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**Statement by Ms. Rashida Manjoo
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its causes and consequences**

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Mr. Chairperson, distinguished delegates, representatives of the United Nations and the NGO community,

It is with great pleasure that I address the 68th session of the General Assembly and present my report pursuant to resolution 65/187. This report addresses the issue of violence against women and custodial settings.¹

Many countries are witnessing a disproportionate rate of increase of women being incarcerated, compared to their male counterparts. My report illustrates that there is a strong link between violence against women and women's incarceration, whether prior to, during or post-incarceration. Evidence suggests that incarcerated women have been victims of violence at a much higher rate prior to entering prison than is acknowledged by the legal system generally. While there are women who are incarcerated for committing crimes, without extenuating circumstances linked to prior violence, the undeniable link between violence and incarceration, and the continuum of violence during and post-incarceration, is a reality for many women globally.

In addition, gender stereotyping can have disproportionate negative effects on women, including increased sentencing patterns and specific forms of violence, as compared to male prisoners. Women belonging to ethnic and racial minorities face a disproportionate rate of incarceration; as structural factors affect the causes, consequences, and conditions of, and vulnerability to, arrest and incarceration. The consequences of incarceration takes a toll on several aspects of women prisoners' lives, and in many instances contribute to repeat offending.

Women are being incarcerated for many reasons including incarceration for illegal activities which they commit in response to coercion by abusive partners; or their connection with others engaged in illegal behaviour; prosecution and incarceration for crimes such as prostitution when they are coerced and become victims of sex trafficking; and for obtaining abortions, including in cases of rape in countries where abortion is illegal or legal in limited circumstances. Women sex-workers are also administratively detained for purposes of rehabilitation, in some countries.

In some countries, women are also being imprisoned for 'moral' crimes such as adultery or extramarital sex. Evidentiary rules which require corroboration in rape cases may also lead to incarceration of women victims of rape. Currently both domestic and international anti-drug policies are a leading cause of rising rates of incarceration of women around the world. Furthermore, women's political activism has also given rise to arrests and detentions in some countries.

Some countries hold women in pre-trial detention for long periods. Pre-trial detainees may have limited contact with other prisoners; fewer opportunities for healthcare, vocational or job programs; and also restrictions on family contact. Migrants who are held in custody, typically on administrative grounds, are traditionally either asylum seekers or irregular immigrants awaiting adjudication of their claims – and have not been convicted of any crime.

Adverse prison conditions, and the lack of a gender responsive environment, is a global problem, and women prisoners often face conditions that are worse than those experienced by their male counterparts. They are vulnerable to numerous manifestations of violence, including rape by inmates and guards, being forced into prostitution, touched in a sexual

¹ A/68/340

manner during searches, and required to wear revealing prison uniforms. In some contexts, women and men are housed together in the same facility or even the same cell, which increases the risks of abuse.

Psychological violence including solitary confinement of women and girls can be another form of abuse, particularly when applied for an extended period of time or used as punishment. Inferences have been made as regards the correlation between solitary confinement and high suicide rates and attempted suicide amongst women prisoners. In some countries, verbal and psychological abuse may be used to extract information regarding details of prisoner's sexual relations; under threat of public disclosure of such information, in order to extract false confessions, including as regards espionage.

Many custodial settings do not offer adequate and timely mental or physical healthcare to women inmates, and may actually provide less healthcare to female prisoners than to male prisoners. The failure to consider women's specific health needs, results in the ignoring of reproductive health needs and also medical conditions stemming from a history of poverty, malnutrition, physical or sexual abuse, drug use, or inadequate medical care.

Globally, the reality is that women are primary caretakers of children. The incarceration of women who have children, does lead to questions about both the care of children left behind, and also, young children living in prisons with their mothers. There are no universally agreed upon standards for determining which circumstances warrant this, and whether this is in the best interests of children. Most countries have instituted policies that base this decision on the age of the child.

Mr. Chairperson,

Evidence shows that incarceration can contribute to increasing the level of vulnerability and danger for female offenders. In 2011, the General Assembly, through resolution 65/229, adopted the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), which established for the first time standards that relate specifically to women prisoners, offenders and accused persons. The Bangkok Rules recognize that the principle of non-discrimination requires States to address the particular challenges that women confront in the criminal justice and penitentiary systems. Although the Bangkok Rules reflect a gender-sensitive response to conditions for incarcerated women, they do not adequately address the problem of pathways to, and consequences of incarceration.

States have a duty to address the structural causes that contribute to women's incarceration, and to address root causes and risk factors related to crime and victimization through the development of social, economic, health, educational and justice policies. States have an obligation to act with due diligence to prevent, respond to, protect against, and provide redress for all forms of gender-based violence.

There is an urgent to identify and address the pathways to women's incarceration; to establish better, safer, and more gender-responsive conditions and environments for women prisoners; to ameliorate the negative consequences of women's imprisonment; and to reduce the numbers of women in prison around the world. In some countries, there are emerging practices and on-going discussions on the need to shift from incarceration to community sentencing for female offenders, given the fact that the majority of women offenders rarely pose a public threat. In a context of scarce resources, and the shutting down of gender-specific prisons as a cost-effective measure in some countries, it is imperative that States consider alternatives to incarceration for women, where applicable.

Thematic Report to the Human Rights Council²

My thematic report to the Human Rights Council this year focuses on the issue of State responsibility for eliminating violence against women. In preparation for the report, I invited Member States and civil society organisations to provide inputs, and I held consultations in a few regions. The goal was to collect country experiences in order to analyze the interpretation, application and effectiveness of the measures being undertaken, and also the extent to which States are fulfilling their responsibility to act with due diligence to eliminate violence against women.

As a general rule, State responsibility is based on acts or omissions committed either by State actors or by actors whose actions are attributable to the State. A long-standing exception to this rule is that a State may incur responsibility where there is a failure to exercise due diligence to prevent or respond to certain acts or omissions of non-State actors.

The basic guiding elements in respect of State responsibility to act with due diligence include, among others: recognizing the problem; reviewing current policies to identify problem areas; modifying laws and policies to prevent harm or protect a right; ensuring both State and non-state actor accountability; addressing root causes of violence and the sources of discrimination that intersect in the actual experiences of women; punishing and/or rehabilitating the perpetrator; providing compensation and other remedial measures to the victim; reporting to an international body in respect of measures taken towards compliance; and generally monitoring cases and indicators to follow up and further modify policies.

Drawing on jurisprudence from the regional human rights mechanisms and also national practices, it is clear that human rights due diligence requires constant investigation and evaluation to assess whether human rights principles apply in a State's own behaviour and in its monitoring of third party behaviour. State responsibility to act with due diligence requires that there is a framework for discussing the responsibility of States to act with due diligence, through separating the due diligence standard into two categories: individual due diligence and systemic due diligence.

Individual due diligence refers to the obligations that States owe to particular individuals, or groups of individuals, including to prevent, protect, punish and provide effective remedies. Individual due diligence places an obligation on the State to assist victims in rebuilding their lives and moving forward, and also requires States to punish not just the perpetrators, but also those who fail in their duty to respond to the violation.

Systemic due diligence refers to the obligations States have to ensure a holistic and sustained model of prevention, protection, punishment and reparations for acts of violence against women. At a systemic level, States can meet their responsibility to protect, prevent and punish by, among other things, adopting or modifying legislation; developing strategies, action plans and awareness-raising campaigns; providing services; reinforcing the capacities and power of police, prosecutors and judges; adequately resourcing transformative change initiatives; and holding accountable those who fail to protect and prevent, as well as those who perpetrate violations of human rights of women. Also, States have to be involved more concretely in overall societal transformation to address structural and systemic gender inequality and discrimination.

Country Missions

Mr. Chairperson,

I would like to take this opportunity to thank the Governments of Bosnia and Herzegovina, Croatia, Papua New Guinea and the Solomon Islands for their cooperation during my visits. Each mission generated a positive dialogue at both Governmental and non-governmental levels, and I look forward to a fruitful and continued dialogue on the implementation of my recommendations. I also conducted visits to India and Bangladesh in April and May of this year and I thank the Governments for inviting me. I would like to thank the Governments of Azerbaijan, Honduras and the United Kingdom for inviting me to visit their countries sometime later this year and early next year. I regret that the Governments of South Africa and Colombia deferred their confirmation of the visit dates. I also look forward to receiving positive responses from the Governments of Afghanistan, Bahamas, Bolivia, Cuba, Egypt, France, Israel, Libya, Nepal, Nigeria, Palestine, Venezuela, Uzbekistan, Turkmenistan and Zimbabwe.

Solomon Islands³

From 12 to 16 March 2012, I conducted a mission to the Solomon Islands. The Government is making efforts to respond to the ongoing persistence of poverty and underdevelopment in the country. In this context, it has recognized the importance of women's rights and has made efforts to develop legislation and policies at the national level to improve gender equality and eradicate violence against women. However, the Constitutional provisions enacted to tackle discrimination and protect the rights of women, have not resulted in specific enabling legislation. Consequently, there are limited remedies for women victims of violence seeking justice for abuses perpetrated against them. Where legal provisions do exist, their implementation, particularly in terms of the functioning and the capability of protection mechanisms like the police and other justice institutions, is clearly deficient.

Structural obstacles that limit women's access to justice include a highly centralized legal system, the low rate of prosecutions, factors which prevent women from addressing their claims before the courts, and financial constraints facing circuit courts, among others. As access to justice through formal mechanisms becomes challenging for women, particularly in remote areas, many resort to traditional forms of justice, which remain patriarchal and non-responsive to women's human rights.

Papua New Guinea⁴

I visited Papua New Guinea from 18 to 26 March 2012. The economic growth gained through the development of extractive industries has not yet translated into tangible benefits for all citizens. Structural inequalities and discrimination continue to disproportionately impact women. Despite some law and policy developments, I noted significant gaps in the legislative framework, notably in the Constitution of the country which lacks a specific definition of discrimination or provisions in respect of its prohibition, including on the grounds of sex. Further, there is no specific legislation on violence against women broadly and/or domestic violence. Unfortunately, the draft Family Protection Bill which is under consideration, does not fully address the protection needs of women victims.

With regard to institutional measures, Family Support Centres have been established in some hospitals. There are no State-run shelters for victims of violence and women must depend on under-funded and limited services mostly provided by donor-dependent civil society

3 A/HRC/23/49/Add.1

4 A/HRC/23/49/Add.2

organizations. In addition, mechanisms such as the police, prosecution and judicial services - reflect the lack of substantive and consistent service to meet protection needs.

Bosnia and Herzegovina⁵

I visited Bosnia and Herzegovina from 28 October to 6 November 2012 and noted that the Government has recognized the importance of upholding and protecting the human rights of women, through the enactment of legislation that acknowledges the State's obligation to provide measures of prevention, protection, assistance and compensation. The success of these initiatives, however, is hampered by the high levels of fragmentation and lack of a central State level authority with jurisdiction to ensure the effective implementation of these initiatives throughout the country. This often results in the lack of effective redress for women who have been victims of violence, both past and present.

Domestic violence has been recognized by both State and non-State actors as a widespread problem, although there is currently no official data indicating prevalence rates or the conducting of comprehensive research by national or international institutions, to gather such data. Unreported cases, lack of uniform statistical records, and the tendency to treat domestic violence as a private issue, have resulted in fragmented data that has not been analysed at the State level.

During the mission, I also addressed the issue of war-time sexual violence. For many victims, silence has been the norm, particularly for women, due to fear of their perpetrators, fear of disclosing their experiences to their families, and fear of social stigmatization. Women interviewees generally stated that the State neglects their existence and tries to avoid addressing its responsibility towards them, and this has resulted in a lack of access for victims of war-time violence to both criminal and civil remedies, as well as to adequate protection, support, reparation and rehabilitation efforts. Many perpetrators remain unpunished and victims continue to encounter them in their communities on a daily basis. It is critical to both recognize and to address the continuum of post-conflict violence, which is reflected in the current high levels of domestic violence.

Croatia⁶

From 7 to 16 November 2012, I conducted a mission to Croatia. The Government of Croatia has put in place legislative and institutional measures and strived to develop relevant policies to address the elimination of violence against women. There are a number of areas which are of concern and in need of further attention. For example the policing and prosecution of cases of domestic violence needs to be reviewed to ensure victim safety and offender accountability. Despite guidelines for police officers and protective measures under the Law on the Prevention of Domestic Violence, these are not consistently applied; and most cases of domestic violence are pursued as misdemeanours, ostensibly to enable a speedy court process.

Furthermore, Centres for Social Welfare are mandated to preserve the unity of the family and to provide reconciliation through mandatory mediation processes. However, this is often carried out with disregard to the protection needs of women victims of family violence. There is an urgent imperative to transition from welfare/beneficiary approaches and practices - to a rights-based approach which recognizes women's right of access to effective justice and accountability.

5 A/HRC/23/49/Add.3

6 A/HRC/23/34/Add.4

Accountability and relevant redress for past crimes is not a reality as yet for many women victims, despite numerous cases of violence having been documented. Few cases have been prosecuted and reparation issues remain unresolved. Consequently, victims are denied access to psychosocial support, adequate healthcare and other necessary support.

Conclusion

Mr. Chairperson,

The past year has revealed how much more still needs to be done to effectively respond to and prevent violence against women. It is important to celebrate milestones such as the Declaration on the Elimination of Violence against Women, which is 20 years old this year. But we have to take cognisance of the enormous challenges we continue to face in the struggle to eliminate violence against women. As highlighted in the May 2012 report of the UN System Task Team on the Post-2015 UN Development Agenda, inequalities, including gender discrimination and gender-based violence, need to be one of the top priorities of concern for the post-2015 agenda.⁷

A key area of work which remains is to create a legally binding framework to address States' responsibility to act with due diligence, at both the individual and the systemic levels, to combat violence against women. I call on member States to continue collaborating with the mandate in our common goal of promoting and protecting the rights of women broadly, and to addressing violence against women in particular.

I thank you for your attention and look forward to a constructive dialogue.

⁷ Report of the UN System Task Team on the Post-2015 Development Agenda, "Realizing the Future We Want for All", paras. 60-62 and 91.