



# General Assembly

Distr.: General  
23 May 2012

Original: English

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## Human Rights Council

Twentieth session

Agenda item 3

Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development

## Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo\* \*\*

### *Summary*

This thematic report addresses the topic of gender-related killings of women. Rather than a new form of violence, gender-related killings are the extreme manifestation of existing forms of violence against women. Such killings are not isolated incidents that arise suddenly and unexpectedly, but represent the ultimate act of violence which is experienced in a continuum of violence. Women subjected to continuous violence and living under conditions of gender-based discrimination and threat are always on “death row, always in fear of execution”.

Globally, the prevalence of different manifestations of gender-related killings is reaching alarming proportions. Culturally and socially embedded, these manifestations continue to be accepted, tolerated or justified—with impunity as the norm. States’ responsibility to act with due diligence in the promotion and protection of women’s rights is largely lacking as regards the killing of women.

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\* The footnotes are reproduced as received, in the language of submission only.

\*\* Late submission.

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## I. Introduction

1. The present report, submitted pursuant to Human Rights Council resolution 16/7, is the third thematic report submitted to the Council by the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, since her appointment in June 2009. Chapter II summarizes the Special Rapporteur's activities since her previous report to the Council up until 20 March 2012. Chapters III to V address the topic of gender-related killings of women.

## II. Activities

### A. Country visits

2. During the period under review, the Special Rapporteur requested invitations to visit Bosnia and Herzegovina, Croatia, India and Venezuela (Bolivarian Republic of). Earlier requests for country visits were also reiterated to the Governments of Bangladesh, Nepal, Turkmenistan, Uzbekistan and Zimbabwe.

3. The Special Rapporteur visited Jordan, from 11 to 24 November 2011 (see A/HRC/20/16/Add.1); Italy, from 15 to 26 January 2012 (A/HRC/20/16/Add.2); and Somalia, from 9 to 16 December 2011 (A/HRC/20/16/Add.3). In addition, she visited Solomon Islands, from 12 to 16 March 2012, and Papua New Guinea, from 18 to 26 March 2012. The Special Rapporteur would like to thank these Governments for having responded positively to her requests for a visit and urges the Governments that have not yet done so to provide a favourable response.

### B. Communications and press releases

4. The communications sent to Governments during the reporting period (see the joint communications report, A/HRC/20/30) concerned a wide array of issues that reflect a pattern of inequality and discrimination relating to violence against women, its causes and consequences. These included: arbitrary detention; torture or cruel, inhuman or degrading treatment or punishment; summary and extrajudicial executions; sexual violence, including rape, sexual abuse and sexual exploitation; and other forms of violence grounded in discrimination against women.

5. The Special Rapporteur issued numerous press statements, either individually or jointly with other mandate holders.

### C. General Assembly and Commission on the Status of Women

6. In October 2011, the Special Rapporteur presented her first written report to the General Assembly (A/66/215). It contained an overview of the mandate's work and main findings, and the challenges that continue to be identified.

7. In the report, the Special Rapporteur described how the mandate has analysed violence against women in four main spheres: violence in the family; violence in the community; violence that is perpetrated or condoned by the State; and violence that occurs in the transnational sphere. She then analysed States' obligations, under international human rights law, to prevent and respond to all acts of violence against women.

8. The Special Rapporteur argued that States' efforts to comply with their due diligence obligation must address the structural causes that lead to violence against women. In doing so, States should consider the multiple forms of violence suffered by women and the different types of discrimination they encounter, in order to adopt multifaceted strategies to effectively prevent and combat this violence. She concluded the report by presenting a proposal for a holistic approach to understanding and addressing discrimination and violence against women.

9. On 29 February 2012, the Special Rapporteur submitted a written statement to the Commission on the Status of Women, in which she highlighted the need to ensure the social, cultural, and economic participation and empowerment of rural women.

#### D. Other activities

10. The Special Rapporteur participated in consultations, held in Brussels in June 2011, with European civil society organizations, including representatives of European observatories on violence against women.

11. On 12 October 2011, the Special Rapporteur convened an expert group meeting in New York to inform her thematic report on gender-related killings of women. The meeting brought together 25 experts from academia, civil society organizations and United Nations agencies and bodies with technical and practical expertise on and experience in working on violence against women.

12. On 18 July, 2011, the Special Rapporteur participated in a general discussion on the protection of women's human rights in conflict and post-conflict which was organized in New York by the Committee on the Elimination of Discrimination against Women. The Special Rapporteur also held a bilateral meeting with the Committee with a view to strengthening partnerships between the two mandates.

13. The Special Rapporteur also participated as main speaker in numerous international conferences including, among others, the South Asian conference entitled "Reclaiming Space—from Victimhood to Agency: State and Civil Society Responses to Violence against Women", held in Pakistan in September 2011; the Women Building Peace conference, held in Barcelona in October 2011; and the Strengthening Girls' Rights Worldwide conference, held in Berlin in October 2011.

### III. Gender-related killings of women

14. In this report, the Special Rapporteur addresses the topic of gender-related killings of women whether they occur in the family or the community or are perpetrated or condoned by the State. Globally, the prevalence of different manifestations of such killings is increasing, and a lack of accountability for such crimes is the norm. Terms such as femicide, feminicide, honour killings and crimes of passion, among others, have been used to define such killings.

15. Rather than a new form of violence, gender-related killings are the extreme manifestation of existing forms of violence against women. Such killings are not isolated incidents that arise suddenly and unexpectedly, but are rather the ultimate act of violence which is experienced in a continuum of violence. Women subjected to continuous violence and living under conditions of gender-based discrimination and threat are always on "death

row, always in fear of execution”.<sup>1</sup> This results in the inability to live, and is a major part of the death process when the lethal act finally occurs.<sup>2</sup> Rather than serving isolated or individual purposes, such violence follows institutional logic “to delineate and sustain hierarchical social relations of race, gender, sexuality and class and, thereby, to perpetuate the inequality of marginalized communities”.<sup>3</sup>

16. The killings can be active or direct, with defined perpetrators, but they can also be passive or indirect. The direct category includes: killings as a result of intimate-partner violence; sorcery/witchcraft-related killings; honour-related killings; armed conflict-related killings; dowry-related killings; gender identity- and sexual orientation-related killings; and ethnic- and indigenous identity-related killings. The indirect category includes: deaths due to poorly conducted or clandestine abortions; maternal mortality; deaths from harmful practices; deaths linked to human trafficking, drug dealing, organized crime and gang-related activities; the death of girls or women from simple neglect, through starvation or ill-treatment; and deliberate acts or omissions by the State.

17. The discrimination and violence that is reflected in gender-related killings of women can be understood as multiple concentric circles, each intersecting with the other. These circles include structural, institutional, interpersonal and individual factors. The structural factors include macrolevel social, economic and political systems; institutional factors include formal and informal social networks and institutions; interpersonal factors include personal relationships between partners, among family members and within the community; and individual factors include personality and individual capacities to respond to violence.<sup>4</sup>

18. Thus an understanding of gender-related killings requires taking into account the political, social and economic contexts within which it takes place, including the responses of men to women’s empowerment; the political, legal and societal reaction to such killings; the principle of the continuum of violence; and patterns of structural discrimination and inequality that continue to form part of the reality of women’s lives. It is also important to disaggregate data by factors such as race, ethnicity, education, sexual orientation and economic status, among others, to establish systemic patterns that exacerbate existing vulnerabilities.<sup>5</sup>

19. Impunity for the killings of women has become a global concern. As noted by the Secretary General: “Impunity for violence against women compounds the effects of such violence as a mechanism of control. When the State fails to hold the perpetrators accountable, impunity not only intensifies the subordination and powerlessness of the targets of violence, but also sends a message to society that male violence against women is both acceptable and inevitable. As a result, patterns of violent behaviour are normalized”.<sup>6</sup>

<sup>1</sup> Nadera Shalhoub-Kevorkian, Reexamining Femicide: Breaking the Silence and Crossing “Scientific Borders”, *Signs*, The University of Chicago Press, Vol. 28, No. 2 (2002) at 581.

<sup>2</sup> Ibid.

<sup>3</sup> Darren Lenard Hutchinson, “Ignoring the Sexualization of Race Heteronormativity, Critical Race and Anti-Racist Politics”, 47 *Buffalo Law Review* (1999) at 20.

<sup>4</sup> See Shae Garwood explaining Moser’s framework for causal levels of gender violence, “Working to Death: Gender, Labour, and Violence in Ciudad Juárez, Mexico” pp. 4-5, citing Caroline Moser, ‘The Gendered Continuum of Violence and Conflict’ in C. Moser and F. Clark (eds) *Victims, Perpetrators, or Actors? Gender, Armed Conflict and Political Violence* (London: Zed Books, (2001).

<sup>5</sup> Gauthier, D. and W. Bankston, (2004) “*Who kills whom revisited: A sociological study of variation in the sex ratio of spouse killings*”. *Homicide Studies*, 8(2), 96-122.

<sup>6</sup> See, United Nations, *In-depth study on all forms of violence against women: Report of the Secretary-General*, A/61/122/Add.1 (2006) at 76.

## A. Conceptual evolution of terms

20. The term femicide has been used since the beginning of the nineteenth century to describe the killings of women.<sup>7</sup> It was proposed as an alternative to the gender-neutral term of homicide, a term which overlooks the realities of inequality, oppression and systematic violence against women. It reappeared in the 1970s as part of the struggle of the feminist movement to name their own experiences and create a form of resistance to this fatal form of violence.<sup>8</sup>

21. Femicide was first defined as “the murders of women by men motivated by hatred, contempt, pleasure or a sense of ownership of women”.<sup>9</sup> Subsequently, it was defined as “the misogynist killing of women by men”.<sup>10</sup> The definition was expanded to go beyond that of misogynist killings, to all forms of sexist killings, including those killings by men motivated by the socially constructed right to do so, their superiority over females, pleasure or sadistic desires towards women, or the assumption of ownership over women.<sup>11</sup>

22. The term femicide has been used in the context of killings of women in the private and public spheres. In some European contexts, such killings are described as “crimes of passion”. In South Asia the term femicide has been adopted to encompass cultural practices in the region such as female infanticide, preadolescent mortality of girls and dowry-related deaths.<sup>12</sup> The phenomena of so-called “honour killings” in the Middle East are rarely specifically labelled as acts of femicide, but some scholars have highlighted the femicidal nature of such acts and the impunity that accompanies such killings.<sup>13</sup>

23. A critical comparison, when addressing the killings of women, can be seen in the labelling in the West of femicides as “crimes of passion” stemming from individual violent behaviour; and in the East, as “crimes of honour” arising from cultural/religious practices and beliefs. This dichotomy exposes the simplistic, discriminatory and often stereotypical manner of construction, thereby obscuring the intersectionality of political, economic, social, cultural, and gender factors faced by all women around the world.<sup>14</sup>

24. With the alarming escalation of extreme forms of violence against women and girls in the 1990s, including in Mexico, El Salvador and Guatemala,<sup>15</sup> there was a pressing need to create and adopt new concepts and strategies to address the phenomenon. The disproportionate impact of economic, political and social factors in which the killings of women and girls were occurring, as well as the patriarchal nature of the societies that

<sup>7</sup> See Corry, J. (1801) “*A Satirical view of London at the commencement of the nineteenth century*”, Edinburgh: T. Hurst, Paternoster-Row; Ogilvy and Son, Holborn; R. Ogle, Turnstile; and Ogle and Aikman. Also MacNish, W. (1827) “*The confessions of an unexecuted femicide*” (3a. ed.), Glasgow: M.R. M’Phun, Trongate. And Wharton, J. and J. Smith (1987) “*The law lexicon, or, dictionary of jurisprudence*” (English edition). Littleton, CO: F.B. Rothman. (Originally published in 1848).

<sup>8</sup> Kaye, J. (2007) “*Femicide*”, Online Encyclopedia of Mass Violence, available at [www.massviolence.org](http://www.massviolence.org), accessed on 5 September 2011.

<sup>9</sup> Caputi, J. and D. Russell (1990) “*Femicide: Speaking the unspeakable*”. Ms.: The World of Women, 1(2).

<sup>10</sup> Radford, J. and D. Russell (eds.) (1992) “*Femicide: The Politics of Woman Killing*”, New York: Twayne.

<sup>11</sup> Harmes, R. and D. Russell (eds.) (2001) “*Femicide in Global Perspective*”, New York: Teachers College Press.

<sup>12</sup> Ibid.

<sup>13</sup> Kaye, J. (2007) “*Femicide*”, Online Encyclopedia of Mass Violence, available at [www.massviolence.org](http://www.massviolence.org), accessed on 5 September 2011.

<sup>14</sup> Supra note 1.

<sup>15</sup> See in particular reports on the visits to Mexico (E/CN.4/2006/61/Add.4), El Salvador (E/CN.4/2005/72/Add.2 and A/HRC/17/26/Add.2) and Guatemala (E/CN.4/2005/72/Add.3).

subordinated them, had to be taken into account. This violence has included torture, sexual abuse, deprivation of liberty, post mortem dismembering and the abandoning of bodies in public spaces by perpetrators (individual or groups), known or unknown to the victim. It is in this specific context that the concept of femicide scenarios was developed to determine the existence of a femicide crime, despite the difficulties of identifying motive, intention and perpetrators.<sup>16</sup>

25. Parallel to this conceptual discourse, Mexican feminists decided to translate the term femicide directly from its Latin origins as “*feminicidio*”.<sup>17</sup> The femicide versus feminicide debate that has taken place in the Latin American context has not been resolved as yet. In the interim, feminists and academics have simply moved past the issue and adopted either or both terms, depending on the country, the context, the campaign or the lobbying target.<sup>18</sup>

26. Despite the increasing attention paid to the killings of women, there is little consistency in the normative frameworks used by researchers and service providers.<sup>19</sup> Some scholars propose that a framework which includes the theoretical, political, operative and judicial aspects is useful, as it enables the recognition of multiple intersections of class, ethnicity, race, age, disability, migration, occupation, sexual orientation and gender identity, among others, in the killings of women.<sup>20</sup>

27. Other scholars advocate for the use of the notion of continuum as a tool of analysis where reinforcing linkages between different types of violence are complex, context-specific, and interrelated. This tool integrates a multitude of causal factors at structural, institutional, interpersonal, and individual levels.<sup>21</sup>

28. It is argued that the term feminicide could be usefully adopted when holding governments to account at the international level, as it highlights the impunity and the institutional violence aspect of such crimes, which are caused by States’ acts or omissions. Institutional violence against women and their families is present in all aspects of States’ responses to the killings of women. This can include: tolerance, the blaming of victims, lack of access to justice and effective remedies, negligence, threats, corruption and abuse by officials.<sup>22</sup> Under this scenario, femicide/feminicide is a State crime tolerated by public institutions and officials, due to the inability to prevent, protect and guarantee the lives of women, who have consequently experienced multiple forms of discrimination and violence throughout their lifetime.<sup>23</sup>

<sup>16</sup> Carcedo, A. *et al.* (2010) “*We will not forget nor will we accept. Femicide in Central America 2002–2006*”, Costa Rica. CEFEMINA.

<sup>17</sup> They considered that the Spanish use of the word femicide “*feminicidio*” simply referred to the homicide of women. See Monarrez, J. (2008) “*Morir por ser mujeres, Femicidio/Feminicidio La Violencia Maxima*”. Revista Mujer Salud. El Inventario del Feminicidio Juarense. Vol. 4/2008. Chile.

<sup>18</sup> Carcedo, A. “Análisis y diagnósticos de legislación comparada”. Paper presented at the international conference on “Violence and Femicide in Bolivia”, 7, 8, 9 November 2011. La Paz, Bolivia.

<sup>19</sup> See Conference report (2009) “Strengthening Understanding of Femicide. Using research to galvanize action and accountability”, Program for Appropriate Technology in Health (PATH), *InterCambios*, Medical Research Council of South Africa (MRC), and World Health Organization (WHO). Conference held on 14–16 April, 2008. Washington, DC.

<sup>20</sup> *Supra* note 16.

<sup>21</sup> *Supra* note 4.

<sup>22</sup> Lagarde, M. (2001), Introduction in “*Feminicidio una perspectiva global*”. Harnes, R. and D. Russell (eds.) Mexico DF: Centro de Investigaciones Interdisciplinarias en Ciencias y Humanidades, UNAM.

<sup>23</sup> *Ibid.*

## B. Global trends and manifestations

29. Globally, the prevalence of different manifestations of gender-related killings is reaching alarming proportions. Culturally and socially embedded, these manifestations continue to be accepted, tolerated or justified—with impunity as the norm. States’ responsibility to act with due diligence in the promotion and protection of women’s rights, is largely lacking as regards the killing of women.

### 1. Killings of women as a result of intimate-partner violence

30. Intimate-partner violence is a problem affecting millions of women all over the world, and the overwhelming burden of partner violence is borne by women.<sup>24</sup> Research on homicide resulting from intimate-partner violence reflects, almost without exception, that females are at greater risk than males, and that the majority of female homicide victims are killed by male intimate partners.<sup>25</sup> The United Nations Office on Drugs and Crime studies also confirm that in many countries, intimate partner/family-related homicide is the major cause of female homicides, and that female homicide rates are much more likely to be driven by this type of violence than by the organized crime-related homicide typology that so affects men.<sup>26</sup>

31. As with all forms of intimate-partner violence, intimate-partner femicide is likely to be significantly underreported. Studies have shown that in some countries between 40 and 70 per cent of female murder victims are killed by an intimate partner.<sup>27</sup> In many countries the home is the place where a woman is most likely to be murdered, whereas men are more likely to be murdered in the street.<sup>28</sup>

32. One study indicates that there are approximately 3,500 intimate partner violence-related deaths every year in Europe.<sup>29</sup> Women account for more than 77 per cent of all victims of intimate partner/family-related homicide,<sup>30</sup> with women between the ages of 35

<sup>24</sup> Heise, L. and C. Garcia-Moreno, (2002) “*Violence by intimate partners*”. In E. G. Krug, L. L. Dahlberg, J. A. Mercy, A. B. Zwi, and Lozano, R. (eds.). *World report on violence and health*, pp. 89-121. Geneva, Switzerland: World Health Organization.

<sup>25</sup> See Browne, A., Williams, K., and D. Dutton, (1999) “*Homicide between intimate partners*”. In M. D. Smith & M. Zahn (eds.). *Studying and preventing homicide*, pp. 55-78. Thousand Oaks, CA: SAGE., Campbell, J., (1992) “*If I can’t have you, no one can: Power and control in homicide of female partners*”. In Radford, J. and Russell, D. (eds.). *Femicide: The politics of woman-killing*, pp. 99-113. New York, NY: Twayne. Dawson, M., and R. Gartner, (1998) “*Differences in the characteristics of intimate femicides: The role of relationship state and status*”. *Homicide Studies*, 2, 378-399, and Gauthier, D. and W. Bankston, (2004) “*Who kills whom revisited: A sociological study of variation in the sex ratio of spouse killings*”. *Homicide Studies*, 8(2), 96-122, Heise, L. and C. Garcia-Moreno, “*Violence by intimate partners*”. In: Krug E, Dahlberg, L., Mercy, J., Zwi, A. and R. Lozano, (eds.) (2002) *World Report on Violence and Health* [First Edition]. Geneva, CH: World Health Organization; 2002:87–122. Adinkrah, M. (1999) “*Uxoricide in Fiji: the sociocultural context of husband-wife killings*”. *Violence Against Women*. 1999; 5(11):1294–1321. Kellermann, A. and J. Mercy, (1992) “*Men, women, and murder: gender-specific difference in rates of fatal violence and victimization*”. *The Journal of Trauma*. 1992; 33:1–5. And Mercy, J. and L. Saltzman, (1976-85) “*Fatal violence among spouses in the United States*”, *American Journal of Public Health*. 1989; 79(5):595–599.

<sup>26</sup> United Nations Office on Drugs and Crime (UNODC) “2011 Global Study on Homicide”, Vienna.

<sup>27</sup> Supra note 24.

<sup>28</sup> Supra Note 26.

<sup>29</sup> Project DAPHNE (2007) “*Estimation of mortality linked to intimate partner violence in Europe - IPV EU\_Mortality*”, Psytel, June 2010. Available at <http://psytel.eu/violences.php>.

<sup>30</sup> Supra note 26.



and 44 at higher risk.<sup>31</sup> More recently, research indicates there has been an increase in the rates of killings of women.<sup>32</sup> For instance, in Spain there has been a 15.16 per cent increase in intimate partner femicides.<sup>33</sup> In Italy, the total number of homicides (male and female murders) is decreasing; however, female homicides increased from 15.3 per cent during 1992-1994 to 23.8 per cent during 2007-2008.<sup>34</sup> According to data, in England and Wales in 2009/10 95 female victims of homicide were killed by a current or former partner, compared to 21 male victims of domestic homicide.<sup>35</sup>

33. Studies in Honduras and Costa Rica show that more than 60 per cent of femicides are perpetrated by an intimate partner or male family member.<sup>36</sup> In Peru, 70 per cent of acts of femicide are carried out by a former or current intimate partner.<sup>37</sup> In Mexico, 60 per cent of the women who were murdered by their intimate or ex-intimate partners had previously reported domestic violence to public authorities.<sup>38</sup> In some cases in Nicaragua, while the crimes were perpetrated by persons unknown to the victim, the murders were planned and paid for by the partner or ex-partner.<sup>39</sup>

34. A 2004 national study on femicide in South Africa estimated that a woman is killed by her intimate partner every six hours.<sup>40</sup> Of the cases in which relationship status could be established, 50.3 per cent of the women were killed by an intimate partner. Furthermore, a racial analysis indicates that women of colour are disproportionately affected by such killings. The rate for coloured women was 18.3 per 100,000 women; for African women it was 8.8, and for white women, 2.8.<sup>41</sup>

35. Statistics from the United States Department of Justice estimate that 40 per cent of female homicide victims were killed by an intimate partner in 1993, increasing to 45 per cent in 2007. An estimated 6 per cent of male homicide victims were killed by an intimate partner in 1993, decreasing to 5 per cent in 2007.<sup>42</sup> Also, where the relationship between the victim and the murderer could be determined, over 90 per cent of the women knew the

<sup>31</sup> Icrs-Viu, Esplugues, J.S., Marmolejo, I.I., Esteve, Y.G., and Sánchez, P.M., (2010) “*3rd International Report on Partner Violence against women*”. The data was compiled in 2006, and shows the evolution of femicides between 2000 and 2006. Chapter 2, pp. 65-99.

<sup>32</sup> Spinelli, B. (2011) “*Femicide and feminicide in Europe. Gender-motivated killings of women as a result of intimate partner violence*”. Expert group meeting on gender-motivated killings of women. Convened by the Special Rapporteur on Violence against Women, its causes and consequences, Ms. Rashida Manjoo, New York, 12 October 2011.

<sup>33</sup> Ibid.

<sup>34</sup> Official data collected by EURES.

<sup>35</sup> Homicide Index; as published in Table 1.05 of ‘Homicides, Firearm Offences and Intimate Violence 2009/10’ at para. 280.

<sup>36</sup> See Carcedo, A. and M. Sagot (2001) “*Femicidio en Costa Rica. Cuando la Violencia contra las Mujeres Mata*”, San Jose: OPS/INAMU.

<sup>37</sup> Meléndez, L. (2010) “*Perú – Incidencia y formación sensible al género para los legisladores y operadores de justicia*”. In Jiménez, P. and K. Ronderos, (eds.) “*Feminicidio: Un fenómeno global. De Lima a Madrid*”. Heinrich Böll Stiftung and CAWN.

<sup>38</sup> Lagarde y de los Ríos, M. (2006) “*Feminicidio*”, Artículos de Ciudad de Mujeres. Paper presented at Universidad de Oviedo, 12 January 2006. Available online at [www.ciudademujeres.com/articulos](http://www.ciudademujeres.com/articulos).

<sup>39</sup> Puntos de Encuentro (2006) “*Lo que cocinamos: II Encuentro Feminista Centroamericano*”, La Boletina No. 64. Available online at [www.puntos.org.ni](http://www.puntos.org.ni).

<sup>40</sup> See Mathews S, Abrahams N, Martin L, Vetten L, van der Merwe L, and R. Jewkes, (2004) “*Every six hours a woman is killed by her intimate partner: a national study of female homicide in South Africa*”. Gender and Health Research Group, Medical Research Council Policy Brief, South Africa; 2004; 5.

<sup>41</sup> Ibid.

<sup>42</sup> Catalano, S., Smith, E., Howard, S., and M. Rand, (2009) “*Female Victims of Violence*”, Bureau of Justice Statistics, Selected Findings. U.S. Department of Justice, September 2009. Available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fvv.pdf>

male killer, with 60 per cent of the victims being wives, common-law wives, ex-wives, or girlfriends of the offenders.<sup>43</sup> In 2008 firearms were the most common weapon used by men to murder women, with nearly two thirds of the women having been murdered by male intimate partners. Women also suffer “hostile gun displays” as a form of intimate partner violence, by which abusive partners threaten to use guns against their victims.<sup>44</sup>

## 2. Killings of women due to accusations of sorcery/witchcraft

36. The killing of women accused of sorcery/witchcraft has been reported as a significant phenomenon in countries in Africa, Asia and the Pacific Islands.<sup>45</sup> The pattern of violations includes violent murders, physical mutilation, displacement, kidnapping and disappearances of girls and women.<sup>46</sup> In many countries where women are accused of sorcery/witchcraft, they are also subjected to exorcism ceremonies involving public beating and abuse by shamans or village elders.<sup>47</sup>

37. Although in the majority of the cases younger women are at higher risk of sorcery/witchcraft violence, a study has found that in some parts of Africa, older women are more vulnerable to sorcery-related femicide due to their economic dependence on others, or the property rights that they hold—and which younger members of the family want to inherit.<sup>48</sup> Also, if women are perceived as dangerous and a threat to men, their labelling as witches, and consequently their destruction, is then seen as justified.<sup>49</sup>

38. A study in Zimbabwe found that of the 42 cases of femicide involving women older than 50, most of the women had been accused of witchcraft by male relatives prior to the killing.<sup>50</sup> A study conducted in Ghana found that many poor, often elderly, women were accused of witchcraft and subsequently murdered by male relatives, or subjected to a range of physical, sexual and economic abuses.<sup>51</sup>

39. Women accused of witchcraft in Ghana are often violently driven from their communities and forced to take refuge in “witch camps”. Many widows are subjected to property-related violence, including violent evictions and loss of inheritance; and subjected to sexual abuse and harassment by relatives.<sup>52</sup> In India, based on accusations of being a *dayan* (witch) or practising *banamathi* (witchcraft), physical violence is sometimes employed against Dalit women as a mechanism to take possession of their family lands

<sup>43</sup> Violence Policy Center, *When Men Murder Women: An Analysis of 2008 Homicide Data*. Washington, DC, 2010, p. 10. Available at <http://www.vpc.org/studies/wmmw2010.pdf>

<sup>44</sup> *Ibid.* p. 1.

<sup>45</sup> See, Chapter on victim groups in the extrajudicial executions context of the Handbook compiling observations and recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions (hereinafter “Handbook on Victim Groups”), Chapter 8, Victim Groups, at pp. 47-50.

<sup>46</sup> Indai Sajor, “Gender-motivated Killings of Women Accused of Sorcery & Witchcraft a Form of Femicide: Papua New Guinea Case”, paper prepared for Expert Group Meeting, October 12<sup>th</sup>, 2011. pp. 9-10.

<sup>47</sup> Handbook on Victim Groups (Supra Note 45) p. 49

<sup>48</sup> Galloway, S. (1995) “*Femicide project*”. Report by country. Zimbabwe. Women in Law and Development in Africa (WiLDAF).

<sup>49</sup> Watts, C., Osam, S. and E. Win (2001) “*Femicide in Southern Africa*”, edited extracts from “*The private is public: A study of violence against women in Southern Africa*”. Harare, Zimbabwe, Women in Law and Development in Africa, 1995. In Harmes, R. and D. Russell (eds.) (2001) “*Femicide in Global Perspective*”, New York: Teachers College Press.

<sup>50</sup> Supra note 48.

<sup>51</sup> See, Adinkrah, M., “Witchcraft accusation and female homicide victimization in contemporary Ghana”, *Violence against women*, vol. 10, No. 4 (2004), pp. 325-356, in *In-depth study on all forms of violence against women, Report of the U.N. Secretary-General* at para. 125.

<sup>52</sup> A/HRC/7/6/Add.3, report of the Special Rapporteur on violence against women, its causes and consequences, Addendum, Mission to Ghana, 21 February 2008.

and/or to keep them under economic subjugation, sexual exploitation, gender domination and control.<sup>53</sup> In Nepal, particularly in the southern Terai region, elderly women, widows, destitute women and women of low caste are often targeted and deprived of their property rights or victimized to settle a personal vendetta.<sup>54</sup>

40. In Papua New Guinea, cases of torture and murder of an estimated 500 women accused of practising sorcery/witchcraft have been reported.<sup>55</sup> Sorcery allegations against women have been increasing, in particular in the Highlands region.<sup>56</sup> Suspected witches have been thrown from cliffs, tortured, dragged behind cars, burned or buried alive. Victims of such attacks and killings are mainly widows or other vulnerable elderly women who do not have children or relatives to protect them, women born out of wedlock or women who do not have any standing in the family.<sup>57</sup> According to police reports, women are six times more likely than men to be accused of sorcery.<sup>58</sup>

41. Those who torture or kill are almost exclusively men, and are often related socially or biologically to the victim.<sup>59</sup> Some accusations of sorcery are economically motivated, for the purpose of taking over land or possessions of those accused, or because payments have been made by third parties to name alleged sorcerers. According to expert reports, “increasingly, there is a perception that accusations of sorcery are a convenient disguise for premeditated killings based more on a person’s dislike for another, jealousy, envy, greed, rivalry or revenge and targeting women from the tribes or communities”.<sup>60</sup>

42. A study showing sentencing patterns in witchcraft-related cases in Southern Africa reveals that men accused of killings of women were sentenced to shorter periods of time, and often the charges were reduced to minor crimes. Overall, sentences were lenient when the perpetrator was the husband or a male relative of the woman killed. In Zambia, for instance, the average sentence was one to two years for charges of premeditated homicide of women.<sup>61</sup>

### 3. Killings of women and girls in the name of “honour”

43. As noted by the Secretary-General, certain cultural norms and beliefs are the causal factors of harmful practices resulting in violence against women, such as crimes committed in the name of “honour”.<sup>62</sup> Honour killings have been characterized as being among the most severe manifestations of harmful practices.<sup>63</sup> Murder to cleanse family honour is

<sup>53</sup> A/HRC/11/6/Add.1, 2009, at para. 228. *See also* Saravanan, S., *Violence against women in India: A literature review* (New Delhi, Institute of Social Studies Trust, 2000); Chen, M. A., “Widowhood and aging in India”, United Nations Research Institute for Social Development case study available at: [http://www.unrisd.org/unrisd/website/projects.nsf/\(httpAuxPages\)/25DCC0F9F3E206C3C1256BB200552FC6?OpenDocument&category=Case+Studies](http://www.unrisd.org/unrisd/website/projects.nsf/(httpAuxPages)/25DCC0F9F3E206C3C1256BB200552FC6?OpenDocument&category=Case+Studies).

<sup>54</sup> Jill Schnoebelen, “Witchcraft allegations, refugee protection and human rights: a review of the evidence”, *New Issues in Refugee Research*, Research Paper No. 169, Policy Development and Evaluation Service, 2009, p. 11.

<sup>55</sup> *Supra* Note 45 at p. 49

<sup>56</sup> The broad majority of the population in the highlands believes in extra-natural explanations to life misfortunes. When a death, sickness or an accident occurs, it is common to explain it as having been caused by the use of sorcery.

<sup>57</sup> *Sorcery, Witchcraft and Christianity in Melanesia* by Franco Zocca and Jack Urame, Melanesian Institute 2008.

<sup>58</sup> See also Amnesty International 2009 and *The National*, June 19, 2003, p. 6.

<sup>59</sup> *Supra* Note 46.

<sup>60</sup> *Ibid.*, p. 3.

<sup>61</sup> Rude, D. and M. Kazunga. (1995) “*Report on the femicide research*”. Report by country. Zambia. *Women in Law and Development in Africa*.

<sup>62</sup> *Supra* Note 6, at para. 78.

<sup>63</sup> *Ibid.*, at para. 123.

committed with high levels of impunity in many parts of the world.<sup>64</sup> Although honour crimes have mainly occurred in the vast zone spreading from the Sahara to the Himalayas, it also occurs in other regions and countries with migrant communities.<sup>65</sup>

44. Honour killings remain underreported and underdocumented globally. The United Nations Population Fund (UNFPA) has estimated that 5,000 women globally are murdered by family members each year in honour killings.<sup>66</sup> With widespread urbanization, the proliferation of media and the changing roles of women, it has become difficult for such crimes to go unnoticed, and such killings are becoming more visible.<sup>67</sup>

45. Honour killings take many forms, including direct murder; stoning; women and young girls being forced to commit suicide after public denunciations of their behaviour; and women being disfigured by acid burns, leading to death.<sup>68</sup> Honour crimes are also linked to other forms of family violence, and are usually committed by male family members as a means of controlling women's sexual choices and limiting their freedom of movement. Punishment usually has a collective dimension, with the family as a whole believing it to be injured by a woman's actual or perceived behaviour, and is often public in character. The visibility of the issue and the punishment also serves a social objective, namely, influencing the conduct of other women.<sup>69</sup>

46. Stoning is a method of capital punishment primarily used for crimes of adultery and other related offences linked to honour, of which women are disproportionately found guilty. This has resulted in 23 joint communications by mandate holders sent between 2004 and 2011, in respect of more than 30 women sentenced to death by stoning. Other communications to governments relate to honour crimes committed by family members or to the action/inaction of the State with regard to flogging or death by hanging of women for suspected premarital sex, for adultery, for failing to prove rape, and for acts deemed incompatible with chastity.<sup>70</sup>

47. It is argued that in the United Kingdom of Great Britain and Northern Ireland crimes in the name of honour are rooted in cultural traditions, not religious beliefs, and that "the conflation of the concepts of culture and religion contributes to the misunderstanding of such crimes, particularly in the context of Islamophobia and the 'war on terror'".<sup>71</sup> Similarly, the Special Rapporteur on extrajudicial, summary or arbitrary executions noted that "a number of renowned Islamic leaders and scholars have publicly condemned this practice and clarified that it has no religious basis".<sup>72</sup>

<sup>64</sup> Expert Group Meeting report "Violence against women: Good practices in combating and eliminating violence against women". Organized by the Division for the Advancement of Women in collaboration with the United Nations Office on Drugs and Crime, 17 to 20 May 2005, Vienna, Austria.

<sup>65</sup> E/CN.4/2002/83.

<sup>66</sup> See, UN In-depth study on all forms of violence against women, report of the Secretary-General, A/61/122/Add.1, 2006, at para. 78.

<sup>67</sup> Baydoun, A. (2011) "*Killing of women in the name of honour: An evolving phenomenon in Lebanon*". Paper presented at the Expert Group Meeting on gender-motivated killings of women. Convened by the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, New York, 12 October 2011.

<sup>68</sup> Ibid. at para. 78.

<sup>69</sup> See, In-depth study on all forms of violence against women, report of the Secretary-General, at para. 84.

<sup>70</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum, 15 years of the United Nations Special Rapporteur on violence against women, its causes and consequences (1994-2009) – A critical review, A/HRC/11/6/Add.5 (2009).

<sup>71</sup> Kelly, L. and Sen, P. (2007) "Violence against Women in the UK". Shadow Thematic Report for the CEDAW Committee.

<sup>72</sup> E/CN.4/2000/3.

48. The Special Rapporteur on violence against women has raised concerns about the phenomenon of self-immolation, reported in Afghanistan and the Islamic Republic of Iran, whereby women and girls attempt suicide by setting themselves on fire because they feel they are “dishonouring” the family.<sup>73</sup>

49. United Nations treaty bodies have expressed concerns that honour-related crimes often go unreported, are rarely investigated and usually go unpunished, and that when they are punished the sentences are far less than those for equally violent crimes without the “honour” dimension.<sup>74</sup> Reduced sentences are justified on the basis of the necessity of murdering such women, to defend the misconceived notion of family honour.<sup>75</sup>

50. In his report on working towards the elimination of crimes against women committed in the name of honour, the Secretary-General presented a series of recommendations in relation to the criminalization of such acts, and noted that those deliberately participating in, facilitating, encouraging or threatening women and girls in the name of honour should be punished.<sup>76</sup> He also noted that “in countries with immigrant communities, protection should be given to victims and potential victims in connection with asylum and immigration procedures”.<sup>77</sup>

#### 4. Killings in the context of armed conflict

51. During armed conflict, women experience all forms of physical, sexual and psychological violence, perpetrated by both State and non-State actors, including unlawful killings.<sup>78</sup> Such violence is often used as a weapon of war, to punish or dehumanize women and girls, and to persecute the community to which they belong.

52. Women and girls suffer from operations randomly or strategically targeting and terrorizing the civilian population, but also from summary and extrajudicial executions, imprisonment, torture, rape and sexual mutilations for fighting in resistance movements, for engaging in the search for and defence of their loved ones or for coming from communities suspected of collaboration.<sup>79</sup> Gender inequality becomes more pronounced in conflict and crisis situations, as competing masculine discourses place contradictory demands on women, and conflict is instrumentalized as a pretext to further entrench patriarchal control.<sup>80</sup>

53. The Special Rapporteur on the situation of human rights defenders has stated that women human rights defenders, who challenge oppressive governments and policies, are more at risk of suffering violence and other violations. While reclaiming their rights or the rights of their communities, they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation, and the role and status of women in society. The mission report on Colombia by the Special Rapporteur on

<sup>73</sup> E/CN.4/2006/61/Add.5. See Special Rapporteur on violence against women, “Situation of Women and Girls in Afghanistan”, A/58/421 on Afghanistan, and country mission report, at para. 29. See Special Rapporteur on violence against women, mission to the Islamic Republic of Iran, E/CN.4/2006/61/Add.3, 27 January 2006 at para. 29.

<sup>74</sup> A/65/44, para. 60 and 63. Report of the Committee against Torture, Forty-third session (2-20 November 2009), Forty-fourth session (26 April-14 May 2010).

<sup>75</sup> See report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2000/3, 2000, at para. 78.

<sup>76</sup> A/57/169 at para. 32.

<sup>77</sup> Ibid.

<sup>78</sup> In-depth study on all forms of violence against women, report of the Secretary-General at para. 143.

<sup>79</sup> A/HRC/14/22 (2010) at para. 33, report of the Special Rapporteur on violence against women, its causes and consequences.

<sup>80</sup> A/HRC/4/34/Add.2, at para 22, Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to Turkey, 5 January 2007.

the situation of human rights defenders highlights the killings of several women human rights defenders and the gravity of the violence, persecution and sexual torture in these murders.<sup>81</sup>

54. In Afghanistan, women's rights defenders continue to be regularly threatened and intimidated, and high-profile women, mainly political activists, have been assassinated, and their killers have not been brought to justice.<sup>82</sup> The Taliban's interpretation of sharia law is used to justify harsher punishments for women seen to be mixing with men outside their immediate families.<sup>83</sup> A common means of intimidation and control of local communities, mainly women, is the use of night letters. These are threatening letters, usually hand-delivered, or pasted onto a door or in a mosque, by insurgent groups. The content of these letters varies, but the main message is a threat of harm to women and girls (or their parents) if they go to school or to work, leave their homes, speak to non-family men, or call radio stations with music requests.<sup>84</sup>

55. In the 45-year-old civil war in Colombia, women community leaders and women fighting for their rights are the main targets of gender-related killings.<sup>85</sup> These women are especially vulnerable if they promote land rights<sup>86</sup> and the rights of the most marginalized groups, such as indigenous people, ethnic and religious minorities, trade unionists, and lesbian, gay, bisexual and transgender individuals.<sup>87</sup> The Special Rapporteur on extrajudicial, summary or arbitrary executions has confirmed that defenders of women's rights are significant targets of unlawful killings by both Colombian State forces and illegal armed groups.<sup>88</sup> The gender-specific intimidation of women defenders includes the targeting of their children and families, as a way to manipulate their roles as mothers, thereby exerting additional pressure on them to stop their human rights work.

## 5. Dowry-related killings of women

56. In some South Asian countries, a widespread practice is that of dowry-related murders. This term covers the deaths of young brides who are murdered, or driven to suicide by continuous harassment and torture perpetrated by the groom's family in an effort to extort dowry payment or an increased dowry of cash or goods. The most common manifestation of this practice is the burning of the bride. These incidents are often presented as, and accepted to be, accidents, such as death as a result of an "exploding stove".<sup>89</sup>

57. Dowry-related violence is embedded in religious and cultural traditions of the South Asian region.<sup>90</sup> The practice has permeated all communities. Pakistan enacted an anti-

<sup>81</sup> Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, "Mission to Colombia". 4 March 2010, A/HRC/13/22/Add.3.

<sup>82</sup> Human Rights Watch, Country Summary: Afghanistan. January 2011.

<sup>83</sup> Report "*Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*". United Nations Assistance Mission in Afghanistan, Kabul, and Office of the United Nations High Commissioner for Human Rights, Geneva. 9 December 2010.

<sup>84</sup> Ibid.

<sup>85</sup> Supra Note 81 at para. 31.

<sup>86</sup> Colombia Human Rights Network, Urgent Action Appeal (May 3, 2002), available at: [http://colhrnet.igc.org/newitems/may02/ai\\_urgent\\_appeal\\_3may02.htm](http://colhrnet.igc.org/newitems/may02/ai_urgent_appeal_3may02.htm).

<sup>87</sup> Human Rights First. Report to the Committee on the Elimination of All Forms of Discrimination against Women, on its Consideration of the Combined Fifth and Sixth Periodic Reports by the Government of Colombia. Thirty-seventh Session 2007.

<sup>88</sup> A/HRC/14/24/Add.2, at para 74, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mission to Colombia. 31 March 2010.

<sup>89</sup> BBC online network, "*World: South Asia Bride burning 'kills hundreds'*", in BBC News, 27 August 1999 (accessed 5 September 2011).

<sup>90</sup> Flavia Agnes, "Gender Based Killings—A South Asian Perspective", Paper prepared for Expert Group Meeting, New York, October 12, 2011, p. 7.

dowry law in 1976, Bangladesh in 1980 and Nepal in 2009. Despite legislative reforms, dowry is an indispensable part of weddings in this region; it has been a cause of violence against women,<sup>91</sup> and the laws have failed to have an impact in curbing dowry or elevating the status of women within marriage.<sup>92</sup>

58. In several cases in Bangladesh, dowry-related harassment of women has been aggravated to acid attacks, leading to blindness, disfigurement and death of women.<sup>93</sup> In 2002, Bangladesh passed a law imposing the death penalty on offenders and also restricted the sale of acid, in response to the growing problem of acid attacks.<sup>94</sup> In the first half of 2009, 119 cases of dowry-related violence, including 78 deaths, were reported. In 2008, 172 women were killed, and the figure for 2007 was 187.<sup>95</sup>

59. Statistics for the period 2007 to 2009 show that there have been between 8,093 and 8,383 reported cases of dowry deaths in India.<sup>96</sup> As noted by experts, the numbers of reported cases do not add up to conviction rates. The National Crime Records Bureau of India reports that for 2008 there were 1,948 convictions, as against 3,876 acquittals.<sup>97</sup> Acid attacks are also becoming a growing phenomenon in India, with young women being targeted for spurning suitors and for rejecting proposals of marriage, as well as in connection with contestation over dowry.<sup>98</sup>

60. Human rights bodies have strongly condemned these practices.<sup>99</sup> Experts argue that there is a need to address the underlying cultural concerns, such as the subordinate status of women within their birth/natal and marital homes; issues of property and ownership within these realms; the control of women's sexuality; the stigma attached to divorce; and the lack of support for a woman after she is married.<sup>100</sup>

## 6. Killings of aboriginal and indigenous women

61. Aboriginal and indigenous women and girls experience extremely high levels of violence. The social, cultural, economic and political marginalization of aboriginal and indigenous women globally, along with a negative legacy of colonialism, historic racist government policies and the consequences of economic policies, has driven an alarming number of these women into extremely vulnerable situations. For example, the effect of certain economic policies imposed on the Central America region has exacerbated the vulnerability of indigenous women, and has forced them to migrate both internally and regionally. They have been pressed into low-skilled and low-paid jobs, mainly in *maquila* factories, domestic service, the sex trade and prostitution, under precarious and exploitative conditions.

<sup>91</sup> [http://www.gorkhapatra.org.np/rising.detail.php?article\\_id=45558&cat\\_id=7](http://www.gorkhapatra.org.np/rising.detail.php?article_id=45558&cat_id=7)

<sup>92</sup> Supra note 90.

<sup>93</sup> Law Commission of India, Report submitted to the Honorable Supreme Court of India for its consideration in the pending proceedings filed by one Laxmi in W.P. (CrI.) No. 129 of 2006 on "The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime", July, 2008, Report No. 226 (2009), p. 3.

<sup>94</sup> In 2002, the Parliament of Bangladesh enacted two laws against acid violence: Under the Acid Control Act of 2002, the unlicensed production, import, transport, storage, sale, and use of acid can result in a prison term of 3-10 years. Those who possess chemicals and equipment for the unlicensed production of acid can get the same prison term.

<sup>95</sup> <http://www.irinnews.org/report.aspx?reportid=86100>

<sup>96</sup> Supra note 90.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> See CERD/C/IND/CO/19, CEDAW/C/IND/CO/3, CEDAW/C/TUN/CO/6, CRC/C/BGD/CO/4, E/C.12/IND/CO/5.

<sup>100</sup> Kishwar, Madhu, (2005). 'Destined to Fail - Inherent Flaws in the Anti Dowry Legislation'. *Manushi*, (148), May-June, pp. 3-12.

62. The intersection of different layers of discrimination based on race, ethnic identity, sex, class, education and political views further disenfranchises indigenous and aboriginal women, reproducing a multi-level oppression that culminates in violence. In cases of killings of aboriginal and indigenous women, the main failings by the authorities are the failure of police to protect aboriginal women and girls from violence and to investigate promptly and thoroughly when they are missing or murdered, and the disadvantaged social and economic conditions in which aboriginal women and girls live, which make them vulnerable to such violence.<sup>101</sup>

63. In Guatemala, the current experience of massive and violent killings of indigenous women has a legacy stemming back to colonial times, further increasing during the 36-year armed conflict. Indigenous Maya women constituted 88 per cent of victims of sexual and systematic attacks, with such attacks being publicly and intentionally perpetrated, mainly by military and paramilitary personnel.<sup>102</sup> After the 1996 Peace Accord, no efforts were made to seek justice for and provide reparations to the victims and their families. In fact, article 200 of the Penal Code (repealed in 2006) afforded immunity to perpetrators of sexual violence and kidnapping of women and girls over 12 years old, where the perpetrator subsequently married the victim. Thus a State-endorsed impunity was established, condoning all forms of violence, particularly against indigenous women.

64. In Australia, violence against aboriginal women is egregious due to the use of weapons and the licensing of firearms. Incidents of weapon-inflicted violence, involving hammers, knives, sticks, stones, guns and pickets, have resulted in a number of homicides of aboriginal women.<sup>103</sup> Recent reports indicate that aboriginal women are at far greater risk of being the victims of homicide, rape and other assaults than non-aboriginal women.<sup>104</sup> However, aboriginal women have been reluctant to expose these acts of violence, due to the risk of further denigration of their communities from the dominant white society. As noted by the Committee on the Elimination of Discrimination against Women, “indigenous women and girls face the highest levels of violence, especially at home where indigenous women are 35 times as likely to be hospitalized as a result of family violence-related assaults as non-indigenous females”.<sup>105</sup>

65. Until 1985 Canada had many discriminatory laws against aboriginal women and children; this has had an intergenerational impact, and has contributed to a legacy of violence, abuse and impunity.<sup>106</sup> Today, a young aboriginal woman is five times more likely than other Canadian women of the same age to die of violence.<sup>107</sup> According to a 2010 report, of 582 cases of violence against aboriginal women, 20 per cent involved missing women and girls, 67 per cent involved women or girls who died as a result of homicide or negligence, and 4 per cent fell under the category of suspicious death (usually

<sup>101</sup> Sharon McIvor and Shelagh Day, “Gender-Motivated Killings of Aboriginal Women and Girls Canada”, Prepared for UN Expert Group Meeting on Gender-motivated killings of women, 12 October 2011.

<sup>102</sup> The Commission for Historical Clarification “*La Violencia Sexual contra la Mujer*”, Volume 3, #41.

<sup>103</sup> Penelope Andrews, “Violence against Aboriginal Women in Australia: Possibilities for Redress within the international human rights framework”, 60 Albany Law Review 917.

<sup>104</sup> Ibid.

<sup>105</sup> CEDAW Committee, Concluding Observations to Australia, U.N. Doc. CEDAW/C/AUL/CO/7, 2010, para. 40.

<sup>106</sup> Complaint to the UN Human Rights Committee: Sandra Lovelace v. Canada, Communication No R.6/24, U.N. Doc. Supp. No. 40 (A/36/40), at 166.

<sup>107</sup> Amnesty International, *No More Stolen Sisters: The Need for a Comprehensive Response to Discrimination and Violence Against Aboriginal Women*, September 2009, at 1, available at: <http://www.amnesty.org/en/library/info/AMR20/012/2009/en>



declared natural or accidental by the police).<sup>108</sup> Between 2000 and 2008, 153 cases of murders of women and girls were reported, and in 115 of these cases, the bodies are still missing.<sup>109</sup> Aboriginal women and girls are more likely to be killed by a stranger than are non-aboriginal women. Approximately 50 per cent of such murders remain unsolved.<sup>110</sup> The Committee on the Elimination of Discrimination against Women has expressed its concern that “hundreds of cases involving aboriginal women who have gone missing or been murdered in the past two decades have neither been fully investigated nor attracted priority attention, with the perpetrators remaining unpunished”.<sup>111</sup>

## 7. Extreme forms of violent killings of women

66. The growing sociopolitical phenomena of gangs, organized crime, drug dealers, human and drug trafficking chains, massive migration and the proliferation of small arms have had a devastating impact on women’s lives, particularly in Mexico and Central America. The northern triangle of Central America has the highest rates of homicide in a non-conflict context.<sup>112</sup> The rate of killings of men has been stable during the last decade, but there has been an increase in the rates of killings of women.<sup>113</sup> In 2004 in Guatemala, murders of women increased 141 per cent, as opposed to 68 per cent for men; in El Salvador in 2006 murders of women increased 111 per cent, compared to 40 per cent for men; and in Honduras in 2007 murders of women increased 166 per cent, compared to 40 per cent for men.

67. As regards Mexico, in 1993 reports began to appear in the international media of the discovery of the mutilated bodies of raped and murdered women on wastelands outside the city of Ciudad Juárez.<sup>114</sup> Data collection on femicides has indicated an escalation in the numbers of killings, with one author estimating that approximately 740 femicides occurred between 1993 and 2009 in Ciudad Juárez.<sup>115</sup> The patterns of killings include abduction and disappearances for a few days; torture and sexual assault by groups of men; murder and mutilation, particularly of the sexual organs and breasts; decapitation in some cases; and the naked bodies/body parts being left on public display or dumped in empty wastelands of the city. In the worst cases, parts of the bodies are scattered through different areas of the city with messages written on the bodies or on paper found on the bodies. It is argued that the

<sup>108</sup> Native Women’s Association of Canada, *What Their Stories Tell Us: Research findings from the Sisters in Spirit initiative*, 2010, at 18, available at: [http://www.nwac.ca/sites/default/files/imce/2010\\_NWAC\\_SIS\\_Report\\_EN.pdf](http://www.nwac.ca/sites/default/files/imce/2010_NWAC_SIS_Report_EN.pdf). Since the publication of the 2010 report, more missing and murdered aboriginal women and girls have been added to the SIS database and the number is now over 600.

<sup>109</sup> Native Women’s Association of Canada, *Voices of Our Sisters In Spirit: A Report to Families and Communities*, 2nd Edition, March 2009 at 96, available at: [www.nwac.ca/sites/default/files/download/admin/NWAC\\_VoicesofOurSistersInSpiritII\\_March2009FINAL.pdf](http://www.nwac.ca/sites/default/files/download/admin/NWAC_VoicesofOurSistersInSpiritII_March2009FINAL.pdf)

<sup>110</sup> Ibid.

<sup>111</sup> CEDAW Committee, Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada, U.N. Doc. CEDAW/C/CAN/CO/7, (2008) at para. 31.

<sup>112</sup> UNDP (2009) “*Abrir espacios para la seguridad ciudadana y el desarrollo humano*” Informe sobre Desarrollo Humano para América Central. IDHAC, 2009-2010. Colombia. UNDP.

<sup>113</sup> Supra Note 16.

<sup>114</sup> Prieto-Carron, M., Thomson, M. and M. Macdonald (2007) “*No more killings! Women respond to femicides in Central America*”, Gender and Development, volume 15:1, Routledge Publishing.

<sup>115</sup> Monárrez, J. (2009) “*Trama de una injusticia. Femicidio sexual sistémico en Ciudad Juárez*”, El Colegio de la Frontera Norte, Mexico.

murders are conducted with symbolic effect—destroying the victim’s humanity, integrity and identity.<sup>116</sup>

68. Victims come from a range of social and economic backgrounds, which vary from country to country, as do the circumstances in which they are killed. Many of the murdered women come from the most marginalized sectors of society: they are poor, from rural areas, of ethnic origin, sex workers or maquila workers. Young women between 16 and 24 years old are the most vulnerable group. Overall, 25 per cent of murders reveal evidence of sexual assault; 66 per cent of murders in Honduras and 44 per cent in El Salvador exhibit signs of brutality.<sup>117</sup> Small firearms were used in 90 per cent of femicides in Guatemala<sup>118</sup> and in 79 per cent of femicides in Honduras in 2010.<sup>119</sup> Femicide is considered the second-highest cause of death of women of reproductive age in Honduras.<sup>120</sup>

69. Central America is a post-conflict region with fragile States and institutions, and it is also the poorest region in the Americas.<sup>121</sup> The effect of certain economic policies encouraged and facilitated the introduction of maquilas. The low-paid jobs created by the maquila industry are mainly occupied by women, in particular poor and illiterate women from rural areas. Contracts are generally on a temporary basis, with long working hours and no benefits. Also, women walk through dark public spaces as they return home late in the day, with no protection against criminal activities in the public sphere.

70. Furthermore, organized crime groups and gangs (known as *maras*) have multiplied and have created an internal system of control of local territory and of communities. They have established an open market for a profitable arms trade, which allows them to position themselves as the main providers of private security for drug cartels, entrepreneurs and the elite.

## 8. Killings as a result of sexual orientation and gender identity

71. Gender-based killing due to sexual orientation and gender identity is a phenomenon that has been recently, albeit insufficiently, documented. Although limited statistics are available, civil society reports suggest that violence, motivated by hatred and prejudice based on sexual orientation and gender identity, is a daily reality for many. It is “characterized by levels of serious physical violence that in some cases exceed those present in other types of hate crimes”.<sup>122</sup> Lesbian, gay, bisexual, transsexual, transgender, intersex and queer persons (LGBTIQ), and also activists working in this sector, are targeted because they do not conform to stereotypes of gender sexuality and/or identity, thus becoming victims of homophobic crimes.

72. Manifestations of violence, such as abuse of police power, sexual violence in prisons and murders fuelled by hate, as well as several kinds of discrimination, persist. As academics have noted,<sup>123</sup> there is a paradox in the advancement in the protection of individuals’ sexual rights on the one hand, and the increasing escalation of homophobic

<sup>116</sup> The women are viewed as inferior and are hence turned into waste material. See Segato, R. (2004) “*Territorio, soberanía y crímenes de segundo Estado: la escritura en el cuerpo de las mujeres asesinadas en Ciudad Juárez*”, Serie Antropológica, 362, Brasil.

<sup>117</sup> Supra Note 16.

<sup>118</sup> Ibid.

<sup>119</sup> Sánchez, J. (2011) “Impunidad: Un grito sin respuesta. Informe final femicidios en Honduras”, Tribuna de Mujeres Contra los Femicidios. Honduras.

<sup>120</sup> Ibid.

<sup>121</sup> UNDP Human Development Index (2010).

<sup>122</sup> See Human Rights First, *Violence Based on Sexual Orientation and Gender Identity Bias*, 2008 Hate Crime Survey (2008) at p. 1.

<sup>123</sup> Julieta Lemaitre, “Love in the Time of Cholera”, *Sur*, International Journal of Human Rights, Argentina, 2010.

crimes on the other. In this sense, LGBTIQ persons, including women, are especially vulnerable to many kinds of violent crime, from killings in private homes to killings in public spaces known as “social cleansing”, extortion by blackmailers who threaten to reveal their identity to the public, and abuse from officials, especially the police, who sometimes arrest them.<sup>124</sup>

73. In the case of South Africa, the recent murders of Black lesbian women demonstrates the multiple and intersecting factors that have led to an escalation in homophobic attacks, despite progressive constitutional provisions preventing discrimination on the basis of, among others, race, gender and sexual orientation.<sup>125</sup>

74. The Human Rights Council has expressed its concern about the increasing violence and killings of lesbian, gay, bisexual and transgender persons and the impunity surrounding these crimes.<sup>126</sup> More recently, the Council passed a groundbreaking resolution on human rights violations based on sexual orientation and gender identity.<sup>127</sup>

75. The Inter-American Commission on Human Rights has held several hearings in the last three years regarding the situation of violence and discrimination against sexual minorities in some countries of the Caribbean and Central and South America. In these countries, civil society organizations have expressed their concern regarding increasing incidents of homophobic crimes.<sup>128</sup>

76. Reports of homicides of “trans” people reflect that 93 murders were recorded in the first half of 2010.<sup>129</sup> Another project has revealed that between January 2008 and September 2011 there were 681 reports of murdered “trans” people in 50 countries.<sup>130</sup>

#### 9. Other forms of gender-related killings of women and girls

77. As noted above, certain cultural norms and beliefs are the causal factors for harmful practices resulting in violence against women.<sup>131</sup> For example, in India the practice of sati, that is, the burning alive of a widow on her husband’s pyre, has emerged since the country’s independence.<sup>132</sup> To date there have been at least 40 reported cases.<sup>133</sup>

<sup>124</sup> Ibid., at p. 80.

<sup>125</sup> Kim Vance, ARC International “gender-motivated killings of women on the basis of sexual orientation and gender identity”. Paper presented at EGM Oct 2011.

<sup>126</sup> Report of the Working Group on the Universal Periodic Review. Honduras. Human Rights Council. A/HRC/16/10, 4 January 2011, at para 35.

<sup>127</sup> Human Rights Council resolution 17/19.

<sup>128</sup> IACHR, hearings on sexual orientation and gender identity available at: <http://www.cidh.oas.org/prensa/publichearings/Advanced.aspx?Lang=ES>

<sup>129</sup> The TMM project started in April 2009 as a cooperation between Transgender Europe (TGEU) and the academic online magazine Liminalis – A Journal for Sex/Gender Emancipation and Resistance. With the involvement of the editorial team of Liminalis, the TMM became a pilot project of Transgender Europe’s “Transrespect versus Transphobia Worldwide” research project in September 2009.

<sup>130</sup> [http://www.transrespect-transphobia.org/en\\_US/tvt-project/tmm-results/all-tmm-reports-since-2008.htm](http://www.transrespect-transphobia.org/en_US/tvt-project/tmm-results/all-tmm-reports-since-2008.htm)

<sup>131</sup> See the In-depth study on all forms of violence against women, report of the Secretary-General.

<sup>132</sup> Banerji, R. (2009) “*Female Genocide in India and the 50 Million Missing Campaign*” Intersections: Gender and Sexuality in Asia and the Pacific. Issue 22

<sup>133</sup> Mani, L. (2003) “*Multiple meditations: feminist scholarship in the age of multinational reception*”, Feminist Theory Reader, McCann, C., and Kim, S. (eds), New York: Routledge, 2003, pp. 365–77, p. 372.

78. Female infanticide has been practiced throughout history, on all continents, and by persons from all backgrounds.<sup>134</sup> It remains a critical concern in a number of countries today. It is closely linked to the phenomenon of sex-selective abortion, which targets female fetuses. Female infanticide has been known to take such forms as the induced death of infants by suffocation, drowning, neglect and exposure to danger or other means.<sup>135</sup>

79. In recent decades, sex-ratio imbalances in favour of boy children have grown in a number of Asian countries, and there is broad agreement concerning the problem of gender-biased sex selection.<sup>136</sup> In a context of son preference, the recent availability of technologies that can be used for sex selection has compounded the problem. The rise in sex-ratio imbalances and the normalization of the use of sex selection is caused by deeply embedded discrimination against women within marriage systems, family formation and inheritance laws.<sup>137</sup>

80. In the case of India, international attention has been drawn to the vast divergence in the country's natural gender ratio, with estimates that in 2003 100 million women were "missing" from its population.<sup>138</sup> It is estimated that one million selective female foetal abortions occur annually in India.<sup>139</sup> There is no official statistical data available on female infanticide, but in the state of Kerala, it is estimated that about 25,000 female newborns are killed every year.<sup>140</sup> The preadolescent mortality rate of girls under 5 years old was 21 per cent higher than for boys of the same age in India. Violence, as well as nutritional and deliberate medical neglect by girls' parents, was cited as the main causes of death.<sup>141</sup>

81. Female infanticide in China goes back as far 2000 B.C. Girls were the main victims of infanticide, especially so in times of poverty and famine.<sup>142</sup> A study suggested that the estimated number of missing girls in the twentieth century in China between 1900 and 2000 is 35.59 million, representing 4.65 per cent of its population. An analysis of the most recent data from China shows that while the sex ratio at birth is more skewed in rural areas, the ratios in large cities increased in 2005 compared to 2000.<sup>143</sup> These findings suggest that son preference is still a strong influence, and is increasingly being acted upon by those living in cities.

## IV. International and national developments

### A. International human rights law and jurisprudence

82. Violence against women has been affirmed, in many human rights instruments and by human rights bodies, as a violation of the rights and fundamental freedoms of women.

<sup>134</sup> Williamson, L. (1978) "*An anthropological analysis*". In Marvin Kohl (ed.), *Infanticide and the value of life*, pp. 61-75. Buffalo, NY: Prometheus Books.

<sup>135</sup> Hom, S. (1992) "*Female infanticide in China: the spectrum of human rights and reflections towards another vision*". In Harmes, R. and D. Russell (eds.) (2001) "*Femicide in Global Perspective*", New York: Teachers College Press.

<sup>136</sup> Preventing gender-biased sex selection. An interagency statement by OHCHR, UNFPA, UNICEF, UN-Women and WHO. 2011.

<sup>137</sup> Ibid.

<sup>138</sup> Sen, A. (2003) "*Missing Women Revisited*", *British Medical Journal* 327:1297-8. UK

<sup>139</sup> Allahbadia, G. (2002) "*The 50 million missing women*" *Journal of Assisted Reproduction and Genetics*, vol. 19, no. 9: 411-16.

<sup>140</sup> Aravamudan, G. (2007) "*Disappearing Daughters: The Tragedy of Female Foeticide*", New Delhi: Penguin Books, pp. 157-59.

<sup>141</sup> Moccia, P., Anthony, D., and A. Orlandi (eds) (2007) "*The State of the World's Children*", South Asia Edition. Women and Children. The Double Dividend for Gender Equality. UNICEF.

<sup>142</sup> Croll, E. (1980) "*Feminism and socialism in China*". New York, Schocken Books, pp. 24.

<sup>143</sup> Ibid.

The killing of women constitutes a violation of, among others, the rights to life, to equality, dignity and non-discrimination, and not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment. The obligation of States to ensure these rights arises pursuant to the duty of States to prevent and protect individuals from human rights violations within their jurisdictions, to punish perpetrators and to compensate individuals for such violations. The failure of States to guarantee the right of women to a life free from violence allows for a continuum of violence that can end in the deaths of women.

83. Gender-based violence has been recognized as one of the most extreme and pervasive forms of discrimination, severely impairing and nullifying the enforcement of women's rights.<sup>144</sup> The Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Elimination of Violence against Women address all forms of violence, which include the killing of women, as acts of violence that are prohibited under international law.<sup>145</sup>

84. Treaty bodies and special procedure mandate holders have also condemned specific forms of violence, including femicide, honour-related killings, systematic killings, disappearances and witchcraft-related killings of women.<sup>146</sup> They have also raised concerns in relation to the significant obstacles for women in accessing justice, the climate of impunity surrounding such cases, and also the systematic failure of States to investigate or provide redress.<sup>147</sup>

85. A significant component of the international human rights framework is the duty placed on States to prevent, investigate, punish and provide compensation for all acts of violence. The Declaration on the Elimination of Violence against Women spells out the obligation of States to exercise due diligence when gender-based violence occurs, whether perpetrated by the State or by private persons.<sup>148</sup> In numerous resolutions relating to the intensification of efforts to eliminate all forms of violence against women, the Human Rights Council and the General Assembly have also urged States to act with due diligence

<sup>144</sup> See, for example, Human Rights Council resolution 14/12 of 18 June 2010 on accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention; Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104 of 20 December 1993; United Nations, *Beijing Declaration and Platform for Action*, Fourth World Conference on Women, September 15, 1995, A/CONF.177/20/Rev.1 (1995) and A/CONF.177/20/Add.1 (1995); CEDAW Committee, *General Recommendation 19: Violence against Women*, (11<sup>th</sup> Session 1992), U.N. Doc. A/47/38 at 1 (1993).

<sup>145</sup> See Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104 of 20 December 1993, article 1.

<sup>146</sup> The Commission on the Status of Women, the Commission on Human Rights (replaced by the Human Rights Council) and the Commission on Crime Prevention and Criminal Justice have also regularly adopted resolutions on violence against women. See, for example, General Assembly resolutions 63/155, 61/143, 59/166, 58/147 and 56/128. See Felice Gaer, "Approaches of the human rights treaty bodies to gender-based killings of women", Presentation at Expert Group Meeting, New York, 12 October, 2011.

<sup>147</sup> See Report of the Secretary-General, *In-depth study on all forms of violence against women*, U.N. Doc. A/61/122/Add.1 (2006); *Access to Justice for Women's Victims of Violence in the Americas*, Inter-Am. Com. H.R., supra note 4; *Hemispheric Report of the Commission of Experts of the Mechanism to Follow-up on the Implementation of the Convention Belem do Pará* (hereinafter "Hemispheric Report"), Inter-American Commission of Women, OEA/Ser.L/II.7.10 MESECVI-II/doc.16/08 rev.1 (2008); and Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo supra. Committee on the Elimination of Discrimination against Women, "General Recommendation No. 28 on the Core Obligations of States Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women", (2010) at 34.

<sup>148</sup> See Article 4(c) of the Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104 of 20 December 1993.

to prevent, investigate, prosecute and punish the perpetrators of violence against women and girls and to provide protection to the victims.<sup>149</sup>

86. The rights of women and girls to be informed about and provided with access to the mechanisms of justice and effective remedies are also contained within international human rights law.<sup>150</sup> As noted by the Special Rapporteur: “the obligation to provide adequate reparations involves ensuring the rights of women to access both criminal and civil remedies and the establishment of effective protection, support and rehabilitation services for survivors of violence”.<sup>151</sup> The General Assembly has repeatedly urged Member States to take action towards this end by means of a more systematic, comprehensive, multisectoral and sustained approach, adequately supported and facilitated by strong institutional mechanisms and financing, through national action plans; and to ensure that all human rights and fundamental freedoms are respected and protected.<sup>152</sup>

87. Relevant resolutions also provide that States must condemn violence against women and not invoke custom, tradition or religion to avoid their obligations to eliminate such violence; develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to victims; provide access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies; and ensure that the secondary victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions.<sup>153</sup>

88. In other resolutions, the General Assembly has also urged States to review or abolish all laws and regulations that discriminate against women or have a discriminatory impact on women and ensure that provisions of multiple legal systems comply with international human rights obligations, and to use best practices to end impunity and a culture of tolerance towards violence against women, including by evaluating and assessing the impact of legislation, rules and procedures regarding violence against women and reinforcing criminal law and procedure relating to all forms of violence against women, as well as by incorporating into law measures aimed at preventing violence against women.<sup>154</sup>

89. In 2000, the Human Rights Committee adopted general comment 28 on the equality of rights between men and women, in which it stated that honour crimes which remained unpunished constituted a serious violation of the International Covenant on Civil and Political Rights. Moreover, laws which imposed more severe penalties on women than on men for adultery or other offences also violated the requirement of equal treatment.<sup>155</sup> In

<sup>149</sup> General Assembly resolutions 61/143 of 19 December 2006; 62/133 of 18 December 2007 and 63/155 of 18 December 2008 on the intensification of efforts to eliminate all forms of violence against women.

<sup>150</sup> See Article 4 of the Declaration on the Elimination of Violence against Women and Article 7 of Convention Belem do Para, supra note 1. Also relevant are the rights to judicial protection and effective remedies established in general human rights instruments. See the American Convention on Human Rights (arts. 8 and 15); the American Declaration of the Rights and Duties of Man (art. XVIII); the Universal Declaration of Human Rights (art. 8), the International Covenant on Civil and Political Rights (art. 2, para. 3), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 6), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (art. 14).

<sup>151</sup> Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, U.N. Doc. A/HRC/14/22, (2010) at p.1.

<sup>152</sup> General Assembly, Resolution 61/143 of 19 December 2006 and Resolution 63/155 of 18 December 2008 on the intensification of efforts to eliminate all forms of violence against women.

<sup>153</sup> United Nations, Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104.

<sup>154</sup> See Resolution 61/143 of 19 December 2006 and Resolution 63/155 of 18 December 2008 on the intensification of efforts to eliminate all forms of violence against women, supra.

<sup>155</sup> CCPR/C/21/Rev.1/Add.10.

2004, the General Assembly passed a resolution on the elimination of crimes against women and girls committed in the name of honour. It stressed the need to treat such crimes as criminal offences punishable by law. It emphasized that such crimes are incompatible with all religious and cultural values, and called upon all States to continue to intensify efforts to prevent and eliminate crimes against women and girls committed in the name of honour, by using legislative, administrative and programmatic measures.<sup>156</sup>

90. The Committee on the Elimination of Discrimination against Women has held State parties accountable for their failure to act with due diligence in addressing violence against women.<sup>157</sup> For example, in the cases of *Goekce (deceased) v. Austria* and *Yildirim (deceased) v. Austria*,<sup>158</sup> both concerning women victims of domestic violence, the Committee found that the State had discriminated against the women for failing to act with due diligence to protect their rights to life and to physical and mental integrity. The Committee has also addressed structural discrimination against women in relation to gender-based murders. In its inquiry under article 8 of the Optional Protocol into the abduction, rape and murder of women in and around Ciudad Juárez, the Committee has recommended that Mexico sensitize all state and municipal authorities to the need for violence against women to be regarded as a violation of fundamental rights.<sup>159</sup>

91. Furthermore, the Committee on the Elimination of Discrimination against Women has characterized the persecution of women accused of witchcraft as an extreme form of violence against women.<sup>160</sup> It has expressed its concern about the persistence of the belief in witchcraft and the subjection of women in witch camps to violence.<sup>161</sup>

92. The Committee on the Elimination of Discrimination against Women has urged Canada to examine the reasons for the failure to investigate the cases of missing or murdered aboriginal women, to take the necessary steps to remedy the deficiencies in the system, to carry out thorough investigations of the cases of aboriginal women who have gone missing or been murdered in recent decades, to conduct an analysis of such cases in order to determine whether there is a racialized pattern to the disappearances, and to take measures to address the problem if that is the case.<sup>162</sup>

93. The Committee against Torture has stated that the definition of torture includes the principle of non-discrimination on any grounds, including gender, sexual orientation and transgender identity.<sup>163</sup> Thus, States are obliged to protect certain minority or marginalized individuals or populations especially at risk of torture, and should ensure such protection by fully prosecuting and punishing all acts of violence and abuse and ensuring implementation of other positive measures of prevention and protection.<sup>164</sup> The Human Rights Council, in

<sup>156</sup> General Assembly resolution 59/165 of 20 December 2004.

<sup>157</sup> The Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women allows the Committee to review individual petitions against State parties that have ratified the CEDAW Convention. See Article 7, para. 3.

<sup>158</sup> CEDAW Committee, *Sahide Goekce (deceased) v. Austria*, communication No. 5/2005, views adopted 6 August 2000; *Fatma Yildirim (deceased) v. Austria*, communication No. 6/2005, views adopted 6 August 2007.

<sup>159</sup> Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico, CEDAW/C/2005/OP.8/MEXICO, para. 286.

<sup>160</sup> With regard to India, in 2007, the Committee noted its concern about the practice of witch-hunting. See CEDAW Concluding Observations to the country, U.N. Doc. CEDAW/C/IND/CO/3.

<sup>161</sup> In examining the report on Ghana, the Committee received information alleging that some 2,000 witches and their dependants were confined in five different camps.

<sup>162</sup> Concluding observations of the Committee on the Elimination of Discrimination against Women: Canada, U.N. Doc. CEDAW/C/CAN/CO/7, (2008) at para. 32.

<sup>163</sup> See, Committee against Torture (hereafter CAT), General Comment No. 2, at para. 20.

<sup>164</sup> *Ibid.*, at para. 21.

its resolution 17/19, requested the United Nations High Commissioner for Human Rights to present a study documenting discriminatory laws and practices and acts of violence against individuals based on sexual orientation and gender identity.

## B. Some national practices

94. States have sought to comply with their due diligence obligation to prevent violence against women through the adoption of specific legislation, the development of awareness-raising campaigns, and the provision of training for professional groups, including the police, prosecutors and members of the judiciary.<sup>165</sup> Many States have adopted national plans of action on violence against women in an effort to coordinate activities between and within government agencies and to take a multisectoral approach to prevent violence.

95. In Afghanistan, the Law on Elimination of Violence against Women broadly criminalizes violence against women broadly. Despite this, cases of gender-based killings and other serious crimes against women are still being prosecuted under the Penal Code instead of under the new law.<sup>166</sup> This is resulting in acquittals of perpetrators, the reduction of charges to less serious crimes, convictions with lighter sentences and women victims themselves being accused of “moral crimes”.<sup>167</sup> Also, article 398 of the Penal Code mitigates penalties for murder if the victim is a close relative caught in the act of committing adultery, and the killing was not premeditated.<sup>168</sup>

96. Legislative advances have been made by Lebanon regarding honour crimes. In August 2011, Lebanon repealed article 562 of its Criminal Code. That article had mitigated the sentences of people who claimed they killed or injured their wife, daughter or other relative to protect the family honour.<sup>169</sup> The Lebanese courts almost invariably refused to accept the alleged notion of honour to justify these crimes, and article 562 was rarely used by the judges.<sup>170</sup> Nevertheless, women’s organizations in Lebanon argued that enacting a comprehensive law for the protection of women from family violence was an effective strategy to prevent killings of women in the first place.<sup>171</sup>

97. In 2010, the government of British Columbia established the Missing Women Commission of Inquiry, to conduct fact-finding missions and police investigations with regard to reports of missing and murdered women in the city of Vancouver (the Pickton case).<sup>172</sup> This initiative does not address the phenomena in other parts of the country.<sup>173</sup>

<sup>165</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, *The due diligence standard as a tool for the elimination of violence against women* (hereinafter *The Due Diligence Report*), E/CN.4/2006/61, 2006, para. 38.

<sup>166</sup> United Nations Assistance Mission to Afghanistan (UNAMA) and the Office of the High Commissioner for Human Rights in Afghanistan, “*A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan*”, November 2011.

<sup>167</sup> *Ibid.*

<sup>168</sup> *Supra* note 83.

<sup>169</sup> See Human Rights Watch, “Lebanon: Law Reform Targets ‘Honor’ Crimes”, August 2011.

<sup>170</sup> Baydoun, A. (2011) “*Killing of women in the name of honour: An evolving phenomenon in Lebanon*”. Paper presented at the Expert Group Meeting on gender-motivated killings of women. Convened by the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo, New York, 12 October 2011.

<sup>171</sup> *Ibid.*

<sup>172</sup> Sharon McIvor and Shelagh Day, “Gender-Motivated Killings of Aboriginal Women and Girls Canada”, Prepared for UN Expert Group Meeting on Gender-motivated killings of women, 12 October 2011.

<sup>173</sup> *Ibid.*



98. India passed the 1961 Dowry Prohibition Act, and dowry death was also criminalized in the Indian Penal Code,<sup>174</sup> where a provision was introduced proscribing dowry-related violence and establishing domestic violence (cruelty in the marital home) as an offence with a maximum punishment of three years.<sup>175</sup> This amendment was also necessary to respond to the difficulties of proving the murder of women committed within the home. The normal evidentiary rules were amended to shift the burden of proof to the accused in the hope that it would enable the prosecution to secure convictions. Similarly, evidentiary rules relating to the offence of abetment (instigation, conspiracy or intentional aiding) to suicide were amended to more justly deal with cases of suicides committed by women due to dowry harassment.<sup>176</sup> Despite such reforms, the incidence of dowry-related killings continues.<sup>177</sup>

99. Although some States have enacted legislation providing for the punishment of witches, penalties for the persecution or killing of witches have not been explicitly established. In some countries, laws consider witchcraft as an aggravating circumstance which warrants a lesser punishment for the aggressor.<sup>178</sup> For example, in Papua New Guinea, attacks against persons accused of sorcery can be prosecuted as a crime under ordinary criminal legislation. Although the Sorcery Act of Papua New Guinea provides for the prosecution of those responsible for the deaths of accused witches, there is almost no enforcement of the law, as witnesses often fail to cooperate out of fear or complacency.<sup>179</sup> According to reports, of 67 sorcery-related incidents in Simbu recorded by the police between 2000 and 2005 (including 92 persons dead or injured), only six affidavits were produced regarding killers of suspected witches and only two people were eventually sentenced.<sup>180</sup>

100. In 2008 Guatemala passed the Law against Femicide and Other Forms of Violence against Women. It includes a comprehensive framework and incorporates a wide definition that acknowledges that femicide is committed by a person who, in the context of unequal power relations between men and women, puts to death a woman because she is a woman.

101. At the federal level, Mexico passed the General Law on Women's Access to a Life Free of Violence in 2007. Although this law does not recognize femicide as a crime, it has included "femicidal violence" (*violencia feminicida*) as a type of violence. To date, only the federal authorities of the capital and three county/state governments have issued executive regulations to implement this new legislation.

102. In 2010, El Salvador passed the Integral Law for a Life Free of Violence for Women, which defines and classifies two types of femicide: when the perpetrator of the death of a woman is motivated by hatred or contempt based on gender; and aggravated femicide, when the perpetrator is a civil servant, government official or member of the police or army, when two or more persons are involved, when the killing is committed in the presence of any of the victim's members of the family, when the victim is a minor or

<sup>174</sup> See Section 304-B, Indian Penal Code. A minimum of seven years and a maximum of life imprisonment was the prescribed punishment.

<sup>175</sup> See S.498-A of the Indian Penal Code.

<sup>176</sup> See Section 306 of the Indian Penal Code.

<sup>177</sup> The National Crime Record Bureau of India (NCRB) reports for 2008, there were 1,948 convictions as against 3,876 acquittals. In 2009, 8,383 dowry violence cases have been reported. See *Crime in India*, National Crime Record Bureau (NCRB), Ministry of Home Affairs, Government of India, cited in Flavia Agnes, *supra*, p. 7.

<sup>178</sup> *Supra* note 45 at p.51.

<sup>179</sup> Jill Schnobelen, "Witchcraft allegations, refugee protection and human rights: a review of the evidence", *New Issues in Refugee Research*, Research Paper No. 169, Policy Development and Evaluation Service, 2009.

<sup>180</sup> Oxfam, *Sorcery Beliefs and Practices in Gumine: A Source of Conflict and Insecurity*, 15 Oct 2010.

with a disability, or when the aggressor has abused any authoritarian power held in the family, work or educational environment.

## V. Conclusions and recommendations

103. While States have initiated various preventive programmes, there are numerous gaps in their efforts. Challenges include: a lack of overall societal transformation; inadequate provision of access to justice; the absence and/or insufficiency of the rights-based discourse when addressing the killings of women; and the blindness to structural inequalities and the complex intersecting relations of power in the public and private spheres, which remain the root causes of sex and gender discrimination. A holistic approach in preventing gender-related killings must be emphasized in all the measures taken by States to investigate and sanction violence, especially in crafting, implementing and evaluating legislation, policies and national plans of action.

104. Feminists have also identified what they believe are other challenges: the difficulty of translating social realities into claims based on rights; the narrow interpretation of rights within an international legal order; and the prevalence of discriminatory cultural stereotypes in the administration of justice. The formulation of rights-based claims by women remains an important strategic and political tool for **women's empowerment and for addressing human rights violations**.

105. The weaknesses in information systems and the poor quality of data are major barriers in investigating femicides, developing meaningful prevention strategies and advocating for improved policies. The different frameworks, definitions and classifications used in the conceptualization of femicide often complicate the collection of data from different sources and could lead to documentation that may not be comparable across communities or regions.<sup>181</sup> Studies on the subject have been conducted primarily using data from homicide databases. Information collected by official or State sources is frequently not harmonized or coordinated. Often there are incongruities between the data collated by the different facilities, including inconsistencies in the categories used to document the circumstances surrounding the crime, the victim-perpetrator relationship and the fact of pre-existing violence. The development of an effective evidence base requires improving the quality and comparability of data.<sup>182</sup>

106. The use of inexact categories for the classification of murders, such as the category "others", results in misidentification, concealment and underreporting of femicides—in particular those that do not occur in a family situation. Another common practice is the use of stereotypical and potentially prejudicial categories, including "crime of passion" or "mistress".<sup>183</sup>

107. In February 2009 the Statistical Commission, in response to a request from the General Assembly,<sup>184</sup> adopted a set of indicators that can document the prevalence of violence against women. The indicators proposed include: degree, frequency, relationship with the perpetrator, victim's age, and records of murder cases.

<sup>181</sup> Supra note 19.

<sup>182</sup> Ibid., p. 4.

<sup>183</sup> Carcedo, A. "Femicide in Central America 2000–2006". Presentation of a study co-authored by Lemus, G., Kennedy, M., Herrera, M., D'Angelo, A., Hidalgo, Ana., Ungo, U., and S. Pola – in Conference Report supra note 20.

<sup>184</sup> See General Assembly resolution 61/143.

According to the information gathered to date, no country has all the information necessary to calculate and create the proposed indicators.

108. Although media coverage of killings of women has generally perpetuated stereotypes and prejudicial biases, it has provided contextual information, including, inter alia, the victim-perpetrator relationship and any history of violence. This has **helped women's organizations** to distinguish cases of femicide from those of homicides of women.

109. The lack of adequate assessment of risk, the lack of enforcement by police and the judiciary of civil remedies and criminal sanctions, and the absence or inadequate provision of services, such as shelters, also exacerbate the risk of women of being abused and murdered, as often women have no choice but to continue living with their abusers.<sup>185</sup>

110. In the context of murders relating to witchcraft, a number of factors that hinder or prevent adequate police response were identified. These include shortages of personnel, vehicles and fuel and a limited presence of the police, as well as the taboo surrounding sorcery, which in and of itself prevents intervention. In many cases communities do not cooperate and are reluctant to give information to the police due to fear of mob rule and of being accused as co-sorcerers if they assist victims.<sup>186</sup>

111. International humanitarian law proscribes gender-based violence and extrajudicial executions of women during armed conflict. It also forbids attacks on their personal dignity, in particular humiliating and degrading treatment. Significant obstacles to investigating and prosecuting killings of women have been identified. These include the failure of police intervention, a lack of implementation of security measures for women, repeated attacks on law-enforcement **officials and women's** rights advocates, and inaccessible detention locations in areas under the control of insurgents and other illegally armed groups. Institutional weakness results in impunity in cases of gender-related killings of women, as a lack of respect for the rule of law, corruption and poor administration of justice are the norm.

112. Despite progressive jurisprudence from the regional human rights systems, often there is no mechanism to coordinate the implementation of the judgements at the national level, with some authorities stating that the absence of a special implementing law precludes fulfilment. It is argued that in order to facilitate compliance with such rulings, the creation of an international standard for the investigation of femicide, which ensures compliance with the guarantee of non-repetition, is necessary. An Action Protocol, aimed at the judiciary, prosecutors and political bodies, can outline guidelines for the prevention of and investigation into incidents of femicide.<sup>187</sup>

113. **As noted by this mandate, developing indicators for State responses "is somewhat less complex than measuring violence, because there are clear responsibilities set out in international law: to prevent, protect, prosecute and provide compensation".**<sup>188</sup> While adequate regulatory frameworks have generally been adopted to deal with violence against women, weaknesses include: a lack of adequate

<sup>185</sup> Lidia Casas and Macarena Vargas, *The response of the State to Domestic Violence*, Chile, 2011.

<sup>186</sup> *Supra* Note 46 pp. 9-10.

<sup>187</sup> Project: Protocol of Madrid. *"Creation of a Protocol for the Effective Investigation and Documentation of Extreme Violence against Women for Gender-Based Reasons: Femicide"*. Derechos Humanos: Federación de Asociaciones de Defensa y Protección, and University Carlos III, Madrid.

<sup>188</sup> A/HRC/7/6, at para 69.

operative, technical, financial and human resources and, in some cases, a lack of political will to effectively and practically address the problem.

114. In 2007, the Economic Commission for Latin America and the Caribbean concluded that to end violence against women, it is imperative that it become a focus of public agendas: firstly, as a human rights violation, secondly, because violence is an obstacle for development and, finally, because it is a key issue for democracy and governance.<sup>189</sup> In this sense, the elimination of violence against women is based on three pillars: legal protection, public policies and a culture of respect without discrimination.<sup>190</sup>

115. A holistic approach for the elimination of all forms of violence against all women would require that systemic discrimination, oppression and marginalization of women be addressed at the political, operative, judicial and administrative levels.<sup>191</sup>

116. In cases involving gender-related killings, the international and regional human rights systems have included some of the following standards regarding the due diligence obligations of States:

(a) Conduct effective investigations of the crime, and prosecute and sanction acts of violence perpetrated by State or private actors, especially when these acts demonstrate a pattern of systemic violence towards women;

(b) Guarantee de jure and de facto access to adequate and effective judicial remedies;

(c) Include in the obligation of access to justice a requirement to treat women victims and their relatives with respect and dignity throughout the legal process;

(d) Ensure comprehensive reparations for women victims of violence and their relatives, including measures that are designed to address institutional and social factors;

(e) Identify certain groups of women as being at particular risk for acts of violence due to having been subjected to discrimination based on more than one factor, including women belonging to ethnic, racial and minority groups. Such factors must be considered by States in the adoption of measures to prevent all forms of violence;

(f) Modify the social and cultural patterns of conduct of men and women and eliminate prejudices, customary practices and other practices based on the idea of the inferiority or superiority of either of the sexes, and on stereotyped roles for men and women.

<sup>189</sup> Economic Commission for Latin America and the Caribbean (ECLAC), (2007), “*¡Ni una más! El derecho a vivir una vida libre de violencia en América Latina y el Caribe*”, (LC/L.2808), Santiago de Chile.

<sup>190</sup> ECLAC (2009) “*¡Ni una más! Del dicho al hecho: Cuánto falta por recorrer? Únete para poner fin a la violencia contra las mujeres*”. Chile.

<sup>191</sup> A/HRC/17/26 Special Rapporteur on violence against women “Multiple and intersecting forms of discrimination and violence against women” (2011).