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

Intersections between culture and violence against women

Summary

This is my first thematic report to the Human Rights Council in my capacity as the Special Rapporteur on violence against women, its causes and consequences. It is submitted in accordance with Human Rights Council decision 1/102. Section I is an introduction, section II summarizes my activities in 2006 and section III examines the intersections of culture and violence against women and contains my conclusions.

The report addresses the dominant culture-based paradigms that justify or explain the violations of women's rights, reducing violence against women to a cultural problem. It traces the trends in the development of the international normative framework on violence against women in relation to culture that culminated in the recognition of the primacy of women's right to live a life free of gender-based violence over any cultural considerations. Then, it critically examines how cultural discourses are created, reproduced and instrumentalized to challenge this primacy and the validity of the principle of gender equality and women's human rights in general. It is argued that cultural explanations overlook the material basis of cultural formations, thus disguising the political and economic foundation of sociocultural dynamics.

Building on the Universal Declaration of Human Rights, women's movements appropriated the universally agreed language of human rights and transformed the international human rights framework to address their concerns. Thanks to the common struggles of women of diverse cultures and backgrounds, a well-established gender equality and women's rights regime has evolved within the United Nations, reflecting a universalizing culture from within.

These norms establish the primacy of women's right to live a life free of gender-based violence and provide that States cannot invoke any cultural discourses, including notions of custom, tradition or religion, to justify or condone any act of violence. This also means that they may not deny, trivialize or otherwise play down the harm caused by such violence by referring to these notions. Instead, States are expressly required to condemn such violence, which entails denouncing any cultural discourse put forward to justify it.

Since their inception, the universality of human rights and their validity in a given local context have been continuously contested through relativist discourses that brand them as external impositions that are incompatible with local culture. On the other hand, cultural practices that discriminate against women are frequently regarded as belonging to "others", whether they live in developing countries or belong to local immigrant communities. Embedded into this practice of "othering" is a trend towards isolating violence against women from the wider political and economic environment and the overall concern for women's rights, empowerment and equality.

In the neo-liberal era, identity politics, based on cultural differences has made culture the site of contestation and the notion of culture a tool of new forms of oppression, whether in its orientalist or occidentalist guise. Women, particularly those from the Global South, find

themselves entangled in these ideological contests as they are reduced to “weak victims” and are left with the “choice” of joining forces with imperialist/hegemonic projects or compliance with oppressive practices.

In order to successfully uphold universally agreed values, in particular the principle that no custom, tradition or religious consideration can be invoked to justify violence against women, the report identifies the myths around cultural discourses and outlines general guidelines for an effective strategy to counter and transform culture-based discourses, which constitute one of the major obstacles to the implementation of women’s rights.

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I. INTRODUCTION

1. In my capacity as Special Rapporteur on violence against women, its causes and consequences, I hereby submit my first report to the Human Rights Council (HRC), in accordance with Council decision 1/102. Section II summarizes my activities in 2006 and section III examines intersections between culture and violence against women. I would like to draw the attention of the Council to the addenda to the present report. Addendum 1 contains summaries of alleged human rights violations related to violence against women, its causes and consequences that were brought to the attention of the Governments concerned, and government responses. Addendum 2 reports on my fact-finding mission in Turkey, addendum 3 on the mission to Sweden and addendum 4 on the mission to the Netherlands.

II. ACTIVITIES

A. Country fact-finding missions

2. I visited Turkey (22-31 May 2006), Sweden (11-21 June 2006) and the Netherlands (2-12 July 2006) at the invitation of the Governments concerned.
3. I will carry out an official mission to Algeria in January 2007 and to Zimbabwe in August 2007. In addition, I have asked to visit Ghana and Saudi Arabia and renewed my request to visit the Democratic Republic of the Congo.

B. Statement to the General Assembly

4. On 25 October, I delivered an oral statement to the Third Committee of the General Assembly. I emphasized that the current challenge in combating violence against women is to ensure that the root causes and consequences of the problem are tackled at all levels, from the home to the transnational arena. I emphasized that applying a human rights perspective to the problem has shifted the focus from the earlier victimization-oriented approach to one of empowerment and that today, a life free of violence is accepted as an entitlement rather than merely a humanitarian concern. I also mentioned that, while the State remains the primary duty bearer with respect to ensuring the human rights of each individual, in a globalized world where transnational space is expanding and non-State actors are gaining influence over diverse spheres, there is a need to broaden our understanding of the due diligence obligation beyond individual States. This may require new mechanisms and the adoption of legally binding, international codes of conduct for non-State actors with a transnational reach.¹

C. Regional and expert consultations

5. Regional consultations with civil society organizations working on matters related to my mandate have become an integral aspect of my work. From 11 to 13 September, I attended the Asia-Pacific NGO Consultation, organized in Ulaanbataar in cooperation with the Asia Pacific

¹ The full text of the statement is available at: <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/EAFBB31D2EA03948C12572280083450B?opendocument>.

Forum on Women in Law and Development (APWLD). The Asia-Pacific Consultation, which has become institutionalized and offers a model for other regions, focused on regional trends with respect to culture and violence against women.

6. In January 2007, I will attend a European regional consultation in London, organized by the National Alliance of Women's Organizations (NAWO).

7. On 2 and 3 November, I convened an expert consultation on culture and violence against women in cooperation with the Office of the High Commissioner for Human Rights and with the generous support of the Catalan Agency for Development Cooperation.² The event brought together 14 experts on the topic from all regions of the world in Geneva and provided valuable input for the thematic section of this report.

D. Participation in other meetings

8. Throughout the year, I participated in numerous events in Turkey and elsewhere in my capacity as Special Rapporteur, some of which are listed below.

9. On 16 and 17 February 2006, I attended a meeting of the Advisory Committee on the United Nations Secretary-General's study on violence against women held in New York. On 1 March, I took part in a consultation organized by the Government of Canada, following up on my 2006 report to the Commission on Human Rights (E/CN.4/2006/61) on using the due diligence standard as a tool for the elimination of violence against women. Later that month, on the occasion of International Women's Day, I participated in various events in Dublin. At the regional consultation on women and adequate housing organized in Barcelona, Spain (16-20 March), I highlighted the linkages between violence against women and infringements of the human right to adequate housing.

10. On 25 April, I addressed the Commission on Crime Prevention and Criminal Justice in Vienna on the role of the criminal sector in combating violence against women. At the Second International Policy Conference on the African Child, which was held in Addis Ababa on 11 and 12 May and which focused on violence against girls in Africa, I delivered a speech on "Violence against women: the international dimension". From 17 to 19 May, I took part in consultations between members of the Turkish Parliamentary Investigation Commission on Violence against Women, German authorities and Turkish community organizations in Berlin.

11. From 26 to 29 June, I visited the Council of Europe in Strasbourg, France, and addressed the Parliamentary Assembly with respect to the Council's campaign on violence against women and also exchanged views with the Enlarged Bureau of the Ministers' Deputies. On 17 November, I delivered a keynote speech in Istanbul at the second international conference of the *Hürriyet* newspaper's campaign to end domestic violence. At the launch of

² I would also like to acknowledge and thank Rights and Democracy (International Centre for Human Rights and Democratic Development) in Montreal for its continued support to my mandate in the form of a grant.

the Campaign to Combat Violence against Women of the Council of Europe, which took place on 27 November in Madrid, I delivered a keynote address on changing attitudes to combat violence against women. Later that month, I spoke at a public event on honour-related violence held in Amsterdam at the invitation of the Royal Tropical Institute.

E. Communications with Governments and press releases

12. In the period from 1 January through 1 December 2006, I sent 78 communications bringing alleged human rights violations to the attention of Governments. Thirty-one of these communications were joint urgent appeals, 44 were joint letters of allegation and 3 were letters of allegation sent by my mandate alone. As of 1 December 2006, only 36 government replies to these communications had been received. A comprehensive analysis of these communications, including an indication of international trends emerging from these communications, can be found in addendum 1.

13. I also issued several press releases during the period under review to commemorate significant days. On the occasion of International Women's Day, 8 March, I issued a joint statement with the Special Rapporteur on the right to adequate housing calling on the international community to ensure that women's advances in decision-making are sustained and irreversible. In this context, we highlighted that in emergency response efforts following natural disasters women often find themselves not only disproportionately affected but often excluded from meaningful participation in emergency decision-making structures. As a result, the indiscriminate forces of nature typically have a disproportionately negative effect on women's human rights.³

14. On the occasion of the International Day on the Elimination of Violence against Women, 25 November, the High Commissioner for Human Rights, the Special Rapporteur on the human rights of migrants and I jointly called on States to ensure that women can migrate without having to fear violence.⁴

15. In a joint statement with other mandate holders for Human Rights Day, 10 December, I expressed my conviction that any successful effort to eradicate poverty must advocate for the full respect of all human rights and stressed that eliminating poverty will greatly contribute to efforts to protect and promote human rights and human dignity. In this context, we expressed particular concern about the heightened effects of poverty on women around the world.

³ Statement available at: <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/F2D3BBEA68E45D4AC125712A005A7FDC?opendocument>.

⁴ Statement available at: [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/5B561B840D2B5CB5C125723000627FE9?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/5B561B840D2B5CB5C125723000627FE9?OpenDocument).

III. INTERSECTIONS BETWEEN CULTURE AND VIOLENCE AGAINST WOMEN

A. Introduction

16. In previous reports (E/CN.4/2004/66; E/CN.4/2006/61), I identified culture-based identity politics as a major challenge to the achievement of gender equality and the elimination of violence against women. In this report I aim to further explore this point.

17. Culture can be defined as the set of shared spiritual, material, intellectual and emotional features of human experience that is created and constructed within social praxis. As such, culture is intimately connected with the diverse ways in which social groups produce their daily existence economically, socially and politically. It therefore embraces both the commonly held meanings that allow for the continuation of everyday practices as well as the competing meanings that galvanize change over time.

18. Across all regions, culture constitutes a primary source of diverse and sometimes contradictory normative systems that provides the rationale for varied patterns of gender roles and identities, which signify relations of power. At the global level, values commonly shared by the international community have been formalized into international human rights law and other instruments, including declarations and policy frameworks. Even though these standards, which include the principle of equality between women and men as a key value, are universally applicable and legally binding, they are inadequately implemented.

19. This is due, on the one hand, to the fact that deepening inequalities between nations, groups and women and men as well as the polarized global power structure have belittled the practical universality of human rights norms and, on the other hand, that the universal legitimacy of human rights norms is increasingly challenged by cultural discourses. The critics assert that international human rights norms are Western in origin and therefore not appropriate in non-Western contexts. This is particularly the case when it comes to women's human rights, which become compromised, if not totally sacrificed, by assertions of specific cultural practices and claims in many parts of the world.⁵ Violence against women committed in the name (or guise) of "culture", "custom", "tradition" or "religion" continues to be prevalent. Moreover, the very notion of gender inequality is contested when established interpretations of culture or projections of "their" culture are used to justify and excuse acts of discrimination and violence against women, thus undermining the compliance of States with their international human rights obligations.

⁵ For a review of cultural practices in the family that are violent towards women see the report of Radhika Coomaraswamy, the former Special Rapporteur on violence against women, its causes and consequences (E/CN.4/2002/83). For a comprehensive report on violent and/or gender discriminatory practices linked to tradition and religion see Abdelfattah Amor, Special Rapporteur on freedom of religion and belief, *Étude sur la liberté de religion ou de conviction et la condition de la femme au regard de la religion et des traditions* (E/CN.4/2002/73/Add.2, French only).

20. Parallel to these trends, there has also been a tendency on the part of some to essentialize traditional cultures of the Global South as inherently harmful to women.⁶ In this context, human rights law has been perceived as an instrument to eliminate “harmful traditional practices”. Such an approach not only fortifies a superficial duality between modernity and tradition but it also assumes that eliminating the practice on its own will serve to liberate the “victimized women” of these cultures. Furthermore, it overlooks the economic and political underpinnings of women’s subordination and the construction of culture within the dynamics of power relations at local, national and global levels. Cultural essentialism also ignores the agency of women in the developing world and the trajectories of their resistance to violence and oppression.

21. This report aims to address these areas of contestation in order to identify strategies that can contribute to the advancement of the women’s rights agenda in combating violence against women. Firstly, it traces the trends in the development of the international normative framework on violence against women in relation to culture, culminating in the recognition of the primacy of women’s right to live a life free of gender-based violence over any cultural considerations. Secondly, it critically examines how cultural discourses are created, reproduced and instrumentalized to challenge this primacy, and the validity of the principle of gender equality and women’s human rights in general. In doing so, I seek to outline the general parameters of a strategy to counter and transform culture-based discourses in order to overcome one of the major obstacles to the implementation of women’s rights.

B. Culture and violence against women in the international human rights framework

1. Universal claims for rights

22. The Vienna Declaration and Programme of Action, which the community of States adopted by consensus, confirms: “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”⁷ This universality extends naturally also to women’s human rights, which have been solemnly recognized by States as “an inalienable, integral and indivisible part of universal human rights”.⁸

23. While the articulation of human rights discourses as individual rights is associated with the intellectual ideas of the Western Enlightenment period, these rights were neither “naturally” embodied norms of Western societies nor the obvious consequences of the linear progress of a

⁶ Cultural essentialism is a term used to describe the tendency to believe that those who belong to a specific culture exhibit morals, ideas and traits universally.

⁷ A/CONF.157/24 (Part I), chap. III, preamble.

⁸ Ibid., part I, para. 18.

given people's culture. The core values that human rights protect and promote, including dignity, equality and the notion of rights itself, emerged in response to human suffering around the world. These values have been articulated in an array of literatures, religions and cultural practices of people all around the world⁹ and became formalized into international law through consensus decisions of representatives of States Members of the United Nations in multilateral negotiations and advocacy of civil society groups.¹⁰

24. In addition to serious violations such as slavery, genocide or ethnic cleansing, the historic oppression of women, rooted in a universal patriarchal culture, counts among the gravest failings of humanity, to which human rights have responded. Gender inequality and the violence associated with it is one of the common elements of history that cuts across all "civilizations". For instance, Jean-Jacques Rousseau, one of the "fathers" of Western enlightenment, apparently saw no contradictions with the principles he espoused when he wrote: "In the family, it is clear, for several reasons which lie in its very nature that the father ought to command."¹¹ However, in many parts of the world, historical transformations and women's individual and collective struggles resulted in significant deviations from this norm towards greater equality between the sexes. This has required and continues to require a firm political commitment, prioritizing gender equality as a public policy issue and constantly stimulating and monitoring changes in the culture of major institutions of society through informed political and legislative action.

25. Historically, women everywhere had to organize to resist patriarchy whether in negotiating their representation in public space; unequal nationality, property or personal laws; and the public/private distinction in international human rights law, among others. Women in their struggle against oppression within their homes and societies often aligned themselves with larger resistance movements striving for social and political justice, including resistance movements against colonial and racist oppression or anti-globalization and environmental movements, etc. For example, in South Africa it was the strong presence of women in the struggle against the racism and sexism of the apartheid State that was instrumental in ensuring that gender equality was firmly entrenched in the 1996 Constitution. However, it must be noted that these alliances did not always work to women's advantage. Nonetheless, they occasioned new contradictions, equipped women with new skills and exposed the gendered nature of other spheres of conflict and contestation.

⁹ M. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley, CA: University of California Press, 2004); *Human Rights in Cross Cultural Perspectives: A Quest for Consensus*, A.A. An-Na'im, (ed.) (University of Pennsylvania Press, 1995).

¹⁰ Z. Arat, "Forging A Global Culture of Human Rights", *Human Rights Quarterly*, vol. 28, pp. 416-437; M. Chanock, "'Culture' and human rights: orientalisng, occidentalising and authenticity". In *Beyond Rights Talk and Culture Talk. Comparative Essays on the Politics of Rights and Culture*, M. Mamdani (ed.) (New York: St Martin's Press, 2000), pp. 15-36.

¹¹ J.J. Rousseau, *A discourse on political economy* (1755). Edition used: *The Social Contract and Discourses*, translated and with an introduction by G.D.H. Cole (London: J.M. Dent and Sons, 1913).

26. Not least due to the universality of women's oppression, the human rights movement itself struggled for a long time to recognize that the equality of women and men constitutes a logical and indispensable element of a normative system built on dignity and equality.¹² The inclusion of the norm of non-discrimination on the ground of sex in the Charter of the United Nations as well as the Universal Declaration of Human Rights, which laid the ground for universal rights, was made possible in response to the demands of women.¹³

2. Primacy of women's right to live a life free of violence

27. Building on the Universal Declaration, women's movements appropriated the universally agreed language of human rights and transformed the international human rights framework to address their concerns. The evolution of women's history, especially since 1970s, has revealed the commonalities and the global connectedness of women's local resistance. The United Nations provided a platform for women to network and integrate the common elements of this history into the work of the Organization, which has resulted in the growth of a well-established gender equality and women's rights regime. Most important in this regard is the adoption of the Convention on the Elimination of All Forms of Discrimination against Women (1979) by the General Assembly. The Convention addresses linkages between culture and gender discrimination, requiring States not only to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women, but also stipulates that States "shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women" that are linked to inequality between the sexes and gender stereotypes. While the Convention enjoys near universal ratification, a number of States have sought to curtail its scope by entering extensive reservations to articles 2 and 16 on cultural or religious grounds. Reservations to the core provisions of articles 2 and 16 are legally impermissible (see Convention, article 28 (2)), since they are incompatible with the object and purpose of the Convention.¹⁴

28. The Convention, however, does not explicitly make reference to violence against women (apart from article 6 on trafficking of women and exploitation of prostitution, which draws on prior international treaties and relates to "public sphere" forms of violence). In order to remedy this drafting gap, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted a comprehensive general recommendation (No. 19) in 1992, which has

¹² For a discussion of continuing challenges at the international level see: C. Chikin, "Gender and International Society". In R. Thakur and E. Newman (eds.), *New Millennium, New Perspectives* (Tokyo: United Nations University Press, 2000), pp. 242-260.

¹³ It is noteworthy that a woman from India, Hansa Mehta, who, in the drafting of the Universal Declaration, objected to her fellow drafters' initial proposal to include the phrase "all men are created equal".

¹⁴ Cf. also Report of the Committee on the Elimination of Discrimination against Women, statements on reservations to the Convention on the Elimination of All Forms of Discrimination against Women, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 38 (A/53/38/Rev.1)*, part two, chap. I, sect. A, paras. 8, 16 and 17.

formally recognized that violence against women constitutes a form of gender discrimination that impairs or nullifies women's enjoyment of human rights and fundamental freedoms under international law.¹⁵ The Committee has also stated that traditional, religious or cultural practice cannot justify violations of the Convention.¹⁶ This means that States parties violate their obligations under article 2 of the Convention whenever they either (i) fail to condemn any specific form of violence against women; or (ii) fail to pursue, by all appropriate means and without delay, a policy to eliminate such violence, regardless of whether the violence is grounded in traditional, religious or cultural practice.

29. After decades of women's advocacy and lobbying, in 1993 the General Assembly finally adopted, by consensus, a comprehensive Declaration on the Elimination of Violence against Women (the Declaration). The Declaration specifies State obligations that emerge from the human rights to life, liberty and security of the person, freedom from torture, the rights to health, equality and non-discrimination and others that are laid down in binding human rights treaties and form part of customary international law. Under article 4 of the Declaration States are required to condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. They have to pursue by all appropriate means and without delay a policy of eliminating violence against women, which entails adopting all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on inequality, ideologies of inequality or gender stereotypes.

30. These norms establish the primacy of women's right to live a life free of gender-based violence. States cannot invoke any cultural discourses, including notions of custom, tradition or religion, to justify or condone violence against women. This also means that they may not deny, trivialize or otherwise play down the harm caused by such violence by referring to these notions. Instead, States are expressly required to condemn such violence, which entails denouncing any cultural discourse put forward to justify it. For this reason, senior government officials who remain silent when significant sectors of their own population justify certain types of violence against women with reference to culture incur responsibility for a human rights violation.

31. States also have to take active measures to eradicate violence against women committed with reference to culture that go beyond merely criminalizing and prosecuting the violence itself. Instead, they have to identify those aspects of a given culture which are linked to the violent practice and are required to develop a comprehensive strategy to transform those aspects.

¹⁵ See Report of the Committee on the Elimination of Discrimination against Women, *ibid.*, *Forty-seventh Session, Supplement No. 38 (A/47/38)*, chap. I, paras. 6 and 7.

¹⁶ See note 13 above, para. 17.

3. The harmful traditional practices agenda

32. The most concrete expression of the evolving normative framework with respect to culture and violence against women is found in the agenda on harmful “traditional” practices affecting the health of women and children that was formalized through the establishment in 1984, by the Subcommission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, of a working group on harmful traditional practices. In 1988 a Special Rapporteur was appointed to monitor and report on the issue.¹⁷ Within this context, although several traditional practices were identified, the main focus was on female genital mutilation (FGM).¹⁸

33. While this agenda has helped to identify types of violence against women formerly not recognized and mobilized international and local constituencies for their eradication, it also contributed to essentializing certain cultures as the source of the problem. As one writer put it, the harmful traditional practices agenda “unfortunately reinforced the notion that metropolitan centers of the West contain no ‘tradition’ or ‘culture’ harmful to women, and that the violence which does exist is idiosyncratic and individualized rather than culturally condoned”.¹⁹ A 1995 United Nations publication on harmful traditional practices, for instance, seems to juxtapose non-Western traditional practices with “non-traditional practices, such as rape and domestic violence” (sic).²⁰ This classification is dubious and highlights the problem the concept of “tradition” entails. Since high rates of domestic violence and rape persist in the Western world,²¹

¹⁷ Study on traditional practices affecting the health of women and children; final report of the Special Rapporteur, Mrs. Halima Embarek Warzazi (E/CN.4/Sub.2/1991/6).

¹⁸ Any procedure involving partial or total removal of the external female genitalia or other injury to the female genital organs for cultural, religious or other non-therapeutic reasons and thereby causes physical and/or psychological harm must be regarded as female genital mutilation, regardless under what medical conditions it is carried out.

Some have argued that the treatment of female genital mutilation as a harmful practice to women is an ethnocentric stand that ignores the fact that the practice provides women with more sexual power over her partner and makes them more proactive in sex. Such notions could have been entertained if we were to assume that women are free agents and do not behave under severe patriarchal constraints. Paradoxically, such claims are themselves ethnocentric and are advanced by taking women’s subordination as a given.

¹⁹ B. Winter, D. Thompson and S. Jeffreys, 2002, “The UN Approach to Harmful Traditional Practices”, *International Feminist Journal of Politics*, vol. 4, No. 1, pp. 72-94.

²⁰ *Harmful Traditional Practices Affecting the Health of Women and Children*, Human Rights Fact Sheet No. 23, 1995.

²¹ See the reports on my missions to Sweden (A/HRC/4/34/Add.3) and the Netherlands (A/HRC/4/34/Add.4).

despite commendable legal and institutional measures in place for women's advancement, it is hard not to perceive these violations as harmful social traditions rather than merely as the crimes of individual, deviant perpetrators.

34. Compartmentalizing violence against women and neatly partitioning it into "practices" may at times also be counterproductive, if commonalities and shared root causes of such practices are not identified and integrated into a holistic strategy. In some cases, merely suppressing a harmful practice may only shift the problem, unless the root causes are thoroughly addressed. The case of Cameroon is illustrative in this regard. Female genital mutilation, which is prevalent in the country, is said to be slowly declining as various actors have launched awareness-raising campaigns and some senior government officials have come out to denounce it as violence. At the same time, however, another harmful practice that seeks to control the sexuality of women through violence, referred to as "breast-ironing", is reportedly on the rise in Cameroon and surrounding countries. Scorching-hot objects are placed on the budding breasts of a young girl in the hope of preventing the breasts from growing too soon so that the girl remains unattractive to men and does not engage in sexual intercourse at an early age.²²

4. Normative challenges in the name of culture

Global instruments

35. At the global level, despite many gains, the struggle for women's human rights and gender equality has increasingly become an uphill battle. International instruments that foster the recognition of cultural diversity often do so without duly safeguarding the rights of women. On 20 October 2005, for instance, States adopted the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Protection and Promotion of the Diversity of Cultural Expressions. The Convention formally recognizes that its provisions may not be invoked to infringe or limit human rights and fundamental freedoms as enshrined in the Universal Declaration or guaranteed by international law, but it fails to make explicit reference to the Convention, the Declaration, or the principle of gender equality in general. Moreover, article 20 seems to suggest that the UNESCO Convention is not subordinate to any other treaty. These drafting ambiguities might tempt States that have entered extensive reservations against the Convention or other human rights conventions on grounds of culture or never ratified such conventions for the same reason to invoke the UNESCO Convention in bad faith to politically justify their position.

36. It is often asserted that cultural rights held by individuals or groups, including minorities, indigenous people or immigrant communities, can be invoked to trump women's human rights

²² The practice causes severe pain and can result in strong fevers, malformations of the breasts, cysts and abscesses. A survey undertaken in Cameroon indicated that 38 per cent of all girls who developed breasts before the age of 11 had been subjected to breast ironing. For girls with breast development before the age of 9 the risk stood as high as 50 per cent. F. Ndonko and G. Ngo'o, *Étude sur le modelage des seins au Cameroun*, Yaoundé, 2006.

and equality. Reference is made in this regard, for instance, to article 27 of the International Covenant on Civil and Political Rights, which establishes that any person belonging to ethnic, religious or linguistic minorities existing in a given country has the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. The Human Rights Committee has stated that the minority cultural rights articulated in article 27 do not authorize any State, group or person to violate the right to the equal enjoyment by women of any Covenant rights.²³ Instead, States are asked to report on measures taken to discharge their responsibilities in relation to cultural or religious practices within minority communities that affect the rights of women.

37. This jurisprudence is consistent with the object and purpose of minority rights, which are meant to give members of minorities the opportunity to effectively realize their individual human rights in the face of majority domination that can be so pervasive that the individual's right to non-discrimination alone proves to be ineffective and insufficient. Group-specific rights such as those established by article 27 serve to further their bearers' individual rights, not to further curb the freedom of other members of the marginalized group. This applies even more so vis-à-vis women who are very often confronted with multiple layers of discrimination based on both gender and group membership.

38. Similarly, the United Nations Declaration on the Rights of Indigenous People, approved in 2006 by the Human Rights Council but not yet adopted by the General Assembly, stipulates that the human rights and fundamental freedoms of all must be respected in the exercise of the extensive group rights recognized by that document. However, this document also fails to make reference to the Convention and the Declaration. The special needs of women are only mentioned along with those of inherently vulnerable groups (children, youth, the elderly and the disabled). Women's challenges vis-à-vis their own communities, including often alarming degrees of gender inequality, patriarchal oppression and violence,²⁴ are not addressed at all. It remains unclear, for instance, what legal recourse, if any, an indigenous woman would have, who is confronted with a discriminatory decision issued by a male-dominated community council that exercises indigenous people's "right to autonomy or self-government in matters relating to their internal and local affairs" (see article 4 of the United Nations Declaration on the Rights of Indigenous People).

39. These shortcomings, which can still be overcome, detract from the important human rights advances the adoption of the United Nations Declaration on the Rights of Indigenous

²³ General comment No. 28: Equality of rights between men and women (art. 3), *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40 (A/55/40)*, annex VI, sect. B, para. 32.

²⁴ See the reports on my missions to Guatemala (E/CN.4/2005/72/Add.3) and Mexico (E/CN.4/2006/61/Add.4), Cf. also the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (E/CN.4/2005/88, paras. 38-39) and the reports of that Special Rapporteur on his missions to Colombia (E/CN.4/2005/88/Add.2) and Canada (E/CN.4/2005/88/Add.3).

People would entail and they could prove to be counterproductive for indigenous peoples' rights in the long run. Ultimately, indigenous peoples' struggle for social justice on a human rights platform will only be legitimate, and therefore successful, if human rights problems within the community, in particular violence and discrimination against women, are also acknowledged and addressed.

Regional frameworks

40. Women's rights, including the primacy right to a life free from gender-based violence, have also been challenged through regional frameworks using rights terminology. An example is the Cairo Declaration on Human Rights in Islam, adopted in Cairo on 5 August 1990 at the Nineteenth Islamic Conference of Foreign Ministers. Noting that all human beings form one family whose members are descendants of Adam (with no mention of Eve), the Cairo Declaration states, with rather deliberate ambiguity, that "all *men* are equal in terms of basic human dignity and basic obligations and responsibilities" (my emphasis) without any discrimination on the grounds of, inter alia, sex. According to article 6, "woman is equal to man in human dignity", but the same article also asserts that "the husband is responsible for the maintenance and welfare of the family". With regard to violence against women specifically, it is to be noted that Declaration considers that only men have the "right, within the framework of the Shari'ah, of free movement" and that it is prohibited to breach the right to safety from bodily harm "without a Shari'ah-prescribed reason". Similarly, the 1993 Bangkok Declaration, which builds on the "Asian values" debate, adopts an alternative vision of rights that challenges the universal validity of international human rights law.

41. It is obvious that these regional normative frameworks are incoherent with the universal framework that has legal precedence over them. More striking, however, is that such discourses ironically serve to reinforce the encroachments stemming from orientalist thinking that they inherently aim to counter.

C. Cultural relativism and women's human rights

1. Difference or domination

42. Since the inception of human rights, their universality and their validity in a given local context have been continuously contested through relativist discourses that brand them as external (usually Western) impositions that are incompatible with local culture. Such claims have provided reference points for judicial systems in excusing acts of violence against women or have helped sustain parallel justice systems that hand down severe forms of punishment to women presumed to have transgressed social norms.

43. In most of the developing world, the history of colonial oppression and the existence of authoritarian political regimes as well as the economic and political polarizations between the North and the South provide fertile ground for a cultural relativist stand that has emphasized respect for differences between cultures vis-à-vis the discursive universalistic strategy of the international human rights framework. Underlying this emphasis on cultural difference is a

vision of culture as a homogenous and bounded entity with an excessive aggregation around a unified identity. Moreover, this vision conveniently overlooks the relations between culture, oppression and power structures, which privileges one interpretation of culture over another. In the neoliberal era, identity politics, based on cultural differences, has made culture the site of contestation and the notion of culture a tool of new forms of oppression,²⁵ whether in its orientalist or occidentalist guise.

44. Women have found themselves entangled in these ideological contests and have often been left with the “choice” of joining forces with imperialist/hegemonic projects or compliance with oppressive practices. This dilemma is all too evident in the colonial experience, where colonial powers in Africa and India, for instance, often selectively addressed some women’s concerns to legitimize their “civilizing” mission, enlisting the discourse of the Western women’s movement of that time to promote their colonial agenda. In India, colonizers introduced their own ideals of Victorian femininity, aspects of which had much in common with the local prototype in their dependence on male validation and their primacy of a self-effacing maternal role, while selectively targeting practices such as child marriage and “sati” (the immolation of widows at the funeral of their husband). Social legislation aimed at improving the life conditions of women, which included raising the age of marriage and introducing education, became emblematic of imperial achievement. These linkages between colonial oppression and women’s rights campaigns at the time have been instrumentalized to undermine local women’s rights advocacy today, whereas the contribution of women’s movements in the decolonialization struggle have been largely forgotten.²⁶

45. The colonial experience was no doubt not uniform. Some colonial projects, such as the efforts to abolish foot-binding in China (1874-1911) or the initiatives to abolish bride wealth in Uganda in the 1950s, paralleled campaigns by local women activists. In other instances, as in Kenya in 1920-1931 and later in the 1950s, colonial efforts to abolish female circumcision strengthened the nationalist cause and gave new salience to the practice, which came to symbolize nationalist opposition to colonialism.²⁷

²⁵ S. Mojab, “The Politics of Theorizing ‘Islamic Feminism’: Implications for International Feminist Movements”, *Women Living Under Muslim Laws. Dossier* (2001), pp. 23-24.

²⁶ See: Report of the Asia Pacific NGO Consultation, *Negotiating Culture: Intersections of Culture and Violence against Women in Asia Pacific*, APWLD, 2006.

²⁷ A. Tripp, “The Evolution of Transnational Feminisms”. In *Global Feminism*, M. Ferree and A. Tripp (eds.), (New York University Press, 2006), pp. 51-75.

2. Orientalizing culture²⁸

46. When conceptualizing culture in the context of women's rights violations, the notion of culture is frequently truncated in two steps: leaving aside the artistic realm, culture is often defined as a characteristic of non-Western persons only, and in a second step, the notion of culture is mystified and further reduced to its symbolic, ritualized or supposedly "traditional" manifestations.²⁹

47. In Western countries, distinct cultural norms that define gender relations are often not questioned or even perceived as culture. In many European countries, for instance, half-day schooling and rigid shop hours remain in place, which presume that "someone" can take care of children and the shopping during regular working hours. These seemingly trivial cultural practices complement gender ideologies that prioritize women's reproductive roles and reinforce, albeit in discrete forms, women's subordination. This helps to explain why a significant number of women in the West, despite their advances in the public sphere, still encounter intimate partner violence.³⁰

48. Other seemingly non-gendered practices, such as the gun culture, also have consequences for gender-based violence. For instance, in 2003, 50 per cent of female homicide victims in the United States of America were shot and killed with a gun.³¹ Women in the United States of America are 11 times more likely than in other high-income countries to be murdered through the use of a firearm.³² Yet, the culture of legal and widespread gun ownership, constitutionally entrenched, retains majority support. Throughout the Western world, the widespread portrayal of women as sexual objects in the media and unrealistic female beauty ideals that trigger harmful self-imposed practices, which may result in life-threatening diseases such as anorexia or bulimia, are rarely seen as cultural phenomena, but are regarded as questions of market dynamics and free choice.

²⁸ Orientalism, a concept critically examined by the late Edward Said, is a manner of regularized writing, vision and study dominated by imperatives, perspectives and ideological biases ostensibly suited to the "Orient". It is the image of the "Orient" expressed as an entire system of thought and scholarship (Cf. Edward W. Said, *Orientalism*, New York, Pantheon, 1978).

²⁹ A.M. Tripp, "Conflicting Visions of Community and Citizenship". In M. Molyneux and S. Razavi (eds.), *Gender Justice, Democracy and Rights* (Oxford University Press, 2002), pp. 413-440.

³⁰ See note 20 above.

³¹ Violence Policy Center, "When Men Murder Women: An Analysis of 2003 Homicide Data (2005). Available at: <http://www.vpc.org/studies/wmmw2005.pdf>.

³² David Hemenway, Tomoko Shinoda-Tagawa and Matthew D. Miller, 2002, "Firearm Availability and Female Homicide Victimization Rates among 25 Populous High-Income Countries", *Journal of the American Medical Women's Association* (2002). See also: [http://www.hsph.harvard.edu/press/releases/\[ress04172002.html](http://www.hsph.harvard.edu/press/releases/[ress04172002.html).

49. Instead, cultural practices that discriminate against women are frequently regarded as belonging to “others”, whether they live in developing countries or belong to local immigrant communities. This approach is often not void of inherent contradictions. While strongly denouncing practices as grave violations that tend to occur mostly abroad, such as female genital mutilation or “honour”-related violence, many States still fail to provide women facing such violations an escape by bringing their refugee laws into line with international standards on gender-related persecution.³³

50. Embedded in the practice of “othering”³⁴ is a trend towards redefining violence against women as an integration problem associated with immigrants from developing countries rather than a gender inequality problem. The consequences are twofold: immigrant women and men are further stigmatized and marginalized, which complicates their engagement in a constructive dialogue to address problems of gender inequality that indeed exist within their communities. At the same time, violence against native women is relegated from a social justice concern with a human rights dimension to a depoliticized “law and order” issue that may no longer be prioritized in comparison to other crimes.

3. Challenging and negotiating hegemonic cultural paradigms

51. Culture evolves as a response to different and competing individual and collective needs and aspirations, which makes culture diverse and dynamic. However, at any given time, certain interpretations of culture may be legitimized and imposed on a society or a community. The assertions of dominant interpretations of culture, in seemingly diverse sociocultural settings, are often similar to the extent that they (i) presuppose a static and homogenous set of values and norms that govern the lives of a collective entity; and (ii) reflect and reinforce hegemonic and patriarchal power relations. Such cultural discourses are at odds with universal cultural standards, in particular the legally binding human rights principle that no custom, tradition or religious consideration can be invoked to justify violence against women.

52. In order to successfully uphold universally agreed values, in particular the principle that no custom, tradition or religious consideration can be invoked to justify violence against women, it is necessary to address, and understand, the process of legitimization in the assertion of these types of discourses. This requires systematic engagement in a “cultural negotiation” whereby the positive cultural elements are emphasized, while the oppressive elements in culture-based discourses are demystified.³⁵

³³ The Office of the United Nations High Commissioner for Refugees (UNHCR) has compiled principles and guidelines on protection against gender-related persecution. See UNHCR, Guidelines on International Protection No. 1: Gender-Related Persecution within the context of article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HRC/GIP/02/01) (2002).

³⁴ Othering is a way of defining and securing one’s own positive identity in contrast with and through the stigmatization of an “other”.

³⁵ See my report on the due diligence standard (E/CN.4/2006/61).

53. Contrary to what some may claim or fear, such an engagement with culture does not erode or deform local culture but rather challenges its discriminatory and oppressive aspects. This of course may provoke resistance from those who have a vested interest in preserving the status quo. Negotiating culture with human rights concerns inherently questions, delegitimizes, destabilizes, ruptures and, in the long run, destroys oppressive hierarchies. It also contributes to harnessing the positive elements of local culture to advance human rights and gender equality, a process that also revalidates the culture itself. In many places, women's rights activists have successfully mobilized artistic and symbolic expressions of culture. For example, in the north of Mexico, which has seen extreme levels of violence against women,³⁶ local women's movements have used the language of human rights discourses incorporated with symbolic actions that have countered the culture of impunity and violence against women. The cultural sphere thereby "became increasingly important for integrating emotive with cognitive understandings about the atrocities taking place, as well as for working through the deeper social and psychic trauma resulting from the violence, especially for the bereaved families of the disappeared and murdered women."³⁷

54. Another international example is the 16 Days of Activism against Gender Violence Campaign that was started in 1991. Spanning the period from 25 November, International Day on the Elimination of Violence against Women, to 10 December, Human Rights Day, it emphasizes the need for the recognition of violence against women as an international human rights issue. The 16 Days Campaign has become a cultural event symbolizing women's resistance to gender inequality. This activism draws on local culture to raise awareness while strengthening solidarity at a global level. For example, this year in France, a large group of women dressed up as "Marianne" with made-up bruised faces. Marianne is the symbol of French liberation and pride, embodying freedom, equality and dignity. With this act, French women demonstrated the disparity between persistent gender discrimination and the symbolic representation of women's place in French society. They received widespread media coverage and generated a response from the major presidential candidates, both of whom promised to tackle the issue once elected president.

55. Cultural discourses can also complement and reinforce the human rights discourse. On 25 November 2006, for instance, a group of distinguished Islamic scholars assembled at Al-Azhar University in Cairo issued a set of recommendations recognizing that female genital mutilation "is a deplorable, inherited custom, which is practiced in some societies and is copied by some Muslims in several countries".³⁸ They concluded that "there are no written grounds for this custom in the Qur'an with regard to an authentic tradition of the Prophet" and acknowledged that "female genital circumcision practiced today harms women psychologically and physically" and should be "seen as a punishable aggression against humankind". They demanded that "the

³⁶ See in this regard the report on my mission to Mexico (E/CN.4/2006/61/Add. 4).

³⁷ L.R. Linda Fregoso, "We Want Them Alive!: The Politics and Culture of Human Rights." *Social Identities*, vol. 12, No. 2, (2006), pp. 109-138.

³⁸ Available at: http://www.target-human-rights.com/HP-00_aktuelles/alAzharKonferenz/index.php?p=beschluss&lang=en.

practice must be stopped in support of one of the highest values of Islam, namely to do no harm to another”, and called for its criminalization. Recommendations such as these are exemplary and praiseworthy provided that they are embedded in an earnest and ongoing process to examine and, if necessary, reinterpret the entire spectrum of cultural norms that discriminate against women and they are not only tactical concessions to reaffirm dominant discriminatory paradigms and the authority of those who represent them.

56. The emerging human rights culture, built on values that retain a universal appeal despite the implementation gap, is another cultural resource that has so far been underutilized, because the human rights framework and its moral force is still not fully applied to the concerns of women. In overcoming the public/private dichotomy, for instance, we should recognize all those forms of violence against women that entail severe pain or suffering, whether physical or mental - e.g. female genital mutilation - as torture. Cases in which young women living outside their home countries or regions are sent home under a deceptive pretext and with the intent of forcing them into marriage should be regarded as human trafficking.³⁹ As cultural relativist discourses strengthen, we need unashamedly to invoke universal human rights and defend the principles for which women around the world have struggled with more pride, not less. It needs to be noted that when societies create a positive cultural environment for women and enhance their access to critical resources such as land, housing, sustainable livelihoods and other entitlements, the risk of violence is significantly reduced and the society as a whole flourishes economically and otherwise.⁴⁰

4. Static, monolithic and apolitical? Demystifying culture

57. As indicated above, dominant cultural paradigms that discriminate against women are typically coated in several suits of myths. These myths serve to protect the interests of those who monopolize the right to speak on behalf of culture, but also develop a life of their own as they transform into perceived realities.

58. For one myth, culture is frequently presented as static and immutable, as time-honoured “traditions” rather than the custom of some of those currently living within the culture. Customary law, in particular, derives its legitimacy from this claim to tradition, a claim that has historically been contested. Throughout the world, local customary norms were often distorted, and became more disadvantageous for women, because colonial Powers employed indirect colonial rule structures that used customary authorities and institutions to extend the colonizer’s

³⁹ With respect to forced marriage, I would also like to highlight the positive example set by the Special Court for Sierra Leone which has accepted to try cases of forced marriage that occurred during the armed conflict as crimes against humanity. See <http://www.sc-sl.org/prosecutor-051704.html>.

⁴⁰ For a discussion of the consequences of violence against women, including its cost to society, see: the in-depth study on all forms of violence against women: report of the Secretary-General (A/61/122/Add.1 and Corr.1) (2006).

own power at minimal administrative cost. It is therefore ironic that the continued validity of gender discriminatory aspects of customary law is today often defended in the name of anti-colonialism, anti-imperialism and restoration of the “original” culture.

59. Indirect rule allowed male elders in a position of authority to manipulate customary law and improve their position at the expense of women and youth as it shifted authority structures and accountability patterns. In much of pre-colonial Africa, for instance, there were several layers of authorities based on age group, clans, women’s groups, religious groups, etc. and each defined custom in its own domain. However, the colonial authorities sanctified only one type of authority - chiefs - as a native authority under indirect-rule colonialism and thereby placed them in a privileged position to shape customary law and its codifications in accordance with their interests.⁴¹ Moreover, prior to the colonial conquest, the authority of traditional leaders had depended on support from the various groups within their own communities, whose diverse interests they had therefore to take into account. Yet, within indirect rule structures, traditional leaders now derived their authority largely from the colonial Power, which allowed them to advance and legally entrench their own interests without having to consider disenfranchised groups within the communities, including women.

60. Another common myth is that culture is homogenous and monolithic. Frequently a dominant, discriminatory paradigm is presented as the only legitimate interpretation, whereas the diverse voices existing within each culture are silenced, particularly if they are those of women or other already marginalized groups. The Cairo Declaration on Human Rights in Islam is a case in point (see paragraph 39 above). The Declaration pretends that there is one homogeneous Muslim view of Islamic values based on very intransigent human interpretations of the Koran. This monolithic representation of Islamic culture has been contested by many others including local human rights activists living in Islamic countries or in exile, reformist clerics and self-proclaimed Islamic feminists and women’s rights activists.⁴²

61. Unfortunately, outsiders also buy into the myth of monolithic cultures. State authorities and donors, for instance, have a tendency to seek out so-called “gatekeepers” - the presumed authorities within a presumed monolithic community - when they try to enlist individual community members’ support for human rights initiatives or other purposes such as national security interests. Contrary to the original intention, this may further undermine the position of marginalized groups, specifically of women, because self-proclaimed leaders that represent radical views are empowered. In the Canadian province of Ontario, for example, a minority of religious leaders campaigned with considerable success on a cultural diversity platform for “their” communities’ rights to use Sharia law in civil arbitrations if both parties consent. The Ontario Arbitration Act in force at the time would have arguably allowed for such arbitrations.

⁴¹ M. Mamdani, “Political Identity, Citizenship and Ethnicity in Post-Colonial Africa” (2005). Available at: <http://siteresources.worldbank.org/intranetsocialdevelopment/Resources/reviseMamdani.pdf>.

⁴² Cf. the report of my mission to the Islamic Republic of Iran (E/CN.4/2006/61/Add. 2).

Following the relentless campaigning of a coalition of various organizations, including the Canadian Council of Muslim Women, this initiative was finally blocked by the Ontario legislature.

62. The third myth is that culture is apolitical and detached from the prevailing power relations as well as the economic and social circumstances it operates in. Cultural explanations used to defend practices that are harmful to women often provide a convenient veil to disguise the various interests fostered by the practice. The Italian Penal Code (The Rocco Code of 1931), repealed in 1981, provides insight to this point. Article 587 of the Rocco Code distinguished killing or injuring for the cause of honour as a separate crime and provided for reduced sentence in cases of adultery. Analysts have explained the existence of article 587 by the strict gender discriminatory norms to support the demographic policies of the fascist period, which promoted women's reproductive roles and high fertility rates. "Article 587 effectively gave a 'licence to kill' to the heads of families whose 'honour' had allegedly been tarnished."⁴³ Another example brings to light yet another aspect of the problem. In media reports on trafficking of girls and women from indigenous communities in the Highland region between Myanmar and Thailand, myths of local indigenous cultures, in which families supposedly sell their daughters for profit willingly and without compassion, are often propagated.⁴⁴ Yet, the profound structural vulnerabilities that expose women and girls from these communities to trafficking, including statelessness, ethnic targeting and violent repression of their indigenous identity, are not sufficiently acknowledged.

63. Armed conflict, occupation, the war against terror and militarist cultures often reinforce dominant cultural paradigms that discriminate against women.⁴⁵ Sustenance of group boundaries, family honour and the maintenance of everyday life fall on the shoulder of women, for whom this

⁴³ M.G. Bettiga-Boukervout "Crimes of honour in the Italian Penal Code." In L. Welchman and S. Hossain (eds.), *"Honour": Crimes, Paradigms, and Violence against Women*, (London: Zed Books, 2005), p. 235.

⁴⁴ A.D. Feingold, "The Hell of Good Intentions: Some Preliminary Thoughts on Opium in the Political Ecology of the Trade in Girls and Women". *Ophidian Research Institute*. (1997). Available at: <http://www.phi-ngo.org/pubs/HellGoodIntentions.pdf>.

⁴⁵ See the report of my mission to the Occupied Palestinian Territories (E/CN.4/2005/72/Add.4) and also the report of the previous Special Rapporteur on violence against women, its causes and consequences, on her missions to Colombia (E/CN.4/2002/83/Add.3), documenting that paramilitary groups had imposed strict codes of social conduct on women, upheld by the threat of rape and murder, and sought to reinforce conservative values and stereotypical gender roles. A recently published report by a coalition of Colombian NGOs which follows up on the recommendations of the Special Rapporteur concludes that these problems still exist and that the militarization reinforces violence against women. See *VI Informe sobre violencia sociopolítica contra mujeres, jóvenes y niñas en Colombia 2002-2006*, Bogotá; Mesa de trabajo "Mujer y conflicto armado", pp. 15-17. See also: <http://www.mujieryconflictoarmado.org>.

often means conformity to traditional norms of patriarchy. Conflict and the perceived need to rally around the flag of group identity or the wider cause are instrumentalized as a pretext to further entrench patriarchal control within the group or merely trivialize women's movements.

64. Similar dynamics are often observed in immigrant, minority or indigenous communities that very often experience ethnic or religious discrimination. In an effort to define themselves in opposition to the majority that rejects them, members of these groups may adopt essentialist or fundamentalist interpretations of their own culture. In order to preserve a group identity perceived to be under threat by a majority that seems unwilling to accept cultural, religious or ethnic difference, men as makers of culture very often impose rigid codes of conduct on women who are regarded as transmitters and bearers of culture. Violence is used where necessary to enforce women's compliance with these impositions.⁴⁶

65. Militarization also transforms culture, introducing socially accepted norms of violence.⁴⁷ Women are very often specifically affected by these developments. I received reports, for instance, that women belonging to Wayuu indigenous communities in Colombia face more drastic and even lethal violence in the domestic sphere. As armed groups seek to draw these communities into the ongoing armed conflict, a gun culture is introduced into the communities while indigenous cultural norms calling for a respect for life and restraint in the use of violence are eroded.⁴⁸

66. Concern must also be expressed about failing and failed States: where the rule of force has fully replaced the rule of law, the worst "cultural" forms of violence against women tend to occur. Also worrisome are reactionary donor agendas that reinforce conservative norms and threaten gains made by women. Recent policies on reproductive rights as well as HIV and AIDS, which give preference to sexual abstinence and fidelity over condom use, are particularly illustrative. They not only fail to recognize the problems that oppressed women face in asserting their sexual rights against their male partners, but also reinforce ideologies of men's control over women's sexuality (however they may be culturally framed) and thereby contribute to the perpetuation of the root cause of many forms of violence against women.

⁴⁶ See the report of my mission to Sweden (A/HRC/4/34/Add. 3).

⁴⁷ The United Nations Verification Mission in Guatemala, for instance, has documented linkages between the forced inclusion of indigenous populations in paramilitary units during the Guatemalan armed conflict and a culture of public lynchings that prevails up to this day. *Misión de Verificación de las Naciones Unidas en Guatemala, Los linchamientos: un flagelos que persiste*, 2002.

⁴⁸ Cf. also Mesa de Trabajo "Mujer y conflicto armado", above at note 40, finding that the armed conflict continues to affect women in indigenous communities with special intensity.

D. Conclusions

67. Cultures, including the universal human rights culture, are contested sites. Historically, women, individually and collectively, in the Global North and in the South have actively resisted and negotiated oppressive cultural practices. The interconnectedness of local resistance movements evolved into an international women's movement which succeeded in transforming the international human rights law to address the specific ways in which violation of women's rights occur. This culminated in a comprehensive agenda that recognizes violence against women as a human rights violation that must be condemned regardless of whether the violence is grounded in traditional, religious or cultural practices.

68. However, despite the fact that the international community has recognized the universality of rights, identity politics and cultural relativist paradigms are increasingly employed to constrain in particular the rights of women. Essentialized interpretations of culture are used either to justify violation of women's rights in the name of culture or to categorically condemn cultures "out there" as being inherently primitive and violent towards women. Both variants of cultural essentialism ignore the universal dimensions of patriarchal culture that subordinates, albeit differently, women in all societies and fails to recognize women's active agency in resisting and negotiating culture to improve their terms of existence.

69. Making culture the divisor of rights and singling out specific practices as the only culturally sanctioned form of violence that deserves to be denounced or defended inherently de-links violence against women from its root causes and fragments and complicates the struggles against gender-based violence, particularly for women in the South whose salvation becomes one of denying themselves their own cultural identity. Such a polarized perception of violence against women undermines the universal application of international human rights norms and prevents a scrutiny of domestic culture with respect to human rights implications.

70. This report has argued that cultural essentialism, in its orientalist as well as occidentalist variations, are based on several myths that need to be challenged if we are to move forward in the international human rights agenda in general and the elimination of violence against women in particular. These are: (i) depicting culture as immutable and static; (ii) culture as homogenous; and (iii) culture as apolitical and detached from the material foundation of life. Such myths privilege dominant representations of culture while denying space for alternative voices; they cloud over the material basis of life that underpins cultural claims, thus overlooking the political and economic conditions that sustain the violation of women's rights.

71. Compromising women's rights is not an option. Therefore, the challenge that confronts us today is to respect and prize our diverse cultures while developing common strategies to resist oppressive practices in the name of culture, and to promote and uphold universal human rights while rejecting encroachments grounded in ethnocentric thinking.

72. **In view of the above discussions, a viable strategy in addressing the issue of culture and violence against women must include, but not be limited to, the following broad guidelines:**

(a) Problematizing culture as historically constructed and representing diverse subject positions and interests:

- (i) Interrogating and negotiating culture and identifying positive elements of culture, including human rights culture, and integrating them in strategies to transform oppressive practices defended in the name of culture;**
- (ii) Dismantling the victim narrative of specific groups of women by recording, documenting and disseminating women's agency and common struggles in diverse settings;**
- (iii) Recognizing the commonalities of women's struggles of oppression that go beyond specific cultural boundaries;**

(b) Applying a political-economy perspective to understanding cultural practices:

- (i) Addressing social, economic and political factors that underlie and reinforce harmful cultural paradigms that subordinate women;**
- (ii) Recognizing the political and economic nature of gender inequality and the prevailing forms of violence against women;**
- (iii) Challenging those who defend oppressive practices for women and disclose the vested interests that underpin certain practices;**
- (iv) Recognizing that protection of rights needs not only the transformation of cultural norms and attitudes but also changing their material foundation;**

(c) Approaching all forms of violence against women as a continuum and intersectional with other forms of inequality:

- (i) Avoiding compartmentalized and selective approaches to the elimination of violence against women that de-link the problem from its underlying causes;**
- (ii) Documenting the cross-cultural commonalities in the diverse manifestation of violence against women;**
- (iii) Making explicit reference to the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Elimination of Violence against Women in all normative and policy**

frameworks relating to cultural diversity and group-based rights. Withdrawing all reservations to the Convention, especially articles 2, 9, 15 and 16, which were entered with reference to culture, tradition, custom and/or religion;

- (iv) Ensuring that diverse women's voices within specific communities are heard and that their claim for a right to a life free of violence is not sacrificed in the name of culture;**
- (v) Applying the existing international legal framework for the protection of individuals (including human rights law, the law of armed conflict and refugee law) to fully address the specific concerns of women, including violence against women and gender-related persecution.**
