Violence without Borders:

Paradigm, policy and praxis concerning violence against women

Yakin Ertürk

Women's Learning Partnership
Translation Series

Violence without Borders:

PARADIGM, POLICY AND PRAXIS CONCERNING
VIOLENCE AGAINST WOMEN

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To Özgecan Aslan, Güldünya Tören, Reyhane Cebbari, and the memories of countless victims of violence against women…

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VIOLENCE AGAINST WOMEN

Yakin Ertürk

Yakin Ertürk received her PhD in development sociology from Cornell University in 1980 and served as a faculty member at the Department of Sociology, Middle East Technical University in Ankara, Turkey, between 1986 and 2010. She also taught at Riyadh University (1979-1982) and Hacettepe University (1983-1986). In addition to her academic career, Ertürk has undertaken consultancy work on rural development and women in development projects for national and international agencies (1986-2003). She also held numerous international assignments, including: Director of the United Nations International Research and Training Institute for the Advancement of Women (INSTRAW) in Santo Domingo, Dominican Republic (October 1997-February 1999); Director of the Division for the Advancement of Women (DAW) at UN Headquarters in New York (March 1999-October 2001); UN Special Rapporteur on Violence against Women (SRVAW) (2003-2009); member of the Independent International Commission of Inquiry of the June 2010 events in the Republic of Kyrgyzstan (October 2010-April 2011); member of the UN Human Rights Council, Independent International Commission of Inquiry on the Syrian Arab Republic; and member of the European Council, Committee for the Prevention of Torture (CPT) (2009-2013). She is currently a member of the Board of Directors of the Women's Learning Partnership for Rights, Development, and Peace and the executive board of the Migration and Asylum Research Center, which she co-founded in June 2013.

"Oppression and violence go hand in hand."

Selahattin Ertürk, Tecelli [Manifestations], 1975

"To punish disobedience and discipline liberty, family tradition perpetuates a culture of terror that humiliates women, teaches children to lie, and spreads the plague of fear. Human rights should begin at home."

Eduardo Galeano, The Book of Embraces, 1989

"The skillet is sizzling, there's no dough left; the man came to his senses but I have no life left."

Neriman, an Anatolian woman

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Foreword to the English Edition

Violence without Borders, published originally in Turkish, is the third volume in the WLP translation series. The goal of the series is to make available to the public–especially those interested in women's human rights–original scholarly work produced by and based on the life experiences of women in the Global South. This volume's author, Yakin Ertürk, is not only a distinguished academic scholar, but she also carries an exceptional portfolio of practical field experience acquired in her work with the United Nations. She has led the United Nations Division for the Advancement of Women (DAW), International Research and Training Institute for the Advancement of Women (INSTRAW), and has served as Special Rapporteur on Violence against Women. Her work with the United Nations has been enriched by her impeccable scholarly background and her special academic achievements in the field of sociology.

Violence without Borders comes at an exceptionally auspicious moment for Women's Learning Partnership (WLP). We have been awarded a three year grant by the International Development Research Centre (IDRC) of Canada to study and develop a campaign based on the relationship between discriminatory family laws and violence against women. This comprehensive multi-country study is of great assistance to our work. It follows naturally upon the two previous publications in WLP's translation series which have been translated to English from Arabic and Persian respectively, and subsequently into other languages in the world of the WLP partnership.

The first book in the series, *Guide to Equality in the Family in the Maghreb*, is an advocacy tool developed by women's organizations in Morocco, Algeria, and Tunisia to help mobilize women by providing them information on family law as it relates to other fields that also affect women's lives, including sociology, hygiene, national and international law, religion, and culture. By highlighting the contradictions between and among these various fields as they intersect with women's lives within the family, it seeks to provide an opportunity for individual women to make deliberate and thoughtful choices that lead to effective communication and advocacy.

The second volume, *Iranian Women's One Million Signatures: Campaign for Equality: The Inside Story*, is an extra-ordinary case study of how to build a movement in the 21st century to bring about change not only in societies ruled by autocratic and semi-totalitarian fundamentalist systems of government, but also in the more open and tolerant societies where women are yet to achieve full equality. The context of the movement is the clash between a civil society with a century-old record of growing sophistication and important roles for women on one hand, and an archaic legal system that cannot be reconciled with the

exigencies of modern life. The genius of the movement lies in its capacity to provide a framework where members' thoughts and deeds mesh in ways that easily adapt and change as changing conditions require.

In *Violence without Borders*, structured in four chapters, the author brings a more comprehensive, global dimension to the series. Ertürk's distinguished academic background as a sociologist, her experience as the United Nations Special Rapporteur on Violence against Women, and her realistic passion for women's human rights enable her to weave a tapestry of theory and practice that helps the practitioners of women's human rights face the complex reality of women's condition on the global scale with apposite knowledge, resolution, and patience.

The author begins by sketching a historical-theoretical panorama of women's condition on a global scale, relating the processes that have led to the trans-nationalization of women's issues and their effects to women in the socio-cultural framework of their lives, the obligation of the states to protect them against violence, and the persisting threats and emerging obstacles they face. By conceptualizing violence against women within a holistic gender perspective with its intersections with other systems of subordination Ertürk opens a theoretical framework that prompts us to a guiding concept: that gender equality as both an imploration for rights and a theory of empowerment has aims and values beyond equality between men and women as a goal in itself; it has a pivotal role in achieving other human goals. And that in order to successfully uphold universally agreed-upon human rights values, it is necessary to address and understand the process of legitimization of culture-based values:

> Contrary to what some may claim or fear, such a negotiation with culture does not erode or deform local culture but rather challenges its discriminatory and oppressive aspects. This of course may provoke resistance from those who have a vested interest in preserving the status quo. Negotiating culture with human rights concerns inherently questions, de-legitimates, destabilizes, ruptures and, in the long run, destroys oppressive hierarchies.

In the second half of the book, the author shares with the reader her experiences and findings on a selected number of countries across the world she visited and for which she prepared reports for the Human Rights Council in her capacity as the United Nations Special Rapporteur on Violence against Women between the years 2003-2009. The countries selected for this book include El Salvador, Guatemala, Occupied Palestinian Territory, Russian Federation, the Islamic Republic of Iran, Turkey, the Netherlands, Sweden, Ghana, and the Democratic Republic of the Congo. The conclusions the author derives from a comparative analysis of the status of women in these and other countries not included in the

selection in this book are precise, specific, illuminating and instructive. Ertürk's general observation is:

> Violence against women remains a universal problem. Being a woman is still a risk factor, even in societies where women's liberal rights are promoted and safeguarded. The way authorities approach the problem often lacks substance because it ignores its systemic and structural character. All the authorities see is an amalgam of individual instances of victimhood, deviant male aggression, or misogynous cultural norms and practices.
>
> All around the world, our common goal is to challenge the inadequacy of these approaches, and that ultimately requires that we can envision, design, and put into practice a gender regime that transcends patriarchy and the interest of hegemonic imperial or local centers of power.

The theoretical framework, as well as the descriptions and astute observations derived from the country case studies, provide a valuable roadmap for the global struggle to eliminate violence against women and to move toward our vision of a just and peaceful world.

Mahnaz Afkhami,
President and CEO
Women's Learning Partnership
June 2016

Author's Foreword

My experiences of the past 15 years in the field of human rights, particularly the field of women's rights, have motivated me to write this book. Beyond this, the real driving force has been the anger I felt not only against the escalating violence targeting women but also the tone of the media coverage it receives. Yes, violence against women is now a public policy concern and can no longer be ignored by politicians in Turkey or around the world. But the hypocrisy of in one breath sanctifying women—who at least as mothers supposedly have heaven laid down under their feet, as a Turkish proverb has it—and in the other breath denying them their autonomous personhood by tolerating their discrimination in the home and in society remains very much a fact of life.

In his 1869 essay "The Subjection of Women," John Stuart Mill questioned the mindset that could not imagine women outside the household and the family as equal partners of men in the private and public spheres. That his exhortation continues to be relevant today, 145 years later, feeds the anger. But what is encouraging is that women throughout all corners of the world are transforming this anger into positive energy as they take a stand unwilling to submit to their "fate," at whatever the cost.

Women's struggles for their rights have by now turned into a global force. Their engagement with the universal human rights paradigm and reinterpretation of its standards from a gender equality perspective have given birth to a comprehensive international regime on women's rights. Today, the maltreatment of women even behind closed doors is recognized as a human rights violation that can no longer be excused by the right to privacy, for too long a shield for rights violations.

In Turkey, significant gains have been made in breaking the silence and the denial around violence against women. This was in part the result of persistent efforts of the women's movement and in part the result of the state's willingness to comply with its international obligations, particularly within the framework of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Today in Turkey, violence against women is a public policy concern. Yet sexism is very much alive: discriminatory practices and discourse by state officials empower patriarchy, which encourages transgressions on women in and outside the home.

Despite all the problems that remain, the national and international achievements in women's rights in recent history are a testimony to the success of the global women's movement. Despite national differences, there is a dimension of patriarchal subordination and oppression that is universal, which has enabled women in different countries to mobilize and organize around a common cause,

turning their struggle into one of the most effective global movements of our time. The "formal equality in public life," the movement's initial aim, has since been supplanted, as new women's groups came to the fore along with their demands, diversifying the normative framework on gender equality as well as the debates on feminist theory and practice.

Violence without Borders focuses not only on the gains that have been made but also the challenges that remain. I hope that this book will motivate a new generation of feminists and social scientists to carry the work in this field further, as we still have a long way to go. Despite the achievements and diversity of the women's movement both in Turkey and elsewhere in the world, patriarchy—tamed, destabilized, or intact—continues to reproduce gendered discrimination and provoke violence against women across all borders.

An egalitarian gender regime or contract will require significant ruptures in the universal patriarchal culture. This is a shared goal for all women's groups. In the face of a rising neoliberal and fundamentalist backlash, we need to invoke universal human rights with courage and determination and defend its principles. When guided by research and evidence-based knowledge, it will be possible to broaden our vision and develop effective and transformative strategies.

In addition to my academic work, the knowledge and experience I drew from in writing this book are based on various human rights-monitoring mandates I held at the international level, especially when I was the United Nations Special Rapporteur on Violence against Women between 2003 and 2009. In the thematic research reports I prepared I was able to combine theoretical approaches with practical observations of concrete obstacles that appeared persistent across societies. The official country visits I conducted provided me with an opportunity to monitor both women's actual life experiences and how states responded to their obligation to combat violence against women in different countries. Part III of this book contains the analysis of ten of the 17 countries I visited as rapporteur. The theoretical arguments I advance in the book are derived from these experiences and from the invaluable works of other authors on the subject.

All shortcomings in this book are no doubt mine. However, here, I owe thanks to Işik Teziç, who translated some of the reports and documents in the process of the writing of this book from English to Turkish, and Prof. Korkut A. Ertürk, who contributed to the conceptual discussions. Dr. Pinar Öktem and Assistant Professor Ceyda Kuloğlu—my former students and now fellow colleagues—read the book from beginning to end and gave me their valuable feedback. Through a painstaking effort, Pinar ensured the volume's fluency and consistency both through copyediting and by posing critical substantive questions, and Ceyda, in our search for a title for the book, put the final touch

by proposing *Violence without Borders*. I thank them most sincerely. Finally, I am grateful to my dear friend, esteemed attorney-at-law and feminist activist Canan Arin for introducing me to Metis Publishing; she enabled the book to find life in the right hands.

Yakin Ertürk
Ankara, December 2014

Part I:

Introduction

The Issue and the Approach[1]

The 20th century was violent: it entailed two world wars, genocides, revolutions, anti-colonial wars of independence, etc. The new world order it brought in its wake did not emerge peacefully. The end of the Cold War raised expectations that peace and democracy would proliferate throughout the world at large, yet by the close of the century conflicts and naked violence once again flared up. In the process, violence against women, obscured throughout history behind the façade of private life, transcended the boundaries of the "private" and emerged on the public scene, both internationally and nationally.

Today violence against women is a major public policy concern on the agenda of international organizations, governments, and civil actors alike. This raises a number of questions: What is behind the increased focus on the problem of violence against women in recent decades? Is it an increase in actual violence or an increase in public awareness and recognition of the issue? Is violence against women independent of the rise in other forms of violence, or is it intrinsically connected with them? No doubt these questions require us to probe deep into power relations and the multitude of their inter-linkages at different levels of life.

Violence without Borders, in responding to these questions, aspires to go beyond the narrow victim-oriented understanding that blames violence against women on "harmful traditional practices" and "deviant male behavior", which perceives women as vulnerable beings in need of protection. Years of feminist thinking and praxis have established that the problem is embedded in structurally unequal patriarchal relations and constitutes a grave human rights violation. In this respect, it is argued here that tackling the problem requires a shift in understanding from one of victimization to one of empowerment, i.e., perceiving women not only as passive victims of gendered violence but as active agents of change whose collective initiatives have resulted in a comprehensive international regime for women's rights and equality. In tracing the trajectory of this evolving regime, the book draws on the links between *paradigm* (feminist theorizing), *praxis* (women's realities and activism), and international *policy* formulation. The diverging and converging aspects of violation of women's rights under different socio-structural conditions as well as how governments and other relevant actors respond to the issue at the national level are also explored within the concrete experiences of select countries. As

1 The discussions that constitute the basis of this book have been addressed in some of my previous publications. These publications are included in the bibliography and are referenced within the text when pertinent.

such, this study will also to some extent shed light on the recent history of the global women's movement.

Violence against women[2] emanates from relations of power and thus escalates when power is challenged and destabilized. That in a nutshell is the premise of this book's thesis: When mechanisms of persuasion collapse, latent conflicts simmer to the surface. Any flare up in violence is thus a sign of disintegrating structures of hegemony,[3] and the different forms of violence that have been on the rise since the last quarter of the 20th century all share this common trait and are interrelated.

In fact, the very world order based on the hierarchical nation-state model that reached its pinnacle in the Cold War era is shattering; the notions of "normality" that hitherto shielded off the home and the nation to scrutiny are under challenge; and power, whether in the private or the public sphere, can no longer rule with the pre-established rules of consent. In such an environment, violence emerges by default and becomes normal as it turns into the primary weapon of contention among clashing social groups. That is why I believe women's aspirations and demands, no longer containable within the conventional family and societal structures, are ultimately what have been behind the "feminization of violence," which will be explored in detail throughout the book.

The conditions that provoked and normalized violence have also created new mechanisms of contention and struggle that enabled social groups to make claims beyond the boundaries of the nation-state. Most notably, the ruptures in the nation-state model allowed individuals and groups direct access to the universal human rights system, which emerged as a legitimate repository of universal rights norms and values. Ordinary citizens could thereby break loose from the state's monopoly over their representation and bypass it to advocate for their rights at the transnational level, making it also easier to challenge

2 This analysis focuses on patterns of targeted and systematic violence that are embedded in structures of hierarchical and unequal relationships. Violence resulting from random or clinically pathological situations is not the subject of this book.

3 The concept of hegemony as used here is informed by a Gramscian approach, which is understood as being sustained not only through violence and political and economic coercion, but also through the realm of ideas and knowledge expressed through consent. In Gramsci's view there is not in any sense a single dominant class, but rather, a shifting and unstable alliance of different social classes, i.e., unstable and temporary dominant discourses. There is, therefore, a continuing struggle for dominance between the definitions of reality, where domination arises from a complex interplay of negotiations, alignments, and realignments. Those in power ensure domination through "coercion" and "consent" simultaneously. And when this balance is disrupted, violence manifests in its naked form. For Gramsci's views, see Adamson (1980), Anderson (1976).

parochial categorical constructs grounded in rigid binary opposites.[4] As a result, the diversification of human rights claims since the 1970s went hand-in-hand with the diversification and broadening of the mainstream human rights paradigm. One of the most influential actors of this process has been the global women's movement.

The relationship between violence and human rights is hardly static but rather dialectical; the former signifies hegemony/power, the latter a culture of resistance/rebellion against oppression and abuse. Taking on existent patterns is a complex endeavor; it is laden with its own contradictions and over time creates a new status quo of its own. As will be discussed throughout the book, women's human rights struggle should be seen as part of such a dynamic venture that harbors both that which transcends the "normal" and creates it anew.

Hence, the dialectical relationship between human rights and violence constitutes the conceptual backbone of this book, and globalization, which has triggered new dynamics in the post-Cold War era, constitutes its historical context. This dialectical relationship and the historical framework are briefly discussed below and a conceptualization of violence is presented.

Some Theoretical Arguments

A. Globalization and Post-Cold War Dynamics

A common theme in all and even conflicting accounts of globalization is the view that it represents a new phase of capitalist development that involves the progressive incorporation of the global into its ever-changing dynamics. The spatial reorganization of production, geographic decentralization of capital accumulation, de-territorialized forces of exploitation, and the significance of "hyper-competition" are often discussed in this connection. The socio-cultural and political dimension of global restructuring has been no less profound, particularly in connection with its far-reaching effect on private lives, in no little part due to the supranational governance patterns it engendered (Sassen 1998, Mittelman 2000, Heine and Thakur 2011).

4 The Reform of the Turkish Penal Code (2003-2004) is illustrative of rupturing of binary opposites as it symbolizes a transformation of mentality with respect to how women are conceptualized in law. The previous law, which was subject-oriented rather than act-oriented, stipulated punishment for sexual crimes according to the attributes of the woman victims, using binary classifications such as "virtuous/immoral" (i.e., prostitute), "married/single," "virgin/non-virgin," etc. Thanks to the tireless efforts of the women's movement, the new law, which went into force on June 1, 2005, recognizes the bodily integrity of women, and crime and punishment are defined with respect to the act and the perpetrator. While some of the demands of the women's groups were not reflected in the new law, the reform process itself was a success in terms of women's activism. For the role of women in the reform process, see Eslen-Ziya (2012).

Transplanery connections, to use Coleman's (2011) term, have accelerated towards the end of 1970s, replacing vertical social formations with horizontal "network societies," which are more flexible and interactive social structures (Castells 2004: 7). The growing disparities between the rich and the poor and within and among states, as well as the dislocations accompanying global integration, gave way in time to alternative oppositional networks that challenge globalization. These included not only various rights-based movements, e.g., environmentalist, anti-globalization, and human rights, but also those that harbor extremist violence, such as Al-Qaeda, among others. Coleman argues that the current neoliberal global system is built on a historically distinct, networked military infrastructure controlled by the United States and coordinated with militaries of other states (2011: 21).

Despite boosting open markets and the spread of liberal ideas, globalization has directly or indirectly given rise to new forms of violence. Not a few authors have related the new environment of violence to the dynamics of integration/fragmentation engendered by the spatial restructuring of production (Friedman 2003, Kahler and Walter 2006).[5] This is not surprising, given that the global rise of neoliberal economic formations disrupted the hierarchical power structures associated with the nation-state model, causing it to increasingly cede authority to supranational and private institutions. The growing inability of the (social) state to protect its citizens against the market in turn created fertile ground for new civil-actor based, rival networks to flourish, often with a religious or ethnic reference. Because these networks could offer the *citizen* alternative points of reference and solidarity, they were successful in filling the gap left by the state's withdrawal. The effect was the besieging of the state from below (subnationally) just as transnational networks were gaining ground supranationally.

No doubt this process has varied from country to country, but in many non-Western underdeveloped societies it manifested itself in a much more striking manner. The social state model, prototypical of developed Western countries, rarely went beyond an aspiration in much of the underdeveloped world, where traditional power structures, often collectivist if not totalitarian, were never fully eliminated in the nation-state building process. Many "religious fundamentalist" and "communitarianist" elements, even when subject to sporadic persecution, were politically tolerated by the state and thus continued to provide centers of attraction for excluded social segments for whom condi-

5 The contention that violence is in the nature of market economy and that the collapse of markets is prevented by propaganda mechanisms that present economic disasters as progress has been voiced with regard to various phases of capitalism. In this respect, Asad Zaman (2010), building on the ideas of Polanyi and others, argues that unregulated markets cause tremendous damage particularly in traditional societies and emphasizes the need for a viable alternative to the unstable market economy.

tions of being a "citizen" remained remote. These power blocks served as a reserve force ready to seize the ground abandoned by the state in the neoliberal era and managed to do so, democratically or otherwise, in some countries more successfully than in others.[6]

For instance, in the case of Turkey, Coşar and Yücesan-Özdemir (2014) argue that political Islam facilitated the rise of the neoliberal market economy. According to the authors, the articulation of neoliberal capitalism through political Islam transformed relations between the state, economy, and society in Turkey. As a result, the ever-present latent tension between modern capitalist life and traditional Islamic principles that prevailed throughout the history of the Republic began to be questioned (Coşar and Yücesan-Özdemir 2014: 13).

Conservative right-wing political forces, often self-defined in opposition to individual rights and freedoms, have gained strength even in established democracies, tied dialectically, one would think, to the rights movements' gaining momentum. These trends challenged the nation-state's territoriality as well as its monopoly over the representation of its citizens on the basis of national belonging. Transformation of citizenship, the fragmentation of national identities, and the formation of new identity politics are indicative of this process. In many countries, identity politics brought to the surface human rights violations and humanitarian crises that were assumed long buried in history, in the depths of collective memory, making them part of everyday politics. Since the mid-1970s, many indigenous peoples, driven almost to extinction by the spread of Western colonialism, were inspired by the human rights movement to reclaim their identities and struggle for their appropriated rights. In this respect, there has been an increase in the "indigenous" populations in terms of identity, if not in numbers. International fora helped them to gain visibility and have their voices heard, producing tangible political gains in numerous instances in the form of land restitution and political autonomy.[7]

6 The most totalitarian example of this has no doubt been experienced in Afghanistan with the religiously based Taliban seizing state power in 2006; a "moderate" example—within the context of Islam—has been attributed to the Justice and Development Party (AKP) that came to power in Turkey in the 2002 elections and reelected with a crushing majority vote in the next two consecutive elections. The social uprisings popularly referred to as the "Arab Spring" are revealing in that while they succeeded in the overthrow of authoritarian leaders in certain Arab countries, it soon became clear that democratic ideals were to be postponed to another spring. Repressive radical religious groups emerged as the strongest candidates to fill the power vacuum, creating new conflicts and polarizations. Conservative right-wing movements, which at the outset aim to regulate private life, are highly likely to evolve into a regressive and, depending on the conditions, totalitarian regime. Such trends are inadvertently accompanied by oppression and violence.

7 In 2000, the Permanent Forum on Indigenous Issues was established under the UN Economic and Social Council (ECOSOC) with the aim to hold periodic meetings and generate information and raise awareness on the subject. See: http://undesadspd.org/indigenouspeoples.aspx.

The fragmentations resulting from identity politics was often not without bloodshed, transforming in fact the very nature of the typical violent conflict. Unlike wars fought between enemy armies on battlefields and terminating in victory or defeat, it became increasingly common for intrastate social groups and segments to be locked in perpetual conflict that periodically erupted into armed confrontations virtually in "our own backyard."[8]

Furthermore, now that non-state actors have attained the power to access weapons of mass destruction, as blatantly demonstrated by the attacks on the Twin Towers in 2001, a new security threat has emerged, yet another reminder that violence is slipping out of the monopoly of the state. The contrast with the Cold War era is telling. While political rivalries and the threat of war existed during this period, the strong mechanisms of control exercised by the polarized power structure and the nation-state system largely prevented potential public- and private-level tensions from erupting into open conflicts. Yet, of course, during this period the very state system could legitimate the oppression of its citizens and perpetration of violence behind the shield of national sovereignty.

While the state monopoly over violence might no longer be absolute, those in power can still coerce people, whether directly through the use of violence or ideologically by using the media, education system, or economic institutions and practices. The state is itself a stakeholder with its own interests, and in addition to fulfilling duties such as governance and representation it will not refrain from using violence just to sustain its power. According to Insel, policies of violence are also practiced through judicial actions that constrain freedoms and are arbitrary; semi-official discriminatory practices that target select segments of society; and through turning the rulers' voice and image into the very spectacles projected onto everyday life (İnsel 2014: 35). When public

8 According to UN sources, the number of major armed conflicts peaked at 55 in 1993, involving 42 countries; the most violent of these occurred in eastern Europe, Central Asia, and Africa. Today around 33 ongoing armed conflicts are reported in various parts around the world, with many concentrated in the Middle East region.

The armed conflict that occupied Turkey's agenda for the past three decades is a striking example of this. This conflict has no winner but innumerable losers. And the foremost among the latter is the death of tens of thousands of people, who are expressed in "statistics," and the destruction of social peace.

rage over hundreds of casualties in a recent mining tragedy in Soma, Turkey, focused on the authorities, "the kick of the government" took no time to strike.[9]

With the rise of the security discourse around the world in the global political environment following 9/11, war-like, aggressive militarist strategies have gained ascendancy, as concern for counterterrorism and public safety took center stage. Counterterrorism measures combined with the rising anti-migrant xenophobia have contributed to the rise of the "prohibitive or penal" state, restrictive of rights and freedoms with a greater proclivity to rely on violent methods. The upsizing of the penal state went hand-in-hand with the downsizing of the social state. Wacquant (2001), for instance, draws attention to the massive growth of the prison population in the neoliberal era in the United States. He argues that prisons have increasingly become the means to manage poor marginalized groups left outside the system, the *subproletariat*. The people who fill the prisons are the very ghetto-bound poor whose conditions of life the social state previously tried to ameliorate.

In countries such as Turkey, where mass arrests are common due to arbitrary implementation of laws and the predominance of political-ideological dimensions of social conflicts, the structural character of poverty assumes a far-reaching scope compared to Western countries as described by Wacquant. With respect to the arbitrary implementation of laws, Insel draws attention to three types of violence: "economic violence" based on partisan sharing and distribution of economic opportunities; "socio-economic violence" resulting from restrictions on the rights claims and advocacy opportunities of vulnerable groups; and "symbolic violence" based on regulating the media (2014: 35). Depiction of such sources of violence offer substantive clues in expanding the concept of "penal state" as it applies to Turkey and other countries sharing similar characteristics.

9 The Soma mine disaster revealed that workers' health and work safety was largely compromised with the privatization of coal mining in Turkey, as production cost for a ton of coal had dropped from US$140 to US$24. The president of the British National Union of Mineworkers, responding to the public debate, drew attention to the fact that work safety costs are the first to be cut to decrease costs in the private sector and noted that such vital matters cannot be left to the conscience or prerogative of the bosses. According to him, the priority of bosses is naturally to make money, not philanthropy (press, May 19, 2014). Following the death of 301 miners in Soma on May 13, 2014, angry protesters chanted anti-government slogans and called for the resignation of those responsible. One protester, who was held down by the security forces, was kicked several times by the prime minister's advisor.

B. The Dialectics of Human Rights

While violence and struggle for human rights might be as old as human history, in any given historical period they take on a particular concrete form.[10] The very idea of rights and freedoms we take for granted today, along with the legal and political documents that codify them, are the result of a long history of uprisings against tyranny that transformed people's expectations about the nexus of the relationship between the individual, the state, and the community.[11] However, "…the notion that rights are held and claimed by each person by virtue of being a human is a fairly recent development" (Arat 2006b: 1).

This recent understanding of the concept of "human rights" derives from the Universal Declaration of Human Rights (henceforth referred to as the "Declaration"), adopted in 1948 by UN member states.[12] It is only in the post-Cold War era that the principles of the Declaration, adopted over half a century ago and since codified into binding obligations by international conventions, could become a legitimizing, normative framework—a "rights repository" as it were—accessible by ordinary citizens with relevance to everyday life.

Following the devastations of two world wars, the inspiration for rights and a legal order, envisaged as essential for the construction of a new world, led to the articulation of the principles of the Declaration under the prevailing circumstances of the day and its hegemonic power relations. The preamble of the Declaration affirms the inalienable rights, dignity, and worth of the human person and the equal rights of men and women, where Article 1 proclaims that "All human beings are born free and equal in dignity and rights." The Declaration's universalism is what makes the current understanding of human rights distinct.

However, the Declaration has also been criticized precisely on the ground of the concept of universality of rights. For instance, in 1947, while the Declaration was still being negotiated, the American Anthropological Association (AAA) raised the concern that because the Declaration overlooked the cultural specificity of societies, it could become a new tool of imperialism. The AAA made

10 For the origins and history of the concept of human rights, see Ishay (2004), Gemalmaz (2005), Arat (2006b), Gülmez (2004).

11 In this context, the most important and comprehensive document at the national level is a constitution.

12 The UN was founded at a time when colonialism was still in existence; consequently the UN at its inception was comprised of a total of 58 countries from the East and the West. The three fundamental objectives underlying the creation of the UN are: development, peace, and human rights.

the point that the boundaries of freedom are inevitably established within one's own society and called for respect and tolerance of cultural difference.[13]

As will be addressed in various sections of the book, significant epistemological and ontological criticisms continue to be leveled at the human rights paradigm today in similar debates as well. Furthermore, the current political climate and the deepening of inequalities among and between countries are indicative of the challenges that confront the future of human rights. Yet, even its fierce critics are not shy to capitalize on human rights norms and mechanisms when they are in need of it. That alone suggests that human rights values and norms will not be easily abandoned any time soon.

In the years that followed its articulation, the principles of the Declaration gained greater precision, focusing on concrete themes and specific social groups as they were codified into a series of UN and regional human rights treaties and conventions.[14] Among these, the most pertinent are the Twin Covenants, i.e., the International Covenant on Civil and Political Rights (CCPR)[15] and the International Covenant on Economic, Social and Cultural Rights (CESCR), adopted by UN General Assembly in 1966. These documents along with the Declaration constitute the cornerstone of the international human rights legal framework.

However, along with social, economic, and political dynamics, the dominant values of the era resonate in the implementation of human rights instruments and their proliferation. In this respect, the political culture of Western societies and the liberal state tradition that embodies gender hierarchies have been instrumental in the differential treatment of CCPR and CESCR, the former perceived as rights and the latter as entitlements.

13 The AAA statement did not represent the anthropological community as a whole. It was rather informed by the work of researchers who studied small communities in colonized regions that were subjected to coercive measures for change. For an assessment of the discussions in this context, see Merry (2003).

14 The major human rights treaties are presented in Part II of this book. States parties commit themselves to safeguarding the rights contained within the scope of the relevant convention. For instance, according to Article 90 of the Turkish Constitution, international agreements duly put into effect have the force of law. Appeal to the Constitutional Court, on the grounds that these treaties are unconstitutional, shall not be made. In the case of a conflict between international agreements, duly put into effect, and national laws concerning fundamental rights and freedoms, the provisions of the former shall prevail.

Turkey is signatory to all of the core UN conventions except for the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED) that went into force in 2010.

15 For the full titles of the acronyms of international conventions and institutions used throughout the book, see the List of Acronyms.

A major area of struggle for the women's movement has for long been the hierarchy of rights and the private- vs. public-sphere dichotomy.[16] Feminists have argued that the remnants of patriarchy in the "liberal" character of the human rights law results in the exclusion of women's experiences and sustains their subordination (Romany 1994: 88).

Civil and political rights are recognized as "first generation" priority rights that constitute the "core" of human rights and they aim to ensure rights of citizenship. In this regard, CCPR delineates the boundaries of the relationship between state and citizen in the public domain and the scope of protection and freedom individuals are entitled to by the state. The very nature of these rights limits their applicability to the public sphere and formal relations with the state, the prototypical sphere of men's realities.

At the same time, CCPR includes articles that could be effective in the struggle against violence against women. Examples include Article 6(1) on the right to life, Article 7 on torture and maltreatment, and Article 9(1) on right to liberty and security of the person. However, until recently, due to the public/private dichotomy, a narrow state-centric interpretation of these articles prevailed, resulting in the limitation of the application of the Covenant to rights violations perpetuated by the state and its agents.[17]

In contrast, the more inclusive so-called "second generation" rights involving economic, social, and cultural rights transgress the public vs. private dichotomy. They provide the legal basis for instituting measures that can challenge male supremacy in the private sphere, where patriarchy prototypically relegates women. However, even today, second generation rights continue to be controversial at both national and international levels. That renders international mechanisms for the protection and realization of economic, social, and cultural

16 One of the biggest obstacles to the safeguarding of women's rights has been the distinction of private vs. public sphere in international human rights law. This dichotomy, grounded in liberal thought, assumes that political and legal activity takes place in the public sphere, making it the subject of law and order. The private sphere, on the other hand, is regarded as the province of women, family, and domestic affairs, i.e., not relevant to law and order. The liberal state—and its "blown-up" version, of the international community—therefore is "male jurisprudentially," a state that adopts male power as its central element in the relation between law and society. Thus, the unequal distribution of power within the household is depoliticized and the abuse of women within the privacy of the family is condoned. In this configuration, while the private sphere is a realm where rights violations are off limits to state scrutiny, the arbitrariness of the law endows the state with the right to choose when and how to intervene in private matters (Romany 1994: 92-96).

17 The emergence of important international civil society institutions such as Amnesty International (AI) was largely in response to the silencing of dissident voices by the state in the political arena. The launching of its "Stop Violence against Women" campaign in 2004 gave AI a cutting edge in contributing to rupture the gender-blind tendencies of the mainstream human rights movement.

rights weaker as compared to those for civil and political rights. The former also often tend to be postponed until "the time is ripe," then implemented on a discretionary basis.

However, what is often overlooked is that civil and political rights also accord the state positive duties, not just negative obligations (Elson 2002, Nussbaum 2002, 2005). The ability to exercise one's civil and political rights is not independent from his/her socio-economic status and the existing social and economic conditions. Social and economic rights are about how resources, benefits, privileges, and authority in the home and the society at large are distributed and have a bearing on whether other rights can be realized. Therefore, thinking of rights as hierarchical is inherently contradictory and an obstacle for marginalized classes and groups, including women, in their struggle to access civil and political rights.[18]

The Committee that monitors the CESCR highlighted this contradiction at the 1993 Human Rights Conference: "... States and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate action." [19]

As mentioned above, the rights struggles that have taken place in parallel with the dislocations of the last quarter of the 20th century have led to significant transformations in the theory and practice of universal human rights, broadening their scope and outreach. The interaction between the global women's movement and the intergovernmental system helped transform the conventional human rights paradigm, and the advances in women's human rights undermined the public vs. private dichotomy that underlies mainstream law (Cook 1994, Peters and Wolper 1995). As will be discussed in further detail in Part II, with the radical changes that have been taking place in international law and the understandings of state doctrine, states are now responsible for preventing rights violations perpetrated by private persons within the private sphere.[20]

18 The implications of this problem in terms of women's human rights will be addressed in detail in Part II.

19 E/1993/22, Annex III, para. 5.

20 Clapham argues that human rights law applies to non-state actors as well and that "feminization of human rights" largely accounts for the rethinking of a more comprehensive understanding of accountability. According to him, "We need not only to develop a framework for non-state actors, but also re-examine the effect of the distinction we make between state and non-state activity—between public and private—between governmental and non-governmental" (2006: 1).

In our era, civil demand and transnational movements have become the driving force for human rights and their moral legitimacy. This demand, in turn, finds its legitimacy in the politically recognized international human rights system. Human rights, as a rising value over the past three decades, can be considered as the most universal ideology of the times. Today, every UN member state is party to at least one convention; most if not all social movements are mobilized in the name of this or that right; perpetrators of crimes against humanity are liable to prosecution in international criminal courts;[21] and those whose rights are thwarted at the national level can seek recourse at the international level, bringing the aggrieving state to task through regional or UN mechanisms.[22] Those who have been subject to past sufferings also appeal to the human rights system for justice.[23]

Unlike other value systems of universal appeal (such as religion and nationalism), human rights are not bound by any distinguishing trait like race, religion, sex, or membership in a certain society, class, or political or geographical entity; it is a system of rights that belong to *all* and can simply be claimed on the basis of being a human being. Therefore, states parties to international

21 The prosecution of war criminals by the special criminal courts that were established following the wars in the Former Yugoslavia and Rwanda in the 1990s continues. For an evaluation on special criminal courts, see Peskin (2005). The International Criminal Court (ICC) established in 1998 with the Rome Statute is an important development in terms of enhancing international enforcement. However, the ICC is a criminal court and its jurisdiction is limited to prosecutions with respect to the most severe war crimes and crimes against humanity. Turkey is still not party to the Rome Statute, which has been acceded to or ratified by 123 states as of June 2015. The Statute entered into force in 2002 after ratification by 60 countries (http://legal.un.org/icc/statute/romefra.htm).

22 Turkey tops the list of countries with judgments by the European Court of Human Rights (ECtHR) relating to the flood of complaints brought against it. In the vast majority of the cases the Court has handed down judgments against the Turkish state, charging it to pay reparation to the petitioner or victim. There are many interesting examples of international monitoring and prosecution from other contexts, such as: In 1998 the Chilean dictator Pinochet, holding a diplomatic passport, was arrested in London on the grounds of a warrant from Spain with respect to the deaths of Spanish citizens in Chile between 1973 and 1990 when Pinochet was in power (http://news.bbc.co.uk/2/hi/europe/195413.stm); in 2009 the International Criminal Court for the first time issued a warrant for the arrest of a sitting head of state—Sudanese President Omar al-Bashir—for the crimes against humanity committed in Darfur (www.haguejusticeportal.net). Human rights principles and standards also empower non-governmental organizations in their human rights activism. For instance, former U.S. President George W. Bush had to cancel his visit to Switzerland scheduled for February 12, 2011, due to the pressure of non-governmental organizations on the Swiss government for his arrest on grounds for torture allegations (Reuters, February 5, 2011).

23 For instance, the sexual enslavement of women, commonly referred to as "comfort women," in the Japanese army during the Second World War was brought to the international agenda as a human rights violation in the 1990s by the daughters and granddaughters of these women, most of whom were no longer alive. The Japanese government was prosecuted in mock tribunals, and the women of the world demanded that Japan issue an apology and compensate the victims of its inhuman treatment. For a discussion on the phenomenon of comfort women, see Yoshiaki (2000).

conventions are obligated to protect the rights of not only their own citizens but also all foreigners—workers, migrants, refugees, and the like—within their jurisdiction in or outside national borders.[24] The states that fail to comply with this obligation are criticized by international human rights monitoring mechanisms and encounter reactions from the international community.[25] This shift of sovereignty from the protection of state borders to security of peoples' "… underscores a transition from the absoluteness of nationalism to global interdependencies" (Levy and Sznaider 2006: 671).

However, the international legal system has only limited enforcement capacity, leaving a gap between international human rights laws and their enforcement. Although human rights conventions are legally binding, no international "government" exists to oversee the implementation of international standards that are in place. In the final analysis, their implementation is not independent of international and national dynamics and the political will and capacity of states. In an increasingly global world, problems have gained a transnational character, yet their solution is still confined to the statist approach and institutions of the national system. The power and wealth inequalities among states and the fact that human rights are not a priority issue for any state remain a serious obstacle before the realization of these rights. In terms of enforcement capacity, the regional human rights courts have greater clout.[26] Yet, at the national level many countries lack an indiscriminate political culture and independent monitoring institutions to embrace universal human rights standards.

The thesis advanced above with respect to violence is also valid in explaining why the Declaration gained relevance in everyday life after more than 60 years since its adoption. Both the increase in violence today and the rise of human rights values for oppressed masses are related to destabilization of hegemony resulting from the dynamics of globalization along with the disintegration of the bipolar world system. From a Gramscian perspective, it can be argued that the

24 The inadequate understanding of mechanisms on extraterritorial obligation of human rights creates an important protection gap, which has become particularly severe in the context of globalization. Responding to this concern, 40 international law experts, including members of international human rights treaty bodies and special rapporteurs issued the Maastricht Principles on September 28, 2011. These principles, enunciate the extraterritorial obligations that states must discharge on the basis of standing international law, particularly with respect to the protection of economic, social and cultural rights (see www.etoconsortium.org).

25 In addition to the monitoring mechanisms of core treaties, thematic and country special procedures mechanisms are also mandated to receive individual complaints. For a discussion on special procedures mechanisms, see Part II of this book.

26 There are proposals for the establishment of a permanent world court of human rights. This idea, dating back to the 1940s, re-opened to discussion in 2011 with the initiative of world-renowned and distinguished human rights lawyers under the sponsorship of the Swiss government. For a discussion and criticism of the proposal, see Alston (2014).

prospect for oppression and violence increases as hegemony, which entails both coercion and persuasion, loses its power of persuasion.

According to Keyman, after the 9/11 attacks, counterterrorism measures acquired a priority for all states, giving rise to a new security agenda and virtually locking the world into a new form of militarism (2003: 113). The rise of this security paradigm along with the US attacks on Afghanistan and Iraq increased the magnitude of political violence and demonstrated the normalization of violence (Dönmez 2004: 85).

In such a climate of violence, it is obvious that human rights—the antithesis of violence—cannot become a magical wand to cure all ills. The human rights system, itself a contested field, is not independent of the struggles for rights and the prevailing balances of power. Therefore, it is a pluralistic dynamic structure that tends to diversify over time with changing social dynamics and the emergence of new claims for rights.

C. The Phenomenon of Violence against Women

Biological reproduction forms the basis of the initial division of labor and the source of inequality between the sexes. Woman's body and her sexuality became sites of conquest and subjugation largely due to the critical role of their reproductive capacity in the sustenance of the human species and in the interest of the social group to ensure acceptable lines of reproduction of their lineage. The consolidation of the "natural" differences between men and women into socially distinct social roles and unequal relationships became normalized and institutionalized into a patriarchal[27] gender order that historically precedes the formation of economic classes.

The regulation and surveillance of women's reproductive behavior and their sexuality has taken diverse forms, gradually moving into the conjugal family and the manufacture of consent through romance, family obligations, etc. This, however, did not eliminate the reliance of patriarchy on violence and coercion to ensure that women stay in "their place". In the final analysis, scrutiny of the inherent suppressive nature of gender hierarchies has under all conditions been rendered possible through coercion and violence. What distinguishes the patriarchal system from other systems of inequality is that it is not specific to any particular segment of society: gender relations crosscut all other hierarchies. In this sense, the social positioning of women, while horizontally reflecting a universal attribute, vertically differs according to other systems of inequality. The vertical divergences distort and disguise the

27 The word patriarchy generally denotes systematic male domination over women. For a critical discussion of the concept, see Walby (1990).

categorical subordination of women under patriarchy and entrap them within a cluster of love, power, and oppressive measures, thus making resistance and emancipation ever more difficult.

Control over reproductive relations is intimately linked with the control over the process of production of sustenance—another area of vital importance for human survival. Historically, the latter evolved and institutionalized into class relations. In this respect, the domination of some men over the labor of other men has also entailed violence, slavery being the most striking example of this. Although in the capitalist mode of production, market dynamics and work contract replaced direct and coercive control over labor, because the relations of production are in essence exploitative, class relations also continue to be a contested site.

"Masculinity" is constructed through the dominant masculine roles both within the economic class relations (breadwinner/provider) and in sex-based class relations (regulation of women's sexuality and reproduction and protection of honor). In this connection, notwithstanding the variations across societies, the honor and social standing of a man is "…intrinsically associated with the conduct of the women related to them and paradoxically, their ability to violate the sexuality of other women" (Ertürk 2004: 11). Femininity, on the other hand, is defined in association with masculinity, thereby being confined to the structural position of the "other" (Braidotti 2000). Dominant power relations shelter the dominant class, the dominant ethnicity, and dominant gender relations, which are intertwined and are nourished by one another (Sancar 2009: 20).

Hierarchical structures that are sustained through violence and coercion naturally provoke rebellion. In this connection, women both individually and collectively have always challenged patriarchal domination (Kandiyoti 1988). Even before the contemporary waves of women's activism, this oldest "class" has encountered its dissidents, albeit in different forms and shapes. For instance, it would not be wrong to describe "witches," a category often omitted in discussions on women's rights, as rebels who defied the roles ascribed to them. It is well known that between the years 1550 and 1650 defiant women accused of being witches in the European continent became ostracized, severely punished, and tortured, and tens of thousands were burned in the name of the church and religion (Ben-Yehuda 1980, Katz 1994).

The witch hunts mainly in central Europe took place against a backdrop of rapid socio-economic change and the confrontation between the established Catholic Church and emerging Protestantism, which destabilized the status quo. Ben-Yehuda argues that, "This helps us understand why only the most rapidly developing countries, where the Catholic church was weakest, experienced a virulent witch craze (i.e., Germany, France, Switzerland). Where the Catholic

church was strong (Spain, Italy, Portugal) hardly any witch craze occurred ... the Reformation was definitely the first time that the church had to cope with a large-scale threat to its very existence and legitimacy…Protestants persecuted witches with almost the same zeal as the Catholics" (1980: 15, 23). Nearly three centuries of the witch craze withered away as religious pluralism gained momentum following the Thirty Years War and the 1648 Peace of Westphalia.

While records indicate that men were also accused of witchcraft, the main targets of the mass hysteria associated with the witch hunt were women, who were seen as having dangerous and destructive powers. Researchers note that over three-fourths of those burned on grounds of being a witch were women and suggest that the practice can be viewed as a "genderized mass murder" (Katz 1994: 503).[28]

Despite or due to the important progress achieved by the organized feminist movement against patriarchy in recent history, women have been intimidated everywhere across the world through latent or manifest attacks with the aim of reminding them of "their place." Firestone (1970), in drawing attention to the threat posed by the feminist movement to the established order, relays how the American women's suffrage movement fought so hard for the right to vote, only to be co-opted and pacified by the establishment after the granting of the vote.

In Turkey, similar tendencies of co-optation are characteristic of the ruling AKP's policies and implementations concerning women. During the consecutive AKP governments since 2002, women's representation in the parliament increased and legislation on violence against women was initiated in "dialogue" with women's rights organizations; yet, at the same time, women have actually been appeased, reduced to motherhood and domestic roles, and violence legitimized, as it "…cruises between the lines of discursive practices that reject equality between women and men, and regard women's bodies from a moralist stand and/or ostracize and marginalize feminism on moral grounds" (Coşar and Yücesan-Özdemir 2014: 11).

The tendency to de-link relations of production and relations of reproduction and treat them as separate realms is at the heart of the prediction that patriarchal relations will wither away as traditional societies erode. Indeed, due to the contention that there is a strong tension between capitalism and patriarchy, the logical expectation was that the expansion of the former would naturally lead to the collapse of the latter along with other traditional formations. However,

28 Witch hunts are neither limited to the European continent nor a phenomenon unique to the time period cited above. They continue to be practiced today in Africa, the Pacific, and Latin America, and even among immigrant communities in the United States and western Europe (Mitch Horowitz, July 4, 2014, *New York Times*). For an example of its present-day practices, see Part III, section IX (Ghana) in this book.

this did not happen. Despite the fact that socio-economic change and women's activism has caused significant ruptures and transformations in traditional patriarchy, the structures based on sexual division of labor have sustained themselves, and the patriarchal nature of societies, though modified, has triumphed (Walby 1990, Moghadam 2003, Ertürk 2004, Connell 2005a). Hence, the strong links and compatibility rather than contradiction between the spheres of reproduction and production, i.e., the economic class and sex-based class, have been verified (Hartmann 1976, 1979).

Accordingly, while the economic production process has vertically differentiated men into dominant and subordinate positions (i.e., classes), within the process of biological reproduction male authority and domination have been horizontally privileged. The intersections of the two naturally result in diverse male and female positioning in terms of patriarchal power and subordination. In this context, although some women, subject to their economic class position, can attain certain authority and privilege, as women they cannot categorically escape patriarchal scrutiny. Male privilege to establish domination within gender relations prevails and, according to Kandiyoti, by way of this domination the patriarchal state incorporates ordinary men into its own project of hegemony (2014).[29] The social construction of processes of production and reproduction is a dynamic one, containing contradictory elements and manifesting itself in diverse forms throughout history. Class and gender relations, both in the public and the private sphere, are conflict- and violence-prone; history is a testimony of this.

Current global capitalism has caused massive dislocations leading to multi--layered forms of conflict and violence. According to Friedman, aside from state violence, the most striking forms of violence are located where destruction caused by dislocations and fragmentations has been most intense. These are: (1) ethnic violence related to socio-cultural fragmentation, (2) violence of *lumpenproletarianization* related to the dislocations in livelihoods and class structures observed in many of the world's urban zones, and (3) violence related to both of these that manifests itself in the form of transnational criminal networks (2003: 20).[30] In view of the link between reproduction and production, as argued above, and the deepening ruptures in patriarchal

29 The exception to this occurs in totalitarian regimes. For instance, in Afghanistan, the Taliban imposed its absolutist rule by revoking the authority recognized to men in the private sphere by the liberal state.

30 All of these bear the characteristics of the network society as discussed by Castells (2004).

relations caused by waves of women's activism, patriarchal violence against women needs to be added to this categorization.[31]

Giddens (1999) had warned years ago that globalization should not be perceived merely as "big systems" such as the financial order. Globalization, according to him, penetrates into the most private and personal aspects of life, thus placing traditional family systems under strain in many parts of the world.

Although this process has varied among societies, especially in countries of the global south, liberalization and privatization policies and the powerful impact of the emerging export manufacturing market eroded traditional work structures. In the process, young men who lost their sources of livelihood broke loose from the hegemonic family structures and became integrated into other relationship networks, such as radical religious groups or transnational criminal networks (Friedman 2003).

Young women of the global south have also become uprooted from their traditional modes of existence as they became targeted for mass recruitments in the new export processing zones (EPZ) as cheap and flexible labor. Female labor liberated from its traditional bonds eventually joined the stream of migrant labor for the service sector in global cities (Sassen 1998, 2001, Marchand and Runyan 2000, Parreñas 2001). These processes, referred to by feminist writers as "feminization of the labor force and feminization of migration," have had contradictory outcomes for women. On the one hand, the newly acquired independent and autonomous status empowered these women; on the other hand, owing to the unregulated and flexible work environments and the tensions arising in family relations, they encountered higher risk of abuse and violence. In other words, at the intersections of patriarchy and globalization, women found opportunities for liberation while at the same time encountering new vulnerabilities and risks of violence.[32]

Although patriarchal male violence is interconnected with other forms of violence, it is unlike any other in history as it differs in scope, magnitude, and durability. Essentially, violence against women has been a powerful tool

31 As a result of the disintegrations in the family structure in the wake of the industrial revolution and the demands of the first-wave feminist movements, measures taken with respect to gender equality have become institutionalized relatively earlier in Western societies as compared to other parts of the world. Consequently, in recent years, officials in these societies have tended to adopt the view that local women have completed their emancipation; attention, therefore, has shifted to the problems of migrant women. Despite this official perspective and the impressive levels of representation women have achieved in public life, Western women continue to struggle against discrimination and domestic violence. In this respect, see section VII (The Netherlands) and VIII (Sweden) in Part III of this book.

32 In this respect, Parreñas' (2001) study of Filipino migrant domestic workers is particularly noteworthy.

for maintaining stability in male hegemony, particularly when pressured by changing economic and social conditions and conflict situations. This hegemony, however, is neither static nor linear. The universal patriarchal regime consists of alternative regimes of masculine power; these may contradict and at times overlap with one another. These alternative systems, both internally as well as among one another, embody hegemonic and subordinate male identities (Connell 2005b), with implications for gender relations.

It is important to note that, while relations of production have been contested throughout history, this has not entailed the questioning of male power (i.e., patriarchy) as such. What is an issue of contestation in the power struggles among men is the place accorded to women in society. In this respect, women's bodies become the battleground of the war among men and women's identity becomes the distinguishing feature of alternative masculine political projects. Therefore, as power changes hands among men, gender hierarchies are reconfigured, expanding or restricting women's options in accordance with the new structure of patriarchal power (Ertürk 2004, 2006).[33] At the intersections of gender hierarchy with other systems of inequality, such as class, ethnicity, and nationhood, women experience patriarchal relationship and oppression differently.

Theoretical approaches such as intersectionality and transversalism (Yuval-Davis 2006) have been instrumental in overcoming the essentialist notions of women, thus enabling the construction of a comprehensive gender perspective that captures both the commonalities and the differences of women's status. Despite their differences, their common positioning vis-à-vis alternative patriar-

33 In this respect, Turkey's recent history of nation building is revealing. "The woman question" was a central element of the post-Ottoman Turkish modernization project, which entailed a discontinuity with tradition. Women in the new societal project were endowed with many liberal rights and a visible space in public life, the boundaries of which was, nonetheless, firmly in the hands of the modern state. State hegemony over identity politics remained more or less intact till the 1960s. After this point, as new actors contesting the state gained a footing on the political stage, identity politics diversified and so did the claims for a legitimately available role and status for women. Elsewhere I analyzed this within four distinct periods of the Republic, and in the process the binary identity constructs for women pluralized: (1) 1920s and 1960s – the nationalist / modernist paradigm (modern vs. traditional woman); (2) 1960s and 1970s – the socialist paradigm (revolutionary vs. bourgeois woman); (3) 1980s and 1990s – multiple centers of claim-making consisting of, on the one hand, religious and ethnic demands in the political arena (Muslim / secular woman, Kurdish / Turkish woman), and on the other hand, the emergence of an autonomous feminist movement redefining its own identity. This period also coincides with economic liberalism and market commoditization, where women's bodies became more liberally displayed in advertisements, thus demystifying the taboos over the public display of sexuality; (4) 1995 and beyond – consolidation of diversities and integration with the universal human rights regimes and transnational networks (Ertürk 2006: 88-89, 98-102). A cutthroat competition over women's identity continues to occupy the current public discourse and formal politics. The ruling party's right-wing, conservative approach has increasingly seized the state apparatuses in forming a front against the feminist platform. Hence, especially beginning with 2010, a fifth phase is in the making. Suffice to say, despite the conservative transgressions, women's determination to protect their autonomous space remains firm.

chal structures provided the ground for women to organize and establish global alliances and solidarity networks towards a common struggle. In principle, the centrality of international human rights norms in the struggle for rights has been the driving force in connecting women's struggles from the local to the global, thus uniting them around common values for a world free of violence and oppression. However, at the core of this struggle, cleansing of the "universal" from its West-centric connotations continues to preoccupy feminist paradigm, policy, and praxis.

Also a matter of concern is the language that evolved in the course of women's struggle. In this respect, the tendency to use the term "gender-based violence" as opposed to "violence against women" is quite common. As elaborated in Part II, there is need to draw attention to the problems arising from the haphazard usage of the concept of "gender." Consider; for example, hate crimes against homosexual men or the sexualized assaults against Iraqi male prisoners in Abu Ghraib, and the like. These are also "gendered" forms of violence, entailing both hegemonic masculinity and hetero-normativity that subordinates, marginalizes, and ridicules alternative masculine identities. In this respect, there is a connection between violence against women and violence against subordinated masculinities, in the sense that both are related to hegemonic construction of "gender" identities. However, subjugation of men to abuse is related to their differential access to power at any given time; women's subjugation on the other hand is a systematic and categorical "othering" of women.

Therefore, since all forms of violence (except random violence) are essentially gendered, the term "gender-based violence," which packs all incidents of violence into one bag, does not necessarily provide analytical clarity. On the contrary, it may in fact conceal the substantive differences among different forms of violence. In this connection, inclusion of violence against women in a common package of violence strips it of its particularity, thus making it more difficult to develop effective strategies to combat the problem.

Similarly, gender-neutral concepts such as "domestic violence" or "violence in the family" are also problematic. Dempsey argues, "…it is tempting to assume that all instances of domestic violence share a common set of conceptual elements and that, therefore, one can provide a unified account of this phenomenon." She further notes that while two conceptual elements—violence and domesticity—are used in defining violence in private life, a third element—patriarchal control—is overlooked. Based on this distinction, Dempsey differentiates domestic violence in its *strong sense* from domestic violence in its *weak sense*. "Domestic violence in its strong sense consists of violence occurring in a domestic context, which tends to sustain or perpetuate patriarchy; whilst

domestic violence in its weak sense consists of violence occurring in a domestic context, which does not tend to sustain or perpetuate patriarchy" (2007: 917-8).

The patriarchal system of male domination, which subjects women (and girl children) to violence because of their sex, is a universal phenomenon. Until recently, legal provisions that support male supremacy through the concept of male head of household and the definitions of citizenship, crime, and punishment, etc. have constituted a universal aspect of law.[34]

My Personal Experience on and Approach to the Issue

My long academic career has no doubt been informed and guided by the rich literature on feminist discourse, gender equality, and women's human rights. My insights on gender issues, particularly on violence against women, broadened and deepened during my tenure as UN Special Rapporteur on Violence against Women, its causes and consequences from 2003 to 2009.[35] In this context, I conducted 17 official country visits, and submitted my findings to the relevant governments and the UN Human Rights Council.[36] My assessments on a number of the country visits are included in Part III of this book.

In addition to the reports on my country visits; I prepared seven thematic reports[37] on issues pertinent to combating violence against women; communi-

34 Such provisions have been removed from the laws of some countries largely thanks to women's rights advocacy. For instance, in Turkey, after many years of lobbying by women's groups the Civil Code became amended and went into force in 2002. In this context several gender-biased provisions, including the recognition of men as the "head of household", were removed from the old law that dated back to 1926. The new law has also introduced a property regime that legally recognizes women's unpaid domestic labor.

35 The mandate of UN Special Rapporteur on Violence against Women, its causes and consequences was established in 1994 as a monitoring mechanism under the Special Procedures of the Human Rights Council. For details, see Part II of this book.

36 At the invitation of governments concerned, I visited the following countries: 2004: El Salvador, Guatemala, Occupied Palestinian Territories; 2005: Russian Federation (including Chechnya), The Islamic Republic of Iran, Mexico, Afghanistan; 2006: Turkey, Sweden, The Netherlands; 2007: Algeria, Ghana, Democratic Republic of the Congo; and 2008: Saudi Arabia, Tajikistan, Moldova. In addition, I also submitted a brief report to the Human Rights Council on the unofficial visit I conducted to the Darfur region of Sudan in 2004.

37 These are respectively: 2004: Towards an effective implementation of international norms to end violence against women (E/CN.4/2004/66); 2005: Intersections of violence against women and HIV/AIDS (E/CN.4/2005/72); 2006: The due diligence standard as a tool for the elimination of violence against women (E/CN.4/2006/61); 2007: Intersections between culture and violence against women (A/HRC/4/34); 2008: Indicators on violence against women and State response (A/HRC/7/6); 2009: Political economy of women's human rights (A/HRC/11/6); and 15 Years of the United Nations Special Rapporteur on Violence against Women, its causes and consequences (1994-2009): A Critical Review (A/HRC/11/6/Add.5).

cated with states with respect to individual complaints received from all parts of the world; issued press statements on critical human rights violations; and also dialogued with women's non-governmental organizations (NGOs) in annual regional consultation meetings to discuss regional problems and priorities.

My experiences in the field of mainstream human rights monitoring mechanisms have also been invaluable in broadening my perspective and deepening my insight. Through these I was able observe first-hand how sexism—discretely or manifestly—continues to mold human rights work, often rendering human rights violations of women invisible. Among these, my membership in the independent international commissions of inquiry on the Republic of Kyrgyzstan (2010-11) and the Syrian Arab Republic (2011-12) and in the Council of Europe Committee for the Prevention of Torture (CPT) (2009-13) have enriched my experience and demonstrated the differential treatment of human rights, some being more deserving of redress, while others more of toleration.

For instance, the CPT, which undertakes the monitoring of places of detention to prevent the torture and inhumane treatment of people who are deprived of their liberty, is quite effective and enjoys state cooperation at all levels of its work. States take CPT seriously and this results in a high rate of implementation of the Committee's recommendations (Ertürk 2013c). However, in the area of women's rights there is a distinct discrepancy between discourse and action. While the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) enjoys near universal ratification, in terms of its implementation, indifference rather than determination dominates.[38]

The aim of this book is, on the one hand to explore the conceptual and institutional dimensions pertaining to the issue of women's human rights, on the other hand, to share my international-level experiences on the subject. Therefore, the discussions that follow draw on my academic publications and my work in the context of international human rights monitoring assignments, in particular the Special Rapporteur on Violence against Women mandate, as well as pertinent global discussions and literature.

Outline of the Book

The book consists of four main parts: Part I, the Introduction, has provided theoretical discussions concerning violence against women and the human rights paradigm. This is followed by Part II, which focuses on the internationalization of women's issues; state obligations in combating violence against

38 Although Copelon (1994) demonstrated years ago that the methods used in violence in intimate relationships are similar to those used in torture, violence against women is still addressed as a secondary issue.

women; culture-based discourses; neoliberalism and the political economy of women's rights, and lastly on contradictions and problems related to conceptual matters, institutional framework, and practice. Part III features select country case studies, namely: El Salvador, Guatemala, Occupied Palestinian Territories, Russian Federation, Islamic Republic of Iran, Turkey, The Netherlands, Sweden, Ghana, and Democratic Republic of the Congo.

These are countries I visited and reported on to the Human Rights Council in my capacity as Special Rapporteur on Violence against Women, at the invitation of the relevant governments. The country analyses—although recent developments and new sources of information have been integrated—are to a great extent reflective of my assessment of the situation at the time of the visit. Therefore, this section provides an analysis of particular manifestations of women's status and their problems under specific country conditions during the timeframe of 2004 to 2008, while at the same time illustrating the universal dimensions of being a woman. In a sense, country discussions provide a testing ground for the conceptual claims of this book.

Finally, Part IV, the Conclusion, highlights certain issues discussed throughout the volume that I consider to be of particular importance and some reflections on forward-looking thinking and action concerning feminist vision and practice.

Part II:

Old Problems, New Approaches

I. Transnationalization of Women's Issues

Global Women's Movement and the United Nations

The Charter of the United Nations (UN), its founding treaty, was signed in San Francisco on June 26, 1945, following the human tragedies of two world wars. The Charter declares the UN's primary objectives as: (i) to promote and encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion; (ii) to promote social and economic progress among nations; (iii) to promote and foster peace and security for the prevention of wars; and (iv) serve as a center for harmonizing the actions of nations in the attainment of these common goals.[39]

Among the 50[40] countries that signed the UN Charter, Brazil, China, Dominican Republic, and the U.S. had women on their delegations.[41] Owing largely to the efforts of these and other women present as observers, the Preamble of the Charter not only affirmed the faith in human rights but explicitly referred to the equal rights of *women and men*.

At the inaugural session of the UN General Assembly in London, the U.S. representative Eleanor Roosevelt, on behalf of 17 woman delegates and calling on states to encourage women to take a more active part in national and international affairs, delivered "An open letter to the women of the world." Shortly after the inaugu-

39 The UN was founded over 70 years ago, when the world was considerably different. Its relevance and capability of addressing today's challenges remains fiercely debated. Particularly contested have been the Security Council's five permanent member structure and its failures in dealing with current conflicts and mass atrocities. By many accounts, achievements in other areas of the UN mission also fall short of expectations. Yet, in the face of deepening inequalities between and within nations and the global nature of problems confronting humanity at large, giving up on multilateralism can be risky. Despite its shortcomings, the UN is the only platform where member states can participate in international policy and law making in areas of common concern. Undoubtedly, the UN needs to undergo a radical transformation —not a reform, as such—in order to better respond to changing world dynamics. Particularly in the area of human rights in general and women's human rights in particular, multilateral dialogue and diplomacy provided by the UN is of paramount importance. The international legal framework on human rights provides an invaluable precedent for national legislation, policy, and practice.

40 Poland, although not present at the conference, signed the Charter later, becoming one of the 51 founding member states. With the ratification of the Charter by the founding members, the UN officially came into existence on October 24, 1945. Turkey ratified the Charter, together with Statute of the International Court of Justice, on August 15, 1945.

41 These delegates were: Minerva Bernardino (Dominican Republic), Virginia Gildersleeve (U.S.), Bertha Lutz (Brazil), and Wu Yi-Fang (China).

ration of the General Assembly, the Sub-Commission on the Status of Women was established under the UN Commission on Human Rights. Subsequently, at the insistence of women delegates and civil society representatives, on June 21, 1946, the Sub-Commission was turned into the Commission on the Status of Women (CSW) under the UN Economic and Social Council (ECOSOC).[42] These developments put into motion the internationalization of women's issues, giving them a footing in the realm of multilateral diplomacy and politics. This process gradually became more responsive to the goal of gender equality and women's human rights.

Women's transnational initiatives prior to the founding of the UN, which provided a platform for voicing women's grievances and demands from all over the world, evolved into an effective global force in advocating for the development of a comprehensive international regime for gender equality.[43] Therefore, the history of the UN normative and institutional framework on gender equality is to some extent also the history of the global women's movement from the local to the global. As will be discussed in subsequent chapters, women's history, which became particularly visible since the 1960s, also sheds light on the changes that occurred in the conventional understandings of rights, law, citizenship, war, masculinity, and the state, among others.[44]

Hence, the global women's movement and the creation of the UN are two key elements that account for the evolving international gender equality and women's rights regime. The internationalization of women's issues has stimulated—at times modestly, and at times impressively—national-level pro-women change in the four corners of the globe.

The UN provided women with an international platform to voice their demands, and the women's movement helped expand and transform the UN instruments to become responsive to women's realities. As women's concerns trickled up from the local to the global, the movement diversified and so did the UN gender agenda.

This, in a nutshell, has led to a success story in international governance on women's advancement, which—parallel to feminist scholarship, women's advocacy, and UN policy trends—over time experienced a shift of focus from formal equality to integrating women into development, to empowerment, to women's human rights, and to women, peace, and security.

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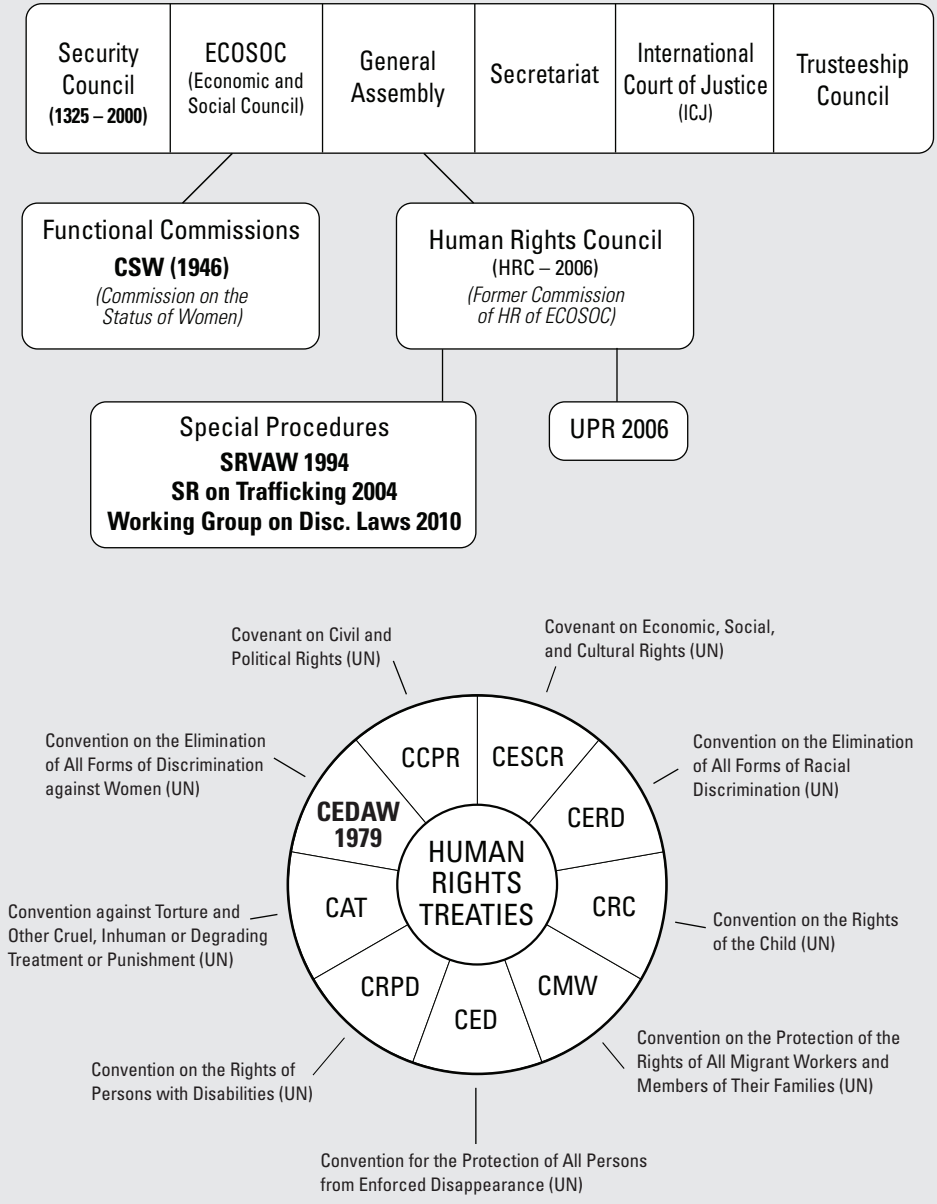
42 See United Nations Blue Book Series on *The United Nations and the Advancement of Women, 1945-1996* and the UN CD-ROM *Women Go Global*, 2000.

43 For a discussion of the evolving UN framework on women's rights and gender equality, see Pietila and Vickers (1990), Ertürk (2005, 2008b), Jain (2005), Snyder (2006).

44 This process contributes to the re-writing of history to reflect the reality of the excluded and marginalized social groups. For the evolution of women's history, see Smith (2004).

Figure 1: KEY UN ORGANS AND WOMEN'S RIGHTS MECHANISMS[45]



45 The bodies and instruments marked in bold in the figure indicate intergovernmental institutions and mechanisms directly related to women's issues. For detailed information on UN bodies and organizational chart, see www.ohchr.org.

Core UN Treaties	
(The years indicated in parentheses denote the year the treaty was adopted by the UNGA and the year the treaty went into force, respectively.)	
CERD	Convention on the Elimination of All Forms of Racial Discrimination (1963) (1965)
CCPR	International Covenant on Civil and Political Rights (1966) (1976)
CESCR	International Covenant on Economic, Social and Cultural Rights (1966) (1976)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women (1979) (1981)
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984) (1985)
CRC	Convention on the Rights of the Child (1989) (1990)
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) (2003)
CRPD	Convention on the Rights of Persons with Disabilities (2006) (2008)
CED	International Convention for the Protection of All Persons from Enforced Disappearance (2006) (2010)

The organizational structure of the UN and its numerous subsidiary bodies for intergovernmental dialogue and decision making is comprised of six main organs as defined in the UN Charter. These are: the Security Council (SC), Economic and Social Council (ECOSOC), General Assembly (GA), Secretariat, International Court of Justice (ICJ), and Trusteeship Council.

In the UN's founding years, human rights were established as a Commission under ECOSOC. In the process of UN reform, in 2006 the Human Rights Council (HRC) succeeded the Commission; the latter was often criticized for having become too politicized to constructively address human rights issues. Therefore, the HRC was created to strengthen human rights. However, unlike the Security Council or ECOSOC, which compliant with the UN Charter are principle organs of the organization, the HRC was created as a subsidiary body under the General Assembly (GA). The Council—made up of 47 members elected by the UNGA—is an inter-governmental body responsible for strengthening the promotion and protection of human rights around the globe, for

addressing situations of human rights violations, and for making recommendations on them.

The UN human rights bodies mandated to monitor human rights violations and implementation of relevant international standards and treaties can be grouped under two headings:

Charter-based bodies. The Human Rights Council and its predecessor, the Commission on Human Rights, are called "Charter-based" as they were established by resolutions of principal organs of the UN whose authority flows from the UN Charter. The current Charter-based bodies are the Human Rights Council and its subsidiaries, including the Universal Periodic Review (UPR),[46] and the thematic and country mechanisms of the Special Procedures. The Special Procedures mechanisms consist of three mandates pertaining to women's rights: the Special Rapporteur on Violence against Women, its causes and consequences; Special Rapporteur on Trafficking in Persons, especially women and children; and the Working Group on the issue of discrimination against women in law and in practice.

Treaty-based bodies. As depicted in figure 1, there are currently nine core human rights treaties. CEDAW is the only treaty that focuses explicitly on women's rights. Implementation of each treaty is monitored by committees comprised of independent experts.

Charter-based and treaty-based bodies receive secretariat support from the Office of the High Commissioner of Human Rights (OHCHR).

While all UN entities are mandated to take measures concerning gender equality in their work, as mentioned above, the principal forum to make political recommendations to UN member states for the advancement of women's rights is the Commission on the Status of Women (CSW), which is one of the functional commissions of ECOSOC.[47]

Creation of a full-fledged Commission dedicated solely for the purpose of women's advancement was supported by many delegates and activists who believed that a separate body was necessary. The separation of women's rights issues from the Commission on Human Rights, nonetheless, sparked a contentious debate and resistance from some delegates. Among the latter, Eleanor Roosevelt, the Chair of the Commission on Human Rights, argued that the referral of women's issues to a separate commission would lead to "ghettoization."

46 UPR is a new mechanism that has been introduced to human rights monitoring procedures through UN General Assembly Resolution No. 60/251 in 2006. See www.ohchr.org.

47 The first intergovernmental agency that focused on women's issues was the Inter-American Commission of Women, founded at the Sixth International Conference of American States in Havana in 1928. See Jain (2005).

Institutionalization and Politics of the Evolving Gender Equality Regime

Although the foregoing debates have persisted through subsequent years, CSW has continued to serve as the main intergovernmental body where decisions on women's status were adopted; it has grown and strengthened over the course of the years.[48] The membership of CSW, which started with 15 at its inception, was increased to 45 in 1990.[49]

During its initial years, the question of whether the CSW should be an expert body or be comprised of government-appointed representatives also occupied lengthy debates; it finally was resolved in favor of the latter. Thus, from the very outset CSW acquired a political identity. While this awarded CSW resolutions greater legitimacy in the eyes of member states, it also caused women's issues to be compromised in the hands of diplomats, bureaucrats, and politicians who were and are often motivated by other priorities, to say the least. On the other hand, because of the low status attached to women's issues in state tradition, representatives appointed to delegations to the CSW tended to be young women, who are generally marginal in state hierarchy.

Paradoxically, owing to their own somewhat marginal status, these female delegates were more sensitive to discrimination, prompting them often to support women's rights goals that may at times contradict their governments' official state line.

CSW, which on occasions faced the risk of being abolished, worked in close collaboration with the global women's movement, supported important research and pioneered the adoption of significant policies on gender equality. The evolution of CSW is usually classified into five phases.[50] In view of the developments that took place over time, a sixth phase needs to be introduced to this classification. These phases, comparable to the status of women they depict, should be regarded as a continuum with achievements and drawbacks, and entailing continuities, shifts, and discontinuities.

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48 For a discussion of the debates on this issue, see Pietila and Vickers (1990), Reanda (1992), Jain (2005).

49 The tendency to view the UN women's rights agenda as an initiative of Western women is quite prevalent. The hegemony of the West in the fields of economy, politics, and the production of information and knowledge cannot be denied. However, the UN has provided the opportunity for the participation of different constituents. Considering the fact that colonialism was still widespread in the years the UN was founded, it is noteworthy that ten out of the 15 members of the CSW were from countries other than the first world.

50 While there are differences in emphasis and interpretation, the evolution of the UN gender equality regime is usually discussed in the framework of a five-phase classification as adopted here. See UN Blue Book (1995), Ertürk (2005), Jain (2005).

The First Members of the Commission on the Status of Women	
Australia:	Jessie Mary Grey Street, Secretary of National Council of Women (1920); women's equality, equal pay, aborigine rights, and world peace advocate.
Belarus Soviet Republic:	Evdokia Uralova, history teacher; administrator at the Ministry of Education.
China:	Way Sung New.
Costa Rica:	Graciela Morales F. de Echeverria, administrator at the Social Security Office in Costa Rica.
Denmark:	Bodil Begtrup, member of World War II resistance movement; Chair of the Sub-Commission on Women's Status under the UN Commission on Human Rights.
France:	Marie Helene Lefaucheux, leader of the resistance against the occupation of Paris in 1940.
Guatemala:	Sara Basrerechea Ramirez, chemist; the only woman faculty member of San Carlos University.
India:	Shareefah Hamid Ali, organizer of the India Women's Conferences in the 1920s; represented India at international platforms.
Mexico:	Amalia C. de Castillo Ledon, playwright and activist on social issues and women's rights.
Syria:	Alice Kandalft Cosma, educator and writer; organizer of the Arab Women's League in Syria.
Turkey:	Mihri Pektaş, university professor; former member of parliament.
Union of Soviet Socialist Republics:	Elizavieta Alekseevna, lawyer; trade unionist.
United Kingdom:	Mary Sutherland, leader in the trade union movement; Chief Woman Officer of the Labor Party.
United States of America:	Dorothy Kenyon, former judge of the New York municipal court; a lawyer active in women's issues.
Venezuela:	Isabel de Urdaneta, teacher and diplomat.

Source: Jain 2005: 16.

1. 1946-65: Achieving Equality

Despite being a small commission with 15 members, during this first period the CSW made significant contributions to the field. CSW members followed the meetings of the Commission on Human Rights on a regular basis and participated in the long and strenuous drafting process of the Universal Declaration of Human Rights. They commented on the draft Declaration and proposed gender-sensitive language, thereby ensuring the use of "women and men" in reference to equal rights and "all human beings" as opposed to "all men."

During this period, while significant debates and research concerning the advancement of women were underway and country-specific data were being collected, women in many countries still had not achieve basic legal rights. This prompted the CSW to focus on legal equality and political rights, which for its time could be deemed radical. In this context, the Commission spearheaded the adoption of several important treaties by the GA. Some of these conventions, which include objectives that are still distant to the lives of women in many countries today, are: Convention on the Political Rights of Women (1952); Convention on the Nationality of Married Women (1957); and Convention on Consent to Marriage, Minimum Age of Marriage, and Registration of Marriages (1962).

Hence, the first phase of the UN agenda on the advancement of women was shaped by the principle of *equality* enshrined in the Universal Declaration of Human Rights. Towards the closing of this phase, as the concept of discrimination came to the forefront, in 1963 the GA mandated that the CSW and ECOSOC prepare a declaration on the "elimination of discrimination against women."

2. 1966-75: Women and Development

In the 1960s, with the gradual decline of colonialism, newly independent countries joined the UN. This not only increased the UN's number of members, but also changed its membership profile. Consequently, the challenges of development facing third world countries gained international importance. "Third Worldism" and the focus on underdevelopment that occupied the political and academic agenda (Baran 1957, Rostow 1960, Frank 1967, Hamza and Shanin 1982) gave momentum to discussions on development, resulting in the adoption of "Decades for Development" (1961-70, 1971-80) within the UN.

The development policies of this era aimed to increase agricultural productivity and economic growth in underdeveloped countries through the modernization of the agriculture sector. This was coined as the "green revolution," entailing mechanization of agricultural production and the introduction of advanced "miracle" seeds, chemical fertilizers, and the like. Even though a significant

level of economic growth was achieved through these initiatives, contrary to the "trickle down" thesis—i.e., that the wealth created would eventually spread to the less advantaged segments of society—the benefits of growth remained concentrated in certain hands and regions, leading to social tensions and unrest. The "green revolution" in third world countries set the stage for the "red revolution," as it were, and proved the "trickle down" thesis to be a myth (Ertürk 1998:107).

The advances in the field of development also influenced the work of feminist researchers and activists who were already experiencing a paradigm shift in their own work (Boserup 1970, Tinker 1976). These initiatives, which evolved into a "Women in Development" (WID) paradigm, revealed that economic growth policies marginalized women in the productive sectors, and parallel to the vertical inequalities referred to above, third world modernization also produced horizontal gender-biased consequences. Women were either "domesticated" and excluded from the process of development or reduced to unpaid family labor with little or no access to benefits of development. Thus, the deepening of inequalities between the sexes made the integration of the issue of women and development to the Second Decade for Development framework inevitable.

In order to address gendered discrimination in the economy in general and the problems of women in the third world in particular, the CSW agenda shifted from formal equality to integration of women into development (Tinker 1990).[51] The WID paradigm, which became the core element of UN programs, guided research, politics, implementation, and activism for over two decades; and perhaps from the perspective of the global women's movement and feminist theory, the greatest benefit of this process was the growing attention to women's paid and unpaid labor.

In subsequent years, the issue of WID led to heated debates and fundamental differences in opinion among feminists. While some argued that the WID paradigm provided an opportunity to better understand particularly the lives of women from the third world, others criticized the modernist tendencies of the paradigm, noting that women from the global south were treated as victims, portrayed within poverty and underdevelopment, in need of being saved. More radical critiques argued that internationally promoted development projects were in fact instruments for the expansion of capitalism and any favorable impact they may have on women's lives was either coincidental or relative (Beneria

51 There is a consensus that Ester Boserup's book *Women's Role in Economic Development* published in 1970 is among the pioneering works on the WID paradigm.

and Sen 1981, Mies 1982).[52] In this environment of intensive debate, different movements within the WID paradigm emerged[53] and women formed transnational networks and organized around alternative development strategies.[54]

The drafting of the declaration for the elimination of discrimination, which initially started during the previous phase, was completed following a four-year endeavor, and in 1967 the GA adopted it. With this, for the first time a comprehensive definition of discrimination against women was realized and the tendency to link gender inequality—beyond the law—with social constructs such as social prejudices, traditions, and customs that are deeply entrenched and hard to change gained ground in the work of CSW.[55] The declaration on discrimination, which turned into a convention in later years, established a strong link between discrimination against women, national development, and world peace.

Some concrete achievements concerning women's rights agenda during this period include: 1966, the International Covenant on Economic, Social and Cultural Rights adopted by consensus; 1967, Declaration on the Elimination of Discrimination against Women; 1972, first woman[56] (Helvi Sipilä from Finland) to be appointed to the post of Assistant Secretary-General, responsible for social development and humanitarian affairs; dedication of 1975 as International

52 The "meaning" attributed to the concept of development and the ideological concerns aside, technically speaking the development approach of the 1960s directed at the third world largely aimed to transform subsistence family production to a market-oriented specialized cash production. In the final analysis, this naturally meant the spread of capitalist market economy (Ertürk 1996: 343).

53 Conceptualizations such as *women in development (WID)*, *women and development (WAD)*, and *gender and development (GAD)* signify movements that underscore the qualitative and strategic differences within the paradigm. For discussions of different conceptualizations, see Razavi and Miller (1995), Marchand and Parpart (1995), Ertürk (1996), Gündüz-Hoşgör (2008), Toksöz (2011).

54 The different conceptual emphases on the subject of women and development were also accompanied by a search for alternative strategies for action. Foremost amongst these is Development Alternatives for a New Era (DAWN), founded by feminists from third world countries. See Marchand and Parpart (1995).

55 The potential weight of the Declaration on the Elimination of Discrimination against Women became evident quite early in the context of the Arab Women's Commission (AWC) established under the Arab League in 1971. Comprised of 18 members, the AWC made reference to the Declaration in defining its mandate (Jain 2005: 48).

56 In 1972 there were no women in the positions of UN Under-Secretary-General or Assistant Secretary-General; and in D-1 and D-2 (director and deputy director respectively) positions only seven out of 240 were women. According to 2008 data, 716 (27.7%) of the 2,487 people working in senior-level positions at the UN are women. Despite the relative increase over the years, the UN is very much behind the 50/50 gender representation goal adopted at the Beijing Conference.

Women's Year; and the same year the convening of the First World Conference on Women[57] in Mexico with the theme of "Equality, Development and Peace."[58]

3. 1976-85: The Decade for Women and the Elimination of Discrimination

"The United Nations Decade for Women" is a global initiative motivated by the realization that development of countries is only possible through the equal participation of women in every sphere of social life and that this can only be achieved by eliminating gender-based discrimination. The aim of the Decade was to critically examine women's status and to encourage and promote women's participation at all levels of decision-making mechanisms. In order to review the progress made in the previous five years, the Second World Conference on Women was convened in Copenhagen in 1980.

This decade was conceived around a three-fold agenda, representing the "first," "second," and newly awakening "third world."[59] It is for this reason that the themes of the 1975 Mexico Conference—"equality," the priority of women from the first world; "peace," the priority of women from the second world; and "development," the priority of women from the third world—also constituted the essential framework of the Decade for Women and the subsequent world women's conferences.

It would not be wrong to perceive the Decade for Women as an international "mobilization" to ensure the overall advancement of women, including the national-level implementation of the objectives set forth at the Mexico Conference. Towards this end, noteworthy steps were taken to gather and activate resources within the UN system, establish networks of cooperation with civil

57 In 1972, when the UN General Assembly declared 1975 International Women's Year, it did not propose a corresponding conference; however, women's groups demanded one. As soon as Helvi Sipilä was appointed UN Assistant Secretary-General, she galvanized the necessary pressure and support for a women's conference and pushed through a resolution to this end at the GA (Tinker 1990: 28).

58 *Equality* was a theme CSW focused on since its foundation; the theme of *peace*, which was important for the Soviet bloc, was added to the conference resolution through the proposal of the delegate from Romania; as for *development*, within the context of Third Worldism it had become a priority issue for the UN agenda and for feminist writers and activists.

59 With the emergence of the third world as a power in international relations, the economy factor gained weight. The realities of the third world brought to light the contradictions of the dominant development reflecting the Western experience. The theoretical framework depicting the Western model of development, i.e., "modernization" theory, came under rigorous criticism, particularly from "dependency" and "world system" theories (Frank 1966, Amin 1974, Wallerstein 1974) and eventually became "dethroned" as the UN and other international institutions adopted new approaches such as "sustainability" and "structural adjustment" (Giddens 1990, Seligson and Passe-Smith 1998). Of course, one should also bear in mind the postmodernist critique and its feminist readings of development (Marchand and Parpart 1995).

society and adopt relevant resolutions. For instance, the adoption of the resolution calling for a World Survey on the Role of Women in Development, to be submitted to the GA every five years, is one of the important achievements in this regard. What distinguished the World Survey, the first of which was published in 1986, from other similar studies is that it addressed development in the context of both developing and developed countries and approached the issue in a comprehensive inter-sectorial and interdisciplinary manner (Pietila and Vickers 1990).

Another achievement of great significance during the Decade for Women is the national-level institutionalization of the concept of "national machinery" for the advancement of women. By 1985 most countries had instituted some form of "national machinery" to undertake the task of women's advancement, and 50% of these were set up during the Decade for Women. During this period, of the national machineries listed for 127 UN member states, approximately 22% were located under ministries of social affairs or social welfare, 20% under NGOs, 16% as separate ministries, and 17% located in the office of the prime minister (Moser 1993: 112).[60]

In short, the Decade for Women gave greater visibility and legitimacy to the UN agenda for gender equality and the advancement of women both within and outside the organization. It also expanded the space for civil initiatives within intergovernmental bodies.[61]

Some other achievements that marked this era include: in 1976 the establishment of two new organizations under the UN responsible for women's issues,

60 Most of these machineries failed to effectively perform their tasks, owing to their marginalized position within the state structure in terms of the provision of both resources and authority. However, in some instances, the weak position of the national machineries also allowed for some unexpected outcomes (Goetz 1997, Acuner 2002, Rai 2003, Kardam 2005). In this context, the case of Turkey is telling. The General Directorate for the Status and Problems of Women (KSSGM), which was established in 1990 under the Ministry of Labor and reassigned to the office of the Prime Minister in 1991, performed relatively well for many years without the requisite legal statute or sufficient funds. This relative success was made possible by the committed efforts of the institution's limited number of staff and the voluntary contributions of women from academia and the women's movement; the latter was itself in its preliminary stages of development during those years. KSSGM offered women a formal institutional framework and women provided the institution with their knowledge and experience (Ertürk 2006: 99, Kardam and Ertürk 1999). In other words, paradoxically, KSSGM's weak position within the state machinery served as its strength. The dynamism of the institution and its ties with the women's movement gradually weakened as it acquired its due place in state bureaucracy. Eventually, the national machinery was renamed as the General Directorate of Women's Status and in 2011 it was relocated under the newly founded Ministry for Family and Social Affairs.

61 The UN Decade for Women facilitated the diffusion of the gender equality agenda to all corners of the world, enabled grassroots women to directly or indirectly connect with international initiatives, and opened greater space for a more active participation of NGOs in CSW and in UN politics. The UN, which is essentially an intergovernmental institution, through the ECOSOC accreditation system allows for NGO participation.

namely, INSTRAW (UN International Research and Training Institute for the Advancement of Women) and UNIFEM (UN Development Fund for Women); in 1979 the adoption of the Convention on the Elimination of all Forms of Discrimination against Women; and the Second and Third World Conferences on Women in Copenhagen (1980) and Nairobi (1985) respectively. The Nairobi Conference was a review and appraisal of the Decade for Women and at its conclusion the Nairobi Forward-looking Strategies for the Advancement of Women was adopted to give direction to the policies and implementation of member states and international institutions.

4. 1986-95: Empowerment of Women

The empowerment movement aimed at developing the inherent capacities of and organizing women from countries in the global south through access to information, skills, and resources (Marchand and Parpart 1995). By the time the Nairobi Conference convened, women had already taken significant steps toward this end and had gathered around the conviction that they could change the patriarchal system, thus laying the ground for a strong global women's movement. The years between 1986 and 1995 mark the beginning of a new era, when the long years of experience women had accumulated started bearing fruit. At this stage women united around the slogan "women's rights are human rights," which proved to be a powerful tool of mobilization and activism.

The UN Global conferences of the 1990s,[62] particularly the 1993 Vienna Conference, by endorsing gender equality as a central objective of the UN system at large, created an enabling environment and a strong momentum for gender equality both within the UN and in state affairs. One of the most significant developments of this period, thanks to the persistent efforts of women, is the entry of violence against women into the international agenda. In 1992, the CEDAW Committee introduced General Recommendation (GR) 19; defining violence against women as a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

The adoption of GR 19 remedied an important shortcoming of the Convention and the issue, which for long was ignored as a "private matter," emerged as a policy and human rights concern. Through GR 19, the Committee expanded the obligation of states parties to the Convention to include in their periodic reports "…information on the legal, preventive and protective measures that

62 The Global UN Conferences of the 1990s include: 1992 Environment and Development (Rio de Janeiro); 1993 Human Rights (Vienna); 1994 Population and Development (Cairo); 1995 World Summit for Development (Copenhagen); 1995 Fourth World Conference on Women (Beijing); 1996 Habitat (Istanbul); and 1996 World Food Summit (Rome).

have been taken to overcome violence against women, and on the effectiveness of such measures" (Article 16/v).

However, the historical turning point in terms of violence against women was the Vienna Conference, where the issue was officially recognized as a violation of human rights. The victory at the Vienna Conference was augmented by two major developments: the adoption of the Declaration of the Elimination of Violence against Women (1993) by the GA, and the establishment of the mandate of the Special Rapporteur on Violence against Women, its causes and consequences (1994) by the UN Commission on Human Rights. A year later, the Fourth World Conference on Women concluded with the adoption of the Beijing Platform for Action, which included among its 12 critical areas of concern, "violence against women," "women in armed conflict," and "women's human rights," thus consolidating the approach to the violation of women's human rights.[63] The normative framework, which emerged with the inclusion of violence against women in official conference documents, will be discussed in detail later in the chapter.

5. 1996-2005: Women's Human Rights

The slogan "women's rights are human rights," which reflected the spirit of the 1995 Beijing Conference, guided the work in this area during this decade. The women's human rights agenda gained momentum with the official acknowledgment in 1990 of violence as a human rights violation. While initially defined as one of the critical areas of concern of the Beijing Platform for Action, human rights subsequently emerged as an approach and movement in its own right, thus guiding the gender equality agenda.

63 At the time of the Fourth World Conference on Women (1995), gender equality was perceived as attainable mainly through women's equal access to basic development goals such as education, participation in the labor force, and participation in politics. Interestingly, however, during the Conference there were strong signs, which were rarely articulated at the time, that equality between men and women was not only a matter of parity but that there was a need to interrogate and unpack patriarchal notions of femininity and masculinity. In their statements, the delegations from Scandinavian countries and Singapore suggested that the involvement of men in the struggle for equality and freedom was inevitable. These and other relevant observations led me, in a somewhat exaggerated manner, to conclude in an article reviewing the Beijing Conference as: "Who knows, perhaps the world is on the verge of a 'men's movement'!" (Ertürk 1995: 64). But the women's movement was not yet quite ready to turn its attention to matters concerning masculinity and the role of men; this had to wait another five years. Following the rich debates in the Beijing+5 process, at which time masculinity issues gained greater visibility, the CSW included in its multi-year (2002-2006) work program the theme of the "role of men and boys in achieving gender equality" for its 2004 session (Ertürk 2004: 4). In subsequent years, masculinity and the role of men became popular areas of research and policy among women.

During this phase, as debates on women's human rights intensified, resources were mobilized for the realization of Beijing objectives. In 2000, the GA Special Session on "Beijing+5" convened to review the extent to which governments met their Beijing commitments, and at the end of the session a Political Declaration and Outcome Document containing new strategies for the realization of the Beijing Platform for Action (BPfA) was adopted. The review and appraisal process significantly expanded the boundaries of the gender equality agenda, as issues such as the impact of globalization on rights violations, the role of the private sector, the changing nature of conflicts, and security issues gained greater attention.

Thus, women's rights, i.e., the domain of "soft politics," began to be addressed by UN entities that operate within the domain of "high politics." Shortly after Beijing+5, on October 31, 2000, the UN Security Council unanimously adopted Resolution 1325 on women, peace, and security. This paved to way for a sixth phase focusing on conflict and peace. Another noteworthy development is the recognition of sexual offences as war crimes by the 1998 Rome Statute that established the International Criminal Court.

6. 2006-present: Women and Peace

The women's human rights movement paved the way for women's close encounter with issues of conflict, peace, and security, enabling them to bring their demands to the policy table. After the adoption of Resolution 1325, issues of women, peace, and security became part and parcel of the UN Security Council agenda, leading to the adoption of consecutive resolutions on the subject. Furthermore, the challenges posed by the changing nature of conflict in the post-Cold War era and the emergence of new extremist groups gave greater impetus to women's peace initiatives. Today, the struggle for peace and security has become a priority concern for feminist theorizing, organizing, and advocacy around the globe.

This period is also significant in terms of institution-building as part of the UN reform agenda. In July 2010, the UN General Assembly created UN Women, the entity for gender equality and the empowerment of women. The stated role of the new entity includes: supporting intergovernmental bodies such as the CSW in their formulation of policies, norms, and standards with respect to women's rights and gender equality; overcoming institutional fragmentations and coordination flaws concerning UN initiatives on gender equality; ensuring accountability through monitoring of progress within the system; and

providing advice and technical assistance to member states to help them implement international standards.[64]

UN Women formally assumed its functions in January 2011.[65] It merged and built on the work of four previously distinct UN institutions, which were created exclusively to focus on various aspects of gender equality and women's empowerment. These institutions included: the Division for the Advancement of Women (DAW), which was the main secretariat of CSW and had existed since 1946 under different names; the International Research and Training Institute for the Advancement of Women (INSTRAW), based in Santa Domingo since 1983; the UN Development Fund for Women (UNIFEM), initially created as the Voluntary Fund for the UN Decade for Women (1976), which became an autonomous entity in 1984; and the Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI), established in 1996 after Beijing.

As mentioned above, gender equality and the advancement of women have been on the UN's agenda since its inception; with the creation of CSW they became part and parcel of the intergovernmental decision-making process. Each phase of the agenda reflects the priorities and perspectives carried to the political arena by the global women's movement as it gradually grew and diversified. With this, while the gender equality agenda integrated into mainstream processes, the diversification of women's voices posed new theoretical and strategic challenges for the global women's movement.

Women's Human Rights

The lack of gender sensitivity and disregard for women's experiences in international human rights law has been a widely debated and criticized issue among feminists (Cook 1994, Peters and Wolper 1995, Askin and Koenig 1999). In their criticism, feminists have drawn attention to the fragmented nature of mainstream rights language and the male-biased conception of the human (Bunch 1995) as well as its Western-centric (Kapur 2002) approach. The international human rights paradigm, which primarily focuses on "harm" and "maltreatment" inflicted by state institutions and actors, has naturally overlooked structural inequalities and their interconnectedness to power relations in private and public life. Critics maintained that this is precisely the point

64 Michelle Bachelet, former president of Chile, was appointed as UN Under-Secretary-General responsible for UN Women. Upon her resignation in 2013, Phumzile Mlambo-Ngcuka from South Africa replaced her.

65 The Europe and Central Asia Regional Office of UN Women was established in Istanbul in 2014.

where human rights violations against women take place and that violations against women differ considerably from mainstream human rights violations.

The global women's movement redefined the established human rights language in a manner that made these invisible rights violations visible. As a result, both the private sphere and mainstream human rights law, which was previously perceived as gender "neutral," came under scrutiny, and the boundaries of "universality," "rights," and "law" expanded to better reflect women's realities. In this respect, parallels were drawn between the human rights violations that women experience in the private sphere with those that constitute a crime in the public sphere. For instance, virginity tests became defined as synonymous with terrorism; sex selection, i.e., abortion of a female fetus, with genocide; and confining women to the house, battering, female genital mutilation (FGM), and rape with torture.

As local women's experiences and life practices connected with the global movement, the women's human rights paradigm and feminist discourse constantly confronted the challenge of re-examining its taken-for-granted truths and approaches. In this respect, the various theses concerning women from the global south, particularly Muslim women, led to heated discussions and at times created dilemmas and disagreements that still remain unresolved among feminists (Bennoune 2010, 2013, Kapur 2002, Sunder 2003).

Global instruments that promote and protect women's human rights can be discussed under two headings. The first is the CEDAW Convention, also known as the "women's international bill of rights," which after a long and strenuous negotiation process was adopted in 1979 and went into force in 1981. The other is the mechanisms and policies on violence against women that came to the agenda, one after the other, in the post-1990 period. I will explore these chronologically.

1. Women's International Bill of Rights: CEDAW

In 1972, CSW concluded that a specific convention on discrimination was necessary.[66] While the details, including whether one or more conventions were needed, were postponed for later discussion at its 1974 session, the Commission agreed to mandate a working group to draft a single comprehensive convention. In 1976, after the draft convention was forwarded to the GA Third Committee for approval, the long and strenuous negotiation process

66 Although the Universal Declaration of Human Rights and the Twin Covenants that codified its principles offered a comprehensive human rights framework, the international community was of the opinion that a separate legal instrument was needed for realizing women's rights. Towards this end, as a first step, the Declaration for the Elimination of Discrimination was adopted in 1967.

started, which after intervals finally concluded. The GA adopted the draft on December 18, 1979, with 130 affirmative votes against 11 abstentions. Upon its ratification by 20 states, the Convention went into force in 1981.[67]

Even after lengthy deliberations, the fact that CEDAW was not adopted as a consensus document was a clear sign of the numerous hurdles awaiting women's rights. Some of the issues that were particularly challenging included prohibition of discriminatory legislation and full equality in areas such as rural development, marriage and the family, education and employment, health services, and bank loans. The extensive reservations placed by some countries on the provisions of the Convention and the shortcomings in the implementation revealed the deep divergences that existed even among the large majority that voted in favor of the convention: the 'yes' vote clearly did not indicate a shared position or a commitment vis-à-vis the Convention.[68]

The international community, which displayed caution with respect to women's rights goals that could be considered liberal in nature, acted in unison in excluding violence from the provisions of the Convention. Many factors no doubt accounted for the omission of violence against women from the understanding of universal human rights and the general delay in women's rights issues from coming on the international agenda. Among these the following are particularly pertinent: in the early 1970s the mainstream human rights discourse and patriarchy had not yet been rigorously questioned; in many countries, women were barely recognized as individuals and equal citizens, deserving of right to education, to vote or be elected; and the limited influence of the global women's movement, which itself was in its infancy.

In addition, according to some observers, although the principle of equality in CEDAW entailed both *de facto* and *de jure* equality, it remained largely limited to the public sphere, as it was modeled after the 1966 Convention on the Elimination of All Forms of Racial Discrimination (CERD) (Charlesworth 1994: 65).

However, over time, realities emanating from the periodic reports of states parties, criticism of feminist scholarship and the diversifying demands of the global women's movement prompted the CEDAW Committee, responsible for monitoring the implementation of the Convention, to adopt new interpreta-

67 Turkey ratified CEDAW in 1985 with certain reservations, which were later removed in 2000. It submitted its first periodic report in 1990.

68 For detailed information on this process, see the UN Blue Book Series on *The United Nations and the Advancement of Women, 1945-1996* and *Women Go Global*.

tions and general recommendations, thus providing the Convention with a more progressive content.[69]

According to Acar, what distinguishes CEDAW from other international documents is its focus on "elimination of discrimination" as opposed to "equality," therefore providing for states parties to adopt special measures of a temporary nature aimed at accelerating *de facto* equality between men and women (2005: 48-49).

The Convention's emphasis on *de facto* equality foresees challenging the sociocultural values and stereotypes of the gender identities that underlie discrimination. In this respect, the Convention's Article 5, which calls for changing gender-based social and cultural behavioral patterns, is a matter of priority. Additionally, by including a separate article on the situation of women living in rural areas, the Convention also draws attention to the fact that equality can only be possible by taking into consideration the heterogeneity of women as a category. The Committee's observations also indicate that some women's groups are addressed separately due to the particularity of their problems or their vulnerability to discrimination (Öder 2010: 25).

CEDAW is a legally binding document that provides a definition of discrimination against women and the measures needed for its elimination. As such it is an indispensable and powerful tool of struggle for the women of the world. Inconsistencies in implementation aside, the fact that 188 countries have ratified the Convention indicates its international significance. However, the struggle for women's human rights is neither static nor a linear process. CEDAW's growing popularity also brought with it its opponents. Today, in some countries, political groups are putting pressure on governments to withdraw from CEDAW entirely.

The Convention gained greater clout in directly impacting the daily lives of ordinary people in the 1990s, as was the case with the human rights paradigm. During this period the Convention gained considerable visibility and came to be recognized as an effective instrument both by women as well as the public. Despite shortcomings in implementation, women in countries that were party to the Convention became watchdogs of their states' obligations under the Convention (Cartwright 2007). For instance, the women's movement in Turkey used CEDAW in an effective manner in legal reform processes particularly since the 1990s and contributed to the realization of major reforms in line with CEDAW principles (Acar 2010a, Ertürk 2006). In this context, as a

69 The Committee of 23 independent experts, established under Article 17 of the Convention to monitor its implementations, examines periodic reports of states parties and makes recommendations to the relevant state. To date, two experts from Turkey have served on the Committee: Gül Aykor (1993-1996) and Feride Acar (1997-2005 and 2010-present). Acar also served as the Chair of the Committee from 2003 to 2005.

result of the persistent advocacy of the women's movement, Article 10 of the Turkish Constitution, which defines equality between women and men, was amended in 2004 with reference to CEDAW. While previously men and women were defined as equal under the Constitution, the amendment introduced an additional element obliging the state to take necessary measures for the realization of the principle of equality between the sexes. The amendment, while welcomed, fell short of the demands of women's groups to include "temporary and special measures" as stipulated by the Convention.

Saudi Arabia and CEDAW

In 2000 Saudi Arabia ratified CEDAW with numerous reservations. In 2008, a large Saudi delegation, mostly comprised of women, went to Geneva to present the first periodic report.

Shortly after (February 2008), in my capacity as UN Special Rapporteur on Violence against Women, I conducted an official visit to Saudi Arabia. During this visit, it was evident from media reporting and my meetings with civil society that discussions around CEDAW were still ongoing and a dynamic process was taking place, with the voices of both proponents and opponents of CEDAW occupying the public discourse. The contestation of different opinions aside, the engagement of Saudi women with CEDAW definitely had an empowering effect on them.

In such an environment, my visit gave further momentum to this dynamism in the country. The press conference I held at the conclusion of my visit on February 14 was attended by many members of the media and civil actors, including women (see Annex 1).

The CEDAW reporting process has provided an important platform for women from different walks of life to interact in preparing shadow reports for submission to the CEDAW Committee. In some countries women are also called upon to give input to the official country report. For instance, since the mid-1990s, diverse women's groups in Turkey have actively contributed to the drafting of Turkey's official periodic reports, followed the review of the report by the Committee, and used the concluding comments in their advocacy.

In 1999, the GA adopted the Optional Protocol (OP) to the Convention in order to further strengthen it and ensure its effective implementation. The OP entered into force in 2000 and by September 2015, 106 states had ratified it.

The OP has created two distinct procedures: a communications or petitions procedure, and an inquiry procedure. These procedures enable individuals to

submit individual complaints[70] to the Committee concerning violation of rights recognized by the Convention and authorize the Committee to conduct inquiries into systematic violations.[71] Article 1 of the OP provides that a state party to the protocol recognizes the competence of the Committee to receive and consider communications submitted by or on behalf of individuals or groups of individuals under the jurisdiction of the state party, who claim to be victims of a violation of any of the rights contained in the Convention. The communications procedure aims to remedy the situation addressed in the complaint, to protect the victim(s) and prevent the incident from recurring. In this context, the Committee may make legislative/institutional recommendations; however, the OP does not set forth any direct compensation or punishment.

Criteria for admissibility require that communications be in writing and that all available domestic remedies are exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

The inquiry procedure enables the Committee to instigate an investigation/inquiry of reliable information it receives indicating grave or systematic violations by a state party of rights set forth in the Convention, which may include a visit to the territory of the state concerned.

- In the first individual complaint received by the Committee, *A.T. v. Hungary,* the author, representing herself, claimed that Hungary had failed in its obligations to protect her from the physical violence and threats of her former partner. The Committee found that the state had not fulfilled its obligations under the Convention's Articles 2, 5, and 16 (2005). Although not explicitly articulated, in noting Hungary's failure to act with diligence, the Committee in fact revealed the manner in which the due diligence standard[72] openly shaped its decision on the state's failure to comply with its obligation as per the Convention to prevent violence against A.T. and protect her from the consequences of this violence.

70 The first complaint under the OP concerned a domestic violence case in Hungary. Turkey ratified the OP in 2002, and in 2004 Rahime Kayhan, a Turkish national, submitted a complaint claiming that she was victimized due to Turkey's violation of Article 11 of the Convention. However, the Committee ruled that the case was not admissible on grounds that domestic remedies had not been exhausted (2006). For studies/cases in the framework of CEDAW and the OP, see Schöpp-Schilling (2007).

71 In accordance with the inquiry procedure, a group of experts from the Committee visited Mexico in 2003 to investigate into reported femicides there. This was the Committee's first inquiry visit conducted in accordance with the OP. For a discussion on the inquiry procedure, see Da Silva and Gomez (2007).

72 The due diligence standard will be discussed in detail in the following section.

2. Developments and Mechanisms with Respect to Violence against Women

Addressing violence against women, which has become a major field of struggle for national and global women's movements, is a relatively recent trend in policy making as well as in the human rights movement. The World Plan of Action adopted at the First World Conference on Women in Mexico City in 1975 did not address the phenomenon of violence *per se*; instead reference was made to the issue in the context of unity of the family and prevention of intra-family conflicts. On the other hand, at the 1980 Copenhagen Conference, which followed the Mexico City Conference, a resolution on "battered women and the family" was adopted and the concluding document made reference to domestic violence.

Violence against women as a subject of international policy was taken up in the real sense for the first time in 1985 at the civil society forum of the Nairobi Conference and its final document Nairobi Forward-looking Strategies, linked promotion of peace with elimination of violence against women in public and private spheres. Furthermore, certain strategies for the prevention of violence in the home, in detention and in conflict situations were included in the document.

In 1985, following the Nairobi Conference, the GA adopted a resolution on domestic violence. Although the language of the resolution was gender-neutral, it nonetheless paved the way for the UN to organize expert group meetings on violence in the family in 1986 and 1989.[73] Thus, the issue of violence against women, entering official UN documents cautiously, became framed within gender perspective by late 1980s. The basic premise of the gender perspective is that male and female identities, beyond biological sex, are socially constructed, and therefore amenable to change.

By adopting this perspective the global women's movement drew attention to the fact that historically femininity was constructed within patriarchal power relations as a subordinate status. This understanding, which also underlies CEDAW's definition of discrimination, demonstrated that violence against women is a tool of oppression and control, normalized and institutionalized within unequal gender structures, and finally in the 1990s feminization of

73 For the process of violence against women entering the UN agenda, see Fitzpatrick (1994), Connors (2005).

violence gained visibility and official acknowledgement. It is for this reason that the 1990s constitutes a milestone for women's human rights.[74]

The entry of violence against women into the realm of international policy and law, on one hand, gave specific forms of violence visibility and, on the other hand, the values taken-for-granted truths and practices of everyday life came under scrutiny. Thus, the issue of violence against women became a public policy issue in every corner of the world in one way or another; women's human rights struggle gained momentum, and with the articulation of local and global processes the diversifying global women's movement became an actor to be reckoned with in public discourse and policy making.[75]

This development has been contentious and problematic both at the official level as well as within the women's movement. Those critical of the universal human rights paradigm—not unlike the debates in earlier periods—have argued that by focusing on violence against women the global women's movement has reinforced the victimization image of women, particularly those in the global south, and entrapped them into a victim-subject identity (Kapur 2002). Nevertheless, irrespective of the controversies, the struggle to end violence appealed to women more so than any other international gender agenda. On May 11, 2011, a Council of Europe convention on violence against women was opened for signature in Istanbul. The Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention, entered into force on August 1, 2014.[76] With the adoption of this Convention, the discussion on whether or not a binding convention is necessary at the international level gained momentum (Manjoo 2014).

74 As mentioned earlier, the 1990s were dynamic years in terms of rights. Numerous factors such as the realignment of borders as a result of globalization, the collapse of the Soviet Union, changes in the relations between the state and its citizens, and the intensification of transnational civil organizing all have enabled ordinary people to access the international human rights system as a legitimate rights depository. In this respect, the global women's movement made use of this process most successfully.

75 November 25th, International Day against Violence against Women, observed in Latin American and Caribbean countries since 1981, commemorated the Mirabal sisters who were murdered by the Trujillo dictatorship in Dominican Republic in 1960. The day soon gained recognition across the globe and on October 19, 1999, the UN General Assembly designated November 25th as the International Day for the Elimination of Violence against Women. Feminist lawyer Canan Arin introduced November 25th in Turkey for the first time in 1992 at the Purple Roof Women's Shelter Foundation. Today November 25th is recognized by all women's organizations and state institutions and every year various activities are held on this day. Another important contribution of Canan Arin to the Turkish agenda is the concept of "zero tolerance for violence against women," which she opened to discussion in 1995, again through Purple Roof. However, this concept is yet to be recognized at the level of state discourse.

76 Turkey was the first country to ratify the Istanbul Convention.

Having the right laws in place is, no doubt, of paramount importance in the promotion and protection of rights. However, my personal opinion is that the existing normative framework at the international level is sufficient for the prevention of violence against women. The present shortcoming in terms of the human rights system is the inadequacy of monitoring and follow-up; priority therefore needs to be placed on strengthening the follow-up and accountability mechanisms.

Furthermore, the principles of equality and non-discrimination are inherent to all human rights treaties, and when addressed within a holistic understanding can compensate for any legal gap. Therefore, states have to be reminded that they have an *interlocking responsibility* with respect to their international obligations.

It must be borne in mind that mindsets and commitment are as important, if not more, as having the right laws in place. It has been over three decades since the adoption of CEDAW, which enjoys near universal ratification, yet CEDAW is one of the least implemented of all treaties. This raises serious questions as to the sincerity and commitment of states parties concerning women's rights.

In the final analysis, respecting and enhancing human rights, including the elimination of violence against women, depends on national-level dynamics, persistence of demand for rights, and a stable and determined political will.

3. CEDAW General Recommendation 19 (1992)

As aforementioned, prohibition of gender-based discrimination is a fundamental principle enshrined in all international documents and mechanisms, including the UN Charter. Among these, CEDAW, the only global treaty guaranteeing women's rights, remained silent on the issue of violence when defining discrimination. It took 13 additional years of struggle following the adoption of the Convention to rectify this shortcoming. With the realization that violence constitutes a grave hindrance to women's ability to exercise their fundamental rights, the Committee, in accordance with Article 21 of the Convention, adopted a series of general recommendations in the late 1980s.[77]

Most relevant amongst these is General Recommendation (GR) 19 (1992), which defines violence against women as an act specifically targeting women because of their sex or one that affects them disproportionately as a form of discrimination that falls under the scope of CEDAW monitoring. With this recommendation the Committee holds states parties to the Convention respon-

77 GR 12 (1989) calls on state parties of the Convention to submit statistics on violence against women and information on law and protective services in their reports; GR 14 (1990) urges states parties to take the necessary measures for the eradication of "traditional" practices such as female circumcision; GR 19 (1992) defines violence as a form of discrimination.

sible for preventing violence against women. Governments, therefore, in their periodic reports to the Committee on the implementation of the provisions of the Convention, are obligated to include information on the measures they have taken in responding to violence against women.

In actuality, CEDAW general recommendations are considered as non-binding "soft law" documents, which are intended as guiding tools for the interpretation of the Convention. However, since the Committee has directly linked violence against women with numerous articles of the Convention, over time it has gained recognition and acceptance by states, thus making violence against women part and parcel of the discrimination the Convention aims to eradicate (Acar and Ertürk 2011: 290).

With GR 19, the Committee also made a significant contribution to the 1993 Vienna World Conference on Human Rights by legitimizing the inclusion of violence against women on the conference agenda.

4. Vienna World Conference on Human Rights (1993)

The momentum created by years of persistent advocacy of the women's movement on violence against women and the rage provoked by the use of gendered violence as a war strategy in the Yugoslavia war gave women a strong incentive to push the boundaries of law, policy, and practice. Thus, in close collaboration with their allies within the UN the women who attended the Vienna Conference captivated the Conference—as it were—and ensured that women's rights were on the agenda. In the preparatory phase leading up to the conference, UNIFEM facilitated the participation of non-governmental organization (NGO) representatives to guarantee that their concerns were reflected in the Conference's final document. Towards this end, the Center for Women's Global Leadership organized a strategic planning meeting, bringing together women from every region, and identified a number of recommendations on women's rights issues.

Women were the most organized and vocal civil constituents of the Conference; they made their presence felt at both the NGO forum and the various platforms of the official meeting through a series of seminars and workshops around the theme "women's rights are human rights." Among these, the most effective activity was the convening of a Global Tribunal on Violations of Women's Human Rights, for local and regional testimonies to be heard. The mock tribunal was structured to address five inter-related themes; human rights abuse in the family, war crimes against women, violation of women's bodily integrity, socio-economic violation of women's human rights, and gender-based political persecution and discrimination. A total of 33 women from 25 countries recounted their stories before an audience of nearly a thousand people. Following each thematic session of the Tribunal, one of the judges presiding over

the hearings responded to the relevant case, and at the Tribunal's closing session the panel of judges issued a joint statement with their recommendations.[78]

The recommendations from the Tribunal and from other platforms of women's groups made their way into the Vienna Declaration and Program of Action, although not in their entirety. With the inclusion of the phrase "the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights" in the Conference document, violence against women as a human rights violation became officially recognized. However, because the public/private sphere dichotomy could not be addressed in the document, a critical dimension of women's human rights violation remained pending. Nonetheless, according to E. Friedman, the mobilization of women around women's human rights and the inclusion of women's human rights in the Vienna Declaration have undeniably globalized the women's human rights movement (1995: 31).

The Vienna Conference also led to two important developments: the adoption of the Declaration on the Elimination of Violence against Women (1993) and the mandate of a Special Rapporteur on Violence against Women (1994).

5. Declaration on the Elimination of Violence against Women (1993)

The same year of the Vienna Conference the GA adopted the Declaration on the Elimination of Violence against Women (DEVAW). While DEVAW is not legally binding in terms of international law, it nonetheless is important as it sets the first and only UN normative framework on violence against women. DEVAW Article 1 defines violence against women as "…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 2 distinguishes physical, sexual and psychological violence within the family, the community and as perpetrated or condoned by the state no matter where it occurs. In my first report to the Commission on Human Rights in my capacity as rapporteur, in view of the effects of globalization, which became much more marked in the years following the adoption of the declaration, I drew attention to the need to focus on the transnational arena in addition to the three domains indicated in DEVAW. Women in the transnational arena as labor migrants, refugees or victims of human trafficking encounter new and

78 See Bunch and Reilly (1994).

multifaceted risks of violence that may go unnoticed if national territory sets the limits of the mandate.[79]

DEVAW Article 4 addresses the responsibilities of the state and stresses that states should not invoke any custom, tradition, or religious consideration to avoid their obligations with respect to the elimination of violence against women. Paragraph (a) of that article calls on states to consider, where they have not yet done so, to ratify or accede to CEDAW and withdraw their reservations to the Convention. Paragraph (c) of the article calls on states to 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. "The call for due diligence by DEVAW with respect to the elimination of violence against women, therefore, has reinforced the principle of positive obligation of states as contained in CEDAW for women's rights as a whole" (Acar and Ertürk 2011: 291).

As a general tendency, UN declarations eventually lead to the adoption of a legally binding treaty on the subject concerned. The fact that this has not followed with respect to DEVAW, despite its adoption more than 20 years ago, casts doubt on the international community's commitment to eradicate violence against women. As mentioned above, there is a revival of discussions on this subject, with certain initiatives underway. Regional human rights systems have been more advanced with respect to responding to violence against women. The most recent international legal instrument on violence against women is the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence—the Istanbul Convention. [80]

The Istanbul Convention, which was adopted after strenuous negotiations, recognizes that violence against women is inherent to the inequality between men and women that exists in various fields of life; its eradication, therefore, requires women's empowerment and equality between the sexes. This legal instrument, grounded on CEDAW GR 19 and the ECtHR ruling on *Opuz v. Turkey,* also calls on states to act with "due diligence" in their obligation to eliminate violence against women.

79 E/CN.4/2004/66

80 Other similar regional instruments are the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women—Convention of Belém do Pará (1995) and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2005). On the other hand, the European Court of Human Rights (ECtHR) has set case law with its rulings between 2000 and 2009 that address violence against women in the context of human rights. Particularly relevant in this respect, is the Court's *Opuz v. Turkey* (2009) decision.

6. Mandate of the Special Rapporteur on Violence against Women (1994)

On March 4, 1994, the UN Commission on Human Rights (now called the Human Rights Council) with its resolution 1994/45 established the post of Special Rapporteur on Violence against Women, its causes and consequences, under the Special Procedures of HRC. The Special Rapporteur is specifically mandated to oversee the implementation of DEVAW and undertake overall monitoring of women's rights in public and private spheres of life in all member states of the UN.

The special procedures mechanisms were introduced in 1979 to strengthen the UN human rights system. The HRC, through the activities of the special procedures mandates, plays a critical role in promoting human rights and in rapidly responding to allegations of rights violations wherever they occur. Amongst other things, these mechanisms offer a unique opportunity to bring universal human rights norms to the national agenda, give voice to the disempowered, call for remedy for victims of human rights violations, and in the process contribute to standard setting, jurisprudence, public debate, and civil society mobilisation.

Special procedures are made up of special rapporteurs, representatives of the Secretary-General (SG), and working groups addressing thematic issues and country-specific situations. The different titles given to the mandates are simply a result of negotiation. While most of the holders of the mandates are selected by the HRC, the SG appoints some. Most of these experts are serviced by the Special Procedures Division of the Office of the High Commissioner for Human Rights (OHCHR) in Geneva.

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 human rights situation in a particular country (country mandates), including during times of crisis. As of March 2015 there are 41 thematic and 14 country mandates.[81]

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

81 For information on these procedures, see www.ohchr.org.

of the UN. Most of these experts are serviced by the Special Procedures Division of the OHCHR in Geneva.

The Special Rapporteur on Violence against Women (SRVAW)[82] is authorized to monitor women's rights in all UN member states irrespective of whether the country concerned is party to any convention or not. The Special Rapporteur is required to fulfill three main tasks: (1) conduct official fact-finding country visits and submit a report on findings and recommendations to the HRC;[83] (2) prepare annual reports for the HRC on in-depth analysis of relevant thematic issues; and (3) receive individual complaints and transmit *urgent appeals* and/or *allegation letters* to the relevant state, seeking clarification, verification, and action for redress. Unlike the complaint mechanism of CEDAW OP, 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.

The role of local and global NGOs is critical for the SRVAW in fulfilling each of these responsibilities. In this respect, civil society actors provide information on human rights situations in a particular country, share research and analysis, hold direct consultations with the SRVAW, disseminate her work, and advocate and lobby for the implementation of the rapporteur's recommendations.

The rapporteurs' annual reports have contributed to policy making and standards setting in the field of international law and provided direction for academic discussions, paradigm shifts, and civil society activism.[84] These reports also constitute an important source for the evolving normative framework on violence against women, the analysis of the causes and consequences of violence, and delineating the roles and responsibilities of states and other actors for the prevention of violence. For instance, during the first years of her mandate as SRVAW, Radhika Coomaraswamy developed the framework for "model legislation on domestic violence,"[85] a pioneering venture in this field.

When I took office as the second SRVAW, in order to further advance standards and stimulate practice, I probed into the "due diligence" standard, a concept present in all legal texts. My objective was to interrogate the concept from a

82 Appointed by HRC, three independent experts have held the office since its inception: 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 (September 2009-2015). Dubravka Simonovic, a Croatian lawyer and diplomat, was appointed as the fourth rapporteur, for a three-year term starting September 2015.

83 For the list of countries visited by the rapporteurs since the establishment of the mandate, see Annex 3.

84 For examples on such contributions, see Dempsey (2007), Öder (2010), Singer (2006).

85 E/CN.4/1996/53/Add.2.

gender perspective and operationalize the implications of the fundamental principles of the standard, namely: "prevention," "protection," "punishment," and "compensation" (E/CN.4/2006/61 and Ertürk 2008). The due diligence standard applies to all apparatuses of the state, and as such it can be an effective tool in bringing about the necessary social change for the eradication of violence against women, if applied diligently.

For example, the judiciary and prosecutors working on cases of domestic violence have the potential and the obligation to change the prevailing balance of power by taking a strong stance to disempower patriarchal notions. Interventions at this level may have both *consequential effects*, in that condemnations 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 prosecutorial services will make that society less patriarchal.[86]

All human rights conventions, primarily CEDAW, provide a legal basis for the mandate of the SRVAW. Therefore, particularly during country visits, the rapporteur advocates for these conventions and in a sense also monitors their implementation. In this respect, human rights monitoring mechanisms reinforce one another. For instance, during my visit to Mexico, in my engagement with officials concerning femicides, I often reminded them of their obligations under CEDAW and Belém do Pará (Inter-American Convention) to undertake vigorous measures to stop the murders of women, particularly by radically reorganizing the security and justice sectors.[87] On the other hand, in Iran, which has not ratified CEDAW, I relied on the Convention on the Rights of the Child, which Iran is party to, in formulating my observations and recommendations.[88]

In many parts of the world, violence against women is still perpetrated with impunity and women's access to justice encounters multiple obstacles. In such an environment it is inevitable that the independent monitoring mechanism of the SRVAW will continue to play a role in making visible the hidden rights violations and to give voice to the most vulnerable women's groups. In this respect, similar mechanisms within regional human rights systems working in coordination with the UN SRVAW can enhance the effectiveness of the monitoring system for the sustenance of international standards on women's rights.

The communications mechanism of the special procedures is a powerful tool that a person or a group whose rights have been violated can access directly

86 E/CN.4/2006/61 para. 90.

87 E/CN.4/2006/61/Add.4.

88 E/CN.4/2006/61/Add.3.

without any costs. Upon receipt of reliable and credible information regarding allegations of violations of rights, the SRVAW (or depending on the case, jointly with other mandate holders) transmits confidential communications 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.[89]

The transmission of allegations to a particular country can potentially be the beginning of a constructive dialogue with the state concerned in enhancing women's human rights; it also provides an opportunity for redress of violations of human rights that may otherwise remain invisible and unspoken. While some of the SRVAW's interventions 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 national and international civil society must follow up on the cases submitted and demand accountability from governments and other concerned bodies. That said, reports on a country's compliance—or lack thereof—with human rights norms are a spotlight on human rights abuses and can motivate a country into altering its practices. 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. Therefore, there is more work to be done for women to fully exploit its potential.

7. Beijing Declaration and the Platform for Action (1995)

The Fourth World Conference on Women that convened in Beijing in 1995, referred to as the "conference of commitments," concluded with the adoption of the Beijing Declaration and Platform for Action (BPfA). The Beijing Declaration is a statement of commitment on the part of governments with respect to women's empowerment and advancement: equality between women and men; mainstreaming of gender perspective into all policies and programs; and the implementation of BPfA goals.

As an "agenda of women's empowerment" the BPfA declares that the advancement of women can be attained through full and equal participation of women in economic, political, cultural, and social decision-making processes in the private and public spheres, and in this context it calls on governments, the international community, and NGOs, including the private sector, to fully

89 See Annex 2 for my communications with the Government of Turkey concerning a complaint I received in 2007.

commit and contribute to the realization of a series of strategic objectives identified in 12 critical areas of concern. It follows that:

> It is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. The implementation of this Platform, including through national laws and the formulation of strategies, policies, programmes and development priorities, is the sovereign responsibility of each State, in conformity with all human rights and fundamental freedoms. (BPfA, Chapter II, para. 9)

The 12 critical areas of concern, which highlight numerous objectives to be realized by the year 2000, are built upon CEDAW and the Nairobi Forward-looking Strategies for the Advancement of Women as well as relevant resolutions adopted by the ECOSOC and the General Assembly. The BPfA served as a roadmap for CSW in the post-1995 period. Over the years, in accordance with its multi-year work program, the Commission devoted each year to the review of two or more critical areas and, in view of changing conditions and emerging obstacles, adopted agreed-upon conclusions for the realization of strategic objectives of the BPfA.

> Violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement. Violence against women throughout the life cycle derives essentially from cultural patterns, in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race, sex, language or religion that perpetuate the lower status accorded to women in the family, the workplace, the community and society. (BPfA, Chapter III, para. 118)

The BPfA places special emphases on certain women's groups because they face increased risk of violence, and therefore are in need of particular protection.

> Some groups of women, such as women belonging to minority groups, indigenous women, refugee women, women migrants, including women migrant workers, women in poverty living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women, displaced women, repatriated women, women living in poverty and women in situations of armed conflict, foreign occupation, wars of aggression, civil wars, terrorism, including hostage-taking, are also particularly vulnerable to violence. (BPfA, Chapter III, para. 116)

> In addressing violence against women, Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes so that before decisions are taken

> an analysis may be made of their effects on women and men, respectively. (BPfA, Chapter III, para. 123)

Among the measures identified in the critical area of concern on violence against women, the BPfA recommends governments to cooperate with and assist the SRVAW and other relevant mechanisms in the performance of their mandate and provide them with all the information requested (BPfA, para. 124(r)). In addition, the Secretary-General of the UN is asked to provide the Special Rapporteur with all necessary assistance, in particular the staff and resources required to perform all mandated functions, especially in carrying out and following up on missions undertaken either separately or jointly with other mandate holders, and adequate assistance for periodic consultations with the CEDAW Committee and all treaty bodies (para. 127).

Beijing Platform for Action

Critical Areas of Concern: Strategic Objectives and Actions

A. Women and poverty
B. Women and education and training
C. Women and health
D. Violence against women
E. Women and armed conflict
F. Women and the economy
G. Women in power and decision making
H. Institutional mechanisms for the advancement of women
I. Human rights of women
J. Women and the media
K. Women and the environment
L. The girl child

The BPfA also calls on governments to "allocate adequate resources within the government budget and mobilize community resources for activities related to the elimination of violence against women, including resources for the implementation of plans of action at all appropriate levels" (BPfA, para. 124(p)).

Women's rights and the prevention of violence are part of the agenda of the international community at large; they have been adopted as a priority objective of the global conferences, primarily the 1994 Cairo Conference on Population and Development and the 1995 Copenhagen World Summit for Social Devel-

opment. In 2000, the GA Beijing+5 special session, "Gender Equality, Development and Peace for the Twenty-first Century," convened to review and appraise the implementation of the BPfA and identify new action plans as needed.

The UN's Division for the Advancement of Women (DAW), serving as the secretariat of the special session, analyzed 135 country reports on the implementation of the BPfA and prepared a report for the session outlining implementation trends to guide the negotiations (*From Beijing to Beijing+5*, 2001). The analysis of the country reports could only identify trends rather than precise assessment of progress made, as most of the strategic objectives of the BPfA were not time-bound. In most countries the main progress was achieved in legal and institutional reforms towards equality between women and men, however, there was little or no evidence of a major breakthrough in fields that would support women's empowerment, such as women's participation in decision-making mechanisms.

The Beijing+5 special session witnessed strenuous negotiations that ran into the early hours of the morning, after which an "outcome document" was finally adopted (United Nations 2001). Negotiations proved to be particularly difficult with respect the paragraphs on sexuality and reproductive health/rights. Having failed to reach a consensus on new and progressive language, the delegates chose to revert to the agreed-upon language of the relevant passages of the BPfA.

The Beijing+5 session clearly demonstrated that the enthusiasm for women's rights experienced at Beijing had withered away and was replaced by tensions, mistrust, and irreconcilable differences. The victory in women's rights achieved since Beijing had provoked a conservative and aggressive backlash. The conservative coalition grounded in an alliance of "civilizations" mobilized months in advance of the special session, declaring that the Beijing process was the "most dangerous" affair. Their proponents who were accredited to the special session virtually terrorized the UN corridors, intimidating women participants, pressuring the secretariat, and trying to influence the delegates. Like-minded supporters sitting amongst the delegates were not a rarity either.

Despite these difficulties, the outcome document that was adopted at the end of the special session introduced certain, albeit modest, new elements. Beijing+5 was a warning sign of the difficult days awaiting the women's rights agenda. This became even more manifest at Beijing+10, where the international community merely settled for reaffirming the agreed-upon commitments of previous documents. These trends understandably alarmed women's groups and some states and led them to be apprehensive about the prospect of a fifth world conference that could endanger gains made if the agreed-upon language were to be opened to negotiations. On the other hand, it is also a fact that women have no inten-

tion of abandoning their cause! In this respect, it is inevitable that the global women's movement will be more persistent and innovative in their strategies.

8. Rome Statute of the International Criminal Court (1998)

While crimes such as rape and sexual violence during war and conflict that largely target women constitute part of the humanitarian law, historically such crimes have been treated as the inevitable spoils of war and disregarded in analyses and peace processes. The outcry provoked by the use of crimes against women as a war strategy in the wars in Rwanda and the Former Yugoslavia in the 1990s indicated that these acts could no longer be tolerated and ignored. The ad hoc courts established in relation to the two wars paved the way for the prosecution of perpetrators of sex crimes.[90]

Under the impact of the growing reactions to war-time sex crimes[91] and the campaigns launched by the global women's movement, the 1998 Rome Statute that established the International Criminal Court (ICC) went even beyond the ad hoc courts and included in its jurisdiction numerous sexual offences and gender-based crimes amongst the most severe crimes of international criminal law, thus becoming the first international treaty on this subject (Chinkin 2004: 117). The Rome Statute entered into force on July 1, 2002, and as of November 2014 it has been ratified by 122 countries.

The ICC is significantly different from the ad hoc tribunals of Rwanda and Former Yugoslavia. First of all, it is a permanent court and was founded by an international treaty. The competent body authorized to adopt relevant regulations and fill existing gaps is the Assembly of States Parties, composed of the representatives of countries that have ratified or acceded to this treaty. The ICC may exercise its functions and powers only in relation to the state parties. The most important aspect of the Rome Statute is that it organizes and systematizes the crimes that constitute gross violations of international law.

90 The International Criminal Tribunals for the Former Yugoslavia and Rwanda were established as ad hoc courts by UN Security Council resolutions. In its milestone decision, in 1998, in the Akayesu case, the Trial Chamber I of the International Criminal Tribunal for Rwanda (ICTR) ruled that rape and sexual assault can be prosecuted as genocide when committed as part of a widespread and/or systematic attack to harm or destroy the target group in whole or in part. Navi Pillay, who served as the UN High Commissioner for Human Rights through August 2014, participated in the prosecution process as the only woman judge on the ICTR. See http://www.unictr.org. Succeeding Pillay, Prince Zeid Ra'ad Al Hussein of Jordan was appointed as the High Commissioner for Human Rights.

91 This awareness was also reflected in older conflict zones that went through peace processes in the 1990s. See Part III, section I (El Salvador) and II (Guatemala).

The Rome Statute authorized the ICC to investigate and prosecute four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression, in situations where states are unwilling or unable to do so themselves. According to the Statute, none of these crimes can be subject to any statute of limitations. Although these crimes are committed against both women and men, certain crimes such as forced impregnation target only women. Sub-provisions of the Statute articles 7 and 8 specifically describe these crimes. For instance, Article 7 (1g) recognizes rape, sexual slavery, enforced prostitution, forced impregnation, enforced sterilization, or any other form of sexual violence of comparable gravity as crimes against humanity. Moreover, it clearly recognizes that the crime of enslavement includes trafficking in women. In addition to these, Article 7 (1h) emphasizes that the persecution against any identifiable group or collectivity on grounds of gender, among other grounds, in connection with any crime within the jurisdiction of ICC, is a crime against humanity.

Besides these, the Rome Statute requires the ICC to observe a number of principles, such as fair representation of the sexes in the recruitment of judges, prosecutors, and other staff; legal expertise on specific issues, including violence against women, amongst selection criteria of judges; diligence in gathering effective and detailed evidence particularly when investigating crimes that involve violence against women; and protection of women witnesses among others. The inclusion of these principles in the Statute has encouraged the appointment of women to positions across the court with a near equal representation of female and male judges. However, existing information shows that there is a tendency to isolate women into lower and mid-level posts.[92]

The inadequate and discriminatory treatment of gender-based crimes in international law has been largely rectified with the Rome Statute, at least in principle. In this respect, the codification of sexual assaults targeting women, such as sexual slavery, as crimes has strengthened women's access to rights and justice and facilitated the prosecution of grave crimes that have continued with impunity throughout history. The principles outlined in the critical area of concern of the BPfA on "armed conflict" provided the international criminal courts with a point of reference; the ICC has gone beyond these principles by providing a multilayered framework for the victims, thus strengthening their agency and recognized the important role of the women's movement in facilitating victims' access to justice (M. Walsh 2008).

Integrating a gender perspective into the Rome Statute and the ICC is no doubt a very important victory and it cannot be denied that the real force underlying

92 For example, see www.4GenderJustice.org.

this victory were women's groups that actively participated in the process.[93] However, it should not be forgotten that only "the most grave" crimes enter the jurisdiction of the ICC. Crimes against women require a holistic approach, and prosecution constitutes just one among many approaches that need to be employed (Chinkin 2004: 129).

9. Security Council Resolution 1325, "Women, Peace, and Security" (2000)

The UN Security Council Resolution (SCR) 1325 on women, peace, and security, adopted on October 31, 2000, is a landmark legal instrument that acknowledges the particular ways in which conflict affects women and the need to include them as active agents in all phases of conflict prevention and peace building. To this end the resolution urges UN member states to ensure increased representation of women at all decision-making levels in national, regional, and international institutions and calls on all actors concerned to adopt a gender perspective when negotiating and implementing peace agreements.[94]

Security Council resolutions are not treaties; however, they are legally binding upon states that are signatories of the UN Charter (Article 25). UN member states, therefore, pursuant to the Charter agree to implement these resolutions.[95] As such, SCR 1325 imposes obligations on all member states, all UN institutions, the Security Council, the Secretary-General, and all parties to armed conflict.

Paragraphs concerning the fundamental objectives of SCR 1325 can be roughly summarized as:

> Paragraphs 1 through 4: Concern the equal representation of women; they call upon member states to take the necessary measures for equal representation of women at all levels of decision making and in all mechanisms concerning conflict resolution and peace processes.
>
> Paragraphs 5 through 8: Concern mainstreaming a gender perspective; they emphasize the need to use a gender perspective in designing and implementing peace talks, peacekeeping operations, and the processes of constructing and sustaining peace; towards this end call upon the Secretary-General to provide training guidelines and materials and member states

93 For the processes of negotiations on the Rome Statute and the creation of the Tribunal, see Bedont and Martinez (1999).

94 Security Council resolutions on the protection of civilians in armed conflict situations (1999) and on children and armed conflict (2000) are also important for the question of women, peace, and security.

95 There are differences of opinion as to whether SCR 1325 is binding or not. See Miller et al. (2014).

to provide the required financial support. In this respect, the gender-sensitive training of UN civilian and military personnel of the peacekeeping operations is of particular importance.

Paragraphs 9 through 12: Concern the protection of women during armed conflict; they call upon all parties to armed conflict to respect international law to ensure the protection of women and girls, especially from sexual abuse; to prosecute and punish the perpetrators; and to meet the particular needs of displaced women and girls in refugee camps.

Paragraphs 13 through 15: Concern the process of disarmament; they draw attention to the need to pay attention to the problems and interests of the needs of female combatants in disarmament and reintegration processes and call on the Security Council to consult with and seek support of women's groups in peacekeeping operations.

Paragraphs 16 through 18: Are recommendations; these include recommendations on the UN reporting systems and integration of a gender perspective into all activities and research priorities concerning women, peace, and security.

SCR 1325 reflects the holistic spirit of the Beijing Platform for Action and reinforces the Platform's strategic objectives defined in the critical area of concern on "Women and Armed Conflict." This resolution also intersects with the principles of CEDAW; therefore using them together will certainly create an added value in enhancing the impact of the instruments concerned.

In the subsequent years, the Security Council continued to adopt new resolutions in line with SCR 1325 on women, peace, and security. These are: resolution 1820 adopted in 2008; resolutions 1888 and 1889 adopted in 2009; resolution 1960 adopted in 2010; and resolution 2122 adopted in 2013.

The fact that resolutions subsequent to SCR 1325 focus mainly on sex crimes during armed conflict potentially poses a risk of fragmenting the women, peace, and security agenda. Addressing women as victims of sex crimes solely in the context of their sexuality and reproductive capacity can normalize or render invisible the other problems and rights violations that women encounter. The discussions concerning Democratic Republic of the Congo included in Part III of this book are especially noteworthy in this regard.

Nonetheless, it cannot be denied that these resolutions have also made a positive input in reinforcing SCR 1325 and in revitalizing its momentum. Above all, the adoption of a series of resolutions on women, peace, and security by the UN's core body, i.e., the Security Council, which is synonymous with "high politics," has contributed to a more systematic connection between the security sector and the UN women's rights agenda. Security sector entities (military,

police, the North Atlantic Treaty Organization—NATO, the Organization for Security and Co-operation in Europe—OSCE, etc.) are now obligated to integrate a gender perspective in their endeavors and abide by the principle of equal representation in their staffing.[96]

- In 2006, during my official mission to Sweden as UN Rapporteur, the program the government had prepared for the visit included meetings with the Minister of Defense and the general in charge of the division responsible the deployment of soldiers from Sweden to international peacekeeping forces. This was a clear indication that Sweden had welcomed the priorities contained in the SCR 1325. During our meeting, the general referred to the involvement of some soldiers and civilians from around the world serving in UN peacekeeping missions in incidents of violence against women as scandalous. He explained that Sweden has a zero-tolerance policy with respect to violence against women, including in conflict zones and that particularly after the adoption of SCR 1325, they have instituted an intensive training program for their own soldiers.

Keeping sight of the feminist vision that foresees empowerment of women and disempowerment of patriarchy as essential elements of a gender-equality agenda can be an invaluable guiding principle in the implementation of the SCRs.[97] Demands toward the inclusion of women in peace processes become meaningful in this framework. The existent international women's rights regime provides legitimacy and opportunity for the demands to this end. States should be held responsible and accountable to fulfill their international obligations.

96 In order to ensure that the SCRs on women, peace, and security do not diverge from their core objective and are implemented in a manner to reinforce one another, developing a comprehensive strategy, including global indicators, is of utmost importance.

97 SCR 1325 is yet to be sufficiently implemented. Only 46 countries have a national action plan in place. (For detailed information and a list of the countries with national action plans, see www.peacewomen.org). The survey UN Women carried out concerning the peace processes between the years of 1992 and 2012 yields important clues as to the shortcomings in implementation. For instance, in a total of 31 peace agreements, only 4% of the signatories, 2.4% of chief negotiators, 3.7% of witnesses and observers, and 9% of the negotiating teams have been comprised of women.

UN Security Council Resolutions on Women, Peace, and Security		
Year	Number	Scope
2000	1325	Calls on states to take measures for the participation of women in peace processes and incorporate a gender perspective in the reconstruction of society during and after armed conflict.
2008	1820	Focuses on the use of sexual violence in armed conflicts as a war strategy.
2009	1888	Concerns the appointment of a Special Representative of the Secretary-General on sexual violence during armed conflict and calls on the SG to submit annual reports on the implementation of resolutions 1820 and 1888.
2009	1889	Underscores the reporting on sexual violence, development of indicators for monitoring SCR 1325, and collection of quantitative data.
2010	1960	10th anniversary of SCR 1325. Mandates to the SG to establish monitoring, analysis, and reporting mechanisms to strengthen the zero-tolerance policy on sexual abuse and violence by UN personnel employed in conflict zones.
2013	2106	As the fourth resolution on sexual violence, special emphasis is placed on the punishment of perpetrators and the provision of services to victims of violence. Draws attention to the role of NGOs, including women's organizations, for the protection of women against sexual violence.
2013	2122	Places women's economic empowerment and the equality between women and men at the center of international peace and security and provides a roadmap for the integration of women's leadership into the processes of conflict prevention and peace building.

II. States' Obligation in Combating Violence against Women

The 1993 Declaration on the Elimination of Violence against Women (DEVAW) introduces in Article 4(c) the obligation of states to "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." Accordingly, the concept of due diligence provides a benchmark by which to determine whether a state is undertaking a successful struggle to eliminate violence against women and if it has met its obligations to this end. However, there is a lack of clarity in terms of the content and scope of the concept of due diligence, which remains a term used principally in legal texts. What it actually means for a state to act with diligence needs to be further explored and defined in an operational manner.[98]

As already mentioned, the problem of violence against women came to the international agenda thanks to the efforts of the global women's movement. It is now recognized as a human rights violation with a universal character. At the same time, however, the tendency to detach violence against women from the unequal gender structures that underlie the phenomenon has largely shaped the agenda within the welfare/humanitarian paradigm with the aim to save the "poor," vulnerable women. As a result, the application of the due diligence standard by governments has been limited to responding to violence when it occurs, i.e., protecting the victims and punishing the perpetrators. There has been relatively less work done on the more general obligation of "prevention," including through transformative change to eradicate patriarchal norms and values that underlie violence and subordination of women. In addition, the exclusively state-centric nature of the due diligence obligation has failed to take into account the changing power dynamics and the challenges these pose for state authority, as well as the new questions they raise about non-state actor accountability.[99]

98 To this end, in 2006, in my capacity as the Special Rapporteur I submitted a report to the HRC (CHR at the time) titled "The Due Diligence Standard as a Tool for the Elimination of Violence against Women." I explored the subject in greater depth in an article titled "The Due Diligence Standard: What Does It Entail for Women's Rights?" (2008a). This section of the chapter is largely based on these two sources.

99 The recognition of women as rights-bearers has naturally brought with it the corresponding notion of the state as duty-bearer, with the obligation to provide these rights. It is a fact that since international law is state-centric, the notion of non-state actor obligation and accountability is not fully developed. For non-state actor obligations, see Clapham (2006).

The challenge in combating violence against women, as articulated in DEVAW, is the full implementation of existing human rights standards in order to tackle the root causes and consequences of violence against women at all levels, from the home to the transnational arena. The multiplicity of forms of violence against women, as well as the fact that this violence frequently occurs at the intersection of different types of discrimination, makes the adoption of multi-faceted strategies to effectively prevent and combat this violence a necessity.

The "prevention" obligation of the due diligence standard needs to be interpreted within such an understanding. In this respect, the violence against women agenda intrinsically challenges sexist values and practices of everyday life and requires a shift of focus from the victimization-oriented approach to an "empowerment" and human rights-based approach. While the former perceives women as weak, vulnerable, and in need of protection, the latter are based on the recognition of the systemic nature of the problem. In this respect, women are subjected to violence not because they are vulnerable beings, but because of the patriarchal gender order that privileges male violence through normative and institutional formations of societies.

Historically, women, individually and collectively, have contested patriarchy. Over time, with women's resistance and the impact of social transformations, patriarchal relations have experienced change in different forms and at different paces in various parts of the world. In more recent times, the acknowledgement of the feminization of violence as a human rights violation has empowered women in their struggles throughout the world.

This is the rationale that underlies the application of the due diligence standard to the duty to eliminate violence against women. In order to understand the potential of this standard, it is necessary to review its historical background and unpack what it actually means for a state to act with diligence.

The Standard of Due Diligence

1. Historical Background

The standard of due diligence has a long history in international law and is made reference to in the works of 17th century writers (Hessbruegge 2004, Bourke-Martignoni 2008).[100] More recent application of the standard was taken up in 1988 in the Inter-American human rights system with the *Velásquez Rodríguez v. Honduras*[101] case concerning the disappearance of Manfredo Velásquez, which resulted in what could be considered a landmark decision of the Inter-American Court of Human Rights.

The Court held that Honduras had failed to fulfill its duties under Article 1(1) of the American Convention on Human Rights and concluded that: "An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention."

In 2001, the Inter-American Commission on Human Rights concluded that Brazil had failed to exercise due diligence to prevent and respond to a domestic violence case despite the clear evidence against the accused and the gravity of the charges. The Commission found that the case could be viewed as "part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors" and that it involved "not only failure to fulfill the obligation with respect to prosecute and convict, but also the obligation to prevent these degrading practices."[102]

The European Court of Human Rights (ECtHR) used a variant of the due diligence standard in the *Osman v. United Kingdom* (1998) case and has since devel-

100 The standard was used in the context of several international arbitration claims in the 19th century, including the *Alabama Claims* (1871), as well as other arbitral awards concerning the responsibility of the state for protection failures in relation to injuries to aliens and their property from private violence (Kummerow Case, Germany/Venezuela Mixed Claims Commission 1903; Spanish Zone of Morocco Claims, 1923; Youmans Claims, *USA v. Mexico*, 1926). These awards established that under international law, the state is obliged to act with due diligence to prevent, investigate, punish, and provide remedies for acts of violence, regardless of whether these are committed by private or state actors.

101 Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, July 29, 1988, Ser. C: Decisions and Awards, No. 04.

102 Inter-American Commission on Human Rights, Report No. 54/01, Case 12.051, Maria da Penha Maia Fernandes (Brazil), April 16, 2001, para. 56.

oped its case law in relation to the obligations of states to provide protection against human rights violations by non-state actors.[103]

The Committee monitoring the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) made a decision under the Optional Protocol in the case of *A.T. v. Hungary* (2005), concerning domestic violence and found that the state party had failed to fulfill its obligations under articles 2, 5 and 16 of the Convention. Although the Committee's finding does not explicitly mention an absence of diligence by Hungary, the standard clearly informed the way in which the Committee determined that the state had failed to fulfill the obligations specified in the Convention to prevent the violence against A.T and to protect her against its consequences.[104]

The above examples have occurred within the context of judicial or quasi-judicial proceedings, which enable the application of the standard of due diligence to the particular factual circumstances and allow, by way of abstraction, the development of general guidelines on the requirements of due diligence. The "positive obligations" contained in human rights treaty law to protect, promote, and fulfill also include obligations to act with due diligence.[105] CEDAW, in its GR 19 (1992), called on states to act with due diligence to prevent and respond to violence against women. As noted above, DEVAW introduced the requirement for states to act with due diligence to prevent, investigate, and punish acts of violence against women in line with national legislation, whether these are perpetrated by state or private actors. This provision was reiterated in paragraph 125 (b) of the BPfA in 1995.

At the regional level, Article 7(b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994) (Convention of Belém do Para) requires that states "apply due diligence to prevent, investigate and impose penalties for violence against women." The same obligation is foreseen in the Istanbul Convention that went into force in 2014.

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103 *Z and Others v. the United Kingdom* 29392/95, [2001] European Commission on Human Rights 333, May 10, 2001; *E and Others v. the United Kingdom,* 33218/96, [2002] ECtHR 590, November 26, 2002.

104 Communication No. 2/2003, *A.T. v. Hungary*, Views adopted on January 26, 2005. ECtHR's 2009 decision on *Opus v. Turkey* also constitutes an important reference on this case of domestic violence. In this decision, the Court concluded that Turkey violated provisions of Article 2 in respect to right to life; Article 3 in respect to prohibition of torture, and Article 4 prohibition of discrimination of the European Convention on Human Rights.

105 Under UN Human Rights Committee General Comment No. 31, CCPR/C/74/CRP.4/Rev.6, para. 8; Committee on the Rights of the Child General Comment No. 5, CRC/GC/2003/5, November 27, 2003, para.1; Committee on Economic, Social and Cultural Rights General Comment No. 14, E/C.12/2000/4 (2000), para. 33.

As elaborated above, a further development was the creation of the mandate of the Special Rapporteur on Violence against Women, its causes and consequences, by the UN Commission on Human Rights in 1994. Resolution 1994/45, which established the mandate, emphasized in paragraph 2 the duty of governments to exercise due diligence in their efforts to combat violence against women.

Furthermore, human rights bodies such as CEDAW, CERD, the Human Rights Committee, the different special procedures of the HRC, and regional human rights institutions have also elaborated on the requirements of the due diligence standard in relation to specific country situations as well as on a more general level. In recent years, the standard of due diligence has been increasingly applied to a number of different human rights issues, ranging from trafficking in persons to the obligations of transnational corporations and other businesses.[106]

On the basis of the practices and *opinio juris* outlined above, it can be concluded that there is a rule of customary international law that obliges states to prevent and respond to acts of violence against women with the maximum due diligence.

2. Primary Principles

Both customary and conventional international law establish that states have due diligence obligations for preventing, responding to, protecting from, and providing remedies for acts of violence against women, irrespective of who the perpetrator is. What is less clear is the scope of generalized obligations of due diligence, that is, those that go beyond specific individuals or groups of women at known risk of violence, and the manner in which compliance with these obligations may be evaluated and monitored.

In the *Velásquez Rodríguez* case, the Inter-American Commission on Human Rights noted that the prevention duty of states "includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages."

In her 1999 report on domestic violence, the first Special Rapporteur on Violence against Women, Radhika Coomaraswamy, developed the following list of considerations for determining state compliance with the obligations of

106 Economic and Social Council, Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1); Sub-Commission on the Promotion and Protection of Human Rights, Commentary on the "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights" (E/CN.4/Sub.2/2003/38/Rev.2).

due diligence:[107] ratification of international human rights instruments; constitutional guarantees of equality for women; the existence of national legislation and/or administrative sanctions providing adequate redress for women victims of violence; policies or plans of action that deal with the issue of violence against women; the gender-sensitivity of the criminal justice system and police; accessibility and availability of support services; the existence of measures to raise awareness and modify discriminatory policies in the field of education and the media; and the collection of data and statistics concerning violence against women.[108]

In the domestic violence case from Brazil discussed above, the Inter-American Commission on Human Rights recommended, *inter alia*, that Brazil: train and raise awareness of judicial and law enforcement personal, so that they do not condone domestic violence; simplify criminal justice proceedings to reduce delays without compromising due process guarantees; establish alternatives to judicial mechanisms that resolve domestic conflict in a prompt and effective manner and create awareness regarding its serious nature and associated criminal consequences; increase police and prosecutorial capacities and resources to ensure that complaints are investigated and processed effectively; and include within teaching curricula the importance of respecting women and their rights as well as the appropriate handling of domestic conflict.

The above sources reveal that there are certain basic principles that underlie the concept of due diligence. The state cannot delegate its obligation to exercise due diligence, even in situations where certain functions are being performed by another state or by a non-state actor. It is the territorial state as well as any other states exercising jurisdiction or effective control in the territory that remain, in the end, ultimately responsible for ensuring that obligations of due diligence are met. Related to this point is the notion that due diligence may imply extraterritorial obligations for states that are exercising jurisdiction and effective control beyond their national borders.

Another fundamental principle connected to the application of the due diligence standard is that of non-discrimination, which implies that states are required to act with the same level of commitment in relation to the prevention, investi-

107 E/CN.4/1999/68, para. 25.

108 Building on Coomaraswamy's work, I drafted my 2008 thematic report on "Indicators on violence against women and state response" (A/HRC/7/6). I proposed two types of indicators that can be used to address state obligations: "institutional indicators" pertaining to legal and political frameworks and "process indicators" that consist of women's access to justice and reporting, victim protection, and training. These indicators are only proposals; the UN Statistical Commission has been assigned to continue its work on indicators. However, as of yet, there are no agreed-upon international indicators on the issue of violence against women and obligation of preventing violence.

gation, punishment, and provision of remedies for violence against women as they do with regards to the other forms of violence.

Due diligence obligation must be implemented in good faith with a view to preventing and responding to violence against women.[109] Coomaraswamy has emphasized that due diligence is more than "the mere enactment of formal legal provisions" and that the state must act in good faith to "effectively prevent" violence against women.[110] While this necessarily entails states taking positive steps and measures to ensure that women's human rights are protected, respected, promoted, and fulfilled, it should be emphasized once again that the question, beyond one of "good faith," is one of obligation.

A further general principle is the duty to ensure that interventions designed to prevent and respond to violence against women are based on accurate empirical data. To date, very little effort has been put into monitoring and assessing the impact of initiatives taken to end violence against women. There are no reliable and comparable statistics to measure and evaluate violence against women and the interventions targeting its elimination. In this respect, there is need for basic consensus indicators that can be used both by intergovernmental bodies and at the national level.

109 The good faith principle is explicit in international instruments, including the Charter of the United Nations and the Vienna Convention on the Law of Treaties.

110 E/CN.4/2000/68, para. 51-53.

Indicators on State Obligation to Eliminate Violence against Women

Developing indicators on state response to violence against women (VAW) is somewhat less complex than measuring violence, because there are clear responsibilities set out in international law: to prevent, protect, prosecute, and provide compensation.

The proposed indicators here will allow individual countries to track their own progress over time. They may also give international monitoring mechanisms, such as the CEDAW Committee, a framework of benchmarks to take into account when considering state responses.

The following minimum standards are contained in various human rights documents:

- Ratification of CEDAW and other human rights instruments.
- Constitutional guarantees of women's equality and repeal of discriminatory laws.
- Plan of action/executive policy on VAW with a strong evidence base and political will for its implementation, demonstrated by budgetary allocation, time lines, and clear paths of responsibility.
- An effective legal framework, statute and procedural law that provides access to justice redress, protection, and compensation.
- Criminalization of all forms of VAW and the prosecution of the perpetrators.
- Increased awareness and sensitivity of professionals and officials.
- Resource allocation to ensure provision of support and advocacy services by NGOs, including shelters, help-lines, advocacy, counseling, and other services.
- Awareness raising and prevention programs.
- Addressing structural inequalities in the promotion of women's advancement.
- Collection, collation, and publication of data, including evaluation of policies and basic research programs.

Source: My report to the HRC,. "Indicators on violence against women and state response." 2008, A/HRC/7/6, para. 69-71.

Trends in Current Applications[111]

1. Prevention

As a general rule, states have sought to discharge their due diligence obligations of prevention of violence against women through the adoption of specific legislation, implementation of awareness-raising campaigns, and the provision of training for specified professional groups. The forms of violence covered by these interventions include domestic violence, sexual assault, trafficking in women, "honor crimes," and sexual harassment.

Some states have adopted or reported as being in the process of drafting specific legislative provisions on domestic violence. The majority of this legislation makes provision not only for criminal sanctions, but also for civil remedies such as restraining or expulsion orders. Noteworthy is the case of Switzerland, which has moved away from an emphasis on mediation in cases of domestic violence towards a preventive paradigm that emphasizes investigation and the laying of criminal charges. In some jurisdictions, detailed legislation has also been adopted on trafficking in women, sexual harassment, and honor crimes.

There is little information or monitoring mechanisms on law enforcement or the impact of legislation in curbing violence against women. In some countries, legislation ostensibly adopted for the purposes of preventing and punishing violence against women has been drafted or applied in ways that further violate the rights of women. For example, the legislation in Ukraine on domestic violence contains provisions that allow a woman to be arrested if she "provokes" violence through "victim behavior" (UNIFEM 2003: 43).

Many states have adopted national action plans on violence against women in an effort to coordinate activities between and within government agencies and to take a multi-sectorial approach to prevent violence. Some others have formed specialized committees on violence against women and appointed commissioners or units to act as focal points within various institutions. There are some examples of mixed commissions or committees that also contain representatives

111 The research on the practice of the due diligence standard by states is based on a number of sources, including: the response of states to a set of questions I sent them in 2005; information provided by the Inter-American Commission on Human Rights and the Special Rapporteur on Violence against Women of the African Union; my observations in the countries I visited as Rapporteur; and relevant literature and reports. Governments that responded to my questions include: Armenia, Austria, Azerbaijan, Belarus, Bolivia, Brunei Darussalam, Canada, Chile, Colombia, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, El Salvador, Estonia, Germany, Greece, Haiti, India, Japan, Jordan, Republic of Korea, Lebanon, Malta, Mauritius, Mexico, Nepal, Norway, Panama, Philippines, Poland, Portugal, Russian Federation, Singapore, Slovenia, Spain, Sweden, Switzerland, Syrian Arab Republic, Turkey, Ukraine, Venezuela, Yemen.

from civil society organizations, but these tend to be the exception rather than the rule. The predominant practice is to call upon civil society and independent expert opinion on occasion for the work of the committee comprised of state or government officials. For instance, the Parliamentary Commission established in Turkey in 2004 to investigate honor killings has sought the contribution of numerous civil actors, interviewed perpetrators and those accused of honor killings, and members of the local community, and this practice was also upheld in subsequent commissions established on issues pertaining to women's rights.

Most states have conducted broad-based public awareness campaigns on violence against women, using posters, magazine advertisements, websites, and television and radio commercials and infomercials. Many countries have established national days of action on violence against women and established special units and funds for financial and logistic support to the international "16 Days of Activism" campaign between November 25 and December 10. Some governments make use of this institutionalized campaign in their efforts to combat violence and run awareness-raising campaigns and call upon high-profile personalities to condemn violence against women and emphasize the principle of "zero tolerance."

In a number of states, efforts have been made to involve men and boys in prevention activities. For example, in Austria, Denmark, and the Republic of South Korea, counseling and anger-management programs are made available to men and boys. The correctional services in the Swedish municipality of Malmö have, since 1995, run the "Fredman" (Peaceful Man) program, which is aimed at influencing the attitudes and behavior of men displaying violence in intimate relationships.

As is also the case in Turkey, training and awareness-raising programs and materials directed at different professional groups have been developed in many countries, including those for the training of police, prosecutors, members of the judiciary, and healthcare professionals, including doctors and nurses. Additionally, some states, such as El Salvador, have created educational curricula on gender equality and non-violent communication strategies for use in schools.

The National Commission on the Role of Filipino Women has organized "gender justice awards" in partnership with several government bodies, a number of intergovernmental organizations, local NGOs, and businesses. The awards were given out to judges who rendered gender-sensitive decisions in cases of violence against women.

The programs briefly discussed above no doubt bear great significance in terms of the sensitivity that states display in preventing violence and creating public awareness on the issue. However, a common trait that runs through such approaches is the treatment of violence against women as if it is an independent

and isolated problem on its own. There are few examples of cases in which the links are drawn between violence, gender inequality, and other systems of oppression, and there is little evidence of active state engagement in overall societal transformation to demystify prevailing gender biases or to provide support to civil society initiatives in this regard.

2. Protection

The many measures undertaken by states in terms of their due diligence obligation to protect consist mainly of providing services to women, such as telephone hotlines, healthcare services, counseling centers, legal assistance, shelters, restraining orders, and financial aid to victims of violence. According to government reports, shelters are generally run by NGOs with state or external donor funding. In certain states, protective services have been accorded a legislative basis either within formally adopted action plans or strategies or through special legislation on violence against women. This does not appear to be the norm, however, and most countries include protective mechanisms in their programs and services on violence against women without stipulating the legal bases for these services. Both Norway and Denmark indicated that they have begun issuing personal security alarms to women who have been identified as being at risk of assault.

- Despite the adoption of protective measures by many states, there are disturbing inconsistencies in implementation and failure to exercise due diligence. For example, in September 2005, a district court judge in the United States agreed to lift a protective order that had been placed against a woman's estranged husband, following an application by the husband for the order to be rescinded so that the couple could get counseling. At the hearing in which the order was lifted, the woman concerned indicated that her husband had been intimidating and threatening her and that she was not interested in counseling but wanted to file for divorce. Despite her request that the protective order be maintained, the judge chastised her and stated that if she wanted a divorce then she should go to the divorce court and not to him; he then rescinded the order. A few weeks later, the husband went to his wife's place of work, doused her with gasoline, and set her on fire, causing grievous injuries to much of her upper body and face. (Source: "Deadly Justice," *Washington Post*, October 15, 2005)

The major gaps in the enforcement of protective obligations include a lack of adequate enforcement by police and the judiciary of civil remedies and criminal sanctions for violence against women and an absence or inadequate provision of services such as shelters, which mean that women often have no choice but to

continue living with their abusers.[112] In addition, the focus of protection has too frequently been on providing short-term emergency assistance rather than on providing women victims of violence with the means to avoid re-victimization.

Regrettably, in many countries protection measures and services are far from being adequate or assuring. Turkey presents a striking example in this regard. Despite the legal reforms and the fact that prevention of violence finally became a state policy in 2006, not a day goes by without the news of a woman being killed just because she is a woman. And these murders are not limited to cases attributed to the Eastern and Southern regions of Turkey under the name of "customary killings." In many places across the country, women from different social segments are being killed, battered with numerous justifications such as customs, honor, or jealousy, or are forced to live lives they do not choose, under oppression.

3. Punishment

The due diligence obligation to investigate and appropriately punish acts of violence against women has been adopted by governments to mean the reinforcement of the capacities and powers of police, prosecutors, and magistrates and the adoption or modification of legislation. In a number of countries steps have been taken to make amendments to their criminal codes in order to modify or repeal discriminatory provisions and ensure that violent acts are met with appropriate punishments. As mentioned previously, some states have adopted specific legislation on domestic violence and trafficking, which establishes new criminal offences and often provides for the creation of specialized investigatory or prosecutorial units.

Specific policing practices and procedures in relation to the investigation and prosecution of cases of violence against women have been developed in many jurisdictions. In Poland, the police have adopted an intervention protocol known as the "blue card" procedure, which obliges the police to provide legal information to victims of domestic violence and to actively encourage them to enforce their right to be free of violence. The South African Domestic Violence Act provides that police must gather data and report to victims on progress of their cases as well as explaining the legal process to the victim.

Another practice employed in the investigation and punishment of trafficking offences are the "points of inquiry" being used by law enforcement authorities in Hamburg, Germany. This involves an investigative protocol that goes beyond the usual statement made by the victim and focuses on the collection of detailed subjective and objective evidence that may be used to prove the crime of trafficking.

112 For an example of such a case, see Part III, section IV (Russian Federation).

However, examples of states failing in their duty to appropriately investigate and punish acts of violence against women are numerous. Many women I spoke to during my missions reported that the authorities often discourage and intimidate them from filing a complaint. In countries such as Uzbekistan, Samoa, and Vanuatu, when a complaint is filed by women, law enforcement authorities and social workers often refer women to community-based structures that promote mediation or conflict resolution rather than execute sanctions as foreseen under criminal or civil law.

Reluctance and the overall failure of law enforcement authorities to seriously investigate crimes of violence against women are common phenomena. Even when cases of violence against women do reach the judicial system, there are still alarming numbers of instances of judges handing down reduced or inappropriate sentences for these crimes. For example, the criminal codes in many countries provide for a suspended sentence in cases of rape if the victim agrees to marry the perpetrator. Accordingly, if the marriage lasts and the couple has children, the sentence is dropped.[113] Many jurisdictions fail to provide women with equal protection, particularly in cases involving sexual assault and domestic violence. As a result women either remain silent, or if they do report the crime, they risk becoming re-victimized.

4. Reparation

Very little information is available regarding state obligations to provide adequate reparations for acts of violence against women. In reply to my appeal for information, a few states mentioned that compensation was available to women through funds for victims of crime or through civil proceedings, but otherwise this aspect of due diligence remains grossly underdeveloped.[114]

In countries that take their obligation of eradicating violence against women seriously, attention needs to be drawn to the "paradox of violence against women." As states do more in this field—change laws, increase protection, provide resources for support services, and the like—an increase in the levels of violence increase is observed. One reason for this is that the initial baseline for reporting was very low. Interestingly, the relatively high rates of violence in these countries appear to intrigue officials in countries with a poor record in gender equality, and they eagerly use such data to justify the high rates of violence in their own countries. However, in the struggle against violence,

113 The old penal code in Turkey entailed a provision that sanctioned such a practice. Even though this provision has been repealed in the new law, it is reported that it continues to be implemented by the courts.

114 R. Manjoo who assumed the duty of rapporteur on violence against women in 2009 submitted her first thematic report on the subject of reparation (A/HRC/14/22).

increases in research outcomes and reporting to institutions should not only be expected, but also understood as an indicator of success at the initial stages of the process. Effective interventions challenge tolerance for violence against women and increase women's sense that they have a right to protection and redress. Therefore, when comparing countries based on the violence against women data, the quality of the database should be taken into consideration.

The Potential of the Due Diligence Standard

The current understanding and application of the due diligence standard as well as the gaps and challenges identified above highlight the need to re-imagine the standard so that it responds more effectively to the specificities of violence against women. The major potential for expanding the due diligence framework lies in: (a) full implementation of the obligation to "prevent," with the view to support women's empowerment and ensure equality between women and men, (b) establishment of permanent mechanisms for the obligation of "reparation" to be functional, (c) adoption of new methods concerning "protection" of the victim and "punishment" of the perpetrator that will be effective in particular circumstances, and (d) ensuring the active participation of committed and experienced NGOs and other relevant non-state actors in responding to violence against women.

While international human rights law provides the guiding principles for state action, innovative strategies need to be employed using alternative discourses such as "empowerment" and "cultural negotiation" at different levels of intervention in order to challenge the foundations upon which gender hierarchies are constructed and violence and other forms of discrimination against women are justified and sustained. Cost efficiency models have also been suggested to appeal to governments, demonstrating the cost of violence to the economy at large. Moreover, while the state retains the primary responsibility for guaranteeing that human rights are respected, protected, promoted, and fulfilled, non-state actors must be held responsible for actions that may give rise to human rights violations.

Therefore, in exercising due diligence to effectively implement human rights law—in order to prevent, protect, prosecute, and provide compensation with regard to violence against women—states and other relevant actors must use multiple approaches in intervening at the individual, community, state, and transnational levels. The discussion below, by way of exploring the potential of the due diligence standard, also highlights certain recommendations towards

this end, which may need to be modified by different actors according to their sphere of activity.[115]

1. The Level of the Individual

The basic principle inspiring the Beijing Platform for Action (BPfA) is that the realization of human rights and fundamental freedoms for all women requires their empowerment (para. 9). This constitutes the prerequisite for achieving political, social, economic, cultural, and environmental security among all peoples (Article 41). The BPfA, which is a project of women's empowerment, calls on states and other actors to take strategic action in 12 critical areas of concern.

In their efforts to combat violence against women states must promote and support women's empowerment as engrained in the Twin Covenants and highlighted in the BPfA as well as CEDAW. This approach requires a political will that embraces the full range of rights—economic, social, cultural, civil, and political—and an equitable allocation of limited resources, ensuring that women's access to critical resources are not sacrificed to other priorities.

Empowerment discourse—through interventions ranging from education, skills training, legal literacy, and access to sources of production, among others—aims to enhance women's self-awareness, self-esteem, self-confidence, and self-reliance. This enables women to understand that subordination and violence are not fate, to resist the internalized oppression, to develop their capabilities as autonomous beings, and to constantly negotiate the terms of their existence in the public and private spheres. Development interventions, whether supported by the state, or multilateral or bilateral donors, must avoid modalities and conditionality that would disempower and curtail women.

Parallel to this, states should also: ensure that women and girls who are victims or at risk of violence have access to justice as well as to healthcare and support services that respond to their immediate needs; provide protection against further harm; and continue to address the ongoing consequences of violence for individual women. To this end, states are required to develop appropriate legislative frameworks, policing systems, and judicial procedures to provide adequate protection for all women, including a safe and conducive environment for women to report acts of violence against them and measures such as restraining or expulsion orders and victim protection procedures.

115 Officials and other relevant actors may consider these recommendations as a matrix: on one axis of the matrix are the levels of intervention and on the other are the acts of prevention, protection, punishment, and reparation which constitute the standard of due diligence. I believe that this matrix will offer a useful tool for decision makers or NGOs in drafting their action plans.

States must ensure that quality physical and psychological health services and legal assistance are provided to victims of violence and that immediate material assistance (shelter, clothing, child maintenance, employment, education) is afforded to women who are survivors of violence. Bearing in mind that a woman who ends up in a shelter may be stigmatized, the state should consider alternative protective measures, while at the same time ensuring a safe future for women who have no option but take refuge in a shelter. Where possible, shelters should be operated by NGOs that adopt a women's rights approach, but their creation, maintenance, and safety (for the victims as well as personnel) are part of the state's obligation to provide protection.

The obligation to provide adequate reparations involves ensuring women's rights to access both criminal and civil remedies. Compensation for acts of violence against women may involve awarding financial damages for any physical and psychological injuries suffered, for loss of employment or educational opportunities, for loss of social benefits, or for harm to reputation or dignity, as well as any legal, medical, or social costs incurred as a consequence of the violence. States are also required to ensure that women victims of violence have access to appropriate rehabilitation and support services. The notion of reparation may also include an element of restorative justice.

2. The Level of the Family/Community

At the community and family level, the human rights discourse needs to be defined or complemented by an approach based on "cultural negotiation." Such an approach completes the empowerment approach discussed above, in that it allows the root causes of violence to be confronted and creates public awareness of the oppressive nature of certain practices pursued in the name of culture. This requires: (a) drawing on positive elements within culture to demystify the oppressive elements of culture-based discourses; (b) demonstrating that culture is not an immutable and homogenous entity; and (c) identifying and contesting the legitimacy of those who monopolize the right to speak on behalf of culture and religion. The next section of this Part offers a critical review of culture-based discourses.

The notion of "cultural negotiation" is inspired by Paulo Freire's (2000) concept of "critical consciousness" and it foresees challenging hegemonic interpretations and discourses of culture. In this context, the notion of cultural negotiation by questioning the power dynamics underlying hegemonic interpretations of culture aims to destabilize their legitimacy and pave the way for alternative understandings. The process of cultural negotiation through campaigns, the media, and dissemination of information can become an important counter-discourse for the transformation of discriminatory values, institutions, and

power structures. In fulfilling its due diligence obligation, the state can prevent discriminatory values from being instituted into state policy, by aligning itself with social movements that contest hegemonic discourses of culture. However, regrettably, many states, as the primary supporter of discriminatory values, do not refrain from violating their international obligations.

The 1993 Declaration on the Elimination of Violence against Women (DEVAW) calls on states to take measures to modify the social and cultural patterns of conduct of men and women to eliminate all practices based on the idea of inferiority or superiority of either of the sexes (Article 4 (j)). In this regard, it is particularly important to support awareness-raising campaigns and curricula that challenge sex stereotypes and uncouple masculinity from oppressive uses of power. The use of gender-sensitive, egalitarian language in officials' public statements, media reporting, and other similar discourses and written material can demystify the taken-for-granted "truths" about gender constructs, break taboos, and break the silence around violence. Research and data on violence against women and their dissemination in ways that reach all segments of society can empower the state or the civil society in their cultural negotiation efforts.

Failure of a state to exercise due diligence to confront all claims for custom, tradition, or religion in justifications for violations of the human rights of women is itself a human rights violation. In Article 4, DEVAW asserts that even in the absence of harm, "states should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination." It should be borne in mind that it is not culture *per se* that dictates a woman be beaten, mutilated, or killed, rather it is those who monopolize the right to speak on behalf of culture. And that can at best be called a patriarchal culture.

3. The Level of the State

State legitimacy today is increasingly established by the state's human rights record, which inherently implies that international human rights standards and the rule of law should inform all state policy and practice. In this context, the ratification without reservation of all relevant human rights instruments, including CEDAW and its Optional Protocol, is an essential first step. The incorporation of international law into the domestic legal, judicial, and administrative order at every level and the adoption of measures for its implementation are important prerequisites for the state's capacity to meet its obligations of due diligence. The different layers of the state apparatuses need to be addressed separately to ensure that human rights in general and women's rights in particular are protected and fulfilled by all agents of the state at all levels of governance for the adoption of measures to institutionalize human rights standards.

Each of the different powers of the state has a role to play in changing patriarchal values. For example, the judiciary and prosecutors working on cases of domestic violence have the capacity and the obligation to change the prevailing balance of power by taking a strong stance to disempower patriarchal notions. Interventions at this level may have both *consequential* effects, in that condemnations of patriarchy can lead to changes in socio-cultural norms, as well as *intrinsic* effects, in that prosecutors or judges can be considered as the "mouthpieces" of society. Strong statements condemning violence against women made on behalf of society through the judiciary or prosecutorial services will make that society less patriarchal.

While cases such as the one reported in the *Washington Post*, cited above, clearly have the effect of empowering patriarchy, there are also practices that can disempower patriarchy. For example, two courts in Turkey that gave the highest sentence in "honor crimes" cases in 2004, even before the new penal code went into effect, demonstrate that judicial authorities can challenge taken-for-granted practices.[116]

Public statements made by government leaders have a similar impact. In 2004, the Government of Australia started a campaign called "Violence against women: Australia says No" and all members of the government, including the Prime Minister, stated publicly that violence against women is unacceptable and "tarnishes any community that tolerates it."[117] Conversely, in response to a woman's outcry about a gang-rape she was subjected to, a government leader's comment that rape is a "money-making concern" and an easy way to get asylum is illustrative of a failure by the highest echelon of state power to meet its obligations in relation to challenging patriarchy.

The state is required to send an unequivocal message that violence against women is a serious criminal act that will be investigated, prosecuted, and punished. The police and judiciary should be given appropriate training in dealing with cases of violence against women in a gender-sensitive manner. Systems for counseling and rehabilitating perpetrators of violence against women, preferably at their own expense, should be put into place. The re-victimization of women who have reported the violence must be avoided, and procedural rules regarding the giving of evidence as well as protection for victims and witnesses must ensure that women are not subjected to further harm as a result of reporting violence.

Violence against women provides states and other actors with a critical entry point for an effective implementation of human rights law. Gender analysis,

116 See Part III, section VI (Turkey).

117 See www.australiasaysno.gov.au.

gender-sensitive research, sex-disaggregated data, and gender-budgeting are useful tools in ensuring that efforts do not go astray.

4. The Transnational Level

At the transnational level there is need to rethink the boundaries of "geography" or "national borders" in terms of responsibilities and duties for the promotion, protection, and fulfillment of human rights standards and to develop transnational solutions to transnational problems such as the regulation of migration and the duties and responsibilities of transnational corporations and international organizations. These entities that hold power need to be held accountable for failures or resistances to adhere to international standards, and, in some cases, new regimes for monitoring these responsibilities should be established.

In relation to migration, both forced and voluntary, states and transnational organizations will need to cooperate in order to develop sustainable solutions firmly grounded in international human rights law. The full implementation of human rights guarantees in the area of human trafficking along the lines suggested in the UN Office of the High Commissioner for Human Rights (OHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking is an essential process for ensuring that women's human rights remain at the center of anti-trafficking policies and programs. Other strategies will involve rethinking the existing restrictions on legal migration opportunities for women workers as well as ensuring that all workers receive adequate legal protection under national and international labor legislation, regardless of their legal status. The current gender biases in national migration laws, whereby the immigration status of a woman is contingent on her being a "dependent" spouse, will also need to be addressed.

Global restructuring has increased the power of transnational corporations. The fact that this power comes with certain responsibilities, particularly in observing human rights standards, is still not central to discussions on due diligence obligations. While the gender aspect is not emphasized, there are a number of limited initiatives in addressing corporate responsibility. These include the Global Compact launched by the UN Secretary-General in 2000; Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises; and the draft norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights approved by the Sub-Commission on the Promotion and Protection of Human Rights at its 55th session, in 2003. In addition to these, some large corporations are adopting codes of conduct to respect human rights standards. While global standards and monitoring mechanisms need to be improved in order to hold corporations accountable for acts of violations of human rights,

states can fill this gap to some extent by applying the rule of law diligently to corporations operating within their territory, particularly in the poorly monitored sectors employing predominantly women.

International financial organizations also have obligations of due diligence in relation to preventing and responding to violence and other forms of discrimination against women. As will be discussed in detail below, the adverse impact of macro-economic policies promoted by such organizations is well documented. In recent years the World Bank responded to such concerns by identifying violence against women as an "inequality trap" to consider in its development framework. In this regard, while the World Bank undertakes country gender assessments, it does so at the request of the host government. When a gender assessment is undertaken, it is essential that the results of the assessment be integrated into all phases of the program design. However, in countries where women's rights are not a priority, there is little likelihood that such a request will be made by the government.

Similarly, the United Nations system is also obligated to respect and uphold the principles of the organization. While international organizations clearly have direct obligations not to commit or contribute to acts of violence against women through their programming or funding decisions, they also have additional duties to cooperate and collaborate closely with local communities and relevant civil society groups to establish coherent inter-agency strategies to work towards the elimination of violence against women. The responsibilities of these organizations do not preclude the individual responsibilities of the states that are members of such organizations.[118]

Last but not least, where states and/or intergovernmental bodies are deploying military, peacekeeping, or civilian policing operations abroad, they must also act with due diligence to ensure that these personnel do not commit acts of violence against women.[119] For this purpose, the sending authority must adopt the necessary legislation and procedures to prevent and respond to such acts, since receiving states may lack the capacity to do so.

Main Messages of the Section

States 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" (DEVAW, Article 4(c)).

118 Montreal Principles on Women's Economic, Social and Cultural Rights, 2002, principle 20.

119 See Part III, section X (Democratic Republic of the Congo).

The historical background of the due diligence standard within the context of women's rights entails judicial or quasi-judicial proceedings that enable the application of the standard to the particular factual circumstances and allow, by way of abstraction, to develop general guidelines on the requirements of due diligence.

Combating violence against women involves challenging sexist values and practices that are entrenched in everyday life and necessitates a shift from the victim-oriented approach to one based on "empowerment" and human rights.

The current applications of the due diligence standard contain only a few examples where the linkages between violence and other systems of oppression are made, and there is little evidence of active state engagement in overall societal transformation to demystify prevailing gender biases or to provide support to civil society initiatives in this regard.

The major potential of the due diligence standard lies in the full implementation of generalized obligations of prevention and compensation—while effectively realizing the existing practices to protect and punish—and in the inclusion of relevant non-state actors as duty bearers in relation to combating violence against women. Therefore, there is need to re-imagine and redefine this standard.

While international human rights law provides guiding principles for states to fulfill their responsibilities to this end, multiple approaches entailing alternative discourses and innovative strategies need to be employed at different levels of intervention in order to challenge the values and institutions upon which gender hierarchies are constructed and violence and other forms of discrimination against women are justified and sustained.

The realization of women's human rights is a universally shared goal and obligation that surpasses politics and borders. The progress achieved thus far towards this goal, although uneven, has verified that systems of domination and oppression can be transformed, as long as there is the political will and determination.

III. Persisting Threats and Emerging Obstacles

This section addresses culture-based approaches, the political economy of rights, and conceptual/institutional inconsistencies concerning the UN gender equality regime, with the aim of highlighting the persisting or emerging obstacles to the universal application of women's human rights norms.

Culture-based Discourses and Paradigms

The need to focus on culture-based approaches is grounded in the fact that these have proven to be discriminatory and an impediment to women's rights. It is for this reason that the gendered discrimination underlying these discourses must be unpacked, confronted, and demystified. With this in view, this section starts with a discussion of the culture and rights dichotomy, followed by an overview of existing global and regional approaches built on cultural claims, then it continues to critically examine how cultural discourses are created, reproduced, and instrumentalized against women's rights. In doing so, the discussion draws attention to certain strategies for countering and transforming culture-based discriminatory discourses.[120]

1. The Culture and Rights Dichotomy

Culture can be defined as the set of shared spiritual, material, intellectual, and emotional features of human experience that is created and constructed within social praxis. As such, it is intimately connected with the diverse ways in which social groups produce their daily existence economically, socially, and politically. It therefore embraces both the competing and conflicting meanings that allow for the continuation of everyday practices, as well as the competing meanings that galvanize change over time.

Across all societies, culture constitutes a primary source of diverse and sometimes contradictory normative systems that provides the rationale for varied patterns of gender roles and identities that represent relations of power. At the global level, standards codified as conventions, declarations, and policy frameworks constitute values commonly shared by the international community, or more precisely what constitutes the international human rights culture. Even though these standards, which comprise the principle of equality between women and men as a key value, are universally applicable and legally binding,

120 This section is based on my report "Intersections between Culture and Violence against Women," submitted to the UN Human Rights Council in 2007 (A/HRC/4/34).

they remain inadequately implemented. Gender-based discrimination, which exists in different forms across societies, continues to reproduce women's subordinate position.

While this situation can be associated with various factors within the dynamics of individual societies, the fundamental obstacle before human rights in general and women's rights in particular is no doubt the deepening inequalities between nations, regions, classes, and the sexes. The world is more affluent and interconnected today than ever before. After more than two centuries of industrial development, there have been many improvements in basic socio-economic indicators. Ironically, the gap between nations, regions, classes, and the sexes has widened with economic growth. For instance, the distance between the incomes of the richest and poorest countries was about 3 to 1 in 1820, 35 to 1 in 1950, 44 to 1 in 1973, and 72 to 1 in 1992 (UNDP 1999), and the 2% wealthy adult population at the top of the pyramid own more than half of the world's wealth.[121]

The ending of the Cold War created a short-lived optimism that the common goals of the international community—development, equality, and peace—could be realized. However, contrary to expectations, a shift in threats of armed conflict from the global to the local, national, and regional levels—resembling what some have termed the "tribalizing" of the world (Barber 1995)—soon set the agenda with culture- and religion-based claims of identity at its center. Interestingly, these emerged parallel to the growing consensus around universal human rights.

In this context, the universality of human rights came increasingly under attack; some arguing that it is a new tool of imperialism and others claiming that human rights is a Western invention and therefore inappropriate in other cultural settings. The latter argument finds wide support, particularly when it comes to women's human rights. In many parts of the world women's rights have become compromised, if not totally sacrificed, in the name of culture and religion. Violence against women committed in the name of "culture," "custom," "tradition," or "religion," sometimes with the blessing of the local laws, continues to be widely prevalent. Part III provides some country-specific examples in this respect.

121 The number of people who die of hunger each day is often higher than the number of people who die in wars over the course of a year. Close to three billion people struggle to live only on two dollars a day and over one billion people on only one dollar; 70% of those in abject poverty are women. The international community failed in its struggle of over half a century to eliminate hunger and poverty. In 2000 it issued the Millennium Development Goals (MDGs) to eradicate poverty by 2015. However, as the target date closes, the MDG's appear to be far from being realized (www.un.org).

Moreover, the very notion of gender inequality is contested when established interpretations of culture or projections of "their" culture are used to justify and excuse acts of discrimination and violence against women, thus undermining the compliance of states with their international human rights obligations.

Parallel to these trends, there has also been a tendency on the part of some to essentialize "traditional" cultures of the global south as inherently harmful to women. In this context, human rights law has been employed to eliminate "harmful traditional practices." Such an approach not only fortifies a superficial duality between modernity and tradition, but it also assumes that eliminating the practice on its own will serve to liberate the "victimized women" of harmful cultures. It overlooks the economic and political underpinnings of women's subordination and the construction of culture within the dynamics of power relations at local, national, and global levels. Cultural essentialism[122] also ignores the agency of women in the developing world and the trajectories of their resistance and struggle to reject violence and oppression.

2. Universal Claims for Women's Rights

The Vienna Declaration and Program of Action, adopted by member states by consensus, reaffirms that: "All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."[123] This universality extends naturally also to women's human rights, which have been solemnly recognized by states as "an inalienable, integral and indivisible part of universal human rights."

While the articulation of human rights discourses as individual rights is associated with the intellectual ideas of the Western Enlightenment period, the claims that these rights were "naturally" embodied norms of Western societies or the obvious outcome of the linear progress of these societies should be approached with caution. The core values that human rights promote and protect, such as dignity, honor, equality, and the notion of rights itself, emerged in response to human suffering around the world. These values have been articulated in an array of literatures, religions, and cultural practices of people all around

122 Cultural essentialism is a term used to describe the tendency to believe that those who belong to a specific culture exhibit morals, ideas, and traits universally.

123 A/CONF.157/24 (Part I), chap. III, preamble.

the world and became formalized into international law through the advocacy of civil society groups and multilateral negotiations and consensus decisions of representatives of UN member states (An-Na'im 1994, Chanock 2000, Arat 2006a).

In addition to serious violations such as slavery, genocide, or ethnic cleansing, the historic oppression of women rooted in a universal patriarchal culture counts among the gravest failings of humanity to which the human rights movement has responded. Gender inequality, and the violence associated with it, is one of the common elements of history that cuts across all "civilizations." For instance, Jean-Jacques Rousseau (1755), one of the fathers of the Western Enlightenment, saw no contradictions with the principles he espoused when he wrote: "In the family, it is clear, for several reasons which lie in its very nature that the father ought to command." However, in many parts of the world, historical transformations and women's individual and collective struggles resulted in significant deviations from this norm towards greater equality between the sexes. This has required and continues to require a firm political commitment, prioritizing gender equality as a public policy issue and a political structure that constantly promotes and monitors changes in the culture of major institutions of society through informed political and legislative action.

As it has also been discussed in the introductory chapter, throughout history women everywhere had to organize to resist, negotiate with, and challenge patriarchy in numerous fields including their representation in public space, unequal nationality and property laws, and the public/private distinction in international human rights law, among others. In their struggle against oppression women have often aligned themselves with larger resistance movements striving for justice, including resistance movements against colonial and racist oppression or anti-globalization and environmental movements. For example, in South Africa, it was the strong presence of women in the struggle against the racism and sexism of the apartheid state that was instrumental in ensuring that gender equality was firmly entrenched in the country's 1996 Constitution. However, it must be noted that such alliances have not always worked to women's advantage. Nonetheless, they gave way to new contradictions, equipped women with new skills, and exposed the gendered nature of other spheres of conflict and contestation.

The human rights movement itself struggled for a long time to recognize that the equality of women and men constitutes a logical and indispensable dimension of a normative system built on dignity and equality. The inclusion of the norm of non-discrimination on the grounds of sex in the Charter of the United Nations as well as the Universal Declaration of Human Rights (UDHR), which

laid the ground for universal rights, was made possible due to the persistent demands of women.[124]

3. Culture-based Approaches against Universality

GLOBAL APPROACHES

(a) The harmful traditional practices (HTP) agenda: The most concrete expression of the evolving normative framework with respect to culture and violence against women is found in the agenda on harmful "traditional" practices affecting the health of women and children. This agenda was formalized through the establishment of a working group on harmful traditional practices in 1984 by the Sub-commission of the Commission on Human Rights on Prevention of Discrimination and Protection of Minorities. In 1988 a Special Rapporteur was appointed to monitor and report on the issue. Although several "traditional" practices were identified in this context, the main focus of the Rapporteur was on female genital mutilation (FGM).[125]

While the HTP agenda has made visible types of violence against women formerly not recognized and helped mobilize international and local constituencies for their eradication, it also contributed to essentializing certain cultures as the source of the problem. The harmful traditional practices agenda "…unfortunately reinforced the notion that metropolitan centers of the West contain no 'tradition' or 'culture' harmful to women, and that the violence which does exist is idiosyncratic and individualized rather than culturally condoned" (Winter et al. 2002).

Compartmentalizing violence against women and neatly partitioning it into practices may often also be counterproductive, if the commonalities and shared root causes of such practices are not identified and integrated into a holistic strategy. In some cases, merely suppressing a harmful practice may only shift the problem, unless the root causes are thoroughly addressed. The case of

124 It should be recalled that it was a woman from India, Hansa Mehta, who, in the drafting of the UDHR, objected to some of her fellow drafters' initial proposal to include the phrase "*all men* (as to imply all human beings) are created equal."

125 Any procedure involving partial or total removal of the external female genitalia or other injury to the female genital organs for cultural, religious, or other non-therapeutic reasons and thereby causing physical and/or psychological harm must be regarded as FGM, regardless of under what medical conditions it is carried out. Some have argued that the treatment of FGM as a harmful practice to women or a human rights violation is an ethnocentric stand that ignores the fact that the practice provides women with more sexual power over her partner and makes them more proactive in sex. Such notions could have been entertained if we were to assume that women are free agents who do not live under severe patriarchal constraints and can freely decide over their bodies and life. Paradoxically, such claims are themselves ethnocentric and are advanced by taking women's subordination as a given to gain ground within the parameters of patriarchy.

Cameroon is illustrative in this regard: Female genital mutilation, which is prevalent in the country, is said to be declining, albeit slowly, since various actors have launched awareness-raising campaigns and some senior government officials have come out to denounce FGM as violence. At the same time, however, another harmful practice that seeks to control the sexuality of women through violence, referred to as "breast-ironing," is reportedly on the rise in Cameroon and surrounding countries. In this practice, scorching-hot objects are placed on the budding breasts of a young girl in the hope of preventing the breasts from growing too soon so that the girl remains unattractive to men and does not engage in sexual intercourse at an early age.[126]

(b) Culture and minority rights: At the global level, the struggle for women's human rights and gender equality, despite the many gains, has always been an uphill battle. International instruments that foster the recognition of and respect for cultural diversity have often done so without duly safeguarding the rights of women. On October 20, 2005, for instance, states adopted the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Protection and Promotion of the Diversity of Cultural Expressions. The Convention formally recognizes that its provisions may not be invoked to infringe or limit human rights and fundamental freedoms as enshrined in the Universal Declaration or guaranteed by international law, but fails to make explicit reference to gender equality. These ambiguities in the text might tempt states that have entered extensive reservations against the Convention or other human rights documents on the grounds of culture (or have never ratified such conventions for the same reason) to invoke the UNESCO Convention in bad faith to justify their position politically.

It is often asserted that cultural rights held by individuals or groups, including minorities, indigenous people, or immigrant communities, can be invoked to trump women's human rights and equality. Reference is made in this regard to Article 27 of the International Covenant on Civil and Political Rights, which establishes that any person belonging to ethnic, religious, or linguistic minorities existing in a given country has the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. The Human Rights Committee has stated that the minority cultural rights articulated in Article 27 do not authorize any state, group, or person to violate the right to the equal enjoyment by women of any Covenant rights.[127] Instead, states are asked to take measures and include

126 The practice causes severe pain and can result in strong fevers, malformations of the breasts, cysts, and abscesses. A survey undertaken in Cameroon indicated that 38% of all girls who developed breasts before the age of 11 had been subjected to breast ironing.

127 A/55/40.

in their periodic reports the steps they have taken to discharge their responsibilities in relation to cultural or religious practices within minority communities that affect the rights of women.

This jurisprudence is consistent with the object and purpose of minority rights, which are meant to give members of minorities the opportunity to effectively realize their individual human rights in the face of a majority domination that can be so pervasive that the individual's right to non-discrimination alone proves to be ineffective and insufficient. Group-specific rights such as those established by Article 27 serve to further their bearers' individual rights, not to further curb the freedom of other members of the marginalized group. This is even more significant vis-à-vis women, who are most often confronted with multiple layers of discrimination based on both gender and group membership.

Similarly, the UN Declaration on the Rights of Indigenous People, adopted by the General Assembly in 2007, stipulates that the human rights and fundamental freedoms of all individuals must be respected in the exercise of the extensive group rights recognized by that document. However, this Declaration also fails to make reference to CEDAW. The special needs of women are only mentioned along with those of inherently vulnerable groups (children, youth, the elderly, and the disabled). The challenges women face within their own communities, including discrimination, gender inequality, patriarchal oppression, and violence, are not addressed in the Declaration text at all. While indigenous people's "right to autonomy or self-government in matters relating to their internal and local affairs" (Article 4 of the UN Declaration on the Rights of Indigenous People) is defined, it remains unclear what legal recourse, if any, an indigenous woman would have when confronted with a discriminatory decision issued by a male-dominated community council.

The above-mentioned contradictions in the Declaration on the Rights of Indigenous People could prove to be disadvantageous for indigenous populations' rights in the long run. Ultimately, indigenous peoples' struggle for social justice on a human rights platform will only be legitimate, and therefore successful, if human rights problems within the community, in particular violence and discrimination against women, are also acknowledged and addressed. In this respect, indigenous women's rights advocates are pursuing a dual struggle both against the majority population and the patriarchal order within their own communities.

REGIONAL APPROACHES

The primacy of women's rights is also challenged through regional frameworks that employ rights terminology. The Cairo Declaration on Human Rights in Islam, adopted in Cairo on August 5, 1990, at the 19th Islamic Conference

of Foreign Ministers, is telling in this respect. Noting that all human beings form one family whose members are descendants of Adam (with no mention of Eve), the Cairo Declaration states, with rather deliberate ambiguity, that "all men are equal in terms of basic human dignity and basic obligations and responsibilities" without any discrimination on the grounds of, *inter alia*, sex. According to Article 6, "woman is equal to man in human dignity"; however, the same article also asserts that "the husband is responsible for the maintenance and welfare of the family."[128] With regard to violence against women specifically, it should be noted that the Cairo Declaration considers that only men have the "right, within the framework of the Sharia, of free movement" and that it is prohibited to breach the right to safety from bodily harm "without a Sharia-prescribed reason."

Along the same lines, the 1993 Bangkok Declaration, which builds on the "Asian values" debate, adopts an alternative vision of rights that challenges the universal validity of international human rights law.

It is obvious that these regional normative frameworks stand in contradiction with the universal framework that has legal precedence over them. More striking, however, is that such discourses ironically serve to reinforce the encroachments stemming from the orientalist thinking that they inherently aim to counter.

4. Challenging Culture-based Discourses

DIFFERENCE OR DOMINATION?

The claim of the universality of human rights and their validity in a given local context have continuously been contested through relativist discourses that brand them as external (usually Western) impositions, incompatible with local cultures. Such claims have provided reference points for judicial systems in excusing acts of violence against women or have helped to sustain parallel justice systems that hand down severe forms of punishment to women presumed to have transgressed social norms.

128 The emphasis on the family has always been a controversial issue at the international arena. The draft resolution on "the protection of the family" tabled by Egypt at the Human Rights Council session in 2013 was adopted on August 14, 2014, with 26 votes in support and 14 votes against. Six country delegations abstained from the vote, while Cuba did not participate. Built upon the "traditional" understanding of the family, the resolution does not recognize the numerous types of families such as single-parent families, extended families, or same-sex marriages. There is ample evidence from around the world to demonstrate that the focus on the "protection of the family" often serves to undermine women's rights and gender equality and prevent same-sex relationships. The adoption of such a resolution under the UN Human Rights Council implies nothing short of legitimization of policies and practices that violate basic rights.

It is well known that in most developing countries, the history of colonial oppression and the existence of authoritarian political regimes as well as the economic and political polarizations between the north and the south provide fertile ground for a cultural relativist stand that has emphasized respect for differences between cultures vis-à-vis the discursive universalistic strategy of the international human rights framework. Underlying this emphasis on cultural difference is a vision of culture as a homogenous and bounded entity with an excessive aggregation around a unified identity. This vision privileges one interpretation of culture over another and overlooks the relations between oppression, power structures, and culture. In the post-Cold War neoliberal era, identity politics, based on cultural differences, has made culture the site of contestation and the notion of culture a tool of new forms of oppression, whether in its *orientalist* or *occidentalist* guise (Ertürk 2012).

Women have found themselves entangled in these ideological contests and have often been left with the "choice" of joining forces with imperialist/hegemonic projects or compliance with the oppressive practices of their own families and communities. This dilemma is all too evident in colonial experience, where colonial powers, for instance, in Africa and India, often selectively addressed certain concerns of women to legitimize their "civilizing" mission, enlisting the discourse of the Western women's movement to promote their colonial agenda. In India, colonizers introduced their own patriarchal ideals of Victorian femininity, which had much in common with the local prototype, while selectively targeting practices such as child marriage and "sati" (the immolation of a widow at her husband's funeral). Social legislation aimed at improving the life conditions of women, which included raising the age of marriage and promoting participation in education, became emblematic of imperial achievement.

These linkages between colonial oppression and women's rights campaigns at the time have been instrumentalized to defame women's rights advocacy and demands today, whereas the contributions of women in the de-colonialization struggle have been largely forgotten.

The colonial experiences were no doubt not uniform. Some colonial projects, such as the efforts to abolish foot-binding in China (1874-1911) or the initiatives to abolish bride wealth in Uganda (1950s), paralleled campaigns by local women activists. In other instances, as in Kenya in 1920-1931 and later in the 1950s, colonial efforts to abolish female circumcision strengthened the nationalist cause and gave new salience to the practice, which came to symbolize nationalist opposition to colonialism (Tripp 2006).

- French colonizers regarded Algerian women as a fundamental element that embodied the "true" self and identity of Algerian culture. As Winifred Woodhull asserts, women were the first to spring to mind when thinking of

> Algeria. Controlling the woman and her body—the essence of a colonized culture—therefore meant getting at the heart of that culture. It was for this reason that woman symbolized both the colony's resistance and its vulnerability to penetration and occupation. The issue of the veiling of women was a primary site of contestation between the local patriarchy and French administration. The unique characteristic of the veil, i.e., enabling women to see without being seen, was of particular significance for the colonial rulers, because woman with her veil had come to represent the resistance of the colonized society. Thus, the orientalist desire came to be expressed as the desire to lift the veil of the colonized society, because the insistence of a woman to wear the veil signified the colony's resistance to colonization. In other words, the veil, from the perspective of the colonizer, attested to the resistance of the Algerian population to the French administration. In short, the colonizer by unveiling women, aimed at the absolute subjugation of the colonized society (Yeğenoğlu 2001: 183).

ORIENTALIZING CULTURE[129]

When conceptualizing culture in the context of women's rights violations, leaving aside the artistic realm, the notion of culture is frequently truncated in two steps: (1) culture as a characteristic of non-Western persons only; and (2) a mystified notion of culture, further reduced to its symbolic, ritualized or supposedly "traditional" manifestations (Tripp 2002).

In Western countries, distinct cultural norms that define gender relations are often not questioned or even perceived as culture. In many European countries, for instance, practices such as half-day schooling and rigid shop hours, which presume that "someone" can take care of children and the shopping for the family during regular working hours, are perceived as gender-neutral practices. Yet, these seemingly trivial cultural practices complement gender ideologies that prioritize women's reproductive roles and reinforce, albeit in discrete forms, women's subordination. This helps to explain why a significant number of women in the West, despite their advances in the public sphere, still encounter intimate partner violence.

Other seemingly non-gendered practices, such as the gun culture, also have consequences for violence against women. For instance, in 2003, 50% of female homicide victims in the U.S. were shot and killed with a gun.[130] According to

129 Orientalism, a concept critically examined by the late Edward Said, is a manner of regularized writing, vision, and study dominated by imperatives, perspectives, and ideological biases ostensibly suited to the "Orient." It is the image of the "Orient" expressed as an entire system of thought and scholarship (see Said 1978).

130 See www.vpc.org/studies/wmmw2005.pdf.

some sources, women in the U.S. are 11 times more likely to be murdered through the use of a firearm than women in other high-income countries (Hemenway et al. 2002).[131] Yet the culture of legal and widespread gun ownership, constitutionally entrenched, retains majority support in the U.S. Throughout the Western world, the widespread portrayal of women as sexual objects in the media and unrealistic female beauty ideals that trigger harmful self-imposed practices, which may result in life-threatening diseases such as anorexia or bulimia, are rarely seen as cultural phenomena, but are regarded as questions of market dynamics and free choice.

Embedded into the practice of "othering" is a trend to redefine violence against women from being a gender inequality problem to an integration problem associated with immigrants from developing countries. Thus, immigrant women and men become further stigmatized and marginalized, which complicates their engagement in a constructive dialogue to address problems of gender inequality that indeed exist within their communities. On the other hand, the same process tends to reduce the violence experienced by native Western women to a depoliticized "law and order" issue rather than a social justice concern with a human rights dimension that may no longer be prioritized in comparison to common crimes of violence.

Many Western states that reflect in their policies and politics the notion that harmful cultural practices are a problem of the "other" strongly denounce women's rights violations such as FGM or "honor killings." However, when it comes bringing their migration/refugee laws in line with international standards in order to provide protection for women who face such violations, they are less than willing to do so. These same states, when confronted with problems such as "early marriage" among immigrant women in their own countries, prefer to deal with the matter within their immigration legislation rather than as a women's rights issue (Gill and Anitha 2011).

NEGOTIATING HEGEMONIC CULTURAL DISCOURSES

Culture evolves as a response to different and competing individual and collective needs and aspirations, which makes it diverse and dynamic. However, at any given time, certain interpretations of culture may be legitimized and imposed on a society or a community. The assertions of dominant interpretations of culture in diverse socio-cultural settings are similar in that they presuppose a static and homogenous set of values and norms that govern the lives of a collective entity and reflect hegemonic and patriarchal power relations. Such cultural discourses are at odds with universal cultural standards, in particular

131 See http://archive.sph.harvard.edu/press-releases/archives/2002-releases/press04172002.html.

with the legally binding human rights principle that no custom, tradition, or religious consideration can be invoked to justify violence against women.

In order to successfully uphold universally agreed-upon human rights values, it is necessary to address and understand the process of the legitimization of culture-based values. This in turn necessitates systematic engagement in a "cultural negotiation," whereby the positive cultural elements that comply with principles of rights and equality are emphasized while the oppressive elements in culture-based discourses are demystified.

Contrary to what some may claim or fear, such a negotiation with culture does not erode or deform local culture but rather challenges its discriminatory and oppressive aspects. This of course may provoke resistance from those who have a vested interest in preserving the status quo. Negotiating culture with human rights concerns inherently questions, de-legitimates, de-stabilizes, ruptures and, in the long run, destroys oppressive hierarchies. It also contributes to harnessing the positive elements of local culture to advance human rights and gender equality, a process that also re-validates the culture itself. In many places, women's rights activists have successfully mobilized artistic and symbolic expressions of culture and have. This not only has strengthened the women's movement but also created the opportunity for gender equality to be realized within the given culture (Fregoso 2006).

The 16 Days of Activism against Gender Violence Campaign that started in 1991—spanning from November 25, International Day on the Elimination of Violence against Women, to December 10, International Human Rights Day—emphasizes the need for the recognition of violence against women as an international human rights issue. The 16 Days Campaign has become a cultural event symbolizing women's resistance to gender inequality. It draws on local culture to raise awareness while strengthening solidarity at a global level. For example, in 2006, in France, a large group of women dressed up as "Marianne"[132] with made-up bruised faces. With this act, French women demonstrated the disparity between persistent gender discrimination and the symbolic representation of women's place in French society. They received widespread media coverage and managed to get a pledge from the major presidential candidates, both of whom promised to tackle the issue once elected president.

Cultural discourses can also complement and reinforce the human rights discourse. For instance, on November 25, 2006, a group of distinguished Islamic scholars assembled at Al-Azhar University in Cairo and issued a set of recommendations recognizing that female genital mutilation "is a deplor-

132 Marianne is the symbol of French liberation and pride, embodying freedom, equality, and dignity.

able, inherited custom, which is practiced in some societies and is copied by some Muslims in several countries," and which needs to be eradicated.[133] They concluded that there are no written grounds for this custom in the Qur'an, acknowledged that female genital mutilation harms women psychologically and physically, and asserted that the practice should be seen as a punishable aggression against humankind and must be stopped in the name of Islam. Recommendations such as these are exemplary and praiseworthy, provided that they are embedded in an earnest and ongoing process to examine and, if necessary, reinterpret the entire spectrum of cultural norms that discriminate against women and that they are not only tactical concessions to reaffirm dominant discriminatory paradigms and the authority of those who represent them.

COMMON MYTHS

Dominant cultural paradigms that discriminate against women are coated in several suits of myths. These myths serve to protect the interests of those who monopolize the right to speak on behalf of culture; they also develop a life of their own as they spread, take root, and transform into widely perceived realities.

According to one myth, culture is presented as static and immutable time-honored "traditions." Customary law, in particular, derives its legitimacy from this claim to tradition. However, throughout the world, the customs and traditions that constitute the foundation of local customary law have been distorted, eroded, and transformed as a result of factors such as colonialism, wars, invasions, mass migrations, national integration, etc. and have changed and reproduced themselves according to the shifting social dynamics and balances of power. The world order that has been spreading over the past few centuries has adjoined different cultures economically, politically, and socially within a hierarchical system of power. "Customs" that are positioned in opposition to women's rights today have in fact been molded within the very cultural imperialism they claim to oppose and have served as a point of reference for hegemonic powers to solidify their positions through manipulating culture.

For instance, in much of pre-colonial Africa there were several layers of authorities based on age group, clans, women's groups, religious groups, etc. and each defined customs in its own domain. The governance of the community was ensured by the common will of these different segments. Colonial authorities sanctified only one type of authority—chiefs—and thereby placed them in a privileged position to shape customary law in a way to institutionalize their own authority (Mamdani 2000). With the transition of the source of authority from common will to the colonial power, traditional leaders defined customs

133 See http://www.target-human-rights.com/HP-02_target/u1-2_alAzha_kairo/index.php?p=-gelehrtenkonferenz&lang=en&.

as to legitimize their own interests without having to consider disenfranchised groups within the communities, including women.

Another common myth is that culture is homogenous and monolithic. Thus a dominant, discriminatory paradigm is presented as the only legitimate interpretation of culture, whereas the diverse voices are silenced, particularly if they are those of women or other already marginalized groups. The Cairo Declaration on Human Rights in Islam, mentioned above, is a case in point. The Declaration presumes that there is one homogeneous Muslim view of Islamic values based on very intransigent human interpretations of the Qur'an. This monolithic representation of Islamic culture has been contested by many others, including local human rights activists living in Islamic countries or in exile, reformist clerics, and self-proclaimed Islamic feminists and women's rights activists.

Unfortunately, outsiders also buy into the myth of monolithic cultures. State authorities and donors, for instance, have a tendency to seek out so-called "gatekeepers"—the presumed authorities within a presumed monolithic community—when they try to enlist individual community members' support for human rights initiatives or other purposes such as national security interests. Contrary to the original intention, this may further undermine the position of marginalized groups, specifically of women, because self-proclaimed leaders that represent radical views are thus empowered. In the Canadian province of Ontario, for example, a minority of religious leaders campaigned with considerable success on a cultural diversity platform for "their" communities' rights to use Sharia law in civil arbitrations if both parties consent. The Ontario Arbitration Act in force at the time would have arguably allowed for such arbitrations. Due to the relentless campaigning of a coalition of various organizations, including the Canadian Council of Muslim Women, this initiative was finally blocked by the Ontario legislature (Korteweg 2008).

A third myth is that culture is apolitical and detached from the prevailing power relations as well as the economic and social circumstances it operates in. This view provides a convenient veil to disguise various interests and balances of power that underlie cultural practices that are harmful to women. The Italian Penal Code (the Rocco Code of 1931), repealed in 1981, provides insight to this point. Article 587 of the Rocco Code distinguished killing or injuring for the cause of honor as a separate crime and provided for reduced sentence in cases of adultery. Analysts have explained the existence of Article 587 by the strict gender discriminatory norms to support the demographic policies of the fascist period, which promoted women's reproductive roles and high fertility rates. "Article 587 effectively gave a 'licence to kill' to the heads of families whose 'honour' had allegedly been tarnished" (Bettiga-Boukervout 2005).

Armed conflict, occupation, the war against terror, and militarist cultures, although with diverse outcomes, often reinforce dominant cultural paradigms that discriminate against women.[134] Sustenance of group boundaries, family honor, and the maintenance of everyday life fall on the shoulders of women, for whom this means conformity to the strict norms of patriarchy. During conflict, the perceived need to "rally 'round the flag" of group identity or the wider, more "noble" causes is instrumentalized as a pretext to further entrench patriarchal control within the group or trivialize women's movements.

Similar dynamics can also be observed in immigrant, minority, or indigenous communities that experience ethnic or religious discrimination. In an effort to define themselves in opposition to the majority that rejects them or to preserve the group identity perceived to be threatened by the majority, there is a strong tendency among these groups to adopt essentialist or fundamentalist interpretations of their own culture. Men who regard themselves as the makers and protectors of culture impose rigid codes of conduct on women who are regarded as the transmitters and bearers of culture. Violence is used, where necessary, to enforce women's compliance with these impositions.[135] Militarist discourse also reinforces the public approval for violence as it promotes rigid notions of womanhood that draw on the traditional role of women as mothers to serve the national interest, including by raising "good soldiers," and notions of manhood that favor violence-prone masculinity (Enloe 1988, 2007, Ertürk 2009, Cohn 2013). In addition, in the case of failed states or when state institutions are besieged by extremist groups, the most oppressive and violent interpretations of culture are imposed on society, undermining the notion of rule of law, primarily when it comes to women's rights.

Main Arguments of the Section

Culture embraces both the commonly held meanings that allow for the continuation of everyday practices as well as the competing and contradicting meanings that galvanize change over time.

Cultures, including the universal human rights culture, are contested sites. Historically, women in the global north and south have—both individually and collectively—actively resisted oppressive cultural practices and an exclusionist understanding of rights.

The interconnectedness of local resistance movements, which have evolved into a global women's movement, succeeded in transforming international human

134 For the contradictory effects of conflict on women, see Part III, sections on El Salvador, Guatemala, the Occupied Palestinian Territories, and the Russian Federation.

135 See Part III, Sweden.

rights law by bringing the invisible facets of women's rights violations to the international fora. Thus, violence against women as a human rights violation that stems from gender inequality has become the subject of a comprehensive international regime.

Making culture the divisor of rights and reducing violence to specific cultural practices of the "other" de-link the problem from its structural root causes and hinder women's struggles for their rights. Particularly for women in the global south, such an approach implies that their "salvation" lies in denouncing their own cultural identity and surrendering to imperialist projects.

Culturalizing the problem of women's rights diverts attention from the unequal gendered structures, as well as from the wider economic and political environment in which these hierarchies evolve and persist.

The cultural authenticity discourse provides a perfect alibi for traditional patriarchs to evade any responsibility to accommodate women's rights claims. Cultural interpretation of women's subordination relieves rich countries of the responsibility for dispossessions such as poverty and destruction caused by capitalism, neoliberal economic policies, militarism, occupation, and armed conflicts (Ertürk 2012).

According to Merry, "blaming culture for the disadvantages faced by women, minorities, and other vulnerable groups is an appealing ideology for proponents of contemporary neoliberal globalization. It blames the havoc wreaked by expansive capitalism and global conflicts on the culture of the other" (2003: 64).

Compromising women's rights or abandoning them to the mercy or compassion of the powerful is not an option. Therefore, the response to the challenges that confront us today in the name of cultural essentialism and relativism is to resist and disclose the oppressive practices in the name of culture, while respecting our diverse cultures and interpreting universal human rights on the grounds of not "uniformity" but rather "difference."

Neoliberalism and the Political Economy of Women's Rights

In view of the fact that the human rights movement has largely neglected the socio-economic dimension of gender-based discrimination, this section has two goals: (1) using a political economy approach, it aims to analyze the challenges of the neoliberal policy environment and go beyond mere distributional aspects of the differential access to economic and social rights, to identify discriminatory policies, practices, and entitlement structures that determine the gendered manifestations of these rights; and (2) addressing the long-standing feminist critique of the dichotomization between the "first generation" and "second generation" rights as contained in the Twin Covenants.[136]

The recognition that rights violations, poverty, and exploitation are not coincidental necessitates reintroducing to the analysis the political economy approach which has long been abandoned. With this in view, this section starts with a review of the basic parameters of the political economy approach and a demarcation of its limits as used here.[137] This is followed by a discussion on the interconnections between specific rights and violence and the consequences of various global processes such as neoliberal policies, armed conflicts, and natural disasters on gender discrimination and women's human rights.

1. The Political Economy Approach

As aforementioned, responses to violence against women by governments and international institutions have been fragmented and treated in isolation from the wider concern for women's rights and equality. Despite the fact that Article 3 of the International Covenant on Economic, Social and Cultural Rights requires states to ensure women's enjoyment of their economic and social rights, governments rarely integrate socio-economic factors into their legislative and policy responses to violence against women. When considering women's human rights issues, violence against women, rather than poverty, housing, unemployment, education, water, food security, trade, and other related economic and social rights issues rarely come to mind. Thus the detachment within the human rights movement of violence against women from the broader struggles for social and economic equality has led to its perception as women's-only problem.

136 This section is based on my report, "The Political Economy of Women's Rights," presented to the UN Human Rights Council in 2009 (A/HRC/11/6).

137 A critical review of the political economy approach falls beyond the purpose of this book. For a discussion of the political economy perspective, see, for instance, Clark (1998) and Armstrong (2013).

In contrast to conventional economics, a political economy approach makes explicit the interconnections between the economic, social, and political realms, demonstrating that power operates not only through coercion but also through the structured relations of production and reproduction that govern the distribution and use of resources, benefits, privileges, and authority within and outside the home and society at large. According to this approach there are three key structural elements that affect the likelihood and prevalence of violence against women: (1) the sexual division of labor, (2) the contemporary neoliberal macro-economic environment, and (3) war and peace processes.

In the context of the *first element*, the sexual division of labor in the private and public spheres (and gender ideologies that reinforce this) holds women primarily responsible for flexible, unregulated, underpaid, or unpaid work, raising the profit margin on the one hand, and bolstering the unequal power relations between women and men on the other. Since the strict division of roles in the domestic sphere constrains women's public participation and their access to economic opportunities in the market, their footing for resisting the risk of violence remains limited. Care-related professions in the public sphere akin to the unpaid work women do in the home are also devalued. The internationalization of care services with globalization has extended this sexual division of labor to the transnational realm as women from underdeveloped and developing countries leave their homes and countries as migrant workers to provide care services for families in wealthier countries, thus, encountering new contradiction and struggles (Parreñas 2001).

The *second element* highlighted in the political economy analysis of women's rights is the contemporary global, macro-economic environment. Capitalist competition has fueled the quest for cheap sources of labor and for investment conditions that maximize profits locally and transnationally. In this context, the relocation of industries to the periphery has disrupted local economies and dramatically changed labor markets, increasing a poorly regulated economy of low pay and insecure jobs and attracting women from developing societies into wage employment on a scale unseen before, particularly in export-processing zones (EPZ) or care/service sectors in global cities (Sassen 1998).

The neoliberal policy environment has led to the expansion of women's employment, thereby providing them with the opportunity for independence, autonomy, and empowerment. But it has also led to the intensification of their workload in the market and at home and to the feminization of poverty especially among unskilled and marginalized poor women, who lack access to productive resources and basic capabilities. Such poverty, marginalization, and lack of protective mechanisms make women easy targets for abuse and undermine the prospects for the progressive realization of their rights (Elson 2003).

As mentioned in the introduction, Giddens (1999) noted years ago that it would be misguided to perceive globalization merely as "big systems" such as the financial order. According to him, globalization has penetrated our most private and personal life spaces and transformed traditional family systems that are under strain in many parts of the world.

Neoliberal policies have also reduced the state's capacity to regulate and tax capital, resulting in an enforcement problem with regard to both property rights and work contracts and the withdrawal of public services and social security provisions (K. Ertürk 2008). Under such circumstances, a return to community-based enforcement and survival strategies—relying largely on women's initiatives—has become unavoidable. One outcome of this has been the strengthened role of culture/religion based on non-state actors, discussed in the previous section.

The *third structural element* of the political economy approach to women's rights is related to the gendered dimensions of war and peace, which are intimately connected to patriarchy and globalization. Violent conflict, often related to control over power and productive resources, normalizes violence and spreads it throughout society. As frequently mentioned in this book, both state- and group-sanctioned violence celebrates masculine aggression and perpetuates impunity with regard to men's violence against women.

Conflict, war, and the security agenda impoverish societies as they make trade-offs between military spending and spending for development and human rights protection, particularly that of women.

To repeat what was stated in the introduction, after the 9/11 attacks, the security paradigm in the context of counterterrorism measures gained prominence as a priority agenda for all states and virtually locked the world into a militarist form of life (Keyman 2003: 113). In this respect, the U.S. attacks on Afghanistan and Iraq increased the dimensions of political violence, displaying how violence became elevated to hegemony (Dönmez 2004: 85).

Hence, sacrificing of justice obstructs peace and stability. As some country cases in Part III illustrate, in the post-conflict reconstruction phase the prioritization of national security and electoral machinery by governments has proven to be destabilizing in the long run, preventing the realization of a sustainable of peace. In actuality, the war/peace dichotomy has little relevance if any for women who lack physical security and access to socio-economic rights.

On the other hand, as emphasized earlier, the tensions emanating from the dichotomization of the Twin Covenants (CCPR and CESCR), which have privileged the former over the latter, have constrained efforts to transform the conditions that underlie gender inequality and violence against women. The

conception of economic, social, and cultural rights largely as "aspirational" rights that can be progressively realized depending on the resources available to a state, in contrast with civil and political rights conceived as "obligatory" rights to be guaranteed immediately, has also been criticized by feminist scholars, who have argued that the fulfillment of the latter can also be seen as a process of progressive realization. In other words, both Covenants impose positive duties on governments to comply with their obligations without discrimination (Elson 2003, Nussbaum 2005).[138] While the implementation of all human rights has an economic and material aspect, budgetary limitations do not excuse a state of non-discriminatory compliance with its obligation to improve the socio-economic conditions of people within its jurisdiction.

It is now a widely recognized fact that the dichotomized treatment of rights constitutes a major obstacle for marginalized classes and groups, particularly women in their struggle to exercise even civil and political rights.

2. Economic and Social Rights[139]

This section aims to establish the linkages between violence against women and women's economic, social, and cultural rights, including the right to adequate housing, property, inheritance, food, water, education, and health, and the right to decent work and social security. These rights are recognized in the Universal Declaration of Human Rights and guaranteed by the International Covenant on Economic, Social and Cultural Rights.

RIGHT TO ADEQUATE HOUSING

The right to adequate housing includes not only security of tenure but also access to a series of public services. It is unconceivable for a woman who does not have housing to protect herself from the threat of violence. Those especially at risk of violence due to lack of access to alternative housing include internally displaced persons (IDP) and refugee women, live-in domestic workers, poor and single women or single mothers who do not have a support system, and women victims of violence living in countries without safe shelters or affordable long-term housing for abused women.

Deprivation of housing is closely linked to violent and forced displacement, as in civil strife situations. As illustrated in the context of some countries in the

138 In this context, multilateral corporations and international economic institutions share and at times surpass the authority and powers of the state in macro-economic processes, therefore, these entities are also required to assume affirmative obligations in the realization of economic rights.

139 The HRC special procedures mechanism has a specific mandate dedicated to each one of the fundamental rights. For reports submitted by mandate holders, see www.ohchr.org.

next part, the risk of violence is particularly acute for IDP and refugee women and girls who live in camps that lack privacy and may be forced to live in the same quarters or in close proximity to male strangers, which increases their vulnerability. Sexual violence has been documented as a serious problem in such environments. Once the conflict has ended, women who are repatriated may no longer have houses or land to return to due to destruction, forced relocation to a different locality, discriminatory inheritance laws, lack of property titles, and secondary occupants, etc.

Large development projects or major international events may involve large-scale evictions of poor people from their homes and land in order to free up desired locations or build infrastructure for the event. The impact of these forced evictions, often by militia or armed forces, is profoundly devastating for women and is correlated with heightened rates of physical and psychological violence and extreme economic deprivation before, during, and after the evictions. This is true both in terms of violence against women at the hands of state authorities, non-state actors, and community members, as well as in terms of domestic violence.

The violation of women's right to adequate housing has also led to gender-based violence both during and in the aftermath of natural and humanitarian disasters. A study of housing reconstruction in the context of the international response to the tsunami in Sri Lanka and

Tamil Nadu revealed gross disregard for women's and girls' rights.[140] Compensation was generally handed out to male heads of the family who, in many cases, did not share it with the women or surviving women-only households

PROPERTY AND INHERITANCE RIGHTS

The right to adequate housing is integrally related to property, land ownership, and inheritance rights. The gender inequality in terms of land ownership and its effective control is the single most critical contributor to the gender gap in economic well-being, social status, and empowerment in the agrarian economies of most underdeveloped countries (Agarwal 1994). Property is a significant livelihood-sustaining asset that can generate income as well as security. Owning land or some other property enables women to secure their economic rights and is also empowering since it gives them the opportunity to deter violence and increases their bargaining power within the family and society at large.[141]

140 By the Habitat International Coalition.

141 Findings of research carried out in different parts of the world bear similarities in this respect. For example, see Agarwal and Panda (2007).

Violation of women's rights to property stems from sex-discriminatory marriage, divorce, and inheritance laws as well as from biases within land dispute bodies which are made up of men and exclude women from the decision-making process. In situations of violent conflict, violations of women's property rights are inseparable from acts of physical violence. For instance, in the Ugandan armed conflict, militarized rape was used strategically in order to acquire women's assets, including land and homes, some of which were needed for the war effort, or indeed, were among the reasons for the conflict (Turshen 2000: 804).

RIGHT TO FOOD AND WATER

Women's right to food and clean water is impaired by their limited access to and control over other productive resources as a result of discrimination in education, lower incomes, inadequate public healthcare, exclusion from decision-making processes, and inequality in intra-household food distribution. The popular saying in Anatolia, "a girl's throat is thin as hair and man's as thick as an arm," is a telling in this regard. Women disproportionately bear the impact of food supply shortages, agricultural production crises, privatization policies, and food price increases.

Women of poor households who are responsible for providing food and clean water for their families sometimes have to walk long distances from their homes to procure these, which may put them at risk of violence and other problems. Narratives of pregnant Nepalese women describe how women labor to fetch water for their families and suffer miscarriages on the journey (Regmi 2007). Similarly, there are reports of Nigerian women who are raped by men or mauled by wild animals on their way to collect water or fetch food (Rotimi 2007). Research findings also reveal the detrimental effects of contaminated water supplies on women who contract chronic illnesses and even die due to their lack of access to adequate medical attention and nutrition (Delgado 2007, Hassan 2005, Sze 2007).

The privatization of water, often encouraged by World Bank and the International Monetary Fund (IMF) policies in developing countries, has created natural monopolies leading to price rises, particularly burdening the poor women responsible for collecting water. On the other hand, easy access to clean water and food supplies significantly improves the living condition of the girl children and women—such as in school attendance, participation in income-generating activities, and the like—and is known to lessen the risk of violence.

RIGHT TO HEALTH

The World Health Organization (WHO) has identified violence against women as an underlying determinant of health. In a multinational study, WHO (2005: 14) found that "women who at some time experienced physical or sexual violence, or both, reported health problems with greater probability than those women who never experienced violence by their partner." Women who experienced abuse declared having problems walking and carrying out their daily work and reported feeling pain, loss of memory, dizziness, and miscarriage in the four weeks preceding the survey.

Irrespective of income status, violence against women affects women's sexual and reproductive health, which is a key aspect of the right to health. Survivors of violence against women have the right to adequate reparation and rehabilitation that covers their physical and mental health. But this support is often not provided. The privatization of health services may affect women survivors' access to healthcare, since the introduction of user fees for patients has been shown to greatly reduce women's attendance at health clinics.

Violence against women is also considered to be a leading cause of HIV/AIDS, affecting women's right to health. Today, 50% of the 31 million adults living with HIV are women. Given the increasing feminization of HIV/AIDS, eliminating violence against women is a critical intervention to reduce the pandemic.[142]

RIGHT TO EDUCATION

Women's access to education is a prerequisite for improving their capabilities and attaining greater self-confidence. Educational levels have also been found to be positively correlated with better health. Lack of education on the other hand, can be a major source of marginalization and isolation within and outside the home, leading to lower status and increased vulnerability to abuse.

Although girls' education is on the rise in many parts of the world, their right to education is frequently violated by economic circumstances. For instance, when the costs of living and food are driven up by financial crisis or privatization, girls are far more likely to drop out of school than boys. Child marriage—a form of violence against girls—is associated with lower educational attainment for girls, limiting their employment opportunities and economic security as well as their access to social and economic resources and decision making in the family.

Although higher levels of education are generally associated with a lesser risk to women of experiencing violence, some studies reveal contradictory patterns.

142 E/CN.4/2005/72.

These findings can be interpreted as a patriarchal backlash against women for challenging the long established rules, as educated women have learned their rights and are therefore not prepared to follow orders unquestioningly.

RIGHTS TO WORK, LIVELIHOOD, AND SOCIAL SECURITY

Paid work, particularly under market conditions, secures a livelihood for women and their family and provides them with a degree of independence. In so doing, it enhances women's ability to escape poverty and resist oppression. While evidence shows that women's earnings can trigger spousal resentment that ends in violence (Schuler, Hashemi, Badal 1998), having an independent source of income provides women with better bargaining power or the option to leave an abusive relationship. Worldwide trends show that gender equality in income and employment has a stronger impact on improving women's status and ability to resist patriarchal control than education alone (Seguino 2008).

- The "population and family policies" legislation package in Turkey, which triggered much debate, stipulated a number of new measures including the extension of maternity leave up to 24 weeks. The chambers of industry and the business community at large argued that this amendment would have an adverse impact on women's employment. Fatma Şahin, the Minister of Family and Social Policies at the time, replied with a statement that confirmed exactly what the critics feared: "... we considered all inputs, all balances regarding women's presence in both employment and family life…" With this response the Minister, who obviously took women's domestic roles as a given, aimed at reassuring the employers that the new provision would not place any burden on the private sector. Cevdet Yilmaz, the Minister of Development, used more striking and candid language in revealing the government's motivation behind the law. He said, "In preparing the legislation package our primary point of departure was to increase the population and support both family and work life…" (*Radikal* daily newspaper, September 20, 2013)

It must be borne in mind that women's employment opportunities often manifest at the intersections of patriarchy and capitalism, where the male breadwinner model and uneven market entitlement structures disadvantage particularly poor women who have little or no resources at their disposal. The majority of working women lack access to public provisions, such as childcare services, social security benefits, and old-age pensions. Competitive capitalism, while expanding women's employment opportunities, has done so under precarious employment conditions and in sectors which by nature are temporary, insecure, and unregulated.

At the same time, the feminization of the workforce and migration have created new contradictions in the lives of women, expanding their potential of becoming autonomous individuals and rupturing and destabilizing patriarchal formations. This situation has been experienced somewhat differently by women in northern countries. In some northern countries, in order to reconcile work and family life, policy measures were put in place that allowed for part-time and flexible work arrangements for women. As will be seen in the case of the Netherlands in Part III, despite the fact that such policies were devised with good intentions, because they were inherently designed on the basis of traditional gender roles they hindered women's economic independence, job security, and opportunities for career development, constituting what has often been perceived as a new trap for women.

Employment policies for women can play a critical role in either advancing gender equality or, while expanding women's employment opportunities, contributing to preserving the status quo and gender inequality.

3. Impact of Globalization

The following discussion analyzes the consequences of global restructuring in terms of women's rights. In so doing it identifies the strategic sites where political-economic processes can be seen to be accentuating existing gender inequalities or creating new patterns of inclusion and marginalization. These sites are competitive globalization and the transition to a market economy; free trade zones and migration; and post-crisis and post-conflict reconstruction.

COMPETITIVE GLOBALIZATION AND THE TRANSITION TO A MARKET ECONOMY

Neoliberal policies open up economies to global competition and seek to lower the costs of production. This process has given rise to unprecedented opportunities for women's access to paid work that can potentially empower them. However, as mentioned above, due to economic volatility, job insecurity, subcontracting, and loss of local livelihoods, a great majority of women in the labor force have encountered new vulnerabilities and risks.

Under such conditions significant ruptures and disintegrations have occurred in hierarchical structures, and livelihoods have been destroyed or in some fields male unemployment in particular has increased; this in turn has led to the destabilization of power structures and masculinities. Aggression against women and children in the home and in public spaces has heightened compensating for the masculinity in crisis, or in other words for the loss of control (Chant 2001, Seguino 2008). A study conducted in 2005 in post-apartheid South Africa showed that men facing chronic unemployment justified their

violent behavior towards their female partners by referring to their feelings of "powerlessness." Migrant men who suffer a loss of status due to dislocation or men whose masculinities are openly targeted under conditions of occupation and war often experience a similar process of powerlessness.[143]

Patterns of economic destabilization associated with macro-economic policies, including structural adjustment policies that facilitate the integration of global markets, have varied from country to country. However, similar cross-country trends in inequalities and vulnerabilities for women have been observed. For instance, the market transitions in central and eastern Europe and the former Soviet Union led to widespread increases in poverty, unemployment, hardship, income disparities, discontent, breakdown of social support networks, and a general loss of status for women. These factors increased women's dependency and raised their vulnerability to abuse within and outside the home (Elson 2003, True 2003).[144]

Similarly, the impact of the Asian financial crisis (1997-1998) on women and girls was also disproportionate. Girls were removed from school to help at home or forced to work in the sex sector to support family sustenance, as a result of cutbacks in public service jobs and salaries (Truong 2001). In some East Asian countries, women's paid labor intensified, while in others, notably South Korea, their labor participation shrunk. The resulting economic and political insecurity strained intra-household relationships, boosted suicides, domestic violence, and abandonment, and provoked private and public backlash against women's rights that was often defended on the basis of culture and tradition (Floro and Dymski 2000).[145]

FREE TRADE ZONES (EPZ) AND MIGRATION

Trade liberalization has facilitated the shift from import substitution to export-led strategies, which entailed the establishment of labor-intensive "free-trade" or export-processing zones (EPZs) exempt from many government regulations. EPZs have attracted young, migrant women from rural areas who are hired on temporary and insecure contracts. Violence against women, including incidents of involuntary pregnancy tests, sexual harassment, rape, and femicide, have

143 See Part III, section III (Occupied Palestinian Territory).

144 See Part III, section IV (Russian Federation); and the reports on my missions to Moldova (A/HRC/11/6/ Add. 4) and Tajikistan (A/HRC/11/6/Add. 2).

145 The lessons learned from these experiences may be instructive in curbing the current global financial crisis and preventing the grievances encountered by women and other marginalized social groups.

been documented in some of these free trade zones in developing countries.[146] The liberalization of industries may also involve importing foreign male workers. If the local economic context is impoverished, their presence may encourage the development of prostitution and sex trafficking as well as gender-based violence. For instance, the presence of multinational companies in the fisheries and forestry industries in the Pacific Islands, which import foreign male workers, has been linked to sex-trade, child prostitution, and HIV/AIDS (Sullivan and Ram-Bidesi 2008).

The demand for women's cheap labor under globalization is not limited to the EPZs but spans over a wide range of forms and space, including care and service sectors and the sex sector in developed and wealthy countries. Some of these sectors targeting women's labor have become a lucrative business for both legal and illegal contractors, while some are an important source of hard currency for migrant-sending countries. "The overall outcome is a significant feminizing of global survival—not just of the women themselves but of their households, of governments and of economic actors" (Sassen 2008: 1).

It has been argued that the same dynamics that have promoted the relocation of manufacturing industry plants and offices from developed hubs to developing countries have also generated in global cities a large supply of low-wage jobs that facilitated women's migration (Sassen 1998: 112). The growing presence of women, immigrants, and people of color in large cities along with a declining middle class has facilitated the operation of devalorization processes. The fact of gendering, e.g., the devaluing of female-typed jobs, facilitates the devalorization of a broad range of jobs executed by the growing and mostly female "serving classes" in global cities (Sassen 2001).

With respect to the impact of migration on migrant women themselves, existing evidence reveals both empowering and disempowering tendencies (Parreñas 2001). By and large, due to the highly unequal power relations of the work situation and the fact that women concentrate in sectors that escape regulatory mechanisms, migrant women find themselves in abusive environments based on multiple oppressions of gender, class, nationality, and ethnicity (Piper 2003). Their vulnerability to violence is particularly aggravated by working in poor conditions with low social status, living in degrading housing situations, and lacking basic legal protections and opportunities for redress.

146 See Part III, section I (El Salvador), section II (Guatemala), and the report on my mission to Mexico (E/CN.4/ 2006/61/Add. 4).

Tajikistan's Transition to a Market-led Economy

The transition in Tajikistan from a command economy to a market-led economy following the dissolution of the Soviet Union was particularly turbulent. Upon independence in September 1991, Tajikistan, the poorest of all the former Soviet Republics, experienced a devastating civil war, which, coupled with the withdrawal of subsidies from Moscow and the strenuous dictates of the global economy, put the country in disarray, causing the already ailing economy to deteriorate and eroding sources of livelihood for the population at large. The consequences of these challenges have been particularly dire for women. Although gender equality is guaranteed in law and policy, the gains women achieved during the Soviet era have eroded to a great extent. The resurgence of patriarchal discourses and practices, often articulated with religious overtones, has placed an additional burden on women.

Agriculture provides the most important source of employment and income for over 60% of the population. Labor conditions are poor and there are problems regarding the payment of salaries. According to the government, only 20% of people working in agriculture are properly covered by labor contracts. Women, who constitute more than 70% of all agricultural workers, are particularly disadvantaged as their ownership and access to land tends to be insecure. The process of privatization of land-use from the system of collective farming (*kolkhoz)* has been slow and the vaguely worded legislation, compounded with an opaque process of land-use title acquisition, enables the use of discretionary power by authorities to deprive women and other marginalized groups of their land-use rights. The proportion of private (*dehqon*) farms headed by women was only 6.8% of total registered farms in 2004.

With most able-bodied men abroad in labor migration, the wives of migrants become the main workforce for farming and bear increased responsibilities for child and elder care. They live in more difficult conditions than women in non-migrant households, and many must take on low-paid jobs. The responsibility of providing for the sustenance of their families borne by the wives of migrants has not been accompanied by their increased participation in decision making within the household or a higher social status parallel to their increased workload. In the husband's absence, the authority remains with the senior male or female member of his family. This in turn implies a greater workload, subordination, and abuse for the young women.

As a result, due to the contradictions of the process of transition to the neoliberal capitalist system, women's subordination has deepened, increasing their susceptibility to abuse and violence, which is experienced in silence by the women and condoned by society at large. Lack of a protective infrastructure, women's legal illiteracy and issues pertaining to registration of marriage and residency, and the rise of early and polygamous marriages prevent women from escaping the environment of violence.

The report on my mission to Tajikistan, 2009 A/HRC/11/6/Add.2.

International institutions, employers, business, and governments are complicit in the human rights abuse and violence against migrant domestic workers, since these workers do not enjoy the basic labor protections guaranteed to other workers. Employers may evade domestic labor

laws, and governments rarely monitor the observance of these in relation to domestic workers. Labor-sending countries often have an economic incentive to ignore their breach, since they benefit from high levels of remittances and do not wish to jeopardize their relations with the relevant host countries.[147] Bilateral and multilateral agreements lack sufficient provisions for the protection of migrants, particularly women migrants.[148]

POST-CONFLICT RECONSTRUCTION

Increases in sexual and physical violence against women as a result of armed conflict and humanitarian crises caused by natural disasters are well documented. Large-scale rape of women has been a military strategy in countless historical and recent conflicts (Kelly 2000, Niarcos 2006, Cohn 2013). The causes of armed conflict are often linked with attempts to control economic resources such as oil, metal, diamonds, or drugs or with contested territorial boundaries. Violence against women is often one way to achieve this control, as demonstrated in many of the recent armed conflicts.

During the Second World War, in the "comfort system" of state-sponsored prostitution, between 100,000 and 200,000 women, mainly from Korea, were subjugated by the Japanese authorities into sexual enslavement. This military strategy of the so-called "comfort women" constitutes a war crime that has not been officially recognized by the Japanese state; it therefore continues to occupy the agenda of human rights advocates and daughters and relatives of the enslaved women, many of whom are no longer alive. Regrettably, similar practices are observed today:

- Tunisian girls become victims of "sexual jihad": Interior Minister of Tunisia Lotfi bin Jeddo rebelled against the abuse of young girls for sexual jihad by Syrian rebels, an issue which had also previously come to fore in the country. "In the name of sexual jihad, Tunisian girls are swapped between 20, 30, and 100 rebels and they come back pregnant…" A "sexual jihad cell"

147 In this respect Saudi Arabia constitutes a clear and concrete example. See the report of my mission to Saudi Arabia (A/HRC/11/6/Add.3).

148 To date only 47 countries have ratified the International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families adopted by the UN General Assembly in 1990 and entered into force in 2003. It is striking that the Western countries with significantly large migrant labor populations are not among the signatory states. Turkey became party to this Convention in 2004.

> was reportedly seized and dismantled in a location west of Tunisia where Al-Qaeda fighters were hiding. (Press, September 21, 2013)

Women and girls displaced by natural disasters have also been subject to rape, sexual abuse, early and forced marriage, and trafficking, with long-term impact on women's rights and welfare in the post-crisis or post-conflict situation (Felten-Biermann 2006).

States rarely include in their programs for the reconstruction processes measures concerning women's economic and social rights. Moreover, in most cases women, especially rape survivors, are completely left out of the process; therefore, many women strive to continue their lives in despair. However, research suggests that women can be empowered in post-crisis situations if the economic and social rights of citizens are ensured during the rebuilding of societies (Pankhurst 2008, Kandiyoti 2007, Wilson et al. 1998).

Main Arguments of the Section

Violence against women is not only a violation of the fundamental right to life but is also closely associated with the violation of a series of economic, social, and cultural rights. The linkages between violence against women and these rights have not been sufficiently explored, and the hierarchical interpretation of rights continues to pose an obstacle to the realization of women's rights.

In contrast to conventional economics, a political economy approach makes explicit the interconnections between the economic, social, and political realms, demonstrating that power operates not only through coercion but also through the structured relations of production and reproduction that govern the distribution and use of resources, benefits, privileges, and authority within the home and within society at large. In this respect, the risk of violence against women is addressed in the context of three key structural elements: (1) the sexual division of labor, (2) the contemporary neoliberal macro-economic environment, and (3) war and peace processes.

The sexual division of labor within the public and private spheres, supported by gender ideologies, delegates women to flexible, unregulated, low-paid, or unpaid work.

Competitive capitalism has undermined state capacity for enforcement and the provision of public goods and services. This has resulted in a return to community-based enforcement and survival systems, which have not only intensified women's workload in order to compensate for the erosion of crucial public services and entitlements but also subordinated women to increasingly conservative cultural discourses that challenge the universality of rights and equality of women.

The feminization of migration, along with feminization of the labor force—two important outcomes of globalization—holds new risks and vulnerabilities as well as opportunities for women's empowerment.

The current global financial crisis, which clearly reflects the inherent instabilities of unregulated markets, offers a crucial opportunity for governments and international institutions to invest in public services and infrastructure to create jobs, improve productivity, and revive economic demand. Such investment, if well designed, has the potential to expand women's economic opportunities and enhance livelihood security.

The state, no doubt, is not the only authority to be held accountable for violations of women's human rights. Sovereignty in the new global order must be understood as the responsibility of nation-states, as well as the shared responsibility of the international community at large. Therefore, promotion and protection of women's economic and social entitlements to prevent and protect them from violence must be pursued not only nationally but also transnationally. The future of human rights and distributive justice will require democratizing the global cultural, political, and economic hegemony.

Contradictions and Problems Pertaining to the Conceptual Framework, Institutional Structure, and Implementation

The focus on violence against women as a public policy concern was a viable entry point in challenging the mainstream understanding of rights and state doctrine. While it made particular manifestations of violence visible, it also put the taken-for-granted values and practices that regulate everyday lives under review. Although the violence against women agenda has been criticized by some for reinforcing the victim-subject, particularly of women of the global south (Kapur 2002), it became a powerful mobilizing force, linking local women's experiences to the global transnational women's movement, thus enriching feminist thinking and activism.

The violence against women agenda has also had transformative outcomes particularly in three areas: (1) transformation of conventional understandings of human rights beyond violations perpetuated mainly by state actors in the public sphere; (2) transformation of the doctrine of state responsibility to include the actions of private individuals, thus, together with the former point, demystifying the public/private dichotomy in law; and (3) transformation of the criminal justice systems with the recognition of new species of crimes, such as domestic and sexual violence, marital rape, stalking, etc. (Ertürk 2008a and 2008b).

As reviewed above, thanks to the tireless efforts of women worldwide, there is a comprehensive international regime in place on women's human rights and equality between women and men, including legally binding international documents, politically recognized policy priorities and measures, and monitoring and "accountability" mechanisms recognized by states and other stakeholders. Yet this success story has not translated into fundamentally changing the lives of vast majority of women. Women in all parts of the world are still subjected to violence and discrimination, gender inequality continues to be the norm and not the exception, and states remain either incapable or unwilling to comply with their international obligations. When it comes to women's rights, the political will of those in power across the globe suffers from inertia or inconsistency in commitment.

The feminist agenda for gender equality has so far concentrated on equal opportunity and representation in public institutions. In this respect, "50/50" came to be a primary goal at national and international levels. This has meant remaining within a liberal paradigm, using basically a male yardstick in identifying goals and in making wrongs right.

This approach, no doubt, gave many women around the world access to the right to vote and stand for election, acquire a profession, and participate in decision-making processes. However, while creating new contradictions in social relations, it has not necessarily been effective in altering the power dynamics that underlie the construction of unequal gender structures and the perpetuation of violence to maintain the status quo.

On the other hand, state policies on combating violence against women has largely comprised of fragmented approaches, motivated by a protection and humanitarian concern rather than women's empowerment and autonomy through a holistic and preventive approach. I have discussed these issues throughout the book and will continue to do so. Below I focus on conceptual contradictions, the difficulty of penetrating the private sphere, hierarchy of rights, and some internal problems stemming from the UN's institutional structure.

1. Conceptual Contradictions

The feminist paradigm's most basic concept, *gender*[149]—a powerful analytical tool in uncovering the social construction of masculinity and femininity and

149 According to Toksöz, the first use of the word "gender" in feminist theory can be traced back to a workshop organized in 1976 at Sussex University (2011: 64). In the 1980s "gender theory" emerged to reorient the path that women's history was taking; it replaced the ideas of masculinity and femininity as fixed biological categories and defined them as socially constructed phenomena. Thus, independent from women's biology and history of the family, the male and female categories came to be recognized as gendered historical subjects (Smith 2004: 2).

the structural inequalities underlying relations between the sexes—has become widely used by states, activists, and laypersons alike. However, its popular usage came at the expense of conceptual consistencies and clarity. So much so that what is meant by it is ambiguous and incorrect. Most often "gender" is used synonymously with the term "women" or merely to connote the difference between men and women (Acar and Ertürk 2011, Goetz and Baden 1997, Ertürk 2004). The former usage is conceptually incorrect and the latter is politically problematic, for it masks the inequality and the political nature of gender relations (Ertürk 2004: 9).

Although there have been attempts to clearly define the concept of gender in basic international documents, in various settings and everyday usage such clarity has not always been the case. In this respect, for instance during negotiations on the Beijing Platform for Action and more recently on the Council of Europe Convention on violence against women it was not uncommon for some to use gender instead of the words "woman" or "sex." In a more contradictory usage, which defies the essence of the concept, gender is employed to denote that men and women are different (Goetz and Baden 1997).

Unfortunately, the inaccuracies in its usage became further consolidated in international discourse with the "gender mainstreaming" resolution adopted by ECOSOC in 1997. This resolution falls short of the understanding of gender as reflected both in CEDAW and the Beijing Platform for Action. In fact, it is not uncommon for equality goals to go astray with gender mainstreaming when implemented by policy makers and practitioners who lack a gender-competent approach or those who do not favor equality between the sexes. In such situations, one often encounters the phrase "we are considering both sexes" as a common interpretation of mainstreaming (Acar and Ertürk 2011: 299).

- If the term gender is so misunderstood, it is hardly surprising that "gender mainstreaming" is also misinterpreted, even when the intentions are good. Most often gender mainstreaming goes "malestream" as illustrated by the following example. During my mission to Algeria as a Special Rapporteur, I visited a police headquarters in one of the provinces. The police commander in charge reported that they operate in line with international standards. He was very proud that they had adopted a gender mainstreaming strategy in their work and in organizing their internal work relations. When I asked him to elaborate on what this strategy entailed, he said that during the month of Ramadan they apply short working hours for the female police in order to allow them to go home early to prepare the *iftar* (breaking of the fast) dinner! (Personal interview with a police commander on January 28, 2007).

The contradiction inherent in the above example is reflective of the discussions in feminist literature on the treatment of women based on their "differences"

or "similarities" (Cook 1994, Charlesworth 1994). Years ago, Fitzpatrick drew attention to the need to resolve relevant theoretical challenges in order to move forward with effective strategies in responding to violence against women and emphasized the importance of considering whether an equality paradigm that favors "equal treatment" or "special treatment" is useful in addressing specific forms of discrimination and violence (1994: 533). The fact that the "similar/different" dichotomy concerning women's status continues to be perceived as a non-reconcilable matter in policy and in practice naturally undermines the efforts to eradicate gendered inequality, discrimination, and abuse.

As a result, the universality of violence against women continues to be the norm, and women continue to be maltreated, tortured, and killed because they are women. Even in countries where women's liberal rights are respected at the highest levels, being a woman is a risk factor. Approaches employed to respond to the problem are often emptied of their content, abstracted from women's actual realities, and framed within a victimization, individual attitude, or misogynous culture understanding, thus failing to break through the vicious circle of oppression.

2. Difficulties in Penetrating the Private Sphere

The public/private sphere dichotomy in law, public policy, and governance has been criticized by feminists as constituting a major obstacle in the achievement of gender equality and the elimination of violence against women. The state, which retains control over the public sphere, transfers its authority to the male head of the household to ensure order and control in the private sphere, while reserving the right to intervene in areas critical for its rule, such as taxation, terms of matrimony, civic rights, and obligations of individual members of the household, to count just a few. With this transfer of authority the family institution is accorded autonomy in the areas of discipline and punishment of women and youth. Its autonomy is protected and almost sanctified under the norm of "privacy of the family." In this respect, the violation of women's right in the private sphere becomes a private matter falling outside the domain of public concern and state control, thus normalizing asymmetrical power relations and oppression in private life (Acar and Ertürk 2011, Ertürk 2008b).

The principle of privacy and priority accorded to the institution of family is central to patriarchal ideology and is reinforced in most cultures by popular proverbs. The Turkish saying, "the broken arm stays inside the sleeve," is illustrative of the strong patriarchal requirement that family affairs remain within the family. This has been and in many situations continues to be a strong pressure on women to submit to rights violations in silence. A woman who deviates from the privacy of the family norm faces the risk of being ostracized and/or violently

punished for her act. Despite the fact that, thanks to the global women's movement, the silence around violence is now broken, family ideology continues to act as a shield against penetration into the private sphere. Women themselves are often reluctant to seek help, for fear of betraying their "loved ones."

Furthermore, unlike other human rights violations, the rights violations against women are not limited to a specific social group; they cut across all categories such as class, race, and ethnicity. Therefore, intervening in violations of rights in the private sphere may provoke a confrontation with certain interest groups and hegemonic powers, thus posing an element of political risk for the authorities. Hence, in terms of political power, ignoring the problem or defining it as not relevant to state scrutiny and intervention may be a rational political choice in order to preserve the status quo and maintain the balance among various interest groups.[150]

Given the political sensitivities surrounding women's rights issues, "equity" rather than "equality" often guides the policy and practice of many states. It took long hours of discussion and negotiation during the Beijing Conference to finally settle on using the term "equality" in the BPfA. Nonetheless, skeptics have continued to push for equity, insisting that each culture has its own criteria of what is just. Gender equity also seems to be more compatible with conservative paradigms and neoliberalism. The Turkish Prime Minister (now the President), openly declared that men and women cannot be equal and argued for "gender justice" instead—clearly missing the point inherent in the international standard of gender equality.

The privacy of the private sphere also accounts for the general insufficiency of the database concerning this domain. Existing information is largely based on personal narratives or comprised of partial statistics produced by inconsistent criteria and samples. The lack of agreed- upon universal and national indicators on the subject is among the factors that prevent the measurement, analysis, and monitoring of the problem.

150 Though rare, there are also cases to the contrary. One example is the reforms in civil law and education law with the creation of the Republic in Turkey, which entailed interventions with potentially transformative effect on gender relations in the private sphere. Another example of state policy challenging social convention concerns introduction of girls' education in Saudi Arabia: In 1956, King Faisal opened two private schools for girls in Jeddah, which provoked strong opposition from the tribes. He was able to diffuse the opposition by emphasizing that sending girls to school is totally voluntary. Soon the demand for more schools for girls grew and the prerogative of fathers not to educate their daughters dramatically changed. Today primary education is compulsory for all children between the ages of 6 and 15, and Saudi women enjoy nearly complete access to primary and secondary education. See my mission report on Saudi Arabia (A/HRC/11/6/Add.3).

3. Concerns with Respect to the Human Rights Paradigm

Women's human rights continue to be challenged and discussed conceptually and politically, both by feminists and mainstream actors. While some of the critics argue that human rights are Western and male-centric, others contend that the understanding of universality of women's rights reduces women to a homogenous category that overlooks their diverse experiences and realities. On the other hand, it is also a reality that the human rights system is abstract, overly legalistic in its language, and too detached from the daily life experience of ordinary women. There is a need to bridge the conceptual gap arising from the distance between the abstract rights system that evolved at the transnational level and the concrete and particular lives of women at the local level (Acar and Ertürk 2011: 298, Ertürk and Purkayastha 2012b).

Furthermore, the dichotomization of the Twin Covenants on civil and political rights (CCPR) and economic, social, and cultural rights (CESCR) has created a tension in the implementation of rights. Largely owing to the hegemony of the Western world, civil and political rights have been privileged as the core of human rights; however, considering economic, social, and cultural rights as aspirational has undermined efforts to transform the conditions that underlie gender inequality and patriarchal violence.

In this respect, the Committee on Economic, Social and Cultural Rights has stated: "…States and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action."[151]

Feminist scholars and the global women's movement have long criticized the conception of economic, social, and cultural rights largely as "aspirational" rights that can be progressively realized depending on the resources available to a state—in contrast with civil and political rights conceived as "obligatory" rights to be guaranteed immediately. They have argued that the fulfillment of the latter can also be seen as a process of progressive realization, as both covenants impose positive duties on governments to comply with their obligations without discrimination (Elson 2002, Nussbaum 2005). Yet, many states, in their approach to advance women's rights, instead of taking appropriate measures to change the socio-economic structure, prefer to adopt legal reforms that fall short of addressing the essence of the problem. Praxis has shown that a

151 E/1993/22, Annex III, para. 5.

woman who cannot develop her capabilities and achieve socio-economic independence cannot exercise the rights foreseen in the laws.

4. Discrepancies and Lack of Coordination among UN Institutions

At the institutional level, the UN gender regime, like other areas of UN work, often suffers from lack of coordination, repetition, and competition. According to Acar (2010a: 199) international organizations may be guided by political realities, institutional competition, and personal rivalries, and for reasons beyond the organizations' *raison d'être*, there may be differences, incoherencies, and disagreements observed in the women's rights standards and policies they advocate.

There have been instances in the past when the institutional competition and rivalries between UN entities specifically responsible for gender equality—namely, the Office of the Special Advisor to the Secretary-General on Gender Issues and Advancement of Women (OSAGI), Division for the Advancement of Women (DAW), UN Development Fund for Women (UNIFEM) and UN International Research and Training Institute for the Advancement of Women (INSTRAW)—prevented them from working in a coordinated and coherent manner. With the creation of UN Women, which became operational in January 2011, these entities have been dissolved and their mandates consolidated and transferred to the new institution. It is yet to be seen to what extent this restructuring will effectively respond to the institutional inconsistencies and deliver the expected outcomes.

Similar disconnects are observed in the workings of intergovernmental bodies, commissions, and treaty bodies as well. For instance, the two functional commissions of the UN Economic and Social Council (ECOSOC)—one on the status of women, convening in New York, and one on human rights, convening in Geneva—provide a striking example. While the latter has recently been upgraded to a council in its own right, the two bodies lacked (and still do) strong institutional means for a coordinated action on women's rights. As a matter of fact, the Special Rapporteur on Violence against Women of the HRC, which monitors violation of women's rights, while being mandated to report to the General Assembly on her activities, was not required to report to the Commission on the Status of Women (CSW) until recently. Such disjuncture reinforces the perception that "women's empowerment" and women's "human rights" are independent of one another. As of 2004, in my capacity as Special Rapporteur, I pursued this matter at the HRC until finally in 2009 the Council adopted a resolution mandating the Rapporteur to report to the CSW.

Equally problematic is the disconnect between the political wing of the women's rights regime, i.e., CSW, and the legal wing, i.e., CEDAW. For instance, the fact that the CEDAW Committee was not invited to the 1995 Fourth World Conference on Women in Beijing or to the Beijing+5 Special Session of the UN General Assembly in 2000 points to the disjuncture between the "legal framework" and "policy making" in the field of women's human rights (Acar 2010a). The move of CEDAW from New York to Geneva, where all other treaties are serviced, has not necessarily contributed to a better integration of CEDAW with other treaty bodies as was the objective; on the contrary, it has on many accounts widened the distance between the policy and normative frameworks.

The nature of the relation between the CEDAW Committee and the Special Rapporteur on Violence against Women, on the other hand, is largely left to the initiative of the relevant individuals. Naturally, the Rapporteur relies on the Convention in assessing the countries she visits, and if the country concerned is not a party to CEDAW, she then makes a strong plea to the government to consider ratifying the Convention as soon as possible. Similarly, it has been common practice for the CEDAW Committee to draw on the Rapporteur's mission reports during the periodic review of a state party. However, there is no established procedure to enable consultation and exchange of ideas between the Committee and the Rapporteur.

The institutional fragmentations and inconsistencies obstruct the effective transfer of experience, insight, and lessons learned in one field of activity to the other. For instance, while both the CEDAW Committee and the Declaration on the Elimination of Violence against Women emphasize that violence against women is a violation of women's fundamental human rights and that combating it will be possible only through women's realization of their socio-economic rights and empowerment, the tendency to view violence against women through the victim-oriented approach still lingers within the UN system.

The Millennium Declaration, which is the most comprehensive development agenda to date, employed positive language concerning women's role in development and placed emphasis on the commitment to women's empowerment, the struggle against violence against women, and the implementation of CEDAW. However, the Millennium Development Goals (MDGs) fell short of the same vision. For example, MDG3 on the promotion of gender equality does not include the struggle against violence as a main target. It has also not addressed critical issues such as women's reproductive rights, peace, or human rights. In this respect, many critics have noted that the MDGs have addressed equality between women and men solely as a goal in itself, without acknowledging its role in achieving other goals.

UN Women can play a critical role to overcome these and other institutional weaknesses within the UN system. It must, however, be recognized that these are not merely coordination problems in the technical sense but rather one of vision.

Part III:

Select Country Cases[152]

152 This Part, featuring select country cases, aims to shed light on the similar and different life practices of women under specific country conditions and circumstances as well as serve as a testing ground for the conceptual arguments of the book. These country reviews are based on the official country missions I conducted in my capacity as UN Special Rapporteur on Violence against Women between the years 2003-2009. Although relevant recent developments in the status of women's rights in the selected countries are also taken into consideration, however, the essence of the discussions are based on my reports to the Human Rights Council containing my findings at the time of the visit. Therefore, the common timeframe and approach provide an opportunity for drawing comparisons between countries. My mission reports and the mission reports of all special procedures monitoring mechanisms are available at www.ohchr.org.

I. El Salvador[153]

The National Setting and Recent History

1. Socio-economic Disparities

Historically a small privileged class has monopolized land, wealth, and power, in El Salvador, resulting in a polarized society.[154] These inequalities underlie the country's current social tensions and, along with a repressive military, constitute the factors that sparked the 12-year civil war from 1980 to 1992. The class and ideological divisions that were at the heart of the civil war were rooted in a state and economic structure controlled by an alliance between a powerful military and a small landed elite.

Despite the series of agrarian reforms initiated in the 1980s, access to land in general and for women in particular has continued to be a problem. Only 3% of the economically active population has benefited from the reforms, with women constituting only 11.7% of that minority. The agrarian policy promoted from1989 to1994 made no reference to rural women.[155] In 1997, 62% of all farmers had access to only 8% of the cultivatable land (FAO 1997).[156] This meant that the country's main economic resource, the coffee plantations, were in the hands of a few large landowners.

153 My visit to El Salvador took place from February 2 to February 8, 2004 (E/CN.4/2005/72/Add.2). My successor Rashida Manjoo visited El Salvador in 2010 and reported on similar findings (A/HRC/17/26/Add.2). More current data and recent developments are available in the latter report. Another important source for post-2004 developments on the subject of women is the CEDAW Committee's report on El Salvador (CEDAW/C/SLV/CO/7). Also on El Salvador, see the report of the Committee that monitors the Convention on the Rights of Persons with Disabilities (CRPD/C/SLV/CO/1) and the report of the Special Rapporteur on the Independence of Judges and Lawyers (A/HRC/23/43/Add.1). My decision to visit El Salvador was partly in response to individual complaints and allegations of systematic murders of young women (femicides) with impunity in the Central America region. Immediately after my mission to El Salvador, I visited Guatemala (E/CN.4/2005/72/Add.3) and in February 2005, Mexico (E/CN.4/2006/61/Add. 4).

154 In 1978, prior to the civil war, while the families constituting the richest 20% of the population earned 67% of the country's total income, the earnings of the poorest 40% was only 7.5% of the total. In 2000, the poorest 20% of the population earned only 2.9% of the national income and the richest 20% earned 57.1% (Human Development Report, 2004). The top 10% of landowners at that time controlled 78% of the arable land (Inter-American Commission on Human Rights; see www.cidh.oas.org/countryrep/ElSalvador78sp/cap11.htm).

155 CEDAW/C/SLV/3-4: 21.

156 FAO, Sustainable Development Department. 1997. "Fact sheet: women, agriculture and rural development: El Salvador" (www.fao.org/WAICENT/FAOINFO/SUSTDEV/WPdirect/WPre0037.htm).

Although in 2000 the agricultural sector accounted for only 8.7% of the gross domestic product, it employed the largest percentage of the population (21%); a significant drop from 34.8% in 1992.[157] In recent years, due mainly to the decline in cash crop prices such as coffee, the agriculture sector experienced heavy loses. The deterioration of the earnings from cash crops has further stimulated the exodus from El Salvador, which had begun in earlier decades. An estimated 525,250 people emigrated between 1980 and 1992. About 59% of emigrants during this time were men, which had direct impact on increasing the number of female-headed households.

Today, about 2 million Salvadorans live abroad, mainly in the United States. The remittances, averaging US$2 billion per year from immigrants, make up the backbone of El Salvador's foreign exchange earnings; 31.52% of female-headed households reportedly rely on remittances, the majority of which is used for consumption purposes.

The deterioration of agriculture also increased the hardship of those remaining in the country. Rural women and girls left their families to take jobs in the informal sector, namely as domestic workers in private homes of urban families and in the *maquila* plants of the export processing zones (EPZs). Although female unemployment rates (3.75%) remained below national (6.35%) and male averages (9.18%), employment contributed little to the improvement of their standard of living, due to poor work conditions, domestic responsibilities, and the sex-wage gap.[158]

The concentration of wealth, therefore, is a structural contributor to the unequal distribution of income and entitlements in El Salvador, resulting in an increase in the percentage of the population living below the poverty level, from 36.1% in 2001 to 38.8% in 2002.[159] The inability of the government to adopt a just income tax law and effective social security measures prevents them from tackling the growing disparities.

2. Process Towards Peace and Democracy

Right before my visit, on January 16, 2004, El Salvador commemorated the 12th anniversary of the signing of the Peace Accords that ended the civil war. In 1992, President Cristiani acknowledged that the causes of the conflict could be found in the absence of democratic political space and the lack of economic

157 CEDAW Shadow Report 2003.

158 Women in the service sector earn 43% of what men earn; this rate increases to 77% in the professional and technical fields (CEDAW/C/SLV/3-4: 4-5).

159 The increase in 2002 in the percentage of the population living under the poverty line may in part be related to the impact of the devastating earthquake in 2001.

opportunities (Call 2002: 545). The state assumed responsibility for building democratic institutions, the rule of law, and the protection of the human rights of its citizens. The government has since initiated legislative reforms, some of which directly address gender-based discrimination.

Despite the reforms, obstacles remain for ensuring human rights. Impunity for past and current violence as well as poverty, gendered discrimination, *machista* culture,[160] the possession of arms by non-state actors, and institutional impotence are all factors that are linked with the perpetuation of violence against women in the country. Furthermore, there is resistance to change from various stakeholders.

The role of women during the civil war and its resolution are important in shedding light on the current status of women in El Salvador. Women comprised 30% of the combatants and 40% of the leadership of the opposition front, Frente Farabundo Martí para la Liberación Nacional (FMLN) throughout the duration of the civil war (Luciak 2008: 234). However, women's rights were not central to the civil war, which was rooted in the long-standing friction between the rich and the poor. As a political party that gained a legitimate voice in the post-conflict political arena,[161] FMLN secured a strong hand in the peace negotiations and succeeded in getting many of its demands to be included in the peace agreements. However, both the women within FMLN ranks and the problems stemming from gender inequality were largely excluded from the peace agreements (Naslund 1999). The limited number of high-ranking women participating in the process were not in a position to insist on equality between sexes, nor was there an organized women's movement in the country that could create pressure to this end.

The reconstitution of the FMLN as a political party in the new political order allowed women within its ranks to participate in the political party structures, the parliament, trade unions, etc. However, the *machista* culture remained largely intact with the return to peace. On the other hand, women's non-traditional experiences during the conflict, as well as their frustration with the discriminatory treatment in the reintegration process, gave them a new sense

160 The terms *machista* or *machismo,* based on Spanish and Portuguese roots, refer to an exaggerated sense of "masculine" pride. This usage dates back to1970s, when Latin American feminists adopted this concept to draw attention to male aggression and violence, particular to the prevalent patriarchy in Latin America. Critics of this usage argue that the *machista* also bears a "positive" meaning, since it refers to the protection and maintenance of the family. Therefore, according to them, ascribing the term a "negative" meaning such as violence and misogyny carries colonial white Western male hegemonic connotations. In the current discussion, the term *machista* is used in line with Latin American feminist usage. For a comprehensive analysis of the concept, see Arciniega et al. (2008).

161 FMLN participated in the first democratic elections and with 21% of the votes became the second largest party in the country.

of feminist consciousness and motivation for struggle. In 1993 women built a broad-based coalition striving to create an agenda for equality between women and men and put pressure on the political parties in the 1994 elections. Because the political parties remained indifferent to their demands, women established *Women '94* (*Mujeres '94*), an alliance across ideological boundaries and parties, and launched an intense and arduous struggle for the visibility of women and women's rights in politics (Luciak 2008). Although the resistance from conservative forces in society continued, investing in building political coalitions enabled women to make significant gains, particularly at the legislative level (Hipsher 2001).

The return to peace and the establishment of democratic institutions did not eliminate the causes of the conflict. Today, power still remains in the hands of the elite and the military continues to protect the powerful families. The truth and reconciliation commission (Commission on the Truth for El Salvador), established to investigate human rights violations during the armed conflict, succeeded in finding the persons responsible for the violations; however, the amnesty granted prevented the investigation of high-ranking officials for their alleged war crimes.[162] Furthermore, poverty, unemployment, and lack of public safety and justice continue to pose major challenges to the consolidation of democratization in El Salvador.

Many Salvadorans feel that peace has not been truly achieved, since political crime was replaced by common crime, including thousands of murders in the capital, San Salvador, in 2002. Government officials attributed the problems to the actions of gangs (*maras*)[163] and adopted an Anti-Maras Act (AMA) on October 9, 2003.[164] There have been allegations that the government used the murders for political purposes to launch the AMA. It was reported that 60 gang members were killed in 1997 in what was thought to be a "social cleansing" exercise. Although investigations revealed the involvement of police and businessmen, no perpetrator was brought to justice.

There is no doubt that the *maras* are a source of violence, including violence against women. The initiations of women into—and women's roles within—the

162 Crimes against women are the least reported incidents at the truth commissions; they are also the least punished. Experts draw attention to the need for truth commissions to be especially mindful in creating an enabling environment for women to be able to recount their experience. In this respect, see Hayner (2011).

163 The National Police Force registered ten thousand gang members in 2003; the vast majority were male and an estimated 2% of the total were female.

164 The Procurator General for Human Rights filed a request for review with the constitutional court on the grounds that the AMA is unconstitutional. Concerns were raised that this law would penalize people on the basis of their appearance and social background and that it breeches several general standards of protection.

maras create high likelihoods for sexual and other forms of violence. A report from the Economic Commission for Latin America and the Caribbean (ECLAC) suggests a positive correlation between domestic violence and gang activity, citing the fact that the mothers of eight out of ten gang members have been victims of intra-family violence (2001: 27). Therefore, by failing to take into account violence in the home, the Anti-Maras Act can only hope to address the symptoms of the social problem of gang violence, not the root causes.

A Salvadoran sociologist attributes the aggressive tendencies of males there to the tensions created by economic marginality. She argues that, under economic and social pressures, men in particular are threatened by dislocation and become enticed with "… alcohol as a means of asserting manhood, and with violence as a method of solving conflict" (de Varela 2003).

Notwithstanding the enduring problems, the most promising aspects of El Salvador's experience in the transition to peace and democracy is the representation of the opposition (ex-combatant interests) in the legitimate political order, as well as the growing strength of the women's movement in shaping public discourse.

3. Family Patterns and Machista Culture

There is a consensus in Salvadoran society that gendered discrimination is attributable to a *machista* culture. Research shows that in many *machista* societies, masculinity is in part measured by a man's virility. Hence, men often father children in an effort to establish masculinity, at an age before they can support a family. This often results in abandoning their partners to pursue other endeavors or to start a new family elsewhere. In the wake of weak paternal responsibility and unstable family structure, the brunt of the economic and emotional burden of providing and caring for the children falls on women and the extended family. This situation is said to be particularly acute in rural areas, where the unions between women and men are often not formalized in matrimony (Sprenkels 2002: 14).

It is estimated that women head 31% of households in El Salvador. According to UNIFEM (2004), female-headed households, in rural and urban areas alike, make up 39% of families living below the poverty line. While some of these may be women who choose to live as a single mother or may be left-behind wives of emigrants, the vast majority are women who are abandoned by their partners and may mother children from different fathers. They typically have little education, few skills or resources, and little support and power to protect themselves against male sexual pressure, which puts them at risk of unwanted pregnancies, violence, and financial hardship.

Goals and Characteristics of Truth and Reconciliation Commissions

Goals:

- Uncover facts of past events for clarification and acknowledgment of the truth
- Promote reconciliation and reduce tensions resulting from past violence
- Identify and address the needs and interests of the victims, other injured parties, and society
- Contribute to the processes of justice and accountability
- Outline institutional responsibilities and propose recommendations for reforms

Characteristics:

- A temporary body, usually operating over a period of six months to two years.
- Investigates past history of human rights violations in a particular country.
- Examines patterns of human rights abuses over a set period of time rather than a specific event.
- Official body sanctioned, authorized, or empowered by the state and occasionally also by the armed opposition if such an arrangement is negotiated in the peace or transition agreement; this allows the commission to have greater access to information and increased assurance that its findings will be taken under serious consideration.

Source: Hayner 2011

In 1997 Las Dignas, a women's NGO, conducted a study that found that 87.5% of women interviewed received no economic assistance from the father of their children, while 61% reported that the father had never provided emotional support when raising their families. Less than 1% (0.9%) of mothers interviewed received economic support on a regular basis. Although the constitution provides that alimony entitlement should be based on the imbalanced situation resulting from divorce, and a new law has been adopted to punish deadbeat fathers, in practice men continue to dodge their alimony obligations. Paternity in El Salvador is considered to be more "extended" than "exclusive" to biological paternity, which means that others in the family or community often shoulder paternal responsibilities. Often, however, the only support system available

for single mothers comes from their own mothers, who themselves have most likely shared similar experiences.

Factors such as the breakdown of kinship networks, a greater age-dependency ratio,[165] inferior earnings, low time availability for jobs, and lack of sufficient formal and informal support mechanisms contribute to the general impoverishment and vulnerability of female-headed households in El Salvador. Even when men *are* present at home, the instability of the conjugal union caused by the male partner's unemployment and/or alcoholism often puts women in a precarious position of having to assume the household responsibilities. The social costs of the instability, often accompanied by domestic violence, may actually offset the male contribution to household income.

Although there is no conclusive research evidence that children are better off living with both parents, studies do reveal that, depending on the quality of time spent, a father's presence may generally be positive for children's development, household sustenance, and the couples themselves. The nurturing of fathers is likely to reduce the propensity of boys for domestic violence later in life (Barker 2003). Considering these findings, it is possible to argue that improving the quality of time spent between fathers and families can contribute to reducing the perpetuation of violence within the home and the society.

Manifestations of Violence against Women

Factors such as socio-economic pressures, a weak legal sector that fosters impunity, inadequacy and inaccessibility of state institutions, the *machista* culture, and violence among men[166] reinforce a generalized state of violence, which manifests itself in diverse forms. Some of the most pervasive forms of violence against women and girls reported to me in El Salvador are reviewed below.

165 The age-dependency ratio, all other factors kept constant, refers to the balance between the supply of workforce (working-age population) and the demands for consumption/care (dependent population) in the household throughout the biological life span of the household. As the number of the non-productive young and elderly population increases in the household, the pressure on the productive population increases, creating a bottleneck in meeting needs of the household. The expansion and dissolution phases of the family are the most critical periods in terms of this balance. Young adult women during the family's expansion phase and old women during the dissolution phase especially face great hardships.

166 Julia Zulver (2014) argues that the continued increase in violence against women is inextricably tied to the "crisis of masculinity" caused by the extreme violence among men. According to Zulver, men faced with state violence or gang violence on the street perceive the women as a punching bag to vent their frustrations in the private sphere.

1. Murders by "Unknown" Assailants—Femicide

During 2002 and 2003, El Salvador witnessed an increase in extremely violent murders of women. The majority of the cases followed a general pattern in which victims were between the ages of 15 and 20 years of age, they disappeared, and they were later found murdered in public parks and wastelands around San Salvador. The mutilated corpses showed signs of rape and torture and in some cases decapitation. According to interlocutors, the pattern to the killings was reminiscent of executions by death squads operating in the 1970s, when bodies were left in the street with signs of torture, to terrorize the communities. The newspaper publicity given to these horrific murders by unknown assailants and the manner in which they were broadly reported in the media heightened anxiety, particularly among young women.

There is conflicting data with regard to murder cases of women. According to the Women's Division of the Office of the Public Prosecutor, there were 306 cases of first-degree murder of women and 280 cases of second degree murder between January and November 2003. However, according to the National Police Force (PNC), during the same period, 202 cases of murder of women and girls were reported to the PNC.[167] The discrepancies in the data raise concerns about the accuracy of data collection by the different institutions.

Las Dignas (2004) conducted an analysis of crimes reported in national newspapers that involved female victims. Their research showed that a total of 153 cases of violence against women were reported in the newspapers in 2003, of which 77 were murder and the remainder rape. In 22 of the murder cases, the victim had also been raped or sexually abused. Of the 62 perpetrators identified by the rape survivors, 32.3% were professionals and 16.1% were gang members. Furthermore, the majority of the perpetrators were family relations or family friends of the victim. These findings challenge official claims that gangs are the primary perpetrators of violence against women. This also suggests that the AMA's strategy for curbing violence against women overlooks the multifaceted nature of the problem.

- Even when the perpetrators are found, the case can end with impunity. For example, in April 1999, 9-year-old Katia Miranda was raped and murdered during a family camping trip with her father and uncle (both high-ranking security force members) and grandfather (an attorney). Although the incident was recorded as a "drowning in the lake," the mother had suspicions that her daughter was murdered and applied to the prosecutor and demanded a murder investigation. Upon the mother's testimony of the

167 Information about violence against women in El Salvador (1993-1994) related to murder and acts of violence, submitted by the Permanent Mission of El Salvador, November 18, 2004.

history of domestic violence and child abuse within the family, the investigation was expanded. The grandfather was accused and brought to court on charges of rape and homicide, the father for not preventing the crime, and others for a cover-up. However, due to many procedural errors and delays, the accused were acquitted. Strangely, public opinion blamed the mother for not going on the camping trip with the family and, therefore, not being a good mother. For reasons of security, the mother sought political asylum in the United States.[168]

2. Domestic Violence and Sexual Abuse of Girls

Salvadoran law prohibits domestic violence and calls for sentences ranging from six months to one year upon conviction. However, because the laws are not consistently implemented, domestic violence is widespread, remains unpunished, and is tolerated. The cases attended to by the National Institute for the Advancement of Women (ISDEMU) and the Forensic Medicine Institute reveal that women are the main victims of intra-family violence.[169] ISDEMU reported receiving 3,786 complaints of domestic violence in 2002 and 4,706 in 2003. The Family Relations Improvement Program (PSRF) registered 4,222 females subjected to domestic violence in 2003. Women's organizations estimate that nine out of ten women have suffered from domestic violence. In her follow-up mission to El Salvador, Rashida Manjoo, the Special Rapporteur on Violence against Women, reported that the number of women murdered every year had reached almost 600 by the end of the 2000s, and the cases of domestic violence against women and girls increased from around 4,000 in 2004 to over 6,000 in 2008.[170]

Women I met with during my visit reported that the judicial system and the police do not take complaints seriously and fail to promptly issue protection orders, and that the orders issued are not implemented with diligence. The courts are said to favor mediation for reconciliation and family reunification over the prosecution of perpetrators, which further exposes victims to their abusers and may ignite reprisal. The authorities indicated that efforts are being made to strengthen women's access to justice through law reform, policies, and programs. Even though steps have been taken to this end, unfortunately, violence against women has continued to increase over the years.

168 Information relayed to me by NGOs during my visit.

169 In 1998 ISDEMU found that 91.74% of the victims in the reported cases of domestic violence were women. That same year, the Forensic Medicine Institute carried out a country-wide medical examination of domestic violence cases and found that 87% of the victims were women.

170 A/HRC/17/26/Add.2.

Data on child abuse and incest is limited, because these crimes usually remain unreported and therefore unrecorded, owing to the social taboo attached to such crimes. However, the testimonies I listened to during my visit reveal that such abuses are disturbingly widespread. The relatively unstable nature of matrimonial unions puts children particularly at risk of abuse by their natural fathers or stepfathers.

Many specific cases in this regard were reported to me. For instance, a ten-year-old girl, raped and impregnated by her father, had to keep her baby due to the country's anti-abortion law. Another case, of a 12-year-old girl raped and impregnated by her stepfather, in which the Procurator General for Human Rights took action, was first defined as aggravated rape, then reduced to seduction of a minor, then further reduced to conciliation, and finally closed when the stepfather agreed to marry his stepdaughter! As we know from cases in Turkey, such provisions and court decisions that exonerate rapists for marrying their victims not only reinsert the victim into the same abusive situation, but also condemn her to a life of indignity and violence with her rapist.

Women's organizations believe that domestic violence and sexual abuse of girls in the private sphere is alarmingly underreported. The reasons cited include societal pressure, fear of reprisal, fear of publicity and stigmatization, discriminatory responses by authorities, and low confidence in the justice system.

- Case 1: T. was married for 12 years. After the first two years, her husband started to subject her to physical and psychological abuse. She threatened him with prison, to which he responded that the police would do nothing. Following a particularly violent episode that resulted in an injury to her spine, she reported the case to the police and obtained medical proof from the forensic institute. However, she was told that the case was not valid, as they needed to catch him in the act. Later, the police did catch him abusing his children and removed him from the home. Although he threatened that he would return and kill her, the judge at the hearing persuaded her to give him another chance for the sake of the children and released him after only five days in detention.
- Case 2: D.'s boyfriend physically and psychologically abused her and regularly threatened her with a firearm. After giving birth to five children, she wanted to be sterilized, but the law required approval from her partner for the procedure (the law was reformed in 2001 and permission from the partner is no longer required). When she tried to discuss it with him, he beat her up so severely that she had to be admitted to the hospital. Although she reported the case to the PNC, he was never prosecuted because he was a

police officer. The couple is now separated, but the man does not pay child support and D. continues to live in fear of his return.[171]

3. Violence and Sexual Harassment in the Workplace

Salvadoran laws guarantee the legal equality of men and women workers pursuant to the provisions of articles 3 and 38.1 of the Constitution and articles 12 and 123 of the Labor Code. However, the areas in which women work tend to escape regulation and therefore often entail poor working conditions, low wages, little job security, and the potential risk of exploitation and violence. The two employment arenas in which women most commonly work are the *maquila* plants and as domestic labor in private houses.

VIOLENCE IN *MAQUILA* PLANTS AND EXPORT PROCESSING ZONES (EPZS)

In 2004 there were roughly 240 *maquila* (assembly) plants located in the 15 EPZs. According to the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), 80,000 women work in *maquilas* in El Salvador: 40 to 50% of these women have an education of between grades 1 and 6; 70% are unmarried mothers; and 75% are between 18 and 25 years of age, while the remaining 25% are between the ages of 26 and 50. They receive a salary averaging US$150 a month, of which roughly 15% goes to rent and 7% to pensions. The majority of *maquila* employees work at the plants for about 10 years, after which many suffer serious health problems such as respiratory disease, urinary infections due to low water consumption, allergies, and joint problems caused by repetitive movement.

The women I interviewed during my visit testified that, despite paying insurance/pension contributions throughout their employment, they did not receive benefits or leave when they became ill or pregnant, since they were coerced to sign documents that relieved employers of their legal obligations, and that the Ministry of Labor did not conduct regular monitoring visits to the *maquilas*. Women working in the *maquilas* expressed the view that while the government promoted the *maquilas* as an alternative to agriculture and a solution to the unemployment problem in the rural areas, it has neglected measures to protect labor rights, allowing "the greedy and abusive" *maquila* owners to monopolize the terms of employment, which in turn put women at risk of sexual harassment, rape, beatings, and exploitation. Many women do not report violent incidents out of fear of being dismissed and being blacklisted from working

171 Testimonies recorded during my mission.

elsewhere. The fact that women employed in the *maquilas* already have limited employment options leaves them helpless in the face of bad working conditions.

I raised some of these concerns, including the dismissal of women on grounds of pregnancy, with government officials, who responded that dismissal on the ground of pregnancy has no basis in the Labor Code. They assured me that the law is enforced and any injured party dismissed under such circumstances could apply to the Ministry of Labor with a medical certificate confirming the pregnancy. Proceedings would therein be instituted against the employer for violation of the law, and compensation and/or reinstatement for the victim would be sought. They said that a draft amendment to the Labor Code was tabled in the Legislative Assembly in January 2004 stipulating that a medical examination and confirmation of condition may not be required.

Despite the testimonies I received regarding violations of women's rights in the EPZs—including sexual harassment, subjection to pregnancy tests, and denial of employment of pregnant women among others—no cases of withdrawal of free-zone privileges for companies due to such violations were reported.

VIOLENCE AGAINST DOMESTIC CHILD WORKERS

According to the International Labour Organization (ILO)-International Program on the Elimination of Child Labor (IPEC) projections of Salvadoran census bureau data, there were an estimated 21,500 children between the ages of 14 and 19 working in domestic service in 2001, of whom 95% were female. Nearly one-quarter began working between the ages of 9 and 11 and over 60% were working by the age of 14 (Human Rights Watch 2004a: 9).

The condition of domestic workers, many of whom are live-in maids in private homes, escapes the labor codes, namely the maximum 8-hour workday and 44-hour workweek guaranteed to other workers. Domestic workers may work up to 16 hours a day and in some cases every day of the week. El Salvador is the only country in Central America to participate in the ILO-IPEC Time-Bound Program to eliminate the worst forms of child labor. However, the government has not included domestic labor in this program (Human Rights Watch 2004a). Girl children are particularly vulnerable to physical abuse and sexual harassment from members of the household in which they live and work. An ILO-IPEC study in 2002 found that 60% of girl domestics surveyed reported physical and sexual abuse. Of those who had held more than one position as a domestic worker, 15.5% reported leaving their position because of sexual harassment or sexual abuse. Wages in this sector are also unregulated and susceptible to exploitation, and according to various sources the monthly wages range from US$0 to US$114.

POLICE-RELATED VIOLENCE

Women's rights organizations assert that sexual harassment within the National Police Force (PNC) is widespread. Women comprise 7% of the police force (1,164 women out of a force of 16,474), with a high proportion of female police officers having reportedly been subjected to sexual harassment and violence. Since women police officers subjected to such violence may suffer from emotional trauma related to psychological coercion, blackmail, manipulation, or threats, their professional performance can also be severely compromised. Victims report strong repercussions in their job stability that may involve transfers and arbitrary punishments, greater work burdens, or obstruction from future professional and promotional opportunities.

Victims face a vicious circle as they also suffer greater marginalization and discrimination after reporting a violation to authorities or rejecting an aggressor's intention. All of these repercussions reinforce the culture of violence in the police force while sending a message that perpetrators can have impunity and that women's rights is not an institutional priority. Although exact figures were not made available, I was informed that the courts generally dismiss sexual harassment charges. The women's studies institute CEMUJER (Centro de Estudios para la Mujer) trains police officers in women's rights and counsels female employees subjected to harassment in the PNC.

Allegations of ill treatment and sexual violence of women under custody by the PNC are also prevalent. There was no indication of such violence within the prison system. At the time of my visit there were 650 female prisoners in San Salvador prison. The female prisoners whom I spoke to were mainly concerned with improving detention conditions and receiving more vocational training.

COMMERCIAL SEXUAL EXPLOITATION

El Salvador's geographical location is attractive to undocumented persons as a transit route to the United States and other countries in Central America, and such traffic has increased in recent years. The lack of opportunities pushed people into the migration stream and put them at risk of trafficking and exploitation. According to NGOs, persons reportedly pay between US$4,000 and $5,000 to be smuggled into the U.S.; however, many women and children do not make it to their final destination and disappear on the way. Many are trafficked into commercial sex exploitation, and some are raped and/or found murdered near the Mexico/U.S. border. The U.S. immigration policy since 9/11 has exacerbated the problem, as more migrants are forced to enter the country clandestinely, becoming easy targets for traffickers.

Another dimension of trafficking involves the abduction and fraudulent adoption of children. International adoptions have reportedly been taking place in

El Salvador since 1982. The government considered it to be a viable option for the country's "orphan" crisis during the war years. However, over time, illegal organizations began to operate in this field and started to kidnap children. According to the NGO Save the Children, many infants, the majority of them girls, are taken from El Salvador for commercial or fraudulent adoptions in North America and Europe. Women's sexuality and reproductive capacity have thus gained a commercial value. As a result, criminal networks have made a business of coercing young and poor women to have babies for sale. The government is well aware of the multifaceted trafficking and informed me of a regional agreement, which was to be signed in March 2004, providing legal guarantees for the victims of trafficking. At the time of my visit the authorities were working with the International Organization for Migration (IOM) to create a shelter for victims of trafficking.

- Mr. N.G., Dean of the Law Faculty, Director of the Bar Association, and candidate for the Supreme Court of Justice, was accused of the commercial sexual exploitation of girls, allegedly filming and taking pornographic photographs of them. Police reportedly found pornographic material at his home, but did not arrest him. He went into hiding and was later captured, but he was detained in a hospital rather than a standard detention facility. He allegedly received special treatment due to his social standing. Many other persons of power are thought to be involved in similar activities, suggesting that the N.G. case is only the tip of the iceberg. The media was insensitive in the way it reported the case, showing photographs of the victims despite legislation to protect minors. The victims now face sexual stigmatization and are taunted as the "porno girls" at school. At the time of my visit in February 2004, N.G.'s lawyers were challenging the legality of the process.[172]

172 Information relayed to me by NGOs during my visit.

Achievements in the Response to Violence against Women

1. Government Initiatives

LEGISLATIVE

El Salvador's constitution establishes the equality of all persons without distinction as to race, sex, or religion.[173] The country is party to all major international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), effective since 1981, and has signed the Optional Protocol in 2001, but has yet to ratify it.[174] The major obstacle to the ratification of the Optional Protocol is the influence of conservative groups in the House of Representatives.

A considerable number of important reforms have been introduced to strengthen domestic legislation and bring it in line with relevant international instruments. The 1996 Law against Intra-family Violence was revised on June 27, 2002. This Domestic Violence Act is a preventative law enacted to punish acts of violence within the family and defines domestic violence as any direct or indirect act or omission that causes injury or physical, sexual, or psychological suffering to or the death of a family member. The Act stipulates that any person with knowledge of an act constituting domestic violence may report it.

Importantly, Article 16 of the Domestic Violence Act, as amended, stipulates that conciliation is provided only when the victim so requests or when it is appropriate, and relates only to elements such as housing, children and custody, and economic aspects. It states that acts of violence are not subject to conciliation; rather, the appropriate protection measures must be requested.

In 1998, a new Penal Code entered into force that incorporated several provisions to protect women's rights, including crimes of sexual harassment and domestic violence. On November 25, 2003, a number of decrees were approved to increase the penalties for crimes against sexual freedom and those related to sexual commercial enslavement. On January 8, 2004, the government further

173 President Salvador Sánchez Cerén, who came to power on June 1, 2014, extensively addressed women's rights in his election campaign and promised to establish a women's ministry by 2015. Cerén is the second FMLN member to become president in the country.

174 El Salvador is also party to the Convention on the Political Rights of Women (ratified in 1994); the Inter-American Convention on the Granting of Civil Rights to Women (1951); the Inter-American Convention on the Granting of Political Rights to Women (1951); and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) (1995). As party to these instruments, the Government of El Salvador further shows its commitment to taking the appropriate measures to curb violence against women.

reformed the Penal Code, Criminal Procedures, and the Family Code in order to encourage greater paternal responsibility and the provision of child support by introducing penalties for non-compliance with alimony payments.[175]

Trafficking in women is classified as an offence punishable by four to eight years of imprisonment under the country's Penal Code, and in 2003 El Salvador approved the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Despite the noteworthy legal reforms for the prevention of violence against women and for bringing perpetrators to justice, the effective application of the legal framework for the prevention and prosecution of violence against women remains a challenge, as further explored below.

INSTITUTIONAL

The National Institute for the Advancement of Women (ISDEMU)[176] was established in 1996 as a national mechanism for incorporating gender issues in public policy, promoting the advancement of women, establishing gender equality, and removing obstacles to women's participation in the social, economic, cultural, and political spheres. The creation of ISDEMU facilitated the development of a National Policy for Women to promote equality of opportunity between women and men. A new action plan for 2000-2004 was drafted and introduced under the "New Alliance" program of government.

Its programs include gender as a cross-cutting issue in all the activities of the public sector and aim to ensure the cooperation and collaboration of the state various organs of the (executive, legislative, and judicial); local authorities; autonomous institutions; and political and civil organizations, especially women's associations. Additionally, in 2000, the Inter-institutional Legal Commission was established to identify gaps, inconsistencies, rules, and regulations that discriminate against women. This commission is also responsible

175 The law prescribes 24 to 48 weekends of imprisonment if alimony obligations are not fulfilled and one to three years of prison and special disqualifications for fraudulent acts to elude alimony obligations. In both cases, the person found guilty should attend a course of responsible paternity and maternity.

176 The ISDEMU board of directors consists of a president, who is the head of the National Secretariat for the Family (the First Lady of the Republic), and representatives of the ministries, the Attorney-General, the Procurator General, the Procurator for the Protection of Human Rights, two representatives of women's NGOs, and El Salvador's representative on the Inter-American Commission on Women.

for aligning domestic legislation with ratified international treaties and for proposing necessary reforms to the council of ministers.[177]

Regrettably, as in numerous other cases across the world, ISDEMU does not have the legal jurisdiction or budgetary capacity to comply with its mandate as a national system to coordinate a comprehensive policy for the advancement of women and gender equality; instead, it undertakes fragmented projects. Nor does it possess the political power to enforce the commitments assumed under CEDAW. The most concrete example provided by women's organizations and other relevant parties that attest to this fact is ISDEMU's inability to push forward the adoption of the CEDAW Optional Protocol, which has been in the Legislative Assembly for years.

SPECIAL PROGRAMS

ISDEMU has implemented a number of campaigns with the aim of ensuring the equality of rights between men and women and eliminating stereotypes, including events to prevent intra-family violence, radio campaigns, and awards for good reporting on violence. One temporary shelter for victims of violence with specialized professional staff was in operation at the time of my visit, and ISDEMU planned to open a second shelter in the north of the country in May 2004.

ISDEMU's Family Relations Improvement Program is an inter-institutional initiative to coordinate activities to control, prevent, treat, and monitor cases of sexual and domestic violence. It is an effort to raise awareness about sexual and domestic violence, as well as to prevent and deal with cases of violence. As part of the program, a family-friendly telephone line (TAF) is available to offer: (1) crisis intervention to help victims of domestic violence; (2) psychological monitoring of victims during the initial episode of the crisis; (3) telephone counseling, support, and monitoring of victims during the legal proceedings; (4) follow-up treatment in cases of individual and group violence, as well as crisis management and monitoring of aggressors; and (5) selection and monitoring of cases in which victims require shelter. According to ISDEMU, between 1999 and 2003, 102,784 domestic violence victims used the phone line and 224,931 persons benefited from the preventative action at national level. Additionally, 1,723 victims used the shelter between 2000 and 2003.

177 The Commission's work includes: (a) a consolidated study of the reform of the Domestic Violence Act; (b) a review of the amendments to the Criminal Code, Family Code, and the Domestic Violence Act; (c) an analysis of the measures for the protection of the family home and a revision of Article 46 of the Family Code; and (d) a revision of the HIV/AIDS Act proposed by the Health Ministry.

In December 2003, the Salvadoran Institute for the Protection of Children and Adolescents (ISNA) opened a home in Ahuachapan Department particularly for the care of girls who had become pregnant and given birth as a result of rape. During my visit it provided services to 12 girls and their children. ISNA also cooperates with the police to search for minors in the red-light districts; in 2003 they took 65 children under protection. With the support of the International Labour Organization, the Salvadoran Institute has been able to develop a program for the prevention of commercial sexual exploitation of children. The Institute has also worked in collaboration with municipalities to eliminate the worst forms of child labor, particularly involving girls.

The Police Academy has developed a human rights program that conducts modules on "policing and women's rights" designed to raise awareness among public security professionals about women's historically rooted inequality and social vulnerability, which warrants special consideration from police.

2. Civil Society Initiatives

A network of women's organizations works with the police, the attorney general, and the prosecution office to improve the criminal justice system's response to cases of violence against women. The same network has also launched the process of developing a manual of implementation standards to prevent violence against women with the support of the United Nations Development Program (UNDP). The manual aims to sensitize criminal justice institutions on violence against women issues and victim assistance. The network has looked into complaint registration protocols and developed a follow-up system to observe the effectiveness of procedures in preventing violence against women. NGOs have also attempted to gain a better understanding of the perception of violence against women cases within the courts by reviewing how judges analyze cases.

CEMUJER, founded in 1980, provides services to women and girl victims of violence. It has a clinic that offers legal, psychological, and social support. It also offers legal representation to ensure that women receive improved access to justice. CEMUJER also provides training and technical advice for judges in an effort to develop a national plan to combat domestic violence. The organization documents abortion cases to support proposals to amend the Penal Code to allow for therapeutic abortion.

Las Dignas has formed mutual assistance groups and given legal literacy training to empower women to make informed decisions about how to proceed in the legal system. The organization helps victims prepare for court and provides support services throughout the legal process.

Reportedly, women's associations in rural communities have been successful in providing a support network. Movimiento Melida Anaya Montes is one organi-

zation that provides safe houses for women victims of violence, as well as legal literacy training and psychosocial treatment.

3. United Nations Initiatives

During the negotiation and implementation of the El Salvador Peace Accords, the United Nations played an instrumental role in mediating negotiations, verifying peace agreements according to international human rights standards, and providing financial and technical assistance to promote institutional development. The UN Observer Mission in El Salvador was particularly crucial in the peace process as an observer and monitor of the peace agreements and elections in El Salvador between 1991 and 1995 (Call 2002: 383-4).

In the post-conflict era, the UN Mission continues to provide support for the development and human rights endeavors in the country. Each UN entity promotes women's advancement within the context of its own mandate. The Inter-Agency Gender Group promotes the expansion and deepening of gender components within UN programs and coordinates with the government entities and women's groups to execute the international agenda on gender issues and to mark International Women's Day. The Inter-Agency Program for the Empowerment of Adolescent Women (PIEMA), an offshoot of the Inter-Agency Gender Group initiative, works to resolve problems young women face, by providing programming on leadership training, HIV/AIDS awareness, gender-based violence, maternal health, and prenatal care.

Obstacles and Challenges

1. Ineffective Implementation of the Law

Despite the generally positive legal frameworks, institutions, and programs outlined above, the Government of El Salvador is failing in its obligations under international law to effectively prevent, investigate, and prosecute crimes of violence against women, mainly due to gendered discrimination in the criminal justice system and inconsistencies in the interpretation and implementation of the law. NGO findings indicate that judges do not take into account the discrimination that women experience, nor do they consider the unequal power relationship between men and women when making their adjudications.

The common perception among the judges assigned to cases of violence against women is that the woman must have provoked the violence committed against her. Due to these stereotypes and the belief that gendered violence is not a serious matter, judges apply or interpret the law incorrectly, often opting for reconciliation rather than prosecutorial processes in domestic violence cases. The new Domestic Violence Act, mentioned above, strengthens protection and

clearly prohibits reconciliation, to avoid returning victims to situations of abuse. For the law to be fully effective, Article 32 of the Code of Criminal Procedure must also be revised.

Victims and their families have reported that when they seek justice they are subjected to further abuse and discrimination by the criminal justice system. In San Salvador, I spoke with several families whose daughters and sisters were among the victims of brutal murders. They all felt that the police and judicial authorities had treated their requests for investigation into the murders with complete disregard. In many of the cases, police conducted only cursory investigations, if any at all. Some family members reported being treated with indifference by the authorities and some female family members were even sexually harassed by police officers. Furthermore, women's organizations working to assist the victims' families said that they had received anonymous death threats and that the police had refused to protect them.

The Fundación de Estudios para la Aplicación de Derecho (the Foundation for Studies on the Application of Law, or FESPAD) recognized some improvements in the criminal justice system's response to violence against women. It argues, however, that the police have not been trained to investigate cases of violence against women or to collect evidence with the necessary sensitivity and knowledge of the laws on victims' rights. Some types of violence receive more thorough investigations, such as kidnappings when investigations have been granted more resources, and thus, there is a reduced incidence of such crimes. For other types of offences such as murder of women, the number of perpetrators brought to justice is very low. According to police records, of the 10,000 sexual offence cases registered with the police each year, only two in every 100 cases reach a judge.

Impunity is still chronic for perpetrators with high political or social status, which obstructs justice. The case of Katia Miranda (above) is a particularly illustrative example of the need to strengthen institutional accountability to prevent such discriminatory practices and impunity. The Office of the Human Rights Procurator, which is the human rights monitoring body of El Salvador, has strongly condemned the way in which the case had been handled even at the highest level and concluded that the information at hand pointed to alarming infractions and negligence in the trial. NGOs continue to fight for a full investigation and the prosecution of this and similar crimes. The case does suggest the need for further review of the court decision and probable structural reform.

The state's Ombudsman's office has developed a data collection system to follow up on assistance provided to women and to monitor police and court treatment of women's cases, in order to put pressure on authorities to comply with international obligations. However, since 1999, this system has encountered

numerous obstacles. As the Peace Accords paved the way for the development of democratic institutions and society, powerful conservative forces that view such monitoring practices as dangerous to their interests reportedly started to neutralize or weaken the powers of the Ombudsman's office, specifically shutting down the subdivision of the office promoting women's rights. The appointment of a new ombudsman with an alleged record of human rights violations further damaged the credibility of the office. Although he was eventually removed from office, his deputy remained on duty, which reduced confidence in the office even further.

There have also been worrisome reports of attacks launched against the judiciary by senior government officials due to decisions relating to the implementation of the AMA (Amnesty International 2003a: 1). Such interference is an infringement of the peace agreements, the recommendations of the Commission on the Truth, and standards and principles regulating the separation of powers at the national level. Such attacks on the independence of the judiciary must be prevented to ensure institutional strength capable of serving all people without discrimination and upholding the rule of law. All steps should be taken to preserve the international standard guaranteeing that judges shall resolve the matters before them "without improper influence (...), pressures, threats or interferences, direct or indirect, from any quarter or for any reason" (Principle 2 of the Salvadoran Basic Principles on the Independence of the Judicature).

2. Lack of Access to Reproductive Health and Rights

While many of the legislative reforms provide greater protection for women's rights, the area of reproductive rights in particular is a serious concern. Induced abortion has always been an unlawful act in El Salvador; however, therapeutic abortion and abortion following rape or abortion on eugenic grounds was legal until 1999, when the constitution was amended to recognize the fetus as a person from the moment of conception. The right to life of embryonic human beings is also protected in articles 133-141 of the Penal Code, which makes violating this right a criminal act. Through this amendment, the rights of the fetus have been prioritized over a woman's right to life, health, and well-being.

Consequently, women and girls impregnated as a result of rape are condemned to further emotional, social, and economic victimization as they are forced to either keep the child, face criminal charges, or risk death. Furthermore, a manual that contained information for adolescents regarding sexual and reproductive health was withdrawn from the educational system in 2000, thus revoking efforts made by the Ministries of Health and Education to raise awareness and prevent unwanted pregnancies.

The criminalization of abortion denies women the right to control their bodies and their lives, as well as the right to reproductive health services that enable them to enjoy full and healthy lives. Unwanted pregnancies put women in a particular bind since they cannot legally terminate the pregnancy, yet they are left alone with the responsibility of the child and face stigma, hardship, and dismissal at work for being pregnant. The failure to protect the rights of pregnant women and single mothers and the criminalization of abortion creates a systemic double standard that abandons women to meet the difficulties alone. The life that awaits teenager mothers and the children thus born is another dimension of the dilemma.

The criminalization of abortion is discriminatory primarily for poor women, since women of higher social standing are said to have access to other options for dealing with unwanted pregnancies. Poor women and girls end up having to induce abortions by using unsafe methods in unsanitary environments, which leads to health complications or deaths. The majority of cases involving illegal abortions brought before the courts involve poor, under-educated young women who can be charged with murder and sentenced to prison for up to 50 years (Amnesty International 2014, Facio and Hardaga 2014).

Conclusions

Salvadoran transition to peace and democracy has led to a number of promising developments, most notably the representation of the opposition in the legitimate legal and political order in the post-war era, the emerging influence of the women's movement—which was marginalized during the peace process—in shaping public discourse with a new awareness, and the improvements in the legal protection of women's rights. Moreover, it is commendable that the Government of El Salvador has recognized the problem of violence against women and has brought legislation in line with international standards to a large extent. Since the establishment of the human rights unit within the PNC, progress is being made in the collection of sex-disaggregated data on cases of violence against women (victim, perpetrator, location).

The consolidation of democracy in the country, however, is hampered by lack of justice and security. The resistance of various stakeholders makes change particularly slow, as a small elite class continues to control the wealth and resources with influence over security forces, politicians, and the judiciary. This situation is an obstacle to achieving an inclusive and just society.

The above mentioned advancements in women's rights have drawn the harsh reaction and counterattacks of certain conservative circles in favor of the status quo. The reform of the Constitution and Penal Code to remove therapeutic abortion is a fundamental setback in this regard and constitutes a striking case of trampling on women's numerous rights, including the right to life. It is impossible not to second the Human Rights Committee's concluding observations on El Salvador[178] regarding the severity of the current law against abortion in its violation of women's right to adequate healthcare and right to life. In order for women to lead healthy and dignified lives, all forms of coercion on women's decisions involving their own bodies and reproductive life should be eradicated, and women's autonomy in this regard should be recognized.

Deepening poverty resulting from the unequal distribution of income sources, impunity for the perpetrators of violence against women, sex and class discrimination in the application of law, the *machista* culture, the possession and use of arms, and the impotence of state institutions are all factors that require urgent attention.

178 CCPR/CO/78/SLV.

II. Guatemala

The Political, Social, and Economic Context of Violence

The alarming prevalence of violence against women in Guatemala is connected to the 36-year-long civil war and the history of inequality, poverty, and exclusion that triggered this conflict. A comprehensive historical analysis is not the aim of this chapter; however, in addressing violence against women, it is necessary to reflect on the legacy of the conflict and the basic tenets of the success and failure of the implementation of the Peace Accords.[179]

The United Nations Verification Mission in Guatemala (MINUGUA) has worked with the government to implement the Accords and establish a democratic system in the country; however, despite the efforts of the international community and years of technical cooperation, the situation remains fragile. The political will to press for the reforms outlined in the Peace Accords has not been forthcoming.[180] Moreover, the parallel structures of power and interest groups continue to pose an obstacle to progress towards a just society. The realization of human rights and the rule of law remains an aspiration.

1. Women in Conflict and in Peace

In December 2003, shortly before my visit, Guatemala celebrated the seventh anniversary of the Peace Accords that brought the country's 36-year armed conflict to an official close. The Commission for Historical Clarification (Comisión para el Esclarecimiento Histórico—CEH) estimated in its 1999 report that some 200,000 Guatemalans had either been killed or disappeared, the vast majority during the first half of the 1980s. According to various sources, it is estimated that around 50,000 people disappeared, one million were internally displaced, and thousands fled abroad (Stanley and Holiday 2002: 421).

179 For a comprehensive overview of Guatemala's return to peace, see Stanley and Holiday (2002).

180 President Oscar Berger Perdomo, who took office on January 14, 2004, shortly before my visit, indicated in his inaugural speech that he would strictly adhere to the 1996 Peace Accords. In our meeting, he assured me that he was committed to taking the necessary steps to address violence against women. Although the situation reflected here covers the developments during previous administrations, it is a fact that the Perdomo administration, which was in office until 2008, also failed to fulfill its promises and that violence against women continues to be a prevalent phenomenon.

The CEH blamed security forces for 93% of these crimes. Based on reports and witness testimonies, it concluded that women and girls had been raped and in some cases gang-raped during massacres of the indigenous Mayan population. Soldiers, according to these accounts, committed other acts of extreme cruelty against women, such as removing fetuses from pregnant women. Survivors still carry the devastating traces and the health complications of the wartime violence on their bodies and their memories. The conflict left many women as single parents. Families of the disappeared still search for their loved ones; unable to end the war in their minds, they are condemned to live with the burden of a fruitless search. Many Guatemalans I spoke to expressed that achieving peace and breaking the cycle of violence depended on a national action plan based on the participation of the entire society and a strong political will in this regard.[181]

Women's participation in the ranks of the opposition forces, the Unidad Revolucionaria Nacional Guatemalteca (URNG) during the civil war was sporadic and limited in comparison to the case in El Salvador. Though there is no systematic data, at the end of the war women comprised roughly 15% of the officially demobilized forces. The guerrilla movement, which reflected the fragmented nature of the indigenous population, did not have gender equality and women's rights issues on its agenda. However, the Peace Accords adopted a progressive approach concerning women's role in society.

Signed four years after the Salvadoran Accords, the Guatemala Peace Accords benefited from certain advantages, three of its points being most pertinent: (1) the lessons learned from the El Salvador experience; (2) the impact of the United Nations global conferences of the 1990s, which created a momentum around the human rights paradigm, in particular for women's rights; and (3) the involvement of an active civil society, including women's groups, which by that time had already developed gender awareness. As a result, four of the seven provisions agreed upon in the Peace Accords specifically addressed women's rights (Luciak 2008: 237). Among these, the following are particularly pertinent: the protection of women heads of households and their families; equal rights for indigenous peoples, with particular focus on indigenous women; and commitment to the principle of positive discrimination to increase women's participation in the public sphere.

181 In this context, the "From Victims to Actors of Change" project, which was launched by the Projects Counseling Services, addresses issues such as mental health, justice, and the recovery of historical memory.

Years later, albeit delayed, the door to justice was cracked ajar. On October 10, 2014, Guatemala's Court for High-Risk Crimes ruled that charges would be brought against two members of the army for crimes of sexual slavery and domestic slavery perpetrated during the armed conflict (www.ipsnews.net).

Many sources (e.g., Spence et al. 1998, Luciak 2004, 2008) have highlighted the contributions of civil society in the initiation and conclusion of the peace negotiations in Guatemala. In 1994 the Assembly of Civil Society (Asamblea de la Sociedad Civil) was established under the Framework Accord, which enabled the participation of civil society organizations in the negotiations between the government and the URNG. The Women's Sector, the most visible group with permanent presence in the Asamblea, consisting of ten different NGOs, played an important role in making women's rights a priority issue in the negotiations. Through her strong advocacy efforts, Luz Méndez, member of the National Union of Guatemalan Women and the only woman member on the URNG delegation during the first years of the negotiations, was able to secure the adoption of the recommendations on women's rights (de Alwis et al. 2013: 187).

Unfortunately, the dynamism at the negotiating table and the progressive provisions that shaped the accords have not been translated into action. The weak and fragmented nature of the URNG[182] left it with little power to influence national policies and action. Similarly, the National Advancement Party (Partido de Avance Nacional) and the Guatemalan Republican Front (Frente Republicano Guatemalteco) governments were unable to deliver the political will and backing needed for the Accords. The failure of the 1999 referendum for constitutional reform was also a major setback in this regard. Therefore, despite the victories at the negotiating table, the achievement of an inclusive society remains encumbered, thus leaving the Guatemalan society troubled and divided with a sense of fatigue. This situation undermines the efforts to establish a common agenda among women.

As MINUGUA stated in 2003, "…seven years after the end of the armed conflict, Guatemala has reached a crucial turning point. Despite hopeful advances just after the signing of the peace agreements, the country is now moving in the wrong direction with regard to human rights issues. Momentum for the reform of crucial institutions, principally the police, the Public Prosecutor and the courts, has stalled at a time when changes have not fully taken root, and modernization efforts are starved of budgetary resources and political support" (A/58/566, annex, para. 22). On the other hand, military influence in state affairs continues, as evidenced by the 85% increase in the 2001 military budget.

Furthermore, the violence perpetrated with impunity by clandestine security groups linked to organized crime has heightened security concerns, due in particular to its alarming resemblance to counter-insurgency activities. Moreover, the expansion of trafficking in drugs and persons, organized crime, and gangs in the last few years has increased the use of drugs and the proliferation

182 URNG was ethnically diverse: 80% of its members came from 21 ethno-linguistic indigenous groups; revolutionary Ladino groups made up the remainder.

of firearms, which have further contributed to the violence and atmosphere of societal insecurity (Keen 2003).

2. Socio-economic Disparities

The problems of unequal land distribution and income disparity that relegated the majority of the indigenous peoples to unproductive farmland and poverty before the war are still unresolved. While the Rural Development Bank, designed to finance small-scale agriculture, is a successful response to the land issue, registration of landholdings continues to pose an obstacle to land rights. An estimated 2% of Guatemalans own 70-75% of all productive land, which leaves the poorest groups, namely the indigenous peoples, without sufficient resources (MADRE 2004). The indigenous rural women (64% of all indigenous women) are predominantly unpaid family workers with little or no independent access to land, credit, and other productive resources (Oxfam 2003). Thus, the Agreement on the Identity and Rights of Indigenous Peoples component of the Peace Accords has not adequately addressed expropriation-based land reform.

The marginal position of the indigenous population is linked to economic disparities as well as to their historical exclusion from legislative power and decision-making processes. The indigenous people have only recently been able to make claims for positions attained through the electoral process. This situation is still problematic for women, especially indigenous women. For the first time in the history of Guatemala, four indigenous women were elected to the Congress in 1995; however, the representation of indigenous women in the Congress did not exceed 5% in the 1995-2007 period. In the 2003 and 2007 legislative years, a total of 13-15 non-indigenous (*mestizo*) women representatives were elected to the Congress. Women's representation in executive branches and local governments has also been low. Considering the fact that Guatemala has the largest indigenous population among the Central American countries, the low representation levels of indigenous people, and especially women, in public offices reveals how very uneven and deep this marginality is.

According to Human Development Report 2004, Guatemala ranks 121st in the human development index (HDI). In 1997, with the exception of Brazil, Guatemala had the highest Gini coefficient of inequality[183] (59.6) among middle-income countries (World Bank 1997: 222). Between 1980 and 2012, Guatemala's HDI value increased 34% from 0.432 to 0.581 (average annual

183 The Gini coefficient of inequality (developed by the Italian statistician and sociologist Corrado Gini) is the most commonly used measure of inequality. The lower the coefficient, the more it reflects complete equality; the higher the coefficient, the more it indicates inequality (http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:20238991~menuPK:492138~pagePK:148956~piPK:216618~theSitePK:430367,00.html).

increase of 0.9%). As such, the rank of Guatemala's HDI for 2012 was 133rd out of 187 countries, which is below the average of 0.741 for countries in Latin America and the Caribbean. According to the 2004 data, the poorest 20% of the population shares 2.6% of the income and the richest 20% earns 64.1%. Seventy-five per cent of Guatemalans live below the poverty line, according to the World Bank, and 81% of the indigenous population is reportedly extremely poor. The estimated per capita earned income of women in 2002 was US$2,007 and US$6,092 for men, and Guatemala's rank in the Gender Development Index (GDI) was 98.

Public spending on social services such as education and health, although increased since 1990, is insufficient, at 1.7% and 2.3% of the gross domestic product (GDP), respectively. Most services do not reach the majority of the population, particularly in rural areas. For example, only 30% of births take place in medical facilities, implying that the lives of the vast majority of women and infants are at risk. This situation also leads to a low level of registration of female babies at birth in rural areas, which results in "marginalized citizenship."[184]

3. Ethnic Composition and Indigenous Women

Guatemalan society is multi-ethnic, multicultural, and multilingual in nature, and the indigenous peoples include the Maya, Garífuna, and Xinca peoples.[185] The core highland departments of Guatemala are areas of high indigenous concentration; therefore, the majority of the country's rural population is comprised of indigenous people (65% of the total).

The Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People stated that indigenous women experience discrimination at three levels: as indigenous persons, poor people, and women. To this three-layered system of discrimination,

I would add discrimination as rural inhabitants. The Special Rapporteur called for special measures to address this discrimination, including greater political, legal, and economic support to the Office for the Defense of Indigenous Women (Defensoría de la Mujer Indígena). He also recommended that the Office initiate

184 According to the United Nations Country Team, around 200,000 women lack identification documents, some having been lost during the war. It was reported that the Embassy of Switzerland in Guatemala has initiated a registration project to enable women to obtain proper documentation.

185 An estimated 42.8% to 60% of the population are indigenous (some claim the figure to be as high as 70%). According to Human Rights Watch (2002: 46), the discrepancies in the data are due to the varying definitions of what it means to be "indigenous." The Maya are comprised of 21 linguistic groups. The Garífuna are basically of African descent. The rest of the Guatemalan nation, from the ethnic standpoint, is composed of the Ladinos or mestizos and the population of European origin or "Whites."

a national dialogue to identify the necessary measures for improving the status of indigenous women.[186]

Language is a primary cause of exclusion for indigenous women.[187] Owing to different prescribed gender roles, boys have greater opportunities than girls to be connected to the Spanish-speaking world, which also gives them a better chance of learning Spanish, accessing education, and using Spanish in everyday life. Unlike boys, who are able to leave the village to seek opportunities elsewhere, girls have little connection to life outside of the village and, therefore, have little or no exposure to the Spanish language. This not only deprives them of access to opportunities in wider society, but also creates obstacles to seeking protection from gender-based abuse within their own communities. During my visit I heard numerous first-hand testimonies from female indigenous survivors of domestic violence who reported that they were not able to access any state protection or services.

The combined third and fourth periodic reports of Guatemala to the CEDAW Committee indicates that 66% of girls in rural areas drop out of school before the third grade and only one in eight finishes eighth grade. Their attendance is hindered by economic, cultural, infrastructural, and nutrition and health barriers.[188] It is well known that such low educational levels limit women's awareness regarding their human rights and preclude them from attaining higher-paying jobs, which ultimately restricts their leverage to negotiate with partners or employers and increases their vulnerability to violence in the public and private spheres.

Indigenous women are predominantly unpaid family workers in the agricultural sector and lack access to land, credit, and other productive resources as well as to mainstream institutions and services. Out of necessity some indigenous women have sought work outside of their village and faced discrimination as women and as indigenous persons in the labor market. Many work in informal sector jobs, such as domestic work in private homes, which is not covered by the labor code and therefore escapes regulation and social security norms. Even women working in the formal sector—paying the same percentage of their wages as men to the state social security—receive unequal benefits.

186 E/CN.4/2003/90/Add.2.

187 Language is a common obstacle for indigenous schoolchildren, who are required to speak Spanish in school, although it is not their native tongue and they have no opportunity to learn it prior to starting school. Approximately 40% of indigenous schoolchildren fail in their first year, while many others quit.

188 CEDAW/C/GUA/3-4: 39.

In the face of exclusion and the risk of violence, indigenous and rural women have developed various individual and collective strategies of struggle. Awareness-raising programs and other projects implemented in remote communities are making an impact in empowering women.[189] There are innumerous women leaders from the indigenous communities who have made their voices heard at the local, national, and even international levels; just to name a few: Rosalina Tuyuc, a former congresswoman; Dominga Vásquez Julajuj, the Mayor of Solala; and Rigoberta Menchú, the Nobel Prize winner. The life stories of these women leaders illustrate all the challenges and contradictions of being an indigenous woman in Guatemala.

The Office for the Defense of Indigenous Women has also provided social services for victims of domestic or community violence, as well as mediation, conflict resolution, and legal services for indigenous women. It is also responsible for coordinating and promoting actions by both government institutions and NGOs to prevent violence and discrimination against indigenous women; however, it lacks the human resources and logistical capacity to perform its functions on a national level.

Intersecting Systems of Oppression and Female-Headed Households

Women's exposure to violence in Guatemala is related to their position in the multiple systems of inequality and shows a tendency to increase as these systems intersect, creating layers of discrimination and exclusion for different groups of women. Four basic systems of inequality intersect with gender hierarchies to distinguish diverse categories of women in the Guatemalan society: class (poverty); ethnicity; urban/rural residence; and displacement. Other intervening factors such as disability and sexual orientation are also bases for human rights violations. Therefore, most if not all women are subjected to various forms of discrimination, which places them at risk of violence.

Before the civil war, it was rare to find women heading households, due to a strict *machista*[190] gender order that assigned to men the role of provider and to women, caring and nurturing roles. During and after the war, however, women suddenly found themselves having to step out of their traditional roles in search of remunerated work for the sake of survival. Factors such as widowhood owing to wartime violence, internal displacement, migration of men for work, marital

189 Micro-credit programs have been shown to make a significant impact on empowering women; see, for example, http://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/meetingdocument/wcms_091581.pdf.

190 See previous section on El Salvador.

dissolution, and the abandonment of the family by men have forced women in Guatemala, like so many throughout Latin America, to increasingly shoulder the burden of supporting the family alone. Between 1990 and 1998, the percentage of urban female-headed households in Guatemala rose from 19.8% to 24.3% (United Nations 2004: 48). Out of this heterogeneous category, nuclear households of mothers and children increased from 87.1% to 88.7%, and extended and composite families headed by women rose from 28.4% to 34.1%.

Barker's study (2003: 11) reveals a low level of economic responsibility on the part of fathers in Guatemala, which is visible through their unequal income contributions to the household relative to contributions by mothers. According to this study, it would take a 15-fold increase in a father's income contribution for parents to achieve equal impacts on improving children's nutrition. The same study indicates a positive correlation between child welfare and the percentage of men's income allocated to the household. Data suggests that even in households where the male is present, women often bear the brunt of the economic and emotional responsibilities, implying that there may be more *de facto* female-headed households than acknowledged.

Other studies in Latin America have shown that families benefit economically, physically, and emotionally when a father demonstrates conscientious, responsible, and non-violent parenting, although as a general rule it is not possible to conclude that dual-parent families are better off than single-parent families. Considering the low level of male support, traditional gender roles relegating women to the private sphere, significant gender-wage differentials, and high age-dependency ratios, it is not surprising that female-headed households are on average poorer than others.[191]

The impacts of the psychological ramifications of the civil war and poverty on men's ability to fulfill *machista* roles as providers have intensified family abandonment, unstable relationships, and alcoholism, all resurfacing in the form of violence against women in and outside the home. According to women's organizations, poverty- and discrimination-induced alcoholism throughout the indigenous male population has served as a catalyst for domestic violence. This in turn undermines opportunities for promoting non-violent relationships in future generations.

Under such unstable and vulnerable circumstances, women heads of household are more predisposed to experience sexual and domestic violence as well as stigmatization, with little recourse to protection and justice. As these women

191 Owing to the definitional discrepancies mentioned above, there is no consensus as to the exact percentage of female-headed households in indigenous communities, but it is known that the intersection of patriarchy and ethnicity, particularly in rural areas, condemn these women to extreme poverty.

take on remunerated work in order to survive, the socially taboo nature of their entrance into the public realm often brings with it sexual connotations that can lead to women being scorned by their community, excluded from social support systems, and made targets of sexual advances.

Manifestations of Violence against Women

S. Walsh (2008: 63) describes Guatemala to be "the most dangerous" country in all of Latin America and emphasizes that this is particularly the case when it comes to women. The impunity enjoyed by the perpetuators of violence sustains parallel and multiple structures of power, which has resulted in fear and lack of confidence in state apparatuses. Although the government in office at the time of my visit had declared its determination to combat violence against women, the major problem confronting the state is its inability to provide women with legal, judicial, and institutional protection from violence. In the following section, I will review the manifestation of multiple forms of violence I observed during my mission.

1. Femicides

At the time of my visit, public attention was focused on a series of brutal murders of women. Most interlocutors were of the opinion that while they may not necessarily have represented a systematic targeting of women, the cases systematically remained unsolved. There was a conspicuous and repeated pattern in regards to the victims of these murders by unknown assailants—the majority of victims were poor women between 13 and 30 years of age, who were abducted, gang-raped, tortured, mutilated, and killed. The corpses were generally found dumped around Guatemala City on unused land. The National Civil Police (PNC) statistics showed a steady increase in the number of women murdered, with 303 in 2001; 317 in 2002; and 358 in 2003, totaling 978 reported cases. The murder rate increased even further in 2004, with 489 cases by the beginning of December. According to the police, while in 2003 women comprised 9.04% of deaths due to violent acts, in November 2004 this figure had reached 13.45%.[192]

The pattern of murders of women in Guatemala shows similarities with those reported in El Salvador, Honduras, and Mexico. The rate at which women are being killed, however, is much higher in Guatemala. Although 370 women were killed (Amnesty International 2003b) in Chihuahua, Mexico, over a ten-

192 According to Human Rights Watch (2013) rapes and sexual assaults of women increased by 34% from 2008 to 2011, while in nine of every ten of these cases, the perpetrators were not punished.

year period (1993 to 2003), nearly the same number of women was killed in Guatemala in 2003 alone.

The Office of the Human Rights Ombudsman (Procuraduría de los Derechos Humanos), established under the 1985 Constitution, conducted a study of violent crimes committed between January and September 2003 by collecting information from death certificates, police reports, and the Public Prosecutor's Office (Ministerio Público) and found that 272 violent deaths of women had been reported throughout the country between January and September: 53% of the victims had bullet wounds, 12% had stab wounds, 8% had been beaten, and 5% had been strangled. The regions of the body most frequently injured were the head and thorax. In two cases the upper extremities had been almost amputated. According to experts, the *modus operandi* is reminiscent of torture methods used in the counter-insurgency. Available information indicates that the most frequent victims were housewives (24%), domestic workers (13.6%), and students (11%).

The response of the security and justice institutions has been inadequate. According to the officials, only three cases had been solved; however, no details were provided regarding the perpetrator, sentence, or compensation. The existent information indicates that there has not been any effective investigation, prosecution, or sanction of those responsible, and no compensation or support for families of victims has been provided.

- The story of a mother whose daughter was murdered is revealing of the many aspects of murders of women: "My 15-year-old daughter María Isabel was a student and worked in a shop during holidays. On the night of December 15, 2001, she was kidnapped in the capital. Her body was found shortly before Christmas. She had been raped, her hands and feet had been tied with barbed wire, she had been stabbed and strangled and put in a bag…When her body was handed over to me, I threw myself to the ground shouting and crying but they kept on telling me not to get so worked up… The case has been passed to two prosecutor's offices but those responsible are still at liberty."[193]

Despite the death threats, relatives of victims and women's and other human rights organizations continue their pursuit for justice. The Myrna Mack case illustrates the obstacles faced in the search for justice for women who have been victims of violent crimes:

193 S. Walsh 2008.

Myrna Mack Murder, Guatemala City

Ms. Myrna Mack, an anthropologist, had been studying the mistreatment of displaced rural communities by the military when she was attacked in front of her Guatemala City office on September 11, 1990. Stabbed 27 times, she bled to death on the street. Police initially informed Myrna's relatives that she had died in a traffic accident. Later, they suppressed a 60-page report by their own investigators concluding that it had been a political killing, linking the military to the crime.

Only after Helen Mack, Myrna's sister, intervened did the case begin to move forward. In 1993, a Guatemalan court sentenced an army officer, Sgt. Noel Beteta, to 25 years for committing the murder. In 2002, another Guatemalan court sentenced Col. Juan Valencia Osorio to 30 years for his role in planning the killing. An appeals court later overturned that conviction, but later the Supreme Court reinstated it. A police investigator who initially gathered the incriminating evidence was murdered in 1991. Two other investigators and three witnesses also received threats and fled the country. In 2002, a lawyer acting for the Myrna Mack Foundation reported receiving death threats.

As of 2004, Col. Valencia Osorio is the only senior officer to be convicted for human rights violations committed during the country's 36-year civil war. However, since the reinstatement of his conviction by the Supreme Court, he has managed to elude police custody, and his whereabouts were unknown. In December 2003, the Inter-American Court of Human Rights ruled that Guatemala should publicly recognize the state's responsibility for the murder and subsequent denial of justice in the case and ensure that the perpetrators of the crime be brought to justice.

Source: Human Rights Watch 2004b

2. Domestic Violence and Other Crimes in the Private Sphere

Even conservative estimates reveal that 36% of all Guatemalan women living with a male partner suffer domestic abuse (Inter-American Development Bank 2003:12). Women are also frequent victims of other crimes in the private sphere, which tend to go unreported or do not result in convictions. According to the Office of the Human Rights Ombudsman, a total of 2,625 cases of violence against women were reported in 2003, of which 2,027 reports indicated violence within the private sphere.

The women's network in Sololá municipality reported that 80% of violence against women cases involve domestic violence; and 80% of the perpetrators of intra-family violence are husbands or partners, with the remaining 20% brothers. Of the victims, 40% are in the 15 to 25 age group, 40% are between 26 and 40 years of age, and 20% between 41 and 55. Domestic violence also impacts, directly or indirectly, children. It is estimated that seven out of ten children, mainly girls, are sexually abused in the home.

3. Violence against Women in the Workplace

Although women contribute with goods and services to family and community development, often as unpaid family labor, their contributions are rarely recognized. This is particularly true for the work of indigenous women in agriculture, animal husbandry, pottery, and weaving. In recent years, however, women in increasing numbers have become paid workers in the labor market through home-based contract work or direct involvement in formal—and informal—sector jobs outside the home. The vast majority of indigenous women who take up work outside the agricultural sector work in private homes as domestic workers, since they lack or have only a few years of education, thus disqualifying them from other forms of employment.

The garment export industry generates 130,000 official jobs in *maquila* factories, 70 to 80% of which are staffed by young women, many of whom are single mothers. Owing to insufficient regulation of this sector, human rights violations are common. Women are reportedly subjected to physical, sexual, and psychological violence. Human Rights Watch reports widespread gendered discrimination, including inquiries about employees' reproductive status, post-hire penalization of pregnant workers, and failure to enforce maternity protections. Despite the fact that employers are required by law to register workers with the national social security system, which will entitle employees to healthcare, many *maquilas* fail to do so while continuing to deduct the social security contribution from the worker's wages. Although factories can be fined and even closed down for this illegal practice, owing to ineffective monitoring, the violators often escape penalty.

Some improvements in work conditions have been made following increased levels of complaints. On July 9, 2003, for instance, workers at two garment factories owned by the Korean company Choi and Shin achieved a precedent-setting victory when their unions and company management signed

their first collective bargaining agreement. The agreement provides for wage increases, improved access to healthcare services, and daycare facilities.[194]

4. Trafficking

Guatemala is a source, transit, and destination country for women and children trafficked for the purpose of sexual exploitation. International sex trafficking predominantly flows into Mexico and the United States. To a lesser extent, there are reports of forced labor trafficking, mainly involving children used in begging rings in Guatemala City. In March 2004, the government signed an anti-trafficking border cooperation agreement with Mexico. Despite some progress, it has not been possible to bring traffickers to justice or to fight the corruption that makes trafficking possible. However, the *first* female Attorney General in the history of Guatemala, Claudia Paz y Paz, who came to office in 2010, resolutely prosecuted incidents of organized crime and violence and brought many criminals to trial. Between 2009 and 2013, a significant drop was recorded in these crimes.[195]

Currently, all undocumented foreigners, including trafficking victims, are subject to deportation within 72 hours of apprehension. The administration that came to office in 2004 pledged to give new direction to the government's inter-agency anti-trafficking group. Both the Secretariat for Social Communication and the Immigration Service announced plans for a public awareness campaign in 2004. A key challenge of the government's commitment in this regard will be the implementation of the agreement with Mexico in responding to a range of trafficking problems on their joint border and protecting the rights of the trafficked victims in the process.[196]

5. Custodial Violence

During my visit there was a riot in the Santa Teresa pre-trial detention center for women in Guatemala City, where there were 223 detainees. There was extensive press coverage on the operation conducted by hundreds of police officers to

194 In the midst of negotiations for the Central America Free Trade Agreement (CAFTA), the Government of Guatemala threatened to deprive the company of its export license if it failed to negotiate this first collective agreement with the unions, reinstate unjustly fired union members, and come to agreement with the union on a plan to resolve problems in the factories.

195 The former Attorney General of Guatemala (2010-2014), Claudia Paz y Paz, aside from her aggressive prosecution of organized crime, is also known for her prosecution of human rights abuses, including the high-profile case against former dictator Efraín Ríos Montt for his role in the genocide of indigenous Mayans during the civil war. However, on May 20, 2013, the Constitutional Court of Guatemala overturned the conviction and a retrial began in 2015. Paz was also a candidate for the 2013 Nobel Peace prize.

196 Another cross-border problem confronting Guatemala is fraudulent adoptions; however, owing to insufficient information, it is not possible to focus on the issue here.

suppress the riot. I visited the prison following the incident. Female detainees complained that the police had used excessive force and attack dogs, and as a result many women had sustained injuries. Some of the women said that they did not receive adequate medical assistance and alleged that some of their belongings, including money, had been stolen during the police intervention.

The legal process that leads to a final verdict in Guatemala may take up to a year and half or even longer, particularly for those who lack proper legal representation. Yet pre-trial detainees are kept under maximum security conditions. Such a long period of detention without any conviction amounts to punishment in itself. The female detainees I spoke to emphasized the need for improved provision of medication, cultural and sport activities, work opportunities, and a place to cook and do their laundry. The most frequently voiced problems were incidents of violence among detainees and unnecessary and arbitrary restrictions on visitation rights. According to the information presented by the prison officials, a large majority of the women detainees are indicted for membership in a gang and by extension for crimes such as murder, battery, theft, and drug trafficking.

Due Diligence in Responding to Violence Against Women

This section assesses Guatemala's compliance with its obligations to exercise due diligence in responding to violence against women, with a view to preventing, protecting, and prosecuting the offences. In so doing, it highlights both achievements and challenges.

1. Legislative Initiatives

Guatemala has ratified the majority of international and regional instruments providing protection for women's rights. The Constitution affirms the principle of equality between the sexes (Article 4, Freedom and Equality). The Peace Accords also contain government commitments with regard to comprehensive measures for the advancement of women. According to MINUGUA, a package of laws on Development Councils, the Municipal Code, and decentralization has opened up new possibilities for broader social participation in development planning at the local level, particularly by groups who were historically excluded, such as women and indigenous peoples.

The Law for the Prevention, Sanction and Eradication of Domestic Violence (Ley para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar, Decreto No. 97-96 del Congreso de la República) specifically addresses violence against women in accordance with the Convention of Belém do Para. This law requires

the registration of cases, the collection of statistics, and the development of public policies to comply with the Convention. The National Coordinator for the Prevention of Domestic Violence and Violence against Women (Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y en Contra de la Muje—CONAPREVI) was created in 2000 as a result of the Law (see below).

Despite these advances, the Penal Code does not consider some forms of violence against women as crimes. At the time of my visit, NGOs had requested Congress to include in the Penal Code sexual harassment, which was not addressed in the law. There are also some discriminatory provisions that preclude women from having the full protection of the law. For example, Chapter VII, Article 200 of the Penal Code exonerates perpetrators of rape if the aggressor marries the victim, provided that the victim is over 12 years of age. With such a clause, Guatemala's legal system sanctions putting victims at risk of further physical and psychological trauma by condemning them to a life with their rapist.

Additionally, perpetrators of crimes of a sexual nature, most of which are committed against women, are highly likely to be pardoned. When a case does reach the courts, whether or not a perpetrator is sentenced in accordance with the rule of law often depends on the personal criteria and initiative used by the individual applying the law.

2. Institutional and Programmatic Initiatives

Existing information and data clearly show that the state is unable to effectively respond the phenomenon of violence against women. Various interlocutors who believed that an effective state response to violence against women is lacking explained that this was due in part to the absence of an integral and coordinated institutional framework and strategy to ensure public security and curtail violent crime against the general population, and women in particular. There is a consensus that this has resulted in the absence of justice and prevailing impunity for criminal acts.

The Women's Office (Fiscalía de la Mujer) has been in operation since 1995 as part of the structure of the Public Prosecutor's Office (Ministerio Público). Its mandate includes investigation of all cases that involve women and minors in relation to the following crimes: (a) abortion; (b) crimes against sexual freedom and decency; and (c) crimes against the legal order of the family and civil status. At the beginning of 2004, it had five branch offices headed by an attorney, three assistant attorneys, and an officer. The Office also has the support of three psychologists and two agents from the Criminal Investigations Office of the Ministerio Público. The PNC has established a special unit to investigate the murders of women.

There are a number of parallel institutions for the advancement of women, with overlapping mandates. The National Office on Women (Oficina Nacional de la Mujer—ONAM), created in 1981, is charged with overseeing state policies on women's rights. The Office for the Defense of Women's Rights (Defensoría de los Derechos de la Mujer) has been part of the Office of the Human Rights Ombudsman since 1991. It has a general mandate to promote and monitor the implementation of gender equality in all spheres: social, political, economic, and cultural. One of its objectives is to bring national law into full compliance with international human rights norms as well as implement commitments regarding women's rights contained in the Peace Accords. A national forum composed of governmental and non-governmental representatives emerged from the Peace Accords, which lobbied for the creation of a ministerial-level body that would effectively replace ONAM as the national machinery for the advancement of women. The Presidential Secretariat for Women (Secretaría Presidencial de la Mujer) was created in May 2000.

The Office for the Defense of Indigenous Women (Defensoría de la Mujer Indígena), called for in the Agreement on Identity and Rights of Indigenous Peoples of the Peace Accords, was officially installed as part of the Presidential Commission on Human Rights (Comisión Presidencial de Derechos Humanos) on July 21, 1999.

The Ministry of Labor has a Working Women's Unit (Sección de Promoción y Capacitación de la Mujer Trabajadora) that promotes women's equal participation in the workforce, educates working women about their rights, and fosters understanding within the Ministry about gender-specific labor rights. The Unit, like the other entities focusing on women's rights, receives inadequate funding to carry out its mandates efficiently and effectively.

The Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos—COPREDEH) was established on July 12, 1991. It includes one representative each from the Office of the President and the Ministries of Foreign Affairs, National Defense, the Interior, and the Ministerio Público. Its administrative structure consists of a chairperson, an executive director, and an assistant director. COPREDEH has devised numerous plans to improve the human rights situation and had concluded that one of the institutions requiring urgent reform was the PNC.

Tasked with implementing the law to prevent, punish, and eradicate domestic violence, CONAPREVI was established in January 2001 by the President. Despite its position in the state hierarchy and high visibility, like the other institutions responsible for women's rights, it lacks the necessary political and budgetary support and therefore cannot conduct efficient and effective work.

CONAPREVI consists of the President himself; the President of the Judiciary; the Head of the Ministerio Público; the President of the National Statistical Institute; a representative of the Program for the Prevention of Domestic Violence and Violence against Women; a representative of the First Lady's Office of Social Work (Secretaría de Obras Sociales de la Priméra Dama); and three representatives of the NGO Red de la No Violencía contra las Mujeres.

During my visit, CONAPREVI launched a progressive national plan for the prevention and eradication of violence against women (PLANOVI, 2004-2014). PLANOVI is based on the understanding that all state institutions are responsible for ending all forms of violence against women, including domestic violence, and that in order to effectively address the phenomenon action must be taken in a coordinated and comprehensive fashion. It includes the following four strategic areas of work: (1) investigation, analysis, and statistics on violence against women; (2) prevention of violence against women; (3) reintegration of survivors of violence against women into family and societal life; and (4) strengthening of the state institutions to prevent, investigate, punish, and reduce violence against women. If the government provides it with the necessary financial and political support, this program grounded on a positive foundation may yield successful results.

In addition to the above, the Ministry of the Interior introduced a campaign in 2004 that published the photos of suspects of crimes and encouraged the public to report any information they may have regarding the suspects' whereabouts. The initiative, however, did not last long because the Criminal Investigations Unit of the Police claimed that the campaign merely warned the suspected criminals. Moreover, several of the photos published were reportedly inaccurate. If designed carefully, such programs can serve to generate greater public sensitivity towards crime prevention and deter potential criminal acts.

3. Initiatives in the Security and Justice Sector

Progress in the security and justice systems is nil. MINUGUA and the Myrna Mack Foundation have presented evidence regarding the existence of clandestine security groups and parallel power structures that, with the acquiescence of the State, operate brutally to silence political opposition, activists, academics and other emerging democratic actors.[197] In this regard, MINUGUA stated that; "The National Civil Police has been undermined by widespread corruption and an inability to stem the rise in criminal violence. The Public Prosecutor and courts have made little significant headway in combating corruption and organized crime or in investigating the ongoing harassment of human rights

197 E/CN.4/2003/104/Add.2.

defenders and judicial sector officials. Important human rights investigations and judicial proceedings have languished unless accompanied by extraordinary efforts from individual judiciary officials and civil society organizations."[198]

One observer, who is knowledgeable and experienced in state affairs, noted that counter-insurgency security structures that evolved during the war are, for the most part, still present and have become part of organized crime and that it is these structures and elite interests that represent a significant obstacle to the implementation of the 1996 Peace Accords.

In this context, in 2002 a range of human rights organizations demanded that the government take action to eliminate these groups. The Human Rights Ombudsman responded by calling for the creation of a Commission for the Investigation of Illegal Groups and Clandestine Security Organizations in Guatemala (Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad en Guatemala—CICIACS), with the participation of the United Nations and the Organization of American States. On January 7, 2004, the UN and the Government of Guatemala signed an agreement to establish CICIACS. Article 2 of the agreement provided CICIACS with the authority to investigate the structure and activities of illegal groups and clandestine security organizations.[199] However, on August 6, 2004, the Constitutional Court issued an opinion declaring the agreement unconstitutional in several key areas. According to some analysts, the Court failed to provide strong legal arguments for its conclusions; nevertheless, CICIACS, which promised radical reforms in the security sector, could not be established.

As mentioned earlier, among the justice system institutions, the PNC is the most criticized for failing to comply with its legal mandate to provide security to the citizens and for serious deficiencies in the performance of investigations within the penal process. The police force is considered today to be the principal source of human rights violations in the country. The Human Rights Ombudsman claims that agents of the PNC might be responsible for at least ten of the murders of women referred to earlier. Some of the murders are

198 A/58/56, annex, para. 19.

199 The term "clandestine groups" refers to criminal networks involving the business sector, private security companies, common criminals, and gang members. It is reported that preliminary investigations have also implicated members of the police and both former and current members of the armed forces. These clandestine groups are closely linked to both organized crime and so-called "hidden or parallel powers." These represent an informal group of powerful individuals, both civilian and military, who have embedded themselves within the state structure and use their positions and contacts to control lucrative illegal activities and guarantee immunity from prosecution. Many of the increasing number of attacks against human rights defenders, whilst often disguised as common crimes, are believed to be carried out by members of clandestine groups.

thought to be part of ongoing "social cleansing" operations conducted by organized crime networks. The evidence suggests that the murders are extrajudicial executions. The Ombudsman's Office estimates that more than one woman is murdered every day. It claims to have provided elements of proof in several cases, but that the Ministerio Público lacks interest and the political will to address the phenomenon.

The Women's Office of the Ministerio Público has 20 investigators divided into five groups. Each of the investigators has estimated 20 cases pending. Both the prosecutor's women's office and the special unit of the PNC reported that 40% of the cases are filed and never investigated due to the lack of resources and personnel. According to CONAPREVI, not one of the murders committed in 2004 has been taken to court. By November 2004, even though more than 400 murders had taken place, only 15 warrants to arrest 15 suspects had been issued.

4. Follow-up by the Women's Commission of the National Congress

In February 2004, the Women's Commission of the National Congress issued an official statement condemning all discriminatory actions against women, noting that they are conducive to acts of violence such as murder and sexual assault. This statement demanded that the Ministerio Público carry out proper investigations in order to solve all the cases of the murdered women and punish those responsible.

Legislative Agreement No. 52-04 of October 6, 2004, entitles the Women's Commission to follow up on the activities carried out by the competent state institutions in order to prevent, investigate, and eradicate all crimes against women. The Commission asserts that the concrete results of this agreement will be to better detect the weaknesses and shortcomings of the justice system and, therefore, determine the legislation and other measures required to correct deficiencies. The requirement that the Commission issue a report with conclusions and recommendations addressed to the state bodies that are by law required to take action on the issue of violence against women is another positive element.

The Commission summoned the Minister of the Interior, the Director of the PNC, and the Human Rights Ombudsman separately to be briefed about the three officials' views on the issue of violence against women, as part of their mandate and to receive information on the procedures and follow-up given to these cases. Women's NGOs such as CONAPREVI and the Red de la No Violencía contra las Mujeres were invited to sit in on these meetings.

Following the meeting with the Minister of the Interior on October 27, 2004, the Commission concluded that "the Government has the political will to enlarge the security apparatus in order to provide a better service to the population in general, and specifically to women" and criticized the Ministry of the Interior for its lack of an internal normative framework to establish the activities and objectives of the Ministry.

Meeting with the Director of the PNC on November 16, 2004, the Commission determined that there was a "need to provide the National Civil Police with the adequate technology and also to provide it with more funding."

On November 29, 2004, the Commission discussed the issue of violence against women with the Human Rights Ombudsman. The Ombudsman stated that the first problem to be addressed was impunity and highlighted the fact that if criminals do not get caught and charged, the severity of the punishment has no bearing.

These consultations are an important beginning aimed at strengthening adherence to international norms and standards for the prevention of violence against women.

Conclusions

Guatemala is a country with a rich cultural heritage, which can be an asset in its efforts to establish a democratic and just society. In doing so, however, it is essential to reverse the historically rooted manifestations of hegemonic relations shaping the contours of social class and governance. It has been argued that "much of the crisis of governability stems from unaddressed and serious questions about the Guatemalan society, most specifically in the intersection of nation, ethnicity, state and community" (Handy 2002. The missing dimension in this formulation is patriarchal gender hierarchy.

Gender politics as adhered to in the various communities has played a key role in not only keeping ethnic and community boundaries distinct, but also in dividing and forcing women into patriarchal patterns of sexual and gender conduct. As a result, even though discriminatory provisions in law have for the most part been eliminated, women throughout Guatemalan society continue to be subjected to discrimination and violence at home, at work, and even when accessing the criminal justice system. Furthermore, women as markers of the identity of their community are compelled to adopt subordinate behavior, which adds *de facto* discrimi-

nation to the societal one. This situation is particularly prominent in the case of women of poor, rural, and indigenous communities.

A positive element in Guatemala, especially at the government level, is that violence against women is acknowledged; however, there is no serious political will behind this recognition. The improvements in women's rights to date have been thanks to the organized women's movement that worked in coordination with national and international actors to exert pressure on state institutions.

In order to overcome the environment of violence in the country, first and foremost, the pain rooted in the atrocities of the civil war must be healed. The Guatemala Peace Accords that brought women to the negotiation table and was drafted with a gender perspective—four years before the UN Security Council Resolution 1325 on Women, Peace, and Security—should be put to practice without any reserve. This requires an end to impunity for past as well as current crimes against women. There is need for serious reform to rebuild the state in such a way that it can challenge the monopoly over resources and the insidious alliance between criminal elements and the still-present counter-insurgency structures. In this context, to address the situation of clandestine security groups, it could be worthwhile to reconsider creating a mechanism with similar powers to those contained in the shelved CICIACS agreement signed in January 2004.

It is essential that the government ensure that women can fully exercise their rights, by eliminating barriers in the criminal justice system. Effective access to justice for women seeking the protection of their basic rights and the prosecution of perpetrators is vital to eliminate the chronic impunity for violence against women. PLANOVI and similar initiatives developed in consultation with civil society must be provided with the necessary political support and financial resources to attain their declared objectives. The media interest in and coverage of my visit, and its working in cooperation with women's organizations, was encouraging. Moreover, the media coverage of the lack of effective response by the police and justice sectors to gender-based violence plays an important role in raising public awareness about women's rights. A critical and well-informed media is essential for informing the public about human rights violations and holding governments accountable for their obligations under international law.

Despite the time elapsed since the signing of the Peace Accords and the various developments that could be considered positive, justice is yet to be instituted in Guatemala. This situation leaves women constrained in a rather complicated and contradictory environment. In the post-war

era, women who have attained new fields of broader social, political, and economic participation continue to be subject to murder and violence due to gender discrimination and the incompetence of the security and justice systems.

III. Occupied Palestinian Territory[200]

The Context: Security, Human Rights, and Humanitarian Law

On November 29, 2012, Palestine, which previously held an "observer entity" status in the UN, was accorded "non-member observer state" status. The international community thus recognized the state of Palestine, with 138 votes in favor during the UN General Assembly vote. Observer state status accords Palestine with the right to appeal to various international institutions, including the International Criminal Court. The change of status may also have other implications for Palestine's international obligations and rights.

On the other hand, in 2004, Israel withdrew from Gaza, which, unfortunately did not end the armed conflict or the problems addressed here; the situation of women in Gaza has worsened as they face new threats every day. During the escalation of the conflict in the summer of 2014, more than 2,000 Palestinians, including women and children, lost their lives as a result of Israeli attacks. The reactions set off by Israel's Al-Aqsa operation in fall 2015 indicated the possibility of a third intifada. These current developments are not included within scope of this discussion, which is based on the situation at the time of my visit in 2004.

National security has become a global concern, which regrettably too often compromises human rights and humanitarian law. This is a salient feature of the state of affairs in the Occupied Palestinian Territory (OPT), accelerating particularly after the second intifada in 2002. Through military orders, Israeli authorities have built and expanded Jewish settlements on Palestinian lands, exploited Palestine's water and economic resources, controlled crossing points, imposed work permits and regulated the movement and the intimate lives of the Palestinian people. This situation has provoked resistance in different

200 Occupied Palestinian Territory (OPT) refers to the West Bank, East Jerusalem, and Gaza. Following the Oslo Accords of 1993, limited sovereignty of some parts of these lands has been transferred to the Palestinian Authority (PA). In Gaza, with Israeli withdrawal in 2005, Hamas gained control and, through a bloody secession from the PA, started to govern Gaza independently. The Fatah-dominated PA retains control of a large part of the West Bank. Even though an accord was reached between the two sides with the Hamas-Fatah Doha Agreement signed in 2012, due to the dynamics in the region, no progress has been made in its implementation.

I decided to visit the OPT upon Israel's military operation on Rafah in Gaza in 2004. During my official mission from June 13 to 18, 2004, I visited East and West Jerusalem, Gaza, and Tel Aviv. On the day I went to Gaza to visit Rafah, Israel closed the roads to the city. There was no security risk reported whatsoever to necessitate such a measure. We learned the ban was lifted later in the day, after my departure from Gaza.

forms, including violence by militant groups. Thus, institutionalization and normalization of violence at the intersections of patriarchal hierarchies and the methods employed by occupation penetrates all aspects of women's lives in the OPT.

Israel, no doubt, has the right to ensure the security of its people. However, human rights law calls for a balance between legitimate national security measures and the protection of fundamental freedoms of all persons concerned. In other words, measures must be proportionate to the threat that they are designed to counter and must be non-discriminatory in nature. Under international law, certain rights are not subject to suspension under any circumstance, including the right to life; freedom of thought, conscience, and religion; freedom from torture and cruel, inhuman, or degrading treatment or punishment; and fundamental principles of fair trial and the presumption of innocence.

In its concluding observations on Israel the UN Human Rights Committee reiterated that the provisions of the International Covenant on Civil and Political Rights (ICCPR) *do* apply to the population of the OPT. It specifically stressed that Israel has to "ensure that measures designed to counter acts of terrorism, whether adopted in connection with UN Security Council Resolution 1373 (2001) or in the context of the ongoing armed conflict, are in full conformity with the Covenant."[201] The Committee noted Israel's frequent use of administrative detention entailing restrictions on access to counsel and failure of disclosure of reasons for detention. It stated that these features limit the effectiveness of judicial review, thus endangering protection against torture and other inhumane treatment. The Committee deplored the punitive nature of the demolition of homes and called on Israel to cease the practice.

On May 19, 2004, shortly before my visit to the OPT, the Security Council adopted Resolution 1544, which reiterates the obligation of Israel, as the occupying power, to scrupulously abide by its legal obligations and responsibilities under the Fourth Geneva Convention of August 12, 1949, relative to the Protection of Civilian Persons in Time of War, and the numerous previous resolutions on the Palestinian question. The international community has stated clearly that the concept of military occupation applies to the OPT, and therefore, Israel is subject to the provisions and rules of international humanitarian law that regulate the situation of occupation.

During our meeting, representatives of the Government of Israel indicated that security measures are a last resort to protect the Israeli population from terrorist attacks; they also stressed that human rights law and the law of war may at times be incompatible. The Israeli Defense Forces (IDF) legal service said that

201 CCPR/CO/78/ISR21/08/2003.

any action exceeding "military necessity" is investigated and that perpetrators are prosecuted if found guilty. They assured me that they are very sensitive to "collateral damage." However, they admitted that sometimes mistakes are made due to poor intelligence. They emphasized that the Israeli Supreme Court also subjects all actions to review and that all residents of the West Bank and Gaza may petition against alleged human rights violations.

On May 27, 2004, Adalah, the Palestinian Centre for Human Rights, and the NGO Al-Haq filed a petition and a motion for an injunction to the Israeli Supreme Court against the IDF, the Minister of Defense, and the Prime Minister. The petitioners asked the Supreme Court to define, for the first time, the legal scope of the term "military necessity" in accordance with international humanitarian law, the Rome Statute of the International Criminal Court, and recent decisions of the International Criminal Tribunal for the former Yugoslavia. The petition challenged the IDF's justification of "military necessity" for its policy of house demolitions. At a hearing on the petition on October 26, 2004, the Supreme Court requested additional submission on a specific incident related to the petition. Although there are a very large number of such cases, the outcomes are not promising in terms of changing the situation.

The Integrated System of Violence against Women

Decades of Israeli occupation of the OPT, the use of force, and stringent security measures, combined with the forms of resistance these provoke, have contributed to the creation of an atmosphere of legitimized violence as a method of conflict resolution. At the intersection of occupation and patriarchy, women experience a multilayered discrimination and a continuum of multiple forms of violence.

The occupation has pervaded all aspects of life and entailed violations of economic, social, and cultural rights as well as civil and political rights. Violence is used by the IDF as a tool to sustain the occupation and by the Palestinian militants as a tool to resist it. The strategic use of instruments by Israel such as land confiscation, extrajudicial executions, daily military incursions, arbitrary closures and curfews, demolitions of homes, and arbitrary detention, among others, have all contributed since 1967 to the current mistrust and hostility pervasive throughout the OPT.

During my visit the situation in Gaza, which was still under Israeli control, was like an open prison. In May 2004, Israel launched raids of unprecedented violence and destruction in the south of Gaza with the aim of finding and destroying tunnels stretching under the border that connected to Egypt, through

which weapons were allegedly being smuggled into Gaza. They demolished homes, damaged schools and other public buildings, and destroyed infrastructure, much of which reportedly stood several hundred meters away from the border. Palestinian civilians, including women and children, were shot without warning. On the first day of the incursion a 14-year-old girl was killed, followed by many more injuries on the second day as troops opened fire haphazardly on demonstrators.[202] I was unfortunately unable to visit Rafah, as the IDF closed the road on the day I was scheduled to travel there; trucks carrying food, ambulances trying to take patients to the hospital, and other vehicles created long queues at the border, causing further inconveniences and hardships.

A woman I spoke with in the Jenin refugee camp told me that during the operation in 2002, the IDF blockaded and fired missiles into the camp, killing many civilians and demolishing homes. The IDF prevented ambulances from entering the camp, resulting in death due to lack of medical care, and they used women as human shields to enter houses. Many men were arrested and detained incommunicado for months. People I spoke to stated that Jenin is frequently targeted in operations; as a result, women and children born as second/third generation refugees continue to suffer post-traumatic stress.

Due to ongoing armed conflict, many women have been widowed at a young age in the OPT; it is estimated that 67% of these women are between 18 and 30 years old. Even as wives of martyrs who thus have an enhanced status, they experience the difficulties of living in a conservative patriarchal community more severely than other women. Many of the widows I met with complained that they have forgotten that they are women and see themselves only as mothers and providers for their family. Women with husbands explained that the dire economic situation and the pressures of the occupation have made men more violent, because the men have lost their ability to "provide" and "protect the family's honor"—two essential elements of manhood in a traditional patriarchal society. As men become stripped of their manhood, women become the shock absorbers of the crises as targets of domestic violence.[203]

Violence against women emanates from two main sources in the OPT: (1) Israeli security measures, and (2) the family and the community.

202 On October 1, 2004, the IDF started another incursion in the north of Gaza, which came in the wake of the continued firing of homemade rockets by Palestinian militants towards Israel and the killing of three soldiers in Morag settlement and one settler in Neve Dekalim in 2004. According to international media reports, on October 6, 75 Palestinians were killed during the attack, 23 of whom were children.

203 This is not to suggest that domestic violence will wither away when the occupation ends. It is rather meant to demonstrate how violence against women is compounded when two systems of oppression intersect.

1. Violence Emanating from Israel's Security Measures

Israeli security measures are directed at the entire Palestinian population; in this regard, women are subjected to violence emanating from these measures in ways similar to other members of the society. However, owing to the diverse ways in which occupation and patriarchy intersect, the direct and indirect impact of security measures tend to have specific and compounded consequences for women. To demonstrate this, I will discuss four measures systematically employed by the Israeli authorities:

RESTRICTIONS ON THE FREEDOM OF MOVEMENT

The policy of restrictions on the movement of Palestinian civilians consists of a number of practices that include: differential residency and identification (ID) status, military checkpoints,[204] "the wall," and arbitrarily imposed closures and curfews. Israel's enforcement of closure has been specifically designed to be unpredictable, thus destroying coherence and leaving the population confused, imposing an atmosphere of fear. An ID system regulates the movement of people within the OPT and from one side of the wall to another. In the occupied territories, people hold one of three different ID statuses corresponding to their place of residence: West Bank, Jerusalem, or Gaza. A West Bank permit holder needs a permit to pass through any of the numerous military checkpoints along the "Green Line" to enter into Israel and Jerusalem. If over the age of 16, the same person would need an additional permit to travel from one Palestinian town to another within the West Bank, and yet another one to enter the industrial zone where he or she works. Palestinians with a Jerusalem ID have the right to move in and out of Jerusalem and throughout most of the OPT, a right often disrupted by border and civil police.[205] It is estimated that tens of thousands of Palestinian families live in Jerusalem without residence permits since they fled and returned to the city after the 1967 war. The absence of a residence permit deprives them of health and social services and prevents children from attending Israeli public schools.

The violation of the right to freedom of movement through these convoluted and restrictive practices also poses difficulties for marriage and family unification. This creates hardships especially for marriages between Israeli citizens and non-Israeli Palestinians. It also affects pregnant women's safe and timely access

204 During my visit there were around 140 permanent checkpoints operating in the West Bank and 30 others in Gaza, supplemented by various forms of roadblocks that were moved daily. Thus, life in the occupied territories continues in the 300 or so isolated and fragmented enclaves into which the OPT has been divided.

205 In addition, Palestinians who allegedly pose a security threat can be assigned new residences through military or civilian decrees.

to appropriate healthcare and hospitals. This has been further exacerbated by the construction of the "wall"[206] which began in 2004, resulting in women having to give birth in cars at the checkpoints, and loss of life in some cases.

Baby Deaths at Checkpoints

On August 28, 2003, Israeli soldiers denied Rula Ashtiya through-passage at Beit Furik checkpoint, and she gave birth on the road. Her baby died shortly afterwards; only then was she allowed through the checkpoint to the hospital in Nablus.

Similarly, Lamees Tayseer Ibrahim Qassem was kept at the checkpoint for an hour and a half in the middle of the night and gave birth to premature twins on December 22, 2003. When the ambulance on the other side was finally allowed through the checkpoint, the twins' condition had already deteriorated, and both newborn girls died shortly after birth.

According to reports from various sources, during the two years of the intifada, the number of stillborn births in the West Bank increased by 500%, the number of babies born at home doubled, and there were at least 39 cases of births at army roadblocks. Restrictions on movement also increased the number of home deliveries. According to UNICEF figures of March 8, 2004, the number of home deliveries increased from 8.2 to 14% since 2002. During the same period, the number of women attending post-natal care decreased from 95.6 to 82.4% and 52 pregnant women gave birth at military checkpoints. Between September 2000 and December 2002, 19 women and 29 newborn infants died at military checkpoints.

The transgression of the freedom of movement and Jewish settler attacks against Palestinian civilians on the roads, as well as the dehumanizing treatment at

206 The "wall" is highly controversial, which is reflected in the terminology used by different actors to describe it. The Israeli authorities call it "security fence"; the Palestinians "apartheid wall"; and still others in diplomacy circles such as the UN refer to it as "barrier." In urban areas, the 8-metre-high concrete slabs with concrete watchtowers I encountered could be most accurately described as the "wall," which according to Israeli authorities comprises only 4% of the total barrier, with the rest of the structure being made of different materials. Whatever the preferred terminology or composition, the impact of this structure on the Palestinian people remains the same: destruction of property and isolation of people from their communities, families, and sources of livelihood. In some areas, Palestinians have to apply for a permit to travel to schools, medical clinics, etc. located across the wall within the OPT. In view of the conservative and protective social pressure on women, the manner in which the wall limits women's daily life is obvious. On July 9, 2004, the International Court of Justice ruled that the wall is illegal and should be removed. The Israeli High Court of Justice issued a ruling that the construction of the wall would not have any adverse effect on the Palestinian people, and the construction continued.

military checkpoints, compel families to marry their daughters at an early age rather than send them to school. This situation cuts women off from their social networks at a young age, since after marriage women typically move to live in their husband's town. Consequently, immobility deprives women of the support and services of formal and informal networks and institutions.

HOUSE DEMOLITIONS

According to the UN Relief and Works for Palestinian Refugees (UNRWA), Israel's military campaign of house demolitions between September 2000 and April 2003 rendered 12,737 Palestinians homeless. At the time of my visit (June 2004), this number had reached well above 20,000, and a large number of civilians including women, children, and elderly were injured or had lost their lives in the process.

According to the Palestinian Independent Commission for Citizen's Rights (PICCR) reports, IDF units, with the support of tanks and helicopters, conduct the demolitions late at night. Most demolitions are carried out on the pretext that the family aided and abetted terrorists; in some cases the houses are demolished on the pretext that the owners did not have building permits. UNRWA reported that during raids on Rafah in May 2004, a total of 277 buildings housing 641 families with 3,451 individuals were completely demolished in the course of just six days.

- I visited the site of a demolished house in the Al-Zaytoun area of Gaza city and spoke to members of the Ashour family at the ramshackle shelter they built near the ruins. They told me that their building had consisted of four floors, housed approximately 30 people, and was demolished during the military incursion from May 11 to 13, 2004. They recounted the incident as follows: Soldiers forcibly entered the building, tied up the men and boys, beat them, and then took them away. They returned at midnight and ordered the inhabitants out of their homes with little time to collect belongings. The building was then demolished, also crushing the taxi parked in front of the building. The men were later released, but the residents were never provided any explanation as to why their home was destroyed.

The manner in which the house demolitions have been executed not only renders entire families homeless, it also inflicts great suffering on the civilian population who, in the process, face loss of life, injury, permanent disability, arrests, and harassment. The magnitude of the force used and the failure to provide warning maximizes the emotional and physical trauma of the demolition. The UN Special Rapporteur on Adequate Housing emphasized on several occasions the disproportionate effects of house demolitions on women, children, and the elderly.

While men and children may spend more time outside the house, the home is the only refuge for Palestinian women; therefore women are particularly burdened in having to adjust to new conditions when their homes are destroyed, and in this environment of chaos, domestic violence increases.[207] House demolitions compound women's responsibilities, as they must often carry the burden of healing the wounds of the homeless families, efforts of rebuilding the home and the struggle of sustaining daily life under dire circumstances.

UN property is also destroyed during military operations. The UN Country Team in the OPT informed me that it has filed numerous compensation claims with the Israeli Supreme Court. In its report to the UN General Assembly,[208] UNRWA stated that it submitted claims to the Israeli Ministry of Foreign Affairs requesting that the government pay an amount totaling US$778,743 for damage to UNRWA property during the military operations in the West Bank and Gaza. As of the end of 2003, UNRWA had received no response from Israeli authorities regarding these claims.

DETENTIONS

According to the PICCR's May 2004 report, the number of Palestinian detainees in Israeli prisons and detention centers had reached 6,599 by the end of March 2004, including 302 children and 85 women. The NGO Defense for Children International reports that since the start of the intifada the Israeli military has detained 2,500 children, of whom 116 have been sentenced. Many were picked up in mass arrest campaigns in 2002, held incommunicado without access to a lawyer and denied contact with family for months. For security reasons, the majority of the Palestinian detainees under the age of 18 are held in Telmond Central Prison along with Israeli juvenile criminal detainees.

The 2004 report of Addameer (Prisoner Support and Human Rights Association) reveals that the number of Palestinian women political detainees has increased since September 2000. As of September 14, 2004, 91 Palestinian women, nine of whom were minors, were held in Israeli prisons. Ninety prisoners were held in the women's section of Ramleh Central Prison (Nevi Tertze) located inside Israel and one woman by Israeli security authorities. Both the former female detainees I met and the accounts of human rights organizations confirmed that Palestinian women under detention are subjected to a similar treatment as men. Upon arrest, the detainees are usually held in solitary

207 Report submitted at the 59th session of the UN Commission on Human Rights (CHR) in March 2003.

208 A/581/13.

confinement and interrogated for days.[209] During this time, women may be tortured, verbally and sexually abused, and threatened. Following trial they are sent to prison. During our meetings former detainees often referred to a police detention center in West Jerusalem described as the "Russian Compound," where they were tortured during interrogation. They also mentioned a secret interrogation unit where Arabs are allegedly tortured; however, I did not receive any information to confirm these allegations or to suggest that women might be held in such a unit.[210]

Women may also be subjected to beatings and humiliation during the arrest or detention of their family members. Entire families may be arrested when the IDF fails to find a suspected "terrorist." Palestinian women are reportedly detained in order to put pressure on relatives who may be wanted by Israel or already under interrogation.

Among the female detainees there are also women who are in the resistance movement and participating in activities that may constitute offences against Israel. The number of women training to become suicide bombers increased during the second intifada. From January 2002 to January 2004, seven Palestinian women conducted suicide bombings and approximately four more were arrested before they could carry out planned attacks. During my visit, two girls, ages 14 and 15, were arrested under suspicion of planning a suicide bombing (*Haaretz*, Israeli daily newspaper, June 17, 2004). The heightened security measures resulting from such suicide bombing suspicions has made women prime suspects at checkpoints, where they may be subject to body searches and detained under administrative order.

- In a conservative society like Palestine, where families and communities keep girls under close scrutiny, a girl who has been detained or arrested bears the risk of being stigmatized because of her absence from public eye. For example, my interview with Feda, a female minor from the old conservative city of Hebron, who was detained for two years for allegedly attempting to kill an Israeli mother and daughter settler, revealed how a woman's victimization and stigmatization can become compounded. Feda became an outcast in her own community, as she is perceived to have been sexually compromised during her two years of detention. Although her family has remained supportive, she has continued to face prejudices and had difficulties reintegrating into the community.

209 Israeli military order 1500 (April 2002) provides for the detention of a person for a period of 18 days without allowing him or her to meet with his/her lawyers.

210 A *Newsweek* article (June 28, 2004: 30-31) reported on a secret torture unit known as 1391, where visits by the Red Cross were said to be banned.

Some observers state that while testimonies of rape during detention or imprisonment are not frequently encountered, cases of sexual violence may go unreported owing to the taboo and stigma attached to being "impure." Israeli authorities assured me that any form of sexual abuse by Israeli security forces or prison personnel would not be tolerated.

LOSS OF LIFE AND INJURIES

Military incursions, targeted killings, and excessive use of force against demonstrators have resulted in a high rate of civilian casualties, including women and children.[211] A study by the Women's Centre for Legal Aid and Counseling (WCLAC) and the Women's Studies Centre (WSC) shows that in the majority of cases women and children were killed or injured due to dangers on their way to routine activities such as going to work, shopping, or school; lack of medical care as a result of access being denied at checkpoints; collateral death or injury during targeted operations; and IDF shelling in or near their homes during curfews or closures of villages, refugee camps, and towns.

- The following are some examples of girl-child victims in Khan Younis refugee camp: in March 2003, 12-year-old Hoda Darwish was sitting at her desk when a bullet fired from an Israeli observation post on the outskirts of the camp hit her, leaving her blind. On September 7, 2004, ten-year-old Raghda Adnan Al-Assar was struck in the head while in class at an UNRWA elementary girls' school and died on September 22, 2004. On October 28, 2004, nine-year-old Rania Iyad Aram died after being shot while on her way to school.[212] Women and children are also victims of targeted assassinations and are injured or killed during air strikes.

Both Palestinian and Israeli women who experience the killing and injury of the principle male provider of the family find themselves left solely responsible for the family sustenance and other needs. Palestinian women in particular must fulfill this task with limited resources, experience, and support on which to rely, and they therefore encounter further hardship. Such destitution endured in silence constitutes the invisible sufferings of armed conflicts and becomes a factor triggering animosity for future generations.

211 According to UN figures, between May 21 and June 23, 2004, 39 Palestinians and two Israelis were killed, and 309 Palestinians and 32 Israelis were wounded. That brings the total number of casualties since the start of the September 2000 crisis to summer 2004 to 3,437 Palestinians and 942 Israelis killed, and 33,776 Palestinians and 6,008 Israelis wounded.

212 OCHA Weekly Briefing Notes, October 27-November 2, 2004.

2. Violence within the Family and the Community

As mentioned throughout the book, patriarchal domination over women becomes more pronounced under conflict and crisis situations. Sustenance of group identity and boundaries, family "honor," and the maintenance of everyday life always fall on the shoulders of women, for whom this often means conformity to oppressive values and expectations. This is the point where two systems of subordination, namely occupation and patriarchy, converge in the OPT. Under the oppression of the occupation, women become more dependent and subjugated to patriarchy, which increases and legitimizes the prevalence of violence in the family and the community.

WOMEN AT THE CENTER OF CONFLICT

The death, imprisonment, or unemployment of many adult male members of the Palestinian community—reaching 80% in some areas—as well as the use of land, water, food, the demolition of homes, and the destruction of the general economy as a weapon against the occupied population, have increased the tensions in the OPT and resulted in a deterioration of the living conditions of the people. Sixty percent of the Palestinian population reportedly lives under the poverty line, while the majority of the population is unemployed and large numbers of people are homeless. Unemployment systematically renders men unable to provide for their families, forcing women to take up work outside the home. At the same time, women's freedom of movement is curtailed due to the increased protectiveness of families in order to avoid risks and harassment at checkpoints, etc. This contradictory situation places an additional burden on women who have to contribute to family sustenance at the center of the conflict.

An environment of generalized violence and heightened social tensions exacerbates unrest at home, and exposure to political violence becomes the predictor of a rigid patriarchal control over women and violence in the private sphere. During the earlier periods of the Palestinian struggle, women were able to circumvent some of the traditional restrictions imposed on them to become more involved in the national struggle. This is well reflected in the often-quoted phrase "land before honor" (Warnock 1990). However, the increased transgression of their land has left "honor" as the only viable ground for the preservation of societal identity—to the detriment of women.

There is a consensus among analysts that the deepening of the conflict in the OPT and the expansion of the tools of occupation have weakened the negotiating power of Palestinian women to challenge the patriarchal gender relations. Existing gender norms have become a defense mechanism to keep the society intact. Particularly after September 2000, women's organizations that were previously dealing with problems related to the domestic sphere, such as

violence and "honor crimes," found themselves having to focus on the heightened human rights abuses of women and children in the Palestinian crisis. This longest-lasting occupation of the modern era has constantly created the conditions for women to prioritize the concerns of the nation over feminism. This meant, for the most part, conformity to traditional norms of honor and strict observance of group boundaries. While this has provided women, particularly in refugee camps and rural areas, a safeguard against the hostile face of the occupation, in a sense it demonstrates that Palestinian women "are placed in a double jeopardy, having to face both the patriarchal-national 'self' and the foreign oppressive 'other'" (Abdo and Lentin 2002: 152).

LEGITIMIZING VIOLENCE AS A WEAPON OF PATRIARCHY

Under occupation, the priority for Palestinian women living in the West Bank and Gaza has been the national struggle, which rests on political structures reflecting the same paternal system within the household. As within the patriarchal hierarchy, men are at the top of the organizational hierarchy of political parties and other entities, while women are at the bottom.

This has not only posed additional barriers to women's freedoms, but also reinforced the values that condone the use and perpetuation of violence against them. This structure, just like the "wall" of the occupation strategy, divides and constricts the lives of women.

The intensification and expansion of the security measures pose a direct attack on Palestinian male image and identity. In addition to the sense of "inadequacy" due to unemployment, men, who are humiliated in public during military incursions and at checkpoints on a daily basis, lose their self-confidence and face a destabilization in their masculinity. According to Rubenberg (2001), "with the enactment of masculinity challenged daily by an occupation that deprives men of the sources of their gender identity—land and the ability to support and defend their families—women's status as markers of family honor and respectability has been enhanced." The failure to perform and increased frustration on the men's part often leads to escalated violence in the home. In this way, women find themselves as multiple victims of the crisis in the OPT, trying to cope with their despair in silence (Khamis 2000: 54).[213] On the other hand, the concept of "martyrdom" in Palestinian society creates severe pressure on the women who have lost their husbands or children: the belief that those who died have died

213 During my visit to the Jabaliya refugee camp, I met a woman who, shortly before my visit, had attempted to take her life as a last resort after many years of living as a refugee and being routinely subjected to domestic violence. She told me that after the attempted suicide, she became an outcast in her home and community, and her situation has worsened since then, because she not only continues to endure the violence and hardship of her living conditions, but now must also live with the shame of having attempted suicide.

for a "holy" and "noble" cause requires women to suppress their grief and even "ululate" in public celebration while still in a state of shock and hysteria.

Under these conditions neither the victims nor the society questions domestic violence; all of these factors cause an overall acceptance of domestic violence as legitimate by the individuals as well as the society at large. In 2002, 86% of the 1,133 Palestinian adults who participated in a public opinion poll on violence against women conducted in Gaza and the West Bank responded that political, economic, and social conditions have increased incidence of violence against women; 55% agreed that a wife assaulted by her husband should not talk about it to anybody but her parents; 54% agreed that it is inappropriate for the police to interfere in domestic violence cases, for this is considered a family affair. The same poll also indicated that the Palestinian Authority is seen as failing to protect and promote women's rights.[214]

IN THE NAME OF "HONOR"

Women in the OPT are killed or threatened with death for tarnishing family honor. These crimes are a manifestation of "culturally" inherited values that impose upon women socially expected behaviors derived from prevailing patriarchal norms and standards. Women's transgression of these norms is said to violate the "honor" of men and the family, which legitimizes violence as a disciplinary measure to maintain or restore family honor in the eyes of the public. Women accused of promiscuity may be imprisoned in their homes, subjected to verbal and physical violence, married to their violator, coerced into suicide, or murdered to cleanse the honor.

Nadera Shalhoub-Kevorkian (2009), a prominent researcher on "honor" crimes in Palestinian society, draws attention to the societal dimensions of such crimes, whereby the family acts under pressures from society out of fear of being socially ostracized. Available information also indicates that some of the women who have been threatened or killed for allegedly dishonoring their family were victims of rape or sexual assault by an intimate associate within the domestic sphere. The murder of women, or "femicide," in such situations becomes inevitable to cover up shameful crimes committed by male members of the family.

Although data regarding "honor" killings is patchy, according to the Women's Affairs Technical Committee (WATC), 33 women were killed in the name of honor in 2002, the majority of whom were under the age of 18. WATC voiced their concern that the destruction of the Palestinian security sector and the gaps in the law protecting women are normalizing the impunity for these

214 A study conducted by Palestinian Working Women Society for Development, in cooperation with the Palestinian Center for Public Opinion in Beit Sahour.

crimes. Throughout the OPT, such cases fall through the cracks of the overlapping and competing normative systems. The lack of national sovereignty and a history of occupation have undermined the ability of the Palestinian Authority to legislate and implement measures to deal with such societal atrocities. Tribal and militant centers of power thus fill this vacuum, often working to resolve cases through reconciliation and mediation while at the same time concealing the crime.

Responses to Violence against Women

1. Legal Framework

Prior to 2012, due to its international status, the Palestinian Authority was not entitled to sign and ratify international human rights instruments, yet it unilaterally committed itself to abiding by international law. Article 10 of the Palestinian Draft Basic Law states that "human rights and the fundamental freedoms must be respected and protected and the PA will work without delay to become party to international instruments for the protection of human rights."

The Palestinians are subject to an amalgamation of laws inherited from different historical periods and bases: the Ottoman Empire, British Mandate, Jordanian and Egyptian laws, and Israeli military orders. This multiplicity of laws has naturally led to the lack of a consistent and uniform legal framework. Furthermore, patriarchal biases prevailing in the legal provisions and criminal justice system prevent women from accessing justice. Several areas of immediate concern are:

(a) The personal status laws that regulate women's rights and roles within the family in the OPT are not unified. While Muslim women in the West Bank are subject to Jordanian law, those in Gaza are subject to Egyptian law. As for Christian Palestinians, laws established by their respective churches govern each denomination. Furthermore, all of these laws contain serious discriminatory and contradictory provisions. For example, the Jordanian Personal Status Code of 1976, which grants a battered woman the right to file for a divorce, requires that the wife show scars of physical abuse in order to proceed with the divorce. Moreover, social pressures and the lack of financial resources to pay for lawyers and court fees limit women's access to the legal system.

All of the personal status laws used in the OPT endorse discrimination between the sexes. For example, the marriageable age in the West Bank for boys is 16 and for girls 15. In Gaza, the decision in regards to the age of marriage is left to the judge's discretion, falling within the age range of nine to 17 years for girls and 12 to 18 years for boys.

(b) The Jordanian Penal Code of 1960 includes a mitigating circumstances clause, whereby the perpetrator of an "honor" crime may be immune from punishment if it is shown that the victim committed an adulterous act. With regard to incest, Article 286 of the Jordanian Penal Code stipulates that, "Incestuous actions shall only be pursued upon the complaint of a male relative or an in-law, up to the fourth-degree kinship." Therefore, neither the victim nor a female relative can file a complaint.

The absence of official policies and procedures further aggravates the difficulties in creating effective preventive and therapeutic programs to combat incest. In cases of rape, the law provides the judge with major discretionary authority to assess the gravity of crimes and impose the appropriate sentence. The likelihood of the judge acting with gender-biased values implies that the decrees will probably not be in favor of the women victims. Furthermore, the law reduces or repeals the sentence against the perpetrator if a "marriage contract is forged" between the rapist and the victim.

2. Initiatives of the Palestinian Authority

As a result of the 1993 Oslo Accords and the transfer of limited sovereignty to the Palestinian leadership, the Palestinian Authority entered into a new phase of governance. Following the 1996 elections, the PA was required to take steps towards building a society founded on democracy, rule of law, and respect for human rights. Although the PA provides services in areas of education and health, Israel has undermined its authority, particularly in the area of security. The Palestinian Legislative Council (PLC) has difficulties meeting because of travel restrictions that prevent members living in Gaza and members living in the West Bank from reaching each other; therefore PLC members have complained that they are not able to work efficiently due to Israeli policies. They resorted to videoconferencing to circumvent these obstacles, but such measures have proven unsatisfactory.

The PA's establishment of the Ministry of Women's Affairs (MOWA) in 2003 is a promising development. The Ministry addresses violence against women as a crosscutting issue in all of their programs. Newly instituted at the time of my mission in June 2004, MOWA was working with the Ministry of the Interior on a joint protocol to train police on women's rights and to create police stations that facilitate women's access. The success of this new ministry in becoming an effective institution for the promotion and protection of women's rights is no doubt dependent on the political and financial support it will receive.

The Ministry for Social Affairs also contributes to the promotion of women's human rights by providing vocational training and seed money to women. It financially supports 48,000 hardship cases, of which 60% are female-headed

households. There is one women's shelter supported by the Ministry in Nablus; however, at the time of my visit this institution was providing only counseling and vocational training.

3. Initiatives of the Civil Society

Civil society in the OPT, particularly women's organizations, are resilient and, despite the military incursions, demolitions, and restrictions on freedom of movement, life prevails in the OPT. The women's movement in Palestine, active since 1948, is professional and well organized.

After the Israeli occupation of the West Bank and Gaza in 1967 created new waves of refugees, Palestinian women took on a more prominent political, economic, and social role. Between 1967 and 1972 Palestinian women mobilized freely and participated directly in the political and armed movements in addition to their traditional support for the national struggle. Legendary women activists such as Fatima Barnawi and Leyla Halid marked this period. From the mid-1970s onwards, the nature of the conflict changed, and new actors, power groups, and paradigms in the Palestinian struggle began to influence politics in general as well as the role and status of women.

During the first intifada in 1987, ordinary women achieved a significant presence in public life. Consequently, a qualitative change occurred in the women's movement, which helped diversify its activities and broaden its perspective. These developments coincided with and became reinforced by the overall global momentum of the 1990s for democracy, peace, gender equality, empowerment, and human rights.

The 1993 Oslo accords shifted the force of the intifada from the grassroots to the higher-level leadership that led to the creation of the Palestinian Authority. Since then women's groups have expressed concerns about the Authority's shortcomings regarding gender issues. These groups hoped to involve women in public life to overcome traditional roles and practices as well as the constraints relegating women's rights to secondary status on the political agenda. Consequently, women organized their own Women's Technical Committees to increase women's involvement in the peace process and other areas. These initiatives opened a debate on women's participation in political parties, and in 1995 a proposal to create a Woman's Council was presented to President Arafat. The proposal was not approved; however, women's committees were formed within different ministries. Women also advocated for penal code reform and equal rights in the constitution, and have succeeded to a certain extent.

However, since the second intifada, there has been a noticeable regression in terms of these achievements and women's rights and fundamental freedoms; the Israeli occupation and its exacerbated security measures have struck a great

blow and have had immobilizing impacts on the activities of NGOs and other sectors. This has resulted in a re-evaluation of priorities and strategic goals within Palestinian civil society. One human rights defender told me that, "Every plan for improvement is being demolished. We are building sandcastles; whatever we build is destroyed by the next wave of security measures implemented by the IDF."

Women's NGOs conduct community educational workshops and work to follow and monitor the criminal justice system's response to women victims of violence. Adalah persists in its legal advocacy work, filing petitions to the Israeli Supreme Court of Justice. Women's NGOs and lawyers also work with former and current female detainees to provide psychosocial support, legal assistance, and vocational training to help them reintegrate into their communities and resume their lives.

Women's community-based organizations operate at the grassroots level to overcome the challenges of occupation in everyday life and to provide support for each other. I visited a community-based women's center in a small mountain village near Jenin in the north of the West Bank that offered an oasis of hope. The majority of the population used to work in Israel before the construction of the wall and suffered due to the confiscation of their lands because of IDF measures to protect a nearby Israeli settlement. With support from the Palestinian Agricultural Relief Committees and coordinated by the Rural Women's Development Society, the women have organized and received vocational training and learned about their rights, and were trying to create sources of income and devise new strategies of resistance.

The efforts of the Palestinian and Israeli women's peace groups formed to seek solutions to shared problems are also noteworthy. Having identified the Israeli occupation as the source of suffering for both sides, the dialogue of peace between the Arab and Jewish women groups started in the late 1980s. Although these initiatives suffered with the heightened conflict following the Al-Aqsa intifada, the process provided Palestinian and Israeli women with an invaluable experience through which a permanent network of communication was founded in the framework of their efforts for peace.[215]

215 Dialogue for Peace, the Jerusalem Link was realized as a joint initiative of the Center for Women's Legal Research and Counseling in Gaza and the WCLAC in the West Bank in cooperation with the UNDP (www.j-c-w.org).

4. Initiatives of the United Nations Country Team

The United Nations operation in the OPT provides assistance to Palestinian women in fields such as economic activities, humanitarian assistance, education and training, and health. UNRWA provides schools, teachers, and all sorts of training materials for the education of Palestinian children with refugee status in particular. The Office of the UN High Commissioner for Human Rights is engaged in technical cooperation activities with the Palestinian Authority (PA) and NGOs. However, as a response to the dire human rights situation in the OPT, it is evident that, in addition to technical cooperation, this office should also assume monitoring duties for the protection of human rights.

The UN faces numerous obstacles in carrying out its mandate in the OPT. Israel's policies and practices, and above all the restrictions it imposes on freedom of movement, prevent UN personnel even from delivering life-saving humanitarian assistance in a timely manner. Israeli military fire into UNRWA schools and other buildings has not only disrupted services but also led to civilian deaths. According to UNRWA officials, UNRWA builds donor-funded homes and schools, only for the IDF to demolish the structures or confiscate the school buildings for military purposes. Despite such constraints, the United Nations is doing its utmost to provide critical services in the OPT.

Conclusions

The grave situation in the Occupied Palestinian Territories has become commonplace, and a promising response from the international community towards a solution has so far not been forthcoming. Israel has effectively contained the Palestinian population in a heavily controlled environment. The degree and extent of oppression associated with patriarchy deepens with aggravation and intensification of the oppression of occupation. At the time of my visit (June 2004), this was particularly visible in Gaza, where any possibility for enjoyment of rights, fundamental freedoms, and liberty simply did not exist.

The multilayered impact of displacement and the integrated system of violence created by the conflict and occupation continue to take a heavy toll on lives of Palestinian women, as security measures and military necessity increasingly take on the character of collective punishment. The consequences of this situation are compounded and in some cases far more severe for women. Women not only bear the combined burdens of occupation and patriarchy, but due to the former their capacity to transform the unequal gender structures of the latter is curtailed. The priorities imposed

by the national struggle have for decades belittled women's struggle to eliminate violence against women as a weapon of patriarchy.

Palestinians are still condemned to live under the longest-lasting occupation of modern history. The history of every Palestinian—wherever she or he may live—is a history of forced displacement embedded in collective memories, carrying with it elements of fear and discrimination. For those living in the OPT, violence is life itself. Therefore, in the last instance, ending the occupation in the OPT is a prerequisite for efforts to eliminate violence against women and protect women's human rights. Until then, to ensure the rights of Palestinian civilians, the Government of Israel must respect international law and fulfill its obligations.

The following call from Palestinian women to the people of Israel made in 2002 articulates the essence of the problem:

Security for Israelis will not be achieved by shelling residential areas, destroying homes, killing innocent civilians, tightening closures, harshening economic realities, subjecting 3.5 million Palestinians to siege and curfew, humiliating Palestinians at checkpoints and assassinating activists. Nor will security for Palestinians be achieved by killing Israeli civilians. But there will be no end to these great losses until the concept of security is revised to serve Palestinians as well as Israelis … We are actively working for, and anticipating a day when a just peace will prevail and both sides may enjoy its many fruitful results.[216]

This call is urgent not only for the peaceful coexistence of Palestinians and Israelis but for the peace and security of the entire region.

216 http://www.j-c-w.org/

IV. Russian Federation[217]

Emergence of the Russian Federation

The Russian Federation was established following the disintegration of the Soviet Union, which as one of the super-powers of the 20th century not only offered an alternative world order to the prevailing market-driven model for its people but also inspired millions more in the emerging nations around the world. The Soviet model was a response to widespread socio-economic inequalities and aimed to abolish class hierarchies through a centrally planned economy instead of a capitalist market economy. Within this context, analysts have often described the history of Soviet's human rights orientation as being "paradoxical" (Chugrov 2000).[218] These complex historical patterns and the recent trends of the transition to a market economy are the determinants that shape the contours of Russia's current domestic and foreign policy.

Two aspects of the Soviet legacy based on the socialist mode of production are particularly relevant to understanding the process of transition, as well as the specific issues addressed in this context: the perception of women as an integral component of the class formation, and the perception of the Soviet Union, built on distinct ethnic groups, as comprising a unified entity. The ultimate goal was to reach a classless society where all inequalities based on sex, ethnicity, and class would wither away; however, these aspirations did not materialize. Aside from the overall socio-economic disparities troubling Russian society today, the situation of women and the question of territorial integrity contested by ethnic divisions, particularly in the North Caucasus, are areas where difficulties have been most pronounced. Both pose a challenge for the Russian Federation in terms of its international human rights obligations and its prospects for the future.

217 My mission to the Russian Federation, which was planned several times but cancelled by the government on each occasion, finally took place from December 17 to 24, 2005. These dates imposed by the government naturally led to geographically restricting the visit to the North Caucasus and Moscow, with a focus on domestic violence in the latter and violence related to armed conflict and prevailing insecurity in the North Caucasus and Chechnya. While domestic violence and violence in armed conflict are interrelated, since both are gendered, the specific conditions in North Caucasus warrant treating the two issues separately for the purposes of this chapter.

218 Russia initiated the first world conference on international law to discuss humanitarian affairs in 1899 in The Hague.

1. The Status of Women

The process of political and economic transition in Russia has had contradictory effects on women. Under communism, minimum levels of social welfare and the enjoyment of certain economic, social, and cultural rights were guaranteed to the population at large; much of this disappeared under market liberalization. Despite recent improvements, high unemployment rates, wage cuts and wage gaps, and limited access to healthcare and education continue to be persisting problems. Women carry a disproportionate share of the hardships emanating from the transition, including poverty, violence, sexual assault, and human trafficking.[219]

The Soviet Union was well known for its universal gender equality policy and the priority placed on the measures needed to realize it. Today, women still have many formal rights; however, with the transition to a market economy, *de facto* equal opportunities have largely been lost and are confronted with the resurfacing of blatant patriarchal norms. There are strong indicators to suggest that the official Soviet policy that promoted women's contribution to society through paid work outside the home on an equal footing with men has been abandoned in favor of reproductive care work defined as a woman's primary responsibility. One such indicator is the decreased levels of women's representation in decision-making mechanisms. While in 1993 women held 14% of the seats in the State Duma, the lower house of parliament, in the 2000 parliamentary elections this rate dropped to 7.7% and to only 0.6% of the seats in the upper house, the Federation Council. Women are also grossly underrepresented in public sector decision-making positions, where, although 55% of civil servants are women, they hold only 1.3% of decision-making posts. Their position is considerably better in the private sector; they occupy 35% of managerial positions, mainly in small enterprises.

According to a 2003 report, 68% of the registered unemployed were women, and although women tend to have more education they generally earn less than men; there are reports indicating that women's average salaries can be as much as 70% below men's average salary for comparable work. The gender-wage gap has been attributed partially to the fact that women are concentrated in low-paid sectors of the economy. It is reported that women make up 80% of those working in healthcare, education, social security, and culture-related sectors, in which salaries are 40 to 60% lower than average salaries in the rest of the economy. Since salaries are increasing faster in the male-dominated sectors of the economy, such as industry, finance, and banking, the wage gap is also

219 After the break-up of the Soviet Union, women became targets of human traffickers and the sex industry. Although trafficking in women is a major problem in Russia today, it is not discussed here because it was not reflected as a priority problem during my visit.

widening. The government has also reportedly prohibited the employment of women in 450 positions presumed to be too hazardous. Women's organizations have argued that this discrimination aims to exclude women from prestigious, better-paid jobs.

The three years of parental leave, taken nearly exclusively by women, is another factor constraining women's employment. Since an employer must retain the workplace of the absent employee and continue paying social benefits, they prefer hiring men. In some cases, upon recruitment, women may be required to sign an agreement stating that they will not get pregnant and that if they do, they will resign.

All these factors disempower women and make them increasingly dependent on their fathers or husbands. Apart from the obvious discriminatory implications, these practices also have an adverse impact on women's overall status in the society, thus increasing the risk of human rights violations, including violence in the private and public spheres.

2. Political and Ethnic Boundaries and Chechnya

Following the dissolution of the Soviet Union, nationalist sentiments emerged among various ethnic groups within the Russian territory. Under the 1993 Constitution a federal system was established, with much power concentrated in the central government. However, bilateral or power-sharing agreements between the central government and the regional jurisdictions have been signed to supplement the understanding of division of power. For some observers, this proliferation of bilateral agreements signaled the demise of Russia, since some regional jurisdictions, particularly the republics, demanded significant power (Hughes 2002: 37).

While several regional jurisdictions have made demands for greater autonomy, Chechnya is the only republic within the territory of the Federation that has demanded complete independence; this demand resulted in two wars. Chechnya declared its independence in 1991 and then became a war zone in 1994 when the Russian army entered to restore the Federation's territorial integrity. In 1996, the Khasavyurt Agreement was signed, which brought an end to military operations. However, in the period that followed, Chechnya was driven to a state of complete lawlessness due to the leaders' inability to establish order. In 1999, forces from Chechnya invaded parts of the neighboring Republic of Dagestan, which prompted the second Chechen war. Since then, and particularly after 9/11, the ongoing hostilities in Chechnya have been defined by the Russian Federation government as an operation within the context of combating terrorism and the subsequent "war on terrorism" (OMCT 2003, Trenin and Malashenko 2004: 13).

Although the 2002 report of the UN High Commissioner for Human Rights[220] states that the situation in Chechnya has "normalized," organizations such as Human Rights Watch (2005) have reported that human rights violations continue to be perpetrated by security forces as well as Chechen fighters, both within Chechnya and the North Caucasus region. This situation is significantly radicalizing the Russian society and deepening mutual prejudice and mistrust between Chechens and Russians. The Council of Europe's Committee for the Prevention of Torture (CPT) made a public statement on July 10, 2003, expressing concern that there is "continued resort to torture and other forms of ill-treatment by members of the law enforcement agencies and federal forces operating in the Chechen Republic," and drew attention to the insufficiency of investigations concerning crimes against civilians allegedly committed by members of the military and others with official status. Similar concerns have been expressed in the reports by Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, on his visits to the Russian Federation in July 15-30, 2004 and September 19-29, 2004.

Despite some efforts by the Russian Federation government to rebuild the infrastructure in war-torn areas, I personally witnessed during my visit that the socio-economic situation of people particularly in Chechnya remains extremely precarious. Education, health, employment, and housing have become rare commodities for the majority of the population. As of the end of 2004, the situation in Chechnya as well as in neighboring Republic of Ingushetia was far from being normal; on the contrary, everyday life continued in a state of despair and disarray.

With respect to the situation of women in the North Caucasus, as elaborated further below, they not only encounter multiple forms of violence as direct targets of the military operations, but they also bear the consolidated hardships associated with the overall destruction caused by the fighting, the contradictory consequences of transition to market economy at large, and the heightened patriarchal control exacerbated by the general situation.

The situation in Chechnya is complex and multifaceted. While a full analysis this of the situation falls beyond the scope of this chapter, in regard to the matter at hand it is important to emphasize that the impact of the conflict and the current military operations is not limited to Chechnya and North Caucasus, where the bulk of the problems are taking place, but span across Russia. In this context, it does not seem feasible to ensure stability, overall development, and respect for human rights or to combat violence against women in Russia at large.

220 E/CN.4/2002/38.

3. Human Rights

The 1993 Constitution of the Russian Federation provides for the primacy of international law over domestic law and it guarantees many rights. Article 19 emphasizes the equality of all before the law and that man and woman have equal rights and equal opportunities for their pursuit. The Federal Assembly in 1996 adopted two concept papers aiming to ensure equality for women: "Improvement of Women's Status" and "Activities for Assurance of Equal Rights and Opportunities for Men and Women."

The Federal Human Rights Commissioner, an independent mechanism with the power to receive individual complaints about human rights violations, was established in 1997. However, the commissioner's mandate does not focus on women's rights *per se* and his recommendations are not binding on the government. Furthermore, his efforts to investigate some human rights abuses have been curtailed by his lack of access to "classified" information.

With respect to regional human rights instruments, Russia has ratified the European Convention on Human Rights and its protocols No. 1, 4 and 7; the right of citizens to take their cases to the European Court of Human Rights is also constitutionally guaranteed. Russia is also party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

At the international level, as of January 2005, Russia had ratified the Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Covenant on Economic, Social and Cultural Rights (CESCR); the Covenant on Civil and Political Rights (CCPR) and the Optional Protocol; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Optional Protocol; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and the Convention on the Rights of the Child (CRC). In addition to these core treaties, Russia has also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

Violence in the Private Sphere

Many state and non-state observers in Russia attribute violence against women to the socio-economic consequences of the transition to a market economy, such as the loss of status experienced by women, increased levels of unemployment, and increased alcohol and drug abuse among men, as well as the toleration for sexual abuse and exploitation. These realities have no doubt intensified the risks of violence for women; however, the loss of status women have experienced is in itself an indication of deep-rooted patriarchal values.

Although under Soviet rule some forms of violence against women, particularly in the public sphere, were criminalized, other actions that may have the potential to challenge gender inequalities, such as marital rape and domestic violence, were ignored. While today violations of women's rights in Russia occur mainly in the private sphere, women are reportedly exposed to increasing and multiple forms of violence in society at large, in prisons, and within the context of military operations. The following section addresses the rights violations of women in the private sphere and in the North Caucasus respectively.

1. Scope and Magnitude of the Problem

Although inconsistent and inadequate, existing data reveals a worrisome increase in violence against women since the collapse of the Soviet Union. Reportedly, 80% of violent crimes against women are cases of domestic violence. The World Health Organization (WHO) reported that between 1994 and 2000 the number of reported cases of violence increased by 217%. Meanwhile, the Ministry of Interior reported 101,000 crimes related to the family over a ten-month period in 2004; that marks a 16% increase over the previous year. The state party's report to the CEDAW Committee in 1999 acknowledged that 14,000 women were killed each year by their husbands or other family members. The same report went on to state that the "situation is exacerbated by the lack of statistics and indeed by the attitude of the agencies of law and order to this problem, for they view such violence not as a crime but as 'a private matter' between the spouses."[221]

As mentioned above, while the problems accompanying Russia's socio-economic transition may partially explain the increase in women's rights violations, the main cause is rooted in patriarchal norms and values. A reaffirmation as it were to this argument came up during my meetings with public authorities, who often referred to the ancient Russian proverb "a beating man is a loving man!" Due to strong patriarchal values, husbands in Russia are generally considered superior to their wives, with the right to assert control over them, legitimizing the general opinion that domestic violence is a "private issue." Moreover, there are a considerable number of people who insinuate that women in fact provoke such actions. Although the laws criminalize acts such as marital rape, due to sexist tendencies such laws are inoperative in practice and victims prefer to remain silent with fear of stigmatization.

- The following statement of a domestic-violence victim reveals the scope of the problem: "Serguei entered my room, pulled me out of the bed and dragged me into the kitchen. There he bent my arms, pushed me to the floor

221 CEDAW/C/USR/5, para. 6.

> and started beating my head against the floor. He said that he is the 'czar and ruler' and that I must do whatever he tells me to do. He forced me to repeat his words, and continued to bend my arms until I replied. I asked him: Do you want to kill me? He answered: I will bring you to such a state that you will kill yourself. You are just a piece of meat and if I kill you, I won't be punished."[222]

After years of abuse and degrading treatment, some women have had to resort to violence themselves. For instance, during my visit, some NGO members recounted the story of a woman victim of domestic violence who killed her husband after learning that he had raped her daughter. The woman was charged with premeditated murder and sentenced to 15 years' imprisonment. The court did not consider the years of domestic violence or the rape of her daughter as mitigating factors. During a meeting with representatives of the Ministry of Justice, an official of the Ministry cited the number of women inmates in prison for murder to support the argument that "women can also be violent!" and suggested that the issue of violence against women should not be exaggerated.

Despite these adversities, it is a promising development that in the new socio-political environment more open to international dialogue and also with the efforts of NGOs, the problem of violence against women has started to attain visibility and to occupy the public agenda, albeit insufficiently.

2. Opportunities and Obstacles to Combating Violence

HOUSING AND RESIDENCE PERMITS

The inability to access independent housing is the biggest obstacle for women attempting to escape violent situations in Russia. Privatization of the housing market and the shortage of subsidized housing has worsened the prospect for renting an apartment for most women trying to establish an independent life after separation or divorce. Therefore, in some cases, women are compelled to share the same residence with a violent partner, even after an official divorce. If a couple is living in a state-owned rented apartment, it is very difficult to evict the violent partner from the common domicile.

According to Article 68 of the 1983 Housing Code, a change in living arrangements requires the agreement of all persons registered at the domicile or a court decision. The revised Housing Code, in effect since March 2005, contains no procedures for evicting persons who are unable to live together. The new Housing Code brings two new definitions: owner of premises, and user of living

222 Reported by women's organizations, based on a 2003 record.

space. Accordingly, after a divorce, the user of the living space can be evicted by court order.

In private housing, the owner cannot be forced to sell his or her property or be evicted; if one partner owns or rents the apartment, he or she has the right to evict the other. As the owner or legal lessee is usually the man, it is more common for the woman to be evicted. If both partners jointly own or rent the apartment with a joint lease, eviction of one of them requires a court order. Even if the woman is the owner or the court rules in her favor, it may be difficult to evict a batterer due to police inaction.

- Tina, a mother of two and grandmother of one child, suffered 18 years in an abusive marriage. Her ex-husband is a police officer; therefore, her complaints to the local police station brought no action. Finally, in 2001, the prosecutor took up the case, leading to the sentencing of her husband to two years' imprisonment. He was, however, released immediately after the verdict without serving any time in prison. Eventually the couple got a divorce, but circumstances forced them to continue living in the same state-owned flat. Tina said it felt like two wild animals being in the same cage. She requested to be assigned a separate state flat, but was refused. On August 9, 2004, her ex-husband arrived home drunk, broke the door of her room, and beat her and the 4-year-old grandchild. On August 17, 2004, she asked for the file to be transferred to another police station, as she believed that the local police were protecting her ex-husband. In September 2004, the prosecutor's office responded that there was no reason to transfer the file. Tina continues to live in this life-threatening situation.[223]

Difficulties in accessing independent housing are further complicated by the practice of residence registration, a remnant of the old Soviet-era *propiska* system. *Propiska* was a permit or document issued by the authorities to restrict all residents to one legal place of residence. Under the Soviet system, a valid *propiska* was required to change residence, to get married, to get a job, to access public services, or to travel. Although the Russian Constitutional Court has abolished *propiska* several times since 1991, *propiska*-like practices reportedly continue in many places, restricting the freedom of movement particularly of the lower underprivileged classes. While authorities emphasized that such a practice no longer exists, violence victims I spoke with repeatedly mentioned *propiska* as a major obstacle to escaping domestic violence. Both the cost and the complicated bureaucratic procedures deter many women from trying to leave a violent relationship. The lack of legal and institutional protection from domestic violence, as discussed below, leaves women in a vulnerable situation.

223 Personal interview, December 2005.

LEGAL AND JUDICIAL FRAMEWORK

NGO representatives have cited the lack of a specific law on domestic violence in Russia as a major obstacle to combating the problem. While the State Duma has considered as many as 50 draft versions of a law on domestic violence, none has been adopted. The Ministry for Foreign Affairs attributes this to the financial implications of the draft bills. Members of the State Duma's Committee on Women, Family and Youth, however, indicated that violence against women is not a priority for the state and that most opponents of the bill claim it would duplicate existing legal provisions. Committee members note that perpetrators of domestic violence can be prosecuted under articles 111, 115, 116 and 119 of the Russian Criminal Code, which criminalize inflicting intentional harm or injury, battery, or threatening another person, and under Article 117, which criminalizes torture. However, according to women's groups, these provisions are often interpreted too narrowly to apply to domestic violence cases.

In their concluding observations on the Russian Federation, the CEDAW Committee[224] and the Committee on Economic, Social and Cultural Rights[225] have both expressed concern about the high rates of domestic violence and the lack of legislative protection. Unfortunately, despite clear recommendations from both committees, legislation on domestic violence has not yet been adopted. The magnitude of the problem clearly manifests the need for a specific legislation; it is evident that making marginal amendments to existing laws is not sufficient.

The lack of specific legislation contributes to impunity for many perpetrators of violence and deters women victims of violence from speaking up. Women's organizations and victims have frequently stated that since police officers do not consider domestic violence a crime, they remain indifferent to reported cases and do not even feel the need to follow up on the complaints; and when they do, instead of registering the incident and detaining the perpetrator, they opt to act as mediators and reconcile the partners. Where women are assertive in their complaint, officers allegedly try to dissuade them from filing their grievance, often by treating them in a degrading, accusatory, and even abusive manner.

In other circumstances, the police may take the perpetrator to the station and beat him instead of initiating a criminal charge, then release him after a brief period of detention. The enraged man may then return home in revenge and commit even more cruel acts of violence. Due to the lack of legal mechanisms such as a system of restraining or civil protection orders, even law enforcement and local officials acting with good intentions fail to protect the victim from further violence once the perpetrator has been released.

224 A/57/38.

225 E/C.12/1/Add.94.

Convicted perpetrators also get away with disproportionately lenient punishments that do not have any deterrent effect. The relevant articles in the Criminal Code typically stipulate a fine, a period of community service, or, at most, a few months in prison for perpetrators of domestic violence.

- 38-year-old Elena, with a 14-year-old son from her first marriage, was divorced from her second husband in May 2004 after eight years of marriage. Her ex-husband had become violent towards her and her son during the last year of their marriage. With the support of women's organizations, Elena's case was taken up as a criminal case under Article 119. Her husband was sentenced to one year's "conditional" imprisonment and released with the understanding that a more severe punishment would be inflicted if the crime was repeated. After the release Elena continued to share the same flat with her ex-husband. On one occasion, he got drunk and beat her with the leg of a chair and tore off her clothes. She managed to escape from the flat and got a medical report from a clinic. Elena was able to file another criminal complaint and her ex-husband has now been charged with attempted murder. I have not received information in regard to the outcome of the case.[226]

INSTITUTIONAL AND POLICY FRAMEWORK

Several institutions have been established in Russia to address women's human rights, such as the State Duma's Committee on Women, Family and Youth; the Commission on the Status of Women; the Social Commission of the Federal Council for Ensuring Equal Rights and Equal Opportunities for Men and Women; and the Department on Medical and Social Problems of Family, Maternity and Children of the Ministry of Health and Social Development.

The Commission on the Status of Women, with representatives from all ministries, was created under the vice president's office in 1996 as the main national machinery to coordinate gender equality policies and practices within the public sector. Parallel structures were established in 89 localities throughout the Federation in order for the Commission to fulfill its mandate. In accordance with a Presidential Decree number 314 adopted on March 9, 2004, the national machinery was first reorganized and subsequently dissolved by a resolution. The authorities indicated that the Department of Medical and Social Problems of Family, Maternity and Children under the Ministry of Health and Social Development is mandated to coordinate gender issues.

However, both the female Duma representatives and NGO representatives are concerned that there is now an institutional vacuum within the state structure.

226 Personal interview, December 2005.

They emphasize that the lack of a specialized body with the clout, authority, and resources to ensure an effective coordination of women's rights and equality issues will seriously jeopardize the implementation of the Beijing Platform for Action and effectively respond to emerging problems and new objectives. Furthermore, they argue that placing the mandate on gender equality within the responsibility of one ministry will severely narrow the scope and vision of the approach to the issue. Addressing women's problems in the unitary category of mothers, children, and family represents an abortive perspective that reduces women to the role of motherhood and denies the fact that women are autonomous individuals with rights. This approach, which completely obliterates the word "woman," stands in contradiction with international standards, including the strategic objectives of the Beijing Platform for Action on institutional mechanisms.[227]

In order to compensate for the lack of a specialized national machinery for women's rights and the overall weak institutional framework, the government has taken other measures for the advancement of women. For example, in the context of Russia's efforts to realize the Millennium Development Goals, the government has elaborated a gender-equality strategy with a section specifically devoted to violence against women. This strategy, which is mainly "protection" oriented, aims to organize public awareness programs and conduct training for law enforcement officers and other professionals who provide services to women victims of violence.

Critics of the strategy argue that limiting the issue to one of public awareness and training fails to acknowledge and address critical problems, such as sexist state policies and the lack of legislation, national machinery, and shelters, among others. The Chairperson of the Presidential Human Rights Council has made particular reference to the insufficiency of shelters, noting that there are only five shelters and 120 crisis centers throughout the Federation. In recent years, there has been an increase in the number of crisis centers and telephone hotlines initiated and managed by NGOs; however, this is far from being adequate to respond to the need.

Women's rights organizations also cooperate with the Prosecutor General and provide special training for law enforcement agencies on violence against women. Some organizations also work with media representatives to encourage more constructive and gender-sensitive coverage of the incidents of violence.

However, women's organizations face many problems and obstacles in their efforts to promote and protect women's rights. The Chairperson of the Presi-

227 A similar development has taken place in Turkey. See Part III, section VI (Turkey) of this book.

dential Human Rights Council, which is also responsible for the development of civil society, stated that there is limited state protection for civil society organizations, leaving them defenseless against pressures and restrictions imposed particularly by local authorities. Furthermore, the lack of tax exemption for non-profit organizations makes these NGOs especially vulnerable. This situation places constraints on the capacity, influence, activities, and effectiveness of women's NGOs and other civil society entities, curtailing their potential for human rights advocacy and for exerting pressure on the state apparatus.

Violence against Women in the North Caucasus

1. Multiple Forms of Violence against Women

VIOLENCE IN THE PRIVATE SPHERE

The conflict and military operations in the region have contradictory implications for women's private lives. Some women have reported greater solidarity within the family and a common resistance in response to the losses they experienced during the conflict, while others, young women in particular, were more burdened by the pressures of patriarchal scrutiny.

The deeply rooted patriarchal values that accentuate family honor, along with conflict and instability in the region, increased the risk of violence for many women and reinforced the requirement of enduring this in silence. The breakdown of law and order, lack of confidence in the authorities, and pressure on women from militant groups to maintain group cohesion have all created an environment where taboo and silence are a rule. Women who deviate from this rule by disclosing their domestic problems face the risk of being ostracized from their family and community.

Internally displaced women in particular have no option but to submit to oppressive relationships. A 1998 study by the World Health Organization found that gendered violence tended to escalate among displaced Chechens, particularly those who took refuge in Ingushetia. International observers have also pointed to forced marriages, polygamy, and blood feuds prevalent in this region as further factors contributing to the vulnerability of women. Ingush parliamentarians stated that the instability in the region triggers the cases of bride abduction and that a draft amendment to the Penal Code has been submitted to the Republican Duma in order to prevent this problem.

Women who face the disappearance or death of husbands or other family members must cope with psychological problems including trauma, stress,

anxiety, and insecurity, while at the same time they struggle for survival. The widows who do not receive a pension through their deceased husbands and do not have any other source of income must work outside the home to provide for their families. Since 1994, many women have organized in reaction to human rights violations, in particular the widespread disappearances. While this has empowered women, it has also created new vulnerabilities, as they become potential targets during security operations.

TARGETED OPERATIONS PERPETRATED BY STATE AGENTS

Although men are the targets of most human rights violations perpetrated by state agents, women are increasingly targeted, both as relatives of alleged male terrorists and as independent actors themselves. I received many concrete examples and information to this end from women's NGOs and relatives of the women who have disappeared, who became victims of extrajudicial execution, or who were tortured by members of the security forces. I was informed that the bodies of three women were found dumped in Grozny at the time of my visit and the whereabouts of another 21 women remained unclear.

In the absence of the rule of law, the civilian population suffers abuse by both security forces and Chechen armed groups, creating a climate of fear and insecurity. Many people I spoke to referred to the obscure nature of the current conflict going on in North Caucasus, which makes life totally unpredictable, distracts international attention and diverts humanitarian assistance from the region because the situation does not qualify as "war."

The authorities emphasized that targeted operations are not a state policy. However, women have become even more vulnerable to human rights violations due to the counterterrorist strategy adopted in response to suicide bombings allegedly committed by "black widows," the term for Chechen women avenging the deaths of family members. On July 9, 2003, Order No. 12/309, also known as "Operation Fatima," went into effect, authorizing police to stop and if necessary detain all (Muslim) women wearing headscarves. Reportedly these women are also strip-searched at military checkpoints. According to local NGOs, such searches are usually conducted by male guards in front of the woman's family members, with the aim of humiliating the woman and the entire family.

Under "Operation Fatima," women can be arbitrarily detained and criminally charged. There are several reports documenting that while in detention, women have been tortured, sexually abused, and raped in order to get them to reveal information or make a confession. However, very few cases of sexual abuse are reported to the authorities due to the shame felt by the victim and fear of ostracization and social stigma. The following statement of a Chechen woman is quite telling: "If they (the raped women) come home, they would be better

off shooting themselves. If anyone laid a hand on them they'd be written off for good here in Chechnya. It's a kind of law. A sullied daughter is worse than a dead one to her father. It's a terrible disgrace. She'll never get married and no one will say a kind word to her, even though it's not her own fault she was dishonored" (Prochazkova 2002: 18). As much as the fear of being excommunicated by the family, women also tend to keep silent because of the fear of reprisals by the authorities (OMCT 2003).

"Operation Fatima" has resulted in the detention of many women without any legal grounds. On December 19, 2004, *Moscow News* ran a story about a Chechen woman, Ms. Murtazalieva, who was detained on suspicion of recruiting terrorists and planning terrorist acts in Moscow, which sparked wide public debate. Jurists drew attention to the insufficiency of evidence presented and asserted that this was a smearing campaign.[228]

Women can also be detained and questioned due to their relationship to Chechen fighters. It was reported that following the Beslan School hostage-taking in September 2004, more than 300 relatives of the hostage-takers, including women and children, were detained by official command. On October 29, 2004, the Prosecutor-General of the Russian Federation, Vladimir Ustinov, declared that the detention of terrorists' relatives should be legalized as a way to force terrorists to surrender. Although he subsequently retracted this statement, I received testimonies indicating that this practice has continued. The detention of innocent people as hostages by the state is in breach of international law. Furthermore, such practices may be entirely counterproductive, since the inability to protect his family motivates the man to continue the guerrilla warfare driven by the urge for revenge.

In January 2005, the human rights group Memorial reported the disappearance of seven relatives of the former Chechen leader Aslan Maskhadov, including his sister, two brothers, a niece, and a nephew. According to eyewitnesses, they were detained in December 2004 by the Republican Security Service under the command of Ramzan Kadyrov and taken to an unknown location. These kidnappings received international media attention and gave rise to protests. At the end of January 2005, the Russian authorities announced that investigations were underway and indicated that they had launched three criminal cases against three commanders in the federal forces in connection with the kidnapping.[229]

228 In 2004 and 2005, I communicated with the Russian government upon receiving complaints concerning women who encountered rights violations, such as arbitrary detention in Chechnya and Ingushetia, and requested information regarding the allegations. For details and the response of the government, see E/CN.5/2005/72/Add.1 and E/CN.4/2006/Add.1.

229 See "Russia Investigates Kidnappings of Chechen Rebel Leader Maskhadov's Relatives," www.washingtonpost.com (3 June 2005).

FORCED DISPLACEMENT

In 1999, when the second Chechen war started, some 95,000 Chechens sought refuge in the neighboring Republic of Ingushetia; however these internally displaced persons (IDPs) were not recognized as refugees as per international law because this movement of displacement took place within the borders of the Russian Federation (OMCT 2003: 58).[230] According to the Danish Refugee Council, in October 2004 there were 22,186 internally displaced women in Ingushetia, constituting 54.5% of the registered IDP population, which marked a 20% increase over the course of three years. The UN HCR explained that the large number of women IDPs was mainly due to the phased return of IDP families to Chechnya, whereby male heads of households would return first. Also, many Chechen male IDPs seeking asylum abroad were being settled in other countries.

Ingushetia, previously regarded as a relatively safe haven for Chechen refugees, has also become prone to human rights abuses with the destabilization of the situation since 2003. Meetings with women in Chechen IDP camps in Ingushetia revealed that these people live with the fear of being forced to return to Chechnya. Testimonies of a number of women in the camps also revealed that camp residents are being terrorized by the frequent operations organized against these camps in Ingushetia by Russian security officers wearing masks.

Despite the security risks in the camps, IDPs do not want to return to Chechnya because the majority of houses, particularly in Grozny, have become inhabitable or are occupied by other people. Under these circumstances, returning IDPs have to live in temporary accommodation centers (TACs). These centers are insufficient in number and therefore overcrowded, and they lack infrastructure, including water, electricity, and sanitary sewerage.

Allocation of shelter in the TACs is based on a 3.2 square meter per person rule; this means strangers may have to share a small unit. A woman I spoke with in a TAC between Ingushetia and Grozny was sharing the apartment allocated to her with 12 other people. She reported that other residents had repeatedly beaten and abused her in order to force her out. She claimed that she had been to the TAC doctor for her injuries but was unable to escape the violent environment, since the authorities were indifferent to her problem.

230 UNHCR and other UN organizations also support programs for Chechen IDPs. I also visited a temporary settlement in Ingushetia of ethnic Ingush IDPs who had fled from North Ossetia in the 1990s. These persons were not internationally recognized as refugees and could not benefit from the UNHCR services for refugees. Although the UN and international NGOs such as UNHCR and ICRC (International Committee of the Red Cross) provided limited assistance, these people were sacrificed to international definitions; with an ambiguous status they are virtually forgotten and left to struggle to stay alive under trying conditions for years.

Reports received also indicated that Russian and Ingush authorities have forced Chechen refugees in Ingushetia to return to Chechnya and that several IDP settlements have been closed, forcing the IDPs to find shelter elsewhere. The government has offered incentives under a voluntary return program, which included promises of help with transportation, placement in a TAC, some humanitarian supplies, and a certain amount of money. However, reports from returnees indicate that these promises have seldom materialized. Part of the problem is allegedly caused by corruption. People in the region reported that local authorities have allegedly misused federal money transferred to the region for compensation and rebuilding.

2. State Response

As noted earlier, Russia has ratified key international and regional human rights instruments. In February 2005, the European Court of Human Rights rendered its judgments in three cases concerning Chechnya, one involving extrajudicial killings (*Khashiyev and Akayeva v. Russia*) and two involving indiscriminate bombing in Chechnya (*Isayeva, Yusupova and Bazayeva v. Russia* and *Isayeva v. Russia*). In all three cases, the Court found that the Russian Federation violated Article 2 of the European Convention on Human Rights, concerning the right to life.

The federal government has framed the military operations in Chechnya as counterterrorist operations. It has been reported that Chechen women are prosecuted under Article 205 of the Criminal Code, which addresses acts of terrorism. According to the officials of the Ministry of Foreign Affairs, a draft bill was being considered by the Parliament at the time of my visit, stipulating the protection of human rights during anti-terrorism operations. This initiative, which marks a positive step, is in compliance with state obligations under international human rights law, humanitarian laws, and refugee laws. What is essential here is for the government to fulfill these obligations without discrimination and with due diligence.

The Federal Ombudsman has the power to receive individual complaints. Also, between 2000 and 2004, there was a Special Representative of the President of the Russian Federation responsible for human rights in the Republic of Chechnya. However, in 2004, following the adoption of the Constitution in Chechnya and the election of a President, President Putin abolished this position. The Chechen Constitution stipulates the establishment of a regional Ombudsman to monitor human rights abuses. The military prosecutor in Chechnya had also suggested that a parallel entity is needed to monitor women's rights.

Numerous federal orders and decrees issued to prevent human rights violations during military raids have proved largely ineffective in combating forced disap-

pearances, extrajudicial executions, torture, and rape. For example, Order No. 80 issued by General Moltenskoy in 2002 specifies that operations to verify addresses should be carried out by clearly identifiable military personnel in the presence of the prosecutor, NGO representatives, and village elders. It also requires that the registration plates of military vehicles be clearly visible. Despite this directive, reports indicate that military operations continue to be conducted in a manner that makes identification of the personnel involved impossible. The people taken away are either never heard of again or their bodies are recovered in unmarked dumping sites or mass graves.

Perpetrators of crimes enjoy impunity to a great extent. On March 24, 2003, Sergei Yastrzhembsky, Adviser to the Russian President, announced that 50 servicemen had been convicted for crimes committed against civilians in Chechnya. However, such declarations were received with suspicion by the civil society. Memorial claimed that only few of the perpetrators were actually punished.

On December 10, 2004, the Russian Human Rights Commissioner Vladimir Lukin stated that 1,700 criminal cases involving disappearances of people in Chechnya had been launched since the beginning of 2004. Meanwhile, the Commissioner for Human Rights of the Council of Europe reported that since Russian law had been reintroduced in the Chechen Republic, 1,749 criminal investigations had been opened into the disappearances of 2,400 people and that the vast majority of those investigations had been put on hold. Additionally, human rights organizations report that there has not been a single conviction for forced disappearances, despite the official recognition of their prevalence.

No credible record was found of perpetrators of crimes against women being put on trial and convicted. Memorial reports that in two cases where the perpetrators were found guilty of rape, the sentences were not executed. The case against Colonel Yuri Budanov is an exception. On July 25, 2003, Colonel Budanov was found guilty and sentenced to ten years in prison for the murder of Elza Kungaeva, a 19-year-old Chechen woman. It was however only following a public outcry that Colonel Budanov was prosecuted, and, interestingly enough, despite strong evidence that he had raped the woman before killing her, he was found guilty only of murder.

The impunity surrounding crimes committed in Chechnya is related to the use of repressive measures that restrict the collection and dissemination of information about human rights abuses, as well as to severely limiting access to justice. This system serves as an effective means of spreading fear and silencing the population. Women's groups and organizations working to document and publicize the human rights violations in the North Caucasus do so with great risks to their own safety.

There are also other factors that obstruct justice: namely, the procedures of the military and civilian prosecutorial systems, their accessibility, and the difficulties in accessing courts at large. There are a total of ten functioning courts across Chechnya. Accessing the courts is physically dangerous for many Chechens, particularly women, who may be arbitrarily detained at checkpoints or face other problems as they are traveling to the court. Moreover, filing complaints is both costly and creates the risk of re-victimization. There is already little confidence in local courts. Appealing to the European Court of Human Rights is not within the means of ordinary citizens. Furthermore, due to the lack of a witness protection program, those who have the courage to lodge a complaint are faced with risks of being kidnapped, tortured, killed, or harm to their relatives. Under such conditions, these people should be sent away to a safe location for witness protection.

Conclusions

The Russian Federation emerged out of a multi-ethnic union of nations that was committed to transcending all sex and class hierarchies. The transition of the Federation to a market economy and the process of its political restructuring revealed that the Soviet legacy of egalitarianism was in fact transient. The transition process entailed multiple challenges for Russia, with contradictory implications for the situation of women in general and for those in the North Caucasus in particular.

Women have borne a disproportionate share of the negative consequences of the transition, which has been accompanied by an upsurge in patriarchal attitudes towards gender relations. This is evident from the barriers to women's equality, especially in the areas of employment and political participation, and from reports of increased and widespread violence against women, particularly domestic violence, sexual abuse, and trafficking. Without firm political will and a commitment to implement established international standards, it will not be possible to eradicate human rights violations against women which are rooted in inequality and discrimination.

Due to conflict and military operations, the situation of women in the North Caucasus is even more complex and alarming. Throughout 70 years of socialist experience, the Soviet policy towards the diverse nations of the USSR played a key role in keeping ethnic boundaries intact; in the North Caucasus this has been a source of contestation to the newly drawn territorial integrity of the Federation. In this context, the widespread destruction and the normalization of diverse forms of violence in the region have caused direct and indirect suffering for Chechen women.

Violence against women in both contexts threatens the advancement of the Russian Federation and the security of all its citizens. In this regard, prioritizing women's rights and addressing violence against women in policy development and legislative reform are urgent challenges confronting the government.

The Russian Federation's historically rooted state tradition, the egalitarian Soviet legacy, and its leading role in international affairs offer an opportunity for the government to mobilize the society for women's rights and eradicate gender inequality and violence at all levels ranging from domestic violence to state violence. The criteria for the establishment of equality between men and women in Russia should be sought not in the archaic values that are deemed to exist in the country's "old" history, but rather in its more recent history and the international standards it has committed to.

V. Islamic Republic of Iran[231]

The Contextual Framework of Iran's Gender Equality Agenda

1. Historical Background

Prior to the 1979 Iranian Revolution, the modernization process, initiated under the Pahlavi rule, led to certain legal reforms intended to benefit women. Particularly noteworthy among these are: the 1932 Civil Code that increased the minimum age of marriage to 15 for girls and 18 for boys; the introduction of co-education in Tehran University in 1936; the 1937 decree for compulsory unveiling; the 1940 Criminal Code (although it retained a man's right to murder an adulterous spouse and other female relatives); women's right to vote in 1963; and the 1967 and 1975 Family Protection Laws that curtailed polygamy and the unilateral right to divorce for men. Nonetheless, women were at the forefront of the 1979 uprising. Millions of women, from all walks of life, took to the streets wearing the chador as a symbol of solidarity with the revolution. The enthusiasm, however, was short-lived. Two days before the commemoration of the International Women's Day (March 8, 1979), Khomeini started announcing measures that signaled a rollback in women's rights. Among these was a decree dismissing all women judges, barring female students from attending law schools, and instituting compulsory veiling (Tohidi 1991).

The issue of human rights became a point of divergence between the regime and the international community on the one hand, and more liberal-minded Iranians on the other. The new rulers of the Islamic Republic of Iran adhered to a cultural relativist position and opted to distance themselves from universal human rights standards, which they defined as Western in nature. This excerpt from an editorial in *Tehran Times* (February 6, 1996), in connection with the visit of the UN Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, is representative of the general sentiments in Iran at the time:

> Criteria for human rights are respected by everyone; however any judgment on the situation of human rights in a country should be harmonious with the nation's culture, religion and traditions. The special envoy should not surrender to direct and indirect pressures from the United States and

231 I visited the Islamic Republic of Iran, upon the invitation of the government, from January 29 to February 6, 2005.

> other Western powers whose aims are to use human rights as leverage against Iran.[232]

The political paradigm that grounded the 1979 Revolution was primarily a reaction to Western imperialism, which was seen as advancing not only militaristically, but also through religion and culture. In this context, women, perceived as bearers of culture, became central to the political discourse that was to shape the society. A weekly women's journal published in Tehran in 1984 argued that colonialism considers women as the best tool for the subjugation of nations: "…women serve as the unconscious accomplices of the powers-to-be in the destruction of an indigenous culture … woman is the best means of destroying the indigenous culture to the benefit of imperialists" (Najmabadi 1998: 60).

Consequently, the revolutionary process of purification from imperialist influences discarded secular women as remnants of the old regime, while women advocates of the revolution were placed in key positions as proponents of the new gender agenda. This was at the same time an initiative that aimed to prove to the critical circles that the Islamic Revolution had delivered women from the corruption and exploitation of capitalism. In this regard, as like-minded women were being placed in visible public positions in order to legitimize the regime, a system of strict control over women's lives was in the making.

2. Governance and Administrative Structure[233]

The new system was carefully crafted on the basis of supreme power. According to the 1979 Constitution, the structure of power that governs Iran is a combination of popular sovereignty (Article 6) and the rule of the Supreme Jurisconsulate (Article 15). Within this context, the highest state authority is vested in the Supreme Leader, who is elected by the Assembly of Experts.[234] The Supreme Leader, as the head of the state, dominates the division of power among the legislative, executive, and judicial branches. His powers and responsibilities range from delineating the general policies of the Islamic Republic of Iran and supervising their proper execution, to appointing and dismissing members of the Guardian Council; exercising direct or indirect control over key institutions

232 Karabell 2000: 212.

233 Iran, which was governed by monarchy, experienced a brief period of constitutional rule in the early 1950s; however, the monarchy was restored in 1953. The governance and administrative structure of Iran is addressed in more detail as compared to the other country cases in this book in order to demonstrate how interlocked the totalitarian and gender-biased structure in the country is.

234 The Assembly is composed of 86 clerics elected by universal suffrage every eight years. The Council of Guardians approves the candidates for the Assembly.

including the armed forces, the Revolutionary Guard, and the judiciary; and confirming candidates for presidency.

The executive branch is headed by the President, who is elected for a four-year term by universal suffrage.[235] The legislative branch is composed of a popularly elected 290-seat Islamic Consultative Assembly (*Majlis Shura-e Islami*) and an appointed 12-member Council of Guardians. The *Majlis* develops and adopts legislation and reviews and ratifies international treaties. In accordance with Article 90 of the Constitution, it also examines and investigates written complaints by the public against legislative, executive, and judiciary decisions. Half of the Council of Guardians members are appointed by the Supreme Leader from among the *fuqaha* (clerical elite) and the remaining half by the *Majlis* from a list of non-clerical jurists recommended by the head of the judiciary, who is appointed by the Leader. The Council of Guardians reviews all legislation passed by the *Majlis* to assess compliance with Islamic and constitutional principles and evaluates *Majlis* candidates for their eligibility.[236] The Council for the Discernment of Expediency for the Interest of the System (or Expediency Council), which is composed of 31 members appointed by the Supreme Leader, is empowered to resolve legislative deadlocks between the *Majlis* and the Council of Guardians. Although the Council of Guardians and the Expediency Council are not elected bodies, they are entrusted with extensive authority and power over the popularly elected *Majlis*. While authorities have asserted that such situations exist in other countries, some observers identify this as a source of potential discord in governance and a constraint on the democratic process.

Although the judicial branch is a constitutionally defined independent body, the Supreme Leader appoints the head of the judiciary from among the *Mojtaheds* (doctors in religious law). The head of the judiciary is directly accountable to the Supreme Leader. This provides the latter with power over the administration of justice. The head of the judiciary is mandated to institute the necessary organizational structure for the administration of justice, draft the budget of the judiciary, and appoint, dismiss, and transfer judges. Among other tasks, the head of the judiciary also appoints the President of the Supreme Court and the Prosecutor General from among the *Mojtaheds*.

While government officials argue that men and women have the same rights and that recruitments and promotions are based on merit or votes, the top decision-making posts at all levels of the governance structure continue to be held by men. These cadres are under the Supreme Leader commanding the

235 The notion of "universal suffrage" needs to be read with caution as eligibility to run for office is regulated in the Islamic Republic.

236 The Council of Guardians disqualified thousands of candidates from running for the seventh *Majlis*. This created much public distress and international criticism.

highest authority. According to Article 115 of the Constitution, no woman may serve as president of the country, and although not specified in the Constitution, a woman cannot serve as Supreme Leader. Also, no woman has ever been appointed to the Council of Guardians or the top decision-making positions of the Expediency Council. The only female member of the cabinet formed after the June 2005 elections, when Mahmoud Ahmadinejad was elected President, was appointed as the cabinet's vice president.

Women can become judges, but they are allowed to occupy only certain judicial positions. These include, *inter alia*, Assistant Prosecutor General, advisor to the Court of Appeals, examining judge, advisor to the legal offices, advisor to the Family Courts, and judge of the Office of Guardianship for Minors and Interdicted Persons' Affairs. Upon my inquiry at a meeting with prominent female and male judges, I was informed that the issue of granting women full authority as judges was being debated in relevant circles.

In short, the governance structure of Iran is male-dominated, with a strong conservative character. While this is in conformity with the dominant patriarchal trend across the world, the authorities in Iran do not regard this situation as negotiable; therefore, prospects for intervention and change are rather limited.

3. International Human Rights Obligations

Iran ratified three core international human rights conventions (CERD, CESCR, and CCPR) before the 1979 Revolution. In 1994, the new regime ratified the Convention on the Rights of the Child (CRC) with reservations on articles incompatible with Islamic laws,[237] and in 2002, it ratified the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999). Iran has not ratified CEDAW or the optional protocols of the conventions it is party to. During my meetings with the female parliamentarians of the seventh *Majlis* and various government officials, including the head of the Committee on Women, Youth, and Family of the Expediency Council, it was emphasized that CEDAW is incompatible with Islamic norms. Moreover, concerns were voiced that the Convention's principle of equality may in fact take away some of the privileges women currently enjoy, such as not having to contribute to family sustenance, since this is the responsibility of the husband.

Article 20 of the Constitution states that "all citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, polit-

237 On January 20, 2005, the CRC Committee reviewed Iran's second periodic report and presented its concluding observations (CRC/C/15/Add.254). Many of the issues raised by the Committee in its report, particularly the definition of the child, questions concerning marriage, and criminal responsibility, are of direct relevance to the objectives of this chapter.

ical, economic, social and cultural rights, in conformity with Islamic criteria." According to Article 3, paragraph 14, the government is obliged to secure "the multifarious rights of all citizens, both women and men" and to provide "legal protection for all, as well as the equality of all before the law."

Although the Constitution includes the principle of equality and Iran is party to some of the main

international human rights instruments, there are worrisome legal gaps in guaranteeing equality. Women and religious minorities are not included in Article 19 of the Constitution prohibiting discrimination based on color, race, and language; and it has been argued that Article 20 requiring "conformity with Islamic criteria" is used as a legal basis of discrimination against women. Furthermore, the application of existing standards falls short of ensuring that women in Iran enjoy *de jure* and *de facto* equality. This situation reinforces unequal power relations between women and men, and renders women vulnerable to violence.

4. Status of Women

The status of women in Iran since the Islamic Revolution is contradictory. Women in Iran—compared to other developing and neighboring countries—have access to health and education and to some extent employment and political participation. However, women's advancement in these spheres takes place under strict surveillance and within well-defined boundaries, transgression of which could be "fatal." There are economic, social, and legal barriers hindering women's full enjoyment of their human rights at universal standards. Women are excluded from equal partnership in determining the parameters of social relationships in the public sphere as well as their private lives. Conformity with such a gender order is ensured through the ideological and legal foundations of the Iranian state, as well as through the use of diverse forms of violence against women within the family, community, and state institutions.

Despite the continuing reports of violations of women's human rights,[238] there have been some positive developments during the past decade. In this regard, the most impressive development has been in the area of the right to education. Although the illiteracy rate, at the time of my visit, was a high 31% among women (17% among men), both the rates of literacy and schooling are improving. The ratio of girls attending primary school is almost equal to that of boys. The most significant progress has occurred in higher education, where 65% of the students are women.

238 For an example of individual complaints, see E/CN.4/2006/Add.1.

However, the progress in women's education has not been matched with an increase in female employment. Women are over-represented among the unemployed. According to the 2003 data, women constituted only 14.2% of the labor force, and most women were concentrated in low-paid, sex-stereotyped sectors of "female jobs." Reportedly, women are more active in the urban and rural informal employment sector. Women's low representation in the formal labor force is directly associated with discriminatory and patriarchal legislative provisions. For example, Article 75 of the Labor Act bars women from working in jobs defined to be "dangerous, difficult or harmful," including military service, and Article 1117 of the Civil Code grants the husband the right to forbid his wife from accepting a job that is incompatible with the interests of the family or her dignity.

Women's representation in the political sphere is also considerably low. Although women can be elected to the *Majlis,* female deputies hold only 12 of the 290 seats, or 4.5%, in the seventh *Majlis* elected in 2004.[239] Meanwhile, the female deputies of the sixth *Majlis*, elected in 2000, were active in the battle for reform in the country, despite their low representation. According to researchers, these deputies challenged the unwritten rules that had defined gender relations and politics in the previous five parliaments (Mir-Hosseini 2004). For example, some did not wear the *chador*, but went to the Parliament in a more informal headscarf and coat.

Women deputies of the sixth *Majlis* also pushed for reform of discriminatory laws and introduced 33 draft bills, most of which were rejected by the Council of Guardians on grounds that they were incompatible with Sharia. With the intervention of the Expediency Council, 16 of the proposed bills eventually became law, but only after being amended to lose their progressive elements. These bills, for example, allowed unmarried women to study abroad, raised the minimum age of marriage for girls from nine to 13, granted women custody rights for sons up to the age of seven, and improved women's rights to divorce. Among the bills that were rejected by the Council of Guardians were the proposals to ratify CEDAW and to give right of residence and nationality to non-Iranian spouses of Iranian citizens. However, the female deputies in the seventh *Majlis* followed a much more conservative approach and were not willing to challenge the numerous discriminatory laws in place.

During my visit I received reliable information concerning women from minority groups, such as the Azeri, Baha'i, Kurdish, and Ahwazi, who experience multiple forms of discrimination, including the violation of their rights

239 See Inter-Parliamentary Union, Statistics on Women in Parliaments (www.ipu.org/wmn-e/classif.htm).

to education and employment. The government officials I confronted on this subject dismissed them as mere allegations.

Although women in Iran do not enjoy equal rights, their intellectual articulations and activism could not be totally excluded from public discourse. To the contrary, women have continued to make an active contribution in many fields ranging from arts to sports, demonstrating their determination to challenge and negotiate the boundaries of the imposed gender order. Many women's organizations have engaged in reinterpreting the Qur'an from a women's perspective. "Instead of beginning with creation as a narrative of origins for women's rights and responsibilities," many of these interpretations place "individual woman in her contemporary social concreteness at the center of their arguments" (Najmabadi 1998: 68). Focusing on women's actual life practices and experiences not only paves the way for alternative interpretations of Islamic jurisprudence, but also demystifies values that justify dichotomies such as Muslim/secular or Iranian/Western, by revealing the universal elements of women's subordination in diverse patriarchal arrangements. In this regard, violence against women emerges as a common point of reference for women worldwide.

Violence against Women

Violence against women in Iran is ingrained in gender inequality, which is upheld by two factors: (1) patriarchal values and attitudes based on notions of male supremacy, and (2) a state-promoted institutional structure based on hardline interpretations of Islamic principles. While the former is a universal and historically rooted phenomenon, the latter has particularities to the gender politics of Iran and the socio-political environment prevalent in the country. Both factors, however, represent a male-dominated society with male-empowering laws and practices. The official ideology underpinning the gender discourse of the state rests on the premise that women in the Islamic Republic have been endowed with honor and dignity. However, in practice this ideology has served to legitimize the subordination of women as well as discrimination and violence against them. Furthermore, it is instrumental in silencing defiance and enforcing compliance.

The ruling clergy, in their reading of the Sharia that shapes both the attitudinal as well as the institutional structures, have tended towards conservative interpretations. This has been the source of divisive debates in the political arena between the hardliners and the reformists. Mir-Hosseini (2004) regards the sixth *Majlis* as a turning point in terms of reformist gender politics and policies. During this period some positive changes occurred in the laws and the administration of justice; however, gender-biased provisions and practices that prompt women's vulnerability to violence in the private as well as public spheres remained the norm.

1. Manifestations of Violence

Given the ideological framework referred to above, violence against women in Iran is rarely acknowledged as a problem by the authorities, and the victims rarely report incidents of violence. The 1999 *Human Development Report of Iran* indicates that domestic violence, in particular, is a hidden social phenomenon that is not discussed openly. The report concludes that no action has been taken to change prevailing attitudes or reform the pertinent laws and regulations. Although this report is outdated, its conclusions are parallel to my findings, revealing that no fundamental change has occurred over time.

It was particularly clear in Ilam[240] that women feel compelled to live with violence, inflicted not only by their husbands but also by other family members for fear of shame, of being ostracized, or of being divorced and for lack of alternatives to the abusive environment. While there are many factors underlying the cases of self-immolation in the city,[241] the lack of legal protection for women victims of violence, the lack of shelters, difficulty in obtaining a divorce, child custody laws that favor the father, and the pervasive gendered discrimination throughout society certainly create a conducive environment for many of the cases.[242]

The self-immolation incidents are also said to be related to "honor" crimes, which are particularly common in Ilam and Khuzestan[243] province. According to statistics provided by a consultant to the governor of Khuzestan, in 2003 there were 45 cases of "honor" killings in one tribe alone, and all the women murdered were under the age of 20. In 2001, a total of 565 women lost their lives in "honor"-related crimes. Reportedly, in 375 of these cases, women were either forced to kill themselves or the incident was staged as self-immolation.[244]

Reports also indicate that there is a worrying increase in the trafficking of girls and women. Most of the trafficking is said to occur in Iran's eastern provinces, mainly in towns bordering Pakistan and Afghanistan, where women are

240 Ilam is the central city of Ilam province on Iran's western border with Iraq; the population of the province is approximately 86% Kurdish.

241 According to information provided by local authorities, these cases are on the rise. For example, in 2002, there were 357 reported cases of self-immolation, of which 163 were women; in 2003 it increased to 279 women in 421 cases; and in 2004, it was 282 women in a total of 480 reported cases.

242 Other factors such as the impact of the eight years of war with Iraq and the high rate of unemployment in Ilam have exacerbated the situation underlying the phenomenon of self-immolation.

243 Khuzestan is a province in the southwest of Iran; its population is mainly comprised of Bakhtiari, Arabic speakers, and Turkic-speaking Qashqai.

244 www.isiswomen.org/page/ngoreporton b10/Iran/.

kidnapped, bought, or entered into temporary marriage in order to be sold into sexual slavery in other countries.[245] The officials I spoke with informed me that measures were being taken to combat human trafficking. At the time of my visit (Jan.-Feb. 2005), it was reported that since 1999, 28 "health houses" had been set up by the state-run Welfare Association to provide assistance for unmarried girls who ran away from their homes and were at risk of being trafficked. These institutions provide temporary housing, professional counseling, and skills development for runaway girls. However, reports also indicate that girls are abused in these shelters. For instance, according to the report of Special Representative of the UN Commission on Human Rights on the Situation of Human Rights in Iran,[246] in February 2001, senior state officials were charged with selling the girls who lived at the Jasmine Center. A judge of the Revolutionary Court was among the accused.

The Law on Combating Human Trafficking, enacted in August 2004, specifically criminalizes trafficking in persons in Iran. The government also took some action against human trafficking by arresting, convicting, and executing a number of persons for the crime. This may be an issue for further exploration in Iran by the UN Special Rapporteur on Trafficking in Persons.[247]

While the various forms of violence observed in intimate relations and in the community at large are a concern, the bulk of complaints received with respect to violence against women in Iran are related to incidents condoned by state agents.[248] During my mission, I met with a number of women's human rights defenders, including lawyers and journalists, who relayed similar experiences. They were arrested without charge by plainclothes agents allegedly from the Ministry of Intelligence and Security, detained *incommunicado* in secret detention centers for a month or more, and tortured or maltreated under detention; their homes were also searched periodically without a warrant. The Constitution of Iran forbids the use of all forms of torture "for the purpose of extracting confession or acquiring information." However, human rights orga-

245 Ibid.

246 A/56/278: 6.

247 As of fall 2015, the UN Special Rapporteur on Trafficking in Persons had not yet visited Iran.

248 During my mandate as the UN Special Rapporteur on Violence against Women, between 2003 and 2009, I acted on 51 complaints regarding women's rights violations in Iran by communicating allegation letters and urgent appeals to the Government of Iran. Most of the complaints were about the discriminatory laws and practices and aggression of state agents. The year 2009 marked a peak in the number of Iran-related complaints, with 12 urgent appeals and six allegation letters. Most of the complaints were about detention, arrest, and interrogation related to the "One Million Signatures Campaign," which was a call for ending discriminatory laws against women in Iran (A/HRC/11/6/Add.1). See Ertürk 2014 (www.learningpartnership.org).

nizations continue to report that torture and other inhuman treatment take place in various detention facilities in Iran.[249]

- The case of Zahra Kazemi, an Iranian-Canadian photojournalist, who died in custody in Iran on July 10, 2003, raises many concerns regarding the treatment of detainees. The authorities initially claimed that Ms. Kazemi died of a digestive disorder, but reports indicate that she was subjected to torture and ill treatment while in detention. It is reported that the government denied requests from Ms. Kazemi's family and the Government of Canada to examine the body. There has been no comprehensive public investigation into Ms. Kazemi's death and parts of the initial inquiries that have been carried out were reportedly censored.

According to reports, some detainees, even after being released, continue to receive summonses to go to police intelligence office for questioning. Allegedly, interrogations serve as the principal means to fabricate criminal charges, coerce confessions, and make threats against the prisoners' family, colleagues, or political associates. During my visit two cases were in the limelight: Ms. Mahbubeh Abasgholizadeh, the editor of *Farzaneh* and a women's rights and NGO activist, who was arrested at her home on November 2, 2004; and Ms. Fereshteh Ghazi of the daily *Etemad* and an online journalist, arrested in her office on October 28, 2004. The story of the latter is particularly telling of how violations are committed:

- In 2001, Ms. Ghazi wrote a letter to the Iranian authorities in which she criticized the violation of women's rights in the country and called for the release of Afsaneh Noroozi, a woman who had been sentenced to death (later released). She also regularly wrote about women's issues in the daily *Etemad*. Reportedly, she was arrested on October 28, 2004, by the Tehran morality squad (*Edareh Amaken*) when she answered a summons to appear before the ninth chamber of the Tehran Prosecutor General's office. She was not provided with any information about why she was arrested or where she was being held. She was kept in solitary confinement for 38 days, pressured to confess on television to relationships with reformist parliamentarians, and was subjected to beatings, resulting in a broken nose. Ms. Ghazi was hospitalized following her release on bail in December 2004. Since her release she was summoned 15 times by phone and three times in writing to appear in court. She was initially charged with acting against the state and being a member of an anti-state organization. During my mission (Jan.-Feb. 2005),

249 In response to increasing international pressure, an anti-torture bill was drafted, but the bill was vetoed by the Council of Guardians in June 2002 and then again in January 2003, even after the bill had been revised and approved by the *Majlis* in December 2002. It has been reported that in April 2004, a judicial directive was issued prohibiting torture.

her case was still open and she feared she would be subjected to further harassment. Ms. Ghazi took her case to the chief of the judiciary, who told her just to disregard future summonses.

The death penalty, particularly by stoning, is a major area of concern. I received numerous reports of women on the death row, sentenced mainly for sexual or moral offences such as adultery. At the time of my visit, there were 397 women in Evin Prison, 200 of whom were sentenced for "moral crimes," some awaiting execution. I spoke to some of these women. Their stories reflect the sexist prejudices in the ideological and institutional structure of the country where these women—some still children—have become labeled as criminals.

- Leyla Mafi, age 19, was sentenced to death in May 2004 on charges of acts contrary to chastity, for operating a brothel, having intercourse with blood relatives, and giving birth to an illegitimate child. According to the government, Ms. Mafi had confessed to all these charges and was to be flogged before being executed. However, social workers looking into this case reported that Ms. Mafi has the mental capacity of an 8-year-old. It is also reported that her mother forced Ms. Mafi into prostitution and that she gave birth to her first child when she was nine. She had been previously sentenced to 100 lashes on two occasions. In response to a communication I sent to the government concerning this case on December 13, 2004, jointly with the Special Rapporteur on extrajudicial, summary or arbitrary executions, I received a response indicating that Ms. Mafi's case was under review.[250] In the following days, I received information that Ms. Mafi no longer faced execution, but that she still faced a punishment of flogging. While the commutation of the death sentence is welcomed, the decision to execute the flogging in itself constitutes an area of grave concern.

Leyla's case seriously challenges the moral basis of the conditions that shaped her life as well as her conviction. The contradictions surrounding the cases of many young women sentenced to death on moral grounds warrant a serious re-examination of such practices, and inhuman punitive practices—such as stoning—must be stopped. In December 2002, Iran's Chief of the Judiciary issued a directive ordering a moratorium on execution by stoning; however, because the legal provisions for stoning still remain in effect it is still handed down as a punishment by some courts, although none had been carried out at the time of my visit.

250 E/CN.4/2006/61/Add.1.

2. The Institutional Basis of Violence

DISCRIMINATORY LAWS

Discriminatory laws in both the civil and penal codes of Iran play a major role in empowering men and aggravating women's vulnerability to violence. In particular, the discriminatory provisions of the Civil Code in areas of marriage, child custody, freedom of movement, and inheritance may perpetuate or legitimize violence against women perpetrated by private actors. The provisions of the Penal Code relating to crimes specified in Sharia, namely, *hudud*, *qisas*, and *diyah*, are of particular relevance in terms of gender justice.

(a) Civil Code

Marriage and divorce: Early marriage is sanctioned by law: girls can be married as young as 13 and boys as young as 15. For girls, the age was raised to 13 from nine only in 2002. Marriages may still be contracted for children under these ages, with the consent of the parents. All girls and women must have the consent of the father (in his absence, that of other male relatives) in order to enter into a marriage contract (Article 1041). Article 1105 of the Civil Code provides that the husband is the "head of the family" and allows him to take multiple wives, which is said to be a source of friction in the family and of vulnerability for women. Thus, the laws that disempower women in the sphere of marriage legitimize the imbalances of power in the marriage relationship, make women vulnerable to violence, and make it difficult for them to escape the environment of violence.

Article 1133 of the Civil Code provides that a man may divorce his wife whenever he wishes. Although technically a court may require a man to produce evidence justifying the divorce, this is reportedly a formality. For women to obtain a divorce, they must prove that they are physically and emotionally harmed by staying in the marriage (Article 1140). The Civil Code was recently amended to clarify the specific circumstances under which a woman may seek a divorce. These include incurable diseases, abandonment of family life, spousal abuse, and battery.[251]

Child custody: Child custody laws favor the father. In principle, both the physical custody (*hezanat*) and the legal guardianship (*velayat*) of the child belong to the father. While under certain circumstances, women are granted physical custody, the authority over decisions regarding the child's well-being is given exclusively to the father. Following a divorce, physical custody was until recently granted

251 The government reported that Article 1133 is amended and that divorce may be granted to a woman upon her request.

to the mother until the age of seven for girls and age of two for boys. In 2003, the law was changed to allow both children to remain with their mother until the age of seven; custody is then automatically transferred to the father, or if he is absent or incapable, then to another male in his family. If the mother remarries, the physical custody then shifts to the father. Women who are subjected to violence feel they have no choice but to bear the violence of the husband and remain in the marriage because they cannot risk losing their children.

Freedom of movement: The Civil Code also restricts women's freedom of movement. For example, according to Article 1005, as the exclusive head of the family, the man has the right to control his wife's freedom of movement and behavior in many situations. The woman must show the written and notarized approval of her husband in order to obtain a passport and to be allowed to travel abroad. Women's freedom of movement is also seriously curtailed by the numerous rules upholding sex segregation in public space. Additionally, an unaccompanied woman must obtain permission from her husband or the local authorities in order to stay at a hotel. To be able to leave the house, women and girls must dress according to the mandatory dress code (*hejab*). Although the Deputy Minister of the Interior explained that there was no mandatory dress code, other officials whom I have spoken with claimed the contrary and argued that failing to obey this rule may result in a punishment of imprisonment from 10 days up to two months and a fine. Such legal provisions empower men to use force on women, including diverse forms of violence, to ensure women's compliance.

Inheritance: The law stipulates that women can inherit only half the share of property that their male counterparts inherit. Therefore, daughters' share of inheritance is only half of the share of sons. When a woman in a permanent marriage dies, her husband inherits all of her property if she has no other heirs and one-fourth of the property if she has children. When a husband dies, his wife only inherits one-fourth of his property if she is his sole relative and one-eighth if he has children. A woman has no right to inherit land. The links between the denial of women's property rights and the risk of violence have been well documented, in particular by the Special Rapporteur on Adequate Housing.[252] The Special Rapporteur on Adequate Housing visited the Islamic Republic of Iran in July 2005. His analysis and recommendations can serve as an invaluable guidance to the government in addressing the problems encountered by women.

252 E/CN.4/2005/43.

(b) Penal Code

The age of majority in the Islamic Republic of Iran is nine for girls and 15 for boys. This is not only discriminatory against girls, but it also subjects both girls and boys to the possibility of being tried as adults for criminal offences and stands in contradiction with the definition of the child as contained in the Convention on the Rights of the Child (CRC). The Committee on the Rights of the Child has expressed concern about this low age of criminal responsibility and in particular about the reports on juveniles who have been subjected to the death penalty and other punishments that amount to torture and ill-treatment, such as amputation of the hand, flogging, and stoning.[253]

The Penal Code in Iran categorizes crimes based on the punishment prescribed for the offence. *Hudud* crimes refer to offences that are considered sins and which have mandatory punishments provided for in the Qur'an. Applicable punishments for such crimes are: the death penalty; crucifixion; stoning; amputation of the right hand and, for repeat offences, the left foot; flogging; imprisonment; and exile. The following crimes are punishable by death: fornication involving a non-Muslim man and a Muslim woman (Article 82); committing adultery for the fourth time (Article 90); having three prior sentences of 100 lashes of the whip (Article 110); homosexuality (Article 179); and having two prior convictions for alcohol consumption. The punishment for the earlier offences of alcohol consumption is 80 lashes of the whip. Because the punishments for *hudud* crimes are predetermined, judges have almost no discretionary power in these cases. Women are disproportionately charged with crimes related to sexual and moral conduct such as adultery and suffer serious consequences in this regard. As will be detailed below, when women are charged with these crimes, they are often unable to refute the charge because of additional discriminatory laws and procedures governing the administration of justice.

Qisas crimes refer to offences such as murder, manslaughter, assault, or mutilation. Proceedings against a perpetrator of crimes that violate bodily integrity are subject to the decision of the victim or the victim's family. In cases of murder or injury, the victim or the victim's family may request that the perpetrator suffer the same treatment as the victim, or in cases of death or physical injury they may accept financial compensation as blood money (*diyah*). The system of *diyah* is a discriminatory practice both against the poor and women. For example, in the case of murder, the family of the victim may choose to be financially compensated through *diyah* or seek the death penalty for the perpetrator. If they choose financial compensation, they reach an agreement on the amount of

253 In December 2005, the Government of Iran announced a moratorium on the execution of minors and that 110 sentences for minors were put on hold in 2005.

compensation to be paid. If they cannot reach an agreement, the compensation is determined according to the preexisting rule which stipulates that the *diyah* for a woman is half the amount paid for a man. The poor, who lack the required resources, are most of the time unable to buy justice, and women suffer as their life is valued at half that of a man.

Scholars have argued that there is no verse in the Qur'an prescribing that the value of a woman's life is half that of a man. More precisely, it is argued that the gender discrimination in the system of *diyah* is based on the understanding that women's social value—due to their lower levels of contribution to socio-economic and political life—is not equal to that of men. Furthermore, it is said that the practice in its initial form is rooted in pre-Islamic tribal norms of "just revenge," which, for nomadic tribes in the Arabian deserts, was aimed at protecting the tribe members against threats from outside (Kim et al. 2003). Some of the authorities I spoke with agreed that the system of *diyah* needs to be revisited in view of Iran's international commitments and women's current status in spheres of education, economy, and politics.

PROBLEMS IN THE ADMINISTRATION OF JUSTICE

(a) Fair trial and rules of evidence

Discriminatory provisions in the Penal Code coupled with flaws in the administration of justice deny women effective access to justice and the ability to escape violence.

First, criminal proceedings are concentrated in the hands of a single person—the judge. It is the judges who prosecute, investigate, and decide the case. Owing to the risk of harassment, it is difficult for political prisoners to find an attorney who will represent them. I received information on numerous accounts of situations where lawyers were prosecuted or reprimanded by judges for drawing the court's attention to the ill treatment suffered by their clients or the malfunctions in the system of justice. Such pressures on the defense undermine due process for women and men alike.

Second, the rules of evidence discriminate against women. For example, the value of a woman's testimony is worth less than that of a man. In criminal offences such as murder or "illicit sexual relations" (adultery—*zina*), a woman's testimony is worth only half that of a man and must be corroborated by the joint testimony of a man in order to be accepted. A woman also faces serious obstacles to proving that she has been subjected to violence. Where a woman has been subjected to violence, she can only prove her claim by presenting several male witnesses. Rape is illegal; however, a rape victim must present four male eyewitnesses or three male and two female witnesses in order to prove the crime. Given that violence against women mostly takes place in the private

sphere, it is extremely difficult to provide eyewitnesses to such acts of violence. If the defendant is acquitted, the victim (woman) runs the risk of being charged and convicted for false accusation (*qazf*) or illicit sexual relations (*zina*). During my visit to Iran, I was informed of a rape case where the victim was charged with adultery due to these evidentiary requirements. I also learned of cases where women who acted to defend themselves against sexual assault, rape, and other forms of violence received severe sentences, since the argument of "self-defense" was ignored.

- 26-year-old Reyhaneh Jabbari was hanged on October 25, 2014. Reyhaneh was arrested in 2007, at the age of 19, on charges of killing her rapist; she was sent to Evin Prison. She was then sentenced to death in 2009 by a criminal court in Tehran. The trial process came under allegations of flawed investigation and severe criticisms by international observers; execution of the sentence was condemned by Amnesty International as "another bloody stain on Iran's human rights record."[254]

Furthermore, the fact that in many cases the punishments imposed are arbitrary and disproportionate to the offences committed creates further injustices for women in particular due to gendered discrimination. Most of the time, women are punished more harshly than men who commit the same crimes. For example, if a woman kills her child she will be punished with the death penalty. The father or paternal grandfather committing the same crime will only be required to pay *diyah* to the child's relatives and possibly also be sentenced to imprisonment, flogging, or a fine. Furthermore, a husband has the right to kill his wife if he witnesses her in an act of adultery, but if a wife kills her husband for adultery, she faces the death penalty or a long prison sentence.

Additionally, the bails set in connection with release are too often disproportionate to the low family incomes. This problem is particularly grave for many women who have been detained on charges of "moral crimes," including prostitution. These women reported that they could not afford to pay for counsel or bail.

(b) Multiple and parallel law enforcement systems

The administration of justice is further hampered by the existence of multiple law enforcement agencies. The responsibility of law and order is shared between several agencies in Iran, some of which allegedly operate without supervision and accountability. These agencies are the law enforcement agencies under the Ministry of the Interior, the Ministry of Intelligence and Security, the Islamic Revolutionary Guards corps (a military force established after the revolution),

254 www.amnesty.com, October 25, 2014.

and a number of quasi-official organs known as "parallel institutions" (*nahad-e movazi*). The latter include the paramilitary volunteer force known as the *Basij* and groups of *Ansar-e Hizbollah*, who work as plainclothes agents under the direct control of the Supreme Leader. These parallel institutions are reportedly responsible for serious human rights abuses committed during democratic and peaceful protests, including beating, harassing, threatening, and arresting a number of human rights defenders and reform advocates. The parallel institutions allegedly act independently of government authority, and even the regular uniformed police are often reluctant to directly confront these agents. These are no doubt serious allegations that should be investigated and corrected if found to be valid.

During my mission, the creation of a headquarters to prevent social offences was discussed. I was informed that this unit would be composed of civilians in charge of inspecting the dress code and other issues in their neighborhood. Candidates would be proposed to the judiciary; those approved would be given an identity card entitling them to certain authority to encourage virtue and discourage vice. Although the executive branch was reportedly not in favor of these institutions on the grounds that they would be partial, the judiciary supported this idea. I conveyed my concerns to the government that such a practice is inherently open to abuse and that this initiative would curtail fundamental human rights and freedoms.

Conclusions

The parameters of women's status in the Islamic Republic of Iran are intimately linked to the basic principles underlying the formation of the state, which claims to deliver women from the "moral corruption" of capitalism and imperialism and "restore" their dignity. However, this has led to a paradoxical situation: on the one hand women's participation in public life is cautiously encouraged in order to legitimize this state ideology, on the other hand, in order to ensure conformity with the state's gender regime, women's lives are subject to strict rules and control.

Compared to women in other developing and neighboring countries, Iranian women have relatively more access to health and education services, and to some extent to employment and political participation; however, the opportunities for their self-expression as autonomous individuals are extremely constrained by the state and social dynamics. Women are praised as mothers but they may not make decisions regarding their children; they may become judges but not preside over a legal case; they may vote and be elected to office but not hold leadership positions. This incongruous situation is a source of tension as well as a barrier to women's

enjoyment of their rights as human beings, including the right to freedom from violence.

I have argued above that violence against women in Iran is ingrained in gender inequality, which is upheld by two factors: (1) patriarchal values and attitudes based on male supremacy, and (2) state-promoted institutional structure based on hardline sexist interpretations of Islamic principles. While the former is a universal and historically rooted phenomenon, the latter is particular to contemporary Iran and defines its gender politics and policies. Both factors, however, represent a male-dominant society maintained by laws and practices that empower men and make it difficult for women to escape violence in the public and private spheres.

In recent years, the Government of Iran has taken some significant steps to address violence against women. However, these have fallen short of addressing the wide spectrum of violence and the human rights violations suffered by women; in essence these steps have succumbed to the sexist and gender-discriminatory perspective. Many Iranian women who supported the Islamic Revolution have been disillusioned by this fact. According to these women, although the new regime has provided certain opportunities in the public sphere for some groups of women who were excluded during the previous regime,, it has failed to deliver on its promise of equal citizenship for women. Women's initiatives to resist the usurpation of their rights continue to be met with harsh responses. If the Iranian regime is sincere about its claim to restor women's dignity, then it must embark on a reinterpretation of its fundamental norms, including Islamic principles, in line with women's current demands, needs and societal contributions as well as the universal human rights standards.

VI. Turkey[255]

The Modernization Process

1. Regional Specificities

Turkey, located at the crossroads of two continents and many civilizations, emerged as a unitary, secular Republic and nation-state by breaking from the multinational, Islamic Ottoman Empire following a War of Independence fought against the Sultanate and Western powers after the First World War. This transition carried with it elements of continuity and discontinuity, unity and diversity, tradition and modernity, which form the basis of political competition and identity politics today (Lewis 1961, Bozdoğan and Kasaba 1997, Ertürk 2006).

The elements of continuity from the Ottoman period to the Republican era are engrained in what has been referred to as "corporate identity," which incorporated both religion and political power within state authority and historically facilitated the sustenance of a centralized political order. Within this context, the tendency towards diversity in public discourse has been discouraged (Keyder 1987).

The restructuring of the relationship between state, community, and the individual on the basis of citizenship rather than communal group membership entailed a divergence from the Ottoman legal/institutional order. At this juncture, the foundation for tension between the state and civil society was laid. While religion was used to unify diverse ethno-linguistic groups, at the same time, in accordance with secular principles, it was excluded from the representation of identity in the public sphere. Similarly, the unitary character of the state was defined in terms of a homogenous nation.

The southeastern/eastern region (referred henceforth as the "eastern regions"), populated mainly by Kurdish citizens, has historically been characterized by its feudal structure and relative autonomy. An individual's status and social relationships have traditionally been determined by their lineage and tribal affiliation. The economic basis of the region's socio-political structure was rooted in a skewed distribution of land. Most arable land was owned by large landowners

255 My mission to Turkey took place between May 22 and 31, 2006, mainly in response to the media coverage of increasing number of suicides among women (and girls) in the eastern and southeastern regions of the country. Therefore, the study is limited to the provinces of Batman, Şanliurfa, and Van. It focused on the general phenomenon on violence against women in Turkey to the extent that I have identified its correlations to women's suicides.

called *aghas*, who commanded extensive authority over rural life and served as the primary arbiters of conflict within their communities. While women held a subordinate position within this traditional patriarchal system, their differential status depended on their lineage, on their bearing sons, and on ensuring the appropriate conduct of daughters and brides in the household. Patriarchal control was upheld and property and collective identity were preserved through endogamy, particularly paternal cousin marriages.

Although the *agha* system suffered with the creation of the Republic, remnants of feudal relations have continued in the region. With the entry into the multiparty system in 1946 and the adoption of agricultural modernization policies, the old *agha* class became integrated into the national system. Within this context, some landlords were able to capitalize on these new opportunities, thereby expanding their spheres of influence by accumulating more land and political power, while others became marginalized. The small landowners and tenant farmers who could not access capital-intensive agriculture either became dependent on the modern *agha* class as sharecroppers or sold their plots and migrated to other parts of the country.

The impact of these trends on the regional integration was contradictory. On the one hand, as the modernized *agha* system became an important element of alliances with political parties and successive governments, the structure of traditional relations strengthened in the region. On the other hand, the exodus to big cities triggered by rural transformations fractured the basis of these relationships, thus allowing for alternative space for individuals.[256]

In the three provinces I visited (Batman, *Ş*anliurfa, and Van), the tribal system, albeit transformed, is most visible in *Ş*anliurfa province, where a majority of inhabitants still identify themselves as members of a specific tribe. To some extent, the strength of the tribal structure results from the province's strong agricultural base. Some *aghas* have integrated into urban structures through which traditional loyalties are sustained. Politics have also helped to keep tribal ties alive. Interlocutors have explained that politicians and administrators have often been inclined to cooperate with local power structures and seek the *aghas*' political support in exchange for non-interference in their internal affairs. More

256 Analysts agree that this process is the basis of both integration and the emergence of ethnic politics in Turkey. The situation became aggravated in 1984 when the illegal Kurdistan Worker's Party (PKK) entered the stage and engaged in combat with the security forces in the region. The violence subsided to some extent in 1997, when the armed forces contained the situation, but the conflict has continued in varying forms and intensity. Currently, the regional dynamics, PKK's standing, and the relationship of the Kurdish people with the state have changed significantly and entered a new phase, and a short-lived peace process was launched. The current developments are not addressed here. In this regard, see Güneş and Zeydanlioğlu (2013). For a study on displacements due to the armed conflict, see Kuloğlu-Karsli (2012). For a study on the humanitarian aspect of the conflict, see Şentürk (2012).

often than not, individuals from the *agha* families themselves join the ranks of central political power.

In Batman province, tribal bonds are considerably looser, particularly in urban areas. The 1952 discovery of oil in the province led to an economic boom, which attracted migration from other parts of the country and diversified the composition of the local population. During the armed conflicts in the 1980s and 1990s Batman also saw a massive influx of displaced persons, which changed the composition of the population. Van[257] has seen similar patterns of urbanization and displacement, which have weakened but certainly not eroded the local tribal structure. Its location as a border city has made Van particularly volatile during the conflicts, which have resulted in mass economic and physical displacements.

Overall, the center-periphery tensions and alliances forged in the process of national integration have had significant consequences for the women in the region, as will be addressed below.

2. Regional Disparities in the Inequality between Women and Men

The "women question" formed one of the central issues that both framed and challenged Turkish modernization. The modernizing elites emphasized that the road to progress must include both sexes, and equality between women and men was given constitutional and statutory recognition. However, modernization was mediated mainly through male-dominated institutions. Consequently, despite many gains and the integration of some women into modernization, the gender order remained intact.[258] Furthermore, the vast majority of women in rural areas and in the eastern provinces remained marginal to the process. Regional and rural-urban disparities became the salient feature of Turkey's experience in development in general and in women's emancipation in particular.

Regional inequality has naturally curtailed the availability of educational and employment opportunities in the eastern regions. Economic deprivation, coupled with sociocultural deprivation emanating from traditional patriarchal practices, put the burden of regional underdevelopment disproportionately on the shoulders of women in this region. According to the UNDP 2001 National Human Development Report for Turkey, provinces in the eastern regions rank among the lowest in the country on both the Gender Development Index (GDI)

257 Van is both a city and a province in Turkey's eastern regions.

258 According to the 2014 report of the World Economic Forum, Turkey ranks 125th out of 142 countries in the gender gap index. Ironically, this data testifies to the fact that Turkey, which is the world's 17th largest economy, is the 17th most unequal country of the world.

and Gender Empowerment Measure (GEM). Out of 79 provinces measured, Batman ranked 70th in GDI and 63rd in GEM (out of 73). The figures for Şanliurfa are 72nd and 65th, and for Van 74th and 67th, respectively.[259]

The regional disparity in women's education is particularly alarming, despite the relative improvements as a result of targeted campaigns over the past few years. According to the data available at the time of my visit (May 2006), while the average illiteracy rate for men in Turkey was 6.1% and the average for women 19.4%, the rates for the eastern regions were 12% and 35% respectively (2000 census). In rural areas of the regions almost half of all women are illiterate. Considering that the majority of these women are also non-Turkish speakers, their exclusion from mainstream society becomes striking. This demonstrates a gross failure on the part of the successive governments since the creation of the Republic in addressing the education problem of women in the regions. It is noteworthy that during the Fourth UN World Conference on Women in 1995, the Turkish government had committed to eliminating female illiteracy by 2000.

In 1997, with the adoption of a new Basic Education Law (no. 4306), the five-year period of compulsory schooling in Turkey was increased to eight years. In 2003, six years after the adoption of the law, it was still estimated that one in eight girls had either never been sent to school or dropped out during the second phase of mandatory primary education (grades 6-8). In Şanliurfa and Van, for instance, almost one-third of all girls were not enrolled in primary education. It is disappointing that the state spends a meagre 3.46% of its gross domestic product (GDP) on educational institutions. A new legislation (Law no. 6287 on Primary Education and Schooling), also known as 4+4+4 by the public, was passed in 2012, incrementally extending mandatory education to 12 years. According to the critics, this legislation is expected to adversely impact girl children's education due to existing gender roles and conservative tendencies in society.

The Ministry of National Education and UNICEF launched a campaign *Haydi Kizlar Okula* ("Let's go to school, girls!"), which focused mainly on the eastern regions. According to UNICEF, the campaign resulted in the enrolment of some 177,000 girls and 87,000 boys, considerably less than the set target. Only five out of 33 participating provinces recorded a positive and statistically significant change in the gender gap in education. In the area of informal education some praiseworthy practices concerning the engagement of authorities with local communities have been reported. For instance, the Şanliurfa Security Directorate convinced the parents of more than 100,000 girls and boys from

259 According to the same source, Turkey's GDI rank globally is 70 and the GEM rank is 76.

poor backgrounds to attend weekend courses on responsible social and civic behavior.

The political dynamics in the eastern regions pose a further constraint on the education of girls specifically and the emancipation of women in general.[260] PKK attacks have often targeted state institutions such as schools and health centers and the state has forcefully depopulated many villages as part of its counterterrorism operations. These practices in turn have meant no schooling for many children in the region. Furthermore, education has been a subject of ideological contention. Since Turkish is the medium of education in schools, some local leaders have argued against sending girls to school, since this will lead to assimilation and loss of Kurdish language and identity. Remarkably, the same argument is not made with regard to boys, who enjoy considerably higher schooling rates.

Violence against Women

1. Multiple Patriarchal Demands

"Honor" (*namus*) is an important value in Turkey; it serves to reproduce the rigid control exercised over women and their sexuality. For women, compliance with the code of honor can range from having to dress and act with "modesty," [261] to observing chastity prior to marriage, to accepting arranged marriages, and to not leaving the house without the consent and/or accompaniment of an older relative. Used as a tool of domination across Turkey, honor is particularly important in the eastern regions, where it is codified into customary law,

260 An exception to this situation is the political participation of Kurdish women. As the demands of the Kurds began to occupy the political and public agenda of Turkey, Kurdish women have gained representation at higher rates in local governance and political parties, compared to their Turkish counterparts. The co-presidential system of management adopted by the People's Democratic Party (and the Peace and Democracy Party before it) has increased the momentum for women's political participation. These women, who have been displaced due to military operations and forced migration during the conflicts and who have become politicized as their loved ones were killed or arrested, have found themselves in the midst of the conflict and increasingly assumed new responsibilities. Coupled with a feminist consciousness, Kurdish women have challenged violence in the private sphere; as a result, today there are many NGOs in the eastern regions that provide support for women victims of domestic violence. The women here, who live under multiple patriarchal structures have formed a significant solidarity network and, in collaboration with other women's groups in Turkey, have contributed to alternative approaches to conflict and peace and the accumulation of experience in this respect. Today, women's peace initiatives have become an important platform for women's organizing.

261 On July 28, 2014, claiming a moral deterioration in the country, Deputy Prime Minister Bülent Arinç underlined the importance of being "chaste and modest" and declared that women should not laugh out loud in public (http://www.theguardian.com/world/2014/jul/29/turkish-minister-women-laugh-loud-bulent-arinc). A discussion along the same lines came up on December 12, 2012, during budget negotiations, when Arinç stated that he was ashamed of a woman MP using the word "vagina" (press).

referred to as *töre* (custom or law). According to *töre*, the family must ensure that its members observe the code of honor, since transgressions (or mere rumors of such transgressions) are seen as "stains" on the entire family. These stains must be cleansed at any cost, if necessary through murder.

Ties based on collective relationships reinforce and harden the ideology of "honor," as it is presented as part and parcel of the collective identity. Women and their immediate families are locked into the normative order of customary law. *Töre* is all-encompassing: it is the moral order that controls not only women but also men—the safe-keepers of that order—and regulates the relationships among them. The observance of honor therefore becomes a communal concern.

Tribal connections extend the reach of *töre* and make it harder for women to escape violence:

- In 1997 an 18-year-old woman sought the protection of the social services in Şanliurfa. Armed family members demanded her return to the family; instead the social services staff transferred her in great secrecy to a shelter in Ankara. However, a government minister from Şanliurfa helped the family (perhaps in good faith) locate her. The family then came to the shelter and promised not to harm the woman if she would marry a cousin. She agreed, and the marriage took place. Six months after the woman returned to Şanliurfa, her father murdered her.

I have argued with reference to the conflict and post-conflict countries discussed in this book that gender inequality becomes more pronounced in conflict and crisis situations, as competing masculine projects target women for their own end and instrumentalize them as a pretext for hardened patriarchal control. This situation also applies to the situation in Turkey's eastern regions. Aside from the overall tensions, because some women joined the ranks of the PKK as combatants and suicide bombers, women in general became prime suspects of terrorism in the eyes of the security forces, thus drawing them to the center of the conflict.

The link between ethnic identity politics and girls' education and the dispute between political Islam and the secular state over the ban on wearing the headscarf in public sector jobs and universities are other examples of clashing values where women bear the consequences.[262]

2. Diverse Manifestations of Violence

The most comprehensive data on gendered violence in Turkey are based on the 2008 survey conducted by the Directorate General of Women's Status. At the

262 The ban on headscarves was lifted in universities in 2007 and in the public sector in 2013.

time of my visit (May 2006), there were no reliable statistics. The few available studies conducted in different parts of the country indicated that most violence against women occurs in the domestic sphere, cutting across all social and educational levels. A survey based on a sample of 1,259 women, conducted between 1990 and 1996, showed that 88.2% of women lived in an environment of violence and that 68% were hit by their husbands (Purple Roof Foundation 1997). According to a 1995 Amnesty International survey of women living in squatter housing in Ankara, 97% of women interviewed had been assaulted by their husbands. In another survey of families in the middle- and upper-income categories conducted in 1996, 23% of the women reported that their husbands were violent towards them; when questioned about specific types of violence, this figure rose to 71% (Amnesty International 2004a).

Domestic violence continues to be perceived as a normal aspect of family life, including by women themselves. The 2003 Demographic and Health Survey of Turkey asked a sample of women whether a husband would be justified in beating his wife if she burned the food, if she argued with him, if she spent too much money, if she neglected the children, or if she refused to have sex with him. Overall, 39.2% of women accepted at least one of these reasons as a justification for wife-beating. This figure was even higher for southeast (50.6%) and eastern Anatolia (45.9%) (Hacettepe University Institute of Population Studies 2003: 33).

Few incidents of domestic violence are reported, since the reporting of such matters is regarded as a dishonorable act in itself and leads to the conclusion that the woman deserved to be punished.

While social norms are gradually changing, arranged and early marriages are still very frequent in the eastern regions. It is not uncommon that marriages are arranged between paternal cousins in order to foster family ties and ensure that property stays in the family. Less common, but still practiced, is *berdel*, the exchange of brides between two families. Families sometimes resort to *berdel* to settle long-standing disputes. In other cases it is perceived as a convenient method to offset costly dowry payments.

Turkey's Civil Code sets the legal age of marriage for men and women at 17 years, but with the special permission of a judge, a boy or girl can marry at the age of 16. Religious marriages are not legally recognized. In practice, these norms are regularly breached, particularly in the region's rural areas and poorer urban neighborhoods. Unless a complaint is filed, authorities rarely investigate such cases. Instead, a number of provincial governors are encouraging couples who only have a religious ceremony to enter a civil marriage as well, so that the women can benefit from the provisions of the law.

The incidence of forced marriages is difficult to assess, since the boundary between arranged and forced marriages is very fluid and reliable data on cases involving outright violence are scant. According to reports, it is more common that intense psychological pressure, veiled threats, and, if necessary, complete social isolation are used to subdue a woman who refuses to marry the groom chosen by her family. A transnational dimension of the problem has also become increasingly visible, as some girls whose families migrated from Turkey to other countries have been forced to marry men still residing in Turkey. This practice aims to prevent young women and girls from marrying foreigners, but it is also used to ensure the husband's entry to Europe as a migrant in the scope of family union.

3. The Particularism of Murders in the Name of Honor

Murders of women in the name of "honor" have been a subject of intensive public debate in Turkey for the past decade. While there is no systematic data on these murders, NGOs document dozens of cases every year in which women (and sometimes also the men involved) are murdered for allegedly dishonorable behavior.

A 2005 survey conducted among 336 men and 94 women from southeastern Anatolia by Professor Aytekin Sir of Dicle University showed that 37.4% of all respondents believed that murder was justified if a wife had committed adultery. The General Directorate of Security conducted a noteworthy survey of 1,091 *töre* murders committed in urban districts[263] between 2000 and 2006: 480 of the total 1,190 victims were women; 710 were men. Nearly one-third of the murders were categorized as "honor"-related, another one-third concerned intra-family conflict, 10% were blood feuds, and the remaining cases involved rape, disputes over marriage arrangements, etc. The study also showed that while the vast majority of the murders were committed in localities that receive high levels of migration (such as Ankara, Istanbul, and Izmir), the birthplace of 50% of the suspects and victims was an eastern province.

What distinguishes "honor"-related killings from other forms of violence against women is the way they are organized and executed in an orchestrated and premeditated manner.[264] A so-called family "council," which may also include members of the extended kin, decides upon and organizes the murder. A young man or boy is often assigned to commit the crime, because it is hoped that the young offender will receive a more lenient sentence. Such murders are often

263 Security in urban localities is under the jurisdiction of the poliçe, whereas in rural areas it is under the gendarmerie.

264 There are numerous studies on murders committed in the name of honor in Turkey. See, for instance, Yirmibeşoğlu (2007) and Önal (2012).

presented as acts of retribution against a woman who supposedly committed an act of grave immorality. However, the demonstrative manner in which they are carried out shows that they serve mainly to terrorize women as a group in order to uphold patriarchal values.

Furthermore, violence against women often results from mere rumor and gossip about the woman's presumed misconduct. Actual proof of the "dishonorable act" is irrelevant, because what is at stake is the public perception of a transgression and the effect of this on the family's social standing.

Public attention to "honor" crimes became particularly pronounced during the Penal Code reform process, which resulted in an amendment in the law prescribing mandatory life sentences for *töre* murders. On May 18, 2005, the Turkish National Assembly created a Commission of Inquiry on honor killings and violence against women and children in general. The Commission carried out an extensive study and presented its findings to the Parliament. In the years following this study, public institutions increasingly addressed the phenomenon of violence against women as a public policy issue.

Reduced sentences handed down by courts in the murders of women under the pretext of honor prompted the women's movement to identify "honor crimes" as a field of struggle. While the focus on such crimes have been effective in terms of unveiling previously unrecognized practices, it has also created a unique, culture-based field that is distinctly different from other forms of violence against women. Reacting to essentializing certain acts as unique in themselves, Elden (2004) challenges the notions of "private" or "common" violence and argues that what happens is men controlling the "life and death" of women by using different cultural elements. Singling out the concept of honor as a special pretext for a crime is nothing but justifying impunity for perpetuators who take advantage of the cause of the provocation clause in certain legal systems that privilege the punishment of presumed immoral behavior.[265]

Suicides of Women in the Eastern Regions

1. Analysis of Available Data

Suicide rates in Turkey are relatively low. According to an estimate by the World Health Organization (WHO), the overall global suicide rate is about 16 per 100,000 persons.[266] Turkish Statistical Institute data from 2003 indicates that the national suicide rate was only 3.83 per 100,000 persons. The suicide rate

265 For a more extensive discussion, see Ertürk (2009).

266 See http://www.who.int/mental_health/management/en/SUPRE_flyer1.pdf. These figures are rough estimates based on available data from about half of the world's countries.

is highest in Turkey's Aegean region (6.98) while it is 2.87 for southeastern and 3.73 for eastern Anatolia regions. Batman, which some journalists have labelled "Suicide City" after the suicide of five women and two men in the first five months of 2006 (two more suicides of women were reported shortly after my mission), saw 105 suicides between 2000 and 2005.[267] This corresponds to an annual suicide rate of about 3.5 per 100,000 persons, which is slightly lower than the national average for 2003.

However, what is of concern about the suicides in Batman and several other provinces in the eastern regions is the anomalous sex ratio of the victims. Worldwide, more men than women commit suicide. The world male/female suicide ratio is roughly 3.5 men to 1 woman (approximately 26 out of 100,000 men commit suicide each year, whereas this figure for women is only about 7 per 100,000). For Turkey, the male/female suicide ratio is about 1.5 to 1, similar to many other developing countries.[268]

In several areas of the eastern regions, including Batman and Van, the trend is markedly different from global and national trends. The male/female suicide ratio for the eastern regions stands at 0.97 to 1; that is to say, more women than men commit suicide though marginally.[269] Furthermore, it is noteworthy that many of the suicide victims in Turkey were young women and men age 15 to 29. In 2003, 62% of female suicide victims were younger than 30 years old, and 37% were in the 15 to 25 age group. Very often the victims come from poor families with rural backgrounds.

2. Factors Surrounding Women's Suicides

Owing to the statistical anomalies, there has been intense debate about the reasons behind the suicides of women in the region. Media and NGOs have expressed concern that many suicides could indeed be "honor" killings, with

267 See Halis (2001).

268 China is the only country which reports higher suicide rates among women. Available data suggests that, globally, women attempt suicide more often than men, but a higher number of suicides result in death for men.

269 See 2003 figures of the Turkish Statistical Institute. For the three provinces I visited, the official figures are: between 2001 and May 2006, there were 82 suicides in Batman (38 men, 44 women) and 439 attempted suicides (133 men, 306 women) were recorded. During the same period, there were 326 suicides (211 men, 115 women) in Şanliurfa. In addition, 581 suicide attempts were recorded, but the data was not disaggregated by sex. The government also informed me that 86 suicides (51 men, 35 women) occurred in Van between 2001 and May 2006. In addition, there were 362 attempted suicides (147 male, 215 female). The Van figures appear to be incorrect given that the 2003 official statistics note 40 female suicides for Van in that year alone. Statistics on suicides in rural districts of Van, which I directly obtained from the Van Gendarmerie Command, noted 69 female and 60 male suicides between 2001 and May 2006. There are also other provinces with decidedly more suicides of women than men. A most striking example is Muşa in the Aegean region, with 104 female suicides as opposed to 42 male in 2003. Since I have not visited these provinces, I cannot draw any parallels to the situation in the eastern regions.

the family either forcing the victim to commit suicide or successfully disguising murder as suicide. Some observers have speculated that higher penalties for *töre* murders under the reformed Penal Code may have motivated many families to disguise "honor" killings as suicides.

CASES INVOLVING CRIMINAL RESPONSIBILITY

There are reasonable grounds to assume that some of the recorded suicide cases are indeed disguised murders. In other cases, family members appear to have instigated the suicide, an act criminalized by Article 84 of the Turkish Penal Code. Many senior justice and law enforcement officials in the provinces share this view and have related to me a number of suspicious cases of suicides or "accidental deaths" of women who may in fact have been murder. Some of these cases have been referred to the courts for prosecution and at least one has reportedly resulted in a conviction:

- Elife Atlihan of Kahramanmaraş became pregnant after being raped by her cousin at age 15. After he denied the accusation before a family gathering, she was handed a rope by her mother and told to cleanse her honor. Her brother, who was ordered to ensure that she committed suicide, helped her set the chair at the right height and left the room. On March 1, 2003, the court convicted the brother and the mother of murder and sentenced them to life imprisonment. The rapist was also convicted.

Article 51 of the Penal Code in force at the time allowed for a reduced sentence on the grounds of grave provocation in cases of "honor" crimes. However, the reduction was not applied to this case as the court followed the prosecutor's view that the Constitution's equality clause prohibited a reduced sentence on honor and *töre* grounds since the victim was raped and impregnated. This case shows that a human rights-sensitive approach by judicial decision makers can compensate for deficiencies in the law itself and underlines the importance of human rights and gender-sensitivity training for professionals.

- Another case, which may have involved a forced suicide, decided by the First Aggravated Felony Court in Van, concerned a 17-year-old married woman named Sevgül. In 1999, her family had arranged her marriage in return for bride money. Since she was not of legal age, the marriage was performed only by religious ceremony. In May 2002, Sevgül was found hanged. Witnesses testified that she had had a heated argument with her husband on the day of her death and forensic evidence proved that she had been severely beaten shortly before her death. The husband was charged with murder but eventually acquitted due to lack of evidence. However, the court convicted the husband of assault and battery and sentenced him to five years in prison, the

maximum possible penalty under the old Penal Code. An appeal against the sentence was still pending at the time of my mission.

Officials assured me that every suicide case is thoroughly examined and, when necessary, forensic investigations are undertaken. Nevertheless, more can and must be done to identify and resolve cases involving criminal responsibility. Given the apparent risk of "honor" killings, medical autopsies undertaken by a specialized forensic institute should be a standard procedure. However, as demonstrated by Suni Eröz's case, this is not always done:

- Suni Eröz allegedly committed suicide on October 17, 2005, in rural Van province. The prosecutor opened an investigation after an anonymous caller claimed in early May 2006 that Suni was murdered. According to witnesses, before her death Suni was accused of having had an affair while her husband was in hospital. This allegation was propounded by the village head (*mukhtar*), who is from the husband's family, and the autopsy was conducted by a local physician instead of a specialized forensic expert. Two days after her death, Suni's alleged lover was found dead in Bursa. Van's Gendarmerie commander explained that the case has been thoroughly reinvestigated and that criminal responsibility could not be found.

I am also not aware of any cases of apparent suicides after which a procedure known as a psychological autopsy was performed. This technique is used to determine a victim's mental state at the time of death. It can indicate whether third parties intervened in the suicide decision. Psychological autopsies are carried out by psychologists or psychiatrists who conduct in-depth interviews with friends, family members, and professionals who were in close contact with the victim.

It is noteworthy that many of the above-mentioned cases occurred long before the new Penal Code came into force. Therefore, the Penal Code itself has not provoked forced suicides. To the contrary, it is likely that the growing public discourse that has challenged patriarchy and violence against women during the reform process may have made the issue of forced suicides more visible.

LINKS BETWEEN SUICIDES AND PATRIARCHAL OPPRESSION

While there is good reason to believe that there are indeed cases of forced suicide and murder among recorded suicides by women, the majority of cases probably do not involve direct criminal responsibility. However, in many cases family members and the wider society bear varying degrees of moral responsibility.

The causes of suicides are never fully within our grasp, not least because the victims cannot be asked about their motives. Personal, family, and sociocultural factors are typically intertwined. Little research has been undertaken worldwide

on the links between violence against women and suicides of women,[270] and official statistics typically do not mention physical or psychological violence as a specific reason for suicide. In Turkey, suicides resulting from prior acts of violence against women would probably be recorded in the categories of "family incompatibility" (28.9% of all female suicides in 2003) or "emotional relationship and not marrying the person they wanted to" (11.5%).

During the course of my mission I had the chance to personally meet with families of suicide victims as well as with women who have survived a suicide attempt. I also spoke with a number of social workers and representatives from women's rights groups who had worked on individual cases. These consultations all point to the rigid patriarchal oppression of women and the human rights violations that go along with it—especially forced and early marriages, domestic violence, incest, rape, and denial of reproductive rights—as key contributing factors to the suicides of women in the region. In the absence of adequate state protection, women may feel that suicide may be their only option to escape extreme violence and oppression.

A case which occurred in a village near Siverek, Şanliurfa, in 1999 is illustrative:

- A young woman preparing to enter university was seen hand-in-hand with a young man. Rumors that she had engaged in premarital sex began to circulate in the community. After interrogation by a family member about the incident, she attempted to commit suicide using sleeping pills. As a result, the rumors intensified and the family decided to propose a *berdel* (exchange of brides) to the young man's family. When the young woman refused to marry the man, her brother was ordered to murder her. The brother refused and tried to convince his sister to flee the village with him. Realizing the distress this would cause her family, the young woman detonated a hand grenade and killed herself.

Another telling case is that of Şükran, a 32-year-old woman from a poor neighborhood in Şanliurfa, which is inhabited mainly by migrants from rural areas:

- Şükran told me that 13 years ago she married her husband in a religious marriage and they had seven children. Her 16-year-old daughter was married off, also by religious ceremony, to prevent "something bad from happening to her." One day she discovered by chance that her husband was getting married a second time on that very day and had already rented a house in the vicinity for his second wife. Although she and her children

270 A survey from Sweden demonstrated that suicide ideation and actual suicide attempts were more frequent among women who suffered violence (see E. Lundgren et al., 2001: 62). In rural India, where the suicide rate among women is almost as high as that of young men, psychological violence and harassment by in-laws for increased dowry payments reportedly accounts for a large part of suicides among married women (Mayer and Zizian 2002).

started to live apart from her husband, she had occasional intercourse with him and became pregnant. He accused her of adultery. A DNA test refuted this accusation and he was convicted of slander. In retribution, her in-laws subjected her to harassment and violence until Şükran attempted to commit suicide by swallowing rat poison. She survived and regained her will to live. When I met her, Şükran appeared quite empowered, holding onto life and working hard to provide a life for her children.

The links between patriarchal oppression and suicides of women have also been demonstrated in a number of academic studies. For instance, a survey of the family members of 31 victims of suicides (Bağli and Sev'er 2003) that took place in Batman in 2001 demonstrated that most of the victims were subject to intense patriarchal pressure; 84% were not allowed to go to a park, visit a movie theatre, or participate in any social gathering without the permission or accompaniment of an older kin; 28% were not even allowed to go out shopping on their own. This pressure seems to have resulted in complete social isolation: only 10% of the victims had talked with someone about their feelings of desperation. Two-thirds of the families interviewed said that marital partners for daughters are better selected by family, kin, or matchmakers and 90% were opposed to their daughters having male friends. Other surveys demonstrated links between suicidal behavior and factors such as forced virginity testing or childhood sexual abuse (Eskin et al. 2005, Cindoğlu 2000).

THE ROLE OF THE MEDIA

When asked about the root causes of the suicides, officials I met often placed blame on the media, stating that the media—television in particular—presented a world of opportunities to young women which clashed with the restricted options they had in their own lives. The logic underlying such arguments is not at all convincing: continued obstacles for women and girls must be removed, not opportunities hidden.

Excessive media coverage of the suicides was also perceived as a factor encouraging the suicides. This concern has considerably more merit. Suicide research has demonstrated the existence of a suicide contagion or "copycat" effect. Exposure to suicide through media reports or direct contact with suicide cases increases the risk of suicide. Factual, responsible reporting is therefore essential. Media professionals should provide information about helpful resources for persons at risk rather than showing graphic suicides or otherwise sensationalizing the issue, as is unfortunately often done.

Responses to the Problem

1. State Response and Initiatives

In the 1980s, the women's movement in Turkey identified gender-based violence in the private sphere as a key obstacle to gender equality. In some areas, significant advances were achieved over the years, particularly in terms of legal reforms, but a real paradigm change was blocked for a long time by conservative majorities that straddled party lines and benefited from the very low representation of women in the Parliament.[271]

The legal reform process that gained a new momentum with the official recognition of Turkey's candidacy for European Union (EU) was used effectively by the women's movement. While the issue of women's rights was not necessarily a high priority in the accession negotiation process, the women's movement in Turkey succeeded in sensitizing the EU authorities to pay more attention to the problem. From a gender perspective, significant advances in legislative reform have been achieved, including the reforms of the Civil Code (2002) and the Penal Code (2005). Today, violence against women has become a central public policy issue. However, the approach to violence against women has not been carried beyond a "protective" approach detached from gender roles and women's status in the society. Furthermore, the replacement of the state Ministry responsible for women and family with the Ministry of Family and Social Policies in 2011 and the positioning of issues related to women's problems under this structure have intensified concerns that women's autonomy as individuals will be jeopardized within the family ideology and that it will exacerbate the gender inequality that underlies violence against women. These recent developments fall beyond the timeframe of the present analysis.

PENAL LAW FRAMEWORK

On September 26, 2004, the Turkish National Assembly adopted groundbreaking reforms of the Penal Code, which entered into force on June 1, 2005. These reforms successfully removed the most obvious patriarchal articles from the law. Rape and sexual assault, which were previously defined as "crimes against public decency and family order," are now defined as "crimes against sexual inviolability." Marital rape has been criminalized (subject to the victim's complaint) and penalties for using violence against the spouse or family

271 At the time of my mission (May 2006), only 4.4% of parliamentarians were women; in the 2011 elections this figure increased to 10%, but this still remains below the world average; in 2009 Turkey established a parliamentary Commission on Equal Opportunities for Women and Men.

members have been strengthened. Virginity testing—a practice often used by families to "determine" a girl's chastity—has also been partially criminalized.

Penal provisions on "honor" killings have also improved. In the past, courts granted reduced sentences for "honor" murders, considering that the perpetrators had been unjustly provoked by the victim's "inappropriate behavior." Article 82 of the Penal Code now stipulates that killings in the name of *töre* must be considered as a case of aggravated homicide and that the perpetrator(s) must be sentenced to life imprisonment. Women's groups have criticized the reform of Article 82 as incomplete, because the provision makes reference only to *töre* murders and excludes the killings in the name of *namus* (honor) committed outside the customary context. Supporters of Article 82, as it now stands, argue that certain types of murders committed in the name of honor (e.g., the father who murders his daughter's rapist) should not automatically be considered to constitute aggravated homicide.

Legal practice will show whether the law, as it stands, sufficiently protects women against all forms of "honor" killings. If the courts do not grasp the spirit of the reform and fail to punish all murders aimed at controlling women's sexuality or curbing their personal autonomy, Article 82 may need to be revisited and amended once again.

In one respect, the reformed Penal Code may mark a step backward. Article 104, as it now stands, could be interpreted as criminalizing consensual sexual relations between teenagers 15 to 17 years old and, albeit phrased in a gender-neutral manner, could in practice reaffirm archaic honor norms of what constitutes appropriate sexual behavior for girls. Just before the adoption of this law, the Prime Minister introduced a proposal to criminalize adultery committed by married adults. Due to strong national and international reactions, this very problematic provision was dropped.

IMPLEMENTATION OF THE PENAL CODE

While from a gender perspective the penal law framework is now overall adequate, significant problems persist in its implementation. Many politicians and administrators still regard domestic violence and forced marriages as internal family matters in which the state should not intervene. In the few cases reported to law enforcement authorities, officials often try to broker an agreement between parties of inherently unequal power, instead of protecting the victims and prosecuting the perpetrators. Particularly in the context of the volatile political situation in the region, some officials are also prone to tacitly subordinate the law to customary forms of conflict resolution in order not to upset relations with local power structures.

There have been some indications in recent years that such attitudes, which put women at risk and ensure continued impunity for the perpetrators, are gradually changing. One positive example is the judgement in the case of Emine:

- Emine was forced into marriage because she was accused of "going around with boys" and on June 12, 2002, she was strangled by her brother. In March 2004 (before the adoption of the new Penal Code) Chief Judge Orhan Akartuna, presiding over the First Aggravated Felony Court in Şanliurfa, convicted Emine's brother of murder and sentenced him to life imprisonment, instead of according him a sentence reduction as per the conventional practice. Her father, uncle, and six other male relatives were each sentenced to 16 years and eight months in jail for aiding the murderer and complicity in crime.

Political support from elected officials is crucial to change the attitudes of local administrators. Following the Penal Code reform, the Minister of Interior published a circular calling on the police to register and follow up on all complaints related to violence against women. Several police commanders I met during my mission explained that, in accordance with this circular, they are responding to all complaints of violence against women, even if initial evidence seems insufficient to refer the case to the public prosecutor.

In July 2006, the Prime Minister, in conjunction with recommendations of the Parliamentary Inquiry Commission on honor killings, issued an official circular to all public institutions, which contained measures to be taken to combat violence against women. The circular was a positive step towards the development of a state policy on violence against women. It called for preventive and protective measures, including a plan of action (2006-2010), hotlines, a parliamentary commission on gender equality, and a database on violence against women, among other things. It did, however, have a number of shortcomings, such as defining women within their traditional reproductive roles and the vagueness of the legal and budgetary implications of the proposed actions.

LACK OF AN EFFECTIVE INFRASTRUCTURE TO PROTECT WOMEN

The lack of an effective institutional framework to protect women facing violence is a major bottleneck in the struggle. Social workers and members of NGOs often have to improvise protective arrangements, sometimes at great personal risk.

The 1998 Law on the Protection of the Family grants abused spouses or other family members living with the perpetrator the right to go to court to apply for a protective order. The application can also be lodged *ex officio* (without the victim's request) by the public prosecutor. In granting the protection order, the

court can require that the perpetrator leave the family home for a period of up to six months or can impose other protective measures. Failure to abide by a protection order can result in imprisonment of up to six months.

In practice, the law has not lived up to the high expectations and was rarely used.[272] In Batman, for instance, there were only 20 applications for protection orders throughout 2005. The lawyers I spoke with explained that the courts fail to enforce these orders regularly. Clear breaches of the terms of a protection order often result in mere warnings to the perpetrators. Therefore, lawyers often advise their female clients to file for divorce and find a new home, rather than seek an ineffective protection order and further aggravate the conflict with the perpetrator.

Even more alarming is the lack of women's shelters that can provide immediate refuge to women escaping violence. The Law on Municipalities, adopted in July 2004, requires all municipalities with more than 50,000 inhabitants to provide a shelter for women victims of violence. By and large, this law has not been implemented.

At the time of my visit in 2006, according to information provided by the government, in Turkey, a country of over 70 million people, there were only 28 institutions that provided services for women subjected to violence. Seventeen of these institutions, with a total capacity of 325 places, are called "women's guest houses" and are affiliated with the General Directorate of Social Services and the Child Protection Agency. The remaining 11 shelters are operated by various civil and public entities.[273] While two of the latter are licensed by the General Directorate—one in Mersin (25 places) and another in Izmir (18 places)—nine are not licensed (their capacity unknown). Relevant laws and regulations require that shelters be staffed with a director, a psychologist, a social worker, a child development specialist, a nurse, and general personnel. However, the information I requested from the government about the composition of the shelter staffing was not made available.

There were no women's shelters in the three provinces I visited. Local officials feared that tribal and extended family ties in the region would make it impossible to keep the shelter's location and the identity of its inhabitants confidential. Given this very real and serious concern, the idea of turning shelters over to local governments needs to be carefully reassessed. While local govern-

272 In order to overcome the adequacies in the legal framework, a new Law no. 6284 on the Protection of the Family and Prevention of Violence against Women was adopted on March 8, 2012.

273 According to 2013 data, there are 90 "women's guest houses" under the Ministry, 32 affiliated with local governments, and three operated by NGOs, with a total capacity of 3,248 (KADEM 2013).

ments—as stipulated by the law and advocated by the federal government—should finance shelters, they should be operated by women's organizations that possess the necessary expertise. The placing of women in a shelter should be coordinated by a central state entity by strictly observing the principle of confidentiality. Needless to say, in view of the necessity to respond with urgency and efficiency to the needs of victims of violence, bureaucratic red tape must be avoided at all costs.

2. Civil Society Initiatives

The growth of an autonomous women's movement in the eastern regions that spans ethnic identities and religious convictions is very encouraging. Organizations such as the KA-MER women's network, the Van Women's Association, the Selis Women's Solidarity Center, and other local women's groups whose representatives I met during the course of my mission are working against all odds to improve the situation of women in the region and provide protection to those under eminent danger.

Most of the women's initiatives and organizing in the region was motivated by questioning violence and its normalization in the public sphere. KA-MER representatives, in explaining how they got started, stated, "This curiosity [about violence] led us to look into our own homes. We found that the place where violence became normalized was the home. Violence against women was continuing … and each one of us were the victims of its practices … [I]t was necessary to work for women, together with women."[274]

In each of the provinces I visited, there are a number of women's organizations—most founded after the year 2000—that conduct research into women's issues and organize awareness-raising seminars. These NGOs also provide legal counselling, accommodations, and hands-on support to women victims of violence or those seeking divorce. Women's NGOs have become an important medium for solidarity among women in the region and have linked up with women's organizations in other parts of the country. For example, the Van Women's Association contributed to the NGO shadow report which was prepared in response to the government's 2005 periodic report on the implementation of CEDAW.

Young women are also protesting the prevalence of violence in the region. According to media reports in September 2005, a small group of brave girls and women in Batman and Hakkari took to the streets following the suicides of young women, declaring that they "do not want to be victims of traditional values." These protests not only sparked public debates but also received support

274 See http://www.kamer.org.tr/eng/icerik_detay.php?id=60. Established in1997, KA-MER aims to open a branch office in all provinces of the region.

from diverse circles. For example, the Democratic Society Party of the time, which primarily addressed regional problems, issued a circular that included the struggle to eliminate violence against women as an integral component of its party strategy.

Conclusions

Although there is a dynamic women's movement in Turkey and many individual women have demonstrated a high level of performance in all walks of life, yet this potential is excluded from formal politics. The development indicators for women are in dire contrast to the country's aspirations, its legal and constitutional provisions, and its international commitments. Violence against women in the private sphere is systematic and widespread. Through the efforts of the women's movement, violence against women has gained visibility over the last two decades and combating violence has become declared as a public policy concern.

At the same time, however, the policies adopted and the contradictory statements made by officials encourage patriarchal tyranny and reactionary practices. Thus, despite all the efforts, not a day goes by without news of a woman having been murdered. In 2013 alone, 456 women were subjected to violence, rape, and sexual harassment: 269 women were killed, 135 victims of attempted murder managed to survive, and 52 could not take the oppression and committed suicide (Human Rights Association in Turkey 2013). A nationwide mobilization for women to attain equal rights and freedoms—driven by political will and commitment—is urgently needed to turn promises into reality.

The suicides occurring in eastern and southeastern Anatolia are intimately linked to gender-based violence, which itself is embedded in the overall parameters of women's status in the country, the regional sociocultural particularities, and its overall underdevelopment, as well as the ensuing political/ethnic tensions that have made the region a site of turmoil. Particularly, the situation of women in the region is entrenched in the complex ties of tribalism, ethnic politics, patriarchy, and national integration policies. Therefore, the high rate of female suicides in the region cannot be approached as isolated, individual incidents.

Limited opportunities for women in the region and their limited access to education, employment, information, health services, and justice are major constraints to their rights as citizens, their potential political power, and their ability to negotiate the terms of their existence and to find redress

for their problems. Without a reliable institutional and legal framework guaranteeing their rights and protection, women's individual and collective resistance can result in fatal consequences.

More specifically, there are reasonable grounds to assume that some recorded cases of suicides in fact constitute grave violence, either because the victim was forced to commit suicide or because a murder was disguised as suicide. Patriarchal oppression, manifesting itself in diverse forms of violence against women, including forced marriage, early marriage, incest, sexual abuse, and "honor"-related violence, is often a significant factor that underlies suicides.

The prevention of women's suicides is a multifaceted issue requiring practical interventions at many levels. There is room for improvement with regard to crisis hotlines and other institutions offering help to persons at immediate risk of suicide. Access to the most lethal means of suicide, including firearms and highly toxic pesticides, which remain easily accessible in the country's rural areas, should also be better controlled. In devising a specific suicide-prevention strategy, the government may enlist the technical cooperation of specialized international agencies such as the World Health Organization (WHO).

In conclusion, women's suicides in particular and the phenomenon of violence against women in general is not a field of technical intervention or an issue of compassion that can be addressed independently from women's social status and the recognition and protection of fundamental human rights. Combating violence against women requires an approach that is geared toward eliminating systems of inequality, rupturing or weakening patriarchy and supporting women's empowerment and autonomy. Regrettably, the current dominant official discourse in Turkey is not very promising in this respect.

VII. The Netherlands[275]

The Increasingly Diverse Landscape of Society in the Netherlands

The Netherlands has become a multi-cultural/ethnic society: 1.7 million (10%) of the total population are first- and second-generation immigrants of non-Western origin.[276] Every third resident of Amsterdam, Rotterdam, and The Hague (and half of all children under 14 years of age) is of a non-Western ethnic background. Given the shortsighted state policies and the integration problems of immigrants, the trends in demographic diversification have challenged the liberal and "tolerant" social landscape of the Netherlands, which over time has led to more restrictive policies towards foreigners.

In this context, women's issues came to be defined within a native/foreign dichotomy, whereby native Dutch women's problems became depoliticized, as the view that these women completed their emancipation gained increased acceptance and the focus shifted to the problems of immigrant women who were perceived to be oppressed by their cultures.

1. Recent History of Immigration

The migratory flows resulting in the present ethnic composition of the population began in the 1940s and 1950s, with migration from Indonesia (the former Dutch Indies). In the 1960s, male laborers from Turkey, Morocco, and southern Europe were actively recruited to work as industrial workers and help rebuild the Dutch economy. Originally "invited" on a temporary basis as "guest workers," in line with the general trend in western Europe, the immigrant workers settled in the Netherlands over time and were joined by their families. At the time of my visit 364,000 persons of Turkish and 323,000 persons of Moroccan origin lived in the Netherlands. They were joined by 331,000 immigrants from former Dutch colonies in Suriname and 129,000 from the Dutch Antilles and Aruba. The 1990s were characterized by a large inflow of asylum-seekers, especially from Iraq, Afghanistan, and the former Yugoslavia: between 1995 and 2001, around 250,000 people appealed for asylum in the Netherlands.

275 I visited the Netherlands from July 2 to 12, 2006, and focused primarily on three areas: domestic/intimate-partner violence, violence in the context of the sex sector, and the situation of immigrant, asylum-seeker, and refugee women.

276 In official statistics, the category of "non-Western" immigrants includes immigrants from Turkey, Africa, Latin America, and Asia, with the exception of Indonesia and Japan.

Although many non-Western immigrants have managed to "integrate" into the middle class, the overall socio-economic status of immigrants, as revealed by unemployment, poverty, and welfare-dependency levels, is substantially worse than that of the average native Dutch population. While this situation is closely associated with the low education levels of the first and second generation immigrants—although they are gradually catching up in this field—the persistence of ethnic discrimination is also an important factor. Illustrative is a 2005 study, commissioned by the Ministry of Social Affairs and Employment, which found that a quarter of the small and medium-sized enterprises in the Netherlands prefer not to employ persons of foreign origin (Klaver et al. 2005). According to the Monitor on Racial Discrimination, the majority of the population remains of the opinion that native Dutch and immigrant communities should have equal chances and rights. In recent years the former has, however, become more negative with regard to living together with immigrants, especially with the Muslim population.

There are also significant socio-economic differences between and within the immigrant communities. Those from Turkey and Morocco, as well as a number of smaller immigrant communities, are lagging far behind other ethnic groups with regard to education, employment, and income (Gijsberts 2004). A 2006 study comparing native Dutch women and women from the four main immigrant groups found that women from Turkey and Morocco have the lowest indicators in every field and also lag behind the men in their own groups (Keuzenkamp and Merens 2006). First-generation immigrant women from Turkey and Morocco, who were married and arrived in the Netherlands through family reunification, are considerably marginalized in mainstream social institutions and processes, not least due to language problems.

2. Shifts in the Policy Framework

Dutch society has long prided itself on a history of "tolerance" of ethnic and religious diversity. After the Second World War, a seemingly "successful" paradigm of coexistence emerged. Provided that they obeyed the laws and respected the way of life in the host country, newcomers were allowed to retain their group identity and live in accordance with their own cultural norms, side-by-side with the native Dutch population.

During the initial phases of the labor migration, full "integration" was neither expected, nor was it actively promoted with a policy. To the contrary, there was a widespread assumption that the "guest workers" would one day return to their countries of origin. However, it soon became clear that this was not the case. Migrant workers, joined by their families, had started to permanently settle in the Netherlands. In the absence of an active integration policy, the state

prioritized taking non-discriminatory measures in order to close the socio-economic gap between migrants and natives. Efforts to encourage active engagement between the native Dutch and the newcomers were less pronounced. Accordingly, "tolerance" of immigrants with a different ethnic and/or religious background never quite transformed into engagement and "acceptance"; in fact, it merely meant forbearance.

During the 2000s the debate on integration of immigrants underwent a radical change. In the post-9/11 environment there was a general sense of mistrust towards the Muslims. The fact that a number of Muslim citizens assumed to be integrated in the Dutch society were also implicated in terrorist attacks caused the native population to question the understanding of tolerance towards multiculturalism. Pim Fortuyn became a prominent figure in Dutch politics by campaigning around an anti-immigrant and Islamophobic discourse. After he was murdered in May 2002,[277] his political party emerged successfully from the subsequent parliamentary elections, winning 26 out of 150 seats.

One year later the lower house of parliament appointed a commission headed by Stef Blok to study the Netherlands' integration policies. In its final report, the Blok Commission demanded that the state pursue a much more active integration policy that also places more demands on the immigrant population.

On November 2, 2004, a Dutch citizen of Moroccan origin murdered Theo van Gogh, a filmmaker who had made a controversial film on violence against women in Islamic societies. The murder galvanized public attention and anti-immigrant sentiments. Subsequently, the government reformed the immigration policy framework, combining mandatory integration requirements to enhance social cohesion with new restrictions on immigration, especially for the purpose of family reunification. The policy focus shifted from socio-economic to sociocultural integration of first- and second-generation immigrants.

Individuals from non-Western countries applying for a residence permit on family reunification grounds would be obliged to complete a civic integration examination that determines fundamental knowledge of the Dutch language and Dutch society before their family members would be allowed to enter the Netherlands. The draft legislation requires immigrants from non-EU countries, including immigrants who are already in the Netherlands, to take mandatory integration courses before they are granted permanent residence status.

The enhancement of the social participation of immigrant women, especially Muslim women, constitutes a central plank of the reoriented integration policy. A number of measures and initiatives have been introduced that aim to protect

277 Fortuyn was murdered by a young native Dutch man, who testified in court that he committed the crime to stop Fortuyn and his politics.

these women from gendered discrimination (including violence) and marginalization within their own communities and to facilitate their integration into the wider society.

While the objective of this initiative is praiseworthy, its credibility even among immigrant women is undermined by two shortcomings. First, there is a tendency to conflate women's emancipation measures with immigration restriction measures. For example, a foreigner who marries a Dutch national or permanent resident is no longer entitled to join the spouse in the Netherlands if the incoming foreigner is younger than 21 years (even though the legal age of marriage in the country is 18 years). This drastic and discriminatory limitation of the right to marry and establish a family apparently aims to prevent "marriage migration" by poor and less educated women who need more support to integrate into Dutch society. Some officials also perceive the initiative as an effective way to prevent forced marriages. However, it is more likely that it would merely increase the age of victims of a forced marriage.

Second, the government's approach often does not sufficiently place discrimination against immigrant women in the wider context of the gendered discrimination experienced by women of all ethnicities. A false dichotomy between emancipated native Dutch women and oppressed immigrant women is hereby fostered in the public perception. Women and men of immigrant background are categorically stigmatized, either as victims or perpetrators, which only increases their marginalization and polarizes the society between "us" and "them."

One manifestation of this trend is the increasing discrimination against Muslim women who wear a headscarf at the workplace and in other areas of public life, because the headscarf is increasingly viewed as a symbol of submission and unwillingness to integrate, without paying attention to the motivation of the individual woman wearing it. In November 2006, the Dutch cabinet adopted a proposal to prepare a bill regarding a general ban on wearing a burka or other garments covering the face in public space. The government referred to "considerations of public order, security and the protection of (fellow) citizens" [sic] to justify the measure. This proposal could foster the stigmatization and marginalization of Muslim women without providing any meaningful support to those women who may be facing extreme patriarchal oppression.

Policy and Practice Towards the Advancement of Women

1. Gender Mainstreaming

Since 1974, the Netherlands has pursued an active women's emancipation policy. The Multiyear Emancipation Policy Plan (2000-2010) established four interlinked objectives: economic independence and women's participation in the labor-force; institution of favorable conditions for the reconciliation of paid work and family responsibilities; equal representation of women and men in decision-making positions; and respect for women's rights, especially in the context of violence against women. Subsequently, the government added the enhancement of the social participation of women as a fifth objective that is specifically aimed at women from immigrant communities.

Initially, the emancipation policy consisted of a two-track approach. Firstly, a specific policy was to be pursued to facilitate women's emancipation, place new issues on the political agenda, and promote strategic alliances with NGOs. Secondly, gender perspective was to be integrated in all policies as part of gender mainstreaming.

In practice, the focus seems to have gradually shifted from the two-track approach to one of almost exclusive focus on gender mainstreaming. At the same time, the structures to implement gender mainstreaming remain underdeveloped, a concern also expressed by the government's Auditing/Inspection Committee on Emancipation in its interim report (Boer and Wijers 2006). Entities, such as a Gender Steering Committee, embedding a gender perspective within each government agency do not exist. Furthermore, a strong national machinery to monitor and coordinate the gender-related work done by different government agencies is also lacking. The Minister of Social Affairs and Employment has the responsibility to coordinate emancipation policy and has an Equality Policy Coordination Department for this purpose. However, even officials from that department acknowledged that it does not have the resources to fully engage with and coordinate the gender mainstreaming activities of the different departments. Instead, the department sees its role as that of a "stimulator" or "initiator."

There is also a tendency to "downstream" gender mainstreaming. Gender-sensitive policy issues are delegated to the municipal level, without equipping the municipalities with the necessary know-how to incorporate a gender perspective. Coherence with central government policy is not adequately monitored. The decentralized Dutch policy concerning the sex sector, discussed below, is a case in point.

While the competencies of municipalities are expanded, the government has limited the role of NGOs and expertise centers for gender equality and women's human rights. A number of institutions have seen their core funding cut. The remaining budgets were often shifted into project-based support that is linked to the government's political priorities in the gender field (Boer and Wijers 2006).

2. The Current Situation

The weaknesses in the institutional framework for promoting gender equality may to some extent be a reflection of a widespread yet erroneous perception that the emancipation of native Dutch women has been successfully completed and is now sustainable. Many of the authorities assume that remaining challenges concern only women belonging to immigrant communities. The Dutch women I spoke to explained that this is not the case and that they will continue bring their concerns to the political arena.

In the Netherlands, women remain underrepresented in decision-making positions and the labor force in general. For example, in the private sector women make up only 4% of companies' executive board members and senior managers. The percentage of women among senior public officials is 16.7%. While women make up more than 30% of PhD students, only 9% of university professors are women. Although the Netherlands has a rather strong representation of women in the national Parliament, the percentage of women in municipal councils stagnates at around 23%. In the provincial councils it is even declining.

The participation of women in the labor force is also lower than that of men; moreover, women, especially after they have children, hold lower-paying jobs and are more likely to work flexible hours. According to 2006 data, women's average hours of work is less than it was a decade ago. Due to these factors, only 44% of women could be considered as economically independent.

Officials have tended to link women's low representation in decision-making mechanisms and the labor force to women's lifestyle preferences. Structural obstacles such as children's school days and the absence of public daycare services as well as the persistence of gender ideologies that prioritize women's reproductive roles were often insufficiently acknowledged.

Manifestations of Violence against Women and State Response

Women in the Netherlands face various types of violence. While the government is committed to combating the problem, in practice, it has identified it mainly as an integration problem to be addressed within a law-and-order framework. Such an approach fails to recognize the gendered nature of the problem. This not only hampers the overall effectiveness of the state response to violence against women, but it also results in a selective response whereby some forms of violence become normalized and others are essentialized within a cultural explanation.

In order to avoid a fragmented and gender-neutralized perception, violence against women must be viewed as a continuum of acts emanating from unequal gender hierarchies that intersect with other hierarchical systems, creating multiple and diverse manifestations of violence.

1. Intimate Partner Violence

In the Netherlands, domestic violence committed by a current or former male partner remains the most prevalent form of violence experienced particularly by native Dutch women. In 2005 a total of 57,000 cases of "domestic" violence were reported to the police (Verwerda 2006). A majority of domestic violence cases (41.1%) involved physical assault with women as the primary victims; three out of every four victims in all reported cases (76.1%) were women. In comparison, male victims were most likely to be found in age groups with inherent vulnerabilities: boys, teenagers, and the elderly.

It is also estimated that 100,000 children in the Netherlands are subjected to violence each year. According to professionals, children witnessing violence between parents may suffer a post-traumatic stress disorder that can seriously affect their cognitive and emotional development. Children who grow up in a violent environment are more likely to become victims of child abuse themselves and are also more likely to continue the cycle of domestic violence (as perpetrators or victims) when they grow up.

The government seems genuinely committed to addressing domestic violence, ending impunity for the perpetrators, and protecting victims. In 2002, it launched a national comprehensive project focused directly on domestic violence. Coordinated by the Ministry of Justice, the project involved six ministries, municipalities, and NGOs. Launched with a budget of Ş4 million, the project was devised around 50 concrete objectives. The project ended in 2010

and was evaluated in 2011.[278] During my visit in 2006 I observed that important steps were being taken in scope of the project.

In 2003, new guidelines were issued for law enforcement officers based on a zero-tolerance policy in combating domestic violence. Although government officials state that the implementation of the guideline is overall successful, the National Police Commissioner responsible for the project acknowledges ongoing problems. According to her, 45% of all criminal complaints related to domestic violence are eventually dropped, because the police reports submitted to the prosecution are inadequate in their documentation of evidence, including victims' testimonies. At the time of my visit, the government had planned to introduce further measures to improve the quality of minutes of testimonies.

Data management was also been cited as a recurrent problem. It is therefore a positive development that a single registration protocol for cases of domestic violence has been put in place. Women's groups have also expressed concern that too many cases do not result in a conviction because prosecutors overemphasize reconciliation between the partners and voluntary treatment programs for offenders.

The government has also taken steps to enhance the existing protective framework. Women who are Dutch nationals or legally reside in the Netherlands have the right to guaranteed admission to any of the country's 100 women's shelters, regardless of whether or not they have reported their case to the police; 4,600 women use the protection of a shelter every year. Also, the government has set up a grant scheme to create 35 Advice and Support Centers on Domestic Violence that provide guidance to victims, perpetrators, and others on how to escape or end domestic violence. These grants also help to support long-term protection measures. The Amsterdam Violence Center, for example, implements a safe accompanied return project for battered women, considering that about half of all battered women eventually return to their partners. The center's staff visits the returning women at certain intervals and supports the couple to ensure that violence does not recur.

At the time of my visit, legislation pending in parliament stipulated authorizing mayors to impose temporary restraining orders against "potential" perpetrators of violence. This preventive law limits the restraining order to a maximum of four weeks and prohibits the persons subject to the restraining order from contacting the person or persons they pose a threat to and from entering the joint domicile. The police are tasked with monitoring the restraining orders' implementation, while the courts are given the authority to punish breaches of the order with up to two years of imprisonment or community service. The bill,

278 For a number of important contributions of the project, see www.blogbird.nl.

which went into force in 2009, was quite controversial; the municipalities were particularly cautious.[279]

Unfortunately, however, the effectiveness of these positive measures has been undermined by serious flaws in the government's strategic framework to combat domestic violence, which is defined in a gender-neutral manner as "violence committed by a member of the domestic circle of the victim." While no distinction is made between different types or victim groups, policy documents stress that domestic violence is not confined to women and that boys and men are often also victims.

This approach fails to acknowledge that the vast majority of domestic violence cases concern violence committed by men against their current or former female partners. Such violence is treated within the same framework as violence against inherently vulnerable groups (children and the elderly) and the occasional case of violence committed by an adult woman against her adult partner that may also occur. The strategic framework thereby misses the specificity of violence by men against women, which is a manifestation of historically unequal power relations between men and women and constitutes one of the social mechanisms by which women are forced into a subordinate position. As a result, the Dutch domestic violence policy tends to focus on individualized interventions to support victims and treat or punish perpetrators, but largely neglects the root causes of violence suffered by women: the lack of socio-economic empowerment, the perpetuation of stereotypical gender roles, and the unequal gender power relations interlinked with both factors.

The justifications underlying the gender-neutral approach to domestic violence are less than convincing. The then-Minister of Justice emphasized in our discussions that everyone is equal before the law, and therefore all forms of domestic violence ought to be treated equally. Law enforcement agencies and judicial organs should indeed pursue all individual perpetrators of violence, whether they are men or women, with equal dedication. Yet this does not prevent the adoption of a policy framework that acknowledges the fact that three distinct categories (men's violence against women, violence against children, violence against the elderly) constitute the vast majority of domestic violence cases and that also takes a differentiated approach towards each category, bearing in mind its specificities.

279 The temporary restraining order act entered into force in January 2009. During the course of the restraining order, both the evicted person and those who stay in the domicile are offered a range of support services. The law requires that five years after the act's entry into force, parliament be briefed of the implementation of the law. To this end, a study was conducted between 2011 and 2013. For a summary of this study in English, see http://www.huiselijkgeweld.nl/english.

Civil society actors offered a more practical justification, explaining that a gender-neutral understanding of the problem would be more acceptable to the wider population. If this is indeed the case, the government clearly needs to increase public awareness of the gender dimension of domestic violence rather than accommodate uninformed views that do not, or do not want to, acknowledge this basic fact.

2. Violence against Immigrant, Refugee, and Asylum-seeking Women

It is widely assumed in the Dutch society that women with a foreign background face higher levels of violence than native Dutch women. While it is reported that 60% of all women seeking refuge in Dutch shelters are of foreign background (Kvinnoforum 2005), a 2002 survey on domestic violence in the Surinamese, Antillean, Aruban, Moroccan, and Turkish communities found that 27% of the women interviewed reported having been the victim of domestic violence. This figure is actually lower than the figures emerging from older surveys on domestic violence in the general population, leading the authors of the 2002 survey to believe that this resulted from underreporting (van Dijk et al. 2002).[280]

Some categories of violence associated primarily with the Turkish and Moroccan immigrant communities, referred to as honor-related violence (HRV), have gained visibility in the past two decades. This visibility led to linking such crimes with culture and religion, namely Islam. Consequently, response to the problem became intimately linked with the government's integration and immigration strategy.

According to a working definition used by the Ministry of Justice, the term "honor-related violence" denotes "any form of mental or physical violence committed in response to a (threatened) violation of the honor of a man or woman and therefore that of his and her family…of which the outside world is aware or may become aware of." This definition disregards both the gendered nature of honor crimes as well as its intersections with other systems of inequality. No comprehensive, sex-disaggregated statistics on these crimes have been compiled in the Netherlands. Most of the known cases involve situations where the regulation of the conduct of young women or girls seems to have failed, which prompts the family to take severe action, including—in the most extreme cases—murder.

280 Official police statistics generally do not record the ethnicity of perpetrators or victims. In scope of a pilot initiative launched in 2006, two police zones were tasked to record information on ethnicity.

Although boys and men may also become targets,[281] HRV serves to ensure women's conformity with group norms and to sustain control over their sexuality, since honor is seen to reside in the bodies of women. The family's attempt to force a woman into a marriage or to cause her to end an unacceptable relationship is often a central theme leading to HRV. Sometimes the mere perception of dishonorable behavior within the community can lead to HRV.

Public attention has strongly focused on several murders that are said to be honor-related. At the same time, the continuum of related acts of violence has probably remained invisible, because HRV tends to be incremental. It typically begins with emotional pressure, restriction of movement, systematic social isolation, and veiled threats of violence before achieving its distinct form if the victim continues to be "defiant." The immense emotional pressure often exercised on victims can affect their mental health and even lead to suicide. Dutch law enforcement officials informed me about cases in which immigrant girls had been driven to suicide in order to cleanse a supposed stain on the family's honor.

With the increased visibility of honor crimes, the government concluded that there is a protection gap in this field and adopted a strategy on HRV that prioritizes the protection of the victims under threat and aims to strengthen the capacity of the law enforcement bodies to effectively investigate these crimes and prosecute the perpetrators. Several projects are underway to operationalize this strategy. The Haaglanden police region, for instance, has set up a Multiethnic Policing Unit, staffed with specialized personnel. The unit is charged with investigating crimes occurring within immigrant communities and, in practice, often also serves as a sort of national expertise center on honor-related violence.

Female genital mutilation (FGM) is yet another issue among the government's policy priorities concerning the immigrant population. According to Pharos, a national expertise center on FGM, an estimated 16,000-20,000 girls and young women with roots in countries where the practice is prevalent are considered to be at risk. Due to the nature of the practice, it is difficult to ascertain how many FGMs are actually carried out in or organized from the Netherlands. In 2005, a

281 Men can become victims of honor-related violence if they insist on not partaking in the punishment of women or girls assumed to have breached the code of honor, or if they have also been an accomplice in violating the code of honor. The phenomenon of men suffering violence at the hands of their family or community for deviating from heterosexuality is also defined as an honor crime in the Netherlands. Defining honor as a general trait of certain groups and categorizing all acts of violence observed in that group as honor crimes bears the danger of concealing both the patriarchal gender constructs that underlie violence and the contradictions stemming from the immigrant status.

commission of the Dutch Council for Public Health and Health Care estimated that at least 50 girls living in the Netherlands are subjected to FGM annually.

The government has adopted a zero-tolerance policy towards FGM. It is considered to be a form of violence against women and children and a protocol has been introduced requiring healthcare professionals to report detected cases to the Dutch Child Abuse Agency. Even though there is no specific criminal provision on FGM, perpetrators can be prosecuted for assault or aggravated assault under the Criminal Code. Dutch nationals can also be prosecuted if they perpetrate FGM in another country, regardless of whether that country has criminalized the practice or not. So far there have not been any prosecutions. In addition to repressive measures, the government and municipalities support a range of preventive measures that aim to reach out to immigrant communities in which FGM is assumed to be prevalent. In six regions of the country, the government is funding a project to introduce and implement a protocol on preventing FGM. In this respect, the AMBER program in Rotterdam, which is funded by the municipality, engages various communities of African origin through information-sharing events and raising awareness on the harmful consequences of FGM.

Representatives of immigrant women's organizations I met with during my mission referred to violence-related concerns that differed significantly from those prioritized by the government. While immigrant women generally welcomed the government's sensitivity on the subject of violence against women, they criticized the authorities' selective focus on phenomena they defined as culture-based (such as HRV or FGM), without adequately addressing the problems and vulnerabilities of immigrant women stemming from their immigrant status.

Increasingly restrictive immigration laws and regulations have produced a number of negative side effects that disproportionately affect immigrant women and thereby undermine the government's initiatives to further their emancipation. In addition, the framing of various forms of violence experienced by immigrant women as a cultural problem complicates the individual and collective struggles of these women to counter violence within their own communities. Immigrant women who have not yet attained permanent residence status are most affected.

According to Dutch immigration law, a foreign woman who comes to the Netherlands to join her spouse who is a Dutch national or permanent resident only receives a dependent residence permit, which lapses in case the couple divorces or otherwise separates. She can apply for a temporary independent residence

permit only after she lives in the country for three years with her spouse.[282] These rules apply to men as well, but they have particular, adverse consequences for women. They create a long-term dependency relationship between the incoming wife and her husband, who controls the legality of her residence in the Netherlands and can choose whether or not to abuse this control.

The dependent residence permit system has trapped many immigrant women who are subjected to the violence of their spouse or another family member in the dilemma of either staying in abusive relationships or becoming undocumented immigrants in the Netherlands once they leave the abuser. Since October 17, 2003, Dutch law has offered a legal way out of the dilemma: a woman escaping her husband's violence can apply for a special independent residence permit.[283] However, she will only receive the permit if: (1) she formally reports her abusive partner to the police; and (2) submits a medical report documenting the violence. Other evidence such as reports from women's shelters does not provide the same entitlement. Once the requirements are fulfilled, it is entirely up to the immigration authorities whether or not to grant an independent residence permit.

These evidentiary requirements undermine the law's accessibility, because the vast majority of women do not dare, or do not want, to report their abusive partners to the police. As highlighted above, the rate of reporting domestic violence cases to the police is quite low, both for foreign and for native Dutch women. For immigrant women the stakes are even higher because they are risking their legal status in the country. Therefore, immigrant women who find themselves in abusive relationships often try to live through three years of abuse and only go to the police when violence reaches unbearable levels.

Undocumented migrant women, including a substantial number of women whose dependent residence permit lapsed when they separated from their husbands, are in an even more vulnerable situation. Because of their irregular administrative position, they are often afraid to report violence to the police—and this fear may not always be unfounded. Civil society organizations have told me about cases in which undocumented immigrant women were themselves arrested when they reported violence to the police. This also prevents them from benefiting from women's shelters and accessing social welfare benefits. Many shelters operating with state funds tend to refuse to accept undocumented immigrant women. The government has acknowledged the problem, but so far has only partially addressed it by allocating special funds to finance

282 An exception applies if the spouse passes away during the three years or in cases involving domestic violence (see footnote below).

283 A total of 97 independent residence permits were issued on the basis of the domestic violence exception between July 2005 and November 2006.

shelter space for those undocumented immigrant women who face "honor"-related violence, provided that the women formally apply for a residence permit.

The precarious situation of undocumented domestic workers in the Netherlands, the vast majority of whom are women, also needs to be addressed. The demand for domestic migrant workers, who perform housekeeping chores or provide child- or elderly-care services in private homes, has sharply increased over the last decades and is being met largely by women from Asia, Latin America, Africa, and eastern Europe. Since domestic work is not legally recognized as a category for which work permits are issued to non-EU nationals, most domestic workers are employed without work permits, recruited informally, and left outside the scope of the labor law. These conditions involve the risk of exploitation and ill treatment and therefore leave the domestic workers at the mercy of the employer. One exception for women from outside the EU is to register as an *au pair* and obtain a one-year residence permit that does not serve as a full work permit.[284]

Asylum-seeking women are also vulnerable in the face of the risk of violence. Asylum-seeking women have to show a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group, or political opinion to be recognized as a refugee under Dutch law. Gender-related persecution is not explicitly recognized as a ground for asylum. However, under certain circumstances gender-based violence can substantiate fear of persecution on one of the aforementioned grounds and give rise to a refugee claim.[285]

In practice, it is often difficult for asylum-seeking women to gain refugee status if their persecution claim stems from a traumatic experience of gender-based violence. The asylum procedure makes it mandatory for the asylum-seeker to recount her experience of violence to the officials in an interview. This interview may take place very soon after the woman's arrival in the Netherlands, when the asylum-seeker is often still very tired, confused, and afraid and lacks trust in the authorities. Under these circumstances, women are often unable to relate experiences of rape or other traumatic incidents to the interviewer, which

284 Considered as a form of cultural exchange rather than work, the *au pair* status ties the permit holder to one particular employer and limits her work to 30 hours per week.

285 In most countries the laws and standards relating to the rights of refugees are based on the 1951 Geneva Convention, which has failed to address persecution on the grounds of gender and age. Therefore, until recently, the persecution of women in the private sphere by non-state actors was not recognized as a legitimate ground for seeking refugee status. With the expansion of the international women's rights agenda, incidents such as domestic violence, FGM, and "honor" crimes started to be accepted as legitimate criteria for asylum requests. However, since the standards in this area have not been sufficiently developed, there are inconsistencies in practice (Ertürk 2013a). In order to fill this gap in the normative framework the CEDAW Committee has adopted General Recommendation 32.

means that they will be precluded from basing a claim on these experiences at a later stage of the process. An exception applies only if the woman can offer sufficient evidence proving that she was medically unable (e.g., due to trauma) to relate her persecution experience during the first interview. According to legal experts, this evidentiary burden is often very hard to meet. During my visit, the government was not in a position to provide me with information on how many women successfully invoked this exception.

3. Violence in the Sex Sector

There are about 20,000 women in the sex sector in the Netherlands, with 8,000 women in Amsterdam alone. An estimated two-thirds of them are immigrant women from southern and eastern Europe. In addition, there are smaller numbers of men and transgender persons engaged in prostitution.

Violence against women occurring in the sex sector remains a significant problem. In 2004 alone, the Dutch Foundation against Trafficking in Women, which organizes shelter and other support for victims, registered 405 cases of trafficking in women. The foundation reported that the vast majority of detected trafficking cases relates to the sexual exploitation of women, although trafficking of women (and men) for the purpose of labor exploitation has also become increasingly more visible.

There are also minor girls who are trafficked into sexual exploitation. In 2005, the National Rapporteur on Trafficking in Persons, an independent monitoring institution established by the Dutch government, reported that some of these girls are trafficked into the Netherlands under the pretext of unaccompanied underage asylum-seekers. There are also strong indications that pimps deliberately seek to recruit minor girls (and sometimes also boys) at asylum centers.[286] Reports indicate that a number of minors disappear from asylum centers every year and that their whereabouts cannot be traced.

Another issue that attracted public attention was the phenomenon of so-called "lover boys." The term, an unfortunate euphemism, refers to criminal pimps who deliberately seek out vulnerable girls and women and pose as their boyfriends before pushing them into prostitution through manipulation and/or violence. The victims are typically minors when they are first forced into prostitution. Using available victim data, the Rotterdam Health Authority calculated that the victims' average age at recruitment is only 15.5 years. It is estimated

286 One teacher working in such a center informed me about the case of a 15-year-old asylum-seeker girl who was approached by a known pimp and only saved from exploitation due to the teacher's intervention.

that "lover boys" are involved in almost half of all cases of youth prostitution (Borne and Koosterboer 2005).[287]

Women in prostitution also face a substantial risk of violence. A survey among prostitutes conducted by the Intermediary Project for Prostitutes in Amsterdam indicated that more than one-fifth of all respondents (22%) had been subjected to assault in the course of their prostitution activities.

The government pursues a model of legalized and regulated prostitution, to curb violence in prostitution and improve these women's social situation in general. Neither the person engaging in prostitution nor those purchasing sex are criminalized. Since October 2000, the operation of brothels and the organization of prostitution, which had only been tolerated before, have been formally legalized. The model enjoys widespread support among the general public. Most Dutch women's organizations are also in favor of this, as they regard prostitution as sex work and want to see the stigmatization associated with the sector to be diffused.

The Dutch approach to the sex sector rests on three tenets: (1) a distinction has been drawn between consenting adults in a legalized sector on the one hand and involuntary prostitution, prostitution of minors (regardless of their consent), and victims of trafficking in women on the other hand, while the government pursues a zero-tolerance strategy against involuntary prostitution, prostitution of minors, and trafficking; (2) Dutch municipalities have been mandated to regulate and monitor the sex sector on the basis of a license system; and (3) the government is responsible for protecting and improving the social position of women in the sex sector. These issues are discussed in greater detail in the following paragraphs.

In implementing its zero-tolerance strategy, the government has stepped up efforts to combat human trafficking. In 2005, new legislation entered into force that criminalizes all forms of trafficking recognized under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention on Transnational Organized Crime. The same year, an Expertise Centre on Human Trafficking and People Smuggling was set up to serve as a national focal point for collecting and analyzing information on trafficking. Efforts are also being made to make

287 It should be emphasized that sexual violence remains a general problem also outside the context of prostitution, especially for younger women and girls. A survey conducted in 2005 found that 18% of a sample of women and girls 12 to 25 years of age had experienced some form of sexual coercion (compared to 4% of men in the same age range). Among less-educated females, this figure reached 21% (Graaf et al. 2005). In this context, several interlocutors claimed that this was due to the shortcomings in sex education provided at schools, which is often focused on safe sex and contraception methods, but does not sufficiently reflect upon harmful sexual attitudes or abuse of power in interpersonal relationships.

investigations more victim-sensitive by requiring that police officers complete a special training program before interviewing potential victims. Law enforcement agents are also encouraged to pursue different investigation strategies that make prosecutions less dependent on the testimonies of victims, who are usually traumatized and frightened.

Improvements must still be made with regard to the protective framework available to victims of human trafficking and sexual exploitation. Women's shelters are often hesitant to take in victims of trafficking, not least due to increased security risks. I was told about cases in which women had to shuttle from shelter to shelter in order to avoid detection by the trafficking network they escaped from. The authorities are also confronted with the dilemma of victims from these shelters often returning to their "lover boys" due to a continued emotional dependency. In these cases, courts can order the victims to be placed in an institution for their protection. In practice, this often means that they are placed in penal institutions alongside girls and women with criminal convictions, because there are not enough specialized institutions for exploited minors. The government plans to create separate facilities to resolve this problem.

Victims of trafficking often do not report to the police because they fear deportation and reprisals or public shame in their country of origin. In response to this problem, the authorities have established a comprehensive set of human trafficking indicators. If a possible trafficking case matches a certain number of indicators, the person in question is considered to be a *prima facie* victim and she is given a period of up to three months to recover and reflect on whether to cooperate with the law enforcement authorities. If she cooperates, she will receive a temporary residence permit for the duration of the investigation and prosecution in accordance with the decision known as B-9.[288] A permanent residence permit will be issued if: (1) the trafficker is convicted; (2) the criminal proceedings have not led to a conviction but, on the date of the judgment, the victim has been in possession of a temporary B-9 permit for at least three years; or (3) the victim has a just fear of reprisal.

If the victim chooses not to cooperate, she will be deported, unless she proves that it would be unsafe for her to return to her country of origin. The linkage between protection and cooperation has been criticized by experts and NGOs in the Netherlands, since many women victims of human trafficking have a well-founded fear of reprisals against themselves or their families if they testify against transnationally connected perpetrators, especially if they cannot prove it.

288 B-9 is a section of the Aliens Act Implementation Guidelines. In 2005, 65 B-9 permits were issued; it increased to 116 for the period between January and November 2006.

Concerning the role of the municipalities, they are responsible for licensing and regulating the sex industry within their boundaries, but are not allowed to outlaw prostitution altogether. In the absence of a national law on prostitution, almost all municipalities adopted regulations that more or less follow the standards drawn up by the Association of Dutch Municipalities. The municipalities can appoint officials who have full access to sex establishments to monitor the operation of brothels or street prostitution. Officials can demand that women in prostitution identify themselves (allowing, for example, the identification of minors), but they are not permitted to permanently register data on women in prostitution. Under the Promotion of Integrity Reviews by the Public Administration Act, the municipalities can ask a special administrative body to withdraw a sex establishment's license if there is serious risk that its operators are involved in other criminal activities.

Women in the legalized and regulated sex sector are now much better protected against violence, exploitation, and unsafe working conditions. The legalization of brothels has also given brothel operators the opportunity to break criminal ties. At the same time, however, the legislation's legalization and implementation aspects also appear to have unintended consequences and negative side effects. A "grey" sex sector continues to exist that escapes regulation. So-called escort services, for example, are often not covered by municipal licensing schemes or it is unclear which municipality has jurisdiction over them, since they do not operate from a fixed address. With justifications such as public security, some municipalities are also pursuing *de facto* abolitionist policies (contrary to national legislation), thereby pushing prostitution within their boundaries once again into an unregulated illegality.

Many of the women in the grey sex sector come from countries outside the EU, since they are generally not entitled to work permits under Dutch law and are therefore not eligible to engage in the regulated sex sector. This legislation is controversial among experts. Some interlocutors argued that these women responded to an existing demand for "migratory sex work" and should therefore be provided with a work permit and the formal labor from abroad, since the women were typically recruited in countries with no regulatory protective framework for prostitution.

Furthermore, a substantial number of women who would be legally entitled to engage in prostitution seem to have shifted into the unregulated sector to avoid taxation or municipal regulations they consider overly intrusive.

Due to the semi-illegality of the grey sector and the absence of regulation and monitoring, women in the grey sex sector face a higher risk of violence. The exploitation of minor girls and trafficked women also appears to take place mainly in grey sector sex establishments. An official evaluation of the lifting of

the brothel ban found "a lack of supervision and poor accessibility for social and health workers [in the grey sector], as the result of which these prostitutes are extra vulnerable to exploitation and their position has worsened rather than improved" (Daalder 2002). In an effort to regulate escort agencies, authorities have required newspapers to record the names and addresses of persons placing advertisements for prostitution. The aim in the long run is to introduce a licensing system for companies operating in this field.

Improving the life conditions and status of women in the sector is by far the least developed tenet of the sex sector policy. Many critics argue that the sex sector is organized mainly by men, for men. Women who operate independently of male pimps are still the exception, not the norm. Women's organizations report that many women are still badly informed about their rights vis-à-vis brothel owners. They criticize the government for focusing mainly on regulation rather than devoting attention to safeguarding the rights of women in the sector.

Conclusions

Gender equality has considerably advanced in the Netherlands, thanks to an active "emancipation" policy driven by the government and the efforts of civil society. Contrary to the claims of certain officials, however, the emancipation project of women in the Netherlands is not yet completed, let alone self-sustainable. This is indicated by the fact that women in the Netherlands, including native Dutch women, are still seriously underrepresented in decision-making positions and in the labor market in general. Moreover, a majority of women are not economically independent.

The government's gender-mainstreaming strategy does not effectively address persisting inequalities, since it delegates fragments of the problem associated with gender inequality to various entities, often as gender-neutral tasks. Overall coordination, monitoring, and accountability mechanisms for different government agencies, as well as gender-budgeting practices, are lacking.

Domestic violence is the most prevalent form of violence against women in the Netherlands. While significant efforts to address the issue exist, they are typically formulated as a gender-neutral security issue. The government lumps violence against women in the private sphere together with violence against inherently vulnerable groups, thereby de-linking the problem from its root causes and prevailing power dynamics.

Women belonging to immigrant communities face particular problems of gender inequality that also translate into violence. Culturally essentialized perceptions of violence experienced by these women have increased stig-

matization and discrimination against women and men of immigrant backgrounds, which is making the efforts to eradicate gender discrimination within these communities more difficult. Increasingly restrictive immigration laws that have unequal consequences for women foster these women's vulnerability to violence.

Women in prostitution still face violence, despite the legalization and regulation approach and the government's efforts to enforce a zero-tolerance policy towards trafficking and sexual exploitation. Additionally, a grey sex sector continues to escape regulation and monitoring. Furthermore, the overtly regulation-oriented policy has failed to enhance the ability of women in prostitution to effectively pursue their interests in the sex sector.

Overall, without a comprehensive policy on violence against women that is defined within the context of gender inequality, a fragmented, gender neutral and "law and order" focused approach prevails, which undermines the effectiveness of the many commendable programs in place to address the problem.

VIII. Sweden[289]

The Context

1. Gender Equality: Policy and Practice

Since the 1970s, the feminist movement has played an important role in Swedish society and politics. It created a broad social consensus on the principles of gender equality and prepared the ground for the country's current egalitarian gender policies. The government's gender-equality policy sets four specific objectives: (1) an equal distribution of power and influence in decision making; (2) economic equality and equal access to education; (3) an equal sharing of unpaid care and household work; and (4) an end to men's violence against women.

A combined strategy of women-focused approaches and gender mainstreaming (the incorporation of a gender-equality perspective in all policies and programs of each ministry) is the principal model for gender-equality work in Sweden. This dual strategy is complemented by efforts to establish gender budgeting practices and sex-disaggregated data.[290]

Gender mainstreaming and gender-equality initiatives are coordinated and monitored by the Minister of Gender Equality, which is advised by a Council on Gender Equality Issues, representing various stakeholders from the political sphere, civil society, and the private sector. The County Administrative Boards (the regional entities supervising and advising the municipalities) also employ experts on gender equality. Furthermore, there is an Equal Opportunities Ombudsman and an Equal Opportunities Commission. These independent

289 At the invitation of the Swedish Government, I carried out an official fact-finding mission in Sweden from June 11 to 21 in 2006. The mission was motivated by a seeming contradiction: despite its apparent and marked progress towards gender equality, Sweden was reported to retain a considerable level of violence against women, according to international press and an Amnesty International report (2004b).

During the course of my mission, which took me to Stockholm, Uppsala, Malmö, Lund, and Luleå, I held consultations with government officials, members of the armed forces, civil servants, local authorities, experts, researchers, and civil society representatives. I also visited the Emergency Unit for Rape Victims at Södersjukhuset Hospital in Stockholm, the National Center for Battered and Raped Women in Uppsala, and several shelters for women exposed to violence, where I met with victims and staff members and found the opportunity to focus on the different dimensions of violence against women.

290 The Official Statistics Ordinance requires that all statistics be disaggregated by sex, unless there are specific reasons for not doing so. In practice, sets of statistical information on any given subject always have at least one sex-disaggregated table. However, according to Official Statistics of Sweden - *Annual Report 2005*, the databanks are still not consistent and not organized in terms of sex- disaggregated information.

government authorities derive their mandates from equal opportunity legislation and can therefore only intervene in discrimination cases related to employment or education.

Initially, the women's movement and the Swedish government focused strongly on ensuring equal opportunities for women and men in the public sphere. This equal opportunity agenda has led to some very impressive achievements: Sweden ranks third among 80 countries assessed by the Gender Empowerment Measure (GEM) of the UNDP 2005 Human Development Report; more than half (58%) of all students enrolling in higher education institutions are women; in 2005, almost four out of five women in Sweden were in the labor force; and the economic activity rate for women (80%) was only slightly lower than that of men (86%).

Differences remain, however, in the types of employment women and men have. According to Sweden's sixth and seventh combined periodic report to the CEDAW Committee,[291] women tend to work in professions that are less well paid and they are six times more likely than men to work part-time. A large portion of the women in part-time work are actually underemployed, as they lack longer work-hour options. Albeit small, a genuine gender-pay gap also continues to exist. Even if one takes into account the differences between men and women with regard to age, level of education, working hours, sector, and occupational group, a gap of about 8% seems to be explainable only by sex. The government is undertaking sustained efforts to eradicate the pay gap between the sexes. The Equal Opportunities Act, for example, requires all employers to carry out a survey and analysis of wage disparities between men and women, to assess whether they result from discrimination.

A glass ceiling is particularly evident in the private sector as women move up the career ladder. Only about 16% of all senior managers in business are female. In 2004, a mere four out of 300 companies listed on the Swedish stock exchange had female managing directors. The previous government had considered imposing gender quotas for boards of directors, but the government in power at the time of my visit apparently no longer pursued these plans.

Levels of representation are much more equal in the public sector, particularly in elected office. Almost half of all Swedish parliamentarians (47%) and cabinet-level ministers (nine out of 22) are women. However, women remain grossly underrepresented in some traditionally male-dominated public institutions such as the National Police or the Swedish Armed Forces. Only 20% of all police officers and 4.4% of all military officers are women. Both security institutions are trying to improve the gender balance.

291 CEDAW/C/SWE/7.

During the 1970s and early 1980s, the Swedish feminist movement hoped that equality between men and women could be reached by removing the obstacles that prevented women from accessing educational opportunities, participating in the labor market, and assuming political functions. It was assumed that women would transform existing gender-power relations once they had the necessary political clout and economic independence. Over the years, it became increasingly clear that the equal opportunity agenda is a necessary element of a successful gender-equality strategy but not sufficient in its own right, since the gendered power hierarchy is reproduced in the private sphere. This in turn created the need to critically examine the construction and perpetuation of deeply rooted patriarchal gender roles and their continued impact on gender relations. Violence against women, which remained a significant problem despite women's visible advancements, thus moved to the center stage of the gender agenda. The dominant explanations of gendered violence, which had emphasized the psychological abnormality, violent upbringing, or alcoholism of the perpetrators, came under scrutiny. The critics highlighted how violence against women was used to uphold and perpetuate unequal gender power relations.

Gradually, these insights also influenced the political agenda. The 1990 Government Bill on Gender Equality recognized violence as an expression "of the prevailing imbalance of power relations between the sexes." Three years later, the government established a Commission on Violence against Women, charged with the task of scrutinizing issues related to violence against women from a feminist perspective and to propose measures to counteract such violence. The Commission's main report, published in 1995, reflected a change in Swedish political thinking and emphasized that violence against women must be viewed from a perspective of gendered power. The government formally adopted this view in the 1998 Law on Violence against Women.

In the past decades, activists, and policy initiatives that address remaining gender inequalities have faced some backlash. Some media and civil society actors in particular openly attacked the feminist movement. In May 2005, for instance, the Swedish National Television broadcast the documentary *Battle of the Sexes* (*Könskriget*), which depicted the women's shelter movement as extremist and hostile towards men. In response, the Swedish Broadcasting Commission, an official media watchdog, published a formal report that criticized some of the program's segments as misleading and inaccurate. Some circles have also tried to reframe the issue of gender inequality as an integration problem, in other words a problem reimported into "equal Sweden" through immigration from developing countries. Even though it is not possible to make generalizations about violence against women based on such approaches, it is worthwhile to examine the country's changing demographics.

2. Changing Demographics: "Old" and "New" Swedes

The composition of Sweden's population has significantly diversified since the Second World War. Today, one in five persons living in Sweden is either an immigrant or has at least one foreign-born parent. Immediately after the war and during the 1960s and 1970s economic boom, Sweden experienced an influx of migrant workers from northern and southern Europe, whose integration into society was largely unproblematic. Since the 1980s, immigration trends have changed. Newcomers are more likely to be non-European and/or non-Christian, with many coming as asylum-seekers. According to the Swedish Migration Board, between 1984 and 2005, Sweden received almost 500,000 asylum-seekers. The major countries of origin include Bosnia, Iraq, the Islamic Republic of Iran, and Afghanistan.

Today, family reunification is the main reason for immigration flows into the country, and the provisions in Swedish immigration law on family reunification have attracted much public debate. Critics argue that these provisions are used to bring new immigrants into the country through arranged marriages between Swedish nationals or permanent residents with foreign roots and individuals in their country of origin, which in many instances may be forced marriages. Another form of arranged, transnational marriage is also on the rise: "match-making" agencies broker marriages between Swedish men and women from poor countries in eastern Europe, Asia, Africa, and Latin America. The phenomenon, which some have chosen to label "mail-order brides," exists throughout Sweden, but reliable estimates of its size were not available.

The religious and ethnic diversification of immigration constitutes an ongoing challenge for the Swedish society. While some "old Swedes" perceive the newcomers as an outright threat or hold openly racist attitudes, a large majority expresses support for diversity but at the same time expects the "new Swedes" to quickly adopt the values of Sweden's consensus society. Subtle, unstated prejudices have emerged towards ethnic and religious minorities who are not prepared to readily assimilate, but instead want to be equal members of society while maintaining their own identity.

These prejudices translate into tangible discrimination in the labor market and other key areas. Non-European immigrants have considerably higher unemployment rates and earn less than native Swedes, and numerous studies demonstrate that these problems do not result only from language or educational deficits. One extensive study from 2003, for instance, concluded that men with both parents born in a non-European country earn 17% less than native Swedes with a comparable education, marital status, and choice of residential location and that they have an 11% higher probability of being unemployed.

The respective figures for women with foreign parents were 10 and 13% (Rooth and Ekberg 2003).

Many persons belonging to religious or ethnic minorities, who feel excluded from Swedish society, reject the ethical norms that are very often presented to them as "Swedish virtues," which in fact are universal human rights values. This becomes particularly obvious with respect to attitudes towards gender equality. In an effort to preserve their identity, second-generation immigrants from marginalized backgrounds, especially young men and boys, adopt very intransigent and conservative views on what constitutes appropriate behavior for women. In some cases, women are viewed as "lacking virtue" for merely engaging with native Swedish culture. Interlocutors also drew my attention to another gender dimension of immigration: male immigrants from non-Western countries often experience a severe status loss after immigration, whereas the process opens new options and prospect of autonomy for women. This becomes a source of tension in the family and often results in heightened control over women.

Manifestations of Violence against Women

Significant levels of violence against women persist in Sweden, despite a concerted effort on the part of the government and society at large to eliminate it. Ending what is termed "men's violence against women" in Sweden is a priority objective of the government's gender equality strategy. Official government documents use the term "men's violence against women" to make the identity of the perpetrators visible and highlight the fact that individual expressions of violence are rooted in the unequal power relations between men and women. Some have expressed reservations about the term, fearing that it may stigmatize men as a group and that it does not take into account the violence perpetrated by women against men.

Official crime statistics can indicate trends over time, but they never reveal the actual prevalence of violence against women, since they only reflect reported crime. Therefore, it is commendable that the Swedish government commissioned a comprehensive prevalence survey on violence against women. This National Survey,[292] published in 2001, revealed a shockingly high prevalence of violence against women. Almost half of all responding women (46%) had experienced physical and/or sexual violence committed by a man at least once since their 15th birthday. One in every eight women (12%) had been subjected

292 For this survey, an extensive questionnaire was sent to a random sample of 10,000 women between the ages of 18 to 64; 7,000 responded.

to physical or sexual violence, including threatening behavior, in the last year prior to answering the survey questionnaire (Lundgren et al. 2001).

1. Intimate Partner Violence

Women in Sweden are at the greatest risk of violence when they are in their own home, especially if they have husbands or other intimate partners. According to the National Survey on Violence against Women, more than one-third (35%) of all women who were married to or had cohabited with a man at least once in their life had been subjected to violence by a partner; 11% reported to have suffered violence at the hands of their current husband or cohabitant partner. Physical violence was the most common form of violence reported. Official statistics on reported crime paint a similar picture: the vast majority of assaults on women take place indoors and are perpetrated by a person with whom the victim is acquainted.

As far as I have observed, there is still a widespread perception in Sweden that "normal" Swedish men do not abuse their partners. Instead, the perpetrators are assumed to be somehow "deviant": unemployed men without education, men who are alcoholics or have a criminal history, men of a non-Western cultural background, etc.

While men of low social status and men with high levels of previous criminal involvement indeed appear to be relatively overrepresented among perpetrators of intimate-partner violence, they only constitute a small segment of that.[293] In absolute numbers, the vast majority of the perpetrators of intimate-partner violence are "ordinary" Swedish men. The National Survey on Violence against Women, for instance, demonstrated that the majority of women who were subjected to violence by their husbands or cohabitant partner lived with Swedish-born men who did not have an alcohol problem. Two-thirds of these women reported that their partner was employed. Almost one-quarter of the abusive husbands or partners had completed a university education.

Similarly, there are no typical victims. A large number of victims were well-educated women with a career and a high income. One study from 2002, conducted by the National Council for Crime Prevention, calculated that there were at least 25,000 gainfully employed women who had suffered violence at the hands of their current or former partner in 2001.

Contrary to commonly held expectations, the case of Sweden attests to the fact that women's empowerment and significant gains in the public sphere does not necessarily lead to the eradication of violence in the private sphere. A closer

293 National Council on Crime Prevention 2002 figures (available at www.bra.se).

look at the dynamics of the phenomenon reveals why. Researchers I met noted that the perpetrators very often do not commit violence against their partners in a sudden spurt of rage. Instead, the use of physical violence, systematic emotional abuse, isolation strategies, and other forms of controlling behavior are combined in a strategy to gradually undermine the victim's self-confidence, take away her autonomy, and "prove" the perpetrator's masculine superiority.

The violence and controlling behavior that starts at a relatively minor level incrementally increases in intensity, and the limits of what constitutes acceptable behavior gradually shift in the eyes of both the perpetrator and the victim. At the end of a long normalization process, the victim often perceives the violence as the partner's justified reaction to her personal deficits. She becomes mentally unable to leave her tormentor, despite her high level of education and economic autonomy. The fear of public shame—being regarded as a tragic failure in a country of equality—is said to pose an additional obstacle that prevents especially well educated and economically successful Swedish women from reporting intimate partner violence.

Intimate partner violence has destructive long-term consequences that go far beyond the physical harm done to the women. According to experts, the victims often develop depression or psychosomatic problems, including sleeping or eating disorders. The National Survey on Violence against Women also indicated that exposure to intimate partner violence increases suicide risk. Another Swedish survey showed that more than two-thirds (70 %) of all female mental patients who had suffered violence in their lifetime linked their psychiatric problems to the violence (Bengtsson-Toops 2004).

Children are likely to be aware of and witness violence committed against their mothers. UNICEF (2006) estimates that 46,000 children in Sweden are exposed to intimate partner violence committed against their mother. Exposure to violence within an important and intimate environment is a traumatic experience for children, who feel helpless, unable to control the situation, and fear that a loved one might be killed. According to professionals, the child may suffer a post-traumatic stress disorder that can seriously affect the child's cognitive and emotional development. Children who grow up in a violent environment are more likely to become victims of child abuse themselves and are also more likely to perpetuate the cycle of domestic violence (as perpetrators or victims) when they grow up.

2. Rape and Sexual Coercion

Women in Sweden continue to face a substantial risk of sexual violence. The National Survey on Violence against Women indicates that more than one-third (34%) of all Swedish women have experienced sexual violence at least once

since their 15th birthday and 7% experienced such violence in the year prior to the survey. The most likely perpetrators are men with whom the victims have an intimate relationship. However, the perpetrators may also be colleagues, friends, neighbors, casual acquaintances or complete strangers: 5% of all women who responded reported that they were forced into some form of sexual activity by a man with whom they did not have a prior sexual relationship.

A study by the Uppsala Centre for Raped and Battered Women indicated that about 1.3% of all women had been abused during or shortly after pregnancy (Stenson 2004). Such antenatal abuse can cause miscarriages, premature labor, or direct injuries to the fetus. Studies have also shown that women who have been subjected to violence during their pregnancy are more likely than non-abused women to give birth to a child with low birthweight (Murphy et al. 2001).

Sexual violence has steadily risen over the last two decades, despite all legislative attempts to strengthen measures for women's protection. Between 1994 and 2004 alone, reported cases of sexual offences increased by 35%, and reported rapes and attempted rapes increased by 45%.[294] In 2005, there was a new peak of almost 3,800 reported cases of attempted or completed rape.[295]

Some have argued that the growth of sexual violence only reflects the general rise in violent crime that Sweden has experienced over the last decade. Official crime statistics demonstrate, however, that the increase in reported sexual offences has outpaced that of offences against life and health. Most experts I spoke with indicated that two developments were underlying the rise in reports of rape. First, sexual violence may have become more visible. Government and civil society initiatives to raise awareness about sexual violence and improvements of the legal frameworks seem to have encouraged more women to come forward and report the crime. Secondly, and more worrisome, there also seems to be a genuine increase in the prevalence of sexual violence.[296] Moreover, a growing number of sexual offenders are boys or very young men. In 2005 alone, there were 187 cases of sexual crimes in which the suspect identified by the police was younger than 15 years old; 190 males suspected of sexual crimes were between 15 and 17 years old.

294 All statistics on reported crimes, prosecutions, convictions, and restraining orders are based on Swedish National Council on Crime Prevention figures (available at www.bra.se).

295 This constitutes a rise of 44% compared with 2004 data. Part of this drastic increase, however, has resulted from a legal reclassification of certain acts of sexual coercion and sexual exploitation as rape.

296 Swedish National Council on Crime Prevention, National Studies of Rapes Reported to the Police (English Summary 2005).

3. Violence against Women of Immigrant, Asylum-seeker, or Refugee Background

Swedish crime statistics are generally not broken down by the nationality or ethnicity of the perpetrators or victims. However, some studies suggest that women in Sweden with an immigrant, asylum-seeker, or refugee background face a higher risk of violence than native Swedish women.[297] Special vulnerabilities within this group of women result to some extent from their residence status. Immigrant or asylum-seeking women without a valid residence permit are often naturally reluctant to approach state authorities for protection and thus remain trapped in violent relationships. Women whose legal residence status in Sweden depends on their relationship with Swedish national or permanent resident face similar problems.

A lack of familiarity with the Swedish language, institutions, and law, sometimes coupled with a general distrust towards state authorities, may pose additional obstacles for non-native women. Women coming to Sweden on the basis of arranged marriages are particularly affected by these problems. Swedish privacy protection legislation prohibits the Swedish Migration Board, which processes entry visas, to match and link their computer files with local authorities. Therefore, the local authorities often do not know about foreign women moving into their community and cannot provide them with information on available language courses, legal literacy programs, or other integration-support measures. Women who have no connection to Sweden other than their arranged husband and his family are therefore often isolated and vulnerable to violent relationships.

While these types of vulnerabilities are generally not disputed, it is hotly debated whether cultural specificities contribute to the vulnerability of women with a foreign background. In this context, the phenomenon of "honor-related violence" (HRV) has commanded much public attention, especially after the murder of Fadime Şahindal in January 2002.[298] The term, which is widely used by Swedish policymakers, researchers, and practitioners without being clearly defined (which is a problem), is generally employed to describe cases in which women or girls are subjected to, or threatened with, violence because they are seen as defying their family's expectations. Some also use the term to refer to

297 Swedish National Council on Crime Prevention, Violence against Women in Intimate Relationships (2002).

298 Fadime, who grew up in a Kurdish family from Turkey, refused a marriage arranged by her family and had a Swedish boyfriend. She publicly spoke out against patriarchal oppression in immigrant families and also addressed the Parliament in this regard. In January 2002 her father shot and killed her in the family's home in Uppsala. He claimed to have committed the crime to restore the family's honor.

cases concerning homosexual or bisexual boys and men suffering violence at the hands of homophobic family members. The Swedish National Police Board calculates that about 400 cases of 'HRV' come to the attention of the authorities every year.

Some feminists among the women's movement in Sweden have cautioned about treating 'HRV' in isolation from other forms of violence against women, which in all its manifestations serves to uphold male superiority and subordinate women. Other feminists, including many women who are themselves from immigrant or refugee backgrounds, argue that women with such backgrounds have to live up to gender-specific expectations that are far more extensive and rigid than those directed towards native Swedish women; therefore, women's oppression should not be generalized.

From a pragmatic perspective, the decisive question is not why, but how 'HRV' is committed, because the means and methods of such cases of violence pose specific challenges to law enforcement authorities, social workers, and other practitioners. Whereas perpetrators of many other forms of gendered violence tend to act alone, 'HRV', in its most distinct form, distinguishes itself by the involvement of several family members (often condoned by other community members) who collude to enforce social norms shared by the group. This collective element in 'HRV' makes it extremely difficult to detach the victim from the actual or potential perpetrators, unless she is willing to break off all relations with her family and begin a new life outside her social frame of reference.

Some Swedish researchers also classify FGM as a form of 'HRV' since it purports to protect the victim's honor, but actually serves to control her sexuality. The government's Action Plan on FGM considers that immigrant or refugee girls from countries where the practice is highly prevalent could be at risk. There are no reliable figures though on how many female genital mutilations are actually carried out in or organized in Sweden.

4. Violence against Saami Women

The very north of Sweden is home to about 20,000 Saami, an indigenous people who also live in northern Finland, Norway, and northwestern Russia. No survey has ever been conducted on violence against Saami women in Sweden. Anecdotal accounts I received from Saami women suggest that they may face significant levels of violence within their communities.

Saami culture has very different manifestations and it develops in a dynamic fashion. This being said, many Saami communities retain strong patriarchal structures and in some communities divorce is reportedly still not a socially accepted option to escape a violent relationship. Saami women's groups also reported that Saami women exposed to violence are often hesitant to obtain

help from mainstream Swedish institutions and authorities, which they consider alien to their culture and language.

5. Violence in the Context of Prostitution

In Sweden, including in official government documents, it is widely considered that prostitution constitutes in and of itself a form of male violence against women, regardless of the consent of the women involved. Consequently, the Swedish Parliament enacted the Law Prohibiting the Purchase of Sexual Services, which entered into force on January 1, 1999. The legislation regards women in prostitution as victims of male violence, and they therefore do not face criminal sanctions under Swedish Law. However, anyone who purchases sexual relations for himself or a third person in exchange for payment is liable to a fine or imprisonment for up to six months.[299] The policy enjoys widespread public support in Sweden and the government has dedicated considerable resources to enforce it.

A special prostitution surveillance unit targets buyers of sexual services from prostitutes. Between 1999 and February 2006, more than 1,300 men were reported for buying sex. Many of the reported men pleaded guilty to avoid a lengthy trial. In other cases, evidence incidentally collected in anti-trafficking investigations, which employed wiretap and other intensive surveillance techniques, was used to prove the transaction between the sex buyer and the woman.

The government believes that the new legislation has considerably decreased the number of both women in prostitution and male sex buyers in Sweden. While most observers generally concur that street prostitution has decreased, some who are skeptical about the law have asserted that prostitution has merely shifted from the streets to less visible indoor locations or to escort services that make use of the internet and mobile phones to arrange contacts between women and sex buyers. It remains unclear whether the law has increased or decreased the buying of sex by Swedish men abroad. Government officials and other supporters of the law expressed the hope that in the long run it would transform attitudes towards the buying of sex and the construction of male sexuality in general.

299 The production of commercial pornography remains legal. Interlocutors explained that this seeming contradiction is due to the Swedish Fundamental Law on Freedom of Expression, which also protects pornography involving consenting adults.

An Internationally Organized Violence against Women Case

'HRV' cases in immigrant communities are also gaining a transnational dimension. The murder of 19-year-old Pela Atroshi, which was related to me personally by her younger sister Breen, is illustrative.

Pela and her family moved from northern Iraq to Sweden in 1995. Unwilling to accept the extremely oppressive rule that her father exerted on her and her sisters, Pela temporarily left the family home. When rumors emerged that she had engaged in extramarital sex with a boyfriend, male relatives living in Sweden and in Australia decided that Pela had to die to cleanse the family honor.

Under a pretext, Pela and her younger sister Breen were lured to Iraq in 1999, where one of her uncles murdered Pela before the eyes of her sister. With the support of her mother, Breen, who is a Swedish citizen, was able to reach Swedish authorities and ask for help. She was able to return unharmed to Sweden via Turkey through high-level political and diplomatic maneuvering and the dedicated work of a special unit in the Swedish National Criminal Investigation Department that has unfortunately since been disbanded.

Breen testified against the perpetrators, and the Stockholm City Court was able to sentence two of her uncles living in Sweden for murder, since the crime had been planned in Sweden. The grandfather and another uncle, both in Australia, as well as the father, who remained in Iraq, escaped prosecution. At the time of my visit Breen was living under a protected identity at an undisclosed location, as threats to her life continue, which implies a future of uncertainty and further hardship for her.

At the time of my visit (June 2006), a comprehensive review of Sweden's prostitution policy, prepared by independent researchers, had yet to be undertaken. It is therefore not entirely certain what effect the policy has had on the types of violence often connected to prostitution. The National Criminal Investigation Department and the National Rapporteur on Trafficking in Human Beings have both come to the conclusion that the trafficking of women from abroad has become less profitable for the traffickers, since it is more difficult to establish contact between potential buyers and foreign victims. Human trafficking flows to Sweden have therefore reportedly decreased.

However, local women who remain in street prostitution, especially women addicted to heroin and other hard drugs, report increased vulnerability to violence and to infection with sexually transmitted diseases. Now often oper-

ating alone to avoid detection by the police, women in prostitution can no longer offer each other information on and protection against the so-called "problem buyers." Since the overall number of men buying sex in the streets has diminished, drug-addicted women are also under much more pressure to accept those clients, who are known to be violent, so that they can finance the costs of their drug consumption (around SKr 2,000 per day).

In the first years of its abolitionist prostitution policy, the Swedish government largely neglected to address the situation of drug-addicted women in prostitution. This problem has somewhat improved in recent years. There are now institutions in the big cities, such as the NAVET center in Malmö, which provide support and counselling to women in prostitution. They also offer access to drug treatment programs. However, waiting periods are said to be far too long.

State and Civil Society Initiatives in the Struggle against Violence

States have an international obligation to exercise due diligence to prevent violence against women, prosecute and punish the perpetrators, protect women from all forms of violence, and provide compensation for the victims. Sweden's efforts to comply with these obligations are quite advanced. Nevertheless, in some areas significant improvements are still necessary and possible. As discussed in the previous part, states have done relatively little with respect to their obligation to prevent violence against women by adopting measures to transform patriarchal gender roles and hierarchies. This holds true also for Sweden, where significant progress has been achieved in gender equality in the public sphere. The most effective and commendable measures undertaken by the Swedish government are in the areas of protection and prosecution. While interventions to protect and punish may have transformative impact, the adoption of innovative prevention strategies remains a challenge for Sweden so that the highly valued norm of gender equality is not compromised.

1. Prosecution and Punishment of Perpetrators

In 1998 and 2005, the Swedish Penal Code underwent major reforms to enhance the protection of women from violence. A number of innovative norms that constitute good practices have been enacted into law. In 1998, for instance, the offence of "gross violation of integrity" was introduced into the Penal Code. A person who commits crimes such as assault or unlawful coercion against another person with whom he has or has had a close relationship is liable to imprisonment from six months to six years, if the acts constitute a repeated violation of the victim's integrity and have severely damaged the victim's self-

confidence. If these acts are committed against a current or former spouse or co-habitant partner, then the man is charged with the violation of the woman's integrity and liable to the same punishment. These criminal provisions encapsulate the peculiar nature of protracted intimate-partner violence situations and serve to ensure that the criminal sanction fits the severity of the crime.

The number of reported cases of gross violations of integrity/women's integrity has steadily increased: of the 2,690 cases reported in 2005, 2,152 were for gross violations of a woman's integrity. Observers point out that some police stations have still not adopted the proactive policing practices and meticulous recording routines that are necessary to prove systematic patterns of violence occurring over a long period of time and to "build" cases of gross violation of a woman's integrity. For example, police officers often fail to videotape a victim's testimony immediately after an assault, even though it is well known that many victims eventually refuse to testify against their partners in court because they either fear their tormentor or develop a false sense of loyalty to him.

With respect to sexual violence, similar discrepancies exist between the high quality of the existing penal law framework and its actual implementation. The penal code provision on rape extends to non-consensual penetrative intercourse and also to other acts that are comparable to such intercourse. Moreover, since 2005 a person can also be convicted of rape if he inappropriately exploits the fact that the victim is in a helpless state due to, for example, unconsciousness, intoxication, drug influence, or mental disturbance. This amendment facilitates the prosecution of rapes using so-called date-rape drugs, because the prosecution no longer has to prove that the perpetrator himself administered the drug to render his victim helpless.

In practice, however, the majority of reported cases still results in impunity for the perpetrators. In 2005, the alleged perpetrators of only 835 cases of rape or aggravated rape were prosecuted, a mere 32% of all cases reported in 2004. The estimated conviction rate for 2005 (also based on cases reported in 2004) was even lower, at only 8%.

Physical evidence of sexual violence, such as vaginal lacerations or DNA traces, often disappears within hours. Many cases therefore do not even reach the prosecution stage due to a lack of evidence, a situation that could be avoided if the police or medical personnel who have first contact with the victim were better trained in gathering and recording evidence of sexual violence. In response to this problem, some Swedish cities have taken the positive step of creating emergency units for rape victims that are specialized in gathering and documenting evidence while providing immediate care to the traumatized victim.

Modules on gender equality and gender sensitivity form an important part of mandatory training for Swedish judges, prosecutors, and police officers. These

training programs have helped change the gender-based perspectives, norms, and biases that often have an impact on the investigation, prosecution, and adjudication of gender-related crimes. Nevertheless, some problems persist. Women's groups reported that some justice sector officials still display a gender bias in contested sexual violence cases.

Sweden has taken special measures to prosecute and punish violence specifically affecting women with a foreign background. As early as 1982, it passed the Act on the Prohibition of the Circumcision of Women (FGM) and further strengthened the Act in 1999. The legislation prohibits, regardless of the consent of the victim or her parents, all external female genital organ operations that are designed to mutilate or produce other permanent changes in them. The crime, which is punishable by a minimum of two years' imprisonment, has been made exempt from the principle of dual criminality. A person with a connection to Sweden can be prosecuted in Sweden for involvement in acts of FGM committed in another country, even if that country does not prohibit FGM.[300] In June 1999, the Göteborg District Court convicted a Swedish national of Somali origin for having authorized and participated in the FGM of his 14-year-old daughter, even though the acts had taken place in Somalia. The man was sentenced to four years of imprisonment. The decision was upheld on appeal.

In 2004, Sweden introduced changes to enhance the protection of women and girls against forced and early marriages conducted in Sweden and abroad. The legal age of marriage is 18 years, and exceptions are only possible with a special permit issued only under very narrow circumstances. Child marriages and forced marriages that have been concluded abroad are not valid in Sweden. There is no legislation specifically criminalizing early or forced marriages, but Penal Code provisions on unlawful coercion, illegal threats, sexual crimes, and trafficking can be applied. The penal legislation is currently under review.

2. Protection of Women at Risk of Violence

Women at risk of violence have recourse to various protective instruments and institutions in Sweden. The Act on Restraining Orders allows a woman at risk to obtain a court order prohibiting a potential perpetrator of violence, persecution, or serious harassment to approach or otherwise contact her. Violations can be sanctioned with fines or imprisonment of up to one year. If special circumstances indicate a clear risk that the person served with the restraining order will commit a crime against the life, health, freedom, or integrity of his cohabiting partner, the potential perpetrator can be ordered to temporarily leave and stay away from the couple's joint domicile. This provision enhances women's

300 The double criminality requirement has also been waived for sexual offences committed abroad against a minor younger than 18 years old, if the perpetrator has a connection to Sweden.

protection and is an expression of the basic principle of justice according to which negative consequences of violence ought to be borne by the perpetrator and not his victim.

Restraining orders are meant to prevent future crimes that are anticipated on the basis of a forward-looking risk assessment. In practice, however, the authorities very often issue restraining orders only in reaction to crimes already committed, especially in cases involving intimate partner violence.

There are also continued problems with the enforcement of restraining orders. It is estimated that at least one in three restraining orders are breached and that repeat breaches are not uncommon. Unfortunately, the continuous and active follow-up work that is necessary to ensure that restraining orders are respected is often put back behind other policing priorities. Police often do not have the personnel resources to document all detected breaches and to initiate sanctions proceedings. Against this backdrop, the question has been considered in Sweden whether to employ electronic devices to monitor the movement of persons subject to a restraining order. However, the practical feasibility and effectiveness of using such intrusive measures on a large scale seem to be questionable.

Restraining orders, even if diligently issued and properly enforced, are only one part of a comprehensive protection strategy. Victims must also have access to safe and adequate shelter, if they cannot (or do not want to) remain in their home. According to the Social Services Act, the municipal social welfare services "should" (not "shall") strive to ensure that victims of crime are given help and support and specifically take into account that women victims of intimate-partner violence need help and support. However, only a minority of Sweden's municipalities operates a shelter that can provide emergency support to women exposed to violence. Most municipalities rely on a national network of about 150 non-governmental women's shelters. Apart from often being the only option available, these non-governmental women's shelters are also the frequently preferred option of women exposed to violence, since they offer anonymous support and the victims do not have to decide immediately whether or not to get the state authorities involved.

Some of the non-governmental shelters employ paid staff. Most rely on dedicated volunteers. Many shelters have to operate under severe budget constraints, because a large number of municipalities fail to fund the non-governmental institutions they use in order to fulfill their own legal responsibilities. A 2005 compiled by Amnesty International found that more than one-third of Sweden's municipalities give no or only symbolic funding to women's shelters. The same survey also showed that many municipalities had not established a coordinated inter-agency approach to violence against women based on substantial and peri-

odically reviewed local action plans. Many municipalities also failed to provide adequate information material on available assistance and protection resources.

In 2006, a government-commissioned inquiry into the shelter situation came to similar conclusions, finding that support for women exposed to violence does not seem to be a priority for many municipalities. The Inquiry Panel recommended that women exposed to violence and their children should be legally entitled to receive adequate support (including access to shelter). It also advised that municipalities should assess each case in accordance with national guidelines and that a fatality review be carried out whenever a woman dies from violence, so as to identify remaining deficiencies in the public system.

From the information available to me, it was not clear whether and how the Inquiry Panel's recommendations would be implemented. The recognition of the essential role of non-governmental shelters in the protection framework and funding of their core activities are a must. In 2006, the government took an *ad hoc* step in the right direction by earmarking SKr 81.5 million to directly support women's shelters.

Reforms in the institutional protection framework must also address the situation of women with special needs. In recent years, the shelter movement has created specialized institutions for young women and teenage girls exposed to violence. Other groups of women with special needs are still underserved. For example, women with severe alcohol or drug problems are usually not given access to existing shelters if they face violence. Unless they agree to enter an addiction rehabilitation program (and actually find an available opening in the program), they face a protection gap. The Swedish Association of Women's Shelters has established an open house in Göteborg, where these women can find safe shelter without being required to enter a rehabilitation program—a commendable initiative.

Additional progress also has to be made with regard to the particular protection needs of women facing HRV, who often encounter particular security risks because of the collective nature of the threat against them. The County Administrative Boards estimate that sheltered housing facilities with enhanced security arrangements are needed for 150 to 300 women facing HRV.[301] So far, the government has created just over 100 places. Non-governmental initiatives such as the Somayah Women's Shelter, which I visited, or the Terrafem Network, have filled the gap.

The authorities often resort to witness protection practices normally used in cases involving organized criminal syndicates, to provide long-term protection

301 CEDAW/C/SWE/7.

for young women and girls at risk of HRV. Some victims are given housing in undisclosed locations or even receive completely new identities. Yet a comprehensive long-term strategy is still lacking to address the specific needs of young women and girls who are suddenly deprived of their family-support network. Women at risk of HRV often need hands-on guidance and support on how to start a new life. Furthermore, special security arrangements must be made to ensure that young women and girls can safely maintain the contact with those family members who do not want to harm them. Unfortunately, the authorities do not always seem to be willing to dedicate the necessary resources for this. Breen Atroshi, the sister of murdered Pela Atroshi, for instance, told me that the authorities are not willing to provide her with the security arrangements necessary to meet with her mother, contrary to what was promised when she agreed to testify against her sister's murderers.

Sweden has introduced specific legislation to address the vulnerabilities of non-Swedish women stemming from their non-permanent resident status. Under the Aliens Act, a foreign woman who holds a temporary residence permit that depends on her marriage to a Swedish national or a permanent resident can only receive a permanent residence permit after two years of marriage. This dependency can trap women in violent relationships. For this reason, a special provision has been introduced into the Aliens Act which allows women to receive a residence permit of her own in cases where the relationship with the partner ended before two years had elapsed because she or her children suffered substantial violence or other violations of freedom and integrity at the hands of her partner. It is sufficient that the victim document the violence through reports from a hospital or a shelter; she does not have to take the often difficult—and sometimes dangerous—step of reporting her former partner to the police in order to legalize her status. Women's organizations and local officials have informed me that this excellent norm is unfortunately still underused, because foreign women exposed to violence are either not aware of its existence or are afraid to pursue this option.

On October 1, 2004, a new provision was introduced into the Aliens Act that allows the authorities to provide victims of human trafficking and other crimes with a temporary residence permit for the duration of the criminal process. The victim is also entitled to social security benefits. At the time of my visit (June 2006), 23 foreigners, all women, had received such a permit.

Conclusions

Sweden has firmly established a strong equal opportunity framework, which has led to very impressive advances towards the achievement of equal opportunities for women and men in the public sphere. At the same time, however, unequal power relations between women and men in Sweden continue to be fueled and reproduced in various forms by rooted, hidden, or transformed patriarchal gender norms.

Owing to the survival of these norms, there are still significant levels of violence against women in Sweden, where women have otherwise attained an equal status in the public sphere. The rise in sexual violence especially in recent years is a particular matter of concern. The perpetrators and victims can be found in all segments and levels of society, although some women, including immigrant, refugee, and minority women as well as women in prostitution, face particular vulnerabilities.

Overall, the Swedish government and society appear to be determined to combat and eradicate violence against women. The penal law framework addressing violence against women is excellent, but low prosecution and conviction rates clearly indicate that its implementation must be further improved. Some deficiencies in protecting women exposed to violence remain and a number of municipalities clearly have to raise the standards of their protection policies. There is room for further innovative strategies to effectively respond to the remaining inequalities. Such strategies would need to address not only the reproduction of gender hierarchies in the private sphere, but would also have to remove the existing obstacles to the equal participation of immigrants and refugees in society.

The inconsistency between the high quality legislative framework and its application in practice, combined with the discrepancy in gender equality in the public sphere achieved at the highest level and the remaining tendencies towards inequality in intimate partner relations, poses a challenge for feminist theory as well as strategies to combat violence against women.

Understanding these contradictions in the Swedish experience is not only important for assessing the situation in this country, but also in terms of shedding light on our global perspective and strategies.

In this respect, it is particularly important to address certain questions: What accounts for the continuing risk of violence for Swedish women, who have attained equal representation in decision-making positions and achieved relatively high levels of economic independence? With the shift of money and power to the private sector, what are the dynamics that underlie women's low level of representation on the boards of directors and senior

management positions of private firms? What are the implications of the Swedish experience, which shows that gender equality is not a linear but a dialectic process, for developing a forward-looking feminist vision and strategy?

IX. GHANA[302]

The Governance and Legal Structure

Ghana is characterized by a dual structure, where formal state institutions coexist with a customary system built around chiefs, councils of elders, and other traditional authorities. This duality is most apparent in rural areas, where close to two-thirds of Ghanaians live.

1. Formal Structure

Ghana's administrative and legal structures are largely based on the institutions it inherited from colonial rule.[303] The legal system follows the common and customary law tradition, and despite efforts to devolve state power to Ghana's ten regions and 110 districts, the governance structure remains centralized. The state's capacity to deliver basic services, combat poverty, and implement the law is weak, especially in rural areas. The government's options are further constrained by an external debt burden.[304]

The Constitution in force at the time of my mission, which restored multiparty politics, came into force in 1992 and engrains the principle of non-discrimination on the basis of sex. Ghana is party to CEDAW (ratified without reservations in 1986) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (ratified without reservations in 2007).

The Constitution explicitly guarantees the institution of chieftaincy, together with its traditional councils, and precludes the state from interfering in the appointment of chiefs. In return, chiefs are barred from taking part in active party politics and may not stand for election to parliament. To the extent that they exercise public power, traditional authorities are fully bound by Ghana's international obligations.

302 At the invitation of the government, I carried out an official visit to Ghana from July 7 to 14, 2007. During the course of my mission, which took me to the Greater Accra Region, the Volta Region, and the Northern Region, I held consultations with officials and government representatives, civil society representatives, and survivors of violence.

303 On March 6, 2007, Ghana celebrated the 50th anniversary of its declaration of independence from colonial rule.

304 The proportion of the population with an income of less than $1 a day has fallen from about 51% in the early 1990s to 35% in 2004; however, very high levels of extreme poverty remain most acute in rural areas. Over 30% of the population lack access to safe water and 68% lack sanitation services. Most diseases seen in clinics are water-related (Adésìnà 2007).

2. The Chieftaincy System

The chieftaincy system is hierarchically organized and composed of a diverse group of tribal kings, paramount chiefs, chiefs, and sub-chiefs. Some traditional authorities are illiterate men who operate entirely on the basis of experience and the teachings of oral tradition; others are university-educated professionals. Although the customary system recognizes certain female figures and grants them a limited degree of authority, virtually all the chiefs in Ghana are men.[305] Deriving their legitimacy from a claim to tradition, these traditional authorities tend to be socially conservative, putting respect for local custom before matters such as gender equality and human rights.

While the status of the customary system varies between localities, traditional authorities generally wield considerable influence. In many rural areas, tribal chiefs administer communal and tribal land rights. Chiefs and the council of elders also serve as arbitrators in all local disputes, including smaller criminal cases and family conflicts, since they are more easily accessible than the state courts, charge smaller fees, and have the social clout to enforce decisions. In addition, traditional authorities deal with all matters supposedly involving supernatural interference (e.g., witchcraft). The state authorities meanwhile remain distant from such cases.

Some chiefs may even exercise authority in serious crimes, such as rape or defilement of minors, and broker settlements between families. This illegal usurpation of state power may unfortunately result in impunity for perpetrators and neglect of victim support. Nevertheless, local state officials are often unwilling to challenge these chiefs, since the balance of power is often tilted against the state. In some of the rural districts, for instance, local police officers explained that they would always seek the local chief's permission before launching an investigation into a reported crime.

3. Customary Law

Custom is recognized by the Ghanaian Constitution as a source of law; thus, it is applied by customary authorities as well as by state courts, unless it is found to violate the Constitution. Customary law is also subject to statute law. Therefore, while customary law discriminates against women, especially in areas of inheritance and property, where statute law provides for a particular matter, it cannot—theoretically—override that provision.

305 In matrilineal communities, queen mothers appoint new chiefs selected by customary councils. Female authorities referred to as *magazia* exist in the patrilineal communities of northern Ghana.

INHERITANCE

According to the traditional doctrine of customary law, the proceeds of the joint efforts of a man, his wife, and children and any property acquired from these proceeds are considered to be the individual property of the man, and upon the death of the husband/father, all the property is returned to the patriarchal family. Women and children in some respect are left to the mercy of the extended family without any guarantee of their livelihood. This custom was legally overridden with the enactment of the Intestate Succession Law of 1985 (PNDC Law 111), which introduced the right to property for women. However, in practice, particularly the rural families and traditional authorities intervening in inheritance disputes often do not know, or deliberately oppose, the statutory law and apply the discriminatory customary norms instead. Even state officials are sometimes insufficiently informed about the contents of the Intestate Succession Law, which distributes estates on the basis of a very complex formula between the deceased man's wife/wives, his children, other family members, and customary law heirs.

DIVORCE AND ITS CONSEQUENCES

Women who are going through a divorce find themselves in an even weaker legal position than widows, because of the discrepancy between customary law and statutory law. The Matrimonial Causes Act 1971 (Act 367) foresees a separation of property between the spouses; in other words, it does not recognize women's contribution to the property acquired during marriage. Since customary law presumes that all property acquired during marriage is the sole property of the husband, women are often deprived of an equitable share of the marital property when they divorce. An exception applies if a woman can prove that she made a "substantial contribution" to the acquisition or maintenance of the property.

The government clarified in writing that the provisions of Act 367 apply to either party in the marriage. Accordingly, the Court "may order either party to the marriage to pay to the other party a sum of money or convey to the other party movable or immovable property as settlement of property rights or in lieu thereof or as part of financial provisions that the Court thinks just and equitable." Government officials made reference to some court decisions to explain that the Act may be effective for providing an equitable settlement for divorced women and noted that the Act's major shortcoming is that it applies principally to monogamous marriages.

The 1992 Constitution recognized the shortcomings of the legal status quo and required the Parliament to enact, as soon as practicable, legislation on the property rights to ensure that spouses have equal access to property jointly acquired

during marriage and that such property is equitably distributed between the spouses upon dissolution of the marriage. At the time of my visit—15 years after the Constitution entered into force—no such law had been passed. The property of spouses bill, prepared by the Minister of Justice at the time, stipulated that divorce courts distributing marital property should take into account the cash or in-kind contributions made by each spouse. According to the draft bill, each spouse was to receive at least one-third of the property acquired during the marriage, and the bill would apply to all marriages, including polygamous customary marriages and *de facto* unions (common law marriages).

REVIEW OF CUSTOMS

In view of the shortcomings and problems of customary law, the 1992 Constitution mandates that the National House of Chiefs, a deliberative body bringing together paramount chiefs from all regions, "undertake an evaluation of traditional customs and usages with a view to eliminating those customs and usages that are outmoded and socially harmful" (Chapter 22, article 272 (c)). At the time of my visit, the House of Chiefs had not taken any steps to launch a genuine effort to bring the customary law in line with statutory law, the Constitution, and Ghana's international obligations.

Status of Women

Ghana is an ethnically, linguistically, culturally, and religiously heterogeneous society, which results in variations of social convention and customary practice.[306] There are also considerable economic disparities between the coastal regions and the marginalized northern parts of the country. However, the strong patriarchal normative framework and the principle of male supremacy are prevalent in both matrilineal and patrilineal communities. Although social attitudes are gradually changing, especially in rural settings, women continue to occupy a subordinate and dependent position to men in virtually every domain of life.

1. The Institutions of Family and Marriage

The male head of household model prevails, and all domestic chores are the exclusive responsibility of women and girls. Although more than not women

306 According to the Ghana Living Standards Survey (Fourth Round 2000) heads of households are: 52.6% Akan-speakers (including Asante and Fanti); 12.4% Ewe; 10.2% Ga-Adangbe; 3.8% Dagomba; 3.2% Guan; 2.7% Dagarti; 1.9% Grussi/Frafra; 1.3% Hausa; and 11.9 % other groups. Of heads of households, 72.8% belong to a Christian denomination and a minority is Muslim (11.8%), although they account for nearly 60% of households in the Northern Region. Only 7.8% of all persons surveyed indicated that they profess a traditional African religion, but many Ghanaians who identify with the Christian or Muslim faith also follow traditional belief systems.

secure the family's main source of income, men are perceived as the "provider." This sexual division of labor corresponds to the obedience of women to male authority and their conformity to differential sexual norms upheld in society. In this respect, infidelity is tolerated for men but constitutes a social taboo for women. Children—girls and boys alike—are groomed from an early age to internalize these stereotypical gender roles.

Discriminatory marriage and family practices sustain unequal gender relations. Marriage entailing the transfer of the bride from one family to the other is perceived as a contract binding two families. In all ethnic groups, the groom's family pays a dowry (money, goods, or livestock) to the bride's family, which in a sense makes the bride a commodity bought by the groom. In some cases, particularly in some parts of the northern regions, young women and girls are exchanged between families to offset dowry payments. Almost by definition, this practice involves a forced marriage for the bride and sometimes the groom; therefore, from the start, seeds of conflict and potential violence are sown into the matrimonial union.

Polygamy is another practice that entrenches women's subordinate position.[307] According to 2006 data, more than one in five women (21.6%) between the ages of 15 to 49 lived in a polygamous union. Polygamy is particularly prevalent in northern regions,; where close to 40% of women live in polygamy.

The Children's Act of 1998 sets 18 as the minimum age for marriage and criminalizes child marriages. However, child and early marriages continue to be performed, because the law is not adequately enforced. This compromises girls' development and deprives them of the information and experience to protect themselves in unequal gender-power structures. Girl children married at younger ages are more likely to drop out of school, are socially more isolated, and are less assertive in pursuing their sexual and reproductive rights. Data from 2006 indicate that more than one out of four of all married women were under 18 when they married.

2. Education

Ghana still has a considerable way to go to achieve universal primary education and gender equality at all levels of education. In 2005, the net enrollment in primary education stood at only 65% for boys and girls alike (UNESCO). A

307 Ghanaian Family Law recognizes three distinct forms of marriage: civil marriage, marriage under customary law, and Islamic marriage registered under the Marriage of Mohammedans Ordinance. Customary law entitles a man to have several wives, while civil marriage is monogamous. The Marriage of Mohammedans Ordinance allows Muslim men to have up to four wives. In practice, many polygamous marriages are never formally registered. The government, however, has indicated that registration is not a prerequisite of legality; once all the required customary rites are performed, a marriage is considered legal.

wide gender gap emerges from the early stages of the schooling cycle, because far more girls than boys drop out of primary school. In 2005, only 69% of girls who enrolled completed the full course of primary education (compared with 75% of boys). The trend continues in secondary school, where the 2005 net enrolment rate was 30% for girls and 37% for boys.

High levels of extreme poverty continue to be a major obstacle to achieving universal education for all children, but particularly for girls. It is not surprising that the country's poorest districts in northern Ghana tend to have the lowest school enrollment and retention rates. Ghana has the lowest rates of schooling and attendance worldwide. The government has invested considerable funds into a capitation grant program to alleviate the burden of school levies on families imposed at the district level, while providing schools with a much-needed inflow of funds. However, these funds do not suffice to cover even the indirect costs, such as school uniforms.

The World Food Program (WFP) supports these laudable government efforts through an on-site school feeding program, which targets impoverished districts in the north and provides 290,000 primary school children with one cooked meal a day, to encourage increased attendance and enhance the capacity of malnourished pupils to follow the lessons.

These initiatives seem to have contributed to a substantial increase in enrollment. The Ministry of Education estimates that enrolment at the primary level in 2006/2007 increased by 7.8% in comparison to 2005/2006. At the junior secondary school level, an 8.8% increase was noted. The increase in the enrollment of girls in basic education was slightly higher than that for boys.

Poverty is only one aspect of the problem. High dropout rates among girls are also rooted in differential values attached to the education of girls and boys. Many families do not want to send their daughters to school because they see education as a mere distraction from a girl's domestic responsibilities. Donor counties and organizations have launched innovative programs to create incentives for families to keep girls in school. The WFP launched a pilot project in 2006, which provides girls in the late stages of primary school and in junior secondary school (i.e., the grades where the dropout risk is highest) with take-home food rations if they achieve at least 85% attendance. UNICEF has provided girls in remote areas with bicycles so that they can complete their morning household chores and still get to school in time. Such programs are no doubt helpful, but they cannot replace sustained efforts on the part of the government, civil society, and the international community to bring a permanent solution to the problem and change the underlying discriminatory gender patterns.

Child marriage, early marriage, and teenage pregnancy also contribute to high dropout rates among girls. Girls who become pregnant are often ridiculed by

their peers and shamed into dropping out. Some districts also seem to have adopted a policy to suspend pregnant girls from schools, to deter pregnancy among other girls. Officials at the central government level assured me that the suspension of pregnant girls, which constitutes a blatant violation of their human right to education, is contrary to official education policy.[308]

3. Employment

The labor market participation among Ghanaian women, including married women and women with children, is very high and practically at the same level as that of men. According to the 2003 Demographic and Health Survey, 75.1% of women and 75.6% of men in Ghana were employed. It is also noteworthy that women seem to have considerable autonomy over the use of their earnings and contribute extensively to family sustenance and the care of their children. Remarkably, more rural women than urban women reported to have full control over their earnings.

The labor market, however, remains strongly segregated by gender. Whereas women work mainly in sales and services, including as self-employed traders, men are primarily employed in agriculture and public sector jobs. The gender segregation also works vertically: women are underrepresented in better paying skilled posts. Three times as many men as women (10% and 3% respectively) work as professional, technical, or managerial staff.

All of the above result in a large wage gap, where women earn about 29% less than men.

4. Public Decision-making Processes

Women are grossly underrepresented among public decision makers. Ghana, with 10.9% female parliamentarians, ranks 89th of 189 in the Inter-Parliamentary Union's ranking of women in national parliaments. Female parliamentarians I spoke with highlighted difficulties in accessing campaign funding and made the criticism that female candidates were rarely fielded in voting districts where their own political party was likely to win. At the district level, women's representation also stands at only about 10%, despite the fact that one-third of district assembly members are directly appointed by the President.

The situation is slightly better in the executive branch and in the judiciary. Six out of 40 members of the Cabinet (15%) and about 17% of judges were women

308 There have been other instances of blatant gender discrimination by local officials. During my visit, for instance, reports emerged that the authorities at the St. Louis Training College in Kumasi had lined up 630 female teacher trainees and subjected them to gynecological examination, due to a suspicion that one of them might have recently had an abortion.

at the time of my visit. In June 2007, for the first time in the country's history, a woman was appointed as Chief Justice.

In 1998 the government adopted affirmative action policy guidelines calling for increasing women's representation to 40% in key positions in public service, in the national

executive, and in policymaking institutions. These guidelines are not binding and the targets are far from being met. However, affirmative action has remained on the agenda in Ghana. In this respect, a draft bill was prepared in 2013 to be presented to the Parliament; the bill is still pending.

Violence against Women

1. Physical and Sexual Abuse in the Family

Physical violence against women is a widespread phenomenon. While there is a lack of up-to-date data, 72% of respondents to a 1998 survey reported that wife beating was a common practice in their community (Pappoe and Arday-fio-Schandorf 1998). Results of another survey published the following year indicated that one-third of all women were experiencing physical violence at the hands of current or previous partners at the time of the survey (Cusack and Coker-Appiah 1999).

The use of violence to enforce patriarchal control over women enjoys widespread social acceptance. According to the 2003 Demographic and Health Survey, 19.8% of men and an even more astonishing 34% of women consider it acceptable for a husband to beat his wife, if she goes out without telling him. Women victims of violence are often expected to silently endure abuse "to protect their family." Women who report their husbands or other family members to the authorities may be ostracized from the family and the community.

There is also a widespread belief that a husband is entitled to sexual intercourse from his wife at his behest and may impose this entitlement by force. According to the 2003 Survey, 10.1% of men and 19.9% of women considered it justified if a husband beat his wife for refusing to have sex with him. However, Ghanaian law, which for so long explicitly protected this male prerogative, has been amended. The Statute Law Revision Commissioner, in exercise of his powers under the laws of Ghana to remove unconstitutional provisions, removed section 42 (g) from the Criminal Offences Act, 1960, (Act 29), whereby a married woman was deemed to have given her blanket consent to her husband using force in sexual relations, thereby preventing the prosecution of marital rape. According to the government, current laws in Ghana do not support rape in marriage.

Unlike domestic violence and marital rape, Ghanaian society does not condone incest. Yet families will often try to cover up the crime to avoid shame, rather than ensure that the perpetrator is punished and the child protected from further harm.

Tanya, a girl from the eastern regions, for instance, was 14 years old when her father raped her on repeated occasions and injured her severely. Tanya's stepmother refrained from helping her, but she was able to report the assault to the police with the help of a neighbor. Tanya's family pressured her to drop the complaint, telling her that she was possessed by demons that turned her into an adult woman at night and made her seduce her own father. When she refused, she was ejected from the home.

A practice known as *tazaba* (direct translation: sister in bed) is reportedly still practiced in some communities in Bongo District and in some eastern regions. The daughter of a man without any sons is given to a paternal cousin to produce a male heir for the family name. The girl does not marry her cousin (who may already have a wife and children) and any son born from that relationship is considered to belong to the family of the girl's father. After giving birth to a son, the girl is freed and may get married, but due to the stigma of single motherhood it is unlikely that she will find a husband.

2. Ritual Servitude and Sexual Abuse

Some communities in the southern Volta Region and certain districts of the Greater Accra Region still practice a custom that was outlawed in 1998, which involves ritual servitude and sexual exploitation of girls. The custom requires a family to offer a virgin daughter as a *trokosi* (slave/wife to the gods) to a traditional fetish village shrine to ward off the punishment of the gods for crimes or moral wrongdoings committed by a family member.[309] The misdeeds for which atonement is sought may often date back generations. One former *trokosi*, for instance, told me that her family gave her to a shrine when she was eight years old, because her great-grandfather had failed to repay a debt and subsequently family members had started to die from seemingly mysterious causes.

A girl designated to become a *trokosi* is usually committed at a very young age (six to ten years old) to the shrine, where an initiation ritual betrothing the girl to the gods is performed. The ritual establishes a relationship of spiritual bondage between the girl and the shrine. From the moment of her betrothal, the *trokosi* must wear special insignia indicating her status, and outsiders are

309 The tradition of *trokosi*, deriving from the Ewe language, is a practice thought to have originated in the 17th century as a means to attract the support of the gods and preserve the "good life" conditions, especially in times of crisis and war. For a review of the tradition from various perspectives, see Gillard 2010.

prohibited from having any sexual contact with the girl. If a man sleeps with a *trokosi*, his family is believed to have incurred the wrath of the gods, therefore, they must also offer a virgin daughter to the shrine. Meanwhile, the man who had sexual relations with the *trokosi* is ritually "purified" and the girl remains a *trokosi* at the shrine.

In addition to performing ritual duties and domestic chores at the shrine, a *trokosi* is also expected to work long hours on farmland belonging to the shrine. She does not receive anything in return for her labor and her family is required to provide her with food and all other necessities. Once a *trokosi* reaches puberty, the shrine's fetish priest (*tronua*) sleeps with the girl to consummate the marriage between her and the gods. Daughters born from such sexual relations also have certain obligations to the shrine.

After serving several years at the shrine, a *trokosi* may be released from servitude if her family pays for a special ceremony. Released *trokosi* are allowed to marry, but they are often unable to find a husband. If a *trokosi* dies during her servitude, her family is expected to replace her with another girl.

In 1998, the government passed a law against ritual servitude (among other things), criminalizing the practice of *trokosi*; however there have been no prosecutions under the law. Government officials were under the impression that the practice had since almost vanished. Information obtained from other sources indicated that the practice continues to thrive. Reportedly, there were at least 23 shrines in the Volta Region and three in the Greater Accra Region that still accepted *trokosi*.[310]

In many districts, the local authorities are reluctant to enforce the law against ritual servitude, fearing a popular backlash. Some also seem to fear adverse spiritual consequences for themselves. While a number of central state institutions, including the Commission on Human Rights, Administrative Justice, and the Ministry for Women and Children's Affairs, have taken a strong stance against the practice of *trokosi*, many elected politicians fail to publicly denounce it in order not to alienate key constituencies.

Certain intellectuals defend *trokosi* as an indigenous religious tradition that provides girls with a form of apprenticeship. None of the former *trokosi* with whom I have spoken shared this view. One 17-year-old girl, the daughter of a *trokosi* and a fetish priest who had herself served in a shrine, asked me why only girls had to suffer to atone for the misdeeds of their families.

310 The shrines and locations where the practice is continued are included in the report I presented to the Human Rights Council in 2008 (A/HRC/7/6/Add.3, footnote 27).

International Needs Ghana (ING) and NGOs have led efforts to liberate *trokosi* and put an end to the practice. According to ING's own estimates, 3,500 girls have so far been liberated and 50 shrines have stopped accepting *trokosi*. ING seeks to liberate *trokosi* with the cooperation and consent of affected communities and shrine priests. Communities willing to cooperate are provided with much needed development infrastructure such as schools and boreholes. Shrine priests are encouraged to accept livestock or monetary donations, instead of girls, from families seeking to appease the gods. Once agreement is reached, a ritual is performed to break the spiritual bondage tying the *trokosi* to the shrine. Liberated *trokosi* are provided with the skills to reintegrate into ordinary life at the ING Vocational Training Centre.

3. Female Genital Mutilation

Female genital mutilation (FGM) has been traditionally practiced by several ethnic groups from northern Ghana. Victims can also be found among immigrants from neighboring countries, where FGM is highly prevalent. UNICEF (2005) has estimated that 5.4% of all women in the 15 to 49 age group in Ghana have been subjected to FGM.[311] In 1994, Ghana criminalized the practice. Since then, successful prosecutions of those performing FGM have been reported, especially from the Upper West and Upper East Regions. In 2007, parliament further strengthened the law against FGM by increasing the maximum penalty to ten years of imprisonment and extending the range of persons who can be prosecuted for involvement in an act of FGM. Officials at all levels of government, including the President, have also publicly condemned FGM.

While there are indications that the practice of FGM in Ghana may be declining as a result of these initiatives, new cases continue to be reported. Civil society organizations and medical practitioners note that FGM is increasingly performed on younger girls, who are less likely to resist or report the crime. Some families apparently also send their daughters abroad to have the procedure carried out with impunity. Officials have stated that the Ghanaian law banning FGM does not apply extraterritorially; therefore it is not possible for the Ghanaian authorities to take action against its citizens who perform FGM in a neighboring country, even if they find out about such cases.

4. Violence against Girl Domestic Workers

Ghanaian law sets the minimum age for formal and informal employment at 15, although children are permitted to engage in "light work" from the age of 13, provided that it does not harm their health or education. Children under 18 are

311 www.unicef.org/publications/files/FGM-C_final_10_October.pdf.

not allowed to undertake certain types of hazardous labor and are prohibited from working at night. Yet hazardous child labor remains a problem. A 2004 International Labour Office (ILO) study estimated that about 11% of school-age children in Ghana and 56.5% of rural school-age children in northern Ghana are engaged in some form of labor. A World Bank paper on child labor in Ghana reported that girls are more likely than boys to be employed in hazardous forms of labor (Blunch and Verner 2000), and according to 2005 data, 15.6% of children in the six to14 age group actively participated in the labor force (Krauss 2013).

Many rural families living in extreme poverty send their daughters to urban areas to live with more affluent families, where they serve as domestic workers in exchange for shelter, food, and sometimes a minimal income. The ILO (2004) found that most girl domestic workers started their work between the ages of 11 and 16 and worked eight to 12 hours per day without sufficient rest, which would imply that they are engaged in one of the worst forms of child labor as defined by ILO Convention No. 182.

5. Kayaye: Violence against Girls Working on the Street

Girls also migrate on their own from impoverished areas in the north to the big urban centers in the south, where they work in the markets and streets as head load carriers (*kayaye*) or in other jobs. Most of the girls are only ten to 14 years old when they first migrate. An estimated 90% of the girls are illiterate and they typically migrate to escape extreme poverty and lack of other options. Many girls also see the *kayaye* experience as an opportunity to acquire the dowry they will need to get married later on in life. Family problems, including exploitation and abuse, are often additional factors pushing girls to leave their homes. It is an old tradition for families who are not socio-economically well off to send especially their girl children to live with relatives who are better off; this practice was traditionally meant to meet the children's basic needs and foster family solidarity and kinship ties. However, with the erosion of social convention underlying such relationships among families, today these children are often exploited and abused by their relatives and some have sought salvation in working as *kayaye*.

- Amina from Tamale, for instance, was six years old when she was sent to live with an aunt, who made her sell food in the local market. If she sold well, she would receive food, if not she would be beaten and left hungry. When she was eight years old, she stole a small amount of money from her aunt and took the bus to Kumasi (Ashanti Region) to work as a *kayaye*. Unable to live on the little money she earned, she returned to her family in Tamale, but unable to endure the ill treatment she left again and at age ten she went to Accra to work as a *kayaye*.

The girls who head south often migrate with the knowledge and consent of their family.[312] Once they arrive in the urban centers, the *kayaye* have to work and live on the street, under dangerous and miserable conditions. Being vulnerable to exploitation and abuse, they often have to seek the "protection" of older street boys in exchange for sex. As a result, many become pregnant outside of marriage and are often ostracized when they return to the north as single mothers.

Some girls abandon *kayaye* work altogether and are fully drawn into Ghana's growing child prostitution sector, which increasingly also seems to cater to foreign child-sex tourists. Girls have reportedly also been trafficked and subjected to commercial sexual exploitation in other West African countries and western Europe. While the government has reacted by adopting a comprehensive Human Trafficking Act in 2005, still more needs to be done to enforce the Act and strengthen Ghana's anti-trafficking cooperation with neighboring countries.

Girls Growth and Development in Tamale is a civil society organization that helps former *kayaye* who return home to their region integrate back into society, by providing them with vocational training and basic education. The 18-year-old Fatima, who participated in these programs, recounted her story:

- Fatima had to live with her maternal aunt after her mother and grandmother had died, because her father was unwilling to take responsibility for her. The aunt exploited and abused Fatima, and at the age of ten she migrated to Accra to work as a *kayaye*. When she was 14, her boyfriend, a fellow street boy, raped her and she became pregnant. She gave birth and returned to the north, where Girls Growth and Development provided support for her and her child. At the time of my visit, Fatima was learning to sew at Girls Growth and Development and aspired to buy a sewing machine with a microcredit loan, so she could provide for her child.

6. Violence against Women Accused of "Witchcraft"

Belief in supernatural forces is quite widespread and deeply rooted in Ghana, and there are many cases especially in rural areas, in which women—and occasionally men—are accused of practicing witchcraft to bring harm to members of their family or community. Being accused of practicing witchcraft is a very serious charge that can have grave consequences. Accused women are often driven violently from their homes and communities, physically assaulted, and, in extreme cases, also murdered.

312 Some reports indicate that organized networks increasingly approach impoverished families to recruit girls as *kayaye*.

Despite its serious ramifications, an accusation of witchcraft can be easily triggered. A community member may dream that a certain woman is a witch, or an adverse event may occur in the community that cannot be explained, such as a suspicious or unexpected death of a community member. In such instances for various reasons a person will be made a scapegoat with witchcraft allegations. In some cases, witchcraft allegations seem to be deliberately directed at women who are successful and are seen as a threat to the patriarchal order.

Violence against women branded as witches is reported from all regions, but the issue is more visible in the north due to the existence of so-called "witches' camps." This misleading term refers to settlements established with the consent of the local community, where women accused of witchcraft, and in some cases family members who flee with them, can seek refuge and protection from persecution by their own community or family. In that sense, a witches' camp is a protection mechanism comparable to a women's shelter in the contemporary sense.

During the course of my mission, I visited the settlement in Gambaga (East Mamprusi District, Northern Region), which is officially called the Gambaga Outcast Home. Its origins are said to date back to the 1900s, when a local *imam* took pity the on women accused of witchcraft and provided them with refuge on a field near the village. Eventually, the local chief (the *Gambarana*) assumed this protective role. The *Gambarana* is thought to be vested with the special spiritual power to determine whether a woman is a witch or not. It is also believed that he can purify witches and extinguish their supernatural powers.

Around 80 women, between the ages of 40 and 70, lived at the Gambaga Outcast Home. Some of these women had lived in Gambaga for more than 20 years, because their community or family steadfastly refused their return. The local population in Gambaga is not afraid to live and interact with these women, since tradition holds that the local gods neutralize a witch's power to practice her craft once she comes to Gambaga. Nevertheless, a certain stigma remains, and women accused of witchcraft can usually only engage in certain limited income-generating activities such as firewood collection that do not require contact with the villagers. Since these women also lack the support of their own family, they are completely destitute.

The Gambaga Outcast Home Project, an exemplary initiative, provides support to women and facilitates their return to their own villages and normal lives. Since the convictions of the local population about witchcraft are very strong, the project does not question the very notion of witchcraft but tries to address the social and spiritual dimensions of each individual case.

- Aisha, 47, one of the women supported by the project, had to flee to Gambaga when a woman from her community dreamt that she was a witch and subsequently died from a seemingly inexplicable cause. Community

members severely beat Aisha and her husband when he tried to protect her. They burned her house and threatened to kill her. When she came to Gambaga, the *Gambarana* determined that she was indeed a witch and should, at least for the moment, not return to her community; he allowed her to seek shelter in Gambaga. After intense negotiations, the project staff managed to convince Aisha's home community to rebuild Aisha's house and allow her to occasionally visit her husband. The *Gambarana* supported the reintegration process by performing a ritual to free the bewitched soul of the woman who supposedly died from Aisha's alleged witchcraft. At the time of my visit, another ritual was being planned to fully remove Aisha's supposed witchcraft powers and reconcile her with her community.

7. Situation of Widows

While Ghanaian customary law denies women the right to inherit, it obliges the heirs of the deceased to maintain his widow and children. In many cases, however, not even this obligation is respected and those invoking customary inheritance rights evict widows from their homes. The Intestate Succession Law seeks to protect widows against eviction by making it a criminal offense to evict a widow or her children from the family home within the first six months of the husband's death. Unfortunately, this protective norm is often wrongly interpreted as permitting evictions after six months have passed.

Several communities practice levirate marriage/widow inheritance, requiring the widow to marry (formally or informally) her late husband's brother as recourse. In other communities, the woman is "inherited" by one of the sons born to another wife of the deceased husband. These marriages are not simply a social support arrangement for the widow, since the man is permitted to have sexual relations with the widow. The children born from these relations are considered to be the deceased husband's, and thus, are often neglected by their biological fathers. Widows are in no position to refuse such arrangements.

State Response to Violence against Women

1. Domestic Violence Act

The Domestic Violence Act no. 732 was adopted by the Ghanaian Parliament in May 2007, after three years of extensive negotiations and sometimes heated public and political debate. Following a broad and gender-neutral definition of domestic violence, the Act criminalizes physical, sexual, and psychological abuse, intimidation, threats, and harassment between spouses and other intimate partners, former partners, family members, and co-tenants.

The Act also criminalizes "economic abuse" in the domestic relationship, which is defined as the "deprivation or threatened deprivation of economic or financial resources which a person is entitled to by law, the disposition or threatened disposition of moveable or immovable property in which another person has a material interest and hiding or hindering the use of property or damaging or destroying property in which another person has a material interest." Given the prevalence of extreme poverty in Ghana, practices such as property grabbing can have serious consequences beyond violence, and the criminalization of such acts is no doubt a promising step.

Furthermore, the Act stipulates that the use of violence in the domestic setting is not justified on the basis of consent, thereby ensuring that the crime of marital rape can now be prosecuted in Ghanaian courts. The new law also accords the courts with the power to issue protection orders. Among other things, courts may order a perpetrator of domestic violence to seek counselling or treatment, pay his victim's medical expenses, and relocate from the common domicile, while continuing to pay rent. If a protection order is breached, courts are to impose fines and/or imprisonment of up to two years.

Criminal sanctions—monetary fines or imprisonment—against a perpetrator of domestic violence may have a negative impact on the entire family; therefore, the courts may refer cases of non-aggravated domestic violence to settlement by alternative dispute resolution methods such as mediation. In doing so, the Act stipulates several safeguards seeking to ensure that "settlement" does not result in impunity or revictimization: the courts may appoint a probation officer and the perpetrator may be required to attend counselling where necessary.

At the time of my visit, the Ministry for Women and Children's Affairs was working to develop a comprehensive domestic violence action plan in consultation with other stakeholders. To ensure its effectiveness, the action plan must be guided by empirical facts and gender analysis and must prioritize the two most prevalent forms of domestic violence: violence against women and violence against children, as well as recognize the distinct characteristics of these forms of violence. In addition, an adequate budget must be earmarked for the implementation of the Domestic Violence Act and its action plan.

2. Capacity of the Police and Justice Sector

In 2005, the Ghana police service transformed its Women and Juvenile Unit into a Domestic Violence Victims Support Unit (DoVVSU) tasked to investigate all crimes involving domestic and gender-based violence. This unit is seriously under-resourced. Moreover, at the time of my visit (July 2007), it lacked the basic equipment to effectively investigate crimes—for instance, it only had five cars and ten motor bikes at its disposal in the entire country. In practice, this

often meant that a victim of domestic violence has to hire a taxi, at her own expense, to take the police to arrest an alleged perpetrator.

The police assigned to this unit also require more training on communication skills with the traumatized victims of gender-based violence and on the full extent of the law. Many police officers are said to attempt on-the-spot settlements between perpetrator and victim, even though the Act accords such powers only to courts.

Many of my interlocutors also criticized the length of judicial proceedings. Domestic violence cases are often adjourned several times, until victims run out of courage or the funds to pursue their case. In our discussions, the Chief Justice acknowledged this problem. Apart from additional efforts to reform the overburdened justice system, she suggested that courts reserve special days to swiftly deal with cases involving domestic violence.

There are also problems with the data compiled by law enforcement authorities. For instance, statistics kept by DoVVSU reflect only the types of reported crimes, without indicating the victim's sex and her/his relationship to the perpetrator. This data is absolutely crucial in terms of combatting violence against women. Especially considering the gender-neutral definition of domestic violence in the Domestic Violence Act, the lack of such data becomes exceedingly striking.

3. Victim Support and Protection

The Domestic Violence Act requires the police to provide victims of domestic violence with protection, yet there are almost no facilities for this purpose. In the whole country, there is only one women's shelter, which is operated by the non-governmental Ark Foundation and relies exclusively on donor funds. As such, police often have no choice but to keep the women, who are fleeing violence, in the police station overnight, before sending them back home—to the abusive environment—the very next day.

Victims are legally entitled to free medical treatment provided by the state in case of emergency or a life-threatening situation, but this norm is not implemented either. Instead, state hospitals and doctors charge a fee of 15-30 new *cedis* (about US$15-30) to issue a medical certificate confirming the abuse. Victims, who are not covered by the Ghana National Health Insurance, cannot afford to obtain the medical evidence and thus may have to withdraw their complaint.

Living in Accra, 16-year-old Catherine was sexually molested by her father and pressured to have intercourse with him when she was 14. She refused and went to the police station; she was referred to DoVVSU, where her statement

was taken and an arrest warrant was given for her to take back to the police station. There, she was told that no cars were available and she would have to hire a taxi for the arrest warrant to be executed. Not being able to afford the taxi fare, Catherine dropped the case. She returned home after an NGO obtained assurances from the father that he would not harm her. Since her return, the father has physically abused her on a regular basis and has refused to pay for her schooling. None of her relatives, including her own mother who lives in a new relationship, is willing to provide her with shelter. Catherine lives under serious risk of violence, including rape by her father.

Conclusions

The realization of commitments to gender equality made under the Constitution and of the state's international obligations remains a serious challenge in Ghana, where women's subordinate position is maintained through discriminatory and harmful practices. The Domestic Violence Act of 2007 marks an important step forward, which needs to be swiftly followed by the adoption of a domestic violence action plan and an earmarked budget to implement the Act.

Violence against women is widespread, and some groups of women are particularly vulnerable. Despite the legislation, girl children continue to be sexually abused in the family, subjected to early or child marriage, exploited as a *kayaye* or domestic workers, or subjected to FGM or ritual servitude. Some women are accused of practicing witchcraft and driven violently from their families and homes. Widows are often deprived of their inheritance and condemned to humiliating and deprived lives. The police, courts, social services, and the health sector are not sufficiently equipped and trained to effectively protect women facing violence.

Constitutionally recognized traditional authorities and the customary law, which wield considerable influence in the society, often pose additional challenges for the advancement of women. The state authorities and civil society, with the support of the international community, need to engage and, where necessary, compel the customary system to fully respect the rights that women and girls are entitled to under the Constitution and international law.

High levels of poverty and the external debt burden limit the government's margin of operation to prioritize allocating sufficient resources for universal basic education, gender parity in education, and the economic and social development of marginalized regions and districts. The international community has a responsibility to support the government's

efforts to promote gender equality and eliminate violence against women through targeted funding and technical cooperation, further debt relief, and, perhaps most importantly, fairer terms of trade.

X. Democratic Republic of the Congo[313]

Recent History and Politics

The recent history of the Democratic Republic of the Congo (DRC) is marked by two major armed conflicts, involving a multitude of actors, the roots of which date back to the divide and rule strategies of the colonial era.[314] An estimated four million people died as a result of the direct and indirect consequences of these wars. The first Congolese war was an aftermath of the 1994 Rwandan genocide. Thousands of perpetrators of the genocide from the Hutu ethnic group, along with about one million refugees, fled from Rwanda to the west into the Democratic Republic of the Congo (then called Zaire[315]). Fearing cross-border attacks, Rwandan military forces in pursuit of the Hutu invaded Zaire in 1996.[316] Also backed by Uganda, Rwandan troops supported a rebel alliance in the DRC, led by Laurent Kabila, that took the capital Kinshasa, ousted the dictator President Mobutu, and installed Kabila as President in 1997.

In 1998, the second Congolese war erupted, with armed groups based in Rwanda attempting to take over the DRC. The Rwandan armed groups supported by Uganda and Burundi were repelled by Kabila with the support of an alliance of Angolan and Namibian forces. These conflicts divided the DRC and led to the emergence of different power groups and an ensuing civil war that lasted years. In 2001, Laurent Kabila was assassinated, and his son Joseph Kabila assumed the Presidency. Following many years of negotiation, in 2002 a power-sharing agreement was signed and in 2005 a transitional government

313 From July 16 to 27, 2007, I carried out an official visit to the Democratic Republic of the Congo at the invitation of the government. During my mission, I focused on sexual violence used as an instrument of war during the civil war. Given the vastness of the country, I was able to get first-hand impressions only in the capital Kinshasa, South Kivu Province, Equateur Province, and the Ituri District. While my findings concentrate mainly on the situation in these localities, reports by independent monitors indicate that patterns of violence I observed are prevalent throughout the country. In addition to visiting various institutions such as hospitals and police stations in the provinces I visited, I also visited the Kinshasa Central Prison in Makala, Bukavu Prison, Mbandaka Central Prison, and the Groupe Litho Moboti Military Prison in Mbandaka.

314 The war in the DRC, which involved many actors, has been termed the "seven-nation war," indicating the number of actors involved at the state level alone (Newman 2006:145).

315 The official name of the country has been changed many times throughout its history; since 1997 it is called the Democratic Republic of the Congo.

316 More than 800,000 Tutsi and moderate Hutu were killed by the radical Hutu (*Interahamwe*) during the conflicts in Rwanda in 1994. These massacres, which lasted a hundred days, ended when the troops led by Kegame, the leader of Rwandan Patriotic Front and supported by the Tutsi, overthrew the *Interahamwe*. However, hundreds of Hutu, some of whom were perpetrators of genocide, fled to Zaire (DRC) in fear of counter massacres.

was formed. A constitution was approved by public referendum, followed by presidential, parliamentary, and provincial elections in 2006. Joseph Kabila was sworn in as President on December 6, 2006, as the first president taking office through elections in the country since 1965.[317]

The successful conclusion of the initial electoral process in the DRC has been considered an important step towards stability; however, security and peace have not been completely ensured. At the time of my visit, armed conflict and hostilities involving the state security forces, dissident factions of the Congolese Army (Forces Armées de la République Démocratique du Congo—FARDC), and various non-state armed groups were ongoing in the eastern parts of the DRC.[318] The presence of an estimated number of 6,000 to 7,000 foreign radical Hutu continuing to operate in the DRC had exacerbated ethnic tensions and led to the escalation of hostilities in the Kivu districts.[319]

Control of the country's abundant natural resources is central to the conflicts. In 2001, the UN Panel of Experts on the illegal exploitation of natural resources and other forms of wealth found that mass-scale looting had taken place in territories conquered by the armies of Burundi, Rwanda, and Uganda during the second Congolese war.[320] The systematic exploitation of natural resources continued through the joint ventures of top army commanders, businessmen, and government officials. Non-state armed groups active in the eastern DRC also usurped natural resources to finance themselves. In July 2007, a Group of Experts appointed by the Security Council (pursuant to Security Council resolution no. 1698 dated 2006) to investigate the illicit transfer of certain embargoed materials to eastern regions of the DRC, confirmed that the most profitable financing source for armed groups is the exploitation and trade of natural resources.[321]

317 At the general elections held on November 28, 2011, which took place in an environment of violence and chaos, Kabila was able to retain office as President.

318 Local armed groups in the eastern Kivu and Ituri districts in particular have continued to fight, on the grounds that they were protecting the Hutu in those regions from the Tutsi. Between March 22 and 25, 2007, forces loyal to the opposition leader Jean Pierre Bemba from the Equateur Province and FARDC violently clashed in Kinshasa, and Bemba went into exile. Hundreds of deaths and injuries have been reported in these clashes, and numerous attacks have been documented against persons perceived to be affiliated to Bemba or even natives of Equateur Province.

319 In 2008, the governments of Rwanda and the DRC signed a cooperation agreement to find a common solution to the problem, however security could not be established in the eastern regions.

320 S/2001/357.

321 S/2007/423, para. 37.

During the transitional period, Congolese leaders mortgaged the country's future revenues by awarding mining concessions in areas controlled by the government. In 2005, a national commission headed by the vice president of the time, declared that a significant number of mining contracts signed by government authorities between 1996 and 2003 were either illegal or detrimental to the country and recommended their termination.[322]

The Magnitude and Nature of the Sexual Violence

Sexual violence has been a defining feature of the Congolese armed conflicts. The magnitude and nature of this violence must be assessed against the historical and political background summarized above. Even though the war has ended, extreme levels of violence against women, including sexual violence perpetrated by non-state armed groups, state security forces, and civilians, persist in those areas of the eastern DRC that are still experiencing hostilities. However, war on women is not restricted to zones of armed conflict; it is rampant in the whole country.

The perpetrators of sexual violence often belong to state security forces. The UN Organization Mission in the DRC (MONUC)[323] Human Rights Division found that 54% of all sexual violence cases documented in the first six months of 2007 were committed by the FARDC and 43% by the national police force (Police Nationale Congolaise—PNC). Members of the Republican Guard, the Police Special Services (Kin Mazière), and the National Intelligence Agency have also been cited as perpetrators of rape. Human rights observers also note an increasing number of rapes of women in detention during this timeframe. Reports also indicate that prison guards have forced female detainees into prostitution.

322 In April 2007, the Minister for Mining created an Interministerial Commission to revisit mining contracts and renegotiate them where necessary. Ironically, while DRC is a very rich country in terms of natural resources, its people live in abject poverty. This wealth has always been a source of exploitation, particularly during the period in question, when numerous regions villages were depopulated and agricultural fields pillaged for mining explorations (Jackson 2011:277-82).

323 Following the signing of the Lusaka Ceasefire Agreement between the DRC and five regional states in July 1999, the Security Council established the UN Organization Mission in the Democratic Republic of the Congo (MONUC). Later in a series of resolutions, the Council expanded MONUC's mandate to include supervising the implementation of the Ceasefire Agreement and it assigned MONUC multiple related additional tasks. MONUC was renamed as of July 1, 2010, as the UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) to reflect the new phase reached in the country (http://www.un.org/en/peacekeeping/missions/past/monuc/).

The number of rapes committed by civilians has also been on the rise. Some of these civilian perpetrators are said to be militiamen demobilized without being put through any reintegration programs. Even more worrisome, the atrocities that took place in the country seem to have eroded all social mechanisms that would have constrained the extensive use of sexual violence. As one woman's rights activist explained: "In the past, burglars would rob a house and then leave. Today, they will first rape all the women in the house and then steal."

Young girls have also increasingly become victims of sexual violence, as there are myths that HIV and AIDS can be cured through sexual intercourse with a virgin. The Hospital of Médecins sans Frontières in Bunia (Ituri), for example, reported that 17% of patients who were treated at the hospital for rape-related injuries in the first half of 2007 were girls younger than 12 years.

Sexual Violence by State Security Forces

Different units of state security forces are among the perpetrators of sexual violence. In some areas, rapes seem to be systematically employed to intimidate the local population. FARDC soldiers of the 109th Brigade based in Uvira were repeatedly accused of rape. On March 22, 2007, for instance, soldiers of this Brigade reportedly raped a 13-year-old girl.

According to reports, individual soldiers and police also routinely extort money and other goods from the local population. Such extortion may often be accompanied by rape. Individual perpetrators in these cases are mostly not held to account by their commanders.[324]

Sexual Atrocities by Non-State Groups

FDLR (Forces démocratiques de libération du Rwanda) and its various factions are major perpetrators of rape in South Kivu. One of these factions, known as "Rasta," has proven to be particularly violent. Operating from dense forest areas, FDLR terrorizes the local population by raiding settlements, looting, murdering, and gang-raping. Women and girls are abducted and taken to the forest, where they are sexually abused and enslaved in inconceivable ways. Many families leave their homes before nightfall to seek shelter in better protected areas.

A number of FDLR/Rasta fighters are Rwandan nationals, some of whom are thought to be implicated in the Rwandan genocide. The sexual atrocities committed in South Kivu are indeed reminiscent of those perpetrated by *Interahamwe* militia during the Rwandan genocide. The atrocities are structured

324 There are countless reported cases; and the identities, ranks and posts of some of the perpetrators are also known. There are many specific examples of such cases from the DRC in the report I presented to the Human Rights Council (A/HRC/7/6/Add. 4).

around rape, sexual slavery, and forced marriage. They strategically aim at the complete physical and psychological destruction of women and destabilization of the entire society. Women are brutally gang-raped, often in front of their families and communities. In numerous cases, men are forced at gunpoint to rape their own daughters, mothers, or sisters. In some cases women were shot or stabbed in their genital organs after they were raped. Women who survived months of enslavement told me that their tormentors had forced them to eat excrement or the human flesh of murdered relatives.

One woman who survived the atrocities described how she and other villagers fled their homes every night to seek protection in the bush. One day in 2005, a group of Kinyarwanda-speaking men, whom she described as *Interahamwe*, tracked them down. They first executed the villagers' leader and later the woman's brother, when he refused to rape her. The woman, her two children, and about 50 others were marched off into the forest where the militia was camped and a series of heinous acts were committed: When one of her children fell, the perpetrators forced her to kill her child. In captivity 19 different men raped her. On one occasion, the commander of the group forced her to fry and eat the hands and feet of her murdered sister-in-law. At regular intervals, the militia would execute the abducted women and men they no longer needed, after forcing them to first dig their own graves.

On the night of July 21, 2007—while I was visiting South Kivu—FDLR/Rasta attacked the village of Nybishaka (60 km southwest of Bukavu), looted several houses, and abducted two women. Six nights later, a group of men in uniform, believed to be FDLR, attacked another nearby village and abducted four women. The following day, one woman was found murdered, another was seriously wounded.

Sexual Abuse and Violence Committed by UN Peacekeepers

In 2004, media reports alleged that MONUC peacekeepers had engaged in large-scale sexual exploitation of Congolese women and girls. The findings of the investigation conducted by the UN Office of Internal Oversight Services (OIOS) in Bunia (Ituri District) were published in January 2005[325] confirming that sexual contact between Congolese women and girls and peacekeepers occurred frequently, usually in exchange for food or small sums of money, often involving girls between the ages of 13 and 18. The OIOS investigation revealed a "pattern of sexual exploitation" in the DRC, contrary to the standards set by the Department of Peacekeeping Operations of the UN Secretariat, which

325 A/59/661.

prohibit any solicitation of prostitution, regardless of the age or consent of the person solicited.

Against this backdrop, the Secretary-General appointed Prince Zeid Ra'ad Al Hussein, Permanent Representative of Jordan to the UN and current UN High Commissioner for Human Rights, to develop a comprehensive strategy on sexual exploitation and abuse in peacekeeping operations. The strategy was debated in the General Assembly in April 2005 and a number of Prince Zeid's recommendations have since been adopted. In July 2007, the General Assembly recommended that standards of conduct, including standards on sexual exploitation, be included in the revised draft model memorandum of understanding between the UN and troop contributing countries.

The Department of Peacekeeping Operations also established a Conduct and Discipline Team within MONUC to provide advice on disciplinary issues, raise awareness, and channel reported cases of serious misconduct to OIOS. Despite these positive measures, sexual exploitation and abuse within MONUC has remained a serious concern. In 2006 the UN recorded 176 allegations in which MONUC personnel were accused of having engaged in sexual exploitation or abuse.[326] While a number of these allegations may eventually prove to be unsubstantiated, others unfortunately have been confirmed with solid evidence.

Some troop contingents still fail to address allegations of sexual exploitation and abuse with due diligence. In some instances, they even attempt to cover up cases. In February 2007, OIOS reported that it had substantiated allegations that a military contingent member of MONUC had sexually abused an underage girl, which resulted in the birth of a child.[327] OIOS also investigated similar allegations involving another girl and a member of the same military contingent; this allegation could not be substantiated because the alleged victim could not be located. In both cases the commander of the respective military contingent had provided subsistence support to the families of the girls for more than seven months, presumably to prevent them from complaining.

Gaps and inconsistencies in the legal and procedural framework still allow perpetrators to escape criminal accountability, even where allegations can be substantiated and the perpetrator is removed from the peacekeeping mission. In cases involving civilian peacekeepers, impunity may ensue, because the perpetrator's country of nationality may not exercise extraterritorial jurisdiction over crimes of sexual exploitation and abuse.

326 This figure represents almost half of the 357 allegations recorded for the UN Department of Peacekeeping Operations personnel worldwide in 2006.

327 A/61/264.

These jurisdictional problems do not apply to military personnel, because military penal codes generally provide for their extraterritorial application. However, cumbersome procedures often prevent the successful prosecution of soldiers for crimes committed in other countries. Troop-contributing countries will usually first repatriate the offending soldier/officer and then carry out a criminal investigation into the case. At this point, witnesses may be inaccessible and important forensic evidence may be lost. Prince Zeid's report recommends that troop-contributing countries conduct on-site courts martial for these crimes. The South African contingent in MONUC has followed this recommendation, which sets a commendable example.

The UN still lacks a mechanism to provide victims of sexual exploitation and abuse with adequate compensation in cases involving peacekeeping operations personnel. At the time of my visit, victims of MONUC abuse could obtain no more than emergency assistance from the UN within current mission budgets. In addition, there are no mechanisms to ensure that fathers of babies born from relationships between MONUC personnel and Congolese women pay child support, nor are there any means to compel a father to do so. The only option for the mother would therefore be to sue for child support in the dysfunctional Congolese judicial system, which is a futile course of action in many respects.

The Situation by Region

1. South Kivu

The situation in South Kivu is the worst crisis of violence against women that I encountered in my work as Special Rapporteur. The Provincial Synergy to Combat Sexual Violence in South Kivu, an action committee bringing together dedicated governmental, civil society, and UN representatives, recorded 4,500 new cases in the first six months of 2007. According to the Committee, 70% of all rapes in South Kivu were committed by non-state groups, 16% by members of FARDC and PNC, and 14% by civilians. According to figures obtained through MONUC, an estimated 14,000 new rapes were recorded in 2005 and 13,000 in 2006. The real number of cases is certainly many times higher, since most victims live in inaccessible areas and are afraid to report. Furthermore, there are inconsistencies in the methodologies used in recording reported cases, which affects the reliability of data.

2. Ituri District

The local dynamics in Ituri have been heavily affected by the Congolese wars and the politics surrounding them. Long-standing tensions between the Lendu and Hema ethnic groups were transformed into a local armed conflict. The

militia groups involved, claiming to fight in defense of their own ethnic group, targeted the civilian populations indiscriminately, killing thousands of civilians or causing them to become internally displaced. Women in particular were treated as war booty and sexually abused.[328] One Lendu woman from a village 40 km west of Bunia, whose village was attacked by Lendu militia in January 2004, described to me how her husband and four children were executed in front of her eyes. She and 30 other women of the Lendu, Hema, and Bira ethnic groups were abducted, sexually enslaved, and subjected to additional forms of humiliation and torture. When fighters from the Union des Patriotes Congolais attacked the Lendu militia and took control of the camp, the fighters subjected the women to the same sexual atrocities as the previous group of men had done.

Efforts to demobilize non-state militia and integrate them into society or the FARDC have improved the overall security situation in Ituri. However, sexual violence continues, especially since more and more civilians commit rape. Between April 2006 and June 2007, Cooperazione Internazionale, which runs a program for survivors of sexual violence, identified and reached more than 6,000 victims of rape in accessible areas. In 2006 the Médecins sans Frontières Hospital in Bunia treated almost 2,000 rape victims. Observers who work in field have emphasized that as high as these figures may appear, they almost certainly represent only a tiny proportion of the total and there are thousands of women they cannot reach in remote areas.

Data provided by various sources indicate that the state security forces commit one in five rapes. Many cases are recorded; however, most times the perpetrators go unpunished. One exception is FARDC Major Komboko, who raped the 12-year-old daughter of another FARDC officer on April 28, 2007, and was sentenced to ten years in prison by the military court. There are numerous recorded cases of FARDC soldiers systematically using rape as an instrument of violence against the civilian population during military operations.[329] Some of these cases have been submitted to the court. For instance, the Bunia Military Tribunal sentenced 13 soldiers to life imprisonment in connection with the systematic atrocities against civilians on February 19, 2007, and convicted 17 soldiers for looting and failure to observe military regulations on June 18 of the same year.

The court also ordered the perpetrators and the state to pay a total of US$98,000 in compensation to the victims at the June hearing. Except for Captain Mulesa,

328 On October 17, 2007, the Congolese authorities surrendered and transferred Germain "Simba" Katanga, a commander of the Force de résistance patriotique en Ituri to the International Criminal Court (ICC). The ICC's arrest warrant accused Katanga, among other things, of sexual enslavement of women.

329 For details, see my DRC Report (A/HRC/7/6/Add. 4: 9).

who was convicted for the crime, none of the other men were prosecuted for rape, since the military prosecutor considered that the available evidence did not suffice to secure a conviction.

3. Equateur Province

In Equateur (in the northwest of the country), where the armed conflict ended several years ago, relationships between the local population and the central authorities remain volatile, since a large part of the local population reportedly supports the opposition movement of Jean Pierre Bemba. The local population is very sensitive to actual or perceived governmental injustices, and acts of violent self-justice occur frequently. Civil disobedience results in collective punishments. State security forces respond with armed and organized reprisals that indiscriminately target the civilian population, involving looting, torture, ill-treatment, and rape, carried out in public. The rates of reported sexual violence cases are alarmingly high. Between June 2005 and June 2007 more than 2,500 victims of sexual violence were identified just in the accessible areas of this vast, densely forested province.

In December 2006, a mob of 250 villagers in Karawa reportedly attacked a police station and lynched a man held at the station. In response, the PNC assembled about 70 police officers from other duty stations in the region and pillaged Karawa, tortured civilians, and raped at least 30 women, including a pregnant woman and four minor girls. According to the information I received, the Military Prosecutor launched an official investigation, but no police officer was arrested or prosecuted in relation to this case. It is reported that numerous similar incidents took place in different parts of the Equateur Province in 2006 and 2007.[330]

Equateur Province was also the site of several mutinies of FARDC soldiers that involved mass rape. In December 2003, soldiers from the 9th Battalion stationed in Songo Mboyo mutinied following rumors that the commander had stolen their salaries. They looted the village and brutally raped at least 200 women. One victim described to me how she was gang-raped by 17 soldiers before the men forced her father at gunpoint to rape her. During the investigation of the incident, which caused an uproar, victims and witnesses received death threats and had to be relocated to other areas. Six soldiers were eventually convicted for crimes against humanity and sentenced to life imprisonment. All six men have since escaped from prison under dubious circumstances.

A similar incident occurred in July 2005. Soldiers of the 39th Brigade in Bokala attacked the civilian population when the body of a FARDC soldier was

330 For details, see my DRC Report (A/HRC/7/6/Add. 4: 11-12).

discovered. At least 64 women were raped, and more than 1,500 persons were subjected to torture, while the village was looted. In June 2006, 40 perpetrators were sentenced. Applying the Rome Statute of the International Criminal Court for the first time in the history of the DRC, the Court of First Instance sentenced eight ringleaders to life imprisonment on counts of "crimes against humanity." On appeal, the life sentences against three of the eight accused were confirmed.

Survivors of Sexual Violence

1. Care and Treatment

Many survivors of sexual violence who escape these atrocities are severely injured and face grave health problems, since most rapes are collective and carried out with extraordinary brutality. Medical data collected in South Kivu showed that more than 26,000 women in the province sought medical assistance for rape-related injuries in 2006.

In some cases, the perpetrators deliberately seek to destroy the victim's genital and reproductive organs. At the Panzi Hospital, I interviewed a ten-year-old girl who had been abducted by armed men she described as "*Interahamwe*." The perpetrators rammed a stick into her vagina, damaging her genital organs irreversibly. Hospital officials reported 20% of all rape victims have suffered irreparable damage to their genital organs.

Many rape victims also suffer vaginal fistula, i.e., the tearing of a hole (fistula) in the tissue between the vagina and the rectum or the vagina and the bladder. A woman suffering from fistula can no longer hold her urine or feces. In addition to the physical pain, many child and women victims of sexual violence must cope with the humiliation of the constant smell. Left untreated, fistula can lead to chronic medical problems. Treatment of fistula requires surgery, which cannot be performed at underequipped local health centers without trained medical staff. The few existing specialized medical hospitals, such as the Panzi Hospital (Bukavu, South Kivu) or the DOCS Clinic (Goma, North Kivu), are not only overwhelmed and working beyond their capacity, but also geographically inaccessible for many women.

Women survivors of rape are often ostracized and rejected by their own families and communities. Husbands often desert women who have been raped or eject them from their home. The fact that state security forces and armed groups often deliberately rape women in front of their families or communities exacerbates the social consequences of rape. The conditions of children born from rape are not adequately scrutinized or documented. These children, who are sometimes rejected even by their own mothers, are constantly scorned and ostracized.

2. Livelihood Security

Victims of sexual violence often end up having to struggle for their mere survival, since they lose their families and all support networks. A 60-year-old woman from the Ituri District told me that she was gang-raped by three militiamen in front of her whole family in 2004. The militia executed her entire family, leaving only herself and her infant grandson alive. Today, she and her grandson live on the street with the help of the local women's association SOFEPADI. Other rape survivors with whom I spoke faced similar hardships. The international donor community, which has provided technical and financial support to the DRC, has largely neglected the economic hardships faced by women survivors of sexual violence.

There is no authority to support women who have been held captive for years or forcefully recruited to join the non-state armed militia camps. At the time of my mission, the National Commission for Disarmament, Demobilization and Reintegration (CONADER) had demobilized 101,000 militia fighters, including 2,600 women. Demobilized fighters were given a small demobilization grant, job training, and equipment to begin a civilian livelihood. However, women who were forcibly or voluntarily associated with armed groups but did not actively take part in hostilities did not qualify for assistance.

Perpetuation of Sexual Violence

1. Impunity for Perpetrators

International law requires the state authorities to exercise due diligence and to investigate, prosecute, and adequately punish perpetrators of violence against women, including sexual violence. This obligation extends to cases when in particular the violence amounts to crimes against humanity, war crimes, and/or torture.

On July 20, 2006, the DRC President signed the Law on Sexual Violence, which introduced major improvements to the Congolese Penal Code and the Congolese Code of Penal Procedure. However, the law enforcement and justice authorities have been largely unwilling to implement the law. Massive impunity prevails.

JUSTICE SYSTEM

The DRC's justice system is in a deplorable state and lacks the capacity to handle even the relatively small number of rape cases that reach it. The MONUC Human Rights Division in South Kivu analyzed the 287 cases of sexual violence that were reported to the military and civilian justice authorities during the period

2005 to 2007. At the time of my visit (July 2007), only 64 cases had been tried, resulting in 58 convictions; the investigations for the rest were still pending.

The non-governmental organization LIZADELL, which provides legal assistance to women and children in Kinshasa, followed 720 cases of violence against women that were referred to the justice system between 2004 and 2006 and reached a similar conclusion. Only 75 cases had resulted in a judgment; and only two judgments had actually been executed.

The Law on Sexual Violence requires the courts to conclude a case within three months after the case is brought to the justice system. Senior justice officials in the provinces I visited considered this norm to be of a purely aspirational nature in light of the realities on the ground. The justice sector is severely under-resourced and understaffed. For instance, there were only two civilian judges in Mbandaka (Equateur), a city with almost one million inhabitants. These two judges were also expected to cover cases referred from two towns, hundreds of kilometers away.

The lack of resources also nearly paralyzes the military justice system, which has jurisdiction over most cases involving gross human rights violations. The few investigations and prosecutions that have been carried out in relation to such cases have virtually all relied on the technical and logistical support of MONUC.

The DRC government remains indifferent to this problem. While most countries dedicate 2 to 6% of their national budget to the justice sector, in the DRC this rate was only 0.6% in 2005 and 2006. The budget presented to parliament for 2007 proposed to reduce the portion even further, to 0.3%. In the absence of an accessible and functioning justice system, the local population often refers rape cases to traditional authorities, local administrators, or armed actors. Settlements brokered by such figures typically disregard the victims' interests; at best, the perpetrator pays a small sum to the victim's family to resolve the case. In some instances, the victim is forced to marry the rapist to cover up the crime.

CORRUPTION AND INTERFERENCE

A judge in the DRC may earn as little as US$20-30 per month. Extremely low salaries and job insecurity for public officials provide numerous entry points for corruption at all levels. There are countless complaints of courts routinely releasing alleged rapists on bail, often under dubious circumstances and in violation of applicable rules of penal procedures. MONUC estimates that 80% of alleged rapists in South Kivu are released on bail and never reappear in court. Lawyers in other provinces made similar observations. In Kinshasa, for instance, four teenagers who gang-raped a ten-year-old girl were released by the court,

which did not give any reasons for its decision. The perpetrators disappeared and were not heard from again.

Political interference during all stages of the criminal process—including pressure on judges and prosecutors particularly by political and military circles, and threats against and intimidation of witnesses—is very common, especially in high-profile cases involving crimes committed by elites or state security forces. There are many such recorded cases that have not been prosecuted.

In October 2004, 73 civilians were killed in Kilwa (Katanga province). A MONUC investigation into the killings documented cases of summary executions, rape, arbitrary arrest and detention, torture, and looting by FARDC forces led by Colonel Adémar, then Commander of the 62nd Brigade. Twelve FARDC soldiers, including commanding officers, and three foreign employees of a multinational company were prosecuted after this incident, which drew wide public attention. On June 28, 2007, the Military Court of Katanga delivered its verdict on the case, acquitting all defendants. Whereas the MONUC investigation had concluded that virtually no fighting had taken place when the FARDC regained control of Kilwa, the court held that all civilians killed were casualties of fighting between FARDC and rebel forces and that no crimes had taken place. While the trial was ongoing, the military prosecutor, who had prepared the indictment and led the prosecution, was reassigned to Kananga.

PENITENTIARIES

The conditions of the penitentiaries in the DRC are so dire in terms of humane and dignified treatment of prisoners, physical state of the facilities, and hygienic and health conditions that they do not even remotely comply with basic international standards. Many inmates were seriously ill, but medical care was scarcely available. During the first six months of 2007, there were reportedly at least 30 deaths of detainees due to lack of access to treatment. Children as old as eight are kept in prison with their mothers, without access to education, adequate medical care, or food. Prison conditions are so appalling that the only salvation is to escape!

With the exception of Makala Central Prison in Kinshasa, none of the prisons received a budget for food from the central authorities and many even lacked drinkable water. Some prison directors said they have no other choice but to allow prisoners to leave prison during the day to search for food and water. While many prisoners are said to return in the evening, since they do not have any other options, others do not. According to the registers of Mbandaka Central Prison, which has adopted this practice, 77 prisoners disappeared or escaped during the first six months of 2007 when they went out to search for food.

In supposedly higher security prisons, perpetrators convicted of gross human rights violations in particular seem to have simply walked out of prison with the connivance of the authorities. MONUC considers that 23 of the 33 prison escapes documented in the first half of 2007 involved corrupt prison wardens and police officers.

On June 30, 2007, 24 detainees "escaped" from the Groupe Litho Moboti Military Prison in Mbandaka, including three soldiers sentenced to life imprisonment in connection to Songo Mboyo mass rape, three soldiers convicted in relation to the 2005 Bokala mutiny, and three soldiers awaiting trial for murder and rape in connection with the Lifumba-Waka atrocities of 2006. The escapes occurred just before 14 detainees were scheduled to be transferred to Kinshasa for security reasons. Twelve of the 14 scheduled for transfer escaped, although two were later recaptured, in addition to 12 other convicts. The prison commander provided me with an incredible account of the escape: the three guards on duty during the night of the escape had sent a detainee to buy food for the other inmates. When the man did not return, they went to search for him, leaving their rifles behind and the prison door open. When they returned, they learned that 24 inmates had escaped.

2. Security Sector Reform

The security sector reform put in effect following the end of the war gives soldiers and the non-state Congolese armed militia the choice to either demobilize and reintegrate into civilian life or join the unified national army. Those who choose to join the army are sent to training centers, where they are to receive training before being redeployed in integrated units. During my mission I observed that the program was marred by inefficiency and insufficient funding and more than 100,000 ex-militia/soldiers were still waiting to be processed.

As part of the principles of the demobilization and integration program, perpetrators of human rights violations are not allowed to join the army; in practice, this has not happened. Men known to have committed serious crimes have remained in the army, and have even been given command positions, almost paralyzing transitional justice. Lieutenant Colonel Bebimobuli Engagela, for instance, known as "Colonel 106" for the many crimes he committed including rape, sexual enslavement, and forced recruitment of girls, was reintegrated into the army and appointed as a trainer at a training center.

Politicians and senior military officers acknowledged that in course of the disarmament process many criminals had been integrated into the FARDC, but assured me that they would be brought to justice once the peace process was stabilized. It is encouraging in terms of the expectations for the gradual institution of justice that the highest levels of government, including the President,

have promised to support a UN mapping of the major human rights violations committed between 1993 and 2003.

3. Women's Status in Society

Sexual violence in armed conflicts in the DRC is directly linked to the deeply rooted gender-based discrimination and inequality in the society at large. Women face discrimination and oppression in virtually every sphere of life: the DRC ranks 130th among 136 countries in the UNDP Gender Development Index (GDI).

The Family Code recognizes equality between the spouses (Article 330), but effectively renders a married woman a minor under the guardianship of her husband. Article 444 stipulates that the wife must obey her husband; Article 448 requires a woman to obtain her husband's authorization to effect any legal act. The law also endorses double standards on marital fidelity: all cases of adultery committed by a married woman are punishable by six months to one year of imprisonment, whereas male adultery is only punishable if it is of an "injurious quality." In almost all ethnic groups, bride price is practiced, which leads some men to believe that they have "bought" their wife. Punishment of women's "disobedience" enjoys widespread social acceptance.

Women also face discrimination and violence in places of work and education. Girls are often denied access to education, as families privilege boys' attendance at school. Interlocutors also pointed out that the discrimination against and harassment and sexual coercion of women and girls in the public sphere is a long-standing phenomenon that predates the armed conflicts.

Article 14 of the Constitution, which stipulates that women have a right to equitable representation in decision-making mechanisms and mandates the state to guarantee this, is not applied either, since other legislation contains contradictory articles regarding women's representation in decision-making positions. Consequently, women are grossly underrepresented in the country's newly established democratic institutions. At the time of my visit (July 2007), women comprised 42 of the 550 members in the National Assembly; five of the 108 members in the Senate; and nine of 60 ministers and vice ministers in the Cabinet. Not a single governor or vice governor was female.

The normalization and banalization of war-related rape, which knew no boundaries, adds to the inequality and oppression that women endure in the public and private spheres and exacerbates and distorts the magnitude of the atrocities against women. The rape crisis and sexual violence that have marked the DRC wars, therefore, cannot be addressed in isolation or independent from gender-based discrimination and violence that women encounter in times of "peace." The war has further reduced women—considered as subordinate and worth-

less to begin with—to mere objects that can be raped, tortured, and mutilated. Without fundamentally altering gender hierarchies and supporting women's empowerment, high levels of rape will persist, even if stability, the rule of law, and democratic, civilian control over the armed forces are established—and women in the DRC will not be in peace.

Conclusions

Sexual violence has been a defining feature of the Democratic Republic of the Congo's armed conflicts. After the end of war, women living in areas of conflict have continued to suffer extreme levels of violence and rape, committed by FARDC, PNC, local and foreign non-state armed groups, and increasingly also civilians. The situation is particularly dramatic in South Kivu, where sexualized atrocities of an unimaginable brutality have been committed, aiming at the complete physical and psychological destruction of women with implications for the entire society.

While war has officially ended in the DRC, women are not at peace, because sexual violence and rape have become normalized as a way of life. Not only have perpetrators been granted impunity, many in the security and military forces responsible for these atrocities have been given commanding positions, as if to be rewarded for their crimes. The security and justice systems remain unable to institute the bare minimum of justice, due to incapacity, corruption, and other reasons. It is questionable whether there is a political will to change the situation and end this impunity.

The scale and the brutality of sexualized violence during the armed conflicts seem to have eroded all protective social mechanisms, unleashing brutal fantasies carried out on women's bodies. Civilians are increasingly among the perpetrators of rape, which indicates a normalization of the war-related atrocities. This deepens existing inequalities and intensifies the oppression of women in society. If the sexual violence associated with war is addressed in isolation, gender-based discrimination and violence endured by women in "peace" will be grossly neglected and the war on women will be reinforced.

Women survivors of rape and sexualized torture can neither access sufficient healthcare nor resources to ensure their livelihood. Most of these women have been abandoned by their families and stigmatized and ostracized by their communities. And a handful of Congolese women's rights advocates are trying to support survivors of sexual violence and make their voices heard at the expense of risking their personal safety and their families' lives.

Women's subordinate status in society and targeting of their bodies with brutal violence reinforce each other and become resistant to the war-peace dichotomy. The international community's and Congolese authorities' addressing sexual violence as an independent and isolated phenomenon on its own undermines the efforts to effectively respond to the problem. Hence, numerous initiatives, including the appointment of a UN Special Adviser on sexual violence to the DRC (March 19, 2005), fail to deliver the expected results.

Given the multitude of actors initially involved in the Congolese wars and the continuation of the destruction and crimes unleashed by these conflicts, responsibility falls on the international community to take all necessary measures to ensure that women and human rights in the DRC are protected. The DRC society and state have neither the capacity nor the means to resolve the crisis on their own.

Part IV:

Conclusion

Violence without Borders addresses how violence against women has been transformed from once being considered a private domestic affair into a major public policy concern for international organizations, governments, and civil actors alike. Historically a weapon to sustain patriarchal gender hierarchies, violence against women has been on the rise as hegemonic structures and institutions lost their stability in the post-Cold War globalizing world. The nation-state, along with the world order it was a part of, having reached its pinnacle during the Cold War is now shattering; power can no longer rule with consent, neither at home nor in public, and *home* can no longer be closed off to scrutiny. This is the context that helps us understand the dynamic behind the escalation of violence against women today. The conventional family and the hierarchical social institutions of yesteryear can no longer contain women's aspirations and demands. The struggle to end the "feminization of violence" has only sharpened the contradiction as it helped transcend not only the boundaries of the private sphere but also that of countries.

As I have argued here, violence against women is an integral part of patriarchal gender relations; thus women routinely face the risk of violence at multiple levels whenever patriarchy intersects with other systems of inequality in society. In some parts of the world women have succeeded through their struggle in transforming these structures to achieve greater equality between the sexes. While in some parts of the world patriarchy remains a formidable foe, in others, greater progress has been achieved towards equality between the sexes. This progress has required and continues to require a firm political commitment to prioritizing gender equality as a public policy issue and to constantly promoting and monitoring change in the culture of social and economic institutions through informed political and legislative action.

As it progressively incorporated a human rights approach over time, the UN gender equality regime has evolved into an instrument to interrogate the abuses experienced in private life, thanks in no small part to the global women's movement. Based on the universal principles of human rights, the international gender equality regime today comprises numerous mechanisms and instruments that can support women's struggle for change at the national level. States that are party to international conventions have a due diligence obligation to safeguard women's human rights in their respective countries, and significant progress has been made in many countries towards this end with the enactment of legal and institutional reforms.

However, much more remains to be accomplished. Violence, in its manifest or latent forms, continues to be used to restrain and control women no matter where we go in the world, notwithstanding the significant variations. Patriarchy can be traditional and unapologetic in one place and tame but resurgent in the

next. They co-exist and comprise a universal regime. Politics retains its masculine character and patriarchy lives on, albeit in modified forms (Ertürk 2009: 60-61). Masculine supremacy might perpetuate itself through brute violence and coercion, but also through the relations of production and reproduction that govern the distribution and use of resources, benefits, privileges, and authority within and outside the home.

Although limited and uneven, the progress achieved so far in preventing violence against women and safeguarding their rights shows that change is possible. Sustaining this progress no doubt requires political will and determination. The stakeholders will need to keep pushing their respective states to fulfill their obligations under international human rights law. But, in addition, all institutions and values that legitimize gender inequality and discrimination will need to be challenged by innovative strategies at different levels of intervention.

Both opportunities and new risks are created for women by the current neoliberal economic environment. On the one hand, the feminization of labor and increased migration have had a potentially empowering effect, while on the other, the rise of conservative and reactionary politics has often fed conditions inimical to women's rights. These latter restrictive tendencies often manifest themselves under the guise of the right to culture or religion, often leading to discourses that divert attention from unequal gendered structures. The discourse on cultural authenticity is a case in point, as it is often used to provide cover for traditional patriarchal values in denying or evading women's rights claims. At the same time, chalking up women's subordination to repressive cultures of the "other" in far-flung foreign lands relieves rich countries of responsibility for the dispossessions caused by capitalism, neoliberalism, militarism, occupation, and armed conflicts (Merry 2003; Ertürk 2013b).

Clearly, compromising women's rights or abandoning this issue to the benevolence of "enlightened" men in positions of power is no option. In confronting all the challenges that use culture, religion, national security, or whatever other discourse is used as a spearhead against women's rights, it is important to unpack and expose their oppressive content while showing that a contextualized understanding of universal human rights promotes "diversity" rather than "uniformity." Universal human rights norms provide a powerful common objective and a tool women can use in their struggles both at the local and the global level. But they are easier for women from around the world to rally around when they shed their Western-centric references and connotations, which remains a core challenge for feminist policy and practice today.

The gains of women and the threats and obstacles that hinder their progress have been addressed throughout this book. Undoubtedly, women's most striking gain universally is the fact that they are no longer willing to accept

their "fate" and striving for a life not only free from violence, but also working towards one that they can be an active and equal partner in constructing. Now that the quest for freedom, equality, and justice has become an irreversible, universal demand for the global women's movement, the question is how can this struggle be carried forward onto the next stage, given the multitude of challenges it faces, whether they arise from the social fragmentation caused by identity politics; the social distance between the human rights system and actual lives of women; the inconsistencies and contradictions related to UN institutions and mechanisms; the dynamics of neoliberal political economy; the rising national security agenda; the conflicts, occupations, and displacements; or the backlash provoked by the movement's very successes. Elsewhere (2012b) I have tried to address these questions by suggesting a number of different strategies that can be effective at different levels of intervention. I conclude this book by briefly reiterating a few of them here.

AT A PARADIGM LEVEL: To date the approach to gender equality has been framed within a liberal paradigm based on two basic objectives: the achievement of equal opportunity and the elimination of discrimination in the public sphere. This approach has no doubt helped women secure the vote and the right to stand for elected office in many countries, as well as increased women's participation in the labor force and decision-making mechanisms. However, it has hardly been effective in changing the power dynamics underlying the patriarchal gender relations that perpetuate violence against women. So the challenge is to come up with a new guiding objective beyond the attainment of liberal rights and equality before the law.

Liberal principles such as "equal opportunity" have failed to overcome the structural inequalities that hinder women's rights. Therefore, they need to be replaced by a new vision that can steer us towards a post-patriarchal society, a vision that reflects the universality of human rights, women's diverse realities, and the conception of a world order and gender contract beyond patriarchy. For **the elimination of violence against women and the realization of women's rights will ultimately require the elimination of patriarchy**. Though clearly this is a goal that will take a long time to fulfill, what can and is happening in the shorter run is the decrease in the patriarchal character of laws, norms, and institutions as these structures are being challenged and destabilized.

AT A CONCEPTUAL LEVEL: Feminist scholars and activists alike will need to join forces to address existing conceptual shortcomings and gaps. In this respect, **intermediary concepts and contextualized analytical and practical tools are needed to bridge the gap between women's actual life practices on the ground and the abstract and distant human rights standards**. The *capabili-*

ties approach developed by Amartya Sen and Martha Nussbaum can serve as a helpful starting point.

Another requirement at the conceptual level is to ensure the continuity of knowledge that connects past experiences to today and builds on lessons learned going forward. That calls for re-visiting the paradigm shifts in the field of women's rights. For instance, although limited to a "basic needs" understanding, a central tenet of the women and development paradigm was the emphasis on the importance of economic rights for women. The shift to the human rights paradigm tended to move away from this insight and prioritized instead civil and political rights. A holistic paradigm of women's rights needs to reconcile the two paradigms and reintegrate the political economy approach into feminist analysis.

AT A POLITICAL/POLICY LEVEL: Change will require women to voice their demands in different institutional fora both at the national and international levels. **Researchers will need to communicate the political implications of their findings, while activists will have to make sure they have the ear of policy makers.** Currently, most policies enacted nationally or internationally target mainly the prevention of violence against women, by and large ignoring its underlying economic, social, and political causes. Needless to say, when its underlying causes go unaddressed, women's human rights violations are harder to root out. Women's monitoring role and ability to intervene in policy making can make all the difference on this score.

AT A PRACTICAL/IMPLEMENTATION LEVEL: Women need to develop strategic alliances with progressive and intercultural movements and support grassroots women's groups through innovative modalities. The goal should be to support and strengthen all social tendencies and processes that share secular/democratic principles and a universal conception of the human being. Furthermore, **in transforming the human rights culture and holding governments accountable to their international obligations, the importance of an effective and aggressive engagement with the international human rights framework can hardly be overstated**. To put pressure on states from multiple fronts, it is important to strategize beyond CEDAW, which women now use effectively. The international human rights system in its entirety is yet to be fully exploited by the defenders of women's human rights. The women's movement's engagement with the UN system needs to be dynamic, developed in accordance with changing conditions, and expanding human rights system.

Violence against women remains a universal problem. Being a woman is still a risk factor, even in societies where women's liberal rights are promoted and safeguarded. The way authorities approach the problem often lacks substance because it ignores its systemic and structural character. All the authorities see is

an amalgam of individual instances of victimhood, deviant male aggression, or misogynous cultural norms and practices.

All around the world, our common goal is to challenge the inadequacy of these approaches, and that ultimately requires that we can envision, design, and put into practice a gender regime that transcends patriarchy and the interests of hegemonic imperial or local centers of powers.

Annexes

Annex 1: Media coverage of Saudi Arabia mission

U.N. tells Saudis to tackle violence against women

Friday February 15, 2008; 12:46 AM

http://www.reuters.com/article/2008/02/14/us-saudi-un-women-idUSL1477724020080214

GENEVA (Reuters) - Saudi Arabia must create laws to protect women from violence and also allow them to play a bigger role in society and the workplace, the United Nations said on Thursday.

"The lack of written laws governing private life constitutes a major obstacle to women's access to justice," said Yakin Erturk, the U.N.'s human rights expert on violence against women.

In a statement she called on Saudi Arabia to create a legal framework based on international human rights standards, including a law criminalizing violence against women.

That would also include a family law on marriage, divorce and minimum age for marriage, said the Turkish sociology professor at the end of a 10-day visit to Saudi Arabia, a key U.S. ally and the world's top oil exporter.

"The need to address women's rights will grow increasingly urgent as the voices of women in Saudi society are heard," she said.

The treatment of women has become an increasing embarrassment for Saudi Arabia. The country drew international criticism after its Supreme Judicial Council condemned a 19-year-old woman to 200 lashes and six months in jail for having been with a man she was not related to when she was attacked and raped by seven other men in 2006.

King Abdullah pardoned the gang-rape victim in December.

Erturk said Saudi Arabia's system of male guardianship for women limits women's freedom of movement and ability to act in a whole range of family and social areas, from marriage, divorce and child custody to inheritance, education and employment.

Saudi Arabia is the only country in the world where women are forbidden to drive. And a Saudi woman faces harassment from religious police if they are not accompanied in public by a male relative acting as her chaperone.

Earlier this month the U.N. Committee on the Elimination of Discrimination against Women called on Saudi Arabia to end the male guardianship system immediately.

Many migrants working as maids in Saudi Arabia are also subject to violence and abuse, Erturk said.

Erturk said access to education had improved for women but their employment opportunities remain restricted and sex segregation operates in the workplace.

Saudi Arabia must also provide training for police, health care providers, community leaders and others to show them that violence against women is both a violation of basic rights and incompatible with Muslim values, she said.

Annex 2:

Complaint mechanism under the mandate of the Special Rapporteur on Violence against Women, its causes, and consequences

An example concerning Turkey (2007: A/HRC/4/34/Add.1)

Turkey

Urgent Appeal

685. By letter dated on 23 June 2006 the Special Rapporteur on violence against women, its causes and consequences, has jointly with Special Rapporteur on trafficking in persons, especially women and children, sent an urgent appeal to the Government regarding Ms. T. B., a German citizen of Turkish descent. According to information received:

686. Ms. T. B. is a German citizen from Hamburg. In April 2006, Ms. T. B. traveled with her mother from Hamburg to the settlement of Karastlak Köyü in the village of Yeni Halfeti, Şanliurfa province, Southeast Turkey, where her grandmother and other relatives reside. Allegedly, her family had pretended that she was going to vacation in the village.

687. Upon Ms. T. B. arrival in the village, her mother took her passport and identity documents away and told her that she had to enter into an arranged marry with a close relative. According to the latest information received, Ms. T. B. is still in Yeni Halfeti. Reportedly, she faces serious limitation of her freedom of movement and is only on rare occasions able to leave her grandmother's house.

688. Concern is expressed that Ms. T. B. may be forced to marry her relative against her will or face severe violence, if she refuses.

689. We appeal to your Excellency's Government to intervene in this case and ensure that the competent Turkish authorities undertake all necessary

action to protect Ms. T. B. from forced marriage, any form of violence or the threat thereof.

Response from the Government

690. By letter dated 29 June 2006, the Government informed that it was established that Ms. T. B. during her vacation in Turkey, contacted the Provincial Gendarmerie Command in Şanliurfa by phone on 30 May 2006 and requested help from the authorities, stating that there were attempts to force her to get married to her uncle's son. The gendarmerie authorities had to refer the matter to the Foreigners Section of the Police, since Ms. T. B. was a German citizen. Ms. T. B. was then assisted by the authorities to return to Germany on 2, June, 2006. On 27 June 2006, the Provincial Gendarmerie Commander in Yeni Halfeti visited Ms. T. B.'s grandmother's premises and confirmed that she was not in Turkey.

691. According to a relative in Germany whom the Turkish authorities have contacted, Ms. T. B. has been granted protection at a social institution in Germany under the German laws and she will be hosted in this institution until October 2006 when she will complete the age of 18.

692. In this framework, it has been confirmed that a forced marriage has not taken place during her stay in Turkey.

Observations

693. The Special Rapporteur would like to thank the Government for its reply to the communication of 23 June 2006 and would like to welcome the steps which the Government took to protect Ms. T.B. The Special Rapporteur would like to receive follow-up information on whether criminal action was taken against any of the alleged perpetrators.

Annex 3:
Missions undertaken by Special Rapporteur on Violence against Women Mandate Holders

Countries (date of visit)	**Document Symbol**
United Kingdom and Northern Ireland (2014)	A/HRC/29/27/Add.2
India (2013)	A/HRC/26/38/Add.1
Bangladesh (2013)	A/HRC/26/38/Add.2
Azerbaijan (2013)	A/HRC/26/38/Add.3
Solomon Islands (2012)	A/HRC/23/49/Add.1
Papua New Guinea (2012)	A/HRC/23/49/Add.2
Bosnia and Herzegovina (2012)	A/HRC/23/49/Add.3
Croatia (2012)	A/HRC/23/49/Add.4
Jordan (2011)	A/HRC/20/16/Add.1
Italy (2011)	A/HRC/20/16/Add.2
Somalia (2011)	A/HRC/20/16/Add.3
El Salvador (2010)	A/HRC/17/26/Add.2
Algeria (2010)	A/HRC/17/26/Add.3
Zambia (2010)	A/HRC/17/26/Add.4
United States of America (2010)	A/HRC/17/26/Add.5
Kyrgyzstan (2009)	A/HRC/14/22/Add.2
Tajikistan (2008)	A/HRC/11/6/Add.2
Saudi Arabia (2008)	A/HRC/11/6/Add.3
Republic of Moldova (2008)	A/HRC/11/6/Add.4
Algeria (2007)	A/HRC/7/6/Add.2
Ghana (2007)	A/HRC/7/6/Add.3
Democratic Republic of the Congo (2007)	A/HRC/7/6/Add.4
Turkey (2006)	A/HRC/4/34/Add.2
Sweden (2006)	A/HRC/4/34/Add.3
The Netherlands (2006)	A/HRC/4/34/Add.4
The Russian Federation (2004)	E/CN.4/2006/61/Add.2
The Islamic Republic of Iran (2005)	E/CN.4/2006/61/Add.3
Mexico (2005)	E/CN.4/2006/61/Add.4

Annex 3 Continued

Countries (date of visit)	**Document Symbol**
Afghanistan (2005)	E/CN.4/2006/61/Add.5
El Salvador (2004)	E/CN.4/2005/72/Add.2
Guatemala (2004)	E/CN.4/2005/72/Add.3
Occupied Palestinian Territory (2004)	E/CN.4/2005/72/Add.4
The Darfur region of the Sudan (2004)	E/CN.4/2005/72/Add.5
Sierra Leone (2001)	E/CN.4/2002/83/Add.2
Colombia (2001)	E/CN.4/2002/83/Add.3
Bangladesh, Nepal and India (2000)	E/CN.4/2001/73/Add.2
East Timor (1999)	E/CN.4/2000/115
Cuba (1999)	E/CN.4/2000/68/Add.2
Haiti (1999)	E/CN.4/2000/68/Add.3
Afghanistan (1999)	E/CN.4/2000/68/Add.4
Liechtenstein (1998)	E/CN.4/1999/68
United States of America (1998)	E/CN.4/1999/68/Add.2
Indonesia and East Timor (1998)	E/CN.4/1999/68/Add.3
Rwanda (1997)	E/CN.4/1998/54/Add.1
Poland (1996)	E/CN.4/1997/47/Add.1
Brazil (1996)	E/CN.4/1997/47/Add.2
South Africa (1996)	E/CN.4/1997/47/Add.3
The Democratic People's Republic of Korea, Republic of Korea, & Japan (1995)	E/CN.4/1996/53/Add.1

List of Acronyms

A	
AAA	American Anthropological Association
AI	Amnesty International
AKP	Justice and Development Party (Turkey)
AMA	Anti-Maras Act (El Salvador)
AWC	Arab Women's Commission (AWC)
B	
BPfA	Beijing Platform for Action
C	
CAFTA	Central America Free Trade Agreement
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN)
CCPR	Covenant on Civil and Political Rights (UN)
CED	Convention for the Protection of All Persons from Enforced Disappearance (UN)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women (UN)
CEH	Comisión para el Esclarecimiento Histórico (Guatemala)
CEMUJER	Centro de Estudios para la Mujer (El Salvador)
CERD	Convention on the Elimination of All Forms of Racial Discrimination (UN)
CESCR	Covenant on Economic, Social, and Cultural Rights (UN)
CHR	Commission on Human Rights (UN)
CICIACS	Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad en Guatemala
CLADEM	Latin American and Caribbean Committee for the Defense of Women's Rights
CMW	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN)
CONADER	National Commission for Disarmament, Demobilization and Reintegration (DRC)
CONAPREVI	Coordinadora Nacional para la Prevención de la Violencia Intrafamiliar y en Contra de la Mujer (Guatemala)
COPREDEH	Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos (Guatemala)
CPT	Council of Europe Committee for the Prevention of Torture

List of Acronyms Continued

CRC	Convention on the Rights of the Child (UN)
CRPD	Convention on the Rights of Persons with Disabilities (UN)
CSW	Commission on the Status of Women (UN)
D	
DAW	Division for the Advancement of Women (UN)
DEVAW	Declaration on the Elimination of Violence against Women (UN)
DoVVSU	Domestic Violence Victims Support Unit (Ghana)
DRC	Democratic Republic of the Congo
E	
ECLAC	Economic Commission for Latin America and the Caribbean
ECOSOC	Economic and Social Council (UN)
ECTHR	European Court of Human Rights
EU	European Union
EPZ	Export Processing Zone
F	
FARDC	Forces Armées de la République Démocratique du Congo
FDLR	Forces démocratiques de libération du Rwanda
FESPAD	Fundación de Estudios para la Aplicación de Derecho (El Salvador)
FGM	Female Genital Mutilation
G	
GA	General Assembly (UN)
GAD	Gender and Development
GDI	Gender Development Index (UNDP)
GDP	Gross Domestic Product
GEM	Gender Empowerment Measure
GR	General Recommendation (CEDAW)
H	
HDI	Human Development Index
HRC	Human Rights Council (UN)
HRV	Honor-Related Violence
HTP	Harmful Traditional Practices

List of Acronyms Continued

I	
ICC	International Criminal Court
ICCPED	International Convention for the Protection of All Persons from Enforced Disappearance (UN)
ICESCR	International Covenant on Economic, Social and Cultural Rights (UN)
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda (ICTR)
ID	Identification
IDF	Israeli Defense Forces
IDP	Internally Displaced Persons
ILO	International Labour Organization (UN)
IMF	International Monetary Fund
INSTRAW	International Research and Training Institute for the Advancement of Women (UN)
IOM	International Organization for Migration
IPEC	International Program on the Elimination of Child Labor (ILO)
ISDEMU	**National Institute for the Advancement of Women (El Salvador)**
ISNA	**Salvadoran Institute for the Protection of Children and Adolescents**
K	
KSSGM	General Directorate of Status and Problems of Women (Turkey)
M	
MDGs	Millennium Development Goals (UN)
MINUGUA	UN Verification Mission in Guatemala
MONUC	UN Organization Mission in the DRC
MONUSCO	UN Organization Stabilization Mission in the Democratic Republic of the Congo
MOWA	Ministry of Women's Affairs (Palestine)
N	
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization

List of Acronyms Continued

O	
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights (UN)
OIOS	UN Office of Internal Oversight Services
OIOS	Office of Internal Oversight Services (UN)
ONAM	**Oficina Nacional de la Mujer (Guatemala)**
OP	Optional Protocol (to the Convention on the Elimination of All Forms of Discrimination against Women) (UN)
OPT	Occupied Palestinian Territories
OSAGI	Office of the Special Adviser on Gender Issues and Advancement of Women (UN)
OSCE	Organization for Security and Co-operation in Europe
P	
PA	Palestinian Authority
PICCR	**Palestinian Independent Commission for Citizen's Rights**
PIEMA	**Inter-Agency Program for the Empowerment of Adolescent Women (UN)**
PKK	Kurdistan Worker's Party
PLC	Palestinian Legislative Council
PNC	**National Police Force (El Salvador), National Civil Police (Guatemala), Police Nationale Congolaise (DRC)**
PSRF	**Family Relations Improvement Program (El Salvador)**
R	
RF	Russian Federation
S	
SC	Security Council (UN)
SCR	Security Council Resolution (UN)
SG	UN Secretary-General
SRVAW	Special Rapporteur on Violence against Women, its causes and consequences (UN)
T	
TAC	**Temporary Accommodation Centers (Russian Federation)**

List of Acronyms Continued

U	
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	UN Development Program
UNESCO	UN Educational, Scientific and Cultural Organization
UNHCR	UN High Commissioner for Refugees
UNICEF	UN Children's Fund
UNIFEM	UN Development Fund for Women
UNRWA	UN Relief and Works for Palestinian Refugees
UPR	Universal Periodic Review
URNG	Unidad Revolucionaria Nacional Guatemalteca (Guatemala)
USSR	Union of Soviet Socialist Republics
V	
VAW	Violence Against Women
W	
WAD	Women and Development
WATC	Women's Affairs Technical Committee (Palestine)
WCLAC	Women's Centre for Legal Aid and Counseling (Palestine)
WFP	World Food Program
WHO	World Health Organization
WID	Women in Development
WSC	Women's Studies Centre (Palestine)

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ABOUT WLP

WLP is an international partnership comprised of 20 autonomous women's rights organizations dedicated to training and supporting women in the Global South, primarily in transitioning and developing societies, to become leaders and advocates for a just, peaceful world. WLP creates culture-specific leadership trainings on women's human rights and democratic participation and partners with local organizations to help women gain the skills they need to fulfill greater leadership roles at the family, community, and national levels. Through our work we promote universal human rights, advance democracy, and strengthen civil society. The WLP Partnership transcends national, religious, ethnic, and cultural boundaries and works to empower and transform women and youth and to harness their tremendous potential as leaders in their families, communities, and societies for a more peaceful, equitable world.

Over the past 15 years, WLP has developed curricula and education resources that encourage women's leadership and rights and bolster their capacities as agents for change toward the establishment of free, fair, and democratic societies. Since 2000, WLP's programs and training materials have reached tens of thousands of women and men in over 40 countries, strengthening local organizations to become self-sustaining and empowering women's movements around the globe.

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