



**Enforcing the Charter for the Rights and
Freedoms of Women in the Kurdish Regions
and Diaspora**

**Kurdish Human Rights Project
Kurdish Women's Project**

Enforcing the Charter for the Rights and Freedoms of Women in the Kurdish Regions and Diaspora

Kurdish Human Rights Project

2 New Burlington Place

London W1S 2HP

Tel: +44 (0)20 7287 2772

Fax: +44 (0)20 7734 4927

Email: khrp@khrp.org

www.khrp.org

Kurdish Women's Project

Acknowledgements

This manual was written by KHRP Executive Director Kerim Yildiz and Legal Intern Archana Sinha and edited by Legal Officer Lucy Claridge. They are grateful to Edel Hughes of the Human Rights Centre at the National University of Ireland, Galway for her invaluable comments and assistance.

This publication was made possible by the support of KHRP's funders:

The Sigrid Rausing Trust (UK), Netherlands Ministry of Foreign Affairs (Netherlands), Open Society Institute (USA), Finnish Ministry for Foreign Affairs (Finland), Oak Foundation (USA), ACAT Suisse- Action des Chrétiens pour l'Abolition de la Torture (Switzerland), Allan and Nesta Ferguson Charitable Trust (UK), Atlantic Philanthropies (USA), C.B. & H.H. Taylor 1984 Trust (UK), Environmental Defense Fund (USA), Fulmer Charitable Trust (UK), Law Society Charity (UK), Oakdale Trust (UK), Rowan Charitable Trust (UK), Sticing Cizera Botan (Netherlands), Swiss Federal Department of Foreign Affairs (Switzerland), The AB Charitable Trust (UK), The Bromley Trust (UK), and UN Voluntary Fund for Torture (Switzerland); whose support is gratefully acknowledged.

Layout & Design: Torske & Sterling Legal Marketing www.torske.co.uk

*Printed in Great Britain
Published by the Kurdish Human Rights Project
ISBN 1 900175 83 5
All rights reserved*

Contents

| | |
|----------------------------------------------------------------------------------------------------------------------------------|----|
| Introduction | 7 |
| Part One – Commentary and Interpretation | 9 |
| Part Two – Enforcing The Charter | 33 |
| Enforcement Under The UN Treaty System – Does It Work? | 46 |
| Appendix 1 | 47 |
| The territorial jurisdiction of international treaties | |
| Appendix 2 | 49 |
| International law pertaining to contents of the Charter for the Rights and Freedoms of Women in the Kurdish Regions and Diaspora | |
| Appendix 3 | 51 |
| Guide to the “1503 Procedure” | |
| Appendix 4 | 53 |
| Complaints procedure to the UN Special Rapporteur for Women | |

| | |
|---------------------------------------------------------------------------------|----|
| Appendix 5 | 55 |
| CSW Complaint Procedure | |
| Appendix 6 | 57 |
| Guidelines for submitting complaints to the UN | |
| Appendix 7 | 59 |
| Guideline questionnaire for the submission of communications | |
| Appendix 8 | 65 |
| Material required for urgent applications to the European Court of Human Rights | |
| Appendix 9 | 67 |
| Outline of the procedure before the European Court of Human Rights | |

Introduction

The Charter for the Rights and Freedoms of Women in the Kurdish Regions and Diaspora (the “Charter”) represents a collective effort between the Kurdish Women’s Project and Kurdish Human Rights Project to urge the elimination of all forms of discrimination against Kurdish women and to promote participation of Kurdish women in the social, political, economic and educational spheres of life irrespective of their religious, political or other beliefs. This manual is aimed at Kurdish women and Kurdish women’s organisations particularly those in Kurdish regions such as Iraq and Turkey and also countries such as, Syria, Armenia, Iran and Azerbaijan that are home to a Kurdish minority. This manual aims to provide both guidance on the application of the Charter in practice as well as an introduction to the international mechanisms currently available to enforce the Charter principles.

The first part of the manual looks at each article of the Charter in practice and offers comprehensive guidance on their application. This guidance is based upon the feedback we have received from fellow NGOs and Kurdish women regarding the Charter’s importance and its application at grassroots level. We have aimed to put into words the experiences of Kurdish women in their attempts to implement the Charter in their daily life.

The second part of the manual provides a general overview of the enforcement mechanisms available to both women’s organisations and individual women who wish to enforce the principles set out in the Charter. Even though the Charter is not legally binding, it will generally be possible for Kurdish women and/or Kurdish organisations to make complaints or bring actions in respect of violation of the Charter’s principles, as they represent already existing international standards. The manual focuses on UN and Council of Europe bodies that are most relevant to women and violations committed against them, as opposed to looking at the entire body of UN enforcement mechanisms, and aims to give Kurdish women and women’s organisations a better idea of their options in the event of violation of their rights.

The Charter is designed to be a living instrument: the fundamental principles it enshrines will always remain constant. However, its interpretation and ambit need to evolve with changing times and reflect the changing needs of women. The Charter was established in

order to make a difference to the daily lives of Kurdish women. This manual is intended to make the experience of using it a more accessible and constructive process.

Part One

The Charter for the Rights and Freedoms of Women in the Kurdish Regions and Diaspora: Commentary and Interpretation

INTRODUCTION

The Charter for the Rights and Freedoms of Women in the Kurdish Regions and Diaspora (the “Charter”) was launched on 22 June 2004 by Baroness Helena Kennedy Q.C. and Lord Avebury at the House of Lords in London and on 12 July 2004 in the Kurdish Regional Parliament in Erbil, Iraqi Kurdistan. The Charter recognises that women, as human beings, have human rights. In addition, the incorporation of women’s perspectives into human rights standards and practices forces recognition of the failure of the governments and people of the Kurdish regions to accord to Kurdish women the human dignity and respect they deserve.

The Charter was initiated by a number of Kurdish women in exile and is considered to be a living instrument, which must continually develop to ensure that it reflects the evolving needs and wishes of women in the Kurdish regions and the diaspora. It is a woman’s human rights framework which equips Kurdish women with a way to define, analyse and articulate their experiences of violence, degradation and marginality.

The existence and implementation of the Charter will contribute to making gender justice an integral element of the rule of law. It is imperative that gender perspectives be integrated into every dimension of justice and that women participate in the shaping of justice frameworks. The Charter has made a timely appearance on the human rights scene: women’s empowerment and gender equality are high on every agenda with the Millennium Development Summit and the 10th anniversary of the Beijing Platform being celebrated this year. In January 2005, Turkey presented its fourth and fifth periodic report (“Turkey’s Report”) under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”). Turkey’s Report highlights the progress made by the Turkish government in the elimination of discrimination against women. On 6 August 2004, the Pre-Session Working Group of the CEDAW Committee requested the Turkish government to provide data on the civil and political,

social, cultural and economic status of minority women, including Kurdish women. On 5 November 2004, the Turkish Government responded that data is not collected on the basis of ethnic origin as this would constitute discrimination. The Turkish government further stated that it could not accept the term “minority” and the term “minority women”, as used to describe Kurdish women in the CEDAW Committee questions, will be interpreted as referring to “women in underdeveloped regions of Turkey”.

The Charter therefore adds to the worldwide gender equality movement by recognising that Kurdish women face very specific problems mainly due to their ethnicity. Therefore, even though it is not legally binding, the Charter assists in asserting the civil, political, social, economic and cultural rights of Kurdish women, which ought to be recognised. Branding Kurdish women as being from underdeveloped regions of Turkey implies that they lack economic and social infrastructures but does not imply the recognition of violations of basic human rights. Now is the right time for the Charter to be promoted to compel the Turkish government to recognise Kurdish women as a minority and as a result give them the protection they deserve.

SPECIFIC RIGHTS IN THE CHARTER

The provisions of the Charter are premised on the “universality” of human rights: everyone has a universal right to all human rights without discrimination. However, this does not mean that all women’s lives are the same or that their experiences, choices or strategies in affirming their rights are or need to be identical. The Charter assumes that the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation for freedom, peace and justice in the world. Without women, no society could achieve progress. It is therefore important to include a gender perspective in all development policies. The main issues highlighted in the Charter are (i) the elimination of all forms of discrimination against women in all areas of life; and (ii) the eradication of violence against women. For the avoidance of doubt, all references to women in the Charter and in this paper shall be deemed to include girl-children.

The CEDAW Committee recognises that in various states and in varying degrees, stereotyped conceptions of women caused by socio-cultural factors perpetuate discrimination based on sex. For example, the view in some Islamic communities is that a woman needs to be subjected to violence to control her sexuality. In Iran, inheritance by a woman does not arise from her role in the family but is a payment for sexual favours. The reality is that women are viewed as subjects with no place in a patriarchal society. The stereotyping of women, the persistent discrimination against them, and the violation of the rights of women are critical areas of concern of the Beijing Platform. Today more

than ever, the world is witnessing violence and discrimination against women. In some Kurdish regions, for example, Iran, women's rights defenders are at risk: stoning still remains the prevalent mode of punishment for women for adultery, rape is used as a weapon of war and vulnerable women are sexually exploited for financial gain. The latter practices are condoned and tolerated which is why they persist. It will take the efforts of individuals, communities, governments and international bodies at national, local and international levels to put an end to violence against women.

PREAMBLE

Noting that law is the foundation of justice and equality and political, social, cultural and economic security and a safeguard for the protection of individual's rights,

Convinced that a firm foundation for a modern society in the Kurdish regions can only be achieved through democracy and equality,

Convinced that only a separation of religion from state can guarantee a free democratic society,

Noting the importance of enacting, amending and implementing legislation which is based on universal human rights as they are codified in the Charter of the United Nations, in the Universal Declaration of Human Rights, in the international covenants on human rights and other conventions, resolutions, declarations and recommendations,

Concerned that religion is often misused in order to legitimate an infringement of rights guaranteed in a democratic society and fosters discrimination against women,

Aware that a change in the traditional role of men as well as the role of women in the Kurdish society and in the Kurdish family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Declaration on the Elimination of Violence against Women, we therefore find it necessary to highlight Kurdish women's demands for equality in order to bring about a fundamental transformation for all women within the Kurdish regions and the Kurdish diaspora,

The Preamble to the Charter recognises that a shift in attitude is required: it represents a new consciousness that violence, especially sexual violence, brings shame on the perpetrator of the violence and not on the victim of the violence. Recognition of equality

in domestic law, including imposing a duty on states to ensure that such equality is attained together with security, liberty, dignity and integrity of the woman, are prerequisites to achieving gender equality.

Furthermore, the Preamble calls for a separation of religion from the state in order to guarantee a free democratic society. An identification of religion with the state encourages the view that “majority religion” is the “official religion”. This does not augur well for women belonging to religious minorities. It is vital that a fair balance is arrived at between various different individuals’ right to religious expression and the values and principles of a democratic society. For example, women who wear the head scarf and face oppression by a secular government in their everyday lives fear that this could justify infringements of their right to freedom of religion. This concern was reinforced by the judgment of the European Court of Human Rights in the case of *Leyla Sahin v. Turkey* (Application No. 44774/98) of 29 June 2004 where the court held that restrictions could be placed on the freedom to manifest one’s religion in order to defend the values and principles of a democratic society. The Preamble recognises the anti-secularist backlash, the rise of political Islam and the efforts to impose religion on people in the last two decades which have witnessed the severe ill treatment of several thousands of women. Religion, medieval laws and customs are far too often revived especially to suppress and dehumanise women.

The Preamble also notes the importance of the positive obligation on states to enact, amend and implement legislation based on the universal human rights set out in the international treaties and covenants. **The state has a duty to protect women from violence** committed not only by agents of the state but also by private individuals and groups. This is in line with the General Recommendations of the CEDAW Committee, which provide that effective complaints procedures and remedies, including compensation, should be provided to victims and survivors of gender based violence (recommendation 19, article 24(i)). More specifically:

“States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia:

- (i) Effective legal measures, including penal sanctions, civil remedies, and compensatory provisions to protect women against all kinds of violence, including inter alia, violence and abuse in the family, sexual assault and sexual harassment in the work place;
- (ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;

- (iii) Protective measures including refugees, counselling, rehabilitation and support services for women who are the victims of violence or who are at the risk of violence.”

Recommendation 10 also requires that states raise awareness of CEDAW and encourage NGOs to do so too. Gender justice and the rule of law rely upon “judicial processes” that fully ensure and protect women’s entitlements on a basis of equality with men. It is states which ultimately bear the responsibility for the enactment, implementation and maintenance of such judicial processes.

ARTICLE 1

Any legal system within the Kurdish regions shall condemn and eliminate discrimination against women in all forms. Referring to CEDAW the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital and sexual status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 1 of the Charter calls for the condemnation and elimination of all forms of discrimination against women. This includes direct as well as indirect discrimination. Discrimination, a human rights violation in itself, causes mass human rights violations around the world. It systematically denies people their rights because of who they are and what they believe and is an attack on the fundamental principle that human rights are everyone’s birthright and apply to all without distinction.

Discrimination can take several forms: government sponsored discrimination that renders women unequal before the law; discriminatory family codes that take away women’s legal authority and place it in the hands of male members of the family therefore restricting women’s participation in family and public life; and legal, cultural, social and religious practices by which women are systematically discriminated against, excluded from political participation and public life and segregated in their daily lives. In some societies the low status of women leads to infanticide of girls. In others, girls suffer genital mutilation. In many states, discrimination denies women their social, economic and cultural rights: they are excluded from education, jobs and healthcare or are persecuted for speaking their own language, for the way they look or for being young or old. The unequal status of women and girls in society generally increases their vulnerability to gender-based violence during humanitarian crises. All too often, they suffer or must flee the risk of sexual violence in situations of armed conflict¹. They may

also encounter violence whilst travelling to safety. In refugee camps, disruptions to community support structures, unsafe physical surroundings, separation from families and patriarchal governing structures often heighten women's and children's vulnerability to gender-based violence. Discriminatory practices reducing women's participation and leadership in refugee settings and women and girls' unequal social, legal and economic status place them at particular risk of sexual exploitation.

Goal 3 of the United Nations Millennium Development Goals deals with the promotion of gender equality and the empowerment of women.² This goal recognises that women have an enormous impact on the well-being of their families and societies, yet their potential is not realised because of discriminatory social norms, incentives and legal institutions. Whilst the woman's status has improved in the last decade, gender inequalities remain pervasive. Discrimination starts very early on and keeps women at a disadvantage throughout their lives. For example, in some countries, infant girls are less likely to survive than infant boys because of parental neglect and discrimination. Owing to the perception of women as carers, girls are more likely to attend to household duties than attend school. A market value is not generally placed on the "caring industry" and as a result women are economically invisible. This impacts on women's lives in several ways. For example, a woman is less likely to walk away from an abusive relationship and seek justice for the wrong done to her if this would mean that she and her children would starve because they are economically dependent on the man of the household to feed them, or because all property belongs to the man of the household.

Who then bears the responsibility of eliminating discrimination?

Under Article 1 of the Charter, the state does not merely guarantee the rights set out in the article but also has a positive obligation to put in place the "judicial processes" required to guarantee and enforce these rights. These range from state parties adopting education and public information programmes which will help eliminate prejudices and practices that prevent women from having social equality, to action by states to remove discriminatory legislation and practices. There is a requirement for the recognition of the principles of equality in domestic legislation. In addition, civil and political, socio-cultural and group rights must be as accessible to women as they are to men.

This article also applies to the state's responsibility to deal with institutionalized discrimination in Islamic societies. This may require the collation of public information, the education of the public and a change in attitude of people with regards to discriminatory customs and practices. Constitutions should provide strong and clear guarantees of gender equality, legal reforms to ensure equality in marriage and family relations, in property ownership and in access to secure jobs and livelihood. For

example, the Shadow NGO Report on Turkey's Report prepared by Women for Women's Human Rights (WWHR) – "New Ways endorsed by Women's Platform on the Turkish Penal Code" states that the Turkish constitutional amendment on gender equality fails to provide a strong enough basis to promote gender equality and equal opportunities for women. It also failed to meet the required implementation of CEDAW Articles 3 (promotion and advancement of women in social, political, cultural and economic fields- equivalent to articles 2, 3, 4, and 7 of the Charter), 4 para.1 (use of temporary special measures aimed at accelerating achievement of de facto equality between men and women) and 15 para.1 (states shall accord to women equality with men before the law). It has been suggested that Article 10 of the Constitution should be amended by adding the following: "*The state takes all necessary measures to provide gender equality, including special temporary measures*" and that an "Equality Framework Law" needs to be adopted and an Equality Monitoring Commission or a Gender Equality Ombudsman has to be established in order to monitor the implementation of legislation, policies and programs to eliminate discrimination against women.³

ARTICLE 2

Women shall not be discriminated against in the political and public life of Kurdish society and, in particular, they shall have:

- (a) Equal rights before the law, e.g. equal rights as witnesses;*
- (b) The right to vote in all elections and to be eligible for election to all publicly elected bodies;*
- (b) The right to participate in decision-making bodies at local, national and international level, such as parliaments, governments and political parties;*
- (c) The right to participate in non-governmental organisations and associations.*

Article 2 deals with the political and public aspects of a woman's life: the right to vote in all elections, to be considered for election to all publicly elected bodies, to have a right to participate in decision-making on a national and international level and the right to participate in non-governmental organisations and associations.

The representation of women in Kurdish society reflects the degree of implementation of the principle of equality. The struggle for women's rights is about making women's lives matter everywhere all the time. The best way of achieving this is to involve women in the decision-making process so that their concerns can be heard and their needs attended to.

A greater participation of women in public and political life will enable women to address

the blocks to their socio-economic as well as civil and political human rights, and to articulate issues like land and inheritance rights in human rights terms. For example, Al-Suwaij and Talabani's, Iraqi women's rights activists, recent efforts to enhance women's rights have included working with other Iraqi women's rights activists to ensure that Iraq's interim constitution recognised men and women as equals. They also helped collect 50,000 signatures calling for 40 percent of positions in local and national government to be allocated to women. This pressure resulted in a minimum of 25 percent of seats for women being approved in Iraq's interim constitution. Giving women the right to vote and to be voted for gives women the chance to help form a government that would empower women. Iraqi women consider that this opportunity is worth the risks. According to Shireen Amedi, head of the Kurdistan Democratic Party's Women's Union, one of the two main political parties in the Kurdish area, at least 80 percent of registered female voters cast their ballot in the Kurdish areas of Iraq. However, one female candidate was killed in December 2004, and another was kidnapped and held for ransom. A third managed to survive an assassination attempt in May, but lost her son in the attack. In spite of the fear and intimidation, about a dozen women with established national profiles ran publicly whilst the rest ran in secret. In the general elections held in Iraq on 30 January 2005, women won 86 of 275 – or 31% – of seats in Iraq's new National Assembly. The National Assembly will draft the new Iraqi Constitution, appoint government officials including the President and two deputies, and legislate by proposing bills and examining bills proposed by the Council of Ministers. A quota system that obliged no less than one in every three candidates on political entity lists to be a woman is credited for helping women to win an even larger share of seats than the 25% goal outlined in the Transitional Administrative Law. The same quota system was used in elections for the Kurdistan National Assembly and for the Governorate Councils⁴.

Experts have encouraged the Turkish government to use special temporary measures to accelerate gender equality. In presenting Turkey's position, it was noted that, the delegation had stressed the need for time to achieve cultural change. However, sometimes time needs help and, looking at Turkey's scale of progress, one could say that should it remain stable, it would take the country more than 200 years to achieve political parity⁵. Turkey introduced provisions giving women political rights before other countries in the region. However, that progress has not been sustained and women's participation in the Turkish Parliament today amounts to a mere 4.4 percent of the total membership to Parliament. Although there are Kurdish members in the Turkish Parliament, they are not there to represent Kurdish interests as they merely represent their province.

ARTICLE 3

All appropriate measures shall be taken to eliminate discrimination against women in all

matters relating to family relations and marriage, in particular:

- (a) Marriage shall not be legally entered into without the full and free consent of both parties, and not by any person under the age of 18;*
- (b) The same rights and responsibilities shall exist for both spouses during marriage and at its dissolution, including reproductive rights;*
- (c) The same rights to decide freely on the number of their children and to have access to information, education and means to enable them to exercise these rights;*
- (d) The same heritage, ownership and property rights;*
- (e) The traditional practices of polygamy, temporary marriage and dowry shall be forbidden.*

Article 3 relates to the rights of women in the private sphere, that is, within the family. The family is a fundamental unit of society and the main centre for the growth and fulfilment of human beings. If changes are to be made on a socio-cultural level, it is very important that a woman enjoys equality at home and that her subordinated social status is not repeated at home, since the family is the most intimate level where gender discrimination is continually perpetuated

This article aims to address oppressing practices such as underage, arranged and forced marriages which are prevalent in Kurdish regions. Men have used forced marriage to evade punishment for sexual assault, rape and abduction. Forced marriage violates a woman's right to choose her partner, a right enshrined in the Universal Declaration of Human Rights ("UDHR") and provided for in the International Covenant on Civil and Political Rights ("ICCPR") and CEDAW, to which Turkey, for example, is a state party. Moreover, the consequences may be severe: refusal can mean death. Women may have to submit to violence and many who seek refuge with their families from violent partners are forced to return to abusive relationships for fear of social stigma.

Article 3(a) specifically requires the full and free consent of both parties to the marriage and a requirement that each party be at least 18 years of age in accordance with Recommendation 21 of CEDAW. In the new Civil Code, the Turkish Government has raised the minimum age of marriage and equalised it for both sexes.

Article 3(b) advocates the same rights and responsibilities for both spouses. This involves decision-making within the household, such as, family planning and reproductive rights. This is of critical importance in altering notions of power and decision making within the family and therefore in society. It is also in line with the Beijing Platform for Action which states:

"Good health is essential to leading a productive and fulfilling life, and the right of all

women to control all aspects of their health, in particular their own fertility is basic to their empowerment.”

and

“The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.”

The new Turkish Civil Code attempts to replace the concept of the “male head of the conjugal union” by equal partnership where both spouses have equal decision-making authority and equal rights over the family domicile. The concept of “illegitimate children” has been abolished and their custody is given to the mother.

Article 3 (c) aims to restore respect for the physical integrity of the woman, to eradicate the dependence of women within the family framework and de-institutionalise situations of violence and exploitation within the family. Women ought to have a say in the number of children they wish to have, and the timing and spacing of them. Educating women in this respect assists in dismantling the dependence on men who are not always best placed to make decisions about a woman’s body or her reproductive rights. For example, in her 1999 report to the Commission on Human Rights, the **Special Rapporteur of the Commission on Human Rights on Violence against Women, its Causes and Consequences, stated that many forms of violence against women result in violations of women’s reproductive rights because such violence often imperils their reproductive capacities and/or prevents them from exercising reproductive and sexual choices. Similarly, many reproductive rights violations constitute violence against women. This is defined as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”⁶. The Special Rapporteur further stated that inadequate levels of knowledge about human sexuality, inappropriate or inadequate reproductive health information and services, culturally-embedded discrimination against women and girls, and limits on women’s control over their own sexual and reproductive lives, all contribute to violations of women’s reproductive health.**

In Turkey’s Report, one of the most significant amendments under the new Civil Code has been the adoption of the “Regime Regarding the Ownership of Acquired Property” as the de facto property regime governing married couples. This new regime enables the equal sharing of all acquired property during marriage, and therefore recognises the value of the unpaid work carried out by women on a daily basis. Under the old Civil Code, the Separation of Property Regime put full-time homemakers at a great disadvantage in

the event of a divorce. The new regime is therefore of vital importance since women's participation in labour in Turkey amounts to only 26 percent.⁷ Unfortunately the new regime is only applicable to marriages that take place after 1 January 2002 and therefore leaves women married before such date at a great disadvantage. In recent years, women have enjoyed better education facilities and therefore employment opportunities than before, so it is very likely that those married prior to 1 January 2002 will have a greater need for the protection offered by the new property regime. Article 3(d) recognises the importance of the "economic" equality of women with men.

Article 3(e) deals with traditional cultural practices such as, "Temporary Marriages" (also known as "Mut'a"), a common practice in Iran. Mut'a allows a Muslim man to contract an unlimited number of temporary marriages in addition to any permanent marriages, of which he is allowed up to four at one time. In contrast, women may contract only one marriage at a time. Furthermore, women must abstain from sexual activity for forty-five days after a temporary marriage ends. Men have no such requirement. The Mut'a violates article 16(1) of the UDHR and article 23(4) of the ICCPR. Practices such as Mut'a and polygamy (a general Shari'ah principle) are male prerogatives which therefore deprive women of equal rights during marriage and at its dissolution, and are harmful to women socially and economically. The CEDAW Committee states that "polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences that such marriages ought to be prohibited." The UN Human Rights Committee states "Polygamy violates the dignity of women. It is an inadmissible discrimination against women ... it should be ... abolished wherever it continues to exist."⁸ Many women are neglected in a polygamous marriage: proper care and financial support may not be given to the woman and her children, especially if she is not the favourite of the husband; men may also not be able to afford to provide the support because of their meager earnings. There is often a direct link between polygamy and financial difficulties in marriages.

ARTICLE 4

All appropriate measures shall be taken to eliminate discrimination against women in the field of employment, in particular:

- (a) The right to the same employment opportunities and to equal remuneration;*
- (b) To prohibit dismissal on the grounds of pregnancy or of maternity leave;*
- (c) To introduce paternity leave with pay;*
- (d) To provide necessary supporting social services, e.g. nurseries, to enable parents to combine family obligations with work responsibilities and/or social activities.*

Article 4 deals with the elimination of discrimination in the field of employment. This

includes discrimination against women on the grounds of reproductive status (for example, denial of full benefits to employees who become pregnant post-employment) and the restrictions placed on employment opportunities available to women by virtue of their gender. This article recognises the governments' continued failure to protect women's employment rights through enacting and enforcing laws outlawing discrimination. There is a clear need to discard gender stereotypes and perceptions about the role of women in society.

The gender based division of labour, with women being primarily responsible for reproductive work and family-related work and men for productive work, also contributes to the perpetuation of gender-based inequalities. When laws, customs, traditional roles, family responsibilities, attitudes and stereotypes provide women with fewer opportunities or place them at a disadvantage as they seek to access opportunities, measures are needed to eliminate such disadvantages and to prevent them from recurring. When policies are designed in the context of respect, promotion and protection of human rights, then unequal outcomes for women in the economic and social spheres oblige governments to design items in a way that reduces inequalities. Women's full enjoyment of their human rights, including those relating to economic development and resources is essential to any strategy aimed at sustainable development.

Turkey's Report notes that the rate of participation of women in the workforce continues to decrease. Under the current amended law, employees are protected against all forms of discrimination on the basis of race, sex, marital status, family responsibilities, pregnancy, religion, political opinion and social and ethnic origin. Furthermore, a draft bill prepared by the Directorate General on the Status and Problems of Women has proposed various changes to the conflicting maternity leave related provisions in the Public Servants Law and the Labour Law, and recommends the replacement of maternity leave with parental leave, granting of parental leave rights to parents in situations of adoption and full involvement of the father in the care and raising of the children. The latter will help shift the social perception that only women are capable of undertaking the carer's role in society, giving women the choice to broaden their horizons and undertake alternative employment. The establishment of such legislation will require rigorous implementation on the part of the Turkish government so that equality of employment opportunities changes from a concept to a reality.

ARTICLE 5

(1) The term "violence against women" means 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.

(2) All appropriate measures shall be taken to condemn and eliminate violence against women and no custom, tradition or religious consideration should be invoked to avoid this obligation with respect to its elimination, in particular:

(a) Prevent, investigate and, in accordance with the existing legislation, punish acts of violence against women, whether those acts are perpetrated by the State, by non-state actors or by private persons;

(b) Develop penal, civil and other sanctions in domestic legislation to punish and redress acts of violence against women, e.g. consider “honour killings” as murders, provide shelters and protection for women and their children;

(c) Abolish cruel, inhuman and degrading measures of punishment such as stoning, which are mainly executed against women.

Discrimination against women and violence are closely interlinked. General Recommendation 19 of the CEDAW Committee⁹ states that gender-based violence is a form of discrimination which gravely affects women’s enjoyment of their human rights. Article 5 sets out the definition of “violence against women” as “any 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.” Dominant ideologies and structures within society that perpetuate violent cultural practices towards women have existed for many years and still exist today. These include the regulation of female sexuality, masculinity and violence in different forms and at different levels:

Domestic Violence

- honour killings
- female genital mutilation (“FGM”)
- suicide as a result of marital rape and abuse
- forced marriage

Violence in Society

- rape
- adultery resulting in stoning
- Mut’a
- trafficking
- terms of the marriage contract

State Violence

- molestation
- gang rape
- beatings and sexual assault in custody
- virginity testing

Several of the above practices constitute a form of violence but they have avoided scrutiny at national and international levels because they are seen as cultural practices that deserve tolerance and respect. For example, even though FGM pre-dates Islam, religious reasons are given for the continuation of FGM in certain societies. The reality is that FGM is a result of patriarchal power structures which legitimise the need to control women's lives. It arises from the stereotypical perception of women as the principal guardians of sexual morality but with uncontrolled sexual urges. FGM reduces a woman's desire for sex, reduces the chances of sex outside marriage and therefore promotes virginity. Another example is honour killings. The concept of honour is especially powerful because it exists beyond reason and analysis. Yet what masquerades as "honour" is really men's need to control women's sexuality and their freedom. These murders are not based on religious beliefs but rather deeply rooted cultural ones. In patriarchal and patrilineal societies the concept of women as commodities, and not as human beings endowed with dignity and rights equal to those of men, is deeply embedded.

Article 5(2) calls for states to develop penal, civil and administrative sanctions in domestic legislation to punish violence against women and to provide redress to female victims even if the violence is associated to a cultural practice. This article also reflects the provisions of article 4 of the Declaration on the Elimination of Violence against Women. For example, "honour defences", whether partial or complete, should be removed from penal codes of states. Article 5(2) ought to be construed in the light of the Declaration on the Elimination of Violence against Women, which specifies the type of action a state should take to eliminate violence against women. The state must:

- develop appropriate penal legislation
- consider developing national plans of action to eliminate violence against women
- in the light of the available resources, provide social services for women victims of violence
- take measures to ensure that public officials entrusted with implementing the laws have adequate training to sensitise them to the needs of women and ensure that adequate resources are set aside in the government budget to combat violence in the family

Looking ahead there is no doubt that long term change and development of a community can be achieved by health and education strategies in cooperation with local women's groups. Working for the eradication of harmful practices in such a manner will ensure that the practice will not re-emerge in the future. For example, in Turkey the 2004-2005 reform of the Turkish Penal Code (the "TPC") has not taken adequate measures to address the problem of honour killings. Despite calls from the Women's Platform on the TPC¹⁰ for the inclusion of honour killings as "Aggravated Homicide" - which attracts life imprisonment - the final draft law contains the term "custom killing". According to the Shadow NGO Report¹¹ on Turkey's Report, the term "custom killings" is associated primarily with local practices in Eastern Turkey and generally involves the extended family unit issuing a death warrant for the female member of the family who has allegedly brought dishonour on the family by behaving inappropriately. WWHR maintains that the term "honour killings" is a more inclusive term that includes not only custom killings but also any act of a man or woman that is motivated by the perception that a man's personal understanding of honour - the woman being the primary keeper of honour - has been blemished. To be in line with terminology used in international legal instruments, the term "honour killings" ought to be used in the TPC and defined as "acts of murder in the name of honour"¹².

Virginity testing is also a prevalent practice in Turkey, Iran and Iraq. It is performed in public institutions, detention centres and even within families who suspect their female members of having engaged in pre-marital sexual relations. This practice discriminates against women as it violates their human rights and bodily integrity, and has led to suicide or death in the name of honour. The revised TPC fails to specifically criminalise the practice of virginity testing (referred to in the draft law as "genital examination") and ban its practice. Furthermore, even though the practice is limited to examinations authorised by judges and prosecutors, it does not seek the prior consent of the woman. Finally, the TPC does not penalise any health workers who actually perform the inspection without the woman's consent. The TPC ought to be amended to specifically ban virginity testing, to require the woman's prior consent where the test is authorised by a judge or prosecutor and to extend the scope of the punishment to those health workers who perform the test contrary to the wishes of the woman¹³.

Dealing with causes of violence requires dealing with the education of the perpetrators of violence and the rehabilitation of the victims of violence. Turkey's responses to the list of issues and questions raised by the CEDAW Committee in relation to Turkey's Report state that there are no widespread rehabilitation and counselling programmes for male perpetrators of violence. Counselling services are only provided to men in prison and there are no adequate shelters for the victims of violence.

ARTICLE 6

All appropriate measures shall be taken to combat all forms of sexual exploitation and trafficking of women and girls.

Article 6 calls for appropriate measures to be taken to combat all forms of sexual exploitation and trafficking of women and girls. Women are more vulnerable to traffickers because of the lack of education or access to work near their homes or because of the prevalence of gender-based abuse and violence. Victims are exploited for sexual purposes, such as pornography, prostitution, unpaid labour in homes, farms, factories or other businesses and forced marriage. Those who are sexually exploited may become infected with HIV or other sexually transmitted diseases. Weak rule of law, porous borders and widespread official corruption all allow human traffickers to operate with impunity. **An issue of great concern is the growing practice of trafficking women from Iran, including Kurdish women¹⁴.** Kurdish women are often coerced into arranged and forced marriages - sometimes at the age of 12/13. They also suffer under the practice of “berdel”. This involves, the exchange of girls: the girl from one family marrying the son of another family, while his sister is given in marriage in return. This is often done to avoid having to pay “bride prices” for the daughters or to strengthen ties within clans and or villages¹⁵.

The report of the Secretary General of the UN on traffic in women and girls (E/CN.4/2003/74) contains an update on UN activities and other international organisations pertaining to the problem. It acknowledges the complexity of trafficking which encompasses various dimensions such as, migration, organised crime, prostitution, security, labour and health. The UNHCR considers that there is a growing acceptance that the human rights of trafficked persons should be at the centre of all efforts to prevent and combat trafficking. Prioritising, protecting, assisting and providing redress to victims acknowledges that trafficking and related violations constitute a denial of basic human rights. To support a rights-based approach to anti-trafficking efforts, the Office of the High Commissioner for Human Rights has developed Recommended Principles and Guidelines on Human Rights and Human Trafficking, which identify core human rights principles and proposed practical steps for their implementation.

Turkey’s Report states that the fact that Turkey lacks both special regulatory mechanisms and standards required to combat human trafficking makes it an easy target. Furthermore, the lack of effective punitive regulations and measures, and the inadequacy of legal brothels and societal taboos with regard to sexuality are factors that account for the increase in transnational forms of prostitution. The existing articles of the Turkish Criminal Code and the further legislation enacted by the Turkish Government to give effect to the UN Convention against Transnational Organised Crime and Protocol to

Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children only addresses the problem of trafficking in part. Combating sexual exploitation and trafficking, also includes attending to the treatment, rehabilitation and housing of victims of trafficking. Trained staff and special shelters need to be made available to victims of trafficking and the police and the judiciary need to be offered special training on the subject of human trafficking. The Turkish Government has set up “The Police Authority to Combat Human Trafficking and Sexual Crimes”, education programmes such as “Combating Human Trafficking” and “Introduction to Immigrant Law” for judges and prosecutors, and a woman’s shelter in Istanbul. However, it is clear from the statistics that trafficking therefore extends beyond Istanbul. Greater investment in shelters and like infrastructure is required in Istanbul and in other affected areas.

Trafficking is also of concern in Armenia where women and children are trafficked for cheap and forced labour or for the sex trade. Testimonials from some victims of trafficking who travelled from Armenia to Turkey¹⁶ state those women who travelled illegally to Turkey or are detained for practising prostitution are detained in a special immigration detention centre in Istanbul before they are deported. The women claim to have been raped by the official of such detention centres, and employers are known to use the centre as leverage for low or unpaid wages or other violations. The Armenian Criminal Code does cover a number of trafficking related offences. However, these rarely serve as a deterrent to traffickers as there are very few indictments in relation to the same and trafficking - even trafficking minors - tends to attract a very mild sentence. Armenia still has not signed the important UN Convention relating to organised crime, trafficking and migrant smuggling but is reported to be in the process of doing the same¹⁷. On 30 March 2004 the Government of Armenia and the United Nations Development Programme (“UNDP”) joined forces to launch the Anti-Trafficking Programme. The overall objective of such programme is to facilitate a national framework to deal with trafficking and its victims by building the institutional capacity of key state agencies, raising public awareness and assisting the victims¹⁸.

ARTICLE 7

All appropriate measures shall be taken to eliminate discrimination against women in order to ensure equal rights for women and men in the field of education, in particular:

- (a) Girls shall be afforded the same conditions and the same access to education, vocational training and studies as boys, the recommended minimum of nine years of compulsory and free education for children;*
- (b) Any stereotyped concept of the roles of men and women at all levels and in all forms of education shall be eliminated, in particular textbooks shall be revised to accurately reflect*

the role of women in history;

(c) Women shall be afforded the same opportunities to benefit from scholarships and other study grants as men.

Article 7 acknowledges that women's empowerment lies in their education. Education will allow women to contribute significantly to improving the quality of their life and the life of their family. For example, literacy courses, driving courses, sewing training and first aid instruction are some of the initiatives that have been put into place by some 15 women organisations in operation in Iraqi Kurdistan. Through these campaigns, which include opening shelters to protect women against domestic violence and asking for changes in the Iraqi Personal Law, the dominant male mentality has started to be challenged. Both the government and non-state organisations bear the responsibility to contribute to the eradication of discrimination against women by the provision of equal access to education.

Articles 7(a) and 7(b) are aimed at dismantling some of the bases of gender inequality namely, inequality of opportunities available to men on the one hand and women on the other. For example, although Kurdish is spoken frequently on the streets of Turkey's cities, a small number of language courses are now operating in Kurdish and other minority languages. Kurdish girls who attend Turkish schools are likely to be shunned by virtue of the language barrier. Some Kurdish people maintain that there is even a call for "education in the native language as a human right".

Restricting women's rights to education also restricts their access to information about their rights, in particular their right to choose how they live, their right to be free from violence and their access to justice. According to UNICEF, 640,000 girls in Turkey are not receiving compulsory education, although women have the right to equal education in law. Of the population aged 15 years and older, only 77 per cent of women compared to 93 per cent of men can read and write. Boys are more likely than girls to be educated beyond primary school level. Schoolbooks reinforce gender stereotypes of men in leadership roles and women doing housework. According to UNICEF, the government is at least partially to blame for gender discrimination in education. In 2003, with UNICEF's support, the Turkish government launched a campaign aimed at getting all girls into school. Depriving girls of education constitutes, among other things, a form of economic discrimination. They are less likely to fulfill their potential in all areas of employment, including in politics. Men earn higher wages: women's salaries are between 20 and 50 per cent of those of men. Men own 92 per cent of all property and approximately 84 per cent of gross domestic production. Women are under-represented in political life.

On 9 December 2004, IRIN News¹⁹ reported the results of a two year study carried out in Iraqi Kurdistan by a mainly Norwegian-funded NGO based in Sulaymaniyah. The

statistics for illiteracy are staggering: 13 percent of unmarried women, 51 percent of married women and 87 percent of widows surveyed said they could not read or write. However, while we hear that due to the threat of male violence, women have disappeared from the roads and public life in many Iraqi cities, we also hear about courageous projects led by women for women, for example, the Women's Centre at the Kurdish Refugee Camp in Maxmur, a village set in the Northern Iraqi desert. The camp was built in 1998 to accommodate 10,500 refugees who were forced to migrate due to the destruction of their villages, torture and killings carried out by the Turkish forces in the 1990s. Before they were forced to flee, the women were restricted to their families and village communities, and due to patriarchal feudalistic family structures many women never had the chance to attend school. Thus 97 percent of the women were illiterate. Despite adverse conditions, the women contributed to the building of a small infrastructure, social institutions and schools. Women's active social engagement is what characterises Maxmur's social life today²⁰.

Education under Article 7 of the Charter includes informal education, for example, education provided to women in community centres. Community centres tend to be found in disadvantaged neighbourhoods and provide women and children with informal education programmes, counselling and advice in relation to social welfare. Community centres are complementary to the work carried out by women's centres and both play a very important role in the empowerment of women from urban and rural areas. The Public Administration reform process in Turkey foresees that community centres will be transferred to local government without any mandatory provisions for keeping them open or establishing new centres, nor is there any guidance as to their operation or monitoring going forwards²¹. In order to carry on and improve the provision of informal education to women in rural and rural/urban areas, such provision ought to exist. Going forward, there needs to be a greater cooperation and collaboration between the local authorities and qualified and experienced women's groups regarding the centres' operation.

ARTICLE 8

- (1) All appropriate measures shall be taken to eliminate discrimination against women in the field of health care in order to ensure access to health care services, including that related to family planning.*
- (2) Traditional practices like female genital mutilation shall be prohibited by law.*

Article 8 of the Charter concerns women's health and calls for all appropriate measures to be taken to eliminate discrimination against women in the field of healthcare. This article ought to be interpreted in accordance with article 12 of CEDAW, which requires

states to eliminate discrimination against women in their access to healthcare services throughout the lifecycle, particularly in areas of family planning, pregnancy and during the post-natal period. Paragraph 6 of General Recommendation 24 states:

“While the biological differences between men and women may lead to differences in health status, there are societal factors which are determinative of the health status of women and men and which can vary among women themselves. For that reason special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups such as, migrant women, refugees, internally displaced women, women in prostitution, indigenous women and women with physical and mental disabilities.”

For example, war or no war, more than 2000 Iraqi women give birth everyday. **But** over a decade of war and international sanctions have caused severe damage to the Iraqi health care system, leaving the country with limited access to medicines, equipment and supplies. This decline, combined with increasing poverty and poor nutrition, has had serious health consequences for Iraqi women and children, such as an increase in infant and maternal mortality. In addition to the general effects of violence and lack of health care:

- Women are uniquely vulnerable to vitamin and iron deficiencies, particularly anaemia, which can be fatal for pregnant women and their babies.
- Women suffer a range of reproductive health problems, from not having sanitary supplies for menstruation or life-threatening complications related to pregnancy.
- The stress and disruption of war often lead to a rise in gender-based and sexual violence.
- Women are primarily responsible for those made vulnerable by war-children, the sick and the elderly.
- Women's vulnerability is further increased by the loss of men and boys, disruptions of the social structure, and other conflict factors. This is especially true in Iraq, where many households are headed by women due to the deaths of male family members during the Iran-Iraq war of the 1980s, the Gulf War of 1991 and the US led coalition invasion in 2003²²

Under CEDAW, state parties are required to eliminate discriminatory practices from existing health legislation and enact further healthcare legislation aimed at improving the provision of health services to women. They must also establish plans and policies based on scientific and ethical research and assessment of the health status and needs of women, taking into account any ethnic, regional or community variations or practices based on religion, tradition or culture. For example, unequal power relationships

between men and women in the home and workplace may negatively affect women's nutrition and health. They may also be exposed to different forms of violence which may affect their health.

Some actions that may be usefully undertaken by states are:

- gender sensitive training to enable healthcare workers to detect and manage the consequences of gender-based violence
- the enactment and enforcement of laws that prohibit FGM and marriage of girl children
- The enactment and effective enforcement of laws and formulation of policies, including healthcare protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health services

Article 8(2) calls for the legal prohibition of practices such as FGM. A German organisation released a survey of villages in Northern Iraq that show that between 60-70 percent of the women have undergone FGM. More than 130 million women around the world are believed to have been subjected to FGM. FGM causes women to suffer infections, pain, haemorrhage and psychological post-traumatic stress disorder²³. The procedure, when performed without any anesthetic, can lead to death through shock or excessive bleeding. The failure to use sterilised medical instruments can lead to infections and the spread of diseases such as HIV/AIDS. Girls who have not been circumcised are considered "unclean" in many of the cultures where it is practised and are often treated as sex workers. The World Health Organisation, UNICEF and United Nations Population Fund have called for the eradication of FGM by educating societies about its effect on women, through mobile health classes and otherwise. According to Amnesty International, "Governments are responsible for protecting women and girls' physical and mental integrity. Moving against FGM should be part of a comprehensive approach to protect women from violence and assert their equal status in society"²⁴. Laws banning the practice of FGM ought to be implemented in all states where FGM is practised and practitioners of FGM ought to be given the required assistance to seek alternative employment to avoid such practice taking place in secret.

ARTICLE 9

Appropriate measure shall be taken to eliminate discrimination against women in other areas of economic and social life, in particular:

(a) The right to family benefits, e.g. for Anfal women, children, displaced and other affected families;

(b) Women shall have the right to free legal advice regarding all forms of discrimination against women.

Article 9 tackles the rights of vulnerable groups, such as Anfal women and displaced women, to state benefits. This article is of particular importance as certain human rights can be suspended in times of war or in serious national emergencies (save for Article 3 of the Geneva Convention which relates to the protection of persons not taking an active part in the hostilities), precisely at the time where refugees and internally displaced persons (“IDPs”) are more likely to need this protection. Furthermore, human rights conventions do not explicitly deal with IDPs or forced relocations; they do not provide for a right of access by humanitarian organisations and are not binding on rebel forces. Also, in practice, refugees often remain on the periphery of effective protection. Non-nationals are perceived to stand outside the community simply because of their lack of citizenship and on that basis may be denied their entitlements under international human rights law.

It is clear from international human rights law that non-citizens are supposed to enjoy human rights - civil and political as well as economic, social and cultural – on the same footing as citizens of a state with few exceptions. According to the Special Rapporteur of the Sub-Commission on non-citizens, “all persons should by virtue of their essential humanity enjoy all human rights”. However, the reality is often otherwise. IDPs cannot invoke the same legal protections as refugees. As a result, IDPs access to healthcare is often very limited, particularly since there is often no specific international humanitarian agency which is responsible for providing them with protection and humanitarian assistance.

IDPs are not covered by the Refugee Convention. To address this shortfall, the non-binding Guiding Principles have been developed. These draw on refugee laws and existing humanitarian and human rights law and include the right to healthcare. However, responsibility for the protection and provision of basic services to IDPs still rests with national governments, many of which may be unwilling to prioritise services to IDPs.

The Turkish government has been in dialogue with UN Agencies about future return plans for 380,000 Kurdish villagers forcibly displaced by the Turkish security forces and has developed two important initiatives. The first is a proposed governmental agency to develop a policy on IDP return, coordinate implementation of the existing “Return to Village and Rehabilitation Program”, in accordance with the United Nations Guiding Principles on Internal Displacement (“Guiding Principles”), and to develop a policy for demobilising the village guard corps. The second is a fairly small-scale joint UNDP-Turkish government project for the return of internally displaced persons to their

homes. Neither initiative had been implemented at the time of writing²⁵. Return is very often a risky process. Returnees are not viewed with much sympathy by the security forces, and will be under threat by government-sponsored village guard neighbours, who in some cases have occupied their lands. Human Rights Watch has noted that, in the last quarter of 2004²⁶, several attacks have taken place on civilians by village guards in areas of return, including in the provinces of Diyarbakır, Muş, Mardin and Hakkari. These recent shootings are an alarming reminder of the continued potential for lethal state violence against civilians. They substantiate the fears of the IDPs for their personal security, a key obstacle to their return.

Human Rights Watch recommends that the Turkish government ensure that the recent attacks on civilians in return areas are thoroughly and independently investigated, that the methods and findings of that investigation are made public, and that any members of the security forces found to be responsible for the killings are prosecuted and punished. It also recommends that the government take concrete steps to establish the new government body to coordinate returns in accordance with the Guiding Principles, to implement the joint project between the government and UNDP, generate accurate government statistics, and to ensure accountability for violence in return communities²⁷.

In northern Iraq, there are several causes for the internal displacement of approximately 800,000 people. The main cause has been the Iraqi government's actions: during the "Anfal" Campaign, 4,500 Kurdish villages were destroyed killing approximately 50,000 people and many Kurds were deported to new "collective settlements" and detention camps. Thousands of Kurds were expelled from Kirkuk because of its strategic location and oil fields. Another cause of displacement has been the constant factional fighting between the Kurdish parties KDP and PUK. In northern Iraq, shelter conditions for the IDPs is rapidly deteriorating to living in open tents or in open unheated public buildings.

The scope of this article can be extended to include recognition of work carried out by women to slow down and eventually eradicate the "vanishing" of women from economic thinking. Work performed at home or "for free" remains unaccounted for, including many essential functions without which daily life would come to a standstill. This blindness operates when it comes to assigning value to "caring" areas of social life: education, health, the support of "non-productive" members of society or what is called the "informal economy". This blindness obscures the importance of work undertaken by women outside the home. For example, 55.3 percent of unpaid agricultural labour in Turkey is performed by women and 30.7 percent in Iraq.

The view stands that domestic activities carried out by women form what people call the "social capital" of a society: the strength and quality of the social fabric. This one-sided

valuation of women's work is not in line with equitable social and economic rights and therefore a true accounting of women's "worth" is called for. From the very beginning of international human rights standard setting, the United Nations recognised that economic equity is intrinsic to a just and peaceful society.

THE WAY FORWARD

The Preamble to the Charter of the United Nations intends to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women". Women have always resisted patriarchal features of their societies and several attempts have been made to overthrow the very old habitual ways of thinking about the position of women in society, by the separation of the world into separate male and female spheres. In all, about a dozen major documents and thousands of regulatory texts have been approved and signed by member states of the United Nations. The unique offering of the Charter is that it aims to address the needs of Kurdish women and girl children who, by virtue of their unique experiences as part of an ethnic minority, often face very specific problems.

The Charter also brings to Kurdish women the wealth of knowledge and experience accumulated from existing conventions and instruments such as, the UDHR, ICCPR, International Covenant on Economic Social and Cultural Rights ("ICESCR"), CEDAW, the Convention against Racial Discrimination and Torture, the Beijing Platform for Action, the Millennium Development Goals and the Refugee Convention. Finally, women, institutions and governments using the Charter ought to learn from each other's success or failure on how to use such documents successfully. Sharing experiences and learning with others, as part of the fight for women's human rights, is a positive struggle which recognises the quality of a woman's contribution in every aspect of the community.

Part Two: Enforcing The Charter

INTRODUCTION

The Charter is a woman's human rights framework which draws its inspiration from existing international treaties and conventions such as, CEDAW, ICCPR and ICESCR. The Charter and the existing international treaties and conventions share the common vision of making gender justice an integral element of the rule of law and including a gender perspective in all development policies. Nations such as Turkey, Iraq, Azerbaijan, Armenia and Syria have all ratified these covenants and treaties²⁸. When a nation ratifies a treaty, it undertakes both negative obligations - to refrain from actions that violate human rights - and positive obligations - to take positive action to guarantee the protection of human rights. Although non-binding in nature, the Charter can be viewed as a code of best practice which is complementary to the existing body of international treaties and covenants²⁹. So, a violation of the principles of the Charter can be deemed to be a violation of the corresponding international principle. In the event of a breach of the Charter principles, Kurdish women or Kurdish women's organisations can use UN enforcement mechanisms that exist to ensure that governments fulfil both positive and negative obligations under the various international covenants and treaties.

The promotion and protection of women's rights in Iraq provides an illustrative example of how UN enforcement mechanisms could be useful. Since the end of major combat operations in May 2003, women and girls have been harassed, injured and killed by armed groups, coalition forces and members of their own family. Women who have been campaigning to protect women's rights have been threatened. Allegations of ill-treatment of female detainees have also been published in the media and by human rights organisations. Even in their homes, Iraqi women may not be safe³⁰. Iraqi women continue to face various forms of discriminatory legislation. Iraq is a state party to international treaties prohibiting any discrimination of women in legislation or legal practice, including ICCPR (Article 26) and CEDAW (Article 2). The Coalition Provisional Authority ("CPA") has introduced several amendments to the Iraqi Penal Code, Law 111 of 1969. Although some amendments have increased penalties for offenders of violence against women, several other discriminatory provisions in the Penal Code have remained. For example, Article 41 of the Penal Code encourages violence against women as it gives husbands the right to "punish" their wives within certain limits prescribed by

law or custom. The UN High Commissioner for Human Rights has noted in his report of June 2004 that the Transitional Administrative Law (“TAL” – interim constitution) “did not offer adequate protection against discrimination in marriage (no equal right to marry, within marriage or to divorce), inheritance and the ability to pass citizenship to children.” It is more than clear that while equality of the woman is certainly not one of the strengths of the TAL or the Iraqi Penal Code, the injustices against Iraqi women are increasing. What faith will an Iraqi woman have in her national system where judicial appointments of women are put on hold due to protests of religious leaders against this position being occupied by a woman? Furthermore, UN Resolution 1325, passed by the Security Council in 2000, stresses the importance of women’s participation in peace-building and conflict resolution. Equality and non-discrimination is a crucial part of eradicating violence against women. It must be understood that 1325 is aimed at all member states of the UN, civil society and other stakeholders. 1325 is currently lacking accountability and, if 1325 is to be implemented in a serious way, it is clear that support mechanisms need to be established within the UN system to address gender-related issues within peace and security programmes in a timely and specific manner.

It is clear that implementation of international treaties and covenants ratified by nations such as Iraq remains a problem. Gender sensitive interpretation and applications of all international human rights standards, in addition to becoming a party to an international human rights treaty, is not always sufficient, even when the provisions are backed by national law. Governments need to apply practical measures to ensure full implementation of internationally agreed human rights standards particularly where human rights violations against women are sanctioned by tradition. Whilst the government attempts or feigns to attempt the implementation of international standards, what of the rights of women who continue to suffer and be brutalised in the meantime? If redress cannot be obtained at the national level then the international level - UN enforcement mechanisms – may provide the answer.

UN ENFORCEMENT MECHANISMS

Two matters deserve careful attention prior to using the UN enforcement mechanisms. These are:

- (a) **The exhaustion of domestic remedies.** It is a principle of international law that the protection of human rights ought to be carried out by national governments. National remedies are viewed as more effective than international ones because they are easy to access, proceed more quickly and require fewer resources than making a claim before an international body. Access to international enforcement mechanisms is therefore seen as a last resort, after the State has failed to correct the

violation or deliver justice. Exhaustion of domestic remedies requires the use of all available procedures to seek protection from future human rights violations and to obtain justice for past abuses. Local remedies can range from making a case in court to lodging a complaint with local police;

- (b) **UN mechanisms are often very slow and time-consuming** therefore remedies available under international law may not always be advantageous to the victim and confidentiality of the complainant cannot always be guaranteed. Victims of violence, for example, may not have the time to invest in such lengthy procedures.

However, international law recognises that domestic remedies may be unavailable or ineffective or unreasonably delayed. In these cases it is not necessary to first address the national mechanisms if it can be convincingly demonstrated that there are, in effect, no local remedies available³¹.

There are two types of international protection bodies:

- (a) **charter-based bodies** such as, the Commission on Human Rights which includes the Special Rapporteurs, the Country Mandates and the Thematic Mandates; and
- (b) **treaty-based bodies** such as the Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

CHARTER-BASED BODIES

1. The Commission on Human Rights was established by the Economic and Social Council (“ECOSOC”) in February 1946. The Commission set up a number of working groups and networks of individual experts, representatives and rapporteurs mandated either to report on specific issues or to accept individual cases. In relation to women’s rights they are:

- (a) Special Rapporteurs, who examine specific types of human rights violations:
- Special Rapporteur of the Commission on Human Rights on Violence against Women, its Causes and Consequences

- Special Rapporteur of the Commission on Human Rights on the Question of Torture
 - Special Rapporteur of the Commission on Human Rights on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
 - Special Rapporteur of the Commission on Human Rights on the Right to Education;
- (b) Country Mandates that examine human rights situations in specific countries, for example, Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Iraq;
- (c) Thematic Mandates, such as:
- Working Group on Arbitrary Detention
 - Representative of the Secretary-General on Internally Displaced Persons
 - Special Representative of the Secretary-General on the Situation of Human Rights Defenders

2. The Sub-Commission on the Promotion and Protection of Human Rights.

3. The Commission on the Status of Women. This Commission consists of 45 members who are elected by ECOSOC for four years. It holds its annual meeting in March in New York.

USING CHARTER-BASED MECHANISMS

1. **1503 Procedure:** The Sub-Commission on the Promotion and Protection of Human Rights (“Sub-Commission”) has the authority to review “situations which reveal a consistent pattern of violations of human rights” and present recommendations to ECOSOC. The Sub-Commission is able to consider individual communications under the 1503 Procedure. This procedure enables two UN bodies, the Sub-Commission and the Commission on Human Rights, to investigate specific types of complaints: those which appear to show consistent or widespread patterns of gross and reliably attested human rights abuses³². The 1503 Procedure is not limited to UN members and may be used by any country in the world³³. It allows complaints to remain on a confidential basis unless the national government indicates that there is a need to make the complaint public. Under the procedure, the authors of a complaint have the option of retaining their anonymity and, as such, their names and

identities will not be revealed to the government. The mandate of the Commission on Human Rights is to examine, monitor and report on human rights situations worldwide and therefore most of its work consists of reporting and monitoring mechanisms as opposed to complaints.

2. However, the 1503 Procedure is limited because it functions more like a reporting mechanism than a complaint mechanism, as its purpose is to provide information on patterns of human rights violations and not to redress individual wrongs. ECOSOC has therefore also created the **1235 Procedure** which allows the Commission on Human Rights to create ad hoc groups of its own members to examine gross violations of human rights with a view to making recommendations in such respect to the ECOSOC. 1235 allows for consideration of petitions and other urgent information by the UN Commission on Human Rights and its Sub-Commission, and provide for a range of follow-up measures, such as the conduct of on-site visits to states and the drafting of reports by Country or Thematic Special Rapporteurs, Representatives, Experts and Working Groups. They are, however, primarily “political” procedures in so far as their operation is ultimately dependent upon decisions being taken within the commission itself (which is composed of UN member states).

Almost all these bodies allow NGOs to intervene in their deliberations. In fact, without the input of NGOs many of these mechanisms would be unable to function effectively. National, regional and international NGOs are fertile sources of information; they provide a picture of the human rights situation in a country that is an alternative to that provided by governments. The comments, observations and recommendations of these bodies in turn support NGOs in their lobbying and advocacy activities. Please note that the 1235 Procedure is available to NGOs but not to individuals.

3. **Thematic Mandates:** The Commission on Human Rights and ECOSOC have established a number of mechanisms which have been entrusted either to working groups composed of experts acting in their individual capacity, or to independent individuals including variously designated special rapporteurs, representatives or experts. The mandates given to such groups of experts typically consists of examining, monitoring and reporting on human rights situations in specific countries or territories (“Country Mechanisms”) or major phenomena of human rights violations worldwide (“Thematic Mechanisms”)³⁴. For example, the mandate of the Special Rapporteur on Violence Against Women, Including Its Causes and Consequences began in 1994 when the Commission on Human Rights appointed Radhika Coomaraswamy, from Sri Lanka, to the position. In August 2003, the Commission appointed Yakin Ertürk, from Turkey, to the Special Rapporteur

position. Ms. Ertürk continues in the position today. The Special Rapporteur collects information on violence against women, its causes and consequences from various governments, agencies and NGO. It then analyses the information collated in order to make recommendations on measures to be taken at the international, regional and national level to reduce violence against women. It is important to note that the findings and recommendations of the mechanisms are not legally binding and non-enforceable. The following are the Special Rapporteurs who deal with **individual** cases:

- Special Rapporteur of the Commission on Human Rights on Violence against Women, its Causes and Consequences
- Special Rapporteur of the Commission on Human Rights on the Question of Torture
- Special Rapporteur of the Commission on Human Rights on the Right to Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health
- Special Rapporteur of the Commission on Human Rights on the Right to Education;
- Working Group on Enforced or Involuntary Disappearances;
- Special Rapporteur of the Commission on Human Rights on the Freedom of Religion or Belief;
- Special Rapporteur of the Commission on Human Rights on the Sale of Children, Child Prostitution and Child Pornography;
- Working Group on arbitrary detentions;
- Special Rapporteur of the Commission on Human Rights of Migrants;
- Special Representative of the Secretary General on Human Rights Defenders;
- Special Rapporteur of the Commission on Human Rights on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance.

The following are working groups that **do not deal with individual cases**:

- Special Rapporteur of the Commission on Human Rights on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination;
- Representative of the Secretary General on Internally Displaced Persons;
- Special Representative of the Secretary General for Children and Armed Conflict;
- Independent Expert on Human Rights and Extreme Poverty; and

- Independent Expert on the right to development.
4. **Country Mandates:** The Commission on Human Rights and ECOSOC have established a number of procedures and mechanisms which have been entrusted to either working groups composed of experts acting in their individual capacity or to independent individuals variously designated special rapporteurs, representatives and experts. The mandates given to such procedures and mechanisms are either to examine, monitor and publicly report on human rights situations in specific countries or territories or on human rights violations worldwide. An example of a country mandate is the Special Rapporteur on the Situation of Human Rights in Iraq which was constituted by the Commission on Human Rights by resolution 1991/74 and renewed under CHR 2002/15. This working group was established in 1991 due to concern over disappearances, executions, torture and arbitrary detentions as well as chemical attacks and displacement of the Kurdish population and in general the fundamental denial of human rights. The Special Rapporteur here does not take up individual cases, but rather studies the current human rights situation in Iraq.
 5. **Other Charter-Based Mechanisms:** Since the 1980's, the Commission on the Status of Women ("CSW") has had the authority to receive complaints on a limited basis. The CSW will not make a decision on the merits of a complaint, and thus the communication procedure does not provide an avenue for the redress of individual grievances³⁵. According to the CSW, "the purpose of this communication procedure is to provide information about violations against women that can assist the Commission in its task of policy formulation and development of further strategies for the advancement of women."³⁶ The CSW complaint procedure is aimed at identifying trends and patterns in relation to women's rights and therefore functions more as a reporting mechanism, since its purpose is to provide information as opposed to providing redress for wrongs suffered individuals.

TREATY-BASED BODIES

1. **Human Rights Committee:** established pursuant to article 28 of the ICCPR; meets three times a year.
2. **Committee against Torture:** established pursuant to article 17 of the Convention against Torture and Other Cruel, Inhumane and Degrading Treatment of Punishment ("CAT") to supervise implementation of the Convention; meets bi-annually.
3. **Committee on the Elimination of Discrimination against Women:** established pursuant to article 17 of CEDAW to supervise the implementation of the Convention;

meets bi-annually.

4. **Committee on the Elimination of Racial Discrimination:** established pursuant to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) to supervise the implementation of the Convention; meets bi-annually.
5. **Committee on Economic, Social and Cultural Rights:** established pursuant to article 8 of the International Convention on the Elimination of all Forms of Racial Discrimination to supervise the implementation of the Convention; meets bi-annually.
6. **Committee on the Rights of the Child:** established pursuant to article 43 of the Convention on the Rights of the Child to supervise the implementation of the Convention; meets three times a year.
7. **Committee on the Protection of the Rights of all Migrant Workers and Members of their Families:** established by article 72 of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families to review the application of the Migrant Workers’ Convention; meets annually.
8. **European Court of Human Rights:** established pursuant to article 19 of the European Convention on Human Rights to ensure the observance of the engagements undertaken by the parties to the Convention.

USING TREATY-BASED MECHANISMS

In contrast to the UN charter mechanisms, which are either not legally binding or require permission to be executed, treaties are backed by the norms regulating international law and are therefore legally binding. The four treaty committees that have mechanisms to deal directly with individual complaints of human rights violations under their respective treaties are: the Human Rights Committee, for ICCPR; the Committee on the Elimination of Racial Discrimination, for CERD; the Committee on the Elimination of all forms of Discrimination against Women, for CEDAW; and the Committee against Torture, for CAT.

Strict regulations exist governing when an individual may formally issue a complaint to one of the monitoring bodies. Firstly, all domestic options for settling the violation must have been previously exhausted. Additionally, the individual issuing the complaint must be under the jurisdiction of a state that is a party to the relevant treaty. No complaint

may be made anonymously; it must come from either the victim, a representative of the victim, or, in rare circumstances in which it is impossible for either of these people to complain, a third, non-anonymous party may issue a complaint. The event in question must have occurred on or after either the date of the treaty's entrance into force or the date the state in question signed the treaty, whichever is later.

The treaty-based mechanisms are as follows:

- a. **Making Inquiries and Reporting and Monitoring:** CAT and CEDAW have the power to conduct inquiries into credible allegations of massive or systematic violations. In the case of CAT, this is pursuant to article 20 of the convention; for CEDAW it is pursuant to an Optional Protocol which states must ratify separately. However, article 28 of CAT allows for states to opt-out by declaring they do not recognise the competence of the Committee provided for in article 20. The committee has the power to request that a state party informs the committee of measures taken in response to an inquiry.
- b. **Required State Reporting:** once a state has ratified a treaty, it is required to report on a regular basis to the treaty-monitoring body. States are under an obligation to report on their own compliance with the treaty, but the committees have no power to enforce this requirement. Thus it is not unusual for governments to miss reporting deadlines or to fail to submit a report at all. NGOs have successfully used the state reporting period as a tool for advocacy³⁷. In addition, NGOs may submit "shadow reports" which offer a critical or alternative view of state compliance with the treaty obligations. Generally, shadow reports contain more detailed information than the state's report and also offer a more impartial perspective than a state report.
- c. **Committee or NGO-Initiated Reporting:** Information from advocates and NGOs may bring a particular issue to the attention of a UN monitoring body which will then carry out a study and issue recommendations in respect of the same. Some UN monitoring bodies may call for a report on government action outside the general reporting obligations of the state under a treaty. There is no real circumscribed process for communications between advocates and UN treaty bodies. NGOs generally address UN committees during the reporting period to raise awareness in relation to specific issues. The UN Committees have frequently expressed the importance of NGO participation in the reporting and monitoring process, especially in the provision of information that determines whether a state is really in compliance with its treaty obligations.
- d. **Complaint Recourse Procedures:** under this procedure, a complaint for remedies for a specific grievance is generally made. For example, a victim could make a demand

for compensation for a specific human rights violation committed against him or her, such as torture in prison. The victim delivers the complaint to the appropriate body which depends on the type of claim being made. Under this type of procedure, the victim continues to participate in the process much as in a court. The state may respond to the complaint and the commission or court may undertake its own independent investigation of the claim. Such complaints are extremely important as the commission or court relies heavily upon it in considering the case. In such cases, NGOs may participate by monitoring and publicising the proceedings. The UN bodies that receive such complaints - for example the Committee on the Elimination of Discrimination Against Women, under the Optional Protocol to the CEDAW - review the submission and can ask the state government concerned to take measures to protect the victim and to provide redress for the violation. However, unlike judgments under regional systems, such as the European Human Rights system, the decisions reached by the UN in such circumstances are not binding on national governments. UN bodies do continue to monitor State compliance.

- e. **Complaint-Information Procedures:** nevertheless, complaints for violations affecting a large population can be made and delivered to the appropriate body. In these cases, specific remedies cannot be sought, but the state can be demanded to change its practices. For example, one could demand that the state change its treatment of all women prisoners. Once the communication is delivered, NGO or individual participation in the case stops. The proceedings then continue largely in secret, with the commission possibly contacting the state for information and conducting its own investigation. Individual or NGO complaints are important as they could help trigger an investigation.
- f. In order for a complaint to be found admissible under a UN enforcement body, it is necessary to follow standard rules of procedure. Each monitoring body may have specific requirements for the form of communications, many of which can be accessed through the UN website on Communications and Complaints Procedure³⁸.

Practical examples

1. An example of the Complaint-Recourse and Complaint-Information procedures is the dual enforcement mechanism set out in the Optional Protocol to CEDAW which is both a mechanism for individual complaints and an investigative mechanism. The individual complaint mechanism is designed so that an individual woman, or group of women, who feel that her/their rights have been abused, can submit the details of the discrimination to a committee of experts who will review the case. This

committee will then contact the relevant state and seek a response and ultimately make a decision on the matter. There are however, a number of requirements that women have to meet in order to use this part of the Protocol. The most important of these are as follows:

- The entire claim must be submitted in writing; there is no oral hearing.
- The state in which the alleged abuse of rights took place must have been a party to the original Convention and the Optional Protocol at the time the abuse occurred (or the violation must continue beyond the date when the state became a party).
- The submission cannot be anonymous. Each submission must have an identifiable woman or group of women as victim(s) of the abuse. This requirement is controversial, as many women's rights activists have argued that it makes it more difficult for the most vulnerable women to bring complaints forward, however the requirement has remained.
- All domestic channels must have been exhausted before women can bring a case to the international level.

Alison Symington³⁹ notes that while the individual complaints mechanism has received significantly more media attention, the investigative procedure may actually end up being more interesting and possibly more useful for women's rights work. This procedure is much looser than the individual complaints procedure in terms of procedural requirements. If the CEDAW Committee is alerted that there have been grave or systematic violations of women's rights in a particular state, the Committee can, in co-operation with the state, launch an investigation. However, "grave and systematic" is open to interpretation in the light of women's rights and discrimination, and this interpretation could be a determining factor in the usefulness of this mechanism.

After making the initial report of women's human rights violations, the original woman or group of women are no longer formally involved in the investigation. In the course of their investigation, CEDAW will assign committee members – usually two - to investigate the allegations and to formulate a report that is submitted to the state in question. The state is then asked to respond to the findings within 6 months. These enquiries are confidential which means the public may never know of them at all.

To use the individual complaints procedure a woman or a group of women who feel that there has been a violation of her/their human rights should do the following;

- identify a claimant or the victim;

- exhaust local/domestic channels;
- carefully write-up and document the case for submission to the Committee.

Once the information is submitted to the Committee for an individual complaint or an allegation is submitted for the investigative procedure, the Committee takes over and the role of the woman's organization or victim is minimal.

2. Another example is the First Optional Protocol to ICCPR. This allows individuals of state parties to ICCPR and the Protocol, who claim their rights under ICCPR have been violated and who have exhausted all domestic remedies, to submit written communications to the UN Human Rights Committee. State parties to ICCPR undertake to ensure that women and men enjoy all the civil and political rights in the Covenant on a basis of equality. In addition, article 26 of ICCPR provides that all people are equal before the law, are entitled to equal protection of the law without discrimination, and that the law shall guarantee equal and effective protection against discrimination.

The Human Rights Committee has decided that article 26 of ICCPR prohibits discrimination in law or in fact in any field regulated by public authorities and that the scope of article 26 is not limited to civil and political rights. Article 26 can therefore be used to challenge discriminatory laws whether or not they relate to civil and political rights. For example, in *Broeks v Netherlands*,² article 26 was used as the basis of a communication under the First Optional Protocol to ICCPR to challenge a social security law that discriminated on the ground of sex. In a number of cases, women have used the communication procedure under the First Optional Protocol to complain to the Human Rights Committee of the UN about sex discrimination which breaches ICCPR⁴⁰.

The European Court of Human Rights

The European Convention on Human Rights (the "Convention") has been incorporated by ratifying member states into national law thus making its provisions legally binding. In addition to whatever protections are available under national law, member states are expected not to act contrary to the findings of the European Court of Human Rights. This means that even if a provision of the Convention has not been implemented in domestic law, the relevant member state is expected to honour such provision and any interpretation given to the same in case law. Many of the rights articulated in the Convention provide protection for women's reproductive rights and the right to live free from violence. For example, it provides for the right to life (article 2), to liberty and security (article 5), the right to respect for private and family life (article 8) and prohibits

discrimination on grounds of sex, race, national origin or colour (article 14). Optional Protocol No.7 to the Convention ensures equality of rights and responsibilities between spouses in relation to marriage and children⁴¹.

Violations of rights under the Convention can be brought to the European Court of Human Rights⁴². Decisions of this Court frequently set human rights standards above those afforded at the national level and can also pressure governments into both changing laws and protecting individuals' human rights. Article 8 of the Convention has great relevance for women's rights because the concept of "private life" has been interpreted to cover a person's moral and physical integrity, including their sexual life. It includes a person's right not to be sexually assaulted and to determine one's sexual orientation. Article 3 has been widely used in cases of rape and torture especially where such acts perpetrated by officers of the state in the course of detaining the victim. For example, in *Aydin v. Turkey* (57/19996/676/866), the victim alleged she was raped and tortured while in police custody and successfully brought a claim before the European Court of Human Rights, as the Turkish authorities had failed to carry out an effective investigation into the victim's complaint of torture. The Court noted that Article 3 of the Convention enshrines one of the fundamental values of democratic society and as such it prohibits in absolute terms torture or inhuman or degrading treatment or punishment. There are no exceptions to Article 3 and no derogation is permissible under Article 15.

The Court recalled in *Aydin v. Turkey* that Article 13 guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal system. This Article requires the provision of a domestic remedy allowing the competent national authority to deal with the relevant violation and to grant appropriate relief. The remedy available under Article 13 must be effective in law as well as in practice. Article 13 imposes an obligation on states to carry out a thorough and effective investigation into incidents of torture without prejudice to any other remedy available under the domestic system. Accordingly, where an individual has an arguable claim that she has been tortured by agents of the State, the notion of "effective remedy" entails a thorough and effective investigation capable of leading to the investigation and punishment of those responsible, effective access for the complainant to the investigatory procedure and the payment of compensation where appropriate. This case is an example of the effective operation of the system of individual petition under Article 15 of the Convention and of a claim being brought under Article 25 of the Convention for compensation in respect of pecuniary damage and non-pecuniary damage.

In cases of deportations and in the event of a **real risk** to an individual's right to life (Article 2) or a real risk to an individual's right not to face torture, or inhuman or degrading treatment or punishment (Article 3) in his/her country of origin and a

flagrant denial of an individual's right to liberty and security of person (Article 5) or a flagrant denial of an individual's right to a fair and public hearing (Article 6) in his/her country of origin, an urgent application can be made to the European Court of Human Rights⁴³ pursuant to the Rule 39 procedure. **The Rule 39 procedure is only a preliminary measure** as a precursor to an individual making a full application to the European Court of Human Rights.

ENFORCEMENT UNDER THE UN TREATY SYSTEM – DOES IT WORK?

The UN system generally operates through reporting, scrutiny and goodwill. While the concluding observations and communications of UN monitoring bodies are not legally binding, it has been argued that they are “clearly adjudicatory” and that “they are an authoritative ascertainment of law” which “contains significant interpretation of the conventions”⁴⁴. International human rights law and activities at the international level will have little resonance locally and will achieve few of the desired results if these activities are not rooted in local initiatives to effect change. As such, concluding comments and observations also provide ammunition for the domestic advocacy campaigns so that recommendations made at an international level can be translated in the domestic arena.

The reporting process is important in so far as it increases awareness of human rights among a variety of governmental actors and non-governmental actors, including, activists, parliamentarians and journalists, and has contributed to some extent to an increased understanding of the ways in which local practices and policies cause women harm and violate their human rights. The preparation of shadow reports by NGOs allows women at grassroots level to identify their concerns and feed them into a process which encompasses the local, national and international dimensions. Claims by individuals before the European Court of Human Rights still appear to be an expedient and effective way of making a complaint and receiving compensation for pecuniary and non-pecuniary damage suffered by victims, whilst also giving a modern interpretation to international law for the advancement of women's rights. However, for treaty enforcement mechanisms to be effective, this will require more than a “rhetorical commitment”: resources are needed to improve access to justice, to train and sensitise judges, legal professionals and law enforcement officials at all levels, to provide shelter and legal assistance to victims, and to launch effective public awareness campaigns⁴⁵.

Appendix 1

The territorial jurisdiction of international treaties

| Treaty Title | Country | Ratification/Reservations | Miscellaneous |
|---------------------------------------------------------------------|---------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| Convention Against Torture | Armenia Turkey Azerbaijan Georgia Syria | Armenia, Turkey, Azerbaijan, Syria and Georgia have all ratified the Convention and recognise CAT's competence to receive and process individual communications under Article 22. | Iran and Iraq did not sign or ratify CAT. |
| ICCPR and First Optional Protocol ("P1") | Armenia Georgia Iran Iraq Syria Turkey | Armenia ratified both. Turkey signed the ICCPR but has not yet ratified it. Georgia and Azerbaijan acceded to ICCPR, P1 and Optional Protocol 2. Iran ratified the ICCPR but not P1 or Optional Protocol 2. Iraq ratified only ICCPR. Syria acceded only to the ICCPR. | |
| CEDAW and First Optional Protocol ("P1") | Armenia Azerbaijan Georgia Iraq Syria Turkey | Armenia acceded to CEDAW. Georgia acceded to CEDAW and P1. Iraq and Syria acceded to CEDAW but not P1. Turkey acceded to CEDAW and ratified P1. Azerbaijan ratified CEDAW and P1. | Iran did not sign or ratify CEDAW or P1. |
| Convention on the Elimination of all Forms of Racial Discrimination | Armenia Azerbaijan Georgia Iran Iraq Syria Turkey | Armenia, Azerbaijan, Georgia and Syria acceded to CERD. Turkey, Iran and Iraq ratified CERD. | Azerbaijan recognised CERD's competence to receive and process individual communications under Article 14. |

| | | | |
|---------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| Convention on the Rights of the Child | Armenia Azerbaijan Georgia Iran Iraq Syria Turkey | Armenia, Azerbaijan and Iraq acceded to the Convention. Iran, Syria and Turkey have ratified the Convention. | |
| International Covenant on Economic, Social and Cultural Rights | Armenia Azerbaijan Georgia Iran Iraq Syria Turkey | Armenia, Azerbaijan, Georgia and Syria acceded to the Covenant. Iran and Iraq ratified the Covenant. | |
| International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families | Azerbaijan Turkey | Azerbaijan acceded to the Convention. Turkey ratified the Convention. | |
| European Convention on Human Rights | Turkey Azerbaijan Armenia | Turkey, Azerbaijan and Armenia have ratified the European Convention on Human Rights. | Turkey recognised at the time of ratification, the right of individuals to petition the European Court. |

Appendix 2

International law pertaining to contents of the Charter for the Rights and Freedoms of Women in the Kurdish Regions and Diaspora

| CHARTER PROVISION | CORRESPONDING INTERNATIONAL EQUIVALENT |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Article 1 | Article 1 CEDAW, Article 14 ECHR |
| Article 2 | Article 2 (c) CEDAW, Article 7 (a) CEDAW, Article 3 CEDAW, Article 8 CEDAW and Article 7 (c) CEDAW |
| Article 3 | Article 16 CEDAW, Optional Protocol No.7 to ECHR |
| Article 4 | Articles 3 and 10 CEDAW |
| Article 5 | Articles 1 and 4 Declaration on the Elimination of Violence Against Women |
| Article 6 | General Recommendation No.19 in 1992; Declaration on the Elimination of Violence Against Women 1993 and Articles 1 and 6 CEDAW |
| Article 7 | Article 10 CEDAW |
| Article 8 | Article 12 CEDAW |
| Article 9 | Article 13(a) CEDAW |

Appendix 3

Guide to the “1503 Procedure”⁴⁶

| Type of Mechanism | Complaint-Information Procedure |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Scope of the Procedure</i> | Consistent patterns of gross human rights violations/situations that affect a large number of people over a protracted period of time |
| <i>Who Can Submit a Complaint</i> | Individuals or NGOs; not necessarily the victim of the violation but with “direct and reliable” knowledge. |
| <i>Role of Advocates</i> | NGOs can initiate a complaint and can later offer supplementary information. |
| <i>Available Remedies</i> | No individual remedies, but the procedure may lead to a decision that gross human rights violations have occurred and should be remedied. |
| <i>How to Submit a Complaint</i> | <p>There is no formal procedure for submitting a complaint under the 1503 Procedure, however, the communication must meet a number of admissibility criteria to be considered:</p> <p>The complaint must be in writing.</p> <p>The names of the authors of the complaint (individuals or an NGO) should be included. If the author chooses to remain anonymous, this must be stated in the complaint.</p> <p>The complaint must show the existence of a consistent pattern of gross and reliably attested human rights violations. Thus, the complaint should include a detailed description of the facts, evidence of the violation and state which rights have been violated.</p> <p>The complaint should include a statement of purpose, which explains the reasons for the submission.</p> <p>The complaint should contain information about the exhaustion of domestic remedies.</p> <p>The complaint should <i>not</i> contain abusive language, be politically motivated or be based solely on information from the mass media.</p> <p>The United Nations Fact Sheet 7 includes general information about the submitting a complaint under the 1503 Procedure and the criteria of admissibility.</p> |

| | |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>Where to Send Communications</i></p> | <p>Commission/Sub-Commission Team (1503 Procedure) Support Services Branch Office of the High Commissioner for Human Rights United Nations 1211 Genève 10 Switzerland Tel: + 41 22 917 9000 Fax: + 41 22 917 9011 Email: 1503.hchr@unog.ch</p> |
| <p><i>How the Complaint Procedure Works</i></p> | <p>After receiving a communication, the Centre for Human Rights will contact the State against which the complaint was made. The State has 12 weeks in which to submit as response on the admissibility of the complaint. The Centre for Human Rights summarizes the communications for the Human Rights Commission and the Sub-Commission on the Promotion and Protection of Human Rights. Before a meeting of the Sub-Commission, a smaller five-person working group meets once a year to review the communications and the States' replies. At this stage, cases in which there is no evidence of a "consistent pattern of gross violations of human rights" are screened out. The working group will forward a small number of cases for further consideration to the Sub-Commission. The Sub-Commission can reject the case, refer the case for further investigation to a working group or refer the case to the Human Rights Commission. First the case is reviewed by a five-person group of the Commission and, if necessary, then by the full Commission. The Commission can: (1) end consideration of the case, if no human rights violations occurred; (2) postpone consideration of the case; (3) initiate a study of the situation or (4) create an <i>ad hoc</i> committee to investigate the situation. Although the 1503 Procedure is confidential, in its annual report, the Commission publishes the names the countries that were under consideration and the recommended actions to be taken.</p> |
| <p><i>Advantages/ Disadvantages</i></p> | <p>NGOs can submit complaints, although participation in the review process is extremely limited. The 1503 Procedure is useful for drawing attention to serious underlying problem but not for cases of violations of individuals' human rights. The procedure is useful if a victim wants the UN to investigate the situation in her country, but not her particular case. The strict confidentiality of the procedure protects victims but does not allow the procedure to be used for publicity or for advocacy purposes.</p> |

Adapted in part from Women's Human Rights Step by Step, Women Law & Development International and Human Rights Watch Women's Rights Project (1997).

Appendix 4

Complaints procedure to the UN Special Rapporteur for Women

| Type of Mechanism | Complaint-Information |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Scope of the Procedure</i> | “Gender-specific” acts of violence, meaning acts or threats of violence directed against women because they are women or acts of violence which affect women disproportionately |
| <i>Who Can Submit a Complaint</i> | Individuals or NGOs |
| <i>Role of Advocates</i> | NGOs can submit complaints and can otherwise contact the Special Rapporteur about issues of concern. NGOs can submit pertinent information to any and all of the special rapporteurs and working groups that are investigating specific human rights violations. |
| <i>Available Remedies</i> | No individual remedies but the Special Rapporteur can request that national governments take action to remedy past abuses or prevent future human rights violations. The Special Rapporteur can transmit an urgent appeal to a specific government about either a general or an individual allegation of abuse. State governments then communicate with the Special Rapporteur about measures taken to remedy the human rights violation(s). |
| <i>How to Submit a Complaint</i> | Complaints may be submitted by individuals or by organizations, such as NGOs. There is no formal process for submitting a complaint to the Special Rapporteur. The Special Rapporteur, however, has prepared a Model Complaint Form ⁴⁷ which sets forth the information is a guide to the relevant information which should be included. In addition, it may be useful to consider some general guidelines in writing complaints, although the Special Rapporteur does not follow strict admissibility criteria. |

| | |
|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>Where to Send Communications</i></p> | <p>The Special Rapporteur on Violence against Women The Office of the High Commissioner for Human Rights United Nations 1211 Genève 10 Switzerland Tel: + 41 22 917 9000 Fax: + 41 22 917 9006 E-mail: csaunders.hchr@unog.ch</p> |
| <p><i>How the Complaint Procedure Works</i></p> | <p>When the Special Rapporteur receives a reliable and credible complaint that is within her mandate, she can take a number of actions. The Special Rapporteur can communicate with the government concerned, asking for a response. The Special Rapporteur can also urge the government to investigate the case, to prosecute and to provide protection and relief to the victim. If a complaint alleges that a human rights abuse is imminent, the Special Rapporteur can send an urgent appeal to request that the government prevent the violation. There are no specific deadlines for submitting complaints to the Special Rapporteur, but each year she issues an annual report. NGOs should, therefore, submit information by the end of October each year in order to be included in this report. The Special Rapporteur may also schedule visits to a particular country, with the invitation of the national government. In this case, NGOs can contact her in advance and can arrange to meet her or provide her with specific information about the situation for women in the country. After a visit, the Special Rapporteur will submit a report on her findings and recommendations to the Commission on Human Rights.</p> |
| <p><i>Advantages/ Disadvantages</i></p> | <p>The Special Rapporteur has been very open to receiving information from NGOs in a less formal manner than other UN bodies. The Special Rapporteur can also respond more quickly than other enforcement mechanisms to bring issues to the attention of the UN. The Commission on Human Rights generally does not implement the recommendations that the Special Rapporteur includes in her reports. Also, the special rapporteurs in general do not have sufficient resources to follow-up after country visits.</p> |

Adapted in part from Women's Human Rights Step by Step, Women Law & Development International and Human Rights Watch Women's Rights Project (1997).

Appendix 5

CSW Complaint Procedure

| Type of Mechanism | Complaint-Information Procedure |
|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Scope of the Procedure</i> | The complaint, or communication, must either (1) allege a pattern of violations in a particular country or (2) identify a problem or problems facing women in several countries. |
| <i>Who Can Submit a Complaint</i> | Individual victims of human rights violations and individuals who can identify a particular victim(s). |
| <i>Role of Advocates</i> | NGOs may submit complaints but have a very limited role in the proceedings |
| <i>Available Remedies</i> | No individual remedies. The CSW may make recommendations to a national government, but has no means of enforcement. |
| <i>How to Submit a Complaint</i> | There is no formal procedure for submitting a complaint to the CSW however, the communication must meet a number of admissibility criteria to be considered: The complaint must be in writing. The complaint must allege that a particular State has committed violations against women. The complaint must show the existence of a pattern of violations in a particular country; or identify a problem or problems facing women in several countries. |
| <i>Where to Send Communications</i> | Commission on the Status of Women c/o Division for the Advancement of Women, Department of Economic and Social Affairs United Nations Secretariat 2 United Nations Plaza, DC-2/12th Floor New York, NY 10017 USA Fax: + 41 22 917 9022 |

| | |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>How the Complaint Procedure Works</i></p> | <p>All stages of the communication procedure are confidential. Communications should be sent to the Division for the Advancement of Women, which, in turn, sends acknowledgement to the author that the communication was received and that it was also sent to the national government. The national government, however, is not informed of the identity of the victim, unless the victim wishes it to be known.</p> <p>The Division for the Advancement of Women, summarizes all confidential communications as well as government replies in a report to the CSW. First, a Working Group reviews the report to bring to the attention of the CSW any communications that “ reveal a consistent pattern of reliably attested injustice and discriminatory practices against women.” The Working Group meets in a closed session.</p> <p>The CSW reviews the Working Group report, also in a closed session, and may make recommendations to the Economic and Social Council to take action related to patterns of abuses that are reveled in the communications.</p> |
| <p><i>Advantages/ Disadvantages</i></p> | <p>The complaint procedure to the CSW is a means to provide information to the UN, which may influence policy formulation on advancing women’s rights. The CSW cannot provide relief for individuals whose rights have been violated</p> |

Adapted in part from Women’s Human Rights Step by Step, Women Law & Development International and Human Rights Watch Women’s Rights Project (1997).

Appendix 6

Guidelines for submitting complaints to the UN⁴⁸

Communications or complaints must follow standard rules of procedure to be admissible to a UN enforcement body. The general guidelines below apply to all complaints submitted to the UN. It is advisable, nevertheless, to also become familiar with any specific guidelines promulgated by the UN bodies to which the communication is addressed. Many of the specific communications requirements can be accessed through the UN website on Communications and Complaints Procedures.

- (1) Communications should be in writing and must describe the facts, the purpose of the complaint, and the right(s) that have been violated. Communications can be posted or faxed to the appropriate office. In some cases, the information may be sent by email.
- (2) Regardless of the reporting format, the precise address of the body to which the communication is sent should appear at the beginning of the communication.
- (3) Generally, only individuals or groups who claim to be victims of human rights violations or who have direct and reliable knowledge of such violations can submit complaints. Non-governmental organizations can submit complaints, but they must demonstrate direct, reliable evidence of the situation and often show proof of consent from the individual or groups to the submission of the communication.
- (4) If the complaint is submitted through either the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women or the First Optional Protocol to the International Covenant on Civil and Political Rights, the communication must concern a State that is a party to the protocol, meaning the State has [ratified] [link to country pages] both the treaty and the protocol and has accepted jurisdiction.

- (5) Complaints to some UN bodies may be submitted anonymously. Other UN bodies, such as the Human Rights Committee will not accept anonymous complaints. In all cases, communications based solely on second-hand information, such as reports from the mass media, are not admissible.
- (6) A communication is inadmissible if it is inconsistent with principles of international human rights law, as contained in the United Nations Charter, the Universal Declaration of Human Rights and other treaties and conventions. The communication cannot be politically motivated.
- (7) The receiving body must have reasonable grounds to believe that a human rights violation exists to admit the complaint. In order to make this determination, the body receiving the communication will also consider any replies sent by the government agencies. The complainant will sometimes have the opportunity to submit additional communications about the government response.
- (8) A communication will only be considered after *domestic remedies* have been exhausted. The victim of a human rights violation or the NGO must first address the national legal system to remedy the violation. There is an exception to the rule when it can be convincingly demonstrated that either the procedures available at the national level would be ineffective or that they would extend over an unreasonable length of time.
- (9) A communication will not be admitted if it is under investigation or settlement by another UN body.

Appendix 7

Guideline questionnaire for the submission of communications

The following questionnaire provides a guideline for those who wish to submit a communication. Please provide as much information as available in response to the items listed below. Attach additional pages as necessary.

1. Information concerning the author of the communication

Family Name

First name(s).....

Date and place of birth.....

Nationality/citizenship.....

Passport/identity card number (if available).....

Sex.....

Profession

Ethnic background, religious affiliation, social group (if relevant).....

Present address.....

Mailing address for exchange of confidential correspondence (if other than present address)

Fax/telephone/e-mail.....

Indicate whether you are submitting the communication as:

(a) Alleged victim(s). If there is a group of individuals alleged to be victims, provide basic information about each individual.....

(b) On behalf of the alleged victim(s). Provide evidence showing the consent of the victim(s), or reasons that justify submitting the communication without such consent

2. Information concerning the alleged victim(s) (if other than the author)

Family Name

First name(s).....

Date and place of birth.....

Nationality/citizenship.....

Passport/identity card number (if available).....

Sex.....

Profession

Ethnic background, religious affiliation, social group (if relevant).....

Present address.....

.....

Mailing address for exchange of confidential correspondence (if other than present address)

.....

.....

Fax/telephone/e-mail.....

3. Information on the State party concerned

Name of the State party (country).....

4. Nature of the alleged violation(s)

Provide detailed information to substantiate your claim, including:

- Description of alleged violation(s) and alleged perpetrator(s).....
.....
- Date(s).....
- Place(s).....
- Provisions of the Convention on the Elimination of All Forms of Discrimination against Women that were allegedly violated. If the communication refers to more than one provision, describe each issue separately.
.....
.....
.....

5. Steps taken to exhaust domestic remedies

Describe the action taken to exhaust domestic remedies; for example, attempts to obtain legal, administrative, legislative, policy or programme remedies, including:

- Type(s) of remedy sought.....
- Date(s).....
- Place(s).....
- Who initiated the action.....
- Which authority or body was addressed.....
- Name of court hearing the case (if any).....

If domestic remedies have not been exhausted, explain why.

.....
.....

Please note: Enclose copies of all relevant documentation.

6. Other international procedures

Has the same matter already been examined or is it being examined under another procedure of international investigation or settlement? If yes, explain:

- Type of procedure(s).....
- Date(s).....
- Place(s).....
- Results (if any).....

Please note: Enclose copies of all relevant documentation.

7. Date and signature

Date/place:.....

Signature of author(s) and/or victim(s):.....

8. List of documents attached (do *not* send originals, only copies)

.....

Appendix 8

Material required for urgent applications to the European Court of Human Rights

Material required

Below is an outline of the material required to make an urgent application to the European Court of Human Rights:

1. The documents and information required are:
 - (a) a chronological account of the events leading to and explaining the individual leaving his or her country of origin and claiming asylum in Ireland, including the basis upon which the individual considers that this danger continues in his/her country of origin. The key in an urgent application regarding a refusal of asylum in a State is that the applicant must demonstrate:
 - i. a real risk of treatment contrary to Articles 2 and / or 3 of the European Convention on Human Rights (i.e. the right to life, or the right not to be tortured or subject to inhuman or degrading treatment or punishment), or
 - ii. of a flagrant denial of the rights contrary to Article 5 and / or 6 of the European Convention on Human Rights (i.e. the right to liberty and security, or the right to a fair and public hearing);
 - (b) copies of all domestic decisions in respect of the asylum application;
 - (c) if judicial review or other review proceedings have not been pursued, an explanation why not should be included. If such

proceedings have been pursued, then copies of all decisions and judgments in that matter are required;

- (d) copies of any domestic case-law to which the applicant refers in his or her submissions, for example, in the context of exhaustion of domestic remedies;
 - (e) the removal directions, namely the document outlining the date and time of removal;
 - (f) the applicant should outline clearly his or her complaints and under which article of the European Convention on Human Rights they are raised.
2. No particular form or format is required for an urgent application – if any information is missing, the Registry will let you know. Subsequently, if the case is to proceed beyond the “injunction” stage to the substantive application, a Rule 36 application form may have to be completed.
 3. If you are contemplating such an application, always submit the documents in advance and make contact with a lawyer in the European Court of Human Rights. You must let the lawyer know the general facts of the case and when it is envisaged the urgent application will be made. That way there will be no time lost and you will be sure of having the case covered by another lawyer in case of absence.
 4. Make absolutely sure to clearly mark each piece of correspondence to the Court with the heading “RULE 39” and with the lawyer’s name, to reduce the risk of delay.

Contact details:

European Court of Human Rights
Council of Europe
F – 67075 Strasbourg – Cedex
France
Tel: 0033 3 88 41 20 18
Fax: 0033 3 88 41 27 30

Appendix 9

Outline of the procedure before the European Court of Human Rights

Procedure before the Court⁴⁹

1. General

Any Contracting State (State application) or individual claiming to be a victim of a violation of the Convention (individual application) may lodge directly with the Court in Strasbourg an application alleging a breach by a Contracting State of one of the Convention rights. A notice for the guidance of applicants and forms for making applications may be obtained from the Registry.

The procedure before the European Court of Human Rights is adversarial and public. Hearings, which are held only in a minority of cases, are public, unless the Chamber/Grand Chamber decides otherwise on account of exceptional circumstances. Memorials and other documents filed with the Court's Registry by the parties are, in principle, accessible to the public.

Individual applicants may present their own cases, but legal representation is recommended, and indeed usually required once an application has been communicated to the respondent Government. The Council of Europe has set up a legal aid scheme for applicants who do not have sufficient means.

The official languages of the Court are English and French, but applications may be submitted in one of the official languages of the Contracting States. Once the application has been declared admissible, one of the Court's official languages must be used, unless the President of the Chamber/Grand Chamber authorises the continued use of the language of the application.

2. Admissibility procedure

Each individual application is assigned to a Section, whose President designates a rapporteur. After a preliminary examination of the case, the rapporteur decides whether it should be dealt with by a three-member Committee or by a Chamber.

A Committee may decide, by unanimous vote, to declare inadmissible or strike out an application where it can do so without further examination.

Individual applications which are not declared inadmissible by Committees, or which are referred directly to a Chamber by the rapporteur, and State applications are examined by a Chamber. Chambers determine both admissibility and merits, in separate decisions or where appropriate together.

Chambers may at any time relinquish jurisdiction in favour of the Grand Chamber where a case raises a serious question of interpretation of the Convention or where there is a risk of departing from existing case-law, unless one of the parties objects to such relinquishment within one month of notification of the intention to relinquish. In the event of relinquishment the procedure followed is the same as that set out below for Chambers.

The first stage of the procedure is generally written, although the Chamber may decide to hold a public hearing, in which case issues arising in relation to the merits will normally also be addressed.

Decisions on admissibility, which are taken by majority vote, must contain reasons and be made public.

3. Procedure on the merits

Once the Chamber has decided to admit the application, it may invite the parties to submit further evidence and written observations, including any claims for “just satisfaction” by the applicant. If no hearing has taken place at the admissibility stage, it may decide to hold a hearing on the merits of the case.

The President of the Chamber may, in the interests of the proper administration of justice, invite or grant leave to any Contracting State which is not party to the proceedings, or any person concerned who is not the applicant, to submit written comments, and, in exceptional circumstances, to make representations at the hearing. A Contracting State whose national is an applicant in the case is entitled to intervene as of right.

During the procedure on the merits, negotiations aimed at securing a friendly settlement may be conducted through the Registrar. The negotiations are confidential.

4. Judgments

Chambers decide by a majority vote. Any judge who has taken part in the consideration of the case is entitled to append to the judgment a separate opinion, either concurring or dissenting, or a bare statement of dissent.

Within three months of delivery of the judgment of a Chamber, any party may request that the case be referred to the Grand Chamber if it raises a serious question of interpretation or application or a serious issue of general importance. Such requests are examined by a Grand Chamber panel of five judges composed of the President of the Court, the Section Presidents, with the exception of the Section President who presides over the Section to which the Chamber that gave judgment belongs, and another judge selected by rotation from judges who were not members of the original Chamber.

A Chamber's judgment becomes final on expiry of the three-month period or earlier if the parties announce that they have no intention of requesting a referral or after a decision of the panel rejecting a request for referral.

If the panel accepts the request, the Grand Chamber renders its decision on the case in the form of a judgment. The Grand Chamber decides by a majority vote and its judgments are final.

All final judgments of the Court are binding on the respondent States concerned.

Responsibility for supervising the execution of judgments lies with the Committee of Ministers of the Council of Europe. The Committee of Ministers verifies whether States in respect of which a violation of the Convention is found have taken adequate remedial measures to comply with the specific or general obligations arising out of the Court's judgments.

Reference

- ¹ Human Rights Watch Report September 2003- Trapped by Inequality
- ² www.developmentgoals.org
- ³ Shadow NGO Report prepared by Women for Women's Human Rights (WWHR)
- ⁴ www.womenwarpeace.org/iraq/iraq.htm
- ⁵ www.unis.unvienna.org
- ⁶ (Declaration on the Elimination of Violence against Women (A.I) 1993) - www.unhcr.ch/women
- ⁷ Shadow NGO Report prepared by Women for Women's Human Rights (WWHR)
- ⁸ <http://radio.weblogs.com/0111520/2005/01/25.html>
- ⁹ <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>
- ¹⁰ Women's Platform is a collection of women organizations whose purpose was to review the TPC
- ¹¹ NGO Report prepared by Women for Women's Human Rights (WWHR)
- ¹² NGO Report prepared by Women for Women's Human Rights (WWHR)
- ¹³ Shadow NGO Report prepared by Women for Women's Human Rights (WWHR)
- ¹⁴ www.kurdmedia.com/reports - 29 August 2004
- ¹⁵ www.kurdmedia.com
- ¹⁶ http://www.iom.int/documents/publication/en/Armenia_traff_report.pdf
- ¹⁷ Second Periodic Report Armenia 2002
- ¹⁸ <http://www.undp.am/?page=pressrel&id=128>
- ¹⁹ www.irinnews.org
- ²⁰ Women's Global Network for Reproductive Rights, Newsletter 80, November 2003
- ²¹ Shadow NGO Report prepared by Women for Women's Human Rights (WWHR)
- ²² <http://www.unfpa.org/emergencies/iraq/>
- ²³ www.msmagazine.com/news
- ²⁴ http://www.wunrn.com/news/factual_aspects/stories/020604_b1.htm
- ²⁵ <http://www.kurdishmedia.com/reports.asp?id=2310>
- ²⁶ Human Rights Watch Report - -- 4 October 2004 - Last Chance for Turkey's displaced
- ²⁷ Last Chance for Turkey's displaced – Human Rights Watch Report – 4 October 2004
- ²⁸ Please see Appendix 1 for further details on ratification and reservations.
- ²⁹ Appendix 2 sets out the corresponding international standard for each article of the Charter.
- ³⁰ AI Report 28 June 2004 "Iraq Human rights protection and promotion vital in the transitional period"
- ³¹ www.stopvaw.org.
- ³² www.stopvaw.org.
- ³³ Please refer to Appendix 3 for procedural steps involved in using the 1503 Procedure.

³⁴ Please see Appendix 4 for procedural steps involved in use of the thematic mechanism.

³⁵ Please see Appendix 5 for procedural steps involved in use of CSW mechanism.

³⁶ www.stopvaw.org.

³⁷ www.stopvaw.org.

³⁸ www.stopvaw.org. See Appendix 6 for general guidelines for submission of complaints to UN treaty bodies

³⁹ Interview with Alison Symington – How can women use the Optional Protocol of CEDAW.

⁴⁰ <http://www.un.org/esa/documents/esc/cn6/1997/optional.htm>

⁴¹ Please see “Taking Cases to the European Court of Human Rights” KHRP publication for further details on taking cases to the European Court of Human Rights

⁴² Please see Appendix 9 for details on the application procedure to the European Court of Human Rights.

⁴³ Please see Appendix 8 for further details of the urgent application.

⁴⁴ Y.Iwasawa, “The Domestic Impact of International Human Rights Standards: the Japanese experience”, in *The Future of UN Human Rights Treaty Monitoring*, Alston and Crawford eds.

⁴⁵ Joint Statement by Louise Arbour, the United Nations High Commissioner for Human Rights, and Yakin Ertürk, the Special Rapporteur of the Commission on Human Rights on Violence Against Women, its Causes and Consequences.

⁴⁶ www.stopvaw.org.

⁴⁷ Please see Appendix 7 for a sample form.

⁴⁸ www.stopvaw.org.

⁴⁹ www.echr.coe.int.

Enforcing the Charter for the Rights and Freedoms
of Women in the Kurdish Regions and Diaspora

Kurdish Human Rights Project
Kurdish Women's Project

ISBN 1900175835



9 781900 175838