

IV . TRENDS IN THE INTEGRATION OF WOMEN'S HUMAN RIGHTS AND GENDER ANALYSIS IN THE ACTIVITIES OF THE SPECIAL MECHANISMS

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A. Introduction

1. This background paper updates the earlier assessments by UNIFEM of progress toward the dual goals of integrating women's human rights and gender analysis into the work of the special rapporteurs, special representatives, independent experts and working groups (Aspecial mechanisms≡) appointed by the Commission on Human Rights. (See *Integration of Women's Human Rights into the Work of the Special Rapporteurs*, UNIFEM (1998); and *Promoting Accountability for Women's Human Rights: Working with the Thematic Special Mechanisms of the Commission on Human Rights*, UNIFEM (1998)). It identifies recent trends in reporting by country-specific and thematic special mechanisms and sets forth recommendations for furthering integration. UNIFEM also reiterates the recommendations set forth in the publications cited above, with regard to conceptual and legal frameworks for integrating women's human rights and a gender analysis, as well as the inclusion of specific women's human rights issues within the mandates of thematic mechanisms.

2. Review of the reports of the special mechanisms since the 1993 World Conference on Human Rights indicates that significant progress has been achieved toward broader and more consistent attention to, and analysis of, women's human rights. Reporting on women's human rights by both country-specific and thematic mechanisms addresses an increasingly broad range of rights, including their economic, social and cultural rights, rights affected by religious and customary law or practice, and reproductive rights. The substantive women's human rights issue considered most frequently by both country-specific and thematic mechanisms continues to be violence against women. The experts are directing greater attention to the relationship between discrimination against women in public and private life and specific violations. The effects of gender on women's human rights are noted more frequently, primarily with regard to women's access to remedies for violations of their human rights. Contacts in on-site visits have been expanded to include women's groups and national officials with responsibilities related to women's human rights with increasing frequency.

3. Nonetheless, substantial inconsistencies and gaps remain. The application of general human rights guarantees to the gender-specific experiences of women and the content of emerging rights of particular significance to women, such as sexual rights, are still relatively underdeveloped. Moreover, several of the special mechanisms have not yet taken steps to integrate women's human rights into their reporting on an ongoing basis. Reporting by these experts includes only isolated references to women as victims of violations, such as women as a part of civilian populations especially vulnerable to war crimes, displacement and other abuses in conflict situations, or descriptions of individual cases involving women as victims of violations by the State that historically have been more frequently directed against men as a consequence of their greater freedom to participate in public life (such as attacks by the State on journalists and

human rights defenders). In addition, several experts who have addressed a range of women's human rights and the effects of systemic gender discrimination in their main reports to the Commission on Human Rights and General Assembly have provided no information on women's human rights in connection with some of their on-site visits.

4. Progress toward the integration of gender-specific information and gender analysis has been more limited than the advances with respect to the integration of women's human rights. This trend may be attributed in part to the continued lack of sex-disaggregated data but also reflects the need for a common analysis of gender as a social construction that conditions the ability of women and men to exercise their human rights. In particular, some reports have emphasized women's vulnerability to violations without any gender analysis or recommended humanitarian initiatives to meet women's material needs without taking into account the gender relations of power in the family and the community. Review of reports since 1993 also indicates that some rapporteurs or representatives have applied a gender analysis in one or two reports and largely disregarded gender-specific information and gender analysis in other reports.

5. Gaps in the information on women's human rights presented in reports, the lack of sex-disaggregated data, and limited application of gender analysis are attributable in part to gaps in the information provided by governments and non-governmental organizations (NGOs). NGOs comprise a central source of information for reporting and other activities by the special mechanisms. Progress toward the full integration of women's human rights and a gender analysis into their work is therefore linked to expanded monitoring of women's human rights by human rights and other NGOs, as well as the provision of resources and training to support the capacity of women's groups to monitor and document violations.

6. The special mechanisms can encourage Governments and NGOs to devote consistent attention to women's human rights and to develop gender specific methodologies for monitoring human rights by: requesting sex-disaggregated data and information related to specific violations of women's human rights; analyzing the gender specific aspects of their mandates; and clarifying relevant legal questions, such as the scope of state responsibility for non-state action. Moreover, steps can be taken to enhance integration within the scope of information available at present. This paper recommends several steps that can be taken to facilitate efforts by the special mechanisms to integrate women's human rights and a gender analysis. As UNIFEM has previously stated, achieving the integration of women's human rights and gender analysis will require intensified efforts by: experts themselves; the Secretariat; Governments responding to requests for information and to requests for cooperation in connection with on-site visits; and NGOs submitting information to the special mechanisms.≡

B. The integration of women's human rights

1. Reporting on women's human rights by country-specific mechanisms

7. Reporting on women's human rights by the country-specific special mechanisms can potentially encompass the full range of civil, cultural, economic, political and social rights since their mandates typically do not restrict the scope of inquiry to a particular set of rights and the

prohibition of gender discrimination applies to all human rights. The resolutions establishing their mandates often request the rapporteurs or representatives to focus on specific issues. In subsequent resolutions, the Commission on Human Rights has periodically identified other issues of particular concern in relation to the mandates. Indeed, the human rights of women are among the subjects highlighted by the Commission in this manner. Reporting on country situations should regularly assess *de jure* and *de facto* discrimination against women: as the general prohibition of discrimination on the basis of sex applies to all human rights and therefore to any rights that may be the subject of specific inquiry by a country rapporteur or representative.

8. The scope of reporting on women's human rights by country-specific mechanisms has expanded most notably with regard to economic, social and cultural rights, religious and cultural laws or practices, *de jure* and *de facto* rights within family structures, and reproductive rights. The two categories of violations addressed most frequently by country-specific mechanisms continue to be violations of rights related to: a) integrity and security of person, in the form of various types of violence against women; and b) equality before the law and equal protection of the law, in the form of *de jure* discrimination in public and private life.

9. The quantity and content of information on violence against women provided by the country-specific mechanisms has clearly benefitted from the analyses by the Special Rapporteur on violence against women of the causes and consequences of such violence. (For discussion of the conceptual and legal approaches adopted by the Special Rapporteur on violence against women, see *Promoting Accountability for Women's Human Rights: Working with the Thematic Special Mechanisms of the Commission on Human Rights*). The following trends have emerged since the 1993 World Conference on Human Rights:

- * violence against women is identified as a category of gender-specific violations, in addition to continued reporting on individual cases involving breaches of the rights to life and integrity and security of person in which the victim is a women, and which are now characterized by the special mechanisms as violence against women for purposes of assessing the integration of women's human rights into their work;
- * domestic violence and the absence of remedies for such violence are increasingly cited in assessments of women's human rights in the country concerned;
- * sexual violence in armed conflict, including abuses by government and rebel forces, and the application of humanitarian law to sexual violence receive more systematic attention. This trend is linked to the wider publicity given to the issue since the abuses against women in former Yugoslavia and the elaboration of international law on sexual violence by the Ad Hoc International Criminal Tribunals for the Former Yugoslavia and Rwanda and in the Statute of the International Criminal Court;
- * violence perpetrated by non-state actors is acknowledged implicitly or explicitly to trigger an obligation on the State to take preventive and remedial action in some form; and
- * violence linked to religious extremism, culture and tradition is treated with increasing frequency and characterized as breaches of international norms.

10. The specific forms of violence most commonly cited include: rape and other sexual assault (custodial rape by law enforcement officials, rape by military or security forces, and rape by non-state actors, including marital rape and rape perpetrated by members of the community); domestic violence; female genital mutilation and other harmful traditional practices; trafficking and forced prostitution; and violence related to women=s reproductive rights, including involuntary sterilization, forced pregnancy and forced abortions. These trends are not reflected consistently in reporting among different country-specific mechanism or even within the work of a single rapporteur or representative.

11. Violations of equality before the law and equal protection of the law are the second most common subject of attention. Reports have cited gender discrimination in laws governing, *inter alia*: legal capacity; rights in family life and rights related to marriage; labor; political participation; criminal procedure; criminal offenses; property rights; and freedom of movement. *De facto* discrimination has been mentioned in relation to: rights in family life and in marriage; property rights, including inheritance; participation in public life and political participation; freedom to seek, receive and impart information; freedom of expression; reproductive rights; and aspects of various economic, social and cultural rights, including education, employment, health, food, housing, and work in the formal and informal sectors.

12. Although reports increasingly provide information related to women=s economic, social and cultural rights, it is not consistently presented within a rights-based framework. For example, some reports have treated illiteracy among women or maternal mortality as matters to be dealt with through development and/or social policy rather than as matters entailing international legal obligations. Information on women=s rights has generally been omitted from the sections of reports that deal with specific economic, social and cultural rights. Some reports have presented analyses of specific economic, social and cultural rights that are grounded in obligations of States parties under the Covenant on Economic, Social and Cultural Rights but that make only cursory references to women or the gender-specific dimensions of the rights concerned.¹

13. Attention to violations of women=s human rights linked to religious or customary laws and practices is growing. In reports to the Commission on Human Rights and the General Assembly over the past five years, for example, the Special Rapporteurs on Afghanistan, the Sudan and the Special Representative on Iran have all characterized a number of laws and practices associated with religious beliefs or custom as incompatible with the prohibition of gender discrimination. In each of these country situations, direct State action constitutes the primary source of violations, although allegations concerning State complicity in, or tolerance of, abuses by non-State actors have also been reported. Customary or traditional practices that are carried out primarily by non-state actors, within the family or the community, have also been addressed by several country rapporteurs. For example, the Special Rapporteur on the Congo reported allegations that Aduring the ethnic conflict in Kivu, single women were considered by AFDL troops to be witches and cannibals; as a result, in Limangi they were beaten, tortured and

¹ See, e.g., the otherwise careful discussion by the Special Rapporteur on Nigeria of the right to health. E/CN.4/1999/36, paras. 52-53

killed.² The Special Rapporteur on Nigeria and the Independent Expert on Somalia have reported on female genital mutilation and other harmful traditional practices as human rights violations.³

14. Some rapporteurs and representatives have explicitly addressed the application of international human rights norms to religious laws and practices that are formally implemented in domestic legal systems, and/or implemented as State policy or with the acquiescence of the State. For example, the Special Rapporteur on Nigeria stated that Awhile the implementation of international norms in particular cultural or religious contexts may entail their adaptation, freedom of religion may not be invoked to shield from scrutiny any law which infringes upon women's rights.⁴

15. Other experts have stated that a religious or customary law or practice violates identified international norms. The Special Rapporteur on Nigeria observed:

Customary law is particularly influential in the private sphere, regulating issues such as marriageable age, consent to marriage, property rights, custody of children upon divorce, etc. Three types of marriage exist in Nigeria: statutory, customary and Islamic. Customary law places no restrictions on marriageable age. The Special Rapporteur has been informed of the practice, particularly in northern Nigeria, of giving away female children in marriage, in contravention of article 16 (1) (b) and 16 (2) of the Convention [on the Elimination of All Forms of Discrimination Against Women]. According to the Government, customary law marriages are also often polygamous, and under the Islamic faith, every Muslim has the right to marry up to four wives provided the man can "take care of the wives equally (CCPR/C/92/Add.1, para. 168)". Such practices, which violate article 26 of the ICCPR and article 16 of the Convention, figured among the concerns of the Human Rights Committee at its fifty-seventh session when it examined the initial report of Nigeria (CCPR/C/92/Add.1).⁵

16. Similarly, the Special Rapporteur on Equatorial Guinea stated that: Women are being kept in prison for unspecified periods because their families have not restituted to their former husbands, upon dissolution of the union, the amount of the bride price received at the time of ratification of the marriage. This kind of traditional and customary practice, which may be equated with imprisonment for debt and is furthermore of unspecified duration ("until she returns the bride price"), constitutes a violation of article 11 of the International Covenant on Civil and Political Rights, to which Equatorial Guinea has acceded, and of the principles requiring the establishment of a time limit for sentences.⁶

² E/CN.4/1999/31, para.106

³ E/CN.4/1999/36, paras. 32-34; E/CN.4/1999/103, para.76

⁴ E/CN.4/1998/62, para.70

⁵ E/CN.4/1998/62, para.70

⁶ E/CN.4/1999/41, para.49

17. The Special Rapporteur on Afghanistan has emphasized the need to address religious and customary laws or practices affecting women=s human rights in the context of humanitarian and peace-making initiatives. Among the core elements of a strategy for meeting humanitarian assistance needs while promoting a framework for peace based on the realization of human rights for all Afghans, he included the following recommendation:

The human-rights based process of transition should be pursued through: (a) promoting an inclusive, participatory process which would enable constructive dialogue to be held with all participants on the effective implementation of human rights; (b) a human rights programme for Afghanistan should focus initially on advocacy and dissemination of the entire range of human rights issues (economic, social and cultural rights as well as civil and political rights); (c) a practical and workable policy should be adopted on discrimination against women and girls, as should a set of standards and benchmarks against which progress and compliance may be measured; (d) the Secretary-General should ensure that all United Nations activities in Afghanistan are carried out taking into account the principle of non-discrimination against women and girls, and that a gender perspective and special attention to the human rights of women and girls, are fully incorporated in the work of the civil affairs unit of UNSMA, including the training and selection of staff.⁷

2. Reporting on women=s human rights by thematic mechanisms

18. Reporting on women=s human rights by the thematic special mechanisms is necessarily circumscribed by the substantive scope of the mandates, which focus on specific rights, types of violations, or status or identity-based groups (such as children or internally displaced persons). Thus the violations of women=s human rights addressed most frequently by the thematic mechanisms with mandates related to integrity and security of person concern violence against women and/or girls. These include: the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on independence of judges and lawyers; the Special Rapporteur on sale of children, child prostitution and pornography; the Special Rapporteur on torture; and the Working Group on enforced or involuntary disappearances (which has reported on attacks against women family members of disappeared persons, as well as the disappearances of women). The Special Rapporteur on violence against women obviously falls within this group.

19. Gaps in reporting on women=s human rights and the types of individual cases taken up by the thematic mechanisms are attributable to several factors. In part, they reflect the substantive scope of the mandates and, more broadly, the fact that the majority of thematic mandates established by the Commission historically have centered on violations of civil and political rights by, or with the complicity of, the State. However, a significant number of violations of women=s human rights that can be interpreted as abuses within the thematic mandates have been overlooked in the past. Examples are detailed in *Promoting Accountability for Women=s Human Rights: Working with the Thematic Special Mechanisms of the Commission on Human Rights*. These interpretations are consistent with established human rights law. Two such examples are

⁷ E/CN.4/1999/40, para.31

provided here. Violations against women that fall within the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions include:

- * the expulsion of trafficked women to a place where their lives are in danger;
- * failure to prevent and respond adequately to honor killings of women by their husbands or other family members;
- * death sentences imposed by customary courts outside the ordinary judicial process;
- * death sentences imposed by lawfully constituted courts within the ordinary judicial process in a manner inconsistent with international guarantees applicable to death penalty or fair trial rights; and
- * killings of women by spouses or family members and death threats in situations where there is impunity for the killings, including a pattern of failure to investigate and prosecute perpetrators.

A second example relates to the work of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Violations against women which may be addressed in communications to the Special Rapporteur include various forms of compound discrimination or intolerance, such as:

- * gender discrimination in nationality laws;
- * violence by security forces or police directed against women belonging to specific racial, ethnic, or national groups;
- * failure to provide women migrants protection against, and remedies for, violence in the family;
- * restrictions on the human rights of women belonging to specific ethnic or racial groups as a consequence of legal protections for those groups (such as restrictions on women's right to administer property);
- * failure to fulfill the economic and social rights of women belonging to specific racial or ethnic groups, evidenced by such facts as their lack of access to adequate food, clothing, and housing; unemployment or underemployment; ill-health; inadequate access to quality health care services (including reproductive health services); lower levels of literacy; or inadequate access to higher education;
- * arbitrary arrest, detention or deportation of trafficking victims belonging to particular ethnic, national, or racial groups and the failure to protect them against violence by government authorities or private persons and to provide effective remedies; and
- * failure to protect women belonging to particular ethnic, national, or racial groups who are engaged in prostitution from violence by government authorities or private persons and to provide effective remedies.

20. Limitations on reporting about women's human rights result in some cases from the expert's interpretation of his or her mandate, notably with regard to the extent to which violations by non-state actors are considered to fall within the mandate. Such limitations may also result from the extent to which experts view contextual information related to the causes and consequences of violations as a part of their inquiry. In addition to gaps related to interpretations of mandates, several of the thematic mechanisms have approached women's human rights as a subject for isolated or, at best, periodic inquiry rather than ongoing review. Other thematic mechanisms have addressed violations of women's human rights primarily in general references

to women as a sector of the population that is particularly vulnerable to violations in conflict situations or to the harmful effects of economic policies.

21. Gender analysis of the causes and consequences of violations, and attention to the interrelationships among human rights can reveal previously overlooked violations of women's human rights that are within existing thematic mandates. The Special Rapporteur on violence against women has examined a wide range of rights pursuant to her analyses of the causes and consequences of different forms of violence against women. Her in-depth analyses of specific forms of violence illustrate how interrelationships among human rights affect women's ability to exercise specific rights and how violations that appear to be episodic are linked to the systemic effects of gender discrimination. Among the other thematic mechanisms, the Special Rapporteurs on freedom of opinion and expression and religious intolerance have expanded their inquiries regarding women's human rights by examining the interrelationship between the right(s) that are the central focus of their mandates and other rights, as described below.

22. Several experts have expanded their focus beyond the violations of women's human rights most centrally related to their mandate to consider causal factors, including gender discrimination. This approach has been adopted by the Special Representative on internally displaced persons and the Special Rapporteurs on religious intolerance, freedom of expression, the right to education, and human rights and extreme poverty. The activities of the Special Rapporteur on internally displaced persons continue to provide a model for integrated analysis of a wide range of women's human rights, including his standard setting initiatives and reporting on country situations.

23. Gender analysis of the interrelationships among women's human rights can provide a basis for identifying preventive and remedial measures that are more likely to be effective in eliminating obstacles to the exercise of specific rights. For example, the Special Rapporteur on freedom of opinion and expression has emphasized the needs to ensure women's rights to participation in public life, end violence against women, and eliminate discriminatory laws and practices in order to protect and promote their rights to freedom of opinion and expression:

In resolution 1997/27 the Commission on Human Rights invited the Special Rapporteur to continue to pay particular attention to the situation of women and the relationship between the effective promotion and protection of the right to freedom of opinion and expression and incidents of discrimination based on sex, creating obstacles for women with regard to their right to seek, receive and impart information, and to consider how those obstacles impeded the ability of women to make informed choices in areas of particular importance to them, as well as in areas related to the general decision-making processes in the societies in which they lived.

The Special Rapporteur wishes to emphasize here that the degree to which States respect, protect and promote the right to freedom of opinion and expression of women, which may be exercised through activities and in ways distinctly different from those of men, will also reflect a country's standard of fair play, justice and honesty with regard to women and the status accorded to them in society.

The Special Rapporteur also recalls that in his report to the fifty-third session of the Commission (E/CN.4/1997/31) he called upon States "to actively support women attempting to make their voices heard and to ensure that they are welcomed as active participants in public life". He further urged Governments "to ensure that effective measures are taken to eliminate the atmosphere of fear that often prevents many women from communicating freely on their own behalf or on behalf of other women who have been victims of violence either in domestic or community settings or as a result of internal or transborder conflict" (paragraph 62).

The issues of fear, shame and exclusion are of great concern to the Special Rapporteur not only because they have an enormous impact on the ability of women to exercise freely their right to expression but also because they reflect, in some countries, inadequacies in the legal protections available to women and, in others, continuing attitudes and practices that are justified on the basis of customary practices, cultural history and social norms.⁸

24. Positive trends are evident in reports by the thematic mechanisms to the 1999 session of the Commission on Human Rights. The recent creation of several mandates related to economic, social and cultural rights provides an opportunity to develop legal analyses and methodologies for monitoring that are gender-sensitive from their inception. In their initial reports to the Commission on Human Rights, both the Independent Expert on human rights and extreme poverty and the Special Rapporteur on the right to education integrated substantive analysis of women's human rights and the gender-specific dimensions of a range of issues within their mandates.⁹ For example, in a country case study by the Independent Expert on human rights and extreme poverty, she drew attention to women prisoners as among the most disempowered of the very poor, including women in prison who had been rejected by their families due to accusations of adultery and whose only hope of survival is to stay in prison.¹⁰

25. In addition, several thematic mechanisms expanded their inquiries to include violations of women's human rights not addressed in their previous reports and/or rights of particular relevance to women, such as rights related to marriage and family life. The Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of lawyers and judges pointed to the need to examine honour killings.¹¹ The Special Rapporteur on extrajudicial, summary or arbitrary executions stated that her attention has been drawn to:

certain traditional practices which, when condoned or ignored by the authorities, may constitute violations of the right to life. She is deeply disturbed by reports of so-called honour killings reported to have taken place in some countries in the Middle East, Latin America and South Asia, where husbands, fathers or brothers

⁸ E/CN.4/1998/40, paras. 2-6, and the specific cases referred to by the Special Rapporteur in paras. 1 and 7 of the report. See also E/CN.4/1999/64, paras. 38-42

⁹ E/CN.4/1999/48; and E/CN.4/1999/49

¹⁰ E/CN.4/1999/48, para. 106

¹¹ E/CN.4/1999/39, paras. 74-75; E/CN.4/1999/60, paras. 41-42

have gone unpunished after having murdered their wives, daughters or sisters in order to defend the honour of the family....This practice is usually resorted to when a woman is believed to have engaged in a sexual relationship with a man. In other cases women have reportedly been killed after having demanded a divorce. Such offenders are given special consideration of mitigation on plea of cultural sensitivity....The Special Rapporteur urges States, and in particular the judiciary in the countries concerned, to use all their authority and integrity to bring this unacceptable practice to an end.¹²

26. Like the country-specific mechanisms, the thematic mechanisms have increasingly examined religious and customary laws or practices that violate women's human rights. The Special Rapporteur on violence against women and the Special Rapporteur on religious intolerance have detailed allegations concerning such violations and outlined conceptual and legal approaches to those violations. Both have emphasized that violations of women's human rights linked to religious laws and practices are associated with many different religions and beliefs.

27. The Special Rapporteur on violence against women made the following recommendations concerning Areligious extremism≡ which emphasize the primacy of international human rights norms:

- * States should adhere to their commitment, as contained in the Declaration on the Elimination of Violence against Women, that they shall not invoke custom, religion or tradition to justify violence against women and should ensure the universal, indivisible and interdependent application of international human rights instruments in all States and societies.

- * Laws relating to criminal procedure and the criminal process should be made compatible with international standards. Torture, cruel, inhuman and degrading treatment or punishment, along with laws which prevent effective prosecution of rape and domestic violence sanctioned by religious interpretations should be repealed.

- * States should take the lead and ensure that traditional practices and rituals in the community which violate the human rights of women are eliminated. Multi-pronged strategies involving law, education and the media should be implemented in order to assist in the transformation of attitudes and social practices.

- * States should clarify their political commitment to human rights norms, realizing that failure in this regard encourages extremist opinion to promote, introduce or justify community practices that are violent towards women.¹³

This approach is consistent with international norms, which permit restrictions on manifestations

¹² E/CN.4/1999/39, paras. 74-75

¹³ E/CN.4/1997/47, para.13.

of religion or belief if they are necessary to protect the rights and freedoms of others and are prescribed by law. See Universal Declaration of Human Rights, Art. 18; International Covenant on Civil and Political Rights, Art. 18. It reflects “the axiomatic doctrine that a State may not invoke the provisions of its national law to justify non-compliance with international law.”¹⁴

28. The Special Rapporteur on religious intolerance has identified two categories of violations within his mandate with specific reference to women: 1) violations of the principle of non-discrimination in matters of religion and belief, in the form of Apolicies, laws and regulations, discriminatory practices and acts≡ against women Abased on interpretations of religion and on traditions supposedly based on religion or belief;≡ and 2) Aviolations affecting women,≡ a category that includes all types of violations linked to religion or belief as they affect women.¹⁵ He has also called for efforts as a Amatter of priority to attack the dual scourge of extremism and discrimination against women≡ and recommended that a "minimum set of standard rules and principles of conduct and behaviour in respect of religious extremism should be drawn up and adopted by the international community≡ and Aa seminar should be held on the status of women from the standpoint of religion, traditions and human rights, so as not only to identify manifestations of discrimination and intolerance, but also to formulate practical recommendations and a plan of action for eradicating such practices.≡¹⁶

29. This approach to violations against women is linked to the Special Rapporteur=s recognition of violations by non-State actors as a significant category of violations within his mandate:

[Trends include a] growing number of policies and practices of intolerance and discrimination on the part of non-State entities. The first category of such entities comprises religious and denominational bodies responsible mainly for inter- and intra-community violations. The representatives of these communities and their followers act against members of their own faith who belong to the same or different branches - examples being the status of women and the status of converts[citations omitted]. These same representatives and believers are also at odds with communities of a different faith. The second category of non-State entities that sometimes overlaps the first comprises politico-religious parties or movements like the Taliban. These two categories raise the issue of the links between politics and the religion and their manipulation, which in this case is a source of intolerance and discrimination, the most extreme form of which is religious extremism....¹⁷

30. In a 1999 opinion, the Working Group on arbitrary detention found certain religious laws and practices regarding adultery and discriminatory restrictions on the right of women to marry

¹⁴ Report of the Special Rapporteur on Torture, E/CN.4/1997/7. The Special Rapporteur applied the well-established principle of international law that States may not invoke their domestic law to justify failure to comply with their international obligations to claims that religious law requiring corporal punishment prevails over international norms. He also pointed out that alternative interpretations of the same religious law by scholars, clerics and governments do not find such punishment to be required.

¹⁵ E/CN.4/1999/58, para. 105. See also A/53/279 (1998), para. 74.

¹⁶ E/CN.4/1999/58, para. 125

¹⁷ E/CN.4/1999/58, para. 115.

outside their faith to be incompatible with international norms. The Working Group consequently found detention pursuant to a conviction under those laws to be arbitrary:

The Government emphasizes that in the case of Mr. Elie Dib Ghaled and all other cases of individuals brought before the courts, the Shari'a, the Constitution and other applicable laws are applied on the territory of the United Arab Emirates, without distinction as to religion or nationality of the accused. Article 2.1 of the Universal Declaration of Human Rights lays down that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind such as, inter alia, sex or religion. One of the rights guaranteed by the Declaration is the right of adult individuals, under article 16.1, to marry without any limitation as to race, nationality or religion. The judicial prosecution of an individual for fornication and for having contracted matrimony with another person of a different religion, and for having concluded a marriage deemed null and void under domestic law is, in the Working Group's opinion, contrary to the principles enshrined in articles 2.1 and 16.1 of the Declaration. It is also contrary to article 18 of the Declaration, to the extent that the spouses have invoked the religious character of their marriage.

In other words, the marriage concluded in the present case was based on the free will of the two spouses. The case of Elie Dib Ghaled is all the more serious given that he married in Lebanon, where the marriage of persons of different belief and faith is entirely compatible with domestic legislation.

Article 7 of the Declaration guarantees equality before the law without any discrimination, as well as equal protection before the law against any discrimination. In the present case, the differentiation between the legal status of individuals and the application of different standards of legal protection for adults of different religions who married of their own free will amounts to a violation of article 7.¹⁸

31. This expanded reporting on religious and customary laws or practices that impair women's human rights represents significant progress toward integration, given the pervasive effects such laws or practices can have on women's human rights. Analysis and recommendations concerning the traditional norms and practices should take into account their effects on women. Emphasis on the need to revive or strengthen traditional values systems without attention to any gender discrimination within those systems may promote policies that undermine women's human rights.¹⁹ As emphasized by participants in the 1998 Workshop on

¹⁸ Opinion 2/1998, E/CN.4/1999/63/Add.1, paras. 10-12.

¹⁹ The Special Representative on internally displaced persons has emphasized the need to address the effects of traditional or customary law and practices on women's human rights in several country situations. For example, he stated in connection with the reintegration of internally displaced persons in Mozambique:

The land question also raised the issue of finding adequate mechanisms to regulate the relationship between national legislation and customary law. Given the limited capacity of the judiciary, the lack of knowledge about national legislation among the population, and the lack of resources to make use of the court system, the large majority of the population will in practical terms have their legal status defined within the framework of traditional systems in the foreseeable future. As reflected above, these systems have proved to be efficient in

Internal Displacement in Africa sponsored by the UNHCR, the OAU, and the Brookings Institute, policies and programs should encourage progressive social and cultural changes in crisis situations. [In the context of internal displacement, when] women are able to return to their place of origin, they should not also return to a society which is characterized by discriminatory and exploitative social relations.²⁰

C. The integration of gender analysis into the work of the special mechanisms

32. The term gender refers to the socially constructed roles of women and men in public and private life. Gender is thus distinct from sex which is biologically determined. This well-established understanding of gender has long informed development and social policy in the United Nations and other intergovernmental organizations, as well as national governments. Gender analysis of human rights is distinct from attention to women's human rights: it entails an examination of the effects of gender on the human rights of both women and men and both girls and boys. The gender-specific dimensions of human rights may be identified by considering the effects of gender on:

- a) the cause of a violation;
- b) the form a violation takes;
- c) the circumstances in which the violations occurs;
- d) the consequences of the violation for the victim; and
- e) the availability and accessibility of remedies.²¹

Gender analysis is a primary tool for identifying violations of women's human rights and preventive and remedial measures. It reveals that women's gender roles historically have been assigned less political, social, economic, and cultural value than those of men. To varying degrees in all societies, discrimination against women is systemic and reflected in the structure and functioning of the law, economic systems, political institutions and processes, religious and cultural systems, and family systems.

33. The Special Rapporteur on the right to education has highlighted the distinction between gender analysis and the integration of women's human rights and noted that this "double mainstreaming", namely the incorporation of both gender perspectives and equal human rights of women throughout the United Nations.... involves a considerable conceptual, strategic and operational challenge.²² In contrast to the marked improvement in integrating women's human

settling many disputes over land in a peaceful manner. However, customary law has its limitations. For example, it may discriminate against single women with regard to allocation of land and inheritance rights. The challenge therefore is to ensure that national legislation, which provides for equality between men and women, can be resorted to. To this end, it might be useful to compile and analyse customary law, with a view to examining the extent to which it harmonizes with national legislation. Furthermore, there is a need to disseminate knowledge about national standards among the population, so that individuals become aware of their rights. Given the high illiteracy rate among the population and the lack of qualified personnel, it would be useful if the local administration and the school system became involved in this effort.

E/CN.4/1997/43/Add.1. See Report of the Special Representative on Children Affected by Armed Conflict, A/53/482, paras. 29, 32.

²⁰ See also the recommendation by the Special Rapporteur on Afghanistan, para.17, above.

²¹ For examples applying this framework, see *Integration of Women's Human Rights into the Work of the Special Rapporteurs*, paras. 5-8.

²² E/CN.4/1999/49, para. 8

rights, progress toward the integration of a gender analysis remains very limited. This lack of progress reflects, in part, the continued lack of sex and gender-disaggregated data in the information provided to the special mechanisms. As the Special Rapporteur on extrajudicial, summary or arbitrary execution remarked in some cases, sources do not indicate whether the victim is male or female and the gender cannot be determined by the name; in other cases, allegations refer to groups of unidentified civilians or without gender specification, for example, the displaced population of a given region.²³

34. However, sex-disaggregated data can only provide a starting point for the substantive analyses necessary to analyze the gender specific dimensions of human rights. As the Special Rapporteur on the right to education explained with regard to the equal right of education for girls:

The existing quantitative data have identified three facets of the gender gap. The difference in male/female illiteracy rate is a reflection of the heritage of unequal access to education, the difference in male/female enrolment points to continuing unequal access, while the male/female difference in the completion of the full cycle of primary education indicates that getting girls into school does not necessarily lead to their staying at school. Manifestations of gender inequality evidenced by such data highlight the magnitude of the challenge but say nothing about the causes of the problem and gender analysis is thus necessary to identify the causes. The subsequent challenge is to specify the ends to be attained and thereupon the appropriate means, as well as monitoring mechanisms to ascertain whether the means employed are leading to the specified ends and corrective action is employed if this turns out not to be the case.²⁴

35. The gender analysis that has been undertaken by special mechanisms has focused on the causes and consequences of violations of women's human rights and access to remedies for those violations. Although information about the human rights of men and boys still comprises the vast majority of the information provided in reports by the special mechanisms, very few attempts have been made to analyze the effects of gender on violations against men and boys. Exceptions to this trend include: on-going attention by the Special Rapporteur on sale of children, child prostitution and child pornography to gender-specific patterns in the trafficking of girls and boys, particularly with regard to the purposes for which they are trafficked, and the forms of violations to which they are subsequently subjected;²⁵ and the analysis by the Special Rapporteur on the right to education of gender imbalances in the ratio of male and female teachers.²⁶

36. Reports by the Special Rapporteur on violence against women provide a model of applied and integrated gender analysis, including her reporting on specific themes and on on-site missions. The Special Representative on internally displaced persons has consistently undertaken gender analysis of a range of specific rights, such as the right to health, and reported

²³ E/CN.4/1997/60, para. 50

²⁴ E/CN.4/1999/49, para. 20.

²⁵ Most recently in E/CN.4/1999/71

²⁶ E/CN.4/1999/49, paras. 73-74

on gender roles within families and internally displaced communities. For example, in the context of his mission to Azerbaijan, he noted that:

Within the family, the experience of displacement has affected gender roles. According to the traditional family structure in Azerbaijan, men are responsible for providing income while women act as the principal family care-givers by undertaking all household chores, cooking and caring for the children, in addition to whatever economic activity they may have been engaged in. Displacement has compelled many internally displaced women to assume new or at least increased responsibilities for financially supporting the family, because of the death, disablement or unemployment of the men in the family.

The changes in gender roles, however, are not fully reflected in the social structures of internally displaced communities. A difference was noticeable between the internally displaced populations visited in urban and rural areas. In urban areas, men and women alike were represented in the groups of internally displaced who came forth to meet with the Representative; indeed, the women tended to be the most outspoken and assertive in communicating the community's concerns. By contrast, in several of the camps it was predominantly, and sometimes exclusively, men who assembled in public areas to meet with the Representative; the women remained close to their homes, although efforts were made by the women comprising his delegation to consult with these women on an individual basis. Even when gatherings of camp populations were mixed, the men and women tended to be clustered separately. In all of the areas visited, the Representative, along with the women comprising his delegation, undertook to consult directly, often separately, with women in order to hear their specific concerns and create conditions in which they could feel at ease in sharing them.²⁷

37. Other experts whose reporting has examined the gender-specific dimensions of particular rights and/or gender roles in the family and in society include the Independent Expert on Somalia; the Independent Expert on Haiti; the Special Representative on Cambodia; the Special Rapporteur on the Sudan; and the Special Rapporteur on Afghanistan.

D. Structure of reports and categories of information

38. In the majority of country reports information and analysis is structured according to a combination of the following categories: a) background or contextual information on the social, political and economic situation in the country concerned; b) specific rights, typically subdivided between civil and political rights and economic social and cultural rights; c) groups within the population, distinguished on the basis of their shared identity and/or vulnerability to violations (for example, indigenous communities, ethnic minorities, and refugees and displaced persons) and, in the case of women and of children, corresponding to groups specifically mentioned in the

²⁷ E/CN.4/1999/79/Add.1, paras. 38-39. In addition, the Guiding Principles on Internal Displacement presented by the Special Representative reflect a gender analysis: provisions related specifically to internally displaced women have been included and gender specific aspects have been recognized within general provisions. E/CN.4/1998/53/Add.2.

relevant resolutions of the Commission on Human Rights as subjects of inquiry; and d) thematic issues of particular concern. Information based on missions is often organized by geographic region within the country concerned; groups within the population; and/or thematic issues.

39. These categories and the information presented within them reflect the underlying conceptualization of women=s human rights and understandings of the gender analysis that guide the special mechanisms. In turn, typologies can reinforce or undermine attempts to develop integrated gender analyses of human rights and ensure attention to women=s human rights. The following trends can be observed:

- * The vast majority of the information presented in reports is described in gender-neutral language. Where gender-neutral language is used, social science and feminist research suggests that the unmarked categories of victims will be assumed by most audiences to be men. Exceptions to this general pattern are cases involving rape and other sexual assault, trafficking for purposes of sexual exploitation, commercial sexual exploitation and human rights abuses against persons working as prostitutes. In these cases most audiences will assume the victims to be women.

- * The majority of reports on country situations now include a specific section with information about women=s human rights, although not all reports explicitly relate the factual information to specific rights or use rights-based language. These sections are titled variously, including: Arights of women (Rwanda, E/CN.4/1999/33; Nigeria E/CN.4/36); Astatus of women (Iran E/CN.4/1999/32); Awomen and children (Myanmar E/CN.4/1999/35); Aspecial problems affecting women and children; and Asituation of women (Congo E/CN.4/1999/31).

- * Although the majority of country-specific reports now include a separate section (however titled) on women=s human rights, some reports still include only isolated and minimal references to women=s human rights or offer only a generic acknowledgement of the importance of attention to the gender-specific dimensions of particular issues, without substantive comment or factual examples.

- * In general, those reports with separate sections on the status or rights of women provide little or no information on women=s human rights under other categories of information. The absence of gender-specific information characterizes the treatments of both rights-specific categories and categories of status or identity-based groups (such as ethnic minorities, indigenous communities, refugee and displaced persons). For example, a number of reports now include a section on the rights of the child but typically omit gender-specific information. Children are presented as a gender-neutral category without reference to girls or boys. The most notable exception to this trend is the work of the Special Rapporteur on sale of children, child pornography and child prostitution.

* Some experts have integrated allegations concerning rape and other sexual assault against women into categories of general, non-gender-specific violations of the integrity of person. Asexual violence[≡] has been defined as a general, non-gender specific category in several reports that deal with armed conflict in specific countries or in the context of thematic issues. See, e.g., Report by the Special Rapporteur on the Congo, E/CN.4/1999/31 (Asexual violence[≡]); Children Affected by Armed Conflict, A/53/482 (1998) (Arape and sexual abuse[≡]). The allegations and comments on patterns of violations summarized under these headings concern sexual violence against women and girls. These positive developments provide examples of how violations of women=s human rights can be addressed within standard categories of rights.

E. Recommendations

40. Based on these trends, the following changes in reporting methodologies and working methods would promote further integration of women=s human rights and gender analysis:

- a) where gender-specific information is not available, the special mechanisms should explicitly acknowledge this gap;
- b) information on women=s human rights should be integrated into the discussion of other substantive issues addressed in reports, in addition to providing more detailed analysis and discussion in a separate section on women (and/or girls);
- c) requests to governments and forms for the submission of information by NGOs and other sources should request data disaggregated by sex and information relevant to gender roles and discrimination against women; and
- d) use of the unitary category Awomen and children[≡] should be discontinued. As a category of information or analysis, it obscures the fact that different substantive human rights guarantees may apply to women and children and reinforces the historical tendency to make concern for women=s human rights derivative of their roles as mothers, rather than recognizing their status as independent rights holders.

41. In addition, continued attention to on-site visits as a particularly significant focus of efforts to promote integration is suggested. Preparation for on-site visits should include: developing contacts with a wide range of sources likely to have information or expertise on the situation of women=s human rights; and gathering gender specific information on national and local law and practice, including cultural traditions. The delegation for the mission should include staff with expertise on women=s human rights and women interpreters. Members of the delegation and support staff should be fully briefed on women= human rights in the country concerned.

42. During on-site visits, experts should seek information from women directly affected by violations, representatives of women=s groups, officials with expertise on, or responsibility for, women=s rights, and any United Nations resident staff. They should seek access to facilities and sites where information may be obtained directly from women affected by violations, such as women=s prisons or women=s units within general prisons, refugee camps, or hospitals. Experts

should request that representatives of women=s groups and women from the community be included in meetings with community spokespersons (who are often men), and request separate meetings as appropriate. Interviews with women victims should be conducted in conditions designed to safeguard their security and the confidentiality of information. A woman staff person should be present during such meetings.

43. As previously suggested, the integration of women=s human rights and gender analysis into conclusions and recommendations by the special mechanisms and their follow-up activities are also of particular importance. Continued efforts should be made to obtain sex disaggregated data from within the UN system itself, especially the human rights treaty bodies.

V. DIRECT AND INDIRECT DISCRIMINATION AND THE INTERSECTION OF DISCRIMINATION AGAINST WOMEN WITH OTHER FORMS OF DISCRIMINATION

Florence Butegwa

A. Introduction

1. The dynamism of the concept and content of human rights is a key feature of international relations and policy formulation. The narrow understanding of and emphasis on civil and political rights is slowly giving way to an acceptance of the equal importance and indivisibility of all human rights. In addition, it is increasingly being accepted that human rights can be experienced differently as a result of differing socioeconomic context in which the individual lives. Thus, specific categories of people, including women, persons with disabilities, and indigenous peoples have sought to articulate how their circumstances influence their enjoyment of human rights. The reality of their circumstances must be acknowledged, understood and then be the basis of human rights policy and practice if human rights are to be truly universal.

2. It is within this context that the discourse of gender integration in the work of human rights mechanisms of the United Nations¹ has to be placed. It is a call for recognition and understanding of the social construction of gender roles, relationships and status as a fundamental factor in shaping the reality of women and men around the world. That reality includes our perceptions, including our understanding of the purport of human rights principles and law. Gender determines the general and/or specific manner and circumstances in which women and men experience the enjoyment or violations of fundamental human rights. As one author put it, "[F]eminist analysis begins with the recognition that each of us views societal concepts and institutions from a different lens depending on our consciousness and our place in society."²

3. A major consequence of gender in our societies is the endemic discrimination against women in almost all spheres of life. The basis of the differential treatment of women may be a perceived need to protect women, or an assumption that women's gender roles make the differentiation justified. For instance, in many African and Asian countries girls and women are discriminated against in matters of access to education. The reasoning is that women are made for marriage and one does not need an education for the purpose. It is also assumed that girls and women will be maintained by a husband or a male relative. Other often cited reasons for discrimination include the fact that a man is the head of a family - a fact used to justify discrimination in employment, in decision-making and in allocation of land, among others. We could go on and on. For the purpose of this workshop, suffice it to start from the premise that in all human rights matters and situations falling within the mandates represented here, discrimination on the basis of gender is relevant. This is what makes it a cross cutting issue to be addressed as an integral part of the respective mandates.

¹ Commission on Human Rights, resolution 1996/48

² Charlotte Bunch, *Transforming Human Rights from a Feminist Perspective*, OSKA (Special English Edition, Fundacja OSKA, Warsaw 1998, 41).

B. What is discrimination?

4. The Convention on the Elimination of All Forms of Discrimination against Women defines discrimination against women as:

"... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (article 1).

5. This definition follows the pattern set in the definition of discrimination in other human rights instruments, including the International Convention on the Elimination of all Forms of Racial Discrimination and confirmed as applicable to all human rights fields in the General Comments of the Human Rights Committee. It is important to note that the discrimination may be direct or indirect. It may arise as a consequence of the application of a law or practice that *prima facie* is non-discriminatory i.e. the application of a so-called gender neutral piece of legislation may result in discriminatory consequences because of the gendered context in which it operates.

C. Relevance of gender-based discrimination to the work of treaty bodies and special mechanisms

6. I would like to focus on two grounds for the relevance of gender-based discrimination to the work of human rights treaty bodies and special mechanisms. Firstly, gender-based discrimination is systemic and therefore necessarily a factor in the enjoyment of individual rights by women and men, boys and girls. We can think about any human right or fundamental freedom e.g. equality before the law and access to justice, freedom of expression and association, the right to participate in public life, the right to life itself and so on. Gender is one of the major determinants of the capacity of women to enjoy those rights. This is a fact that is recognized in each of the human rights instruments as is evidenced by the provision that states shall ensure the enjoyment of the guaranteed rights without discrimination on the basis of, *inter alia*, sex.

7. Secondly, discrimination on the basis of gender is a factor that intersects with other forms of discrimination, including race, ethnicity, religion, social origin etc. Women, falling within these categories are discriminated against because of their race or ethnicity in addition to the discrimination as women. While all people of a particular race or religion or ethnic minority might be disadvantaged, a gender analysis might show that within the group, women end up suffering additional disadvantages in the field of education, health, access to economic resources and opportunities and access to justice. Additionally gender determines or influences the ways in which women experience the discrimination and that may be different from the experience of men.

D. Taking discrimination on the basis of gender into account

8. Acknowledging that gender-based discrimination cuts across other forms of discrimination and human rights violation and responding appropriately is an integral part of compliance with the requirement of gender integration. There are some pointers on how this can be done. The report of the expert group meeting on the development of guidelines for the integration of gender gives some

ideas. It provides that one of the first steps for a human rights monitoring or investigation mandate would be to ask whether the "categories of facts" used in the collection and analysis are relevant to determining the real situation of women i.e. can they expose the discrimination of women in the situation under investigation?

9. An example, in the context of racism, can be found in a simple illustration given recently by Prof. Ewa Letowska (Oska, 1998). She refers to a couple that has adopted bi-racial children. When the adoptive mother (white) takes them out, she experiences signs of open hostility (how shocking; she sleeps with a black man!) but when the adoptive father (also white) takes them out, he is greeted with approval (why, a real connoisseur!). If a team was investigating racism, they will almost certainly miss the different experience indicated above and that is determined by gender, unless the categories of facts sought right from the beginning pointed them in the right direction.

10. Additionally, the addition of an appropriate question to the set of questions to be raised during a mission might not yield the necessary information unless the women are asked. Men might be totally unaware of the discriminatory manner in which racism is experienced. Women who are not gender aware, might also not immediately notice any discrimination in the above reaction or might accept it as "normal" because of the socialization process. Feminist organizations and individuals can bridge this gap.

11. If we were to overlook gender in working on issues of racism, we would be failing in our duty. Human rights law is based on the principle of the dignity and equality inherent in all human beings. An appreciation of discrimination on the basis of gender as a cross cutting issue necessitates an investigation of the experiences of both men and women and an analysis that confirms (or denies) the fact that identified differences are the result of gender-based discrimination.

12. Another example can be found in the context of internally displaced persons (IDPs). It is acknowledged that women (and children) form the majority of internally displaced persons around the world. All IDPs are vulnerable to violations of their human rights, including the right to life, to health, security of persons, to participation in public life etc. For each of the rights under threat, there will be commonalities and differences in the way men and women experience it. For instance, in the face of scarcity of food and medical supplies, women will often suffer more, partly due to discrimination in the appointment of camp leaders. That discrimination is often based on gender. Women are not seen as leaders and as decision-makers, their numbers notwithstanding. They suffer more also because they are socialized to give precedent to their spouses or male partners and to children.

13. Though many of those concerned with the human rights of IDPs often describe the dire plight of women (when compared to that of men) the analysis, if any, rarely make the connection between the violated human rights and discrimination on the basis of gender.

14. Human rights concerns around the issue of structural adjustment offer another good example for appreciating the cross-cutting nature of gender-based discrimination. As the state has receded, individual rights particularly in the social and political sector have suffered. The right to work is threatened as the public sector ceases to be a major employer. The impact, one might say has been felt by the entire population, especially the poor. An analysis of the facts from a gender perspective, however, will quickly show that gender discrimination in these societies has made the negative impact

of economic structural adjustment fall disproportionately on women. In the economic sector, many governments that are implementing structural adjustment policies have adopted a World Bank sanctioned strategy aiming to strengthen the private sector. Substantial financial and technical resources from development loans and grants are put at the disposal of private sector enterprises (taken to mean commercial, industrial and large scale agricultural enterprises). An understanding of gender and particularly the underlying discrimination against women in terms of access to credit, land and entrepreneurial opportunity, will clearly indicate the discriminatory nature of the private sector development programmes. In other words, these efforts reinforce and enhance the discrimination against women.

VI. RELIGION AND CULTURE

Summary of presentation by Radhika Coomaraswamy

1. The critical role of religion and culture in women's enjoyment of their human rights was emphasized. A tendency of States to insist on their cultural rights when it comes to women was noted. The role religion and culture played with regard to women's enjoyment of their human rights had been elaborated by the presenter in a recent lecture entitled "A question of honour: women, ethnicity and armed conflict". It was stated that "in many countries sexual violence is seen as a crime of honour, an act against the community, not the physical integrity of the individual victim. It is this aspect that is at the core of an understanding of violence against women in armed conflict that involves ethnic, religious or linguistic conflict among groups".
2. In light of the importance accorded to religion and culture not just for the individual alone but for the community as a whole, consideration needed to be given as to how to deal with these dimensions in a human rights framework. Two aspects were noted, namely: ratification of or accession to international human rights instruments created binding legal obligations for the State party; and: existing cultures and traditions needed to be interpreted in a "human rights-friendly" manner. Attention was drawn to the Declaration on the Elimination of Violence against women which clearly stated that States "should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to "elimination of violence against women.
3. The frequent discrepancy between law and practice in areas influenced by religion and culture was noted. In this regard, it was pointed out that the State might have laws which prohibit certain practices, but that communities nevertheless continued to practice such outlawed traditions. Furthermore, there continued to be legal pluralism, with statutory law and religious law affecting such areas as marriage and family relations. Courts dispensing the general, statutory law and religious courts also continued to act in parallel. Such religious law and enforcement mechanisms were not always in accordance with a State's treaty obligations under international human rights instruments applicable to women. Consequently, challenges arose as a result of the actions of such non-State actors which often acted without respect for international human rights law.
4. It was noted that Special Rapporteurs and other human rights mechanisms had the opportunity, in the implementation of their mandates, to interpret customs, traditions and religious practices within a human rights framework. Such interpretation needed to go beyond a strict legal analysis and assess the actual implications of such practices of women.
5. The importance of focussing on religion and culture not only with regard to women's enjoyment of their civil and political rights, but also with regard to their enjoyment of economic, social and cultural rights was highlighted. Issues such as women's literacy rates, and their access to land and property were influenced by religion and culture. Cultural norms that shaped personal status laws, including age of, and consent to, marriage, needed to be assessed in light of international human rights law.

6. Since religion and culture created deeply held views, and were part of the ideology of a State or a society, the challenge was to affect change in those deeply held convictions to achieve compliance with international human rights norms. The important role of education and of the media as critical tools for sensitization concerning their human rights dimensions was emphasized.

VII. STATE RESPONSIBILITY AND NONSTATE ACTORS

Summary of presentation by Donna Sullivan

1. Current approaches to accountability under international law for human rights violations by non-State actors, including private individuals, groups, organizations and other entities were outlined. It was explained that many of the most common and most egregious violations of women=s human rights were carried out by non-State actors. Although human rights law traditionally focused on direct violations by the state, regional and international human rights bodies now address violations by non-State actors with increasing frequency. The case law and legal analyses elaborated by those bodies and by scholars provided useful guidance for analyzing non-State violations of women=s human rights within the mandates of the special mechanisms and under various human rights treaties.

2. Three principal contexts were identified for purposes of analyzing human rights violations by non-State actors. The first was national settings in which the rule of law was largely established. The second was situations in which the structures of the State had collapsed or functioned only erratically or partially. These situations may be characterized by the presence of intergovernmental entities as the *de facto* guarantors of human rights. The third context was the operations of non-State economic actors, including international financial institutions and multinational corporations, which were increasingly displacing the central role of the State as globalization of the economy proceeds. Focus was on violations of women=s human rights in the first context, but the need to examine legal frameworks that can be applied in the other two contexts was emphasized.

3. Three different legal bases for holding States accountable for violations by non-State actors were discussed: 1) the State may be accountable for non-state violations when a treaty explicitly establishes the obligations of States parties to regulate the conduct of non-State actors. For example, the Convention on the Elimination of All Forms of Discrimination against Women required States parties to eliminate discrimination by non-state actors in both public life (as in the case of non-State employers) and private life (as in the case of family members); 2) the duty to *ensure* as well as to respect human rights required the State to exercise due diligence to prevent violations, and when violations occur, to investigate, prosecute and punish the perpetrator(s) and compensate the victim. The need to consider a range of preventive and remedial measures in assessing whether or not the State has exercised due diligence (or *Reasonable care*), rather than relying exclusively on criminal justice measures was emphasized; and 3) the State may be required to protect against violations by non-State actors as an aspect of the obligation to protect rights. The duty to protect rights is an element of a framework developed with reference to economic, social and cultural rights but is increasingly applied to civil and political rights. This framework, which has been utilized by the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women, categorizes State obligations as duties to respect, protect and fulfil rights. It has the advantage of emphasizing the range of measures necessary to achieve full realization of a right and emphasizing the indivisibility of rights.

VIII. MAINSTREAMING OF GENDER: THE CASE OF IRAN

Summary of comments
Maurice Copithorne

Introduction

Iran is the oldest extant country mandate under the special procedures process of the Human Rights Commission. It has been in place since 1984, and in the ten years before I took over, a great deal was written by my predecessors about the human rights situation in Iran. So, one of my first decisions was how I should approach my mandate, that is without simply duplicating what had already thoroughly covered.

The Case of Iran

My inventory of relevant considerations included the following:

- Iran was possibly the only theocracy in the world today;
- Iran was a party to the International Covenants but not much else except for the Convention on the Rights of the Child, with reservations;
- the state of the domestic law in Iran would of course be relevant, assuming that the law was in fact a normative institution in Iran;
- in addition to, and perhaps quite apart from the law, there needed to be an understanding of the actual condition of the people, the reality which they faced in their everyday life;
- religion and culture had to be addressed, as did claims about cultural relativity;
- with regard to reliable statistics, they were clearly in short supply, disaggregated or otherwise.

The Condition of Women in Iran

- I knew that women in Iran were, in many respects, second class citizens. That fact was reaffirmed virtually everyday in the country's press, at least on an anecdotal basis;
- I quickly learned that there was fairly reliable evidence of significant change in some areas such as the substantial improvement in women's access to education, literacy rates and in access to university teaching positions. I came to realize that women in Iran could vote, could drive vehicles and did both in substantial numbers;
- on the other had, the legal system – in theory and in practice – systematized gross discrimination, some barbaric punishments, and at the other end of the spectrum, inconvenience and discomfort in the daily lives of women;
- I also became aware that although sometimes a lengthy process, married women could now obtain divorces under certain circumstances, including marriage to a

- second wife without her consent, and that the law concerning child custody while still discriminatory, did now open the door for a court to find that the father was not competent to have custody;
- it became apparent that the public discourse on the condition of women was accelerating and importantly, becoming more widely covered in the Iranian press. There was a growing number of periodicals focusing in whole or in part on the economic, social and political condition of women. Some of the elites including the President and some of his ministers and senior advisers were going on public record as favouring change. Others, including the powerful head of the judiciary and a majority of the senior religious figures who spoke out, were opposing change on religious grounds;
 - I observed that women were playing an increasingly significant role in elections. Women and young people were widely assumed to have been responsible for the election of the reformist President two years ago. In this year's first ever local elections, women were elected to one third of the councils and in general, these successful candidates had strong proportional electoral support; 114 of them came first or second in the election concerned;
 - I came to realize that while Iran might well be a theocracy, women in fact suffered, in some areas at least, less discrimination than women in most countries in the region.

Positioning the Issue of Women in the Report

- In my first report and thereafter, I included a section on the status of women. I realize that this is considered politically incorrect by some but quite frankly, in a society like Iran it seemed best to keep this subject at the front of the stove. The status of women has from the beginning been one of my five or six high profile subjects;
- over the seven reports I have prepared, I have addressed a number of standard defensive arguments on the subject of women; the so called "like treatment" theory which in my view only serves to perpetuate inequality in a substantive sense, the "biological non-identity" argument used in support of defining roles of complementarity between men and women which once again only serves to justify treatment that is substantively discriminatory, the "separate but equal" theory which has been so definitively rejected in courts. In short, I have made it clear that I believed none of these legitimated the non-performance of international obligations with regard to the status of women;
- meanwhile, I have kept up a running commentary about human rights developments in the period under review as they affect women. These include improvements where these appear to be substantive, backsliding which continues to occur, and importantly I believe, the state of the human rights discourse inside of Iran. My latest report refers to a number of recent positive developments, but concludes that the government is still not facing the various disabilities which are the heart of the problem.

Some Comments on a Mainstreaming Approach

This methodology may well be a useful tool for looking at some societies. It may be less so and indeed less doable in others. My experience suggests that great attention must be paid to the particular culture, religion and politics of the society concerned. General prescriptions may not be very helpful. Rather, I feel that in some situations other tools may be very useful such as best practices based on experience with countries with similar or analogous impediments to the full realization of human rights.

There is some good work being done on countries like Iran by United Nations agencies. An example is 1999 UNICEF document entitled “Programme Cooperation for Children and Women from a Human Rights Perspective”.

- This paper refers to “current discussions on the role and obligations of governments, the strategic contribution of international cooperation, the importance of a vibrant civil society and community organizations, the links between peace, security and satisfaction of basic human needs, gender equality, the recognition that children are holders of rights and the links between women’s status and overall human progress all have a basis in international standards of human rights”;
- and again... “development programmes need to address both the effects and the cost of exclusion and the denial of rights among some groups and individuals in society including the processes which perpetuate various forms of inequality, discrimination and exploitation”;
- in addition to UNICEF’s well-known reports on the state of children in various countries, it has now produced a 93-page volume, “The State of Women: The Islamic Republic of Iran”. To my knowledge, there is nothing else in the United Nations system that comes near this volume in capturing what Iran has achieved and what it has still to achieve in terms of the human rights of women as articulated in international instruments;
- this report includes such statistics as disaggregated figures on a number of important indicators such as children 6-10 years not enrolled in school which it accompanies with a section “Why aren’t the girls in school?” It forthrightly challenges the government to live up to its commitments under the Supplementary Slavery Convention concerning marriage without consent and of minors. In fact, it implicitly chides the government in a number of areas.

The Qualitative Improvement of Reports by Special Rapporteurs

- I believe much can be done to improve the quality of our reports;
- as already indicated, my view is that in a mandate like mine, tactically, it makes a lot of sense to concentrate one’s comments on gender issues in one place;
- on the other hand this may not always seem to make sense. For example, should I place the matter of women judges under women or under judges, the matter of gender segregation in hospitals under women or health care, the law on custody under

women or children, the stoning of women under women or under cruel and unusual punishment? There may be no simple answers;

- In short, a lot turns on the nature of the mandate which includes the nature of the society itself. It will in the end be a matter of subjective judgement.

IX. INTRODUCING GENDER ANALYSIS IN STRUCTURAL ADJUSTMENT PROGRAMMES: CONCEPTUAL AND MEASUREMENT-RELATED PROBLEMS

A Personal Observation
Fantu Cheru, Ph.D

1. The literature dealing with gender and structural adjustment can be distinguished between empirical studies focusing on the unequal distribution of the burden of adjustment between men and women and those that challenge the gender neutrality implicit in the theoretical and policy models themselves (Sparr; Elson).
2. A variety of studies carried out in different countries have documented the enormous social costs of adjustment for a large percentage of the population. They have shown specifically the distributive effects of adjustment which have resulted in increased income inequality, tendencies toward social polarization, recomposition of social classes, shifts in control over resources and the biases in the distribution of the costs of adjustment at the household level. These studies point to the existence of class, gender, and ethnic biases in the adjustment process, leading to the questioning of the assumed neutrality in macroeconomic policy.
3. In my report to the Commission, I outlined the specific impact of adjustment programmes: increased unemployment; drastic increases in poverty rate; a fall in real wages; decreased government budgets which jeopardizes the right to food, the right to health, education and shelter; increased labor repression and unsustainable use of natural resources; and a growing conflict between State and society. All the above have a gender dimension.
4. While the data on the effects of structural adjustment programmes come from case studies rather than the statistical analysis of data disaggregated by sex from many countries, it is believed that:
 - (a) Women and members of female-headed household tend to suffer relatively more during the economic contraction associated with the adjustment phase. This is because they are frequently poorer to start with and so reductions in living standards are more critical for them.
 - (b) Women acts as "shock absorbers" during adjustment, curtailing their own consumption and increasing work effort to compensate for household income losses. These studies have revealed an intensification of and increases in women's reproductive work. Because of the sexual division of labor, deep cuts in household budgets and demand reducing policies such as cuts in public services (education, health) or goods and services subsidized by the government (electricity, public transport, basic food stuff) increase pressure on those who administer the household on a daily basis (Beneria and Feldman, 1992).

- (c) Women are often more dependent on public services because of their child-bearing and child-rearing roles. The reductions in social spending that accompany adjustment efforts therefore affect them more directly than men. The shrinkage of government services "off-loads" responsibilities to the private sector -- usually to women.
- (d) Education represents one of the most important factors in women's economic and social advancement and it is often a victim of economic restraint.
- (e) Where there is relatively higher representation of women in the public sector, public expenditure restraint may have a greater impact on women than on men.

5. In short, the numerous case studies from developing countries have shown that women have been affected both as members of households and of specific social groups and as a result of the gendered division of labor. The gender dimensions of the costs of adjustment range from the intensification of women's domestic and market work to the interruption of children's education (girls in particular) to increases in time inputs either to obtain basic services or self-provision them. These are in addition to other costs -- much less tangible and more difficult to measure -- such as stress and domestic violence.

What are the conceptual problems in integrating gender in SAP?

6. The first problem involves the inadequacy of national accounting methods. The dominant economic model does not adequately capture the degree of women's participation in economic life since much unpaid work by women is not accounted for in determining GNP. It is currently difficult to track gender-based changes in income, consumption, prices, employment and time allocation without having a more expanded notion of GDP. Our understanding of economics and national welfare will be substantially different if all "caring services, subsistence production, and the vast range of life-enhancing work done by women" would be visible and counted. A realistic per capita production account would in turn have significant implications to prioritization of policies, from training to credit.

7. The second major problem involves the absence of a wide range of indicators disaggregated by sex that capture the social and economic conditions prior to and during the process of adjustment that are necessary for all of the costs of adjustment programmes and policies to be taken into account and the role of gender relations in the process to be determined. In large numbers of adjusting countries, longitudinal household-level surveys which document such things as: time allocation; intensity of work performed; income; control over income; nutritional, health and educational status are lacking in order to determine the exact impact of adjustment on women and men. Therefore, the absence of gender-specific data, particularly at the international comparative level, leads to a reliance on proxy indicators of women's and men's differential condition.

8. Therefore, in evaluating the impact of a specific "bundle" of macro-economic policies on gender differences, one faces the same problems as in any other impact study:

how to define and quantify the key variables; how to distinguish between the effects of economic crisis, adjustment policies and inflows of foreign capital following adjustment; how to control for external effects such as changing terms of trade or natural disasters.

9. Even in situations where there is clear evidence of increased income following the implementation of adjustment programmes, social welfare implications may vary depending on the gender of the recipient. A man may likely increase spending on luxury items for himself -- e.g. cigarettes and alcohol; whereas a woman tends to spend the extra money on children's and domestic needs.

10. The third conceptual problem involves the level of disaggregation of gender. Because women and men as a group are not homogeneous, it is important to use gender not merely as a second-order disaggregation but to also be mindful of potential methods of disaggregating gender as a category. This has come about as a result of direct challenge by women from developing countries to the notion that "sisterhood is global". The recognition of differences among women based on race, class, age, ethnicity, sexual orientation, is an important contribution to realizing policy interventions at all economic levels in line with principles of distributive justice.

11. A second set of problems with disaggregation is that "who is doing the disaggregation and for what purpose?" In neo-classical economics, biology and preferences are the ultimate foundations of gender inequality. Thus, disaggregation centers around what is believed to be "the male economy" and "the female economy" (Collier, 1990). This approach leads to an analysis of women in isolation from men (and vice versa). It assumes that the reproductive economy will continue to function irrespective of the changes in the rest of the economy.

12. If for example, public sector investments in infrastructure are cut, leading to a deterioration in rural water supplies, the assumption is that the members of the household (very often women) will undertake the arduous work of carrying water from distant bore holes in order to ensure that the needs of their households are met. However, as feminist economists have argued, women's labor is not infinitely elastic; breaking point might be reached where the household is no longer able to reproduce itself.

13. At the end of the day, however, disaggregation of data by gender does not offer all the solutions. One needs to go beyond describing existing differences to explaining the factors that contribute to the current state of affairs. For this reason, gender disaggregation should correspond to our understanding of how gender relations impose constraints on the overall behavior of macro models (Walters, 1995).

14. A fourth methodological controversy that has direct consequences for data collection and analysis has to do with the models of the household. Neoclassical economics does not recognize power differences within the household since it assumes that the 'nucleus' family have shared interests, and thus no asymmetry of power. In reality, decision-making outcomes in households are a reflection of the differential bargaining power of household members. The difficulty of obtaining household-level

data sets with national coverage that contain gender-disaggregated information in key areas does not detract from the potential importance of such findings for an understanding of the impact of micro politics on gender differences.

15. Finally, how do we differentiate the effects of globalization from the effects of structural adjustment since both are mutually reinforcing? Can we expect the State to promote human rights while its power is progressively being eroded by invisible forces of globalization?

16. A more precise assessment of the gender dimensions of SAP-induced change in employment, income and consumption, requires not only improved data sources but also detailed case study material that brings into focus how gender is constructed in specific workplaces and households.

X. THE RIGHT TO LIFE AND GENDER INTEGRATION

Cecilia Medina

1. Traditionally, the right to life, formulated in the International Covenant on Civil and Political Rights as an inherent right of every human being, has been associated with the death penalty or with legitimate defense. The words “no one shall be arbitrarily deprived of his life” has been understood as setting forth for States the obligation of respecting due process for the imposition of the death penalty; or of establishing clear rules to decide when legitimate defense can be invoked in the case of somebody being deprived of his/her life by another individual.
2. However, the right to life, as all other rights contained in the ICCPR, should be enjoyed by all men and women on an equal basis, and States parties have the obligation to respect and to ensure it without discrimination.
3. In order to comply with this obligation, States – and obviously international supervisory organs – have to read the Covenant provisions with fresh eyes and disengage the words from the meaning that has been usually attributed them.
4. Consequently, if we consider that “no one should be arbitrarily deprived of her life”, and we interpret the sentence without making the connection that is traditionally made, several consequences will follow. Just as examples we could mention the following as being covered by article 6 of the Covenant:
 - criminalization of the termination of a pregnancy when it endangers the life of a mother
 - failure to ensure that male and female children are fed on an equal basis
 - failure to devise and apply an efficient and effective mechanism to deal with domestic violence.
5. This exercise encounters sometimes obstacles. The traditional way of interpreting the norm is one of them. Another is that a new interpretation may clash with cultural practices or religious beliefs, or sometimes even in a wider manner, with the way society is organized.
6. The Human Rights Committee has made considerable progress in integrating gender in the interpretation of article 6. It has done so through the examination of States reports under article 40. During this examination, questions on maternal mortality due to clandestine abortions, family planning, cultural practices affecting women’s right to life are routinely posed. At the end of the examination, the Committee’s concluding observations mention, whenever pertinent, the failure of the State to comply with its obligation to respect and to ensure women’s right to life without discrimination. At present, the Committee is in the process of drafting a General Comment on article 3, which grants men and women the equal right to the enjoyment of all civil and political

rights set forth in the Covenant, in order to elaborate the extent and scope, inter alia, of article 6, to include all these aspects which had been left out from the previous General Comment, prepared in 1981.

7. There have been so far no individual communications dealing with these problems, so the Committee has not yet had the opportunity of developing its jurisprudence in this direction.
