

legality and morality of its support for the Afghan insurgents.⁶⁶ In deciding to support the rebels, the United States did not regard the policies of the mujahidin with respect to women as relevant.⁶⁷ The mujahidin are committed to an oppressive, rural, unambiguously patriarchal form of society quite different from that espoused by the socialist Soviet-backed regime. Indeed, Cynthia Enloe notes that '[o]ne of the policies the Soviet-backed government in Kabul pursued that so alienated male clan leaders was expanding economic and educational opportunities for Afghanistan's women'.⁶⁸ A consequence of the continued support for the insurgents was the creation of a vast refugee flow into Pakistan. Of these refugees, 30% were women and 40% were children under 13.⁶⁹ The *mullahs* imposed a strict fundamentalist regime in the refugee camps, which confined women to the premises, isolated them, and even deprived them of their traditional rural tasks. There is no indication that any different policy would be followed if the *mujahidin* were successful and able to form a government in Afghanistan. Indeed, this marginalisation and isolation of Afghan women is being projected into the future, as the educational services provided by the UN High Commissioner for Refugees are overwhelmingly for boys.⁷⁰ The vital impact of education on women and its effect in undermining male domination have been well documented.⁷¹

Morocco's claims to Western Sahara and the Polisario resistance to those claims have led to the establishment of Sahrawi refugee camps in Algeria that are mainly occupied by women and children. In these camps, however, women have been able to assert themselves: they have built hospitals and schools, achieved high rates of literacy, and supported 'the right of the woman and the mother' as well as the 'fight for independence'.⁷² The international community, through the International Court of Justice and the General Assembly, has reiterated the right of the people of Western Sahara to self-determination.⁷³ Despite this legal support, the Sahrawis' only backing comes from Algeria, while Morocco is backed, *inter alia*, by France and the United States. The determination of these women to keep alive a 'democracy, based on proportional representation, with centralised and equal distribution, full employment [and] social and political parity between the sexes' in the adverse conditions of refugee camps has received little international support.

The international community recognises only the right of 'peoples' to self-determination, which in practice is most frequently linked to the notion of the independent state. Women have never been viewed as a 'people' for the purposes of the right to self-determination. In most instances, the pursuit of self-

66 See Reisman, 'The Resistance in Afghanistan is Engaged in a War of National Liberation' (1987) 81 *AJIL* 906.

67 By contrast, the United States used the repression of women in Iran after the 1979 revolution as an additional justification for its hostility to the Khomeini regime.

68 C Enloe, *Making Feminist Sense of International Politics: Bananas, Beaches and Bases* (1989), P 587.

69 *New York Times*, 27 March 1988, p 16, col 1.

70 *Ibid.* The total enrolment in UN schools is 104,000 boys and 7,800 girls.

71 See eg, K Jayawardena, *op cit*, pp 17–19.

72 As demonstrated by the objectives of the Women's Union, founded in 1974. Cumming, 'Forgotten Struggle for the Western Sahara', *New Statesman*, 20 May 1988, p 14. ('Women are at the heart of the revolution; their own struggle for rights doesn't have to wait until the war is over, the two are indivisible.')

73 *Western Sahara Case*, 1975 ICJ Rep 12 (Advisory Opinion of 16 October).

determination as a political response to colonial rule has not resulted in terminating the oppression and domination of one section of society by another.

States often show complete indifference to the position of women when determining their response to claims to self-determination; the international invisibility of women persists. Thus, after the Soviet Union vetoed a Security Council resolution on the invasion of Afghanistan, the General Assembly reaffirmed 'the inalienable right of all peoples ... to choose their own form of government free from outside interference' and stated that the Afghan people should be able to 'choose their economic, political and social systems free from outside intervention, subversion, coercion or constraint of any kind whatsoever'.⁷⁴ The General Assembly's concern was with 'outside' intervention alone. Women arguably suffer more from 'internal' intervention: women are not free to choose their role in society without the constraints of masculine domination inside the State and are constantly subject to male coercion. The high-sounding ideals of non-interference do not apply to them, for their self-determination is subsumed by that of the group. The denial to women of the freedom to determine their own economic, social and cultural development should be taken into consideration by states in assessing the legitimacy of request for assistance in achieving self-determination and of claims regarding the use of force.

Conclusion

The feminist project, it has been said, has the 'twin aims of challenging the existing norms and of devising a new agenda for theory'. This paper emphasises the need for further study of traditional areas of international law from a perspective that regards gender as important. In a review of two Canadian legal textbooks on remedies, Christine Boyle points out that they simply do not address the concerns and interests of women.⁷⁵ She criticises this great silence and concludes: 'Men and Law' is tolerable as an area of intellectual activity, but not if it is masquerading as 'People and Law'.⁷⁶ International legal structures and principles masquerade as 'human' – universally applicable sets of standards. They are more accurately described as international men's law.

Modern international law is not only androcentric, but also Eurocentred in its origins, and has assimilated many assumptions about law and the place of law in society from Western legal thinking. These include essentially patriarchal legal institutions, the assumption that law is objective, gender neutral and universally applicable, and the societal division into public and private spheres, which relegates many matters of concern to women to the private area regarded as inappropriate for legal regulation. Research is needed to question the assumptions of neutrality and universal applicability of norms of international law and to expose the invisibility of women and their experiences in discussion about the law. A feminist perspective, with its concern for gender as a category of analysis and its commitment to genuine equality between the sexes, could illuminate many areas of international law; for example, State responsibility, refugee law, use of force and the humanitarian law of war, human rights, population control and international environmental law. Feminist research holds the promise of a fundamental restructuring of traditional international law

74 Thornton, 'Feminist Jurisprudence: Illusion or Reality?' (1986) 3 *Australian Journal of Law and Society* 5, 6–7.

75 C Boyle, 'Book Review' (1985) 63 *Can B Rev* 427.

76 *Ibid* at 430–31.

discourse and methodology to accommodate alternative world views. As Elizabeth Grosz points out, this restructuring will not amount to the replacement of one set of 'truths' with another: '[feminist theory] aims to render patriarchal systems, methods and presumptions unable to function, unable to retain their dominance and power. It aims to make clear how such a dominance has been possible; and to make it no longer viable.'⁷⁷

The centrality of the State in international law means that many of the structures of international law reflect its patriarchal forms. Paradoxically, however, international law may be more open to feminist analysis than other areas of law. The distinction between law and politics, so central to the preservation of the neutrality and objectivity of law in the domestic sphere, does not have quite the same force in international law. So, too, the Western domestic model of legal process as ultimately coercive is not echoed in the international sphere: the process of international law is consensual and peaceful coexistence is its goal. Finally, the sustained Third World critique of international law and insistence on diversity may well have prepared the philosophical ground for feminist critiques.

A feminist transformation of international law would involve more than simply refining or reforming existing law. It could lead to the creation of international regimes that focus on structural abuse and the revision of our notions of State responsibility. It could also lead to a challenge to the centrality of the State in international law and to the traditional sources of international law.

The mechanisms for achieving some of these aims already exist. The Covenant on Economic, Social and Cultural Rights and the Women's Convention could be used as a basis for promoting structural economic and social reform to reduce some of the causes of sexual and other abuse of women. The notion of State responsibility, however, both under these Conventions and generally, will have to be expanded to incorporate responsibility for systemic abuse based on sexual discrimination (broadly defined) and imputability to the State will have to be extended to include acts committed by private individuals. An international mechanism to hear complaints of individuals or groups, such as a Protocol to the Women's Convention allowing for individual or representative petitions to the CEDAW Committee, could give women's voices a direct audience in the international community.

Is a reorientation of international law likely to have any real impact on women? Feminists have questioned the utility of attempts at legal reform in domestic law and warn against attributing too much power to law to alter basic political and economic inequalities based on sex.⁷⁸ Could this reservation be made *a fortiori* with respect to international law, whose enforcement and efficacy are in any event much more controversial? Would an altered, humanised international law have any capacity to achieve social change in a world where most forms of power continue to be controlled by men?

Like all legal systems, international law plays an important part in constructing reality. The areas it does not touch seem naturally to belong within the domestic jurisdiction of States. International law defines the boundaries of agreement by the international community on the matters that States are prepared to yield to supranational regulation and scrutiny. Its authority is derived from the claim of

77 E Grosz, p 197.

78 Eg, C Smart, *Feminism and the Power of Law*, *op cit*, pp 25, 81–82.

international acceptance. International legal concerns have a particular status; those concerns outside the ambit of international law do not seem susceptible to development and change in the same way. To redefine the traditional scope of international law so as to acknowledge the interests of women can open the way to re-imagining possibilities for change and may permit international law's promise of peaceful co-existence and respect for the dignity of all persons⁷⁹ to become a reality.⁸⁰

INTERNATIONAL DATA ON VIOLENCE AGAINST WOMEN: THE UNITED NATIONS' REPORT: THE WORLD'S WOMEN 1995⁸¹

Gender-based violence against women crosses all cultural, religious and regional boundaries and is a major problem in every country in which it has been studied. It takes many forms, but studies and measurement techniques still little developed. Most data on violence against women are from small, *ad hoc* studies, but several countries have recently conducted national surveys on aspects of violence against women, particularly physical assault by an intimate partner. Data on sexual assault of women and girls are even more limited.

Domestic violence, rape and sexual abuse of children

The most pervasive form of gender-based violence against women is reported to be abuse by a husband or intimate partner. National studies in ten countries estimate that between 17% and 38% of women have been physically assaulted by an intimate partner. More limited studies in Africa, Latin America and Asia report even higher rates of physical abuse among the population studied – up to 60% or more of women. Women assaulted their partners too, but less frequently and seriously than man and usually in self-defence.⁸²

Sexual assault is also common, but only a small fraction of rapes are reported to the police, making police-based crime statistics of limited use for evaluating the magnitude of the problem. In the United States more than 100,000 attempted and completed rapes of women and girls were reported to the police in 1990.⁸³ But a national survey found the rate was more than six times greater, even when considering only adult women and completed rapes.⁸⁴ In the Republic of Korea fewer than 2% of women rape victims ever contacted the police.⁸⁵

In cities in six of 14 developing countries studied, sexual assault rates of 10% or more over five years were found – with the highest, 22%, in Kampala, Uganda. Rates less than 5% were found in cities of four other countries. Given their

79 UN Charter, Preamble.

80 *Feminist Approaches to International Law*, pp 634–45.

81 HMSO, 1995.

82 RP Dobash *et al*, 'The Myth of Sexual Symmetry in Marital Violence' (1992) 39 *Social Problems* 71–91; and *Violence Against Women in the Family* (United National Publication), pp 14–15.

83 United States Department of Justice, Federal Bureau of Investigation, Uniform Crime Reports (Washington DC, 1990).

84 DG Kilpatrick, CN Edmunds and AK Seymour, *Rape in America: A Report to the Nation* (Arlington VA: The National Victim Centre, 1992).

85 Young-Hee Shim, 'Sexual Violence Against Women in Korea'. Paper presented at the Conference on International Perspective: Crime, Justice and Public Order (St Petersburg, June 1992).

methodological limitations, these data can be considered only as very approximate estimates.

Most sexual crimes are committed by individuals known to the victims. Criminal justice statistics and data from rape crisis centres from six countries (Chile, Malaysia, Mexico, Panama, Peru and the United States) have been used to estimate that in more than 60% of all sexual cases the victim knows the perpetrator.⁸⁶

The only data on forced sex that are roughly comparable across countries are from surveys among college-aged women which all used the same questionnaires. These studies report 8% to 15% of college-aged women have been raped. If attempted rapes are included, the rate of sexual assault jumps to between 20% and 27%.

Data from many countries indicate that sexual abuse is an all too common aspect of a girl's childhood. In national sample surveys in Barbados, Canada, the Netherlands, New Zealand, Norway and the United States, 27 to 34% of women interviewed reported sexual abuse during childhood or adolescence. Lower rates of abuse were reported in Great Britain (12%) and Germany (17%).

In a study of 450 school girls aged 13 and 14 in Kingston, Jamaica, 13% had experienced attempted rape, half before the age of 12. One-third had experienced unwanted physical contact and one-third had been harassed verbally. In India, close to 26% of 133 postgraduate, middle- and upper-class students reported having been sexually abused by the age of 12. From 40 to 60% of known sexual assaults have been found to be committed against girls [aged] 15 and younger, regardless of region or culture.

By far most child sexual abuse involves older men abusing young girls. In the United States 78% of substantiated child sexual abuse cases involved girls.⁸⁷ One South African study found that 92% of child victims were girls and all perpetrators but one were male – and two-thirds of them were family members.⁸⁸ In Costa Rica 94% of child sexual abuse victims are girls, and 96% of the perpetrators are male.

Gender-based violence against women and girls has been a focus of activism over the past decade. The majority of countries have more than one non-governmental organisation dedicated to the elimination of gender-based violence against women and girls. They provide services for survivors of abuse, work to change community attitudes and lobby for legal reform in North America, Europe, the Asia-Pacific region and Latin America and the Caribbean. There are fewer in Eastern Europe, Western Asia and Africa.

Activism in several countries has resulted in legal reform. In many countries, rape in marriage is now a crime. Domestic violence laws have been passed in Australia, the Bahamas, Barbados, New Zealand, Trinidad and Tobago, the United Kingdom and the United States. Generally, these acts clarify the definition of domestic violence and empower the courts to issue women 'orders

86 Lori Heise with Jacqueline Pitanguy and Adrienne Germain, 'Violence Against Women: The Hidden Health Burden', *World Bank Discussion Paper* No 255 (Washington DC, 1994), p 11.

87 Gail E Wyatt and GJ Powell, *Lasting Effects of Child Sexual Abuse* (California: Sage Publications, 1988).

88 Ismail E Hafejee, 'Sexual Abuse on Indian (Asian) Children in South Africa: First Report in a Community Undergoing Cultural Change, in *Child Abuse and Neglect*', Vol 15 (1991), pp 147–81.

of protection'. Some governments have funded services for victims and launched media campaigns against violence directed at women.

Other Violence Against Women

Forced Prostitution and Trafficking

Despite international legislation, including the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, trafficking in women for prostitution continues.

Little is known about the extent of this traffic, but several recent studies and international conferences show that countries all over the world are confronted with the problem:

The Commission on Human Rights Working Group on contemporary Forms of Slavery cites estimates of two million women in prostitution in India, roughly 400,000 of whom are under 18 years of age, and with 5,000 to 7,000 young girls from Nepal sold into brothels each year.⁸⁹

Asia Watch and the Women's Rights Group report that at least 20,000 Burmese women and girls work in Thai brothels.⁹⁰

A report to the 1991 Council of Europe Seminar on Action Against Traffic in women and Forced Prostitution describes the main international trafficking routes.⁹¹

A report by the Government of the Philippines to the International Organisation for Migration points to increases since 1982 in the numbers of Filipino women, usually between 16 and 23 years of age, migrating as entertainers. The report suggests that most of these women are the victims of traffic, being tricked into working as prostitutes or in sex-related businesses.

A 1992 report of the Netherlands Advisory Committee on Human Rights and Foreign Policy suggest traffic in thousands of women in the Netherlands alone for the purposes of prostitution.⁹²

Papers presented at the 1994 Utrecht Conference on Traffic in Persons describe the growth in trafficking for sex work among Eastern European countries and from these countries to Western Europe.⁹³

Victims of traffic are open to further abuses. The International Organisation for Migration reports in many cases that, once out of their countries, women are sold to brothel owners. Their documents are confiscated and to recover them, they are obliged to repay the costs of their transportation and subsistence. They are often imprisoned, and if they attempt to leave they are faced with physical assault or threats to their families. They are usually isolated and unable to speak the local

89 International Federation *Terre des Hommes*, as cited in United Nations, Commission on Human Rights, Subcommission on Prevention of Discrimination and Protection of Minorities, Report of the Working Group on Contemporary Forms of Slavery on its Sixteenth Session (E/CN.4/Sub.2/1991/41), para 50.

90 *A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand* (New York: Human Rights Watch, 1993), p 3.

91 Licia Brussa, 'Survey on Prostitution, Migration and Traffic in Women: History and Current Situation' (EG/PROST 92(2)).

92 Government of the Netherlands, Advisory Committee on Human Rights and Foreign Policy, Discussion Paper – the Traffic in Persons, Report of the Advisory Committee meeting held in the Hague, 27 April 1992.

93 Polish Feminist Association, 'Trafficking in Women – Report from Poland', and Lenke Feher, 'Forced Prostitution and Traffic in Persons' papers presented to the Conference on Traffic in Persons, Utrecht, Netherlands, November 1994.

language. Further their status as clandestine immigrants discourages them from coming forward to the authorities.⁹⁴

Violence against migrant domestic workers

The demand for cheap domestic labour has led to the migration of women from poorer to richer countries in both developed and developing regions. The Asia and Pacific Development Centre has estimated one million to 1.7 million foreign women are currently working as domestic workers in the Asian countries studied. Some who migrate for promised jobs in domestic service, catering or entertainment find themselves tricked into prostitution. But it is not only in prostitution that women encounter maltreatment. Because these women are often illegal or undocumented immigrants and domestic work is unregulated, they are vulnerable to abuse. Migrant workers employed in domestic service often find their employers confiscate their passports and withhold their salaries, claiming outstanding debts.⁹⁵

A recent report by Middle East Watch reports abuse, confinement and debt bondage of Asian maids working in Kuwait. It estimates that for the '12 months beginning in May 1991, 1,400 Filipino domestic servants and hundreds of Indian, Bangladeshi and Sri Lankan maids sought refuge in their home embassies. Others were picked up by the police after running away and either arrested or returned to their employers'.⁹⁶ A study of overseas domestic workers in Britain who had left their employers reported that most were not paid regularly, were subject to psychological abuse and had a work day that averaged over 17 hours with no time off. Two-thirds had their passports confiscated by their employer and one-third were physically abused.

Rape in war

Reports of mass rape of women in conflicts in the former Yugoslavia, the latest in a long history of sexual abuse of women during armed conflict, coincided with the growing consciousness of the gender basis of violence against women. The suffering of those women gained particular significance and helped focus attention on State responsibility for gender-based violence in wartime.

Quantifying wartime rape is even more difficult than quantifying sexual assault in other contexts. Estimates of the number of women raped in the former Yugoslavia vary widely. In its January 1993 report, the European Community investigative mission cited 20,000 rapes.⁹⁷ The United Nations Commission of Experts was able to identify 800 victims from Bosnia-Herzegovina by name.⁹⁸ Based on the number of pregnancies resulting from rape and a formula predicting a women's chance of becoming pregnant through one act of intercourse, a team of physicians estimated the number of rapes at 11,900.⁹⁹

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- 94 International Organisation for Migration, *Trafficking in Migrants, Quarterly Bulletin*, No 4 (Geneva, 1994).
- 95 Noeleen Heyser and Vivienne Wee, 'Domestic Workers in Transient Overseas Employment: Who Benefits, Who Profits', in *The Trade in Domestic Workers* (1992).
- 96 Middle East Watch, 'Punishing the Victim' (August 1992) cited in United Nations, Commission on Human Rights (E/CN4/1995/42), para 227-229.
- 97 European Community, *Report to European Community Foreign Ministers of the Investigative Mission into the Treatment of Muslim Women in the Former Yugoslavia*.
- 98 United Nations, *Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992) (S/1994/674)*.
- 99 Shana Swiss and Joan Giller, 'Rape as a Crime of War: Medical Perspective', *Journal of the American Medical Association*, Vol 270, No 5, pp 612-15.

Reporting information suggesting over 254 rapes, the Human Rights Commission's Special Rapporteur on Myanmar pointed out that obtaining data on rape in armed conflict is particularly difficult because victims, if they are still alive, are ashamed, afraid or choose to obliterate the memory.¹⁰⁰ Further, the administrative chaos in armed conflict makes systematic collection of data almost impossible.

Sometimes evidence of sexual abuse in war emerges many years after the conflict. For example, the Japanese government recently acknowledged forcing tens of thousands of women from China, Indonesia, Korea and the Philippines into prostitution for the Imperial Army during the Second World War. These women, known as comfort women, now in their 70s, tell of being kidnapped or tricked into service.^{101, 102}

VIOLENCE AGAINST WOMEN¹⁰³

Jane Connors¹⁰⁴

The Scope and Definition of Violence Against Women

(a) *International definition*

In December 1993, the United Nations General Assembly adopted the Declaration on the Elimination of Violence Against Women.¹⁰⁵ This Declaration categorises violence against women as both an issue of human rights generally and one of sex discrimination and inequality, in particular. It states, thus, that violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms and is a manifestation of the historically unequal power relations which have led to the domination over, and discrimination against, women by men and the prevention of their full advancement. It asserts, further, that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position to men.

Violence against women, for the purposes of the Declaration, is defined by both manifestation and site of violence. Thus, it includes physical, sexual and psychological violence or violence which results in, or is likely to result in, physical, sexual or psychological harm or suffering, whether this violence occurs in the family, the community or is perpetrated or condoned by the State.¹⁰⁶ The Declaration provides examples to elaborate this definition. They include battering, sexual abuse of female children in the household, female genital mutilation, marital rape, sexual abuse and sexual harassment and trafficking in women and forced prostitution. The Declaration makes clear, however, that whatever the manifestation or wherever the site of the violence, for the purposes of the instrument, violence against women goes beyond oppressive behaviour or

100 United Nations, Commission on Human Rights, Report on the Situation of Human Rights in Myanmar, prepared by Mr Yozo Yokota, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1992/58 (E/CN4/1993/37).

101 United Nations, Commission on Human Rights (E/CN4/1995/42), para 286–92.

102 United Nations, *The World's Women 1995*, pp 158–68.

103 Background Paper, 'United Nations Fourth World Conference on Women' (1995). Previously unpublished.

104 At the time of writing, Senior Lecturer, School of Oriental and African Studies, University of London; currently Division for the Advancement of Women, United Nations, New York.

105 GA Res 48/104.

106 Articles 1 and 2.

discrimination generally and must constitute harm resulting from force or coercion.¹⁰⁷ Moreover, 'violence against women' is not random victimisation, but is gender-based.

The definition of violence against women elaborated in the Declaration is a distillation of many efforts to provide an appropriate definition of the issue. It is comprised of three elements: examples of various manifestations and sites or settings of female victimisation which have been identified by, in particular, women's activists and organisations; a narrow focus on violent conduct, rather than violation generally, and the element of gender, reflective of an analysis that violence, generally and certainly that against women, is gendered.

(b) Manifestations and sites of violence

Although women have been victims of violence in various forms and settings since the beginning of time, it has only been relatively recently that the scale and significance of such victimisation has been appreciated and, accordingly, that this victimisation has come to be regarded as a serious issue. It has only been relatively recently, further, that the myriad manifestations and settings of violence against women have been exposed and, to a certain extent, addressed.

Women's activists, predominantly drawn from Europe, North America and Australasia, drew attention to violence against wives in the family and rape as issues of concern related to female inequality and male control, on a sustained basis, only 30 years ago. Debates relating to women and development in the south led to the identification, frequently by grassroots women, of various manifestations of violence against women.¹⁰⁸

Concentration by activists and scholars in both the north and south was initially on sexual violence by those outside the family, including sexual harassment in the workplace and elsewhere, forced prostitution and trafficking.¹⁰⁹ This was followed by attention to violence against women in the family, often described as domestic violence. Perhaps because violence in the family context challenges the universal image of the family as a supportive and loving haven, the natural and fundamental group unit of society¹¹⁰ and because violence against women in the family represents the most fundamental example of the persistent inequality between women and men and, at the same time, serves to entrench that inequality in other spheres, violence against women in this context has remained the central focus of activism and scholarship within general issue of violence against women.

Attention to issues of sexual and domestic violence resulted in the revelation of further manifestations of violence against women. Very often these different manifestations occur within the family, but are tolerated or, indeed, condoned,

107 Article 1 states that 'the term "violence against women" means any act of gender-based violence'.

108 Margaret Schuler (ed), *Freedom From Violence: Women's Strategies From Around the World* (New York: UNIFEM United Nations, 1992); *Violence against Women in the Family* (New York: 1989 (Sales No E89.IV.5)).

109 Kathleen Barry, Charlotte Bunch and Shirley Castley (eds), *International Feminism: Networking Against Female Sexual Slavery* (New York: The International Women's Tribune Centre, Inc, 1984).

110 Article 16(3) of the Universal Declaration of Human Rights; Article 23(1) of the International Covenant on Civil and Political Rights; Article 18(1) of the African Charter on Human and People's Rights.

by the community and State. These include female foeticide,¹¹¹ and infanticide, the neglect, physical and sexual abuse of girl children, often by family members and marital rape. Forms of violence related to custom, culture or religion, some of which are a source of cultural pride, including the practice of sati – self-immolation – by widows,¹¹² female genital mutilation and other initiation practices, widowhood rites and violence related to the custom of dowry were also revealed as risks to women.

Economic, social and political developments, some postdating the adoption of the Forward-Looking Strategies,¹¹³ led to the identification of other areas where women are at particular risk of violence. In some countries, structural adjustment policies have caused women to move from employment in the formal sector to that in the informal sector. There they are frequently subject to poor and unregulated working conditions and vulnerable to physical and sexual abuse.¹¹⁴ The increasing participation of women, predominantly from the south and Eastern Europe, in international labour migration, the conditions of which are frequently unsatisfactory, has also provided a setting for physical and sexual abuse, with illegal immigrants most at risk. Poverty and lack of alternative employment has encouraged many women to turn to prostitution, both within their own countries and abroad. One of the results of HIV/AIDS has been increased sexual violence against girl children, who are not only the subject of victimisation by individuals, but also forced prostitution and national and international trafficking, as men seek younger and younger sexual partners so as to avoid infection.¹¹⁵ Cheap and easy international tourism has brought with it the phenomenon of ‘sex tourism’ which has increased the risks of systematic and deliberate sexual exploitation and violence to women and girl children in the south.¹¹⁶

Ethnic, religious, communal and political conflicts have marked the end of the Cold War and these conflicts have proven to be the setting for much female victimisation. Female activists and often those whose campaigns concern women’s issues, have been revealed as subject to physical and sexual violence, frequently by State agents, such as members of the military or the police.¹¹⁷ Women who are detained have been abused, most often sexually, by prison

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- 111 D D’Monte, ‘Maharashtra Clamps Down on Prenatal Sex Tests’, *People* (1988) 15(3) 26); A Pandya, ‘Prenatal Attack on Women’ (1988) *Christian Science Monitor*, 10 March p 23; V Patel, ‘Sex Determination and Sex Preselection Tests: Abuse of Advanced Technologies’, in (ed) Ghadially, R, *Women in Indian Society* (London: Sage, 1988), pp 178–85.
- 112 S Narasimhan, *Sati: A Study of Widow Burning in India* (New Delhi: Viking, 1988).
- 113 Nairobi Conference: Forward-Looking Strategies for the Advancement of Women (1985).
- 114 Middle East Watch/Women’s Rights Project, ‘Punishing the Victim: Rape and Mistreatment of Asian Maids in Kuwait’, *Human Rights Watch*, Vol 4, Issue 8, August 1992.
- 115 Asia Watch/Women’s Rights Project, ‘A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand’ (New York: *Human Rights Watch*, 1993).
- 116 Douglas Hodgson, ‘Sex Tourism and Child Prostitution in Asia: Legal Responses and Strategies’ (1994) 19 *Melbourne University Law Review* 512 at 513–21.
- 117 Amnesty International, *Rape and Sexual Abuse: Torture and Ill-treatment of Women in Detention* (New York: Amnesty International Publications, 1991) (AI Index: ACT 77/11/91); Amnesty International, *Women in the Front Line* (New York: Amnesty International Publications, 1991) (AI Index: ACT 77/O1/91); Human Rights Watch and National Coalition for Haitian Refugees (1994). ‘Rape in Haiti: A Weapon of Terror’, *Human Rights Watch* Vol 6, No 8; Human Rights Watch and Women’s Rights Project (1994); ‘A Matter of Power: State Control of Women’s Virginity in Turkey’, *Human Rights Watch* Vol 6, No 7 pp 11–23.

officers, the police and the military. Women have been the victims of terrorism and specific targets for, particularly, rape and other sexual assault, during armed conflict. Clear evidence exists suggesting that sexual abuse by soldiers is widespread and that rape, sexual slavery and forced pregnancy are used systematically in some conflicts.¹¹⁸ Most women who are subject to violence during wars take no active part in the conflict, but their abuse, which is very often sexual, is a deliberate tactic to intimidate or undermine the 'enemy' and often aims to inflict deep and lasting damage on entire communities. Frequently, like women in detention, women subjected to violence in conflict situations are abused because they happen to be the wives, mothers, daughters or sisters of the men the authorities cannot capture. These women become substitutes for the men in their families, with soldiers or government agents victimising them to shame their male relatives or to coerce them into surrendering. Many women who are abused during conflicts, moreover, are often from the most marginalised and vulnerable sectors of society, such as indigenous or peasant women or refugee or displaced women.

Conflicts and political and economic insecurity, as well as environmental degradation, have resulted in large refugee flows, with women forming the bulk of the refugee population. Refugee women and girls, particularly those with inadequate documentation or who are single and unaccompanied, are vulnerable to physical and sexual abuse during flight, on arrival in refugee camps and in the country of ultimate settlement.¹¹⁹ Perpetrators of such violence include pirates, border guards, army and resistance units, as well as male refugees. Systematic sexual violence against women and girls, in the context of armed conflict and otherwise, as well as the sexual victimisation of individual women has also proved to be one of the major causes of internal displacement and the decision to seek asylum abroad.

In sum, thus, the focus on the issue of violence against women since the formulation of the Forward-Looking Strategies has shown that women are subjected to three main forms of violence: physical abuse, sexual abuse and psychological abuse. They are at risk of these abuses in all settings and contexts. The major site of violence against women is the family – where physical, sexual and psychological violence is a risk factor for girls and women throughout their

118 Although rape, as well as sexual slavery and forced pregnancy has been always been a feature of war, the conflicts in the former Yugoslavia have produced the most recent evidence women's vulnerability in conflict: see, Amnesty International (1993). 'Bosnia-Herzegovina: Rape and Sexual Abuse by Armed Forces' *AI Index* EUR 63/O1/93; International Human Rights Law Group (1993). *No Justice, No Peace: Accountability for Rape and Gender-Based Violence in the Former Yugoslavia* (Washington DC: Amnesty International, 1994). Bosnia-Herzegovina: "'You Have No Place Here": Abuses in Bosnian Serb-Controlled Areas' (*AI Index*: EUR 63/11/94, p 12); 'Rape and Abuse of Women in the Territory of Former Yugoslavia: Report of the Secretary-General' (UN Doc E/CN4/1994/5 (1993)). Evidence of sexual victimisation of women in the conflicts in the former Yugoslavia coincided with the revelation of systematic abduction of women, described as 'comfort women' who were subsequently forced into prostitution by the Japanese army during the Second World War: David E Sanger, 'Japan Admits It Ran Army Brothels During War' (1992) *New York Times*, 8 July.

119 S Wali, *Female Victims of Sexual Violence: Rape Trauma and its Impact on Resettlement* (World Health Organisation/UN High Commissioner for Refugees, 1990); UNHCR (1993). *The State of the World's Refugees: The Challenge of Protection* (London: Penguin Books), p 70; Executive Committee of the High Commissioner's Programme, *Note on Certain Aspects of Sexual Violence Against Refugee Women*, EC/1993/SCP/CRP.2, 29 April 1993; Africa Watch and Women's Rights Project, 'Seeking Refuge, Finding Terror: The Widespread Rape of Somali Women Refugees in North Eastern Kenya' (New York: *Human Rights Watch*, 1993).