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**INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE  
GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN**

**Towards an effective implementation of international norms  
to end violence against women**

**Report of the Special Rapporteur on violence against women,  
its causes and consequences, Yakin Ertürk**

## Summary

This is the first report to be submitted by the present mandate holder, Yakin Ertürk, to the Commission on Human Rights. The report is submitted pursuant to Commission resolution 2003/45, in which the Commission decided to renew the mandate of the Special Rapporteur on violence against women, its causes and consequences, for a further three years. The report notes the Special Rapporteur's great concern that despite progress at the normative level, violence against women continues to an alarming degree, the most serious violation of women's human rights and an attack on the bodily integrity and the dignity of all women. Building on the work of her predecessor, Radhika Coomaraswamy, the Special Rapporteur will place a priority on developing guidelines for the practical implementation of international law relating to the universal human rights of women with particular attention to the observance of the Declaration on the Elimination of Violence against Women as adopted by States in 1993.

In section I, the report defines the mandate and methods of work of the Special Rapporteur. Section II describes the activities of the Special Rapporteur since she took over the mandate in August 2003. Reference is also made to the activities of the former Special Rapporteur from 2003, until the end of her tenure in July. Section III starts with an assessment of the developments of the past decade in the area of women's human rights and violence against women, and continues with a focus on violence against women, as it manifests within a broad spectrum from the domicile to the transnational arena, in order to capture the persistence of the old as well as the emergence of new sites and forms of violence. Within this context, emphasis is placed on the *universality* of violence against women, the *multiplicity* of its forms and the *intersectionality* of diverse kinds of discrimination against women and its linkage to a system of domination that is based on subordination and inequality. HIV/AIDS is highlighted as the single most devastating epidemic experienced in modern history and that embodies the intersectionality of diverse forms of discrimination. Owing to the magnitude of health, security, development and human rights problems associated with HIV/AIDS and its intricate interplay with violence against women, the Special Rapporteur intends to carry out extensive research on the issue for her annual report for 2005. Finally, section III of the present report elaborates on guidelines for developing strategies for the effective implementation of international standards to end violence against women at the national level and proposes an intervention strategy with three interrelated levels, consisting of the State, the community, and the individual woman. While the State is bound by international human rights law, it is suggested that the human rights discourse at the level of the community and individual women needs to be complemented by a culture and an empowerment discourse, respectively. Section IV contains the conclusions of the report, highlighting the issues raised throughout the report that require further research and analysis.

The Special Rapporteur is convinced that the Declaration, as well as the reports and recommendations of her predecessor, can only be effective if given greater consideration at the country and regional levels. The issues of accountability and due diligence need to be redefined to better incorporate the transnational processes that may not be sufficiently addressed through

existing approaches. The United Nations system can play a fundamental role in responding to existing gaps in global governance, including with regard to improving its own internal accountability mechanisms, in prioritizing women's human rights in the achievement of the Millennium Development Goals and in promoting the human rights responsibilities of private sector actors.

A summary of communications sent to and received from Governments is contained in the addendum to the present report.

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## Introduction

1. The mandate of the Special Rapporteur on violence against women, its causes and consequences, created in 1994 and assigned to Radhika Coomaraswamy (Sri Lanka), was renewed for three more years by the Commission on Human Rights in its resolution 2003/45. The Chairperson of the Commission, after consultations with the Bureau and regional groups, appointed Yakin Ertürk (Turkey) as the new Special Rapporteur in August 2003.
2. The Special Rapporteur hereby presents her first report to the Commission in conformity with resolution 2003/45. The present report reflects her activities in accordance with the mandate entrusted to her, as well as her preliminary views on the future of the mandate.<sup>1</sup>

### I. MANDATE AND METHODS OF WORK

3. The Special Rapporteur adheres to the principle of continuity in the discharge of her mandate. She refers to the work of her predecessor by which the terms of reference and methods of work under the mandate were defined, and endorses them.
4. The main activities of the Special Rapporteur continue to be:
  - (a) Seeking and receiving credible and reliable information from Governments, treaty bodies, the specialized agencies, other special rapporteurs responsible for various human rights questions and intergovernmental and non-governmental organizations (NGOs), including women's organizations;
  - (b) Making urgent appeals to Governments to clarify the situation of individuals whose circumstances give grounds to fear that treatment falling within the mandate of the Special Rapporteur is occurring or might occur;
  - (c) Transmitting to Governments information of the sort mentioned in (a) above indicating that acts falling within her mandate may have occurred or that legal or administrative measures are needed to prevent the occurrence of such acts;
  - (d) Carrying out visits in situ with the consent of the Governments concerned; and
  - (e) Reporting to the Commission on Human Rights and recommending measures, ways and means, at the national, regional and international levels, to eliminate violence against women and its causes and to remedy its consequences.
5. In carrying out her mandate, the Special Rapporteur intends to cooperate closely with other geographic and thematic special procedures mandate holders, the treaty bodies and human rights field operations of the Office of the United Nations High Commissioner for Human Rights (OHCHR). She also intends to continue and develop the collaboration with intergovernmental bodies, such as the Commission on the Status of Women, the Economic and Social Council and the General Assembly; the regional intergovernmental organizations and their mechanisms engaged in the promotion of the human rights of women and, in particular, the Special Rapporteurs on the rights of Women in Africa of the African Commission on Human and Peoples' Rights together with the Special Rapporteur on Women's Rights of the Inter-American Commission on Human Rights. The Special Rapporteur will endeavour to work with other

entities of the United Nations system, including the Division for the Advancement of Women of the Secretariat, the International Research and Training Institute for the Advancement of Women (INSTRAW) and the United Nations Development Fund for Women (UNIFEM), United Nations country teams, as well as with national institutions and NGOs, including women's organizations, concerned with eliminating violence against women.

6. The Special Rapporteur would like to use this occasion to associate herself fully with the recommendations her predecessor included in her last report to the Commission (E/CN.4/2003/75). She expresses the hope that States and other interested national and international actors will examine the recommendations carefully and make every effort to implement them.

## **II. ACTIVITIES OF THE SPECIAL RAPPORTEUR<sup>2</sup>**

### **A. Consultations and participation in meetings**

7. Following her appointment, the Special Rapporteur held consultations in Geneva from 15 to 18 September 2003. She received a series of briefings on the activities of the United Nations human rights programme from OHCHR staff and met with the Acting High Commissioner for Human Rights and the Committee on the Rights of the Child. The Special Rapporteur also met with a number of permanent representatives (Turkey, Russian Federation, Nigeria, Libyan Arab Jamahiriya and Canada) and representatives of international agencies and NGOs, including the Secretary-General of Amnesty International. A meeting was organized in London by Amnesty International on 19 September 2003 to discuss matters of mutual concern. The Special Rapporteur welcomes Amnesty International's initiative to launch a global campaign in 2004 to end violence against women.

8. On 4 and 5 November 2003, the Special Rapporteur participated in an expert meeting entitled "Violence in the name of honour" organized in Stockholm by the Swedish Ministry of Justice, at which she made a presentation entitled "Violence in the name of honour within the context of international regimes".

9. The Special Rapporteur presented her report on the situation of women and girls in Afghanistan (A/58/421) to the Third Committee of the General Assembly in New York and held a number of bilateral meetings from 10 to 14 November 2003 with permanent representatives (Japan, Mexico, the Netherlands, Canada, Nigeria), United Nations officials (Special Adviser to the Secretary-General on the Advancement of Women and Gender Equality and United Nations bodies (Division for the Advancement of Women, the United Nations Population Fund (UNFPA) and the United Nations Children's Fund (UNICEF)).

10. On 25 November 2003, the Special Rapporteur participated in events to commemorate International Day for the Elimination of Violence against Women organized by the Swiss Ministry for Foreign Affairs in Bern. The Special Rapporteur held consultations in Geneva on 26 and 27 November and held meetings with permanent representatives (Guatemala and El Salvador) and the World Health Organization (WHO).

11. On 5 and 6 December 2003 the Special Rapporteur made a presentation at a symposium entitled "Crimes committed in the name of honour" organized by the Consulate of Sweden in Istanbul in cooperation with Ka-Mer (a Turkish women's centre), Bilgi University and the Swedish Institute.

12. The Special Rapporteur convened an agenda-setting meeting in Istanbul on 7 and 8 December 2003 at the beginning of her term of office in order to reinforce the existing solidarity between actors working to end violence and to benefit from the invaluable knowledge and experience that is available worldwide on issues of violence against women. Participants at the meeting included the Chairperson of the Committee on the Elimination of Discrimination against Women (CEDAW), representatives of OHCHR, the Division for the Advancement of Women and UNIFEM, and scholars and NGO representatives from all regions.<sup>3</sup> In the interest of further strengthening collaboration, the Special Rapporteur plans to meet with CEDAW in January 2004 and to address the Commission on the Status of Women in March 2004.

13. On 10 December 2003, the Special Rapporteur, in collaboration with Women for Women's Human Rights - New Ways and the Gender and Women's Studies Programme at Middle East Technical University, organized a high-level dialogue on the reform of the Turkish Penal Code within the context of international human rights law. The meeting brought together members of the Government of Turkey, the Parliament, representatives of the international community in Ankara and civil society actors.

14. Since her appointment, the Special Rapporteur has followed developments in Turkey in the context of her mandate. Her predecessor had planned to visit the country in 2002; unfortunately, the visit had to be cancelled by the Special Rapporteur owing to personal reasons.

## **B. Communications with Governments**

15. The Special Rapporteur draws the attention of the Commission to the addendum to the present report, which contains summaries of general and individual allegations, as well as urgent appeals transmitted to Governments and their replies thereto.

## **C. Situation of women and girls in Afghanistan**

16. Since her appointment, the Special Rapporteur has paid particular attention to the human rights situation in Afghanistan. In its resolution 2003/77, the Commission on Human Rights invited the Special Rapporteur on violence against women to continue to review the situation of women and girls in Afghanistan and to submit a report to the General Assembly and to the Commission. The Special Rapporteur submitted her report to the Assembly at its fifty-eighth session. The Special Rapporteur would refer the Commission to that report in which she welcomed the ratification of the Convention on the Elimination of All Forms of Discrimination against Women by the Government of Afghanistan on 5 March 2003 as a sign of its political will and commitment to end gender discrimination. Despite some progress over the last year, concerns remain which the Special Rapporteur has outlined, at the same time describing

challenges yet to be met. In particular, the Special Rapporteur urges the Government to take steps to tackle impunity for perpetrators of violence against women, while at the same time establish the rule of law throughout the country. In this regard, the Special Rapporteur emphasizes, as a first step, the need for legal and judicial reform, in line with international standards, in order to promote and protect the rights of women and girls.

17. In addition, the Special Rapporteur would like to draw the attention of the Commission to new developments since the last report, in particular with regard to the current constitutional drafting process in Afghanistan. The drafting of a new constitution provides a valuable opportunity to guarantee the principle of equality of rights for women and men and to prohibit all forms of discrimination against women. The Special Rapporteur urges the Transitional Administration of Afghanistan to ensure that the constitution provides for specific protection and promotion of women's rights in accordance with its obligations under international treaties to which Afghanistan is party, including the Convention on the Elimination of All Forms of Discrimination against Women.

18. The Special Rapporteur notes with interest that civil society representatives have presented two sets of recommendations on the draft constitution to the secretariat of the Constitutional Commission of the Transitional Islamic State of Afghanistan for distribution to the delegates at the Constitutional Loya Jirga. The first set of general recommendations comes from a representative set of civil society members across Afghanistan and was drawn from 22 provincial workshops. These meetings were coordinated by the Afghan Civil Society Forum (ACSF) in collaboration with eight other national NGO partner organizations. Each workshop lasted for two days (8 and 9 December 2003) and was attended by about 60-100 representatives of civil society such as intellectuals and academics, NGOs, women and human rights activists, professionals (teachers, lawyers, judges, etc.), tribal elders, community representatives, youth, journalists, etc.

19. The second set of recommendations comes from a cross-section of women's organizations and legal groups, some of which had previously put forth a set of recommendations, to the Constitutional Loya Jirga. In order to consolidate their messages, these organizations, together with the Ministry of Women's Affairs formed a Committee for the Protection of Women's Rights in the Constitution. At a joint two-day workshop (8 and 9 December), opened by the Minister for Women's Affairs (Habiba Sarobi) and the Adviser on Women's Affairs (Mahbouba Hoquqmal) and organized by ACSF, a single set of recommendations was agreed on. A summary of both sets of recommendations will be submitted to the delegates at the Constitutional Loya Jirga, the international community and the press for distribution among the general public. The Special Rapporteur welcomes these initiatives and hopes that the Constitutional Loya Jirga will give the recommendations due consideration.

20. The Special Rapporteur hopes to have the opportunity to visit Afghanistan during 2004 in the context of her mandate.

#### **D. Country visits planned**

21. The Special Rapporteur considers that carrying out country visits is one of the essential elements of her mandate, enabling her to examine in situ the situation of violence against women. Since her appointment, the Special Rapporteur has started to follow up on earlier invitations received by her predecessor to visit the Russian Federation, Mexico, Algeria and the Islamic Republic of Iran. In addition, the Special Rapporteur has requested invitations to visit Nigeria, the Democratic Republic of the Congo, Guatemala and El Salvador.

22. The Special Rapporteur has received a communication from the Permanent Mission of Nigeria to the United Nations Office at Geneva regretting that the visit could not take place during 2003 owing to other commitments, but suggesting that the visit could take place in 2004. The Special Rapporteur has also received a communication from the Permanent Mission of the Russian Federation to the United Nations Office at Geneva reconfirming its invitation to the Special Rapporteur to visit the Russian Federation in the framework of her mandate and suggesting that the visit take place in May or June 2004. The Special Rapporteur has discussed dates for a visit to Central America with the Permanent Missions to the United Nations Office at Geneva of Mexico, El Salvador and Guatemala, all of which have agreed that the visits can take place in 2004. The Special Rapporteur hopes to undertake her first country visit in early 2004.

### **III. TURNING EXPECTATIONS INTO REALITY**

#### **A. Taking stock of the developments of the past decade**

23. A decade has passed since the World Conference on Human Rights and the adoption of the Declaration on the Elimination of Violence against Women. Both of these milestones on the gender agenda of the United Nations represent a turning point in the acknowledgment of violence against women, once a private matter, as a public human rights concern. The term "violence against women" was formally defined in both the Declaration (art. 1)<sup>4</sup> and the Beijing Platform for Action (para. 113) as: "... any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".

24. The Declaration maintains that violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

25. The Platform for Action, by including violence against women, along with women and armed conflict and the human rights of women, among its 12 critical areas of concern, placed a priority on the importance of responding to violence-related issues in achieving advancement of women. Within the context of the intense debates that took place during the negotiations in Beijing, various forms of sexual assault on women that were not specifically mentioned in the Declaration became specified. These include: systematic rape and forced pregnancy during armed conflict, sexual slavery, forced sterilization and forced abortion, female infanticide and prenatal sex selection. The review of the implementation of the Platform for Action that took place at the twenty-third special session of the General Assembly in 2000 clearly demonstrated that violence against women had become a priority issue on the agenda of many Member States and that significant steps had been taken to address the problem, in some cases even before the adoption of the Platform for Action.<sup>5</sup>

26. The review process also revealed that violence, along with poverty, remains among the most pervasive problems confronting women across the globe, with adverse consequences for the other critical areas. On the other hand, the critical area "Human rights of women" has emerged since the adoption of the Platform, as an overarching goal embracing all critical areas of concern. The outcome document of the special session on Beijing +5, "Further action and initiatives to implement the Beijing Declaration and Platform for Action" (General Assembly resolution S-23/3, annex), strongly confirmed that the Platform for Action - built on the goals inherent in earlier mechanisms, including the Convention and the Declaration, remains intact as a reference point for governmental commitment to ensuring women's human rights. While reaffirming the strategic objectives with regard to violence against women, the document has gone a step further in calling for the criminalization of violence against women, punishable by law (69 (c). Paragraph 69 (c) states: "[Governments shall] Treat all forms of violence against women and girls of all ages as a criminal offense punishable by law, including violence based on all forms of discrimination"). The document also calls for the introduction or strengthening of legislation and mechanisms to handle criminal matters relating to domestic violence (69 (d)) and the taking of measures to address racially motivated violence against women (69 (g)).

27. The difficult process of negotiations during the twenty-third special session no doubt signalled the growing trend towards political and cultural fragmentation resulting from the disparities and new polarizations unleashed by globalization and the emergence of a backlash. This was reflected in a number of areas that need to be kept in mind and monitored closely in order to accurately assess emerging challenges to the international commitment to end violence against women. One such area of concern was the lack of reference to the Declaration in the document. Similarly, there was a noticeable reluctance on the part of Member States during the negotiations to strongly link the Convention - the legally binding instrument on women's human rights - to the resolutions adopted.

28. Other areas of concern with regard to the document are: (a) the lack of specific time-bound measurable targets to end violence. Paragraph 87 (b) merely calls for "[Governments to] Consider launching an international 'zero tolerance' campaign on violence against women"; (b) weakness in the language concerning State accountability and due diligence with regard to non-State actors who violate women's human rights. The relevant paragraph, 68 (j), reads: "[Governments should] Take all appropriate measures to eliminate discrimination and violence against women and girls by any person, organization or enterprise."

29. Concern over these trends has caused further alarm with the more recent threats to reproductive health and rights as well as the failure of the Commission on the Status of Women at its forty-seventh session in 2003 to reach a consensus on the draft agreed conclusions on women's human rights and the elimination of all forms of violence against women and girls, the first time in the history of the Commission that agreed conclusions have not been adopted on one of its themes. Similarly, the same year, the General Assembly had to abandon an omnibus resolution on violence against women, replacing it with a narrower text on domestic violence against women only (resolution 58/147).

30. These incidents reveal that consensus among Member States on critical issues concerning women's human rights is becoming increasingly difficult. While it is important to acknowledge and monitor these threatening trends, the women's human rights agenda continues to move forward. In 2000, the Security Council addressed the issue of women, peace and security and adopted resolution 1325 (2000). That same year, the Optional Protocol to the Convention came into force. In 2002, the Assembly adopted resolution 57/179 entitled "Working towards the elimination of crimes against women committed in the name of honour". In 2003, the Commission on Human Rights renewed the mandate of the Special Rapporteur on violence against women. Violence continues to be viewed as a violation of human rights, which compels States to engage in international law in dealing with issues of violence, and the General Assembly adopted resolution 58/185 requesting the Secretary-General to conduct an in-depth study on all forms and manifestations of violence against women. The Rome Statute of the International Criminal Court (ICC) includes rape, sexual slavery, enforced prostitution and forced pregnancy in the definition of crimes against humanity and war crimes (art. 7).

31. Furthermore, it must be emphasized that the legal status of the Convention and the obligation it places on States parties cannot be undermined by the concerns raised above. It is encouraging that new States have ratified the Convention in recent years, albeit some with considerable reservations. Since the special session and as at December 2003, the number of States parties to the Convention has increased from 165 to 174. As at December 2003, 75 States parties had signed the Optional Protocol and 57 States had ratified it.

32. Today, numerous international and regional mechanisms are in place to guide efforts to eliminate violence against women. In her last report to the Commission, Radhika Coomaraswamy indicated that the greatest achievements in the struggle against such violence of the past decade have been awareness-raising and standard-setting and "... persuading States to accept international standards, to pass appropriate legislation and to set mechanisms in place to combat violence against women" (para. 79).

33. She continued: "If the first decade emphasized standard-setting and awareness-raising, the second decade must focus on effective implementation and the development of innovative strategies to ensure that the prohibition against violence is a tangible reality for the world's women. In this context, the Special Rapporteur's successor must focus on how to ensure effective protection of women's rights and equal access to justice for women who have suffered violence, in accordance with States' obligations under international law. States should be assisted in eradicating discrimination in law and practice and monitoring the effectiveness of strategies to end violence against women" (para. 78). The next decade "must ensure that the international, regional and national mechanisms set up during this decade are accessible for women seeking redress. The ICC, the Optional Protocol to the Convention and the individual

case system of the regional courts are mechanisms that are now available for women seeking justice. It is hoped that the prosecutions and deliberations of these bodies will set standards of jurisprudence for national jurisdictions to follow. The involvement of the international community in cases will strengthen the hand of individual women who have exhausted all local remedies but feel that justice has not been done” (para. 81).

34. In short, the former Special Rapporteur emphasized that our future duty is to ensure access to, compliance with and monitoring of the implementation of international mechanisms on universal human rights norms, so that the right to be free from violence is the fundamental right of all women no matter where they live. In ensuring constructive continuity in the violence against women mandate, the work of the new Special Rapporteur will pick up from and build on the work of the former. Therefore, this report aims to expand on the conceptualization of violence against women as defined in the Declaration and elaborated in the work of the former Special Rapporteur and provide some preliminary guidelines in developing strategies for effective implementation.

## **B. Expanding on the concept of violence against women, remaining gaps and challenges**

### **1. Institutionalization of the link between male power and violence**

35. “... (v)iolence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women’s full advancement, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men” (preamble, Declaration on the Elimination of Violence against Women). This universal phenomenon is embedded in a patriarchal legacy, at the core of which lies the interest of a social group in sustaining and controlling socially acceptable lines of reproduction of the species. Within this context, as an institutionalized social mechanism, male power is used to control women’s reproductive capacity and sexuality. The honour and prestige of a man, in many instances, are intrinsically associated with the conduct of the women related to them. Paradoxically, violation of the sexuality of other women, such as in the case of rape, particularly as a weapon of war, is also a manifestation of the way in which masculine power and domination over women’s bodies is established. This basic tenet of patriarchal gender order represents a convergence of cultures where violence or the threat of violence has been used as a legitimate mechanism of enforcing and sustaining that system of domination. Societies, however, have tended to diverge in the ways that specific, diverse forms of violence against women have been manifested, both in the private and the public sphere, and, more recently, in the ways they have been responding to the requirements of international law to end violence.

36. The strong connection between power and hegemonic masculinity gives patriarchy its pervasiveness, while what is masculine continuously adjusts itself to changing requirements of power, creating both the opportunity to eliminate some forms of violence while at the same time creating the possibility of renewed or new forms of violence. The transformation from modernization to globalization has ended some of the long-lasting conflicts in the world,

particularly as experienced through the cold war era. However, new areas of conflict, based on ethnic, racial and religious differences, have emerged involving not only States but also diverse non-State actors. The need to assert new boundaries, based on what may have been initially a search for local identity, has necessarily rested on the manufacture of the “other” as the external enemy.

37. Politicized reliance on cultural and ethnic diversities for identity formation is inherently conflict ridden and particularly alarming for women since management of such conflict often results in the justification of violence against women both within and between conflicting groups. In order to preserve existing patriarchal boundaries and societal norms that become threatened under conditions of conflict, patriarchies may resort to greater moral regulation of their women, while others resort to rape and forced pregnancy of women affiliated with the enemy group in order to dishonour an entire social group. Women encounter violence during conflict situations in yet another manner as they may be mobilized to take part actively in the militarized struggle of their group, whether in formal combat or in suicide missions. In short, women become symbolic battlegrounds where cultural boundaries are guarded and wars are fought. They have yet to be included in the building of peace.

38. The popularized phrase “clash of civilizations” is fast becoming a self-fulfilling prophecy, an imaginary line deeply dividing the world. The events of 11 September and its aftermath have further reinforced this trend. The increased politicization of culture, especially its articulation in the form of religious fundamentalism(s), in the competition over global power poses a major challenge to international and national governance around the normative order governing international human rights regimes, particularly as it affects women. The new sites of “normativity”, drawing their legitimacy from culture and religion, have been identified by the former Special Rapporteur as the greatest challenge to women’s human rights (see E/CN.4/2003/75, para. 83). The Convention on the Elimination of All Forms of Discrimination against Women also draws attention to the contradictions that may arise in the intersectionality of collective rights and the human rights of women. This paradox begs the question, “Does the right to cultural difference and specificity, as embedded in the freedom of religion and belief, contradict the universality of human rights of women?”. Alternatively, the question can be turned around as follows: “Is control over and regulation of women the only means by which cultural specificity and tradition can be sustained?”. “Is it culture, or authoritarian patriarchal coercion and the interests of hegemonic masculinity that violates the human rights of women everywhere?”. “When a man beats his wife, is he exercising his right in the name of culture? If so, are culture, tradition and religion the property of men alone?”.

39. Universal human rights norms are clear on these questions. The Declaration stresses that States “should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to [the elimination of violence against women]” (art. 4). The Dialogue among Civilizations, based on the convergence in values embedded in the common heritage of human rights, is critical for resisting religious extremism and its transgression on women’s human rights. It is through such constructive dialogue that consensus on values and norms can lead to a convergence of action in achieving unity within diversity.

## 2. Broadening the boundaries of existing categories of violence against women

40. The Declaration formally defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” (art. 1). This would encompass three broad categories of violence: that occurring within the family, that occurring within the community and that perpetuated and condoned by the State. Expanding on these conceptual boundaries to embrace the whole spectrum of activities from the domicile to the transnational arena may allow us to locate acts of violence that may not immediately be apparent, as well as those that emerge and gain visibility as a result of the dialectics of global change.

41. It has been well established that the privacy of the home is the place where much violence against women is produced and perpetuated. However, so far attention has focused, albeit insufficiently, on violence against women by family members and intimate partners; the situation of domestic workers, who are employed in the private household setting, has been largely ignored in research, policy and standard-setting. The majority of domestic workers in the developing and, in many instances, in the developed world work under totally unregulated conditions. This is an area where statistics and research are virtually non-existent in most countries. While research has been done on the situation of domestic migrant workers, knowledge about women who work, particularly as live-in maids, in their own countries remains largely hidden and outside the domain of regulatory mechanisms. The little information available reveals that domestic workers are subjected to slave-like treatment at the hands of the members of the family employing them. They encounter humiliation, exploitation and extreme forms of violence, often with no access to justice. In this regard, the Special Rapporteur welcomes the fact that the Special Rapporteur on the human rights of migrants has chosen to devote her report to the Commission on Human Rights (E/CN.4/2004/76) to the analysis of the situation of women migrant domestic workers.

42. At the other end of the continuum, the transnational arena is becoming an ever-important new “geography” and process, encompassing the life experiences of women both beyond, and within, conventional national territories. Globalization is de-territorializing space for a growing number of women, who in their own right, are becoming migrant workers primarily to contribute to the livelihood of their families. Transnationalism, used here to refer to a continuum of life experience across conventional state boundaries, involves multiple subjectivities, identities, loyalties, etc. While it is argued that the formation of transnational households can empower women to gain more representation in international law, the opposite has also been observed as some local and traditional forms of violence against women - such as female genital mutilation and “honour crimes”- have become globalized and new forms of violence - such as trafficking for purposes of sexual and economic exploitation - have emerged.

43. Within the context of transnationalism, it is also important to address the impact of restrictive immigration and asylum policies on the situation of women, especially if their residency status is dependent upon that of their husbands. It has been seen that the closing of borders has increased the attraction and profits of trafficking women and men, a situation that naturally increases the risk of violence, particularly for women.

44. The impact of transnationalism on women at both ends of the continuum (i.e. country of origin and country of destination) needs to be further examined in terms of types of violence encountered, the multiplicity of normative systems at work and the multiplicity of State and non-State actors involved. It is particularly important to reflect on the formation of new transnational legal regimes and regulatory institutions governed by private or multinational economic actors and the issue of State accountability within this context. To what extent are existing conceptual and normative frameworks sufficient in responding to the realities of the new geographies and normative systems created by globalization? Are there sufficient and effective mechanisms in place to protect women from violence within the transnational continuum? How are the multiple, sometimes conflicting, normative systems to be reconciled in ensuring the promotion and protection of the transmigrant women's universal human rights? How can international law (in particular the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the International Covenant on Economic, Social and Cultural Rights, among others) be used effectively to prioritize women's human rights when different rights intersect and are in conflict? How can the transnational model of social experience be reflected or integrated in the policy and legal frameworks of States at both ends of the continuum to bridge the gaps that may increase women's vulnerabilities? These pertinent questions need to be addressed at the levels of paradigm, policy and praxis.

45. Given the realities of globalization, there is need to strengthen the capacity of States to comply effectively with their obligations under international law and to examine the issue of global governance in order to ensure the accountability of multiple actors, be they States or international and global institutions that hold extensive power in the global economic order. The United Nations, which was created to uphold universally shared values, can play a constructive role in bridging the gap in global governance that has been created by global restructuring.

### **C. HIV/AIDS: crossroads of multiple forms of violence against women**

46. Since the Fourth World Conference on Women was held in Beijing, HIV/AIDS has emerged as the single most devastating epidemic experienced in modern history. The global HIV/AIDS epidemic killed more than 3 million people in 2003, and an estimated 5 million acquired the human immunodeficiency virus (HIV) bringing to 40 million the number of people living with the virus around the world.<sup>6</sup> More than 95 per cent of HIV-infected people live in the developing world and a vast majority are in the 15-24 age group.<sup>7</sup>

47. Women and girls are particularly vulnerable to HIV/AIDS owing not only to their biological conditions, but also to economic and social inequalities and culturally accepted gender roles that place them in a subordinate position vis-à-vis men regarding decisions relating to sexual relations. Sexual violence against women by intimate partners in the home or by strangers - whether on the street; in institutional settings such as hospitals or in detention or custody; in organized violence, such as mob rape or terrorism and counter-terrorism; in the transnational arena as refugees, labour migrants or trafficked prostitutes; in times of peace or armed conflict - increases women's vulnerability to HIV infection and further violence. Effective intervention strategies can be developed by recognizing and analysing the interplay between gender inequality, violence and the HIV pandemic.

48. While HIV/AIDS was initially perceived to be mainly a health issue, today it is increasingly recognized as a development, security and human rights issue. Its interconnection with and impact on women's human rights have become major areas of concern. As a result, the debates on violence against women and HIV/AIDS are converging and leading to collaboration among those working in each field. Information and knowledge derived from such collaboration has contributed to the realization that multiple factors associated with women's subordinate position increase the risk of HIV infection. Among them are: illiteracy and poverty, conflict situations, lack of sexual autonomy, rape by intimate partners or strangers, multiple sexual partners, trafficking for sexual exploitation, genital mutilation and other harmful practices, prostitution and child marriage.

49. Women diagnosed with the disease are relegated to a destitute life, stigmatized, discriminated against and subjected to further violence within their family environment and in the wider community. Poor women with HIV are particularly deprived as they lack access to medical care and to any form of justice.

50. Further research is needed to understand how violence against women, from the domicile to the transnational arena, intersects with the HIV/AIDS pandemic. There is also need to ensure accountability and foster a sense of responsibility on the part of diverse actors in the fight against the pandemic, including States, community leaders, individual men and pharmaceutical companies.

51. The Special Rapporteur plans to report on the issue of the intersectionality of violence against women and HIV/AIDS in 2005.

#### **D. Strategies for effective implementation of international norms to end violence against women**

##### **1. Multiple and intersectional approach**

52. Respect for the human rights of women is not universal. Violence against women takes place worldwide, from the domicile to the transnational arena. Violence can be prevented and eliminated if there is political will and determination on the part of States and the international community. There is need for greater insight and understanding of the dynamics of the transnational level before intervention strategies with regard to combating violence against women at that level can be suggested. Therefore, this section of the report will limit itself to addressing the implementation of international law to eliminate violence at the national level.

53. Relations of domination are multiple and they intersect, creating for women layers of inequalities and subjection to different forms of violence. The multiplicity of forms of violence and the intersectionality of diverse types of discrimination complicate the issue of justice as rights at any given point may compete or even be in conflict with one another, such as the case of the rights of groups on the basis of culture or freedom of religion or belief versus the rights of women based on universal human rights standards. In order to ensure that the latter are not

sacrificed for the “wider cause” of the former, it is important to adopt a gender perspective in overall policy-making. In view of the intersectionality of systems of domination, integrating an intersectional approach to gender analysis will contribute to identifying the multiple forms of discrimination and identifying State accountability for human rights under the various human rights treaties.

54. Some work is already under way in developing such methodologies.<sup>8</sup> Expanding these efforts will contribute to a better understanding of the specificities of women’s multiple and diverse experiences and how different aspects of oppression shape and add to each other. This in turn will guide effective intervention strategies for remedy and prevention.

55. Since violence is a multifaceted problem, strategies for the effective implementation of international law also need to be multifaceted and to include interventions at the level of the State, the community/non-State actors, and individual women. While the universal human rights standards provide the guiding principles for the struggle to end violence against women, multiple discursive frameworks need to be employed at each level of intervention:

(a) At the level of the State, the approach is, undoubtedly, international human rights law, which provides that States and their agents must observe due diligence to protect, prevent, investigate and punish by law perpetrators of violence against women and ensure, in collaboration with NGOs and other relevant actors, the provision of protective and supportive services for women. It is important that criminal justice sanctions not be replaced by methods of conciliation, particularly in cases involving sexual offences, whether the perpetrator is an intimate partner or a stranger. In this regard, penal codes must be reformed to ensure that sexual offences are defined as crimes against women’s bodily integrity;

(b) At the community level, involving families and other non-State actors, the human rights discourse needs to be complemented by a “cultural negotiation” approach in order to understand the root causes of violence present in everyday life and to raise awareness of the oppressive nature of certain practices pursued in the name of culture by drawing on positive elements of culture and alternative expressions of masculinity that are respectful of women’s rights. Civil society actors - academicians, the media and national and international NGOs - can play an important role in collaborating with the State in this area. In addition, intellectuals and enlightened community leaders, including religious leaders, who distance themselves from the repressive representations of culture have an ethical responsibility to challenge that repressive representation and to demonstrate the compatibility of culture and religion with the universal human rights of women;

(c) At the level of individual women, particularly those at risk of or who have been subjected to violence, an empowerment approach supported by protective and compensatory mechanisms needs to be employed. While the State, through the legal system and various programmes, must ensure women’s access to alternative sources of livelihood, information and justice, civil society actors (through national and international networks) must work towards the creation of a demand for justice and provide support to individual or collective women’s initiatives in this regard.

56. Using this three-tiered approach, effective implementation of international human rights law aims to ensure:

- (a) Access to justice for women, particularly those suffering violence;
- (b) State compliance with international law and State accountability; and
- (c) Development of monitoring mechanisms to measure and evaluate progress in securing State compliance.

## **2. Access to justice**

57. The persistence of violence, particularly against women, prevents cultures from evolving and societies from developing as violence, by its very nature, can only be sustained within a repressive and unjust cultural, social and political environment. Without the full realization of the human rights of women, in all corners of the world, the Universal Declaration of Human Rights is belittled and the quest for justice is reduced to mere rhetoric. Therefore, effective implementation of international law on the universal human rights of women must ensure the protection of women from violence and their access to justice. Gender inequality and discrimination against women are major obstacles to justice. While the full range of obstacles to gender justice needs to be carefully and systematically examined and analysed, the following factors, largely embedded in the patriarchal gender order, are known to exacerbate women's inability to access justice:

- Failure or unwillingness of States to provide justice;
- Prejudice of the judicial, law-making and law-enforcing institutions;
- Discrepancies and incompatibilities in the multiple normative systems in force;
- Women's poverty and lack of economic autonomy;
- Women's legal illiteracy;
- Exclusion of women from public and political life;
- Derogatory attitudes towards and practices affecting women in both the private and public spheres of life;
- The burden of economic crises and economic stabilization programmes;
- The fear and inhibitions experienced by women in seeking justice;
- Lack of strong advocacy groups to support women's demand for justice.

58. The achievement of gender justice is, first and foremost, a matter of political will and determination. It is the responsibility of Governments, parliaments, courts and other relevant institutions; therefore, access to justice needs to be considered along with the issue of State compliance and accountability. The question of providing women with access to justice would need to be attacked at various levels, starting with the ratification of international conventions, the harmonization of domestic law with international law, the training of lawyers and judges in treaty-based law in national jurisprudence, giving due consideration to the recommendations of CEDAW and the Special Rapporteur on violence against women, the adoption of corrective measures to accommodate historically rooted disadvantages and inequalities, compensation for damages caused by acts of violence, civil remedies to provide women with alternatives so that they can escape abusive environments, victim and witness protection, empowerment of women, and the adoption of a societal project to delink masculinity from an association with oppressive uses of power.<sup>9</sup>

### **3. State compliance and accountability**

59. Violence against women is a violation of women's entitlement to their fundamental rights and freedoms. States are the main subjects of international law for ensuring the basic human entitlements to women and men, citizen and alien alike. Failure of a State to protect women from acts of violence can be viewed as State complicity and conspiracy with private actors of violence.

60. Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women requires States parties to pursue a policy of eliminating discrimination against women and, to that end, undertake all appropriate measures, including legislation, to modify or abolish existing laws, customs, regulations and practices which constitute discrimination against women.

61. The Declaration says that States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination and identifies the actions that States should pursue by all appropriate means to that end (art. 4). State accountability requires ethical commitments and, at times, political courage to address and confront long-standing values, attitudes and social conventions that may transgress women's human rights. Human rights codes can erode State legitimacy if those rights are not respected and upheld by the State.

62. State accountability is embedded in the standard of due diligence to protect women's bodily integrity: to prevent, investigate and punish private or State violence against women in accordance with human rights law. In so doing, the State and its agents must undertake gender analysis in order to accurately assess how, why, and under what circumstances specific forms of violence are perpetrated.

63. In times of armed conflict and terrorist acts, when the exercise of State responsibility over armed and insurgent groups may become constrained, greater cooperation between States may be required for common solutions. Developments such as the International Criminal Court serve to fill an important gap in international jurisprudence by potentially enhancing the capacity of international law to hold non-State actors accountable for violent acts.

#### **4. Monitoring mechanisms**

64. The due diligence standard provides a powerful tool for monitoring the implementation of human rights treaties. In this regard, the 1999 report on domestic violence (E/CN.4/1999/68) of the former Special Rapporteur, offers a list of considerations in assessing State compliance with the due diligence standard. In her annual report for the year 2000 (E/CN.4/2000/68), Ms. Coomaraswamy states, “Due diligence requires more than mere enactment of formal legal prohibitions. The States’ measures must effectively prevent such actions. Failing effective prevention, a prompt and thorough investigation, resulting in prosecution of the culpable parties and compensation for the victim, must be undertaken” (para. 53).

65. At the more practical level, effective monitoring would require measurable and comparable indicators of gender justice and State accountability, time-bound targets and a complex set of disaggregated data that captures the interlinkages of multiple forms of discrimination that lead to violence against women in diverse contexts.

66. Another potentially powerful tool for monitoring is “gender budgeting”, a relatively new approach which has not been sufficiently explored in the human rights discourse. The budget is one area over which Governments can and do exercise control. Article 4 (h) of the Declaration specifically says that States should “[i]nclude in government budgets adequate resources for their activities related to the elimination of violence against women”. “Gender budgeting” should be further explored and adopted as a mechanism to monitor State compliance with international law to eliminate violence against women.

#### **5. Strategic use of the mandate on violence against women**

67. The Special Rapporteur, in order to enhance the strategic use of her mandate to contribute towards the effective implementation of international standards, will place priority on the following measures in her working methods:

(a) Using annual regional consultations as an integral and routine aspect of her work to allow for the flow of information between the Special Rapporteur and regional actors, to highlight the regional specificities in women’s realities, to identify the priorities with regard to the prevailing forms of violence against women in the regions, to gain insight for developing a comparative approach and to compile good practices in the implementation of international law. In this regard, the Special Rapporteur encourages NGOs and the donor community to facilitate such annual regional meetings;

(b) Ensuring a strong connection between the theoretical issues raised in the annual research report of the Special Rapporteur and the fact-finding missions to specific countries, so that theory and practice can complement and feed into each other in enhancing understanding of the causes and consequences of violence against women;

(c) Seizing and creating the opportunity for joint missions with other special rapporteurs where converging mandates exist and addressing and producing common solutions to common problems, such as the issues of how to deal more effectively with non-State actors and the multiplicity of normative systems and, by identifying the intersectionality of violations of human rights from the point of view of violence against women, ensuring that other mandates continue to give due consideration to violence against women in their area of work;

(d) Maintaining close working relations with treaty bodies, in particular CEDAW, the Human Rights Committee, the Committee on the Rights of the Child and the Committee against Torture, among others, through periodic consultations and exchange of information on violence against women as well as State reporting in compliance with their obligation under the specific Convention;

(e) Improving the communications procedure of the mandate by developing more effective follow-up mechanisms with regard to the allegation and urgent action letters; engaging in direct bilateral dialogue with Governments in enhancing compliance with specific recommendations.

68. The Special Rapporteur also wishes to call for an initiative, under her auspices, to develop indices on violence against women and State accountability on violence against women to serve as common frameworks for monitoring violence against women and State initiatives for its elimination globally.

#### IV. CONCLUSION

69. **Violence against women is a continuum of acts that violate women's basic human rights, resulting in devastating consequences for women who experience it, traumatic impact on those who witness it, de-legitimization of States that fail to prevent it and the impoverishment of entire societies that tolerate it.**

70. **Over the past decade, the problem of violence against women has gained recognition as a human rights violation that can be eliminated through political will and legal and civil action. In this regard, the persistent efforts of the international women's movement and its ability to make claims on States on the basis of international law have contributed to the creation of a transnational civil society with the capacity to extend support to local women's initiatives that resist violence and mobilize human and financial resources towards this end.**

71. **On the other hand, increased trends towards militarization, armed conflict and global terrorism have naturally focused attention on violence in emergency situations. Parallel to this, the proximity of people of different cultures, through satellite technology or increased movements of people across national borders, has drawn attention to the violence of the "other". Both often result in the normalization of violence against women in the every day and "every night" lives of women everywhere. This has caused a depoliticization of the public discourse on violence against women in certain areas, as evidenced in a number of ways, including: the use of neutral terms to describe some forms of violence; the cutting of funds for women's programmes in the name of gender mainstreaming; the adoption of conciliatory measures in dealing with violence against women; and the**

continued treatment of gender issues as an “add on” factor in policy analysis. Therefore, it is necessary to re-emphasize the need to maintain a strong focus on the continuity and intersectionality of violence against women as it is manifested from the domicile to the transnational arena to avoid losing sight of the universal dimensions of violence against women and prevent blind spots from emerging.

72. Regrettably, the struggle to eliminate violence against women is taking place in an international environment that is less than enabling. Conservative political trends and the response to global terror increasingly favours the adoption of policies and measures that restrict civil liberties and undermine some of the gains made with regard to the universality of basic human rights for women and men. This poses the question, “Is national security emerging as the new arena for contesting international human rights law?”

73. In concluding this report, the Special Rapporteur would like to itemize some of the critical issues that require further attention, research, examination and elaboration, as discussed throughout the report. The Special Rapporteur in the course of her tenure will address some of these issues within the context of her mandate:

(a) In order to preserve the common agenda for universal human rights, it is necessary to promote a constructive Dialogue among Civilizations. This is critical for diffusing the adverse impact of religious extremism on women’s human rights and in achieving unity within diversity based on respect for the human rights of each individual;

(b) The impact of transnationalism on women, at both ends of the continuum (i.e. country of origin and country of destination), in terms of types of violence encountered, the multiplicity of normative systems at work and the multiplicity of State and non-State actors involved, needs to be examined further. It is particularly important to reflect on the formation of new transnational legal regimes and regulatory institutions governed by private or multinational economic actors and the issue of State accountability within this context;

(c) Given the realities of globalization, there is need to strengthen the capacity of States to comply effectively with their obligations under international law and to examine the issue of global governance in order to ensure accountability of multiple actors, be they States or international and global institutions that hold extensive power in the global economic order. The United Nations, which was created to uphold universally shared values, can play a constructive role in bridging the gap in global governance created by global restructuring;

(d) Further research is needed to understand how violence against women, from the domicile to the transnational arena, intersects with the HIV/AIDS pandemic. There is also a need to ensure accountability and foster a sense of responsibility on the part of diverse actors in the fight against the pandemic, including States, community leaders, individual men and pharmaceutical companies;

**(e) It is necessary to maintain a clear focus on the continuity of violence against women and the intersectionality of its diverse forms, from the private sphere of the home to the transnational arena, in order to avoid the normalization of some forms of violence;**

**(f) When rights compete or are in conflict, the adoption of a gender perspective in overall policy-making can help to avoid sacrificing the priority of the rights of women. Integrating an intersectional approach to gender analysis will enhance the analytical capacity of gender analysis in better identifying the multiple forms of discrimination and link State accountability for human rights under various treaty bodies. The intersectional methodology needs to be further elaborated;**

**(g) There is need for systematic analysis of the full range of obstacles to women's access to justice at all levels of social experience;**

**(h) "Gender budgeting" needs to be further explored and adapted to the human rights discourse as a mechanism for monitoring State compliance with international law to eliminate violence against women;**

**(i) Creation of indices on violence against women and State accountability on violence against women need to be developed to serve as common frameworks for monitoring violence against women and State initiatives for its elimination globally.**

#### Notes

<sup>1</sup> The Special Rapporteur would like to thank all individuals, NGOs and United Nations entities for making available to her briefing notes, documents and publications on violence against women, all of which provided invaluable insight for the writing of this report. The Special Rapporteur would welcome the continuation of such collaboration in the future.

<sup>2</sup> The former Special Rapporteur Radhika Coomaraswamy, during the last eight months of her tenure in 2003, met with CEDAW in January 2003. She addressed the Commission on the Status of Women and participated in a number of parallel events and meetings in New York from 3 to 14 March 2003. She visited Geneva from 7 to 11 April 2003 for consultations and to present her report to the Commission on Human Rights at its fifty-ninth session. During this visit, she participated in a number of parallel events and met with representatives of Permanent Missions (Islamic Republic of Iran and Mexico) and international, regional and local NGOs.

The first Regional Consultation on Violence Against Women in the Arab region was held on 12 and 13 May 2003 in Cairo, organized by the Arab Alliance for Women. As the former Special Rapporteur was unable to attend, her assistant from OHCHR represented her. One of the outcomes of the consultation was a plan of action to work towards eliminating violence against women in the region.

<sup>3</sup> Radhika Coomaraswamy, along with the Special Rapporteurs on women's rights of the African Commission on Human and People's Rights and the Inter-American Commission on Human Rights were invited to the meeting but unfortunately were unable to attend owing to prior commitments and other constraints.

The Special Rapporteur expresses her gratitude to those who contributed to the meeting with their participation, to the Government of Canada for providing the funding for the meeting and to the Istanbul-based NGO, Women for Women's Human Rights - New Ways, for their logistical support. The agenda-setting meeting provided invaluable insight for the preparation of this report.

<sup>4</sup> The adoption of the Declaration on the Elimination of Violence against Women was followed by the creation of the post of Special Rapporteur on violence against women, its causes and consequences, in 1994 by the Commission on Human Rights.

<sup>5</sup> See, *From Beijing to Beijing +5* (United Nations: 2001), Critical Area of Concern D, for an analysis of measures taken by Governments to end violence against women.

<sup>6</sup> AIDS Epidemic Update, UNAIDS December 2003.

<sup>7</sup> Violence against Women and HIV/AIDS: meeting report, Meeting convened by the World Health Organization, Geneva, 23-25 October 2000.

<sup>8</sup> The Division for the Advancement of Women organized an expert group meeting entitled "Gender and racial discrimination" in November 2000 to provide input into the report of the Secretary-General to the Commission on the Status of Women at its forty-fifth session. Within this context, an intersectional approach was used to capture the relationship between racism and gender. See also, Rita Raj (ed.), 2002. *Women at the Intersection*. Rutgers: Center for Women's Global Leadership, in which intersectionality as a methodology is further developed.

<sup>9</sup> The issue of the role of men in achieving gender inequality will be addressed by the Commission on the Status of Women in March 2004. This provides an opportunity for the Commission to revisit the causes of violence against women and its linkages with patriarchal power. See the Special Rapporteur's forthcoming article, written as a contribution to this process, entitled "Considering the role of men in gender agenda setting: conceptual and policy issues", *Feminist Review*, Issue 78.

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