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Human Rights

Study on the extent of violence against indigenous women and girls in terms of article 22 (2) of the UN Declaration on the Rights of Indigenous Peoples²

Note by the secretariat

Pursuant to a decision of the Permanent Forum on Indigenous Issues at its tenth session (see E/2011/43, para. 113), Eva Biaudet, Megan Davis, Helen Kaljuläte and Valmaine Toki³, members of the Forum, undertake a study on the extent of violence against indigenous women and girls in terms of article 22 (2) of the Declaration, which is hereby submitted to the Forum at its twelfth session.

¹ E/C.19/2012/1

² The Department of Economic and Social Affairs bears no responsibility for the views and recommendations in this report.

³ The authors wish to thank Permanent Forum member, Mirna Cunningham for her contribution to this report, and would also like to acknowledge Camille Webb-Gannon from University of New South Wales, Rauna Kuokkanen from University of Toronto and Tove Holmström, for their research and editorial assistance.

Advanced Unedited Version

I. Introduction

1. Despite international declarations and conventions on violence against women and the vast literature analysing the phenomenon as well as recommendations for countering such violence in general, there is far less material published about violence against indigenous women and girls specifically and the ways in which indigenous women explain and understand violence. Given this lacuna, this study pays particular attention to article 22 (2) of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) focusing on the rights and special needs of indigenous women and girls. The UN Declaration as well as this study, calls upon States to adopt measures, in conjunction with indigenous peoples, to ensure that indigenous women and girls enjoy protection and guarantees against all forms violence and discrimination. This study adopts as a framework the *Handbook for Legislation on Violence Against Women* as well as the recommendations of the Permanent Forum on Indigenous Issues regarding this pandemic.⁴ It canvases the extent and nature of violence against indigenous women and girls across the world and concludes by emphasising the importance of States working with indigenous peoples to adopt measures to eliminate all forms of violence against indigenous women and girls.

⁴ Permanent Forum on Indigenous Issues, Combating Violence Against Indigenous Women and Girls: Article 22 of the United Nations Declaration on the Rights of Indigenous Peoples: Report of the Expert Group Meeting, UN ESC, 11th sess, Provisional Agenda Item 3, UN Doc E/C.19/2012/6 (28 February 2012).

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2. The term ‘violence against women’ refers to “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.⁵ It “is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”.⁶

3. Many States have put in place legal, regulatory and institutional frameworks to combat violence against women, and have worked to improve coordination between different stakeholders. Best practice guidelines have been identified by the UN (such as the Handbook for Legislation on Violence Against Women),⁷ intended for member States to emulate as a basis for formulating and implementing better laws, policies and programs. Nevertheless, comprehensive implementation of legal and regulatory frameworks as well as best practice guidelines has not occurred in all jurisdictions. Therefore, the UN General Assembly has recognised that initiatives undertaken by member States to eliminate violence against women must be strengthened to ensure that they are systematic and sustained, and cover all groups of women including indigenous women.⁸

II. The multifaceted nature of violence against indigenous women

4. Article 22 (2) of UNDRIP is important because it is an indigenous women-specific provision in international law targeting member States as

⁵ Declaration on the Elimination of Violence Against Women, GA Res 48/104, UN AOR, 48th sess, Supp No 49 at 217, UN Doc A/48/49 (1993) art 1.

⁶ Committee on the Elimination of All Forms of Discrimination Against Women, General Recommendation 19: Violence Against Women, 11th sess (1992), UN Doc A/47/38 (1993) para 1.

⁷ Division for the Advancement of Women, Department of Economic and Social Affairs, United Nations, Handbook for Legislation on Violence Against Women (2010) <<http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>>.

⁸ Ibid.

Advanced Unedited Version

integral partners for combating violence and discrimination against indigenous women and children. Scant analysis concerning article 22 (2) has been published. In 2012 the Permanent Forum's Expert Group Meeting produced the first global report based on elaborating the meaning of article 22(2). This study also aims to contribute to a better understanding of Article 22 (2) by explaining the various ways in which indigenous women and girls experience violence. Violence is not only perpetrated within the home or community; it is not only experienced as 'traditional' or 'customary' violence or even interpersonal violence; it also includes violence by the State and within the private sector. Violence experienced by indigenous women and girls "def[ies] simple categorisation".⁹ Additionally, indigenous women and girl's experience of violence is often compounded by dual discrimination based on race and gender, particularly when they seek to take action to redress the violence.¹⁰

5. Indigenous women and girls encounter violence in two key domains: both within their communities (such violence might be linked to traditions and customs, and may affect women and girl's health, sexuality, or freedom of movement); and outside of their home/community environments (such violence may be sexual or otherwise physical, or may be structural and committed by public officials).¹¹ Indigenous women have contended that violence against women is any act of violence committed against them because of their gender

⁹ Harry Blagg, Crime, Aboriginality and the Decolonisation of Justice (2008), 139; Kyllie Cripps writes that "It is widely recognised that the naming and defining of violence as it occurs within families has constituted one of the most extensive, ongoing and controversial issues in the discourse on family violence. ... For people outside such professions and discourses, namely those experiencing the violence first-hand, it is not surprising that they often lack the knowledge, language and communicative resources to interpret and apply the names and definitions created in academic and professional discourses to their own experiences": Kyllie Cripps, 'Indigenous Family Violence: Pathways Forward' in N. Purdie, P. Dudgeon and R. Walker (eds), Pathways Forward: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice (Australian Council for Education Research, 2010) 145, 146.

¹⁰ Amnesty International, Violence Against Women, (6 November 2007) <<http://www.amnesty.org/en/campaigns/stop-violence-against-women/issues/implementation-existing-laws/indigenous-women>>.

¹¹ Melissa Lucashenko, 'Violence Against Indigenous Women: Public and Private Dimensions' in Sandy Cook and Judith Bessant (eds), Women's Encounters With Violence: Australian Experiences (Sage Publications, 2007) 147.

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and as a consequence of their historical position within the patriarchal family.¹²

In addition, indigenous women have argued that violence against women and girls is a phenomenon that should be analysed in a broader structural context, particularly with regard to the impact of colonisation.¹³

6. Several common themes and considerations reoccur in the literature with respect to causes and correlates of violence against indigenous women:

- a) Violence against indigenous women and girls is multi-faceted in nature and cannot be separated from colonisation. This includes the violence inflicted on women and girls during historical processes of colonisation, and violence that stems from the ongoing impact of colonisation including the breakdown of community structures and cultural authority which is a correlate of alcohol and drug-associated violence against indigenous women and girls.¹⁴
- b) Policies based on racism, exclusion and a development approach that are contrary to the principles of indigenous peoples and fundamental human rights are, in many parts of the world, still in place.¹⁵ These policies continue to be implemented by the State as well as through multi-national corporations that operate on indigenous territories and extract resources from indigenous lands. These policies impact detrimentally on

¹² Aboriginal and Torres Strait Islander Women's Task Force on Violence, Aboriginal and Torres Strait Islander Women's Task Force on Violence Report (2000) 31.

¹³ Ibid 46.

¹⁴ Aboriginal and Torres Strait Islander Women's Task Force on Violence Report, above n 10, 58; Paul Memmott et al, Violence in Indigenous Communities, Crime Prevention Branch of the Commonwealth Attorney-General's Department (2001) 12

<www.crimeprevention.gov.au/Publications/.../violenceindigenous.pdf>; Amnesty International, Maze of Injustice (2006) 15

<[¹⁵ Amnesty International, above n 12, 46.](http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&ved=0C C8QFjAC&url=http%3A%2F%2Fwww.amnestyusa.org%2Four-work%2Fissues%2Fwomen-s- rights%2Fviolence-against-women%2Fmaze-of-injustice&ei=AzZQUK- aCeQNiAffq4CQDg&usg=AFQjCNH3YlohKfn8UqXHNusR6Lpv_Y2b9A&sig2=CpZ_ePBGxo UctRfoSrUhWQ>.</p>
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indigenous women and girls.

- c) The problem of violence against indigenous women and girls is not only a question of individual human rights but also of the rights of indigenous peoples and general women's and girl's human rights. The systematic violation of collective rights of indigenous peoples is a major risk factor for gender violence.

III. Women and the United Nations Declaration on the Rights of Indigenous Peoples

7. The UN Declaration specifically mentions indigenous women three times:¹⁶

- Article 21 (2) calls upon states to pay “particular attention” to the “rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the context of special measures to improve economic and social conditions”;
- Article 22 (1) reads as follows: “Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration”; and
- Article 22 (2) declares that: “States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination”.

8. Both article 21 (2) and article 22 (1) emphasise the “rights and special needs” of indigenous women and children. Article 22 (2) expresses in mandatory terms that States “shall” take measures, meaning there is a duty upon States to take active measures to ensure full protection and guarantees against all

¹⁶ Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN GAOR, 61st sess, UN Doc A/RES/47/1 (2007) 9.

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forms of violence and discrimination. The language of “in conjunction with indigenous peoples” reinforces the UN Declaration’s commitment to obtaining free, prior and informed consent from and to working in partnership with indigenous peoples when realising this goal. Article 22 (2) derives from race/indigenous-specific rights and protections as recognised by the International Covenant on Civil and Political Rights (ICCPR),¹⁷ the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)¹⁸ and article 6 of the International Labour Organization’s Convention 169 on Indigenous and Tribal Populations (ILO 169)¹⁹ which establishes an obligation for governments to consult with indigenous peoples when considering measures that will affect them.

9. Article 22 (2) also draws from public international law pertaining to general human rights such as protection from and the elimination of all forms of violence and discrimination. This includes general prohibitions against violence and discrimination contained in the Universal Declaration on Human Rights (UDHR),²⁰ the ICCPR,²¹ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).²² Article 22 (2) is similarly supported by general public international law covering women-specific rights and protections against violence and discrimination,²³ and international law with respect to children-

¹⁷ International Covenant on Civil and Political Rights opened for signature 16 December 1966, arts 6(3) and 20(2). GA Res 2200A (XXI) (entered into force 23 March 1976).

¹⁸ International Convention on the Elimination of All Forms of Racial Discrimination, GA Res 2106 (XX), UN GAOR (21 December 1965) arts 1 and 5.

¹⁹ International Labour Organization Convention (No 169) Concerning Indigenous and Tribal Peoples in Independent Countries, 76th sess, (27 June 1989) arts 2,3,4 and 12.

²⁰ Universal Declaration on Human Rights, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) arts 2,3,5 and 7.

²¹ Above n 15 arts 2(1), 6(1), 7, 9(1) and 26.

²² International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 November 1976) art 2 (2).

²³ ICCPR, above n 15, art 3; Human Rights Committee, General Comment 28: Equality of Rights Between Men and Women (Article 3), 68th sess, UN Doc CCPR/C/21/Rev.1/Add.10 (2000) (replaces General Comment 4); above n 20 ICESCR art 3; Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981) arts 2–3; Committee on the Elimination of All Forms of Discrimination Against Women, General Recommendation 19: Violence Against Women, 11th

Advanced Unedited Version

specific rights and protections.²⁴ Such bodies of law include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),²⁵ the Convention on the Rights of the Child,²⁶ and treaty body commentary including the Committee on the Elimination of All Forms of Discrimination Against Women's General Recommendation 19: Violence Against Women.²⁷

IV. Thematic summaries

10. The following summaries reflect upon many common themes involved in the extensive phenomenon of violence against indigenous women and girls. The aim of these summaries is to provide a general overview of the challenges indigenous women and girls face in responding to violence and to illustrate how endemic violence against indigenous women and girls is in both private and public domains. The summaries, although not exhaustive, canvass different forms of violence against indigenous women and girls: customary and traditional violence; inter-personal and intra-cultural violence; violence with roots in colonisation; sex trafficking; and violence by multi-national corporations (MNCs) and the State including as a consequence of resource exploitation and tourism development. Some of the information included pertains to women and girls within largely indigenous-populated countries generally, rather than to indigenous women and girls specifically in those countries, as data for each often

sess (1992), UN Doc A/47/38 at 1 (1993); Declaration on the Elimination of Violence Against Women, GA Res 48/104, UN GAOR, 48th sess, Supp (No 49) at 217, UN Doc A/48/49 (1993) arts 3–4; Declaration on the Elimination of Discrimination against Women, GA Res 2263, UN GAOR, 22nd sess, UN Doc A/RES/2263 (1967); Elimination of Violence Against Women, Commission on Human Rights Res 2003/45, 59th sess, UN Doc E/CN.4/RES/2003/45 (2003) art 2; Beijing Declaration and Platform of Action, UN Doc A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

²⁴ ICCPR, above n 15, art 24(1); Human Rights Committee, General Comment No 17: Rights of the Child, 35th sess (1989) in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI/GEN/1/Rev.6 at 144 (2003); ICESCR, above n 20, art 10(3); Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) arts 2, 19, 27; Rights of the Child: Revised Draft Resolution, UN GAOR, 61st sess, 3rd Comm, UN Doc A/C.3/61/L.16/Rev.1 (2006).

²⁵ Convention on the Elimination of All Forms of Discrimination Against Women, above n 21.

²⁶ Convention on the Rights of the Child, above n 22.

²⁷ Committee on the Elimination of All Forms of Discrimination Against Women's General Recommendation 19: Violence Against Women, 11th sess (1992), UN Doc A/47/38 at 1(1993).

Advanced Unedited Version

proves difficult to separate. Each type of violence (many of which overlap) will be described, then several international examples of that violence will be given, following which measures implemented by States and communities to combat such violence will be outlined and an assessment of the extent of the problem remaining will be provided.

Interpersonal Violence

11. Instances of physical, emotional and sexual violence against women and girls (usually perpetrated by men) is referred to variously as interpersonal violence, domestic violence and family violence (although these terms have also be used when alluding to other patterns and perpetrators of violence).²⁸ Viewed from a macro perspective, interpersonal violence against women and girls by men and even between women in some cultures is still cultural (rather than purely individually pathological), stemming from a culture of misogyny that is global in its dimensions. Underreporting of such violence is ubiquitous,²⁹ as is internalised sexism by women.³⁰ Violence against women and girls is also a serious public heath concern in indigenous communities. Domestic and sexual violence is associated with acute and chronic health problems among women and girls and harms the mental health of the women and girls, which may further limit their ability to seek safety and access to services.

Assault

12. An indication of the universalism of interpersonal violence against women, particularly indigenous women and girls, can be found in the following statistics and reports. In 2005, the World Health Organization (WHO) found that 50 per cent of women in Tanzania and 71 per cent of women in Ethiopia's rural

²⁸ Cripps, above n 7, 145-6.

²⁹ Fadwa Al-Yaman, Mieke Van Doeland and Michelle Wallis, Family Violence Among Aboriginal and Torres Strait Islander Peoples, Australian Institute of Health and Welfare Canberra (2006), 27 <www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=6442458606>.

³⁰ See Mary Kimani, 'Taking on Violence Against Women in Africa: International Norms, Local Activism Start to Alter Laws, Attitudes' (2007) 21(2) Africa Renewal <<http://www.un.org/ecosocdev/geninfo/afrec/vol21no2/212-violence-against-women.html>>.

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areas reported beatings, or other forms of violence, by husbands or other intimate partners.³¹ In Kenya, “42 percent of 612 women surveyed in one district reported having been beaten by a partner”.³² In Uganda, 41 per cent of women reported being beaten or physically harmed by a partner and in Zimbabwe 32 per cent of 996 women reported physical abuse since the age of 16.³³ In Tonga, women’s complaints of domestic violence have increased.³⁴ However for reasons of shame, particularly when the abuser is of higher rank, there is a code of silence around such abuse.³⁵ Similarly in New Zealand the true levels of violence against Maori women are not known. Notwithstanding this, nearly 20 per cent of Maori women are reported as being assaulted or threatened by an intimate partner, three times the national average.³⁶ In many indigenous communities in the Arctic region, the rate of women who experience violence and take refuge in shelters is higher than the national average.³⁷

Murder

13. In 2003, the Kenyan Attorney General’s office noted that “domestic violence accounted for 47 per cent of all homicides”.³⁸ In South Africa, “one woman is killed by her husband or boyfriend every six hours”.³⁹ In

³¹ Ibid.

³² United Nations Children’s Fund, Domestic Violence Against Women, Innocenti Digest No 6 of 2000, June 2000 <<http://www.unicef-irc.org/publications/213>>.

³³ Kimani, above n 26.

³⁴ Law Commission Te Aka Matua O Te Ture, *Converging Currents: Custom and Human Rights in the Pacific* (2006) 93 <http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CDQQFjAD&url=http%3A%2F%2Fwww.lawcom.govt.nz%2Fsites%2Fdefault%2Ffiles%2Fpublications%2F2006%2F10%2FPublication_120_340_SP17.pdf&ei=qMFrUJy9I8XwmAWX6IGIBA&usg=AQjCNHAOLixHoepRZxERi52ive8E7b9Ww&sig2=JHMN2SB6UiKFkTAGjW1z7g&cad=rja>.

³⁵ ‘Atu ‘o Hakautapu Emberson-Bain, *Women in Tonga* (Asian Development Bank, Manila, 1998), 27.

³⁶ New Zealand Ministry of Social Development, 2010 Social Report, Safety Section (2010) 103-105 <http://www.socialreport.msd.govt.nz/documents/safety-social-report-2010.pdf>.

³⁷ According to available statistics, young Indigenous women in Canada are five times more likely than other Canadian women of the same age to die as the result of violence: Amnesty International, *No More Stolen Sisters* (2009) 1, <http://www.amnesty.org/en/library/info/AMR20/012/2009>.

³⁸ Kimani, above n 26.

³⁹ The Examiner, Clinton’s Africa Vision is Out of Focus, Say Critics (October 2 2011) PeaceWomen <http://www.peacewomen.org/news_article.php?id=4136&type=news>.

Advanced Unedited Version

Zimbabwe, six out of 10 murder cases tried in the Harare High Court in 1998 were related to domestic violence.⁴⁰ In Australia, violence against indigenous women within indigenous communities has been described as having reached epidemic proportions.⁴¹ Indigenous women are 45 times more likely to experience family violence than non-indigenous women⁴² and “far more likely to be killed by their partner than non-indigenous women”.⁴³ Assault is a significant cause of death for Australian indigenous women — nine to 23 times greater than the equivalent age-specific rates for non-Indigenous females.⁴⁴

Sexual violence

14. In the Pacific, violence against women, especially sexual assault including the raping of women and children, is of serious concern.⁴⁵ In Papua New Guinea, there is a high level of violence against women by their husbands and also between co-wives.⁴⁶ Non-governmental women’s groups working to end violence against women in Papua New Guinea have found that approximately 85 per cent of the cases they tend to are related to polygamy.⁴⁷

15. In light of these statistics and practices, many measures have been taken to eliminate violence against indigenous women and girls across the world. Various Pacific Island nations have implemented legislation on domestic violence⁴⁸ and specialised family violence courts. In Fiji, civil society organisations such as the Fiji Women’s Crisis Centre, women’s organisations and other non-government organisations provide invaluable assistance in

⁴⁰ Kimani above n 26.

⁴¹ Memmott et al, above n 12, 11.

⁴² Based on offences reported to police in Western Australia: Jane Mulroney, Australian Statistics on Domestic Violence, Australian Domestic and Family Violence Clearinghouse (2003) <www.austdvclearinghouse.unsw.edu.au>.

⁴³ Ibid.

⁴⁴ Australian Bureau of Statistics and Australian Institute of Health and Welfare, The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples, 2008 (2008) 170.

⁴⁵ Above n 30, 93.

⁴⁶ Ibid 97.

⁴⁷ Ibid.

⁴⁸ See for example the Domestic Violence Act 1995 (NZ).

Advanced Unedited Version

highlighting violence against women in a context where issues concerning women and children have become secondary to issues of national security.⁴⁹

16. In New Zealand there have been some promising emerging practices in addressing family violence, for example the Ngati Porou Community Education Project aims at reducing injury by addressing road safety, alcohol and drug related harm, family violence and playground safety. The project centres on tikanga (customary knowledge) and located at marae (community meeting places). In relation to family violence, wananga (education sessions) are held to discuss situations relevant to Maori, and hui (meeting) and a concert was held to raise awareness about the need to prevent violence.⁵⁰ The New Zealand Domestic Violence Act 1995 provides programs for adult protected persons (usually women) and regulates that tikanga be included in the program design and delivery.

17. In Australia, a number of measures have been taken over decades to combat indigenous violence against women. The most successful and enduring measures are those that are conceived of and developed by indigenous communities themselves with the support of the State. For example, alcohol management plans or other restrictions on the sale and use of alcohol have been in place in a number of areas for a long time;⁵¹ Indigenous Family Violence Prevention Legal Services (FVPLSs) have played an important role in combating family violence; and night patrols which consist of a group of volunteers who routinely walk up and down main street keeping an eye on community members affected by alcohol are active⁵² as are shelter/protection programs.⁵³ Alternative

⁴⁹ See for example the Fiji Women's Crisis Centre's website at <www.fijiwomen.com>.

⁵⁰ M Brewin and C Coggan, 'Evaluation of the Ngati Porou Community Injury Prevention Project' (2004) 9(1) *Ethnicity & Health* 515.

⁵¹ University of Notre Dame Australia, Fitzroy Valley Alcohol Restriction Report December 2010, Drug and Alcohol Office, Western Australia (2010).

⁵² David Higgens and Associates, Best Practice for Aboriginal Community Night Patrols and Wardens Schemes: A Report to the Office of Aboriginal Development, Darwin, Office of Aboriginal Development (1997) <<http://indigenousjustice.gov.au/db/publications/285968.html>>.

Advanced Unedited Version

justice models; community justice groups; education and awareness programs such as the Mildura Family Violence and Sexual Assault campaign⁵⁴ and the Aboriginal Women Against Violence Project are also operative in Sydney.⁵⁵ There is substantial evidence in the Australian literature supporting the principle that indigenous community initiatives to combat violence are more likely to succeed because of the degree of self-determination exercised over their development and implementation.⁵⁶ Evidence also indicates that the involvement of men and police is critical to that success.

18. Addressing violence in small, relatively isolated indigenous communities can be challenging due to extended family relations and the obligations that arise from such relations. A major problem in combating violence against women and girls in the Arctic region is a lack of victim services and programs. Too often, services for victims of crime and violence in the Arctic operate in isolation of each other. There is a lack of a systematic and coordinated approach. In Inuit communities, gaps in services, inequitable distribution of resources, burnout and loss of trained staff, an absence of training and support for front-line workers and incomplete program evaluations impede efforts to prevent violence.⁵⁷ One successful initiative in combating violence has been the Nuluaq Project, developed by Pauktituuq Inuit Women of Canada, which provides a searchable database and network contact list of 400 services and programs.

⁵³ Australian Human Rights Commission, Social Justice Report 2007 (2008) <http://www.hreoc.gov.au/social_justice/sj_report/sjreport07/index.html>.

⁵⁴ Ibid.

⁵⁵ Margot Rawsthorne, Alice Chivell and Alison Smith, Aboriginal Women Against Violence Project Evaluation Report (2010) <<http://hdl.handle.net/2123/6267>>.

⁵⁶ Monique Keel, Family Violence and Sexual Assault in Indigenous Communities, Walking the Talk, Australian Institute of Family Studies No. 4 (2004) 1-31; Memmott, above n 12.

⁵⁷ Inuit Women of Canada, National Strategy to Prevent Abuse in Inuit Communities (2006) <<http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCAQFjAA&url=http%3A%2F%2Fsgdatabase.unwomen.org%2Fuploads%2FNational%2520Strategy%2520to%2520Prevent%2520Abuse%2520in%2520Inuit%2520Communities.pdf&ei=geFsUP7hGMf-iAe3kIGYCw&usg=AFQjCNFFMykzS-vjYzSCGjYMg2Hf-lq1NA&sig2=KHp72jfK8hKBfCaLGfuXDg&cad=rja>>.

Advanced Unedited Version

19. Although legislation in many parts of the world exists with the intention to eliminate sexual violence against women, enforcement is still an issue. Evidence to substantiate such violence is often questioned by enforcement agencies and victims can be reluctant to provide evidence.

Private sector violence

20. The activities of corporations have had a negative impact on indigenous traditional ways of life. In indigenous communities where mining activity exists, women and girls are more at risk of violence and health related problems. In Ecuador's oil fields, cancer constitutes 32 per cent of the deaths, three times more than the national average (12 per cent), affecting mainly women. Seventy five per cent of the population uses contaminated water and women are in permanent contact with water because they are washing clothes, going to the river, and preparing the local beverage. Indigenous women and girls have an increased workload, they walk more to fetch drinking water, firewood for cooking and additionally, they carry out the agricultural work since men are integrated into oil industry employment.

21. In the case of pesticides, the effects on the health of women by pollutants include high levels of toxins in breast milk, blood from the umbilical cord, in the blood serum and fatty tissue, causing infertility, abortions, births, premature menopause and menstruation, cancers of the reproductive system, decreased lactation and the inability to produce healthy children which affects the mothers, families and communities psychologically, relationally, emotionally, and financially.

22. In addition, tourist activities impact on indigenous women and girls. Tourist resorts cause conflicts because investors pressure to buy the lands of indigenous peoples. Some communities have been evicted and women have

Advanced Unedited Version

been the most affected by the privatisation of the land and the loss of territorial control, as is in the case of the north coast of Honduras. This impacts on tourism because women's knowledge of local issues is central to the development of cultural and tourist activities.

Public sector violence

23. Public sector violence against women and girls is linked to the practice of 'private' domain or interpersonal violence. Each domain of violence legitimates the other in that 'the personal is the political' and vice versa. Widespread and longstanding patterns of violence against women and girls within personal relationships and homes have resulted in a normalisation of sexual and other forms violence in community life, which, in turn, has led to public acceptance of violence and even to a failure to recognise acts of violence as such. Public sector violence is part of a wider pattern of systemic and culturally condoned or at least accepted violence against women in the public domain, such as discrimination in the workplace or public sexual harassment.⁵⁸ Various explanations for the public perpetuation of violence against indigenous women and girls include geographic isolation of women from solidarity movements or other services, lack of economic opportunities for women, and limited services for victims that could educate them about their rights and avenues for redressing violence.

24. Public sector violence against indigenous women is prolific. For example, in Australia, indigenous women are hugely disproportionately represented in the prison system, often for petty crimes,⁵⁹ and in rural areas are

⁵⁸ Gender Matters, Manual on Gender Based Violence Affecting Young People <http://eycb.coe.int/gendermatters/chapter_2/1.html>; Office of the United Nations High Commissioner for Human Rights, The Public-Private Continuum of Violence (1997-2000) <www.osce.org/gender/14333>.

⁵⁹ Anti-Discrimination Commission Queensland, Women in Prison (2006) <www.adcq.qld.gov.au/pubs/WIP_report.pdf>.

Advanced Unedited Version

not provided with adequate reproductive health services.⁶⁰ “In Canada, 42.7% of Aboriginal women live in poverty which is double the percentage of non-Aboriginal women and significantly more than the number of Aboriginal men”, and “the economic contributions Aboriginal women do make are often minimized and ignored”.⁶¹ The Special Rapporteur on Violence against Women pointed out that in Guatemala there are impunity in cases of violence against indigenous women. The economic situation, the scarce coverage of resources and the geographic remoteness limits access to justice. Women are generally monolingual and the staff of such institutions is not bilingual.

25. Some governments have taken measures to counter public violence against women. For example, in South Africa, initiatives were taken by the government in 2003 when it adopted a protocol to the African Charter on Human and Peoples’ Rights committed to ending discrimination and violence against women. The adoption by the South African government of CEDAW has also committed the government to change discriminatory practices and laws such as those that relegate women to a secondary status. However, the problem is an endemic and deeply rooted one that requires radical systemic change the world over.

Discrimination and mistreatment in public services

26. Institutional violence is any act of discrimination, exclusion, restriction or impairment, by action, omission or cultural imposition that the institutions of the State perform, breaching their legal statutes, to the detriment of

⁶⁰ Carole Thomas and Joanne Selfe, Aboriginal Women and the Law <[⁶¹ United Nations Platform for Action Committee, Aboriginal Women and the Economy \(2003-2011\) <<http://www.unpac.ca/economy/awe.html>>.](http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CDcQFjAD&url=http%3A%2F%2Fwww.aic.gov.au%2Fpublications%2Fprevious%2520series%2Fproceedings%2F1-27%2Fmedia%2Fpublications%2Fproceedings%2F21%2Fthomas.pdf&ei=Na5aULLoLMWjiQeN54CIDw&usg=AFQjCNGw62_3FjeXB3kN355cEQ3XYRPDkw&sig2=TSRhicgYXlYWLT1yu98d9w>.</p>
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human rights of indigenous women. The first form of institutional violence is the lack of services. Many indigenous women do not have identification documents and that affects the chances of being beneficiaries of public services, acquire assets or be subject to credit. State programs also lack intercultural perspective. For example, indigenous women are mistreated in hospitals for using their indigenous language, dress or traditional medicine and often staff do not explain the condition and treatment.

Customary/traditional/cultural violence

27. ‘Culture’ is often used as a justification for both violence against indigenous women and the argument that misogynous practices are traditional and thus should trump foreign or western human rights standards.⁶² “Violence against women is one of the key means through which male control over women’s agency and sexuality is maintained”.⁶³ Because such insidious assumptions become internalised and accepted as ‘cultural’, a great many cases of ‘traditional’ violence often go unreported.

28. Examples of ‘traditional’ or ‘customary’ violence against women abound. In North Africa, India and China, sex selective abortion, or female infanticide, has resulted in the “missing millions” phenomenon – that is - demographics indicate that there should be far more women populating certain countries and regions than there currently are.⁶⁴ In 2006, a study by the South African Institute of Security Studies found that “the subservient status of women, particularly rural women, in many African countries is deeply rooted in

⁶² Converging Currents, above n 30.

⁶³ United Nations, Ending Violence Against Women: From Words to Action (2006) <http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&ved=0CFQQFjAJ&url=http%3A%2F%2Fwww.un.org%2Fwomenwatch%2Fdaw%2Fpublic%2FVAW_Study%2FVAWstudyE.pdf&ei=16laUJu8Me2yiQf194D4CA&usg=AFQjCNHTm8ezoVz5tymGsaGbZ73ozWRqUA&sig2=Eymw3JlO4QKwLzuA2jhIA>.

⁶⁴ Amartya Sen, More Than 100 Million Women Are Missing, The New York Review of Books (1991) <<http://www.nybooks.com/articles/archives/1990/dec/20/more-than-100-million-women-are-missing/?pagination=false>>.; The Economist, Gendercide: The War on Baby Girls (2010) <<http://www.economist.com/node/15606229>>.

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tradition.” Cultural norms such as “the right of a husband to beat or physically intimidate his wife”⁶⁵ relegate women to a subservient position in relation to their husbands and other males. In both eastern and western Africa female genital mutilation is carried out.⁶⁶

29. The perception of women and girls as property of men not only serves to keep women and girls subservient and perpetuates violence by men against women; it has also been linked to the increase of HIV and AIDS in some parts of Africa. Upon the death of the husband, in eastern and southern Africa it is common for the wife and for husband’s property to be inherited by the husband’s eldest brother.⁶⁷ In Kenya, the wife is forced to marry even if their potential husband has HIV.⁶⁸ The spread of HIV is compounded in Western Kenya, Zimbabwe and parts of Ghana where it is believed if a man, infected with HIV, has sex with a virgin he will be cured.⁶⁹

30. As of 2007, only South Africa has enacted relevant and adequate laws to punish violence against women. “In Kenya, the sexual violence bill passed only after certain sections, such as one that would have outlawed marital rape, were removed”.⁷⁰ In Uganda, similar laws have existed for more than a decade. Tanzania and Zimbabwe have faced similar resistance to fairer legislative measures.⁷¹ However, in “Rwanda the legislature has passed several progressive laws, including one that gives female children the right to inherit their parents’ land and property, a right that was traditionally reserved for males”.⁷² In Guinea, “public education efforts have brought together local non-government organisations and religious leaders … to explain that Islam does not condone the abuse of women”.⁷³

⁶⁵ Above n 28.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Above n 26.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

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Colonisation-related violence

31. Decades and even centuries of colonialism and racism have served to perpetuate violence against women and girls in many indigenous communities. Cultures of violence, imposed by systemic racism and the infliction of direct, symbolic, and structural violence against indigenous peoples through colonisation, are reproduced in countless ways leading to the implosion and severe dysfunction of many indigenous communities and cultures and subsequent increased rates of violence against women and girls.⁷⁴ Internalised racism contributing to poor self and group-esteem (as well as ‘acculturative’ stress) and a desire not to further marginalise their men or bring shame upon their communities often results in the acceptance by indigenous women of (or a reluctance to speak out against) violence.⁷⁵

32. A variety of programs have been put into place to combat ‘family’ violence in Australian indigenous communities. Programs aiming to address ‘colonisation-related’ violence include “strengthening identity programs” intended to help develop in individuals a greater sense of self-worth and sense of value to the community so that they become less vulnerable to factors associated with enacting violence.⁷⁶ Such programs develop team building skills and community values, and also work on everyday numeracy and literacy skills.

33. “The impact of personal, family and community disintegration in many [indigenous] societies, enacted by missions, statutes and regulations, and [government] policies, is still being realised today and should not be underestimated if genuine and workable solutions to prevent violence in Indigenous communities are to be developed. What is required is treatment and ‘healing’ on a massive scale, including the healing of individuals, families and

⁷⁴ Johan Galtung, 'Cultural Violence', (1990) 27 (3), Journal of Peace Research, 27.

⁷⁵ Cripps, above n 7; Memmott, above n 12.

⁷⁶ Memmott, above n 12, 65.

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whole communities".⁷⁷

Trafficking in indigenous women and girls

34. Discrimination and poverty are root causes of trafficking in human beings, which is often referred to as modern-day slavery. Indigenous peoples, and especially indigenous women and girls, are affected by this crime to highly disproportionate degrees. Trafficking in human beings is about exploitation and control over another human being, and profiting from his or her vulnerability. Human trafficking takes many forms, including for the purpose of labour and/or sexual exploitation.

35. Human trafficking occurs in all types of economic activity and happens in all parts of the world.⁷⁸ It is a largely hidden phenomenon, and therefore difficult to measure. According to the Global estimate of forced labour, released in June 2012 by the International Labour Organization (ILO), twenty-nine million people are victims of forced labor and human trafficking at any given time.

36. Trafficking affects all population groups, but some groups are more vulnerable than others.⁷⁹ The ILO has confirmed that in all regions of the world, victims of human trafficking are frequently drawn from minority or socially excluded groups.⁸⁰ Indigenous peoples, women and youth are particularly vulnerable to forced labor and human trafficking.⁸¹ In Latin-America, long-standing patterns of discrimination and inequality are cited as root causes to the high number of indigenous peoples trafficked.⁸² Similarly, in the Central-African

⁷⁷ Memmott, above n 12, 17.

⁷⁸ ILO 2012 Global Estimates of forced labour, executive summary released on June 1st 2012

⁷⁹ ILO Global Estimates 2012, Questions and Answers on Forced Labour, analysis released on June 1st 2012

⁸⁰ ILO Global Estimates 2012, Questions and Answers on Forced Labour, analysis released on June 1st 2012

⁸¹ ILO The cost of coercion – global report under the follow-up to the ILO declaration on fundamental principles and rights at work, 2009 (1:1)

⁸² ILO, 2009, The Cost of Coercion, 19-20

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region, the subjugated position of many forest-dwelling groups puts them at risk of human trafficking.

37. Poverty is a significant root cause of trafficking. According to a World Bank report released in 2010, indigenous peoples consistently account for far higher and “stickier” poverty rates than other populations and groups.⁸³ The high poverty rates that indigenous women and girls face make them particularly vulnerable to trafficking. In Canada, the difficult socio-economic situation of First Nation peoples has been cited as one major reason for the alarming rates of aboriginal women and girls trafficked both within the country and from Canada to the US.⁸⁴

38. On a global scale, indigenous peoples are facing increasing threats of land grabbing and commercial exploitation of their lands and natural resources. The implementation of development projects, such as the construction of dams and highways, logging operations and tourism development, may have devastating impacts on indigenous communities and, to a disproportionate extent, on women and girls in the affected communities. In the Lao Peoples’ Democratic Republic (PDR), massive infrastructure developments have resulted in the resettlement of many indigenous communities. Such resettlement has had multiple consequences, and heightened vulnerability to trafficking has been identified as one of them.⁸⁵ Available numbers from the Lao PDR support not only the notion that indigenous communities are more vulnerable to trafficking but also that the majority of the victims trafficked in the region are girls.⁸⁶

⁸³ World Bank, 2010 “Indigenous peoples – still among the poorest of the poor” The study reveals that although indigenous peoples make up roughly 4.5 % of the global population, they account for 10 of the world’s poor – with nearly 80 % of them in Asia.

⁸⁴ Victims of Trafficking in Persons: Perspectives from the Canadian Community Sector, 2006. This study was commissioned by and prepared for the Department of Justice Canada. Executive summary available at www.justice.gc.ca/eng/pi/rs/rep-rap/2006/rr06_03/p0.html

⁸⁵ Broken Promises Shattered Dreams, a profile on child trafficking in the Lao PDR, UNICEF

⁸⁶ Broken Promises Shattered Dreams, a profile on child trafficking in the Lao PDR, UNICEF According to the report, a disproportionate number of the trafficked victims are from ethnic

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39. In many cases, the trafficker and the victims may be from the same community. In the Arctic, addressing trafficking and violence in small, relatively isolated indigenous communities has proven to be very challenging due to extended family relations and the obligations that arise from those relations. In some communities, there is a heavy emphasis on maintaining good relations within and between extended families, sometimes at the cost of individual well-being. Talking about abuse and violence, in particular sexual violence is considered taboo. In making violence against indigenous women and girls, including human trafficking, visible, all measures fighting this crime need to be victim-oriented, gender sensitive and implemented in cooperation with indigenous women.

V. Conclusions

40. Violence against indigenous women and girls is endemic in every part of the world. It occurs in the private domain within homes, families and communities and in the public domain perpetrated by the state and by corporations.

41. The reasons for community and interpersonal violence in indigenous communities are multifaceted, often exacerbated by alcohol and drug abuse which can be part of a devastating response to colonisation violence. However caution must be adopted when viewing violence against indigenous women and girls through a ‘causation’ lens; issues of colonisation or alcohol and drugs must be seen as situational or precipitative factors and should not be invoked to absolve perpetrators of interpersonal and intra-cultural violence against indigenous women and girls.

minority backgrounds. The majority of the trafficked victims (60 %) are young females between the ages 12-18.

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42. The UN Declaration contains specific articles aimed at redressing violence against indigenous women and children, but although many member States have sought to implement some measures to combat this violence, there is still a long way to go towards its eradication.

43. The evidence is clear that where an indigenous community exercises a degree of ownership over the conception and establishment of measures to address violence, those measures are more likely to be effective and successful. Furthermore a partnership approach between indigenous communities and the State is more likely to be successful in tackling violence in those communities than a solely state-devised program.⁸⁷

VI. Recommendations

44. It is recommended that Member States increase funding for community-led violence prevention initiatives, the recruitment and training of indigenous service providers and front line workers, and shelters, as well as culturally appropriate crisis and counselling services in indigenous languages.

45. It is recommended that States work with indigenous communities to design education and public awareness campaigns specific to those communities and allocate sufficient funds for this work consistent with article 22(2) UN Declaration.

46. It is recommended that all actors who work to improve the co-ordination of abuse prevention services and resources, increase their co-operation and jointly co-ordinate services and programs for victims of violence and abuse.

⁸⁷ Memmott, above n 12.

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47. It is recommended that States and the UN system in order to empower victims of trafficking, the language and cultural backgrounds of indigenous women and girls need to be factored into their assistance programmes and strong efforts should be made to prevent discrimination based on ethnicity and particular attention be paid to restore and support building the victim's self-esteem.

48. It is recommended that the UN system, programmes and funds that focus on combating trafficking of human beings provide particular attention to support victim's identity, including their identity as an indigenous peoples.

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