachments should be sent to vaw@ohchr.org.

Communications Report

Both urgent appeals and letters of allegation remain confidential until published country by country in a summary form along with any replies received from the concerned State in the SR's annual Communications report to the HRC.¹³ These reports can be used by the petitioners to follow up on their case or for general human rights advocacy by human rights defenders. Communications reports are also an important source of information for researchers as they also reveal trends

¹³ In 2010 mandate-holders decided to prepare a joint communications report containing all communications, including urgent appeals and allegation letters to States, and the full responses of States. Given the significant percentage of joint communications, 66 percent, the decision will significantly avoid duplication of communications being published in individual mandate-holders' reports.

and types of cases with respect to women's human rights violations that are brought before an international mechanism as well as protection gaps.

The SRVAW in a number of their Communications reports have provided an overview of the complaints communicated. For example, according to the 2009 (A/HRC/11/6/Add.1) report SR transmitted 93 communications to 34 Member States, 80 of which were sent jointly with other mandate holders of the HRC. The largest number of joint communications was sent together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. This, as noted by the SR in the report, indicates that the reporting of the forms of human rights violations experienced by women converge with that of more conventional forms of violations, therefore, not representative of the full range of human rights violations women encounter particularly in the private sphere.

Concluding Remarks

The recognition of violence against women as a human rights issue, has had a transformative impact on human rights theory and practice in three areas: (i) expansion of human rights beyond the conventional understandings of violations perpetuated mainly by State actors in the public sphere; (ii) inclusion in the doctrine of State responsibility the actions of private individuals; and (iii) introduction of new species of crimes, such as domestic violence, marital rape, etc. within the criminal justice systems.¹⁴

Within this process the mandate of the Special Rapporteur on violence against women is a powerful monitoring tool accessible directly by victims of violence. As stated above, this potential of the mandate is underused. The number of communications transmitted by the SRVAW annually is far below that of the more conventional human rights mandates such as human rights defenders or torture, each act on over 300 complaints a year. Even the complaints that are filed tend to concern mainstream human rights violations. A number of factors no doubt account for both the average number of complaints transmitted as well as the type of complaints received by the VAW mandate, including; lack of familiarity with international mechanisms; the legalistic and distant nature of human rights mechanisms; the fact that women are still reluctant to make public the violations of rights they experience; women's rights activism and human rights activism rarely converge, which keeps women marginal to the existing human rights monitoring framework; among others.

¹⁴ Yakin Ertürk, "The Due Diligence Standard: What Does It Entail for Women's Rights?" in Carin Benninger-Budel, ed., *Due Diligence and Its Application to Protect Women from Violence*. Leiden: Martinus Nijhoff Publishers, 2008.

While some interventions of the SRVAW will have a positive consequence on individual cases, they will not necessarily oblige states to change laws and practices particularly where the case involves issues related to citizenship, asylum and the like. In the final analysis, it must be borne in mind that for the international human rights system to produce the expected results member states must be willing to cooperate and for national and international civil society to follow up on the cases submitted and demand accountability from governments and other concerned bodies. “However, reports on a country’s compliance—or lack thereof—with human rights norms shine a spotlight on human rights abuses and can shame a country into altering its practices.”¹⁵ The communications mechanism is a unique and powerful instrument that brings hidden issues to the public discourse, which will subsequently be the motor of change in a society. Hence, there is more work to be done for women to fully exploit its potential.

Combating Violence against Women: Examples from Latin America

*By Jacqueline Pitanguy*¹⁶

The Multidimensional Phenomenon of Violence against Women

Violence against women (VAW) is a multi-dimensional and pervasive phenomenon in societies worldwide and requires a broad and holistic approach to be understood, prevented and punished. Practitioners from diverse disciplines should be encouraged to analyze its causes and consequences for victims, perpetrators and society at large. Grasping why violence occurs and what its impact is demands the attention and insights of women’s human rights activists, legal and medical professionals, media producers and journalists, policy makers, religious leaders and social scientists among others.

A major obstacle to a woman’s full entitlement and exercise of her human rights lies in the cultural values and religious beliefs that infuse hierarchical symbolic representations of male and female in most societies. These values and beliefs place women as subordinate to men and legitimate unequal gender relations, which women themselves ironically perpetuate due to these same and other constraints. This social perception of women is the matrix for all forms of discrimination and violence against them, providing a rationale for lesser access to equal family and civil laws, to reproductive health, to protection against domestic and sexual violence, to education, to labor, to equal pay for equal work, to property rights and to political power.

The form of VAW may differ according to a woman’s place of residence, race and ethnicity, religion, socio-economic conditions and age among other factors, all of which are in turn affected by a country’s political organization—namely, the extent to which institutions are democratic and civil liberties are respected. Practitioners must bear in mind the complex relationship between all these

15. Lenora M. Lapidus, “The Role of International Bodies in Influencing U.S. Policy to End Violence Against Women,” *Fordham Law Review*, Vol. 77, No. 2, November 2008.

16. Founder and executive director of CEPIA—Ciudadanía, Estudio, Pesquisa, Informação e Ação [Citizenship, Study, Research, Information, Action]—a Brazilian non-governmental organization advancing women’s human rights.

variables because the most visible and brutal forms of violence—physical aggression, sexual violations and murder—occur on a continuum of unequal gender relations marking the life cycle of a woman.

In Latin American countries and particularly Brazil, practitioners, spearheaded by women's rights activists, have made strides in combating VAW, though there remains much work to do. This brief review illuminates uneven progress in four areas: the state of gender relations within the family, women's participation in the political arena, efforts to prevent maternal mortality and the fight against domestic violence.

Women's Rights within the Family—Creating Equality at Home

Though popular culture in many Latin American countries portrays women as “queens” and “chiefs” at home, family laws have historically ascribed to them a secondary role relative to men in decisions concerning marriage, children, property and the like. To eliminate this subordination necessitates changing discriminatory civil and penal codes and re-interpreting laws that are misinterpreted and misused to discriminate against women.

In Brazil, revising the civil code of 1916, which defined men as the head of the family, was a major goal on activists' agenda during the latter half of the twentieth century. Among the instruments used in the long-term struggle to redefine family gender roles in legal terms were advocacy campaigns, academic discussions, pro bono work by lawyers, publications and films—all underscoring the gap between the reality of women's roles in society and laws that are unfit to regulate contemporary family relations. In 1982, the government signed CEDAW, the Convention on the Elimination of All Forms of Discrimination against Women, but with reservations to those articles related to family relations.

A crucial turning point in this struggle was the passage in 1988 of the new Citizen's Constitution which promulgated equal rights and responsibilities for men and women within marriage. Feminists' activism was vital to its passage, as they referred to CEDAW's provisions stipulating that signatories would take measures to eliminate unequal gender relations within the family, to legitimize their demands for change in Brazil's laws. The effect of the Constitution was to abolish the country's reservations to CEDAW. The fight for equality and human rights within the private realm of the home culminated in the implementation of the 2003 civil code which refers to the rights of a “person” rather than to those of a “man” and to “family authority” rather than to “paternal authority.”

The Right to Political Participation—Running for Office, Electing Women

Shifting away from the private sphere, the presence of women in public life varies significantly from one country to another in Latin America. However, within every society, women are newcomers to the political arena as contrasted with men who have always been there. This exclusion of women from political power has been defined and denounced as a form of VAW by activists in many Latin American countries who have fought for quotas in electoral campaigns.

Dilma Rousseff's election in October 2010 as Brazil's first female president has been a major step towards the deconstruction of stereotypes depicting women as out of place in the political arena. Even before Rousseff's election, women's rights activists, along with a few politicians and the Ministry for Women's Affairs, launched a campaign called "More Women in Power."

Brazil is still one of the countries in Latin America with the lowest proportion of women in the National Congress. A major achievement was the 1997 quota law according to which at least 25 percent of the candidates on electoral lists had to be women; in 2000, this proportion was raised to 30 percent. Yet political parties often do not fulfill their quotas, and when they do, they do not whole-heartedly support women's candidacies because the law provides no serious sanctions for not achieving the correct numbers. Other Latin American countries such as Argentina and Chile have a high proportion of women in their parliaments, and both have also had women presidents.

The Right to Health—Preventing Maternal Mortality

Throughout Latin America, viewing VAW from the perspective of women's right to health has opened up greater possibilities for understanding this problem, preventing its occurrence, treating victims' physical and psychological injuries, punishing perpetrators and reintegrating survivors (and, when appropriate, perpetrators) into society. Acts of violence by their very nature deny a victim's right to health. Women's lesser access to financial resources and to the levers of decision-making power in both the private and public domains compound this human rights violation.

A striking example of the inextricable link between VAW and the violation of one's right to health is maternal mortality—defined as a woman's death during pregnancy or up to 42 days after its termination due to causes related to pregnancy or to the infant's birth. According to the World Health Organization, maternal mortality may be avoided in 92 percent of cases. Its major causes such as high blood pressure, infection, hemorrhaging and unsafe abortion do not require costly investments in medical technology. Rather, addressing these causes requires awareness and political will; the absence of both reflects women's de facto status as second-class citizens.

Although Latin America's rate of maternal mortality is still very high—an estimated 28,000 women die every year, it has decreased in many regional countries, including Brazil, in recent decades. Advancements in health services, nutrition, education, sanitation and income distribution as well as urbanization have contributed to this progress. More significant, however, is the advocacy work of women in the national and international arenas who have raised the visibility of maternal mortality and demanded that relevant practitioners implement measures to prevent it.

In Brazil, activists have demanded better data that would enable them to investigate and publicize the causes of maternal mortality. Women's activism has

stimulated governments' political will to provide access to family planning, safe abortions and pre-natal and post-delivery care.

The establishment of committees on maternal mortality in many Latin American countries since the 1980s exemplifies the results of advocacy work by women's rights activists vis-à-vis the public health sector. In Brazil, the first such committee was installed in 1987 to coincide with an important political moment affirming women's rights in the country's democratization process and the new constitution's promulgation a year later.

Today, these committees exist in every state and in many municipalities. Composed of representatives of public health agencies, medical and nursing associations, and schools as well as women's rights organizations, their main objectives are to: evaluate the accuracy of data on maternal mortality, identify major problems in healthcare services, investigate suspicious deaths and propose solutions. These committees play a key role in defining the magnitude of maternal mortality and in rendering governments accountable to confront this form of VAW.

The Right to Bodily Integrity—Living Free of Domestic Violence

Women's rights activists in Latin American countries have engaged in dialogue and debate with their governments and especially the legal-judicial sectors to end the impunity with which men perpetrate domestic and sexual violence against women. Article 1 of the 1993 UN Declaration on the Elimination of Violence Against Women states that VAW is "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." In practice, the social recognition that certain behaviors, customs and laws are violent towards women depends upon the gender power relations of a given society.

As in other regions of the world, domestic and sexual violence pose a particularly difficult challenge to those in Latin America seeking to combat VAW because these abuses tend to occur repeatedly over an extended time period at home between the same aggressor and victim. In Brazil, women's rights activists pioneered the Special Policy Stations to Attend Women Victims of Domestic Violence, DEAM. The first DEAM was inaugurated in 1985, establishing a pedagogical example for police officers who had before then generally not viewed VAW as a crime. Activists, working with the National Council for the Rights of Women created in 1985, also pressed for a constitutional provision affirming that the state has a duty to prohibit violence within the family, challenging the age-old conceptualization of domestic violence as essentially a private matter. This provision offered a normative framework for laws and public policies in relation to women's security and access to justice.

In 1994, Latin American activists supported the establishment of the Inter-American Convention to Prevent, Punish and End Violence against Women, better known as Belem do Para Convention, after the Brazilian city where it was

signed. This document has inspired various national laws against VAW such as the 2006 Brazilian Law named for Maria da Penha, a victim of her husband's domestic violence who took her case to the Inter-American Court of Human Rights. Other Latin American countries have also passed specific legislation on VAW, recognizing that universal laws are applied differently to men and women.

In short, women's rights activists in Latin America have broken the silence surrounding VAW and continue to shine the light on its various forms—on the daily humiliations and aggressions suffered by women who have been victims and have emerged as the main agents of their own liberation.