



International Service for Human Rights

The Reports in Short

ISHR's summaries of documents for the UN Commission on Human Rights
62nd Session and Human Rights Council 2nd Session

The Special Rapporteur on violence against women, its causes and consequences¹

Mandate Holder

Yakin Ertürk.

The mandate was created in 1994², in recognition of the continuing and endemic violence against women and the marked increase in acts of sexual violence. The Special Rapporteur seeks and receives information on violence against women, its causes and consequences, and recommend measures, ways and means, at the national, regional and international levels, to eliminate violence against women and its causes and to remedy its consequences. The mandate covers all forms of violence against women and girls, whether those acts are perpetrated by the State, private persons or armed groups. The issues addressed under the mandate include domestic abuse, sexual violence, trafficking, economic and social policies, child marriages, female circumcision and cultural practices.

Activities

- Report on the due diligence standard as a tool for the elimination of violence against women;
- Communications with Governments;
- Mission to the Russian Federation from 17 to 24 December 2004;
- Mission to Iran from 26 January to 6 February 2005;
- Mission to Mexico from 21 to 25 February 2005;
- Mission to Afghanistan from 9 to 10 July 2005.

Annual Report³

Scope

This is the third annual report of the Special Rapporteur summarising her activities in 2005, in which she also examines the due diligence standard as a tool for the effective implementation of women's human rights.

Summary and key conclusions

- The 1993 *Declaration on the Elimination of Violence against Women* adopted the concept of due diligence as a yardstick to determine whether States have met their obligation in combating violence against women. There remains a **lack of clarity** concerning its **scope** and **content**;
- There is a **narrow interpretation** and **application** of due diligence. Its application has been State-centric, failing to take account of changing power dynamics and the growing role of non-State actors. It has also been limited to responding to violence when it occurs, ignoring the **generalised obligations of prevention** and **compensation**, including the duty to transform societal values and institutions that sustain gender inequality, and to address the root causes of violence against women;
- Eradicating violence against women and ensuring that human rights are universally enjoyed is a common goal and a shared obligation;
- **Multi-faceted strategies** are needed in view of the multiplicity of forms of violence and the multiple layers of discrimination suffered by women;

¹ Summaries prepared by Cléa Thouin, Intern, ISHR, supervised and edited by Meghna Abraham, Information Program, ISHR.

² Commission on Human Rights Resolution 1994/45.

³ E/CN.4/2006/61, 20 January 2006.

- Several basic principles underlie the concept of due diligence: **non-delegation** of State obligation to exercise due diligence; duty of **non-discrimination**; need for **accurate empirical data** and **reliable indicators**; need for **monitoring** and **assessing** of the impact of initiatives;
- The quest for a broader interpretation of human rights adequately reflecting and responding to the experiences and needs of women is confronted by three main challenges: the prevalence of the **private/public dichotomy**; the **resurgence of identity politics**; and the **emergence of trans-national power blocks**;
- **Alternative discourses** and innovative strategies need to be employed at different levels of intervention in order to challenge the foundations upon which gender hierarchies are constructed. At the level of individual women, **empowerment** is essential to the realisation of their human rights; at the community and family level, the human rights discourse must be complemented by an approach based on “**cultural negotiation**”, which allows the root causes of violence to be confronted and raises awareness of the oppressive nature of certain practices pursued in the name of culture; at the State level **international human rights standards** and the rule of law must inform all State policy and practice; At the trans-national level there is a need to develop **trans-national solutions** focusing on the responsibilities and duties of trans-national, financial and international organisations;
- Failure of a State to exercise due diligence to confront all claims for custom, tradition, or religion in justification for violations of the human rights of women is itself a human rights violation.

Mission to the Russian Federation⁴

Scope

The report covers a mission to the Russian Federation (the Federation) from 17 to 24 December 2004, during which the Special Rapporteur visited the Chechen Republic and Moscow; met with representatives of the Federal Government, the authorities of the Republics of Ingushetia and Chechnya and representatives from civil society; and heard testimonies from victims of domestic violence and human rights violations, as well as internally displaced persons (IDPs) and female detainees.

Summary and key conclusions

The Russian Federation emerged out of a multi-ethnic nation that was committed to transcending all sex and class distinctions, but this legacy was transient. The recent transition to a market economy, with high unemployment rates, wage cuts, and the upsurge of patriarchal values have shaped the current patterns of human rights violations of women in the Federation. Although the 1993 Constitution ensures the equal right of women and men and the State is a party to many human rights instruments, including the Committee on the Elimination of Discrimination Against Women, there are reports of increased and widespread violence against women, particularly domestic violence, sexual abuse and trafficking. Women in the North Caucasus bear the additional burden of the multifaceted hardships in the region, such as the ongoing military operations. The Government is however well equipped, with its well-developed State apparatus and human rights commitments, to mobilise society to put an end to violence, provided that this issue is prioritised.

Domestic violence:

- Violence against women is mainly caused by: **deep-rooted patriarchal values** exacerbated by the **socio-economic consequences of transition**, such as the loss of status of women; increased levels of unemployment; alcohol and drug abuse among men; and sexual exploitation;
- There has been a **worrisome increase in domestic violence** since the collapse of the Soviet Union, with reportedly 80% of violent crimes against women being cases of domestic violence;
- There is also a serious problem of **under-reporting** and under-recording of such crimes by the authorities;
- Women attempting to escape violent situations are frequently unable to access **independent housing** and compelled to share the same residence with violent partners, even after divorce. This is due to a severe shortage of subsidised housing; difficulties experienced in evicting a violent partner; and the continuing practice of **residence registration**, which restricts all residents to one legal place of residence;
- The **lack of specific law on domestic violence** is also a major obstacle. It contributes to impunity and lenient sentencing for crimes committed in the private sphere, deters women from seeking recourse and reinforces police unwillingness to deal seriously with the problem;
- The **institutional framework** to address women’s human rights is weak and there is no specialised body with appropriate authority or resources. Government measures do not address this problem or

⁴E/CN.4/2006/61/Add.2, 26 January 2006.

gender-insensitive State policy; sex stereotyping; and perpetuation of outdated notions of masculinity and femininity;

- There are only five **shelters** in the Federation and 120 **crisis centres**;
- **Women's organisations** face many constraints including limited State protection; vulnerability to pressures and restrictions from local authorities; and lack of supportive financial measures.

Violence against women in the North Caucasus:

- Women in this region are subjected to violence in the domestic sphere, as a result of **strong traditional patriarchal norms** of family honour and the **state of affairs in the region**, which causes severe lack of confidence in the authorities;
- Violence continues to prevail and **women are increasingly targeted by operations** carried out by State agents. Women have become even more vulnerable due to the **counter-terrorist strategy** adopted in response to suicide bombings allegedly committed by "black widows". This has led to the arbitrary detention of women, during which they may encounter torture and gender-specific violence. Women are also targeted due to their relationship to Chechen fighters or alleged fighters;
- Since 1999 some **95,000 Chechens sought refuge** in the neighbouring Republic of Ingushetia and are still living there as IDPs. There are numerous reports of targeted operations taking place against camps in this region and Russian and Ingush authorities are forcing or pressuring Chechen refugees to return to Chechnya despite the fact that returning IDPs would be forced to live in crowded temporary accommodation centres with precarious living conditions, thereby increasing women's vulnerability to violence.

The Federal Government has framed the current military operations in Chechnya as counter-terrorist operations, and while a federal ombudsman has been appointed, there is, as yet, no such position focusing on the Republic of Chechnya. This means that **military operations often involving human rights abuses are perpetrated in impunity**. This is due to a number of reasons:

- Repression to restrict the collection and dissemination of information about human rights abuses;
- Limited access to justice, notably due to the fact that there are only ten functioning courts in Chechnya;
- The existence of two prosecutorial bodies – the military and the civilian procurators – with civilians unable to appeal directly to the military procurators;
- Legitimate fear of reprisals.

Key recommendations

- The Government should develop and implement a **national human rights action plan** and investigate all allegations of human rights violations;
- The Government should **eliminate discrimination against women** in all fields and should collect **data disaggregated by gender**;
- The Government should establish **national machinery for the advancement of women**, at the highest level and with the power and necessary resources to make binding policy decisions;
- The Government should **support and strengthen women's NGOs**;
- The Government should adopt **specific legislation on domestic violence** and **amend housing legislation** to assist women victims of violence to escape violent households, notably abolishing registration systems;
- The Government should establish **more shelters and crisis centres**;
- The Government should promote changes in gender-sensitive attitudes and behaviours by providing **training** to police, prosecutors, judges, medical personnel and other groups in contact with women victims of violence as well as promoting awareness-raising media campaigns;
- In the **North Caucasus**, the Government should ensure that discrimination against women is not legitimised by the passage of **anti-terrorism legislation**, support the establishment of an ombudsman, enforce orders designed to protect against arbitrary detention and enforced disappearances, rebuild the courts in Chechnya and ensure access to justice;
- In this region the Government should establish **clear jurisdiction** between **military** and **civilian prosecutors**, prevent and investigate attacks on human rights defenders and ensure the rights and safety of IDPs.

Mission to the Islamic Republic of Iran⁵

Scope

⁵E/CN.4/2006/61/Add.3, 27 January 2006.

The report covers a mission to the Islamic Republic of Iran (Iran) from 29 January to 6 February 2005, during which the Special Rapporteur met with Government officials, women victim of violence, families of suicide victims, and human rights defenders. The Special Rapporteur also visited Evin prison, interviewing a number of detainees and observed family courts and ongoing trials.

Summary and key conclusions

Women's status in Iran is intimately linked to the basic principle underlying the formation of the State, which aims to free women from corruption and restore their dignity. This has led to a **paradoxical situation** where **women's participation in public life is encouraged but this is done under strictly observed rules imposed on women**. Women therefore have access to health, education and to some extent employment and political participation, but the ground for their autonomous self-expression is precarious. For example, women are praised as mothers, but may not exercise authority in this regard, and women may be elected to office, but not hold leadership positions.

Violence against women in Iran is ingrained in **gender inequality**, which is upheld and perpetuated by two inter-related factors, which represent male-empowering values, laws and practices and make it difficult for women to escape public and private violence: the universal and historically rooted phenomenon of **patriarchal values and attitudes based on male supremacy**; and the **State-promoted institutional structures based on gender-biased, hard-line interpretations of religious principles**.

Violence against women is rarely acknowledged as a serious problem by authorities and rarely reported by victims. Women feel compelled to tolerate violence by husbands and other family members for fear of shame, ostracism, divorce, or for lack of alternatives. There is also a worrying increase in the **trafficking** of girls and women, mostly in the eastern provinces bordering Pakistan and Afghanistan, where women are sold into sexual slavery in other countries. The bulk of complaints however, are related to **accidents condoned by State agents**, and experienced particularly by women human rights defenders, lawyers and journalists who are arbitrarily arrested, detained *incommunicado* in secret detention centres, and subjected to ill-treatment. The **death penalty**, particularly by stoning, has also been a major area of concern, especially because women are sentenced mainly for sexually or morally oriented offences such as adultery.

While the principle of equality is contained in the Constitution and Iran is party to the principle international human rights instruments, women are not included in the article in the Constitution prohibiting discrimination. Conformity with Islamic criteria has been used as a legal basis of discrimination against women. In recent years however, **some positive steps** have been taken to elevate women's status and eliminate violence against them, such as approving a bill to combat trafficking; amending laws on child custody and the minimum age of marriage; as well as ordering a moratorium on stoning.

Despite these efforts, there are still worrisome gaps with **discriminatory provisions** in both the **civil and penal codes** and **flaws in the administration of justice** that disempower women and aggravate their vulnerability:

- Early marriage is sanctioned by law as girls can be married at the age of 13;
- The husband is the head of the family by law and may divorce his wife whenever he wishes, while women must prove that staying in a marriage will cause them physical and emotional harm;
- Child custody law favours men as both the physical custody and legal guardianship of the child;
- A husband has the right to control his wife's freedom of movement and behaviour in many situations, such as in obtaining a passport or travelling abroad;
- Women inherit only half of the share of property of their male counterparts;
- The age of majority for girls is 9 and 15 for boys, subjecting more girls to the possibility of being tried as adults for criminal offences;
- Women are disproportionately charged with crimes related to sexual and moral conduct and are often unable to refute these crimes because of additional discriminatory procedures governing the administration of justice;
- Criminal proceedings are concentrated in the hands of judges and the rules of proceedings discriminate against women, notably by establishing that the value of a woman's testimony is worth less than that of a man, and by demanding that women present several male witnesses to prove that they have been victims of violence;
- Many punishments are disproportionate to the seriousness of the crime and often discriminate against women;
- The administration of justice is also hampered by the existence of multiple law enforcement agencies, including paramilitary volunteer forces, some of which allegedly operate without supervision and accountability.

Key recommendations

- The Government needs to embark on a **re-interpretation of its fundamental norms**, including Islamic principles, in line with the current needs and societal contributions of women and universal human rights standards;
- The Government should implement the provisions of the **Declaration on the Elimination of Violence Against Women**, and ratify and implement the **Convention on the Elimination of All Forms of Violence Against Women**;
- The Government should **enhance women's access to justice** by preventing early and forced marriages; removing obstacles to women's rights with regard to child custody, divorce, inheritance and freedom of movement; eliminating all obstructions to justice on the grounds of sex, class and religion; prohibiting cruel corporal punishments; ensuring the right to a fair trial; and abolishing requirements that women present eyewitnesses in order to prove that they have been subjected to violence;
- The Government should **prioritise the elimination of violence against women as a public policy issue** by providing effective protection to women who have experience violence; establishing and supporting more shelters; conducting research on violence against women; conducting full investigations into suicides of young women; vigorously enforcing the prohibition of torture; investigating allegations of arbitrary detention; and strengthening the capacity of the Commission on Women's Participation;
- Governments should **promote and support the empowerment of women in all spheres of life** by promoting their participation in formal labour market, instituting special measures to increase their political participation, ensuring that women enjoy full freedom and rights to become equal partners in decision-making in the home, at work and in society at large, and listening to the voices of women.

Mission to Mexico⁶

Scope

Mission to Mexico from 21 to 25 February 2005 motivated by the situation in Ciudad Juárez, where hundreds of women have been murdered over the last 12 years. The Special Rapporteur met with national and local authorities, parliamentarians, law enforcement and justice authorities, representatives of national human rights institutions, the United Nations resident coordinator, UN specialised agencies and members of civil society.

Summary and key conclusions

- The Government of Mexico is party to a number of international standards that provide women with protection and different levels of Government have taken steps towards fulfilling their international obligations, but there is still a need to improve the police and justice sectors, as well as the coordination between federal and state levels;
- There are unbearably **high levels of violence against women**, both as a consequence and symptom of widespread **gender discrimination** and **inequality** on one hand, and a **multi-layered governance and legal system** that does not effectively respond to violent crime on the other hand. Indeed, the ***machista* culture** is still a dominant social paradigm causing and perpetuating violence against women, and the **federal authorities** only have **limited jurisdiction**, leaving the rest to the jurisdiction of the state and local authorities. There is therefore a **widely differing legal standard** to prevent and respond to violence against women throughout the country;
- Some groups of women, such as migrant, poor and indigenous women, are particularly vulnerable to violence due to **additional layers of discrimination**;
- **Domestic violence** is by far the most prevalent type of violence against women and these are often not taken seriously by police and prosecutors;
- There is widespread **impunity** for sexual violence, as well as **lenient sentencing**;
- The situation in **Ciudad Juárez**, in which a large number of women have disappeared or been murdered, is used as an exemplary case, reflective of a wider phenomenon. There is **continuing impunity** for the perpetrators and there is evidence of **criminal conduct of public officials**.

Key Recommendations

- The Government should **end impunity** for violence against women through legislative, investigative and judicial reform;

⁶ E/CN.4/2006/61/Add.4, 13 January 2006.

- The Government should **investigate** and **prosecute perpetrators** of violence against women with transparency, especially in the State of Chihuahua;
- The Government should provide **protection** and **support services**;
- The Government should create a **gender-sensitive information** and **knowledge base**;
- The Government should strengthen **institutional infrastructure for the advancement of women**;
- The Government should promote **training, operational, and awareness-raising programmes**;
- Civil society should **develop solidarity networks** to develop common strategies for the advancement of women;
- Civil society should **support** and **monitor the efforts of the Government**;
- Civil society should **undertake research** on the issue and continue to play a **strong advocacy role**;
- The international community should **prioritise funding** initiatives of groups focusing on women and provide **sufficient resources** to enable the **United Nations Country Team** to integrate a gender perspective in its activities.

Mission to Afghanistan⁷

Scope

The report covers a mission from 9 to 19 July 2005, during which the Special Rapporteur visited Kabul, Kandahar and Herat, and met with several ministers, high ranking members of the judiciary, members of the Afghan Independent Human Rights Commission (AIHRC), the police, medical staff, and representatives of civil society. The Special Rapporteur also listened to testimonies of women detainees and victims of violence.

Summary and key conclusions

The four years since the fall of the Taliban have seen considerable change in the legal and institutional framework. The Constitution enshrines the principle of equal rights for men and women; obliges Afghanistan to respect international human rights standards; and reserves a quota in the legislature to women. Afghanistan has also ratified the *Convention on the Elimination of All Forms of Discrimination against Women* without reservations.

Despite these developments, the situation of women remains dramatic and discrimination. Severe violence against them is all-pervasive in the public and private sphere, and efforts to improve their status are intimately linked with the challenge of multiple transitions, more particularly establishing peace, a sustainable economy, and the rule of law and security. Four factors underlie women's vulnerability and the perpetuation of violence:

- The **traditional patriarchal gender order**, in which girls and women have no status as independent persons;
- The **erosion of protective social mechanisms**: 23 years of boundless war has disintegrated the social fabric of the society and many actors have deformed Islam to justify their tyrannical acts against women;
- The **lack of the rule of law**;
- **Poverty** and **insecurity**: girls and women are disproportionately exposed to malnutrition and inadequate medical care throughout their lives.

Marital rape, sexual assault and other forms of violence against women within the household are on the one hand a taboo, but on the other accepted as a norm. Furthermore, reports of kidnappings and rapes of women by militia and warlords continue to be widespread. Child and forced marriages constitute between 60 and 80% of all marriages and are a major source of violence against women throughout their life cycles. The common practice of **bride money** means that girl children become an asset exchangeable for money or goods. While actual marriage is supposed to be delayed until the child reaches puberty, reports indicate that this is rarely observed. Another heinous type of **forced marriage** is the practice of *bad*, where a woman or girl is ceded by one family to another to settle a dispute. Women are also vulnerable if their husbands die, since a widow is perceived as the property of her in-laws. Family violence; forced marriages; lack of education and customs are associated with the phenomenon of **self-immolation** reported in Herat, although it is suggested that they are also linked to honour crimes.

Violence against women is tolerated, and perpetrators enjoy **impunity** because the law enforcement and justice system are generally dysfunctional and biased against women. The failure to protect is also grounded

⁷E/CN.4/2006/61/Add.5, 15 February 2006.

in the **multiplicity of normative systems** and the predominance of the so-called “informal” justice over the formal justice machinery:

- Five normative frameworks are relevant: international human rights obligations; the Constitution; the formal secular legal system; the Sharia; and customary law, but there is no codified hierarchy between them;
- Although the Constitution does not describe Sharia as applicable law, legal practitioners refer to it. Actual knowledge of the rules of Sharia law however, appears ambiguous;
- The civil code establishes the legal age of marriage for girls at 15 and ensures the right of women to choose a husband without the prior consent of their guardian, but none of these provisions are respected;
- The penal code makes sexual intercourse outside the marriage punishable by imprisonment but does not recognise the crime of statutory rape;
- Most women are detained on charges related to sexual offences, for which the legal bases remain vague. Many women are also detained for having run away from home, although this is not a crime;
- The normative framework governing the lives of most Afghan women include practices such as total subordination of women to men; denial of women’s inheritance rights; and exclusion from public life.

There is also a problem with the existence of **parallel systems of law enforcement**:

- The police force is weak, fragmented, unskilled, ill-equipped and prone to corruption;
- In some rural areas, the formal justice system has completely disappeared and the majority of judges lack legal training in the secular law and the Sharia;
- In cases of child marriages and domestic violence, the police, prosecutors, and the courts tend to seek to mediate instead of enforcing the law;
- Local informal councils, composed overwhelmingly by men, exercise authority to settle disputes and enforce norms. In some cases militia commanders use these councils as decision-making bodies;
- It is estimated that 80% of litigation takes place within the informal legal system.

The Government’s strategy to reduce the level of violence against women is focused on **economic development, education, and empowerment of women** as these are seen as root causes of discrimination and violence against women. The Ministry of Women’s Affairs focuses on health, education, legal protection, and economic empowerment. Other initiatives include the **AIHRC**, which is mandated to promote and monitor human rights and investigate human rights violations, develop a national curriculum on human rights and provide suggestions of human rights policy. **Afghan NGOs** active in the defence of women’s rights are numerically few but play a dynamic role, notably in the establishment and running of safe houses. A number of **UN agencies** are active on issues of violence against women in Afghanistan, including UNIFEM and UNDP.

Key recommendations

There is a need for a **double strategy** addressing both **short-term** protection needs and **long-term** underlying causes of violence against women.

- The Government should encourage the **grass-roots development of a sense of citizenry** in both men and women to build a strong, democratic and inclusive State;
- The Government should **eliminate the multiplicity of normative systems** by giving priority to a clear codification of family law and of the criminal law concerning gender-specific offences, and clearly establishing that those involved in the organisation of child and forced marriages commit a crime and must be prosecuted and punished in criminal law;
- The Government should **sensitise** and **train** the police and the judiciary on issues such as child or forced marriages and launch **media campaigns** explaining that these are against fundamental precepts of Islam;
- The Government should establish **specialised women’s rights units within the police**;
- The Government should review the files of all **women currently in detention**;
- The Government should **increase and strengthen safe houses**;
- The Government should collect **data** from all relevant sources to start building a substantive database on violence against women;
- The Government should **prioritise women’s human rights and the elimination of violence against women in public policy**, by strengthening the Ministry for Women’s Affairs, the AIHRC and other relevant entities;
- The **international community** should focus their support on projects that have potential to further equality between men and women and counteract violence against women.

Scope

The report contains summaries of general and individual allegations and urgent appeals transmitted to Governments between 1 January and 31 December 2005, replies received during the same period and observations by the Special Rapporteur.

Summary and key conclusions

- The Special Rapporteur transmitted 89 communications on behalf of 130 people to the Governments of 34 countries. This represents eight per cent of the total communications sent by Special Procedures.
- 29 responses to these communications were received as well as 31 replies to communications transmitted over the past years, approximately 26 per cent of Governments replied. In 14 per cent of cases further information was received from the source and in 10 per cent of cases, there was follow-up.

Please note that Governments that have replied to current or previous communications are marked with an asterix.

- The Special Rapporteur transmitted communications to Afghanistan, Bahrain*, Canada*, Colombia*, Chad, China*, Democratic Republic of the Congo, Egypt*, Guatemala*, India, Indonesia*, Islamic Republic of Iran*, Iraq, Israel, Mexico*, Myanmar*, Nepal*, Pakistan*, Philippines, Qatar*, Russian Federation*, Saudi Arabia*, Serbia and Montenegro*, Singapore*, Sri Lanka*, Sudan, Syria, Thailand*, Turkmenistan*, United Kingdom of Great Britain and Northern Ireland, United States of America, Uzbekistan*, Viet Nam* and Zimbabwe*.

⁸ E/CN.4/2006/61/Add.1, 27 March 2006.