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增进和保护所有人权 — 公民权利、政治权利、

经济、社会和文化权利,包括发展权

暴力侵害妇女、其原因及后果问题特别报告员 拉希达•曼朱的报告

增编

基于性别的杀害妇女问题专家组的概要报告* **

概要

本报告载有由暴力侵害妇女、其原因及后果问题特别报告员拉希达•曼朱于 2011 年 10 月 12 日召开的基于性别的杀害妇女问题专家组会议的调查结论,以 便为其订于 2012 年 6 月就此专题提交人权理事会的报告提供资料。来自学术界、民间社会组织和联合国机构和组织的 25 名专家出席了会议,他们都具有暴力侵害妇女方面的技术和实际专门知识,并具有这方面的工作经验。

^{*} 本报告概要以所有正式语文分发。报告全文载于概要之后,仅以提交语文分发。

^{**} 迟交。

Annex

[English only]

Report of the Special Rapporteur on violence against women, Rashida Manjoo, on the expert group meeting on gendermotivated killings of women

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I. Introduction

- 1. On 12 October 2011, the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, convened an expert group meeting in New York on gender-motivated killings of women to inform her thematic report on this topic to the Human Rights Council in June 2012. The present report is submitted in accordance with Human Rights Council resolution 7/24 and General Assembly resolution 65/281.
- 2. The meeting brought together 25 experts from academia, civil society organizations and United Nations agencies and bodies with technical and practical expertise on and experience in working on violence against women.

II. Context

- 3. In the exercise of her mandate, the Special Rapporteur has observed that gender-motivated killings of women have taken on disturbing proportions in the last few years. The Special Rapporteur has looked at this phenomenon from the perspective of the continuum of violence, and the multiple forms of discrimination and oppression which women around the world continue to face. The Special Rapporteur and her predecessors have expressed particular concern at the extremely violent murders of women and girls, including when reporting on country visits to Latin America. A worrisome failure of States to effectively comply with their due diligence obligations to prevent, investigate, punish and provide reparation for all acts of violence against women has also been noted.
- 4. In response, the Special Rapporteur intends to focus her report to the Human Rights Council in 2012 on gender-motivated killings of women also known as femicide¹ with the aim of providing a global perspective on the prevalence, manifestations and causes of such killings. The report will also provide recommendations to States and other stakeholders to assist them in their efforts to prevent and eradicate gender-motivated killings of women.
- 5. To this aim, experts from a range of professional backgrounds and geographic locations were invited to share their expertise, views and experiences. A background paper was circulated in advance of the meeting to the participants to provide an overview of the manifestations, causes and consequences of gender-motivated killings from a global perspective. The background paper outlined the three main objectives of the meeting, namely: (a) to build upon national, regional and international expertise on the manifestations, root causes and consequences of gender-motivated killings of women; (b) to discuss policy, legal and institutional challenges at national, regional and international levels to address such killings; and (c) to identify good practices and lessons learnt in different regions.

III. Overview of discussions

6. The Special Rapporteur provided opening remarks on the meeting's objectives and outlined the background and modalities of the meeting, which was structured around three main sessions: (a) the conceptual clarification, evolution and current debate of the terms femicide and feminicide; (b) current trends and regional perspectives on manifestations and

¹ See report of the Secretary-General, in-depth study on all forms of violence against women, A/61/122/Add.1, para. 84.

causes of gender-motivated killings of women; and (c) practice and jurisprudence on gender-motivated killings of women from regional and international human rights bodies.

A. Presentation on "femicide" and "feminicide": conceptual clarification, evolution and current debate on the terms

- 7. This introductory presentation explored the origins and evolution of the concepts of "femicide" and "feminicide" and their contemporary application in law and practice from a Latin American perspective, where the terms have had particular resonance at the political and societal levels. To this end, a framework with four levels examining the theoretical, political, operative and legislative dimensions was applied.
- 8. In outlining the historical trajectory of the concept of femicide at the theoretical level, it was noted that the concept gained modern relevance in the feminist movement of the 1970s, when "femicide" was proposed as an alternative to the gender-neutral term of homicide in order to recognize the discriminative, oppressive, unequal and systematic violence against women, which at its extreme end culminated in death. Diana Russell and Jane Caputi in 1990 defined the term as "the killing of women by men motivated by hate, contempt, pleasure or the assumption of ownership of women". It was expanded by Diane Russell and Jill Radford in 1992 as "the misogynist killing of women by men" and later broadened by Diane Russell and Roberta Harnes in 2001 to "the killing of females by males because they are female" in order to include "all forms of sexist killings" with a view to capturing the socially constructed and perceived right to do so.⁴
- 9. It was explained that femicide could be intentional or indirect and hence included unintentional killings of women, as exemplified by some instances of domestic violence which could result in the death of women. The presentation referred to female infanticide, preadolescent mortality, dowry-deaths, clandestine abortions, honour killings, maternal mortality and deaths arising from harmful practices or neglect (such as starvation or ill-treatment) of women and girls. The term femicide ("femicidio") was particularly embraced in Latin America in the 1990s as a useful tool in response to an alarming escalation of very violent murders of women and girls. In parallel, the word "feminicidio" was introduced as the direct Spanish translation from the Latin origins of femicide, adding the element of impunity and institutional violence owing to the lack of accountability and adequate response of the State to such killings. The presentation underscored that femicide involved killings perpetrated or tolerated by both private and public actors by action or omission and that adopting feminicide in English could prove useful when State accountability was at stake.
- 10. At the political level, it was noted that the use of the term remains a political choice and a rather specialist notion yet to reach mainstream political discourse. At the operative level, the importance of clear definitions of what constituted femicide in order to carry out effective investigation and prosecution was emphasized. That was particularly pertinent with respect to disaggregated data collection efforts: significant discrepancies in available data in Latin America owing to definitional inconsistencies remained a clear challenge and must be addressed in order to improve criminal investigation, analysis and response to acts of femicide. Lastly, referring to the judicial level, the presentation recalled the due diligence obligation of States to prevent, investigate and prosecute all forms of violence

² "Femicide: Speaking the Unspeakable", p. 34, in Russell and Jill Radford, *Femicide: The Politics of Woman Killing* (New York, 1992).

³ Femicide: The Politics of Woman Killing.

⁴ Femicide in Global Perspective (New York, Teachers College Press, 2001), pp. 13–14.

against women and to protect women and provide reparation. The importance of recognizing the conceptual evolution was emphasized and illustrated in the political frameworks that had lead to action and investigation of the phenomenon in Latin America.

11. In conclusion, the presentation underlined that the very different contexts of femicide, set against the multiple forms of discrimination and violence against women, required multisectoral responses. The ensuing discussion touched on the challenges of how to determine when the killing of women is gender-motivated. The importance of accurate statistics and analysis and the need to address the dichotomy of State accountability and individual responsibility were emphasized in that respect. One participant underscored the value of femicide as a gender-specific crime and the current absence of gender-sensitive data collection.

B. Manifestations and causes of gender-motivated killings of women: current trends and regional perspectives (session 1)

- 12. In this session, presenters discussed the prevalence, manifestations and causes of gender-motivated killings of women in different parts of the world, drawing upon specific national or regional trends, particularities and recent developments. This included information on the physical manifestations of killings, their legal, political, socioeconomic and cultural contexts and how killings are situated in the continuum of violence against women. Presentations also examined legislative measures to prevent killings and good practices and challenges in preventing, investigating and prosecuting gender-motivated killings of women as well as strategies to encourage data collection and reporting. States' compliance with their due diligence obligation and measures undertaken by States to combat impunity of perpetrators and ensuring accountability was given particular emphasis.
- 13. Dowry-related killings of women, suicides and self-immolation (South Asia), killings of women as a result of intimate partner violence (Europe), killings of women accused of sorcery and witchcraft (Africa and the Pacific), honour-related killings of women (Middle East and North Africa) and extreme forms of gender-motivated killings of women (femicides) in Latin America were among the different manifestations discussed in this session. Participants also examined gender-motivated killings of women on the basis of sexual orientation and identity and ethnic or racial origins and in the context of armed conflict, underscoring the emphasis of the mandate on the multiple forms and intersectionality of discrimination and violence.

1. Manifestations and causes of gender-motivated killings: regional contexts

14. The presentation on South Asia noted that, despite progress in criminal law reform, the failure to comprehensively address strong patriarchal values, the high premium on women's chastity and the subordination of women remains a key factor in the prevalence of gender-motivated killings of women in the region. As an example, despite the prohibition of dowry in the Penal Code of India, the reported number of dowry-related deaths of women had significantly increased from 4,836 (1990) to 8,383 (2009). The limited impact of criminalization in efforts to eradicate killings was also noted in the very low conviction rate (10 per cent). Suicides by women were reported to have become a "pan-South Asian trend", with suicide due to domestic abuse, forced marriages, the casting out of widows and lack of inheritance rights emerging as the leading cause of death among Nepalese women in the prime reproductive age group (in 2008/2009). In the region, honour killings, acid burning attacks, witch-hunting, foeticide, gender-based violence during caste and communal conflict were also discussed in the context of a lack of acceptance of girls in society and the absence of adequate family support.

- 15. As regarded Europe, the presenter referred to the widespread prevalence of domestic violence in many member States of the European Union. According to statistics, one in four women had experienced domestic violence during their lives and only 7 per cent had reported violence to the police. It was noted that 70 per cent of women killed had been victims of intimate partner violence. The highest rates had been recorded in the Baltic States. Lengthy separation procedures (Spain) were identified as increasing the risk for tension between couples where the risk for re-victimization was particularly high. In Italy, it was highlighted that killings of women were perpetrated primarily by family members, while killings by former partners were reported to be on the increase, from 11 (2006) to 29 cases (2011). The importance of using femicide as a criminological category in Europe and collecting data on femicide specifically to show that killing of women is a gender-related crime was emphasized. In the region, a key challenge to engender structural change at institutional and social levels concerned the need to move from a family-based approach to a gender one in addressing killings of women. Common indicators of violence against women, sensitization among women of their rights, combating gender stereotypes among members of the judiciary and law enforcement agencies were required for better implementation of due diligence obligations.
- During the presentation on gender-motivated killings of women accused of sorcery and witchcraft, it was stated that such killings are based on beliefs in extra-natural causes of unexplainable deaths. Such killings are reportedly common in the case of Papua New Guinea and other Melanesian countries. In some parts of Papua New Guinea, they were reportedly on the increase. The gender-motivated aspects of such killings could be seen in the fact that women are six times more likely than men to be targeted. The particular vulnerability of certain groups of women (women marrying into another clan, widows or elderly women without family members to protect them, women born out of wedlock) was highlighted. Underlying socioeconomic factors were also referred to, with accusations made as a means to take over land, or based on other personal motivations. While these killings have been prosecuted under the Penal Code, legislation specifically criminalizing not only attacks on people accused of sorcery but also those practising sorcery (Sorcery Act of 1971) was regarded as problematic – as the focus was on the sorcerer as perpetrator and not on the alleged victims. Strengthening prosecution under the Penal Code was recommended, coupled with an urgent need to strengthen the capacity of the law enforcement agencies to respond to and investigate sorcery-related attacks.
- 17. The presentation on the phenomenon of the killing of girls and women accused of witchcraft in Africa was based on findings from Cameroon, the Central African Republic, Congo, the Democratic Republic of the Congo and Gabon. While it was noted that such killings did not target women and girls disproportionately compared to men and boys, the underreporting of cases most of which occur in remote and inaccessible areas highlighted the need to analyse available data critically. To prevent and eliminate violence and killings perpetrated against women and girls accused of witchcraft, three areas were noted as particularly important: (a) regulating the role of and belief in traditional doctors and medicine; (b) addressing the practice of local Christian churches; and (c) enhancing the capacity of States to implement and enforce existing constitutional orders and legislation.
- 18. The significance of the evolving economic status of women and the sociopolitical context when examining gender-motivated killings of women was accentuated in the presentation on the killing of women in the name of honour. Using Lebanon as a case study, it was noted that the geographical location of judges had been an important factor in the prosecution of honour-based killings of women, with courts in urban areas being more prone to refuse notions related to honour. The importance of a comprehensive law on violence against women was becoming increasingly critical as "family femicide" or economically motivated killings of women were becoming more common than honour-related killings. In that context, the presenter referred to the refusal, or difficulty, of men to

adapt to the changing role of women in society and to "compromised manhood" in situations of unemployment or infidelity, where the killing becomes a means to restore the "decorum" of that manhood. In a situation of weak State institutions due to civil war and political separatism along confessional lines, it was noted that women's rights advocates feared current attempts of religious groups to dilute the draft law on protection of women from family violence.

19. In examining extreme forms of gender-motivated killings in Latin America (using Central America and Mexico as case studies), the heightened vulnerability of women to violence and compounded discrimination, in contexts of poverty, fragile States and institutions, organized crime, narcotraffic, and a militarized post-conflict situation was emphasized. In several Central American countries, the prevalence of killing of women and girls had increased at an alarming rate compared to men, with the majority of victims representing young women from vulnerable and marginalized backgrounds. It was noted that most perpetrators were known to the victim with a corresponding negligent and passive social and judicial response. Killings were often perceived as "crimes of passion" or "gangrelated crimes". The presentation also highlighted the systematic killings of women who were abducted and disappeared for few days, tortured, sexually assaulted, murdered, mutilated and their corpses (or parts of them) dumped in the outskirts or empty wastelands of the city. In that regard, the presentation underlined the need to contextualize the intersection of acts of femicide with discrimination based on race, ethnicity, class, age, occupation, migration status and gender identity. As a positive development, the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women had prompted several States to pass legislation specifically criminalizing acts of femicide. Although laws penalizing femicide as a crime had been successfully passed in several Latin American countries, they reflected the lack of a common definition, with some penal codes referring to killings as intimate partner violence solely, while others included killings in the context of both private and public spheres. Application of laws remained weak, with impunity and lack of due diligence by the State to prevent femicide, protect women, investigate and punish perpetrators, and provide reparations to victims and their families prevailing.

2. Manifestations and causes of gender-motivated killings: specific contexts

- The difficulty of gathering information on the prevalence and manifestations of 20. gender-motivated killings of women was highlighted in the examination of gendermotivated killings on the basis of sexual orientation and gender identity. Reluctance to report such crimes due to stigma was particularly challenging. It was noted that this problem was compounded by the fact that many of such killings were concealed behind the shame that the perceived transgression of sexual identity was considered to bring about. While gender-motivated killings were a global phenomenon, the presentation underlined the importance of recognizing the different causes thereof, depending on the specific local, national or regional context. In that respect, in order for States to respond effectively, the importance of assessing prevailing stereotypes and addressing the social or cultural or economic factors and belief systems that underpinned such attitudes and values (including "honour") was emphasized. The often aggravated nature of these killings, the prevalence of violence and killings of that group of women in the family sphere and the social intolerance and harassment that might lead to suicides among lesbian, transgender and bisexual women were highlighted. Good practices and studies of the Council of Europe and the Organization of American States were referred to.
- 21. The intersectionality between discrimination on the basis of race and ethnicity and violence against women, including killing and disappearances, was examined in the presentation on gender-motivated killings of indigenous women. Using Canada as a case

study, the weak law enforcement and judicial response to reported cases of disappearances and killings of Aboriginal women were explained in relation to the historical exclusion and social marginalization of the indigenous community. The importance of addressing the stereotyping of the lifestyle of Aboriginal women, among police and members of the judiciary in particular, and the discrepancies in, and the lack of, disaggregated data was identified as a critical factor in effectively responding to the phenomenon. The socioeconomic element was equally emphasized. It was noted that urban migration was forcing aboriginal women into homelessness and prostitution, thereby increasing their exposure to violence, abuse and harassment. In that vein, improving social programming was indicated as important as enhancing the capacity of the police to investigate and protect.

22. Another aspect noted at the expert meeting was the challenges in combating impunity for gender-motivated killings of women due to poor investigation and lack of prosecution in situations of armed conflict. The example of Afghanistan was referred to, where the impact of a recent law on elimination of violence against women was reportedly constrained by the lack of training on the law among judges and prosecutors. Further, the parallel application of customary and statutory judicial systems, and a general breakdown of the rule of law due to the conflict, jeopardized efforts to implement gender-sensitive and human-rights-friendly legislation. Participants also pointed to the need to ensure that protection of civilians was at the core of the rules of engagement of international troops in the light of the disproportionate killings of women and children by NATO forces during airstrikes and joint operations.

C. Practice and jurisprudence on gender-motivated killings of women from regional and international human rights bodies (session 2)

- In examining the importance and challenges in the international human rights system of responding to gender-motivated killings of women, the meeting recalled the contribution of international human rights law in entrenching the principle of State responsibility for acts of violence against women. An important contribution in that regard was the recognition of all forms of violence against women as a form of discrimination, whether committed by private or public actors, and the obligation of States under the framework of the due diligence obligation. Ground-breaking case law from the Inter-American and European Court of Human Rights respectively and findings of the Committee on the Elimination of Discrimination against Women that link violence and killings of women to patterns of institutional violence and structural discrimination were referred to in identifying the specific elements of States' due diligence obligation. The presentations underlined the importance of transformative reparations which provided the possibility of modifying the status quo of discrimination and oppression of women. It was noted that transformative reparations required a holistic approach by States which responded to violence against women perpetrated in the different spheres – from the family to the transnational area. Translating that approach to local and national settings through the effective implementation of recommendations from international and regional human rights bodies remained a challenge.
- 24. Approaches and recommendations of the United Nations treaty bodies on gender-motivated killings of women was presented based on an analysis of concluding observations of the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Human Rights Committee, the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights since 2000. It was noted that treaty bodies had addressed the issue of gender-motivated killings of women in the context of honour crimes, femicide, violent murders, ritual killings and killings of women accused of witchcraft, lynching and extrajudicial killings. The

presentation highlighted that recommendations of the Committee against Torture and the Human Rights Committee tended to focus on legalistic and judicial aspects of States parties' due diligence obligation whereas the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child emphasized educational and awareness-raising measures, including the role of the media. Remaining gaps and challenges referred to included visibility of gender-motivated killings of women in the work of the treaty bodies, the absence of a definition of what constituted an effective investigation and the lack of an enforcement mechanism to ensure the implementation of treaty body recommendations.

- 25. The overview of the work of United Nations special procedures referring to the findings of the mandate holders on violence against women, torture and extrajudicial, summary or arbitrary executions confirmed the main findings discussed in the expert meeting in terms of manifestations, prevalence, causes and challenges in response to gender-motivated killings. The main recommendations of the meeting concerned: (a) enhanced access to justice of women; (b) ending impunity of perpetrators; (c) disaggregated data collection; and (d) supporting national capacity and assistance. Remaining challenges in implementing the recommendations included the importance of follow-up to recommendations by the wider United Nations system, finding partners at the national level for effective implementation, reaching out to concerned populations in accessible language and format, and concerted and coordinated action among United Nations entities to end violence against women.
- In examining the role of regional human rights mechanisms in combating gendermotivated killings of women, it was noted that the Inter-American Court and Commission on Human Rights – while offering some of the most elaborate judgements clarifying States' obligations in regard to violence against women - had pronounced on human rights of women only recently. The presentation examined recent cases from the Inter-American system to shed light on the development of legal standards relating to violence against women, discrimination, due diligence and access to justice which, it noted, represented key areas related to gender-motivated killings of women. Three judgements of the Inter-American Court of Human Rights which were considered to have set groundbreaking standards in the fields of due diligence, access to justice, and reparations for victims and their family members in cases of violence and discrimination against women were presented: González et al. ("Cotton Field") v. Mexico (2009), Rosendo-Cantú et al. v. Mexico (2010), and Fernández-Ortega et al. v. Mexico (2010). The presenter also referred to the Jessica Lenahan (Gonzales) et al v. United States of America (2011) case in which the Inter-American Commission for the first time pronounced the issue of discrimination against women under the American Declaration of the Rights and Duties of Man (1948) and its close link to violence against women. Echoing discussions pursued at the meeting, it was noted that positive change at national level through compliance with judgements required political will of States, engaging civil society in advocacy and compliance strategies, the need to start implementation immediately and the provision of technical support to States.

IV. Conclusions

27. Participants of the expert group meeting identified a number of concerns, challenges and recommendations relating to gender-motivated killings of women and States' responsibility to prevent, respond to and provide remedies for these human rights violations. These will be explored and developed in depth in the report of the Special Rapporteur to the Human Rights Council at its twentieth session (A/HRC/20/16).

- 28. The killing of women because they are women is a global phenomenon. In some parts of the world, gender-motivated killings of women are on the increase. They are often located at the end of a continuum of violence against women, set against general patterns of discrimination against women and tolerated impunity of perpetrators. While manifestations, prevalence and causes differ between regions in response to specific local contexts, many similarities exist. Notably, the meeting accentuated the particular vulnerability of certain groups of women to gender-motivated killings due to the intersectionality between discrimination on the grounds of ethnicity, race, beliefs, sexual orientation, social status, migration or other status, on the one hand, and violence against women, on the other. The meeting confirmed that the violent nature of killings often included sexual violence.
- 29. Presentations indicated that the majority of gender-motivated killings of women were perpetrated by intimate partners or close family members. That points to an urgent need to reinforce the obligations of States obligations under international human rights law to prevent and respond to violations occurring in the private sphere.
- 30. Furthermore, changing social norms, value systems and perceptions is as important as developing and enforcing comprehensive legislation on gender equality, the status of women in society and violence against women. To combat gendermotivated killings both processes must follow in parallel, and start without delay. The meeting highlighted the limited impact of legislative reform unless accompanied by transformative policies which addressed both the socioeconomic disempowerment of women and discriminatory stereotyping and attitudes vis-à-vis women, in particular among members of the judiciary and law enforcement agencies. As an illustration, legislation criminalizing "femicide" as a specific offence will prove toothless as long as killings of women by intimate partners are regarded as crimes provoked by jealousy or by "sexually aggressive" women.
- 31. The expert meeting noted the need for further regional debates and a common understanding and streamlined definition of key concepts, such as femicide and feminicide. While seen as positive steps, different approaches in domestic legislation of some Latin American countries were noted, including where some referred to femicide as killings as a result of intimate partner violence in the private sphere, while others encompassed the public sphere killer(s) unknown to the victim and with evidence of extreme violence in women's bodies. Participants concurred on the importance of legislation that distinguished gender-based and gender-motivated killings of women from other gender-neutral homicides of women. Clear and enforceable provisions in this regard are critical in order to establish patterns and design appropriate and effective responses to eliminate violence and gender-motivated killings of women.
- 32. All interventions concurred on the paucity of data and/or lack of sex and race-disaggregated data on gender-motivated killings of women as a key challenge. The meeting acknowledged the problem of gross underreporting of violence against and killings of women. Linked to social stigma and fear among victims, and also poor criminal investigations, underreporting highlights the need for a multifaceted and comprehensive approach to eliminating gender-motivated killings of women. This includes the need to enhance women's knowledge and awareness of their rights, recourse to protection mechanisms and remedies and the importance of strengthening States' technical capacity to effectively investigate, prosecute and punish all acts of violence against women, as well as to provide reparations to victims and their families in line with their due diligence obligation.

- 33. Strengthening States' capacity to end violence and killings of women engages the responsibility of many actors. This includes the promotion and change of the mindset of society, the media, public authorities and prosecutors in order to stop the recurrence of blaming the victim and/or their families for these crimes. The meeting noted the importance of responsible media reporting, engagement of civil society and partnerships across international, regional, national and local bodies. Effective follow-up and implementation of recommendations of international and regional human rights bodies depend on such alliances.
- 34. Ultimately, however, ending gender-motivated killings of women will be successful only to the extent that States exercise political will and responsive leadership. The Special Rapporteur's proposed holistic framework to ending violence against women (set forth in A/66/215) should be a point of departure in this regard. It requires a comprehensive approach based on full implementation of international human rights standards, without discrimination.

Appendix

List of participants

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