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**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав,  
включая право на развитие**

### **Доклад Специального докладчика по вопросу о насилии в отношении женщин, его причинах и последствиях Рашиды Манжду**

Добавление

**Сводный доклад о региональных консультациях по вопросам  
ответственности государств и насилия в отношении женщин  
(2011–2013 годы)\* \*\***

#### *Резюме*

Настоящий документ содержит резюме пяти региональных консультаций, состоявшихся в Тунисе (с 20 по 21 июня 2012 года), в Словакии (с 9 по 10 декабря 2012 года), на Фиджи (с 27 по 28 января 2013 года) и в Южной Африке и Уганде (с 8 по 9 декабря 2011 года и с 2 по 3 апреля 2012 года соответственно). Выводы этих совещаний послужили полезным информационным подспорьем для тематического доклада Специального докладчика об ответственности государств за предупреждение насилия в отношении женщин, который был представлен Совету по правам человека в июне 2013 года.

\* Данное резюме распространяется на всех официальных языках. Доклад, прилагаемый к настоящему резюме, распространяется только на том языке, на котором он был представлен.

\*\* Представлено с опозданием.

## Annex

*[English only]*

### **Report of the Special Rapporteur on violence against women, Rashida Manjoo, on the regional consultations on State responsibility and violence against women (2011 to 2013)**

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## Introduction

1. The mapping exercise and research on State responsibility to prevent violence against women included a series of regional consultations convened and/or attended by the Special Rapporteur. This addendum includes the summaries of the main issues of concern discussed during the regional consultations which took place in Tunisia (from 20 to 21 June 2012), in Slovakia (from 9 to 10 December 2012), in Fiji (from 27 to 28 January 2013), and in South Africa and Uganda (from 8 to 9 December 2011 and from 2 to 3 April 2012 respectively). These summaries are based on the discussions held with a wide range of expert participants in these meetings, and are not a reflection of the situation in any individual country.

### A. Middle East and North Africa (MENA) Consultation

2. The meeting was held in Tunisia, from 20 to 21 June 2012.

#### 1. General context

3. The region generally reflects strong patriarchal traditions and practices, and to differing extents, women face discrimination in numerous aspects of their lives, including in the justice, health and other sectors. Family laws are primarily based on religion, relying on the provisions of religious laws and are often administered by all male religious courts. In most countries, men are considered to be the head of the household, to whom women owe a duty of obedience.

#### 2. Manifestations of violence against women

4. Domestic violence was identified as the most common manifestation of violence against women in the MENA region, with physical violence being particularly prevalent. Reporting rates for rape are so low that prevalence is difficult to determine. Women who have been raped are sometimes forced by their families to marry the perpetrator. Single mothers and those who have had sex outside marriage (whether consensual or forced) are ostracized. Sexual violence in the family, in the context of marital relations, is generally not recognized as violence, either at State or non-State level. In extreme cases, violence in the family manifests in killings of women and girl children, often in circumstances where "honour" is involved. Female Genital Mutilation (FGM) is prevalent in some countries. Forced and early marriages are also common in some countries. Across the region, migrant workers are particularly vulnerable to violence. Often they have no status and no legal protection under labour and other laws, and are unable to report abuse due to fear of deportation or being prosecuted under discipline or morality laws.

#### 3. Law, policy and institutional responses

5. Most States in the MENA region have ratified the Convention on the Elimination of All Forms of Discrimination against Women but the vast majority have made reservations to articles 2; 15, paragraph 4; 16; and 29, or general reservations on the basis of conflicts with Islamic Sharia law. Most of the constitutions in the region have provisions on equality between the sexes, equality before the law or the outlawing of sex-based discrimination. However, most constitutions also provide for the supremacy of Islamic Sharia laws, particularly in family law matters.

6. The vast majority of States do not have any specific legislation protecting women against gender-based violence. In most States, domestic violence is not a punishable

offence, and in those States where it is, prosecution is limited to crimes where there is visible injury. Severe acts of violence, including murder, carry either no punishment or extremely light sentences where crimes were committed in the name of “honour”. Some States provide for the bringing of private suits for domestic violence, while others have begun to abolish discriminatory provisions in criminal statutes, including viewing domestic assaults as an aggravating factor in such cases. Laws that criminalize acts of sexual relations outside of marriage or adultery carry severe penalties including stoning, lashes and the death penalty. Penalties for such acts are higher for women than for men.

7. Rape, abduction, prostitution and sexual offences are punishable in the penal codes of most States. In most States, rape, and in particular rape of a minor, is not punishable if the perpetrator marries the victim. Marital rape, as a specific offence, is not criminalized in the region. Sexual harassment is not a crime in most States, although some reforms have been made in North African countries to criminalize such acts. A few States have passed specific legislation to prohibit sex trafficking. Female Genital Mutilation (FGM) is criminalized in a few States, but sometimes in limited circumstances, such as where it would “result in prejudice” or if not carried out in health institutions.

8. Most States in the MENA region do not have a national strategy or a national action plan on violence against women, gender-based violence or gender equality. A few States do have general national plans that touch on issues of domestic violence or violence against women. There are a small number of States with policies on violence against women, which are multidisciplinary and include protection, prevention and education measures as well as monitoring and operational plans. However, these are not funded and are poorly implemented. Overall, the State support that is provided is neither holistic nor multi-sectoral.

9. As regards accountability, the criminal justice system is rarely used by women victims of different manifestations of violence. Police practices across the region do not meet core minimum standards and police are largely not adequately trained. A few States now have special units to police domestic violence. With regard to rape, women victims are often treated as the accused under provisions preventing sexual relations outside marriage, and are potentially subject to severe punishment. They are furthermore in danger of being forced into marriage with the rapist, to absolve him of punishment. Married women who report violence are also at risk of repudiation (divorce) by their husbands, and also of further violence within the extended family. Domestic violence is not classified as a crime in the majority of States. Where it is reported, police encourage women to return home. In cases of “honour” killings, police do not investigate the real cause of the killings and instead close files as “accidental deaths”. When cases concerning acts of violence do reach the courts, it is very rare for perpetrators to be convicted and the burden of proof is often placed on victims, adding to the challenges that they already face. Even when convictions do occur, mitigating circumstances are used to ensure minimal sentences, even if the law provides otherwise. Judges often refer cases of violence to mediation. Medical personnel, police, judges and service providers are not sufficiently trained to deal appropriately with women victims of violence.

#### **4. Data collection and analysis**

10. In most States, there have been no national surveys regarding the prevalence of violence against women. In those States where surveys have been carried out, data collection has focused on the prevalence of domestic violence. These surveys have not analysed the impact of interventions, the performance of the public sector, the attitudes, behaviours and experiences of the public or the social and economic costs of violence. In a few States surveys and studies have been used to develop policies and programmes.

## **5. Service provision**

11. The services available in MENA States are varied, with some States providing shelter and hotline services, legal and psychological counselling and support. There is evidence that States are collaborating with non-governmental organizations (NGOs) in this work. However, in many States the primary service providers are still NGOs funded by external donors. Often they have insufficient funding or capacity, while existing State institutions are frequently staffed with insufficiently trained officials who promote mediation and rehabilitation, rather than justice within a human rights framework that promotes victim safety and offender accountability.

## **6. Assessment of fulfilment of due diligence standards**

12. Overall most States in the region are failing in their responsibility to act with due diligence to promote the right of women and girls to live a life free from violence. In most States, legislation and policy fails to protect women, due to the lack of effective redress measures. In States where attempts to address such violence have been made, most women are not aware of their rights under the new laws and face discrimination and harassment in enforcing them. With regard to prevention of violence against women, in many States there are no laws and policies and awareness-raising efforts are insufficient. States are largely failing to investigate violence against women and police and court officers fail to act with due diligence to investigate and prosecute acts of violence. They dismiss the victim, exercise discretion to drop cases, or pressurize the victim to drop charges. Punishment for acts of violence against women is minimal. Where sentences are imposed they are mitigated to extremely low levels, including suspended sentences or a few months in prison for killing women in the family. There is also the problem of men avoiding punishment for rape and abduction by marrying the victim. Reparations for violence in the region are rarely provided. In the very few States where it is possible to get compensation for violence, this requires significant effort and does not address the victim's needs.

## **B. Central and South-Eastern Europe and Baltics Consultation**

13. The meeting was held in Slovakia from 9 to 10 December 2012.

### **1. General context**

14. Patriarchal attitudes are common across the region. Not only does this encourage impunity and discourage reporting, it is manifested in a range of responses to violence. Victims are blamed when they report different forms of violence; mediation is promoted; accountability is not a reality; and victims are sometimes arrested when they report violence. Stereotypes of women's proper role in society are common. This makes it more difficult for women to leave violent situations, and leads to less reporting of violence. The attitude of States to violence against women in the region is focused on the welfare approach. Political will to improve the situation for victims of violence is limited, with concerns about capacity and funding limitations. The financial crisis has been used as an excuse to cut large numbers of services across the region.

### **2. Manifestations of violence against women**

15. There is an increasing recognition of the problem of domestic violence in the region, particularly intimate partner violence. Domestic violence statistics are collected, and policy and legislation is designed around the issue. Human trafficking is another area in which States are developing policies, strategies and specific legislation. However, other forms of violence, including rape and sexual abuse, broadly defined, including violence and harassment in schools and workplaces, are increasingly subsumed into domestic violence

policy, or are not addressed. Violence against women in conflict has not been sufficiently addressed in the region.

16. Vulnerable groups, including Roma women, ethnic minorities, rural women, and poor women suffer aggravated violence and have less access to services. This remains problematic despite some efforts to disaggregate data and create specific policies to address the problems faced by these groups.

### **3. Law, policy and institutional responses**

17. All of the States have signed and ratified the core United Nations treaties regarding violence against women. There is also widespread acceptance of a range of Council of Europe and other European conventions. Countries in the region have started to sign the Council of Europe Convention on preventing and combating violence against women and domestic violence. All States have Constitutional provisions guaranteeing equality before the law. Most also provide for non-discrimination and equal rights for spouses in marriage. Most States have specific laws on gender equality and anti-discrimination, or on the equality of women and men, which prohibit direct and indirect discrimination and sexual harassment in the public sphere. All States have some prohibition of discrimination in the workplace. The violation of these laws is often a criminal offence, either at a criminal or at an administrative level.

18. There are specialist laws addressing domestic violence in most States. All States have some provision by which a protection order can be granted by the courts. Domestic violence is punishable as a criminal offence, although often by a lesser sentence both in law and in practice. In some instances, these laws do not cover all relationships, and thus fail to recognize non-cohabiting or same-sex relationships. In some States violence against women, unlike other forms of violence, requires a private prosecution. Many States deal specifically with human trafficking in law or policy. Penal codes in some States set out provisions for the punishment of perpetrators, for a range of forms of violence including physical and sexual violence, war crimes, and exploitation, trafficking and prostitution.

19. Most States have national action plans and strategies to deal with gender equality at a national and local level. However, fewer States have National Action Plans with regard to violence against women, and if there are such plans they tend to focus on domestic violence. There are intersectoral national programmes and protocols on domestic violence in most States. Many States also have specific programmes for human trafficking, including the protection of victims. Roma integration policies have been developed in certain States. These plans are far from comprehensive in some instances, while others have an extremely wide scope with little information on actual implementation plans. Furthermore, little or insufficient funding is allocated to such plans, and monitoring and evaluation mechanisms are insufficient or non-existent.

20. There are very few dedicated bodies responsible for violence against women, with most institutions on gender equality. Some States have specific institutional bodies to deal with particular manifestations of violence, primarily with regard to human trafficking and less commonly domestic violence. Protocols for police units have been set up to try to ensure uniform standards. However, these are not always effective. The institutions, whether ministry, department, agency or parliamentary Committee, which are responsible for gender equality and/or violence against women, vary in different States.

21. While there are policy and programmes set up, including for police, health services, and justice officials, these are rarely implemented effectively. Many policies mandate the cooperation of different State organs responsible for addressing violence against women, but these organs do not collaborate substantively at the national or local levels. Institutions have overlapping obligations and capacities which often create confusion, and furthermore

exchange of information between the different institutions is poor. Victims of violence have to navigate what is often quite a bewildering system and are rarely provided with the needed support to do so.

22. Shelters and other institutions such as centres for social work focus on encouraging family reconciliation and are ill-equipped to deal with the numerous forms of violence. Some States in Central and South-eastern Europe have centres for social work, whose primary responsibility is to provide front-line services to victims of violence. However, staff at these centres are poorly trained and operate a family-centred, social welfare approach. They promote mediation in situations of violence, fail to report violence, and fail to provide adequate safety measures.

23. Police fail to comply with the obligations set out in national legislation and policy; promoting mediation, failing to record complaints, making dual arrests, and failing to investigate or prosecute crimes. The same is often true for court officials and health and social workers. Frontline services within the justice system, including emergency or interim protection orders, are rarely available to victims. Monitoring and evaluation of policies, funding allocations, governmental programmes and implementation of legislation is very rarely undertaken. Where it is undertaken, it is neither participatory nor meaningful, and it is not used to analyse and improve mechanisms and laws. There is an overall lack of accountability in State systems, with almost no sanctions for State officials who breach their obligations.

24. States have allocated funding for some awareness-raising efforts, and have also sought to ensure the engagement of NGOs in this work. However, the impact of these policies has not yet been adequately assessed and in most places, the attitude of society in general remains patriarchal.

25. There is insufficient funding provided by States for services, preventive programmes, financial assistance and other resources for addressing violence against women. Those services that are provided for by the State, especially State clinics and centres for social work, are often underfunded, and specific budget lines for violence against women are not provided. There is not enough funding provided to build the capacity of institutions or to train State officials such as police officers and judges to meet their obligations. Budgeting for violence against women is often delegated to local authorities. The financial crisis has led to an increase in cuts to funding for welfare services generally, but particularly for addressing violence against women. There is no current mechanism that can be used to highlight or address the impact of such funding cuts/austerity measures - in a context where funding allocation was insufficient to start with.

#### **4. Data collection and analysis**

26. There are insufficient data collection systems in place. Some States are beginning to collect data on violence against women but overall there is still a lack of information on the numerous forms and prevalence of different types of violence that exists. Data that is collected focuses in particular on domestic violence and intimate partner violence, leaving other manifestations of violence against women invisible, including sexual harassment and rape. Gender disaggregation or disaggregation on the basis of membership of a vulnerable group is rare. Data tends to focus mostly on prevalence rates, and there are no State-sponsored studies on the attitudes, behaviours and experiences of victims. Methods of data collection fall below acceptable standards, including interviewing women while third parties are present. Data analysis is often poor, highlighting selective statistics such as the number of cases resulting in conviction, without comparison to the number of reported cases. The impact of interventions and the implementation of laws and policies is not generally monitored and evaluated.

## 5. Service provision

27. There has been an increase in cooperation between State bodies and NGOs, but work still needs to be done to ensure a coordinated and holistic response. Nevertheless, the vast majority of effective front-line services provided to women in the region are provided by NGOs. NGOs are the primary providers of shelter, psychological counselling, toll-free helplines and self-help groups, and legal aid. Hotlines are common throughout the region, but are operated by NGOs and are not available 24/7. This work is funded primarily by external donor funding and is project-based and not sustainable in the long term. Where States do support NGO efforts, it is often on a small financial scale and is often perceived as money being given in return for control over the activities of such organizations. Minimum standards for the provision of services do not exist; there are insufficient shelters, advocacy and counselling centres, and specialist rape crisis centres. Long-term support for victims is non-existent.

## 6. Assessment of fulfilment of due diligence standards

28. With regard to promotion of the right to be free from violence, States in the region have signed many of the key international and European conventions, demonstrating political will to deal with the issue. Constitutions provide for equality before the law for men and women, penal codes address violence against women, and laws and policies addressing specific forms of violence have been promulgated. However, States in the region demonstrate strong familial and protectionist attitudes, which make it difficult for women to realize their individual human rights. States, and in particular federal States, sometimes fail to respond to and prevent violence by delegating their obligations to local authorities.

29. Legislation prohibiting violence against women is often very specific, dealing with domestic violence and trafficking, and fails to deal with other forms of violence or address linkages between violence and other systems of oppression. While States have made efforts to set out laws, policies, protocols and institutions to address domestic violence and trafficking, these are often not implemented or funded appropriately. Other forms of violence have not been addressed through specific laws and policies. There is inadequate data collection on violence against women to allow for protection and prevention measures to be designed and implemented properly.

30. States are not exercising due diligence to investigate and prosecute acts of violence against women. Police often refuse to record complaints and attempt to persuade the victim to mediate/conciliate with the perpetrator. It is becoming a common practice for police to arrest and prosecute both the victim and the perpetrator. Police do not use proper investigatory techniques to examine and prosecute charges, often relying on victim testimony and forcing victims to drive the investigative process. Prosecutions effected are often for minor crimes or misdemeanours rather than other possible more serious charges, and prosecution is often by private suit. Programmes and protocols for the investigation of acts of violence are not implemented. At the institutional level, there is a lack of investigation and accountability for State officials' failure to address violence against women. Institutional mechanisms are not sufficiently independent or funded to provide effective oversight.

31. States are largely failing to provide protection and prevention services. Much of the service provision and awareness-raising effort has been undertaken by NGOs, largely funded by external donors. Where services are provided, a family welfare/protectionist approach is adopted, instead of a human rights approach. State-run services are provided by a range of overlapping institutions, leading to inefficiency and confusion. Staff at Centres for Social Work and other State institutions are insufficiently trained and largely promote mediation and reconciliation, thereby further endangering victims. A move towards gender-



neutrality in the region has meant that specific services for women victims of violence are declining.

32. While protection orders are theoretically available across the region, it is often difficult for victims to access them, with judges also promoting mediation instead. Where protection orders are granted, they are done so after some delay, despite the urgent need for protection. When protection orders are breached, the State fails to respond timeously and effectively. If breaches are acted upon, they result in suspended sentences, warnings or perpetrator programmes, rather than further protection for victims to ensure safety.

33. With regard to punishment for violence against women, there are laws criminalizing most forms of violence against women across the region. However, inappropriately low sentences, including warnings and suspended sentences or anger management programmes for serious acts of violence, are often provided in law and in practice. The justice system places inappropriate pressure on victims, through scrutinizing their testimony rather than looking for other supporting evidence, blaming them, and forcing them to mediate or rebuild relationships with perpetrators.

34. Provision of reparations to victims is minimal in some States and is generally insufficient. Yet resources are allocated to male perpetrator programmes, at the expense of addressing victims' needs. The provision of compensation in most instances, in practice, requires the victim to go through a separate, expensive civil process to recover monetary compensation from the perpetrator himself, who often has no money or independent resources.

## **C. Pacific Islands Consultation**

35. The meeting was held in Fiji from 27 to 28 January 2013.

### **1. General context**

36. Violence against women in the Pacific Islands region occurs in the context of strongly patriarchal societies with a resurgence of societal conservatism, leading to increased silencing of victims. Many women live in close-knit, small communities and reporting violence and pursuing legal and other remedies is particularly difficult. Victims face stigmatization as well as constant pressure from the perpetrator or his friends and family. This leads to very low reporting rates, whether in respect of domestic violence, rape or sexual harassment, *inter alia*.

37. Women in the region are largely in a fragile economic position, bearing the brunt of unemployment and increasingly without access to resources, including rights to land. Vulnerable women in the region include women with disabilities, and women who face harassment and discrimination from both public and private sources, due to their sexual orientation and/or gender identity. For women living in rural areas in the region, there are minimal government services such as police, courts, or health services. They are at significant risk of violence but also of impunity in the face of such violence. In many States women have limited access to the legislature or the executive authorities, making it significantly harder for them to advocate for needed reforms in laws and policies.

38. In some States, customary law is the primary source of law in rural areas. There are States where women cannot own land. Even in matrilineal contexts, women are less likely to own land, despite past practices to the contrary. Bigamy is a criminal offence in most States, and some States prohibit adultery and abortion. Most States have a minimum age for marriage of either 16 or 18, and, in theory, laws provide for equal division of property after divorce.

39. A positive development in the region is the existence of extremely strong networks, both intergovernmentally and in terms of cooperation between NGOs in different States. Institutions such as the Pacific Regional Rights Resource Team, the Pacific Prevention of Domestic Violence Programme, United Nations agencies, the Secretariat of the Pacific Community, and the Melanesian Spearhead Group have a significant impact on the development of capacity within States and also in terms of information-sharing between States. NGOs also work within a range of networks to share information and expertise across the region.

## **2. Manifestations of violence against women**

40. The primary manifestation of violence against women in the Pacific region is domestic violence, which is common to all States and increasing in prevalence and severity. This violence includes intimate partner violence to a large extent, but there has also been an increase in child abuse, sexual assault and incest, which is reflected in the high number of pregnancies amongst girls. Rape, including marital rape, and sexual harassment are growing problems. There are some concerns about sex tourism in the region, as well as a rise in prostitution. It was stated that this increase is partly driven by the demands of expatriate workers in the extractive and other industries. This has led to an increase in sex trafficking, whereby women are trafficked into the Pacific Islands to provide services for foreign workers.

41. Recent family violence surveys have highlighted the problem of domestic violence and intimate partner violence in particular, thus resulting in responses by many States. The development of legislation and protocols to deal with these forms of violence against women has also included a focus on child abuse, including incest. However, other forms of violence, including rape and sexual harassment, receive less attention, despite an increase in prevalence.

## **3. Law, policy and institutional responses**

42. States across the region have ratified the Convention on the Rights of the Child, and most have ratified the Convention on the Elimination of All Forms of Discrimination against Women. While a few States have ratified or signed the International Covenant on Civil and Political Rights, most have not, and have not acceded to the Convention against Torture or the International Covenant on Economic, Social and Cultural Rights. However, international law obligations require an additional step of domestication at the national level in the majority of Pacific Islands States. This is very rare and results in States not meeting their international law commitments.

43. Some States do have provisions in their constitutions regarding equality and/or non-discrimination rights, but in most instances discrimination on the grounds of sex is not explicitly forbidden. Many States have included provisions concerning the prohibition of slavery, forced labour, and torture and inhumane treatment. Some provide for guarantees to the right to life, personal liberty, health care, education, legal services and due process. Many States have explicit provisions guaranteeing the right to recognition and practice of custom and tradition, including customary law.

44. The criminal codes of all States prohibit offences against the person, including assault and battery, bodily harm and murder. In a few States there is legislation specific to domestic violence, both criminalizing violence and streamlining processes for applications for restraining orders and injunctions. These laws set out the duties of official bodies, as well as strengthen the remedies that courts can order. For those States without specific laws on violence against women, restraining orders can be obtained through the use of other laws. Often this is time consuming and expensive, and is applicable to certain relationships/status of relationships only, for example the breakdown of a marriage. There

are draft laws dealing with domestic violence in some States, demonstrating the political will to increase protection against domestic violence. However some of these draft laws have been in existence for a long time (up to five years in one instance).

45. Rape and other sexual offences are prohibited across all States. Rape is defined narrowly in some States, although there is a gradual move to more inclusive definitions of rape, including non-penile penetration and penetration other than vaginal. Marital rape is not criminalized in any of the countries. Most States have statutory rape laws in respect of young children, and some have offences of rape and other sexual assaults against teenagers. Prostitution, pimping, trafficking and other forms of crimes “against morality” are prohibited across the region and a few States do have specific human trafficking legislation. Most States do not prohibit sexual harassment, and those that do only have civil law remedies for violations. In many States, customs and traditions are expressly taken into account when determining the guilt and sentencing of perpetrators, and this often leads to significant reductions in sentences.

46. In a number of States there are specific provisions in the criminal code placing a legal duty of support on those who have charge of persons who cannot support themselves, including (presumably) support for spouses and children. The law provides for specific offences of neglect and failing to provide necessities. However, prosecution and penalties for such violations are extremely low.

47. There is generally political will to improve legislative and policy measures for addressing violence against women, but some States are failing to take the lead on drafting laws and policies, and this is placing significant burdens on NGOs to draft and cost laws. States in the region have taken steps towards establishing decrees, regulations and protocols as regards violence against women. In many States, there is a no-drop policy for domestic violence cases and a few have first response protocols for health and police workers. In certain States “zero tolerance” zones have been established, but contrary to the stated intention, this has led to victims being actively discouraged from reporting, rather than complaints being taken more seriously. Overall, there are minimal or mostly informal regulations providing guidance to officials and service providers, usually with NGOs providing such guidance.

48. There exist in some States National Plans of Action which broadly address women and development and/or gender equality, with many including violence against women as a subsection of the overall policy. Only one State has a specific national plan on violence against women. Most of these plans are extremely broad and are not targeted to specific intervention. Also there is no money provided for their implementation, and no monitoring and evaluation provisions are included. Ministries and departments that are mandated to implement these plans do not have the human and financial resources for effective implementation; some are corrupt and inefficient; and their focus is often on formal compliance, rather than on developing sustainable and meaningful interventions.

49. With regard to both national plans and national policies, there is a lack of access to information. This makes it difficult for civil society to be involved in implementation and/or to assess and monitor compliance. Criticisms include: that such plans and policies are not drawn up in a participatory and consultative manner with NGOs, they are not always gender-sensitive, and often do not deal with violence against women with any kind of specificity. However, some States are working with NGOs to develop programmes, primarily on awareness-raising initiatives, to address violence.

50. There is a lack of a coordinated and multi-sectoral approach to violence. Police units, including those set up to deal with violence against women, are underfunded and only work at certain times. There is insufficient training for public officials at all levels. Prosecutors have insufficient training, and despite no-drop policies, they rarely prosecute

violence. When such cases are prosecuted, they are primarily brought in lower courts with limited sentencing authority. The prosecution services can, and do, decide in many instances, to drop cases. Women cannot afford to lodge private prosecution cases. Magistrates are poorly trained both in the law and on violence against women, and often push for reconciliation in such cases. Mitigating circumstances, based on both law and custom, are used commonly and inappropriately to lower sentences for perpetrators. Protection orders are rarely granted, and magistrates and judges demonstrate patriarchal views and perpetuate victim-blaming and victim-shaming stereotypes. International law and international norms are used rarely, and where cited, the focus is primarily on providing for the protection rights of children, rather than for women. Transportation for women in geographically remote areas is expensive and is not provided for by the State. Multi-sectoral coordination is weak to start with, and this is exacerbated by the geographical complexities of the countries in the Pacific region.

51. There are insufficient State resources allocated to implement laws and policies on violence against women, and thus the majority of resources emanate from technical assistance programmes, and other resources from foreign donor funds. These sources of funding are increasingly diminishing. Some States have made efforts to train public officials on the nature and consequences of violence against women, including the police, judiciary, lawyers, and health workers. However, most training programmes have been initiated by NGOs. Some States have attempted to develop referral networks that incorporate or build on the work of NGOs, and there are increasingly positive working relationships being built between States and NGOs across the region.

52. Numerous criticisms were raised in respect of insufficient consultation by States and also by international organizations. It was argued that there was selectivity in who was included in meetings and consultations, who had access to information, and who received funding. The view was that the functioning of United Nations agencies sometimes resulted in creating divisions and competition amongst local NGOs. Also some United Nations agencies were seen as competing in programmatic activities, and also for donor funds, as opposed to collaborating and supporting NGO work in the region.

#### **4. Data collection and analysis**

53. Across the region Family Health and Safety Surveys have been and are still being undertaken. These studies, often undertaken in partnership with governments and local bureaus of statistics, are primarily funded by external international donors. They have highlighted the high prevalence rates of violence against women in the region, as well as the attitudes, behaviours and experiences of women, men and young people. The surveys do not address the social and economic costs of violence against women, the impact of interventions, or whether the State is meeting its obligations in addressing such violence.

54. The surveys have provided significant momentum for activists, NGOs and others to push for increased legislative and other support for victims of domestic violence, and in particular intimate partner violence. However, the surveys focus on family health and safety aspects. This means that many other forms of violence, including rape, sexual harassment and violence outside the home are not analysed or addressed. Furthermore, there have been some problems with the administration of the surveys in certain States, particularly where the World Health Organization (WHO) framework was disregarded, and some researchers were themselves subjected to violence.

55. It was found that data collection by service providers, including the police, hospitals and the court system, is extremely poor. It was also found that data that is collected is not generally made public, thus making it extremely difficult to design policies and programmes and to monitor the impact of interventions in a participatory and inclusive manner which includes the input of NGOs.

## 5. Service provision

56. Frontline services provided by the police in the Pacific region are inadequate. Despite official no-drop policies on domestic violence in some countries, not only do police fail to register complaints, they also fail to investigate reports of violence, drop cases due to a lack of evidence, encourage “reconciliation” with perpetrators, fail to exercise powers to arrest the perpetrator, and fail to assist victims as regards their safety needs. There are also significant problems with corruption. Police across the region encourage male perpetrators to apply for protection orders, in order to pre-empt complaints of domestic violence by women, and also to use such protection orders as a coercive tool in relationships. Yet they fail to apply for, serve or enforce protective orders for victims. Victims are sometimes arrested and intimidated when reporting violence.

57. In a range of cases of violence against women, police fail to provide a confidential and safe environment for reporting, fail to investigate reports, and often abrogate their responsibility, by referring victims directly to NGOs. Specialist units set up to deal with violence against women often only operate during working hours and staff are insufficiently trained and have access to limited resources.

58. In the region, NGOs provide a significant proportion of the services provided to victims, including shelter, counselling and legal advice. In a number of States, NGOs are the primary if not the only providers of such services. Some States work collaboratively with NGOs to provide basic support as regards frontline services, despite initial reservations regarding working with NGOs. However, NGOs obtain most of their funding from external donors. Despite the strength of many of the NGOs and their provision of advocacy and counselling services, minimum service provisions are not being met. There are insufficient hotlines, shelters, and counselling services available. In particular, long-term support is very rare. Health care is provided by the State in most cases but is not sufficient, and doctors rarely refer victims to other service providers. Access to reproductive and sexual health services is often particularly problematic.

59. The geographical challenges faced by States in the region mean that even if services were to be provided to the minimum standards as per population demographics, they would be unlikely to reach all women. Many women, particularly on outer islands, are isolated from almost all services, including the police and courts, and cannot access services provided by the State or NGOs. Such law as is applied in these regions is primarily customary. Some States and NGOs in the region have started to establish committees or authorized persons in remote locations to whom victims can turn, but the implementation of this is yet to be properly realized. Against this background, NGOs, both national and regional, and intergovernmental organizations have put significant resources and long-term advocacy into community mobilization and awareness-raising initiatives. There has been some similar input by the State in certain circumstances, but this input has primarily relied on the existing advocacy of NGOs and activists. Initiatives include the provision of training to local activists to provide focal points in local communities, and the development of educational curricula in schools. NGOs are also seeking to engage with religious leaders to encourage community sensitization.

## 6. Assessment of fulfilment of due diligence standards

60. In most States, the general criminal code is insufficient to deal with violence against women, and legislation to deal with specific types of violence, including domestic violence, is just beginning to emerge across the region. Recent legislative developments in some States include a specific focus on domestic violence, including for the provision of access to protection orders. However the lack of training of State service providers to implement such legislation has resulted in difficulties in obtaining protection orders. Also, the lack of support in going through the process, and financial and other costs, are a barrier to access.

Furthermore, if granted, enforcement and violations are not effectively addressed by the justice system. Despite positive legislative developments, the protectionist approach to violence against women, as opposed to a human rights approach, is leading to problems in addressing victim safety and offender accountability. The lack of monitoring and evaluation of laws and policies across the region does not allow for an analysis of effectiveness.

61. Despite positive law and policy developments, this is not accompanied by awareness or education on rights and remedies, so women are often not aware of the developments. Minimal community awareness of the obligations of State providers has led to a lack of accountability demands at the community level. While there are a range of national complaints and oversight mechanisms, including ombudspersons and commissions, these are not sufficiently funded to provide advice and information or to address violations. The issue of functional independence was also raised as an issue that impacts effective functioning of such mechanisms.

62. As regards prevention, in some areas across the Pacific Islands, there is limited access to services, including counselling, shelter, and police and court services; often due to geographic realities. Women's economic dependency on perpetrators, due largely to unpaid labour, is further exacerbated as they struggle to access support/maintenance payments, within a justice system that is not responsive to the consequences of such dependency.

63. In terms of protection, the police and prosecution services were accused of failing to investigate reports of violence, either due to corruption within the system, protection of known offenders, or because of cultural attitudes that fail to recognize violence against women as a crime. When these systems do respond, insensitivity and inappropriate investigations are the norm. There are insufficient accountability measures in the police and other institutions to prevent corruption and inefficiency. Victims are often pressured into reconciliation or cases are prosecuted as minor offences. Sentences for domestic violence offences are low, and mitigating factors are used to lower sentences.

64. The lack of substantive individual or collective reparations, legal aid or State-sponsored counselling, health and other services, is the reality in many States. When reparation is ordered, it is in lieu of punishment, and is often minimal.

## **D. Sub-Saharan Africa Consultations**

65. The Special Rapporteur attended meetings hosted by different organizations which were held in South Africa from 8 to 9 December 2011 and in Uganda from 2 to 3 April 2012.

### **1. General context**

66. Patriarchal stereotypes and attitudes are prevalent across the region. In family and personal law, men are often considered the head of the household, with women being primary caregivers of children. In most States, customary and religious law regimes exist in respect of personal and family law, and these are often interpreted and applied in discriminatory ways. Marital rape is explicitly criminalized in some States. The minimum statutory age for marriage is found in some States' laws, and can range between 15 and 21 years. Polygamy is permitted in most States, with some States regulating this practice. Some States have legislation which grants men and women equal rights in marriage, inheritance rights, the equal distribution of property after divorce, and the right to contract and execute deeds without the consent of the husband.

67. Despite legislative provisions in some States, in practice women are not granted rights to equal inheritance, including property and other resources. A husband and sometimes a father's permission is required before women can exercise their rights to

freedom of movement and contract. Bride price is a common practice and is sometimes interpreted as women being the “property” of the husband. Early marriage is common across the region, as are polygamy, widow inheritance and discriminatory widowhood rights.

68. Women in the region mostly live in poverty, and are often economically dependent on male members of the family. Often, they face discrimination and violence in both the formal and informal economy. Particularly vulnerable groups include: heads of households, internally displaced persons, refugees, rural women, children heading households, women with disabilities, elderly women, women who are HIV positive and lesbian women. Women face difficulties in accessing education and health-care services, leading to diminished life expectancy, high maternal mortality, and high rates of HIV/AIDS infection.

69. Some States in the region have experienced significant unrest and conflict, and violence against women has been perpetrated both by State and non-State actors. The gravity and scale of some forms of violence perpetrated in the region, whether in terms of sexual violence in conflict, or violence in peacetime, reflects a continuum of violence that is underpinned by discrimination and inequality.

## **2. Manifestations of violence against women**

70. Different forms of violence exist across the region, with domestic violence being the most prevalent form. Such violence is often of a severe nature, and is condoned by societal attitudes, and justified through the use of cultural and religious defences. Sexual violence, including rape, sexual abuse and incest, is a problem throughout the region. Sexual violence in schools is a particularly pervasive issue in some States, and this is reflected in the teenage pregnancy statistics and also the HIV/AIDS rates amongst young women. Sexual harassment, prostitution, sexual exploitation and trafficking across the region appear to be on the rise. Female genital mutilation and violence against women labelled as “witches” is also a problem in some countries. The abandonment and neglect of young wives is problematic in some States. In a number of States, chastisement of wives by husbands is still legal.

## **3. Law, policy and institutional responses**

71. States in the region have ratified the key international conventions, particularly the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Most States have also ratified the Maputo Protocol to the African Charter, and some States in Southern Africa have signed the Southern African Development Community (SADC) Protocol on Gender and Development. However in many States, international law does not have direct effect, and in such instances States have not fully domesticated their international obligations.

72. Many States have incorporated constitutional rights to equality and/or non-discrimination on the grounds of sex and gender. In some instances, de jure and de facto inequality and discrimination is permitted through the exemption of such provisions in personal status/family laws which emanate from customary and religious laws. This is despite the fact that in many instances there is a clear articulation that marriage is based on free and full consent, and that the right to equality in marriage is guaranteed. Some States also guarantee socioeconomic rights, including access to health and education rights.

73. Constitutions provide for a range of rights, including human dignity, freedom, the right to be free from torture and inhuman treatment, the right to personal liberty, physical and mental integrity, and the prohibition of slavery. There is an increasing trend for domestic violence to be covered by specific legislation, empowering courts to grant protection orders and also criminalize acts of domestic violence. In some instances, the

nature of the relationship between the perpetrator and the victim is broadly defined, thereby recognizing relationships other than those linked to intimate partners. Some States prohibit harmful customary practices. Some laws provide for a wide range of obligations, including those related to the powers and duties of the police. Some States have legislation which goes beyond domestic violence and covers other forms of violence against women, while other States rely solely on provisions of the penal code to address all forms of violence against women. States have begun to improve criminal procedures, allowing cases to be held in camera, abolishing corroboration requirements and preventing cross examination on previous sexual history. Often progressive laws are drafted with significant input from NGOs and international agencies, thereby reflecting international best practices.

74. There is specific legislation regarding human trafficking in many States, with some States including this in their penal codes. There are very few States that have no specific legislative provisions on trafficking. Prostitution and other forms of sexual exploitation are often prohibited in the region. In many States, sexual harassment is prohibited under employment legislation, and is considered misconduct and criminalized in some instances. Rape is prohibited across all States, with definitions ranging broadly from coercive circumstances to narrow and outdated definitions, including the requirement of penile penetration. New legislation emerging in the region reflects international developments as regards definitions including gender-neutral forms of the offence. Other sexual offences, including sexual and indecent assault, attempted rape, abduction, defilement, indecent assault and incest, are criminalized across the region. Specific harmful practices are also forbidden in some instances. Female Genital Mutilation (FGM) is prohibited in a few States, sometimes only applying to girls under the age of 18.

75. Effective implementation of laws is a challenge in many States. The investigation, prosecution, conviction and punishment of violence against women is extremely rare across the region. Domestic violence in particular is rarely prosecuted, and rape cases often do not result in convictions. Despite progressive laws, the prosecution and conviction rates are low and sentences for perpetrators of domestic and sexual violence are generally quite low. Some States have begun to increase sentences for sexual offences, and have commendably removed provisions on immunity for military officials. Also, the inclusion of the HIV status of the perpetrator of sexual violence is considered an aggravating factor in some States. Legal remedies are inaccessible to victims for a variety of reasons including costs, courts are often inaccessible, particularly for rural women, and there is a lack of staff or resources to provide the remedies guaranteed in law. Even when relief is granted by the courts, compliance is a barrier that prevents effective redress. Customary courts, when implementing laws which are often discriminatory, continue to perpetuate stereotypes, and sometimes deny access to remedies to women.

76. Some States have national policies, action plans and programmes, including on equality, domestic violence, trafficking, HIV/AIDS, or on preventing and responding to gender-based violence. The trend however, is a primary focus on the advancement of gender equality, of which violence against women is one element. In a number of States, intersectoral obligations exist across a range of ministries, to deal with gender equality broadly and violence against women in particular. Notably provisions for referral between the police and the health sector are increasing. Ministries in many States provide training for a range of stakeholders, including those in law enforcement, the judiciary, health and education, community leaders, and women and girls. Many of these policies were developed with significant support and collaboration from NGOs and international organizations.

77. There are ministries and or departments that deal with gender or women in the majority of States. However, in many of these, the ministries are understaffed, under-resourced and have insufficient capacity to carry out the tasks allocated to them.



Furthermore, some State ministries reflect a welfare and patriarchal approach in addressing violence against women. Some States have committees and national agencies that deal with violence against women, some of which include collaborations between civil society and government.

78. There exist different oversight mechanisms, including human rights/gender commissions, ombudspersons, and women's observatories in the region. Some of these are independent, under the terms of the Paris Principles relating to the Status of National Institutions. Many suffer from a lack of funding and support from the State, and some have been politicized through appointment processes.

79. There have been a range of awareness-raising initiatives by governments, often collaboratively with NGOs and the media. In many States, governments actively participate in the 16 Days of Activism Against Gender Violence Campaign. Some States have run campaigns encouraging women to stand for public office, including Parliament. These initiatives have met with some success in some States.

#### **4. Data collection and analysis**

80. Many States rely on NGOs and international agencies to provide them with data regarding the prevalence and forms of violence. Some States have set up data collection units and databases in ministries, as well as in the courts and the police services. Some data has provided an accurate reflection of the prevalence of different forms of violence and the attitudes of different stakeholders, but it does not assess the impact of violence against women holistically or the impact of the measures implemented.

#### **5. Service provision**

81. Incidents of violence against women that are reported to the police are not reflective of the actual prevalence thereof, due to the stigmatization of victims of many forms of violence, tacit acceptance of violence in the community, and the fact that frontline services are not readily accessible for victims. States in the region rely heavily on the provision of services by NGOs and by international agencies. NGOs are providing most of the services available to victims of violence against women in many States, including counselling, training, advocacy and outreach, and shelter. This is provided on the basis of aid from external funders. Often such services do not meet the needs, do not subscribe to minimum standards, and are rarely long term and holistic. Legal aid is provided by some States, but is often insufficient and/or of poor quality; and many States rely on NGOs or pro bono lawyers to provide such assistance. There are some examples of States providing one-stop shops, toll-free helplines, and some psychosocial support. However, these programmes are often underfunded and are unable to provide support 24/7.

82. In many States there are specialized units in the police to deal with violence against women, through victim support units or desks, particularly for women and children. These units are insufficiently funded, and officials are poorly trained. Reporting of violence takes place in public and non-confidential spaces. Police fail to record complaints of violence, and perpetuate patriarchal stereotypes, failing to believe victims and telling them to go home, and actively encouraging withdrawals of cases. If cases are pursued, police encourage mediation and reconciliation. In certain instances, there are concerns about police violence, as well as with corruption in dealing with cases.

#### **6. Assessment of fulfilment of due diligence standards**

83. Despite significant awareness-raising activities, which are largely driven by NGOs and international organizations, legal literacy is low; and negative societal attitudes as regards women's human rights continue to impact prevalence rates of violence against

women. States in the region largely condone cultural practices that discriminate and perpetuate violence against women, both through the lack of legislation and also due to a lack of enforcement of existing legislation. Within the sphere of personal law, States' condoning of harmful customary practices means that many women are left without protection in the areas of early marriage, economic dependence, polygyny and widow inheritance.

84. Existing legislation in many States does not provide sufficient penalties for violence against women generally, including rape, Female Genital Mutilation (FGM), witchcraft violence and other forms of customary violence. There are specialized units in the police in most States, but these are insufficiently funded. Reporting violence takes place in public spaces with no privacy. Police fail to fulfil their obligations. Hence investigation and prosecution of violence is rare. Police brutality and violence, as well as widespread corruption are the norm in some States. Courts rarely grant protection orders, and if they do so, these are rarely served on perpetrators, leaving women without protection. Furthermore, courts lack the staff or resources to provide the remedies guaranteed in law. Sentences for perpetrators of domestic and sexual violence are generally quite low. As discussed above, some States have begun to increase sentences for sexual offences. Also, there is insufficient legal aid for victims for access to justice. Health-care providers in some instances display discriminatory attitudes towards women who have been victims of violence. Approaching the State for protection in the face of violence is a challenge for many women in the region.

85. Most States rely on NGOs as the primary source of services to victims of violence. A few States provide some services, including one-stop shops, helplines and psychological support, but most fall below minimal requirements for effective redress, and are reliant on external funding.

86. The unstable political situation in some States, which often culminates in unrest and conflict, has left women without protection from the State, and also at risk of direct violence from State actors.

87. Reparations for victims of violence are extremely rare. While in some instances civil damages are available, the legal costs of such applications are prohibitive and victims are rarely aware of the possibility. Generally remedies are not transformative or sustainable.

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