

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 the mandates of thematic mechanisms: customary law or practice, and reproductive rights. The substantive women's human rights issues 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 are 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

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.

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

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

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

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

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.

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.

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

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: Rights of women (Rwanda,

* 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 o5fpld2 Tm0 ult of59.12 8006 66 459.12OhourOhcog sociog soci

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

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

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.

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 .1(s 1 (e C3(revenverssumlowin)-52.7(g)95(, th
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- 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

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 to the level of the individual, the data are not representative of the population as a whole.

- (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

X. THE RIGHT TO LIFE AND GENDER INTEGRATION

Cecilia Medina

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rights set forth in the Covenant, in order to elaborate the extent and scope, inter alia, of