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**FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS  
AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF  
THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION  
ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE  
UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE  
ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

**Report of the Special Rapporteur on violence against women,  
its causes and consequences, Ms. Radhika Coomaraswamy  
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### **Introduction**

1. The Commission on Human Rights, at its fifty-second session, in its resolution 1996/49 of 19 April 1996, welcomed the work of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, and commended the Special Rapporteur for her analysis of violence against women in the family (E/CN.4/1996/53 and Add.2).
2. As already indicated in her previous report, the present report focuses on all forms of violence against women in the community. (1) The Special Rapporteur would further like to draw the attention of the Commission to the report of her mission to Poland (24 May-1 June 1996) on the issue of trafficking and forced prostitution of women and girls (E/CN.4/1996/47/Add.1); to Brazil (15-28 July 1996) to study in depth the issue of domestic violence against women (E/CN.4/1996/47/Add.2); and to South Africa (9-18 October 1996) on the issue of rape in the community (E/CN.4/1996/47/Add.3). The Special Rapporteur would like once more to express her appreciation for the cooperation of the Governments concerned during her visits, enabling her to report to the Commission on Human Rights in a substantive and comprehensive manner on the issues concerned.
3. In 1997-1998, the Special Rapporteur hopes to visit the Western European or North American region to study issues relating to State violence against women, as well as the Asian and Middle Eastern regions. Finally, the Special Rapporteur is also planning to undertake a country visit to report on violence against women during times of armed conflict in the African region.
4. The Commission also has before it an addendum to the present report containing summaries of communications between the Special Rapporteur and Governments concerned on allegations of violence against women (E/CN.4/1997/47/Add.4).
5. Finally, the Special Rapporteur will present the Commission on Human Rights at its fifty-fourth session with brief follow-up reports to all her country visits carried out until then. Such reports would include information on the implementation of the Special

Rapporteur's recommendations, as well as new developments in the countries concerned in connection with the issues studied. In addition, the need to carry out any follow-up missions would also be determined. [[back to the contents](#)]

## **I. VIOLENCE IN THE COMMUNITY**

6. Article 2 of the Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104) states that "violence against women shall be understood to encompass, but not be limited to, the following ... physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution".

7. For most women, the community provides the contours for the enjoyment of social space. It determines the nature of their social interactions and the type of values that will condition their lives. Community is a social space outside the family but not fully under the control of the State. It is the site for flourishing private organizations and intermediary associations which have an impact on the lives of women as part of their daily interactions. From neighbourhood associations to private corporations, religious groupings, trade unions and professional associations, the community provides the basis for what is now called civil society. Though ephemeral in concept, the community is also the site of a woman's social identity whether that identity is defined in secular, ethnic or religious terms.

8. The community may also be the site of restrictions on and regulations of female sexuality. In many instances, women and girl children are subjected to violence by their communities because of their sexuality and sexual behaviour. A key component of community identity, and therefore the demarcation of community boundaries, is the preservation of communal honour. Such honour is frequently perceived, by both community and non-community members, as residing in the sexual behaviour of the women of the community. Communities, therefore, "police" the behaviour of their female members. A woman who is perceived to be acting in a manner deemed to be sexually inappropriate by communal standards is liable to be punished. Such punishments range from eviction from the community to corporal punishment, such as flogging and stoning, and death. In many cases, the restrictions on women's sexuality, as defined by the community, are sanctioned by the State through the promulgation of laws and policies reflecting the communal values. In most communities, the option available to women for sexual activity is confined to marriage with a man from the same community. Women who choose options which are disapproved of by the community, whether to have a sexual relationship with a man in a non-marital relationship, to have such a relationship outside of ethnic, religious or class communities, or to live out their sexuality in ways other than heterosexuality, are often subjected to violence and degrading treatment. Single, widowed or divorced women living alone are often targeted by violence and rape in the community. Women, "unprotected" by a marriage union with a man, are vulnerable members of the community, often marginalized in community social practices and the victims of social ostracism and abuse.

9. Women's empowerment and economic independence are rarely recognized by societies where marriages are arranged and where sexuality is tightly controlled by communal mores and policing. The lack of choice with regard to lifestyle is closely linked to the lack of options available to women for economic autonomy within the community, whether in terms of earning power or resource distribution. Women without communal protection in the form of an approved marriage, and often without access to training or marketable skills, may be forced into prostitution or economically exploitative work to support themselves and their dependents. Those who seek work to strengthen their economic empowerment outside the domestic sphere or the immediate community, such as in free trade zones and other low-skilled labour-intensive areas, are often seen as being sexually available to men and therefore sexually promiscuous. Sexual harassment of women workers in these zones, travelling to and from work and in their workplace, is a commonplace occurrence. To strive to live and work outside the watchful gaze of the family and community is to risk becoming a target for male violent behaviour.

10. With regard to women's human rights, the term community is, therefore, a Janus-faced concept. On the one hand, the community is often the site for the denial of women's rights. Whether in terms of the strictures of ethnic and religious communities, the social construction of marriage, discrimination in the workplace or educational institutions, or rape and sexual harassment in public spaces, the community may be the site for brutality, violence and discrimination against women. On the other hand, the community is often a nurturing space, which provides women with social support and solidarity, especially when they are seeking redress from the State.

11. Community organizations have often taken the lead in fighting violence against women and discrimination either by the State or other groups in civil society. It is the community which has often developed institutions to provide legal and psychological counselling to women, to advocate and defend women in the court system, to provide shelters and other forms of assistance to women victims, to accompany women to the police station and the courts to prevent them from being alienated by the criminal justice system. The community is often the buffer, the support which gives solidarity and strength to women victims of violence during their times of crisis.

12. The community is, therefore, the site for struggle between different visions, varying practices, and diverse social attitudes. It is where groups sympathetic to women's issues have to confront and expose those practices and attitudes which are demeaning or discriminatory towards women by raising awareness and mobilizing concerned people. In most societies such struggles are being conducted by individuals and groups interested in fostering human rights and women's empowerment. They are in the process of doing valiant service in an area still fraught with tension and contradiction. Their activities must be supported by the commitment of the international community to values and standards which have been enumerated in international instruments of human rights law. [[back to the contents](#)]

## **II. INTERNATIONAL STANDARDS**

13. The Special Rapporteur, in her earlier reports, has discussed in detail the framework of international and regional human rights law relating to violence against women, seeking to clarify the international obligations and standards which are pertinent for the elimination of violence against women (see E/CN.4/1995/42). In her report to the Commission on Human Rights at its fifty-second session (E/CN.4/1996/53 and Add.2), the Special Rapporteur reflected on these standards as they related to violence against women in the family.

14. Like violence against women in the family, violence against women in the community brings into focus the important question of State responsibility for non-State actors and private individuals. In the past, a strict interpretation of human rights law considered that the State is only responsible for its own actions or that of its agents and that action by private actors is a matter of criminal justice. In recent times, however, this approach has given way to more realist thinking which holds that States are expected to exercise due diligence in preventing, prosecuting and punishing those who perpetrate violence against women, "whether those acts are perpetrated by the State or by private actors". As the Special Rapporteur stated in her first report, "this emergence of State responsibility for violence in society plays an absolutely crucial role in efforts to eradicate gender-based violence and is perhaps one of the most important contributions of the women's movement to the issue of human rights" (E/CN.4/1995/42, para. 107).

15. Although not legally binding, the Declaration on the Elimination of Violence against Women sets out a comprehensive framework with regard to the elimination of violence. With regard to violence against women in the community, the State is called upon to condemn violence against women and not to invoke custom, tradition or religion to avoid its obligations. The Declaration recommends, therefore, that the State take an active role in eliminating and preventing violence against women by or within the community. Article 4 of the Declaration requests that States "adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women". The State is vested with a positive obligation to bring about redress, not only through legislation, but also by fundamentally changing the patterns of socialization which tend to disempower women and create an atmosphere in which violence against them appears more legitimate.

16. The Declaration and the Convention on the Elimination of All Forms of Discrimination against Women highlight the importance of legislation and legal institutions in providing redress for women victims of violence but also emphasize the necessity of a multi-pronged strategy, including non-legal mechanisms, to eliminate such violence. To this effect, the Declaration calls for police training, sensitization of the judiciary, reform of educational curricula, data collection and specialized assistance to women victims. The Special Rapporteur would like to reiterate the importance of these measures in supplementing legislation and the criminal justice system if long-term policies to combat violence against women are to succeed.

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### **III. RAPE AND SEXUAL VIOLENCE AGAINST WOMEN, INCLUDING SEXUAL HARASSMENT**

17. In July 1991, 71 teenaged schoolgirls at a Kenyan boarding school were raped by their male classmates. Nineteen of the girls died as a result of the attacks and the chaos that ensued. The devastation of the event was compounded by the response of the Deputy Principal, Ms. Joyce Kithira, according to whom "[the] boys never meant any harm against the girls. They just wanted to rape". (2)

18. As a manifestation of violence against women, rape and sexual violence, including sexual harassment, are universal, cutting across State borders and cultures, used in all countries and in all cultures as weapons of degradation and terror against women. All forms of sexual violence against women serve as methods of subjugating women by controlling their sexuality through violence, fear and intimidation.

19. "Rape is an intrusion into the most private and intimate parts of a woman's body, as well as an assault on the core of her self." (3) It is the destructive combination of power, anger and sex which fuels sexual violence against women. Many victim-survivors of rape report experiencing feelings of annihilation as a consequence of being raped, arising from the very nature of rape - a direct attack on the self. One study of convicted, incarcerated rapists found that rape was used most often as a mechanism of revenge or punishment and the perpetrators expressed satisfaction and heightened levels of self-esteem directly resulting from the rape.

20. Like survivors of traumatic events such as war and torture, rape victims often suffer a form of post-traumatic stress disorder termed Rape Trauma Syndrome, which is generally induced in individuals who are subjected to extreme threats, terror and helplessness. The sufferer of Rape Trauma Syndrome continuously relives her rape through a series of flashbacks, dreams and body memories. (4)

21. Rape and sexual violence, including sexual harassment, occur at different levels of society and in distinct settings. Although all forms are connected as manifestations of sexual violence against women, they are distinct in that particularized strategies are necessary in order to provide appropriate remedies. The Indian Forum against the Oppression of Women has enumerated nine distinct forms of rape: (1) communal rape; (2) gang rape; (3) political rape; (4) rape of minors; (5) marital rape; (6) army rape and/or police rape (in situations of war or "peace-keeping"); (7) institutional rape (in hospitals, remand homes and prisons); (8) rape in economically dependent circumstances; and (9) rape within political organizations.

22. The Attorney General of Kenya recently recognized that "the most noticeable and notorious gender crime of our time is rape". (5) Despite such anecdotal evidence, however, reliable statistics are difficult to obtain regarding the incidence of rape worldwide. Official governmental statistics derived from victim reporting seldom reflect

reality. Underreporting of the crime might arise from the fear of being re-victimized in the criminal justice system, of not being believed, from self-blame and from failure by rape victims to equate their experience with the legal definition of rape.

23. As is the case with other forms of violence against women, the lack of statistical data on rape arises by traditionally categorizing such violence as "private" and as a result of a general lack of institutional will to effectively address women's complaints when victims seek redress from State agencies. Recognizing that such statistics are also underrepresentative, indications of the scope of sexual violence can none the less be gathered from existing statistics:

(a) A national probability sample of 1,835 women at 95 colleges and universities in Canada found that 23.3 per cent of the women had been victims of rape or attempted rape. (6)

(b) In Jakarta, city police recorded 2,300 cases of sexual violence against women in 1992, 3,200 cases in 1993 and 3,000 in only the first half of 1994; (7)

(c) A survey of 2,270 adult women in Seoul found that approximately 22 per cent of adult women had been the victim of either attempted rape or rape; (8)

(d) According to the Ministry for Social Protection of the Russian Federation, out of the 331,815 reported crimes against women in the Russian Federation in 1993, 14,000 of them were rapes. (9) Russian non-governmental organizations working with women victims believe the number to be significantly higher;

(e) In the United Kingdom, a sample survey of 1,476 women at universities and polytechnics found that 19.4 per cent had been the victim of sexual violence. (10)

(f) Although adolescents account for less than 10 per cent of the population of the United States, they are estimated to make up 20 to 50 per cent of all reported rape victims; (11)

(g) According to one study of 6,000 university students in the United States, one out of six female students reported that they had been a victim of rape or attempted rape during the previous year. In the same sampling, reportedly 1 out of 15 male students stated that they had committed rape or attempted to commit rape in that year. (12) [[back to the contents](#)]

#### **A. The criminal justice system**

24. The police station is the most common point of entry into formal State legal structures for most victim-survivors of rape. The police culture in many countries, however, is characterized by discriminatory attitudes towards women in general, and towards women victims of violence in particular. A non-governmental organization in India has documented the ways in which discriminatory perspectives are manifested throughout the



police reporting process: (13) one victim-survivor filing a complaint was asked by a police officer if she even knew "the meaning of the word 'rape'"; in another instance, a police officer was reported to have said, "a woman like you will never get raped; don't try to tell us that you did not enjoy it".

25. Such discriminatory behaviour naturally affects the way in which women perceive the police. Women's general distrust of the police, provoked by widespread reports of police misconduct and ill-treatment of women victims of violence, further discourages women's access to formal State structures. The atmosphere which prevails at a police station at the time of reporting a crime will greatly influence whether the woman victim will pursue her complaint. Rape victims must be assured a measure of privacy for recounting the incident without inhibition and police officers should be trained to deal with women victims in a sympathetic and confidence-building manner and provide relevant information for referrals, if necessary. Only relatively few countries, however, have developed specialized law enforcement training on violence against women. The need to transform attitudes within law enforcement hierarchies so as to make the police responsive to suggestions for change is an extremely important element of State responsibility for the prevention and prosecution of rape and other forms of violence against women.

26. Strategies which aim at setting up "one-stop centres" for women victims, either at hospitals or police stations, are perhaps the most effective in combating the problem and in avoiding re-victimization at the hospital. In some countries, such as in Brazil, special women's police stations or women's desks at police stations have been established in order to deal with issues related primarily to domestic violence and rape (see E/CN.4/1997/47/Add.2). Close and effective cooperation between the police and medical professionals is essential in this regard.

27. If rape victims are required to undergo a medical examination at a medical forensic clinic or at a hospital, it is important to realize that the behaviour of medical professionals is also decisive in determining whether the victim will continue to press charges. The need to sensitize health personnel is, therefore, underscored. In some countries, such as Australia, Brazil and Canada, special forensic examination kits are provided in order to accelerate and standardize the procedure. However, in other countries, such as India, the doctor may undertake a test to determine the victim-survivor's virginity based on the number of fingers that can be inserted into the woman's vagina. The Special Rapporteur considers that immediate medical attention is essential for victim-survivors of rape, not only for evidence collection but also because of the risk of contracting a sexually transmitted disease or becoming pregnant.

28. A reason for disproportionately low rates of reporting of rape could be that even though cases are brought to the courts, systemic obstacles and discrimination in the form of unreasonable evidentiary requirements, the rejection of the victim's uncorroborated testimony, the evocation of a victim's past history, the focus on the victim's resistance, the emphasis on the overt use of force and requirement to prove chastity. Indeed, in rape cases, it is the victim who is most often placed on trial rather than the perpetrator, accused of having ulterior motives and subjected to degrading questions with often



pornographic overtones. Prosecutors might fail to adequately address the victims' needs and all too often, information is, either intentionally or unintentionally, withheld from victims.

29. When a conviction is achieved in connection with a rape case, sentencing practice often leaves much to be desired. For example, although Polish national legislation prescribes a penalty of 1 to 10 years' imprisonment for rape, in practice over 50 per cent of those convicted of rape are sentenced to 1 to 2 years' imprisonment, 30 per cent are sentenced to 2 to 5 years and a mere 21 per cent are sentenced to a prison term of over 5 years; 30 per cent of all sentences are suspended. Additionally, even though Polish law treats rape as a crime against personal freedom, both the police and the judiciary generally minimize the significance of the crime by blaming the victim. Such discriminatory attitudes of the judiciary compelled the Supreme Court of Poland, in 1979, to issue a directive calling on the lower courts to apply the letter of the law. In many other countries, lenient sentences continue to obstruct effective implementation of the law with regard to rape.

30. In other countries, legislation prescribes minimum sentences for different categories of rape. According to the November 1995 amendments to the Penal Code in Sri Lanka, the minimum sentence for a rape conviction is 7 years but for certain aggravated cases such as custodial rape, gang rape or rape of a pregnant women, the minimum sentence is 10 years.

31. The trauma of a rape trial for the victim may not end with successful prosecution, as appeal processes may last for years, prolonging and impeding the healing process. As has been rightly pointed out, each appeal to a higher court is a gamble: "The pendulum can swing from one extreme to the other. On scrutinizing the same facts, the trial court may acquit the accused, the High Court may convict him and the Supreme Court can acquit again". (14)

32. Criminal prosecution is not the only legal mechanism for redress for rape victims since civil suits provide potential remedies as well. The general tort law of most countries provides private causes of action for intentional torts such as assault, battery and the intentional infliction of emotional distress. The benefit of civil claims is the lower standard of proof, since the plaintiff must only prove guilt based on a balance of probabilities and not beyond reasonable doubt, so that issues of consent, force and resistance are less likely to be obstacles. Additionally, the victim has sole power, within the statute of limitations, to determine when and if to bring a civil suit, thereby empowering for the victim.

33. Issues of race, ethnicity, class and disability often exacerbate the institutional failures with regard to the State response to rape and sexual violence. In the United States of America, "rape was a common method of torture slavers used to subdue recalcitrant black women" and it is held that the impunity with which white men raped black women in the slave era has contributed to the "systematic devaluation of black womanhood". (15) This devaluation and discrimination manifests itself in the criminal justice system through the

lack of proportional prosecution and sentencing of sexual violence committed against black women. Such disparities exist as a result of institutional racism that gives rise to and feeds off stereotypical images of black women as sexually available and undeserving of protection by the law. Similar experiences are reported by minority women, women living in poverty and women of low social class throughout the world who have been labelled "unworthy" of State or community protection. [[back to the contents](#)]

## **B. Legal framework**

34. Traditionally, rape has been legally defined as a crime against morality. Although at present rape laws in many countries are changing to defining rape as a crime against the person or physical integrity, often the legal link between rape and morality remains, for example in countries of the Latin American region. Conversely, in Nicaragua, which has the most progressive rape law under traditional Latin American criminal codes, rape is classified within crimes against persons. In addition to moving away from the link with morality, legal focus has shifted from the traditional man-against-woman approach towards a gender-neutral definition of the crime.

The legal definition of rape in most countries is limited to non-consensual or forced vaginal penetration, so that the focus is on a male perspective of acceptable boundaries of heterosexual sex rather than on the victims experience of sexualized violence. "[M]ale standards are used not only to judge men, but also to judge the conduct of women victims." (16) Some Commonwealth jurisdictions, however, have revised their definitions of rape to focus more broadly on acts other than penile penetration, such as the insertion of objects into the vagina and anus.

Consent has been defined as the legal dividing line between rape and sexual intercourse. In court, the argumentation over consent, however, often degenerates into a contest of wills and credibility. Many courts are reluctant to find the defendant guilty of rape in the absence of physical injuries. If consent forms an integral part of the definition of rape as a crime, as in most legislations, prosecution must assume the burden of proving the lack of consent beyond a reasonable doubt. If, however, consent is provided as an affirmative defence outside the definition of rape, the burden of proof of consent shifts to the accused. In 1983, amendments to the Indian Penal Code shifted the burden of proving the lack of consent to the accused in cases of custodial rape. The latter still does not constitute mainstream legal thinking on the subject, however.

Statutory rape laws, constructed around the age of consent, provide a mechanism through which the State attempts to define those who are legally incapable of consent. In many countries where early marriage is permitted, the age of consent is abominably low and in violation of international human rights instruments protecting the rights of the child. The need to ensure that laws protect children from abuse requires that the age for statutory rape be put at below the age of 18. However, given the increase of sexual activity among teenagers in some societies, this may cause difficulties. It seems that what is lacking in statutory rape legislation, therefore, is a conceptualization in terms of power relationships. It is sometimes argued that "the Law takes the most aggravated case for

female powerlessness based on gender and age combined and, by formally prohibiting all sex as rape, makes consent irrelevant on the basis of an assumption of powerlessness".

(17) In statutory rape cases, the need to determine whether the perpetrator was also a minor or an adult may be one way of moving forward with regard to this issue.

In some countries, attempts at law reform have adopted a system of gradation with regard to sexual violence, sex crimes or criminal sexual misconduct, ranging from harassment to gang rape. All acts of sexual violence are covered under one legal umbrella. The term rape is often not used, in preference to a less emotive term such as sexual violence.

However, this also means that the use of force effectively determines the seriousness of the crime. Gradation schemes, however, may undermine the seriousness of sexual violence that fails to be manifested by physical violence, so that "... victims who had been beaten felt that the act of sexual intercourse rather than the assault was the primary injury. Some felt that the beating and bruising they received assisted them in the criminal justice process, while the rape itself was not accorded the centrality it deserved. Any legislation highlighting the violent component of the offence at the expense of the sexual violation involved, would therefore seem to be at odds with the perception of many victims." (18)

In many countries, there exists a legal requirement that the testimony of the victim be corroborated. This has, however, been effectively challenged in many jurisdictions since the 1980s, especially within the Commonwealth. Although the judiciary in India has recognized that the special circumstances of rape generally do not lend themselves to the presence of eyewitnesses, judges, especially in cases where the victim is not a virgin or is unmarried, continue to require circumstantial evidence, such as physical injuries, torn clothing or the presence of semen, to corroborate the victim's story. The increasing presence of women advocates is resulting in a deviation from this practice.

Some laws and evidentiary rules allow evidence concerning the victim's sexual history, making the issue of virginity legally relevant and possibly rendering a cross-examination on the victim's sexual history humiliating, whilst providing for restrictions on the admissibility of the history of sexual violence of the accused. In many societies, there is an important link between virginity and the prosecution for rape. Medical examinations to determine rape often require that a victim is examined to ascertain whether she is a virgin or has had some past sexual experiences. This link between virginity and prosecution for rape ensures that certain categories of women, such as prostitutes, are seen as being outside the boundaries of what could constitute rape; as "unrapable". In many jurisdictions, however, these provisions have been changed due to lobbying by women's groups.

The issue of pregnancy as a consequence of rape also raises particular problems in countries in which abortion is prohibited. Laws proscribing abortion or extending restrictions on abortion to cases of rape discriminate against women in general and victims of rape in particular and the State compounds the injury to the rape victim through forced pregnancy. States bear the burden of safeguarding women's reproductive health and protecting their reproductive rights, and the manipulation of women's control

over their own bodies and reproduction through laws criminalizing abortion run counter to this obligation.

To illustrate the differences in national laws governing rape and sexual violence, the Special Rapporteur lists below some national examples submitted to her:

(a) Ghana considers rape as a first degree felony punishable by a sentence of not less than three years' imprisonment and in addition to a fine not exceeding 500,000 cedis (less than US\$ 500) and in default of the payment of the fine to a further term of imprisonment;

(b) According to the Indian Penal Code, rape is a gender-specific crime committed by a man against a woman and is a cognizable, non-bailable offence with a minimum sentence of seven years. Police have the power to investigate and arrest the suspect without a warrant but they do not have the authority to grant bail. The Penal Code has a separate provision for sexual violence; prohibits "unnatural sex where a man inserts the penis into the mouth or anus of the victim (male or female)" (sect. 377) and forbids "uttering a word or making a gesture intended to insult the modesty of a woman". In addition to the prison sentence, a fine may be imposed on the convicted rapists at the judges' discretion. In recent cases, money recovered as the fine has been given to the victim rather than to the State;

(c) In Japan, despite seemingly adequate laws on sexual assault and rape, judicial interpretation has greatly weakened the force of the law. Articles 176 and 177 of the Penal Code define sexual assault and rape in terms of "using violence, making threats or both". In order to determine the level of violence and/or threats, courts have focused on the victims' level of resistance rather than on the level of fear. Additionally, a 1959 precedent from the Yamaguchi district court holds that ordinary sexual intercourse is performed under a certain degree of force, thus making rape more difficult to prove. Building on the 1959 precedent, a 1978 case of the Hiroshima High Court dismissed the charge of rape because it found no evidence of tangible force beyond "ordinary sexual intercourse". Furthermore, civil law has been interpreted to provide a husband whose wife has been raped with a right to seek compensation from the rapist, thereby codifying the traditional perception that women's bodies are their husbands' property;

(d) According to Nepalese legislation, the crime of rape can only be committed against "maids, widows or married women above 16 years";

(e) According to article 117 of the Russian Criminal Code, "ordinary rape" is defined as "sexual intercourse by use of force or threats or by taking advantage of the helpless state of the victim". "Aggravated rape" is "rape accompanied by threat of murder or by serious injury or committed by a person with a record of previous rape conviction" and "especially aggravated rape" is "rape accomplished by a group of persons or by an especially dangerous recidivist or entailing especially grave consequences and also rape of a minor";

(f) In the Ugandan Penal Code, "rape, defilement of girls under the age of 18 and unlawful sexual intercourse with a prisoner" are punishable by the death penalty.

In her forthcoming report, the Special Rapporteur will discuss the need for a separate legal definition and treatment of the crime of custodial violence, which must also be reflected in the sentencing structure so as to effectively deter criminal acts by State officials which result in violence against women. [[back to the contents](#)]

### **C. Sexual harassment**

Catherine Claxton joined the United Nations on 4 February 1974 and became a permanent staff member on 1 October 1977. Ms. Claxton and Mr. Gomez, a senior United Nations official, were colleagues on a first-name basis. On 2 March 1988, Ms. Claxton entered Mr. Gomez's office to discuss an official matter. After some suggestive remarks by Mr. Gomez, however, Ms. Claxton moved to leave the room. At this point, according to a report dated 21 January 1994 by Justice Mella Carroll to the Secretary-General of the United Nations "(Mr. Gomez) grabbed her by the shoulder/upper arms and forced his tongue into her mouth. He moved his right hand to her buttocks and pulled her against him and then moved that hand to her breast. At this stage she was able to pull free". The judge stated in his opinion, "All in all, I am satisfied that there is clear and convincing evidence that Mr. Gomez assaulted Ms. Claxton on 2 March 1988 as alleged". He added "this was sexual harassment". There were also dicta in the judgement that Mr. Gomez may have attempted to affect Ms. Claxton's career by refusing to change the classification level of her job. Mr. Gomez officially retired on 15 February 1994.

Within weeks, it was discovered that Mr. Gomez had been rehired by the United Nations Development Programme at a level that allowed him to retain his diplomatic immunity and thus remain outside United States legal jurisdiction (Ms. Claxton's lawyers had filed a suit at the New York Supreme Court). Despite the report of the judge, the United Nations insisted that no damages were payable by the Organization. (19)

The United Nations has, in some cases reported to the Special Rapporteur, shown a certain insensitivity to the problem of sexual harassment. The need to establish mechanisms to ensure redress to women victims of violence is an absolute necessity in any workplace or educational institution. The "Claxton case" proves the point that sexual harassment can take place in any working environment and that all organizations should have rules and regulations to meet this eventuality. The United Nations is no exception.

Sexual harassment must be understood to exist on the continuum of sexual violence against women. It is a personal attack on women's minds and bodies, instilling fear and violating a woman's right to bodily integrity, education and freedom of movement. It is utilized as a powerful mechanism of control and intimidation, through which women's subordinate social status is maintained. Sexual harassment frequently occurs on the street, in the workplace, in educational institutions and on public transportation.

The more pernicious form, however, is sexual harassment in the workplace or in educational institutions. Sexual harassment strikes at the heart of women's economic self-sufficiency, disrupting women's earning capacity by forcing them out of the workplace or school. Women are nine times more likely than are men to leave their job as a result of sexual harassment.

In many countries, sexual harassment is not codified as a criminal offence, although recent trends indicate a greater willingness on the part of Governments to promulgate legislation to curtail sexual harassment. This could be done by defining sexual harassment as a crime under the penal code or, especially with regard to educational institutions and the workplace, by recognizing sexual harassment as a violation of women's equality in violation of the constitutional and legislative provisions governing gender equality.

Earlier laws on sexual harassment as a criminal offence revolved around the concept of "outraging the modesty" of women, linking sexual violence with arcane notions of female sexual morality. Newer legislation, however, usually provides that a person who, by assault, use of criminal force, words or actions, causes sexual annoyance or harassment is guilty of the offence of sexual harassment. In some contexts, the words "unwelcome sexual advances" are also used. The penalty for such a crime varies, from no minimum sentence up to approximately five years' imprisonment. Compensation to the victim is mostly left to the judge's discretion.

As already mentioned, in addition to criminal prosecution, constitutional and legislative guarantees of equality could also be used to fight sexual harassment. In the United States of America, for example, sexual harassment has been legally conceptualized in terms of workplace harassment. According to the Equal Employment Opportunity Commission, sexual harassment is characterized by "repeated demands or continuing behaviour of supervisors or coworkers that add a discrimination condition to the terms of employment or create a harmful work environment for men or women". (20) Sexual harassment is defined in Title VII of the American Civil Rights Act as "unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature ... when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment". (21)

The above definition identifies two types of sexual harassment. The first is quid pro quo harassment in which decisions on hiring, termination, promotion or pay are made based on the employee's response to sexual advances. This type of harassment is defined in terms of power dynamics when the harasser has a certain leverage over the victim's employment status. The second type of sexual harassment is perpetrated by the creation of a "hostile work environment, including: (1) discussing sexual activities; (2) touching someone unnecessarily; (3) using demeaning or inappropriate terms (such as 'babe'); (4) using unseemly gestures; (4) granting job favours to those who participate in consensual



sexual activity; and (5) using crude or offensive language". (22) In some States, including Australia, the display of pornographic material in the workplace is seen as contributing to such a hostile work environment.

The European Union has recently introduced a code of practice on sexual harassment in the workplace, which defines sexual harassment as "unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work". (23) The code, however, is neither binding nor enforceable. Additionally, the code identifies the scope of sexual harassment to include pornography.

Whereas in the Russian Federation the Criminal Code proscribes sexual harassment, job advertisements continue to request that women employees be "without inhibitions". Despite this, a mere 20 cases of sexual harassment per year are reported to be filed under the Russian statute. (24) In Australia, the Federal Sex Discrimination Act of 1984 makes sexual harassment unlawful in situations of: (a) employment; (b) education; (c) the provision of goods and services; (d) the provision of accommodation, land transactions, admission to clubs; and (e) the administration of the Commonwealth. In the Philippines, legislation has been enacted which criminalizes sexual harassment in the workplace, schools and training centres. Reportedly, however, the Department of Labour and Employment fails to enforce the labour code standards, even in cases of blatant discrimination in job advertisements, hiring practices and unequal pay. In the United Kingdom, the Sex Discrimination Act of 1975 has compelled courts to conclude that sexual harassment is discrimination.

Even in the absence of specific legislation relating to sexual harassment, general tort laws may be utilized. In 1993, a woman in Tasmania successfully utilized tort laws on assault and battery to sue her employer for sexual harassment, since Tasmania had no specific laws governing sexual harassment.

Many governmental and intergovernmental agencies and trade unions have issued guidelines and manuals concerning sexual harassment at the workplace or educational institutions. One of the most successful campaigns was waged by the Australian Human Rights and Equal Opportunities Commission in 1991, entitled "SHOUT", involving poster and media campaigns to advertise a toll-free telephone number to assist women victims of sexual harassment.

The mere prohibition of sexual harassment is not adequate to assist victims of violence. It is imperative that institutions, whether public or private, educational or industrial, have internal procedures that ensure redress in cases of sexual harassment. The Canadian Federal Labour Code serves as a model in this regard. It requires employers to issue a sexual harassment policy that condemns sexual harassment, indicates that disciplinary measures will be taken against transgressors, provides for procedures to deal with instances of harassment and informs employees of their rights.

Most private companies have been slow to respond to victims' needs since the company's first priority generally is seeking to avoid negative publicity. In some companies,



informal mechanisms to address employee's complaints have been institutionalized. Internal mechanisms, if not implemented or enforced vigorously, may, however, serve to privatize the violation and impede the victim's recourse. Often such mechanisms are designed to resolve conflicts through mediation rather than to address the victim's needs and hold the perpetrator accountable. Such practices add pressure to the victim in deciding whether or not to pursue a claim against the harasser. With little or no institutional support for reporting, the victim's concerns about her own job status may encourage silence. In this connection, some jurisdictions render the employer vicariously liable for sex discrimination if he or she does not take adequate preventive measures.

Incidents of sexual harassment are often concealed within the private sphere. Many victims who have come forward have suffered grave consequences, including increased harassment, public ridicule, job loss or expulsion from school. A Russian women's rights lawyer claimed that sexual harassment in the workplace is not an issue because women "like compliments". (25) According to surveys undertaken in the United States and Hong Kong, men are much less inclined to view sexual harassment as a valid complaint than are women.

High profile cases in recent times have motivated the media to focus on issues of sexual harassment, stimulating increased reporting by breaking the victim's sense of isolation. For example, as a consequence of Anita Hill's allegations of sexual harassment against Clarence Thomas, a United States Supreme Court nominee, and the widespread media coverage of the case, complaints to the Equal Employment Opportunity Commission in the United States have more than doubled. A celebrated case with regard to the criminalization of sexual harassment took place in India when old laws on "outraging modesty" were used to convict the former Director-General of Police, Mr. K.P.S. Gill, of sexual harassment. Mr. Gill, one of the most respected members of the Indian police force, was sentenced to serve time in prison for what may be termed a modern case of sexual harassment.

The link between sexual harassment and severe physical, psychological and health-related problems has been established. Eating disorders, depression, anxiety, nausea, headaches, insomnia, increased use of alcohol, nicotine or drugs, stomach problems and weight loss are among the physical and psychological problems that arise for many victims. The United States Merit Systems Protection Board estimates that sexual harassment cost the Federal Government US\$ 267 million over a two-year period. This figure represents costs associated with reduction in productivity, sick leave and the replacement of employees.

Statistics on sexual harassment, despite failing to represent the true extent of the violence, are quite revealing. A 1991 survey of sexual harassment in Japan found that 70 per cent of the 4,022 respondents had been harassed and, according to the Tokyo Metropolitan Government's Bureau of Labour and Economics, approximately 400 women made formal complaints of sexual harassment at work in 1992. An officer of the Bureau noted, however, that this number was unrepresentative, maintaining that as many as 10 times as many women are experiencing sexual harassment but not reporting it. (26) A government

survey undertaken in Japan found that 1 in 7 Japanese women in their 20s had been sexually harassed at some time. (27) [[back to the contents](#)]

#### **D. State strategies to combat rape and sexual violence, including sexual harassment**

Many Governments have started to recognize and take steps to remedy the gender bias that has pervaded their interactions with victims of rape and sexual violence, including sexual harassment. Reportedly, however, mechanisms and bodies created to this effect, such as specialized women's police desks or stations, are often marginalized within State structures, underfunded, understaffed and suffer from low status within the criminal justice establishment. Nevertheless, they play an important role in the campaign to raise awareness and establish procedures with regard to providing redress for women victims of violence.

In other countries, such as India and the United States, training seminars have been carried out in an effort to sensitize police to the realities of violence against women and to educate them about victims' needs. Manuals developed by international organizations, such as the Commonwealth Secretariat, for police training should be disseminated widely. In Costa Rica, seminars and dialogues with judges have also proven very fruitful.

In some countries, such as the United Kingdom and South Africa, police stations have been made more friendly and confidence-inspiring to better meet the needs of rape victims. With the aim of collecting and preserving evidence in a sensitive manner, Canada has developed a sexual assault examination kit, containing information about the legal procedures, the medical examination, victim services and trial. The kit also contains instructions for the police and the examining physician, as well as receptacles for the collection of physical evidence. All the information materials in the kit are provided in the two official languages of the country, English and French.

In the United States, the Rape Treatment Center (RTC), a State-supported non-profit organization, at the Santa Monica (California) Hospital Medical Center, provides an example of a comprehensive rape crisis unit. Among the many services it provides to victim-survivors are: (a) 24-hour emergency medical care; (b) evidence collection; (c) crisis intervention; (d) advocacy; (e) court accompaniment; (f) legal assistance; and (g) psychotherapy services. The RTC utilizes individual, family and group treatment modalities in their work with victim-survivors. Additionally, RTC conducts extensive outreach programmes including school-based prevention programmes; public education and victim-assistance programmes for businesses and community organizations; training for police, prosecutors, medical and mental health personnel; and consultations with the media and governmental agencies.

In Malaysia, "one-stop" rape crisis centres have been set up in some hospitals, complete with special examination suites. Doctors serving these suites are well trained in dealing with evidence collection relating to rape. The police are thereafter called upon to record the incident and a volunteer from a woman's organization is asked to be present to assist

the woman victim. This notion of a "one-stop" centre at the hospital has been useful in streamlining the procedure and investigation in preparation for a rape trial.

In order to increase public confidence in the criminal justice system, some States have attempted to legislate good behaviour. The Victims of Offences Act of 1987, in New Zealand, instructs prosecutors, judicial officers, counsel and other persons working with victims to treat them with courtesy, compassion and respect for their personal dignity and privacy. Additionally, victims are to be fully informed of the services and remedies available as well as the nature of the proceedings. Any concerns they have about the accused and about bail should be transmitted to the appropriate body. Other States have implemented laws that limit the number of people present during rape trials or during the testimony of the victim. Laws restricting the public release of the victim's identity provide a further mechanism for protecting the victim.

Furthermore, rape shield laws have been designed as a mechanism of protection for victims of rape from traditionally discriminatory and abusive cross-examination. Such laws, which have been widely enacted in the United States, limit the admissibility of evidence relating to the victim's past sexual conduct with anyone but the defendant. The scope of protection actually provided by rape shield statutes to the woman victim varies, however.

In response to the frequent lack of access to legal representation by the victim, some Governments and non-governmental organizations have developed legal advocacy programmes to assist victims throughout the legal proceedings. Rape crisis centres, either independently or in conjunction with Government, often provide free legal advocacy services whereby advocates also accompany victims to the police and to court. Additionally, some Governments have established specialized sex crimes units within the offices of the State attorney to work with victim-survivors. All these legal advocacy services sometimes form part of a multi-disciplinary attempt to support victim-survivors.

In addition to reforming the criminal justice system, legislative changes and programmes for the support of women victims, both Governments and non-governmental organizations have developed sustained campaigns to raise awareness of the crime of violence against women and to provide information to potential victims. [[back to the contents](#)]

#### **IV. TRAFFICKING IN WOMEN AND FORCED PROSTITUTION**

Each year, thousands of women throughout the world are trafficked; they are tricked, coerced, abducted, sold and, in many cases, forced to live and work under slavery-like conditions as prostitutes, domestic workers, sweatshop labourers or wives. The exploitation of female labour and of the female body has led to an international industry of trafficking in women. Such trafficking occurs for diverse purposes but the movement of women within countries and across frontiers is usually a result of their unequal bargaining power and vulnerability to exploitation.

Today, women are primarily trafficked from the South to the North and increasingly from South to South: from countries in which structural adjustment has bankrupted the State economy, deforestation has destroyed villages and forced families into urban areas and the feminization of poverty is most apparent, to countries where the gross national product and the standard of living for the average citizen are higher. Consequently, trafficking in women is fuelled by poverty, racism and sexism.

Although trafficking has been of international concern since the beginning of this century, little has been accomplished to effectively combat the flourishing trade in women. Admittedly, trafficking in women presents complex enforcement issues due to its international character and the numerous actors involved. With few exceptions, countries of origin, transit countries and countries of destination refuse to accept responsibility for protecting trafficked women. The primary concern of most States is the "illegal" status of the victim who, if discovered, is quickly targeted for deportation.

Currently, there exists no consensus within the international community regarding the definition of trafficking in women. In fact, trafficking, due to its traditional conceptualization in terms of prostitution, is an extremely divisive issue within the international women's movement and among States. Historically, trafficking has been defined as the "trade of women for the purpose of prostitution" generally involving the crossing of international borders, so that newer forms of trafficking for domestic service, marriage and sweatshop labour were not included. In 1994, the General Assembly defined trafficking as the "illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption". (28)

The United Nations addresses trafficking in women through the 1949 Convention on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949 Convention). Due to its ill-defined and broad terminology, a weak enforcement mechanism and its uniquely abolitionist perspective, the 1949 Convention has failed to attract widespread support and only 70 States are parties. Most Governments and non-governmental organizations agree that there is an urgent need to reformulate international standards so as to meet the exigencies of modern reality. Such a reformulation requires a definition of trafficking and would have to set out principles to guide national and international action with regard to trafficking in women. Unfortunately, the women's movement is deeply divided over this debate, preventing a concerted international effort to bring about necessary and important changes with regard to international standards.

Given the fact that much trafficking crosses frontiers, international standards and guidelines are the only meaningful mechanisms with which to confront the phenomenon. It is imperative that the different camps of activists and Governments which have fought so valiantly for the human rights of trafficked women over the years engage in a

constructive dialogue with a view to collectively evolving international standards and mechanisms to provide redress for women victims.

Patterns of trafficking in women vary according to changing regional conditions and potential opening of markets, similar to a supply-demand curve. An increase in trafficking, for example, occurred during the first wave of industrialization in the nineteenth century. Additionally, technological advances have consistently been employed by traffickers to develop new routes and facilitate international transactions, so that the railroad, ocean steamer, telegraph, telephone and now Internet all increase the scope of their networks. In some countries, such as the United States, the Internet has become an integral component of trafficking in women for the marriage market, used not only to advertise marriage brokers but also to display women and girls for sale as brides.

Trafficking routes replicate migration routes and, according to the International Organization for Migration, arise out of situations of poverty, lack of viable economic opportunities, disparity in wealth between countries and the marginalization of women in countries of origin. The promotion of tourism as a development strategy has also contributed to the prevalence of trafficking in women for prostitution.

Kenya provides a contemporary example of a country in which the flourishing tourism industry has led to an increase in trafficking in the region. Women from Uganda are lured to Kenya for the purpose of providing prostitutes for the growing tourist population. There are reports that women from India are likewise lured to Kenya to work as performers but end up as prostitutes.

Trafficking in women does not only occur from South to North, but also occurs within regions and States. In Colombia, there are trafficking networks for prostitution that solely traffic women within the country or regionally, sending women to Venezuela, Ecuador and Panama. In Colombia, there also exist traffickers dealing exclusively on a global scale, providing Colombian women for markets in Spain, Greece, the Netherlands, Germany, Belgium and the United States of America. Brazil has a flourishing network that systematically traffics women and girl children for prostitution to mining camps and large civil construction projects within the country.

Two main patterns of trafficking for prostitution have been documented. The traditional "two-step" pattern targets women already working in prostitution to be trafficked abroad, whereas the more aggressive "one-step" pattern targets women and young girls directly in their villages to be trafficked for prostitution abroad. With the increased demand for younger women arising from the fear of HIV infection, the "one-step" pattern is beginning to dominate. This usually involves a neighbour or relative who approaches the victim or her parents, deceiving them in order to gain "compliance". One report has identified the following reasons for the steady rise in trafficking for prostitution: (29)

(a) A market, driven by customer demand based on racist, sexist and ethno-centric stereotypes, for foreign and "different" women;

(b) The enormous profitability of exploiting women as prostitutes motivating individuals and organized crime networks to engage in the trade in women;

(c) The feminization of poverty in the victims' home countries, providing a continuous pool of potential "recruits";

(d) Official policies of international development banks and lending organizations encouraging the development of tourist sector services, resulting in severe socio-economic consequences for women;

(e) Lack of an effective international regime for collecting data, providing information and penalizing organized international traffic networks, ensuring that the problem remains hidden;

(f) Demand for undocumented migrant male workers creating a demand for women prostitutes.

In some countries, certain traditional practices give rise to trafficking and slavery-like practices. For example, the Devadasi system in India, once widespread in the country, entails ritualistic marriages of young girls to gods. Often the Devadasi women are later forced into prostitution either out of economic necessity or after being sold by priests to brothels. A similar practice, the Deukis system, is found in Nepal where rich families without daughters are increasingly buying young daughters from impoverished rural families and offering them to the temple as their own. These girls are prohibited from marrying and often become either "kept wives" or prostitutes. Reportedly, 17,000 girls were endowed as Deukis in 1992. (30)

The recruitment of women for prostitution in many societies is often achieved with the complicity of the family. Some impoverished households in Nepal, Bangladesh and Myanmar, for example, sell their daughters, often unknowingly, for money which is used to force the girl to work in debt bondage. This subversion of the family is increasing at an alarming rate as poor families often have very few options for survival. The recruitment of women to be trafficked for prostitution also occurs through deception. Women are misinformed about the type and conditions of the work they will be forced to undertake. Even with (sham) contracts for waitressing, child care or domestic labour, many women from Central and Eastern European countries find themselves forced into prostitution abroad. Those aware of their future employment as prostitutes are frequently deceived about their wages and conditions of work.

The case of Yai, 19 years old. (31) Yai worked in a department store in the south of Thailand but was promised employment in a clothing factory in Taiwan where she could earn a much better salary than she ever would in her current job. Yai's recruiter was a high-ranking Malaysian police officer, who took Yai's passport to arrange her visa for Taiwan. As they landed in Taiwan, the recruiter gave Yai a fake Malaysian passport and she never saw her Thai passport again. In the arrivals hall, a man of Chinese origin met Yai and drove her to a hotel. That night she was raped by him. Yai was then forced into



prostitution, serving 10 to 20 clients per day. She had no option to leave, was threatened with beating and never received any of the money that was paid for her services. Yai's customers included high-ranking Taiwanese policemen who received free sexual services in return for protection.

Marriage is also used as a method of recruitment for trafficking. In order to traffic women to Pakistan, Bengali traffickers or their networking partners are required to marry their victims so as to protect themselves from being prosecuted under Islamic Hudood laws. None the less, 2,500 Bangladeshi women and children are currently being detained in Pakistan under these laws, charged with illegal entry and for having "illegitimate sex". (32) Of the 100,000 to 160,000 Nepalese women and girls reportedly working in India's brothels, at least 35 per cent have been brought into India under the pretext of marriage or good jobs. (33) In Kenya, trafficking is mostly carried out under the guise of marriage, friendly invitations and job offers, with Nigerian women known as "madams" or "Mama-Loa" acting as middle-persons between the victims and their traffickers. Parents in eastern Uganda are deceived by traffickers into believing that their daughters will work on farms or as domestic workers in Kenya, whereas club owners in Suriname reportedly pay women US\$ 500 for every Brazilian recruit.

Women from developing countries, such as the Philippines and Colombia, in South-East Asia and in Eastern Europe are also sold to thriving marriage markets in Western Europe, North America, Australia and Japan. Within Japan there are more than 700 marriage brokers operating, whereas in the United States, there exist hundreds of companies feeding the marriage market through which an estimated 2,000 to 5,000 American men have purchased wives. However, despite the growth and increased awareness about the marriage market, there are few laws prohibiting or regulating it.

In Taiwan, poor farmers and the elderly are among the men who pay intermediaries approximately US\$ 3,000 for young Vietnamese wives. In Viet Nam, the traffic in brides is growing as ethnic Chinese women from poor northern Vietnamese villages are transported across the border into China to marry rural Chinese men from villages devoid of women. Refugee women from Mozambique are lured across the border into South Africa by promises of work only to be sold as concubines or wives to South African men. More than 5,000 Nigerian women prostitutes between the ages of 16 and 30 were reportedly sold as wives to farm workers in the south of Italy.

In China, the incidence of kidnapping and selling of women in rural areas has been increasing since the mid-1980s, so that, in some counties and villages, between 30 and 90 per cent of marriages result from trafficking. Also in China, public security officials in Shandong province, report that 13,958 women were bought and sold in the province in 1990; of those, 3,966 women were freed and 1,690 individuals were arrested on charges of slave-trading. In Jiangsu province, between 1986 and 1988, 48,100 women from all regions of China were sold. The shortage of women in rural areas, traditional views on maintaining the family line which require all sons to marry and the high expenses associated with weddings and betrothal gifts of non-forced marriages all contribute to the demand for women trafficked for forced marriages in China.



The case of Liu Xuelan, 16 years old. (34) On 1 January 1989, in Linsu county in Shandong province, Liu Xuelan was forced into marriage with a man 26 years her senior. After the wedding, she tried to run away but was caught each time, tied up and beaten by her husband. He drove needles under her fingernails and Liu was bruised and bloodied from head to toe, with arms swollen to the size of her thighs. When people from the County Women's Federation tried to intervene, her husband yelled "What do you think you are doing? She is mine. I got her in exchange for my little sister".

Debt bondage is widely used by traffickers to control trafficked women, particularly women trafficked for prostitution. Often women are forcibly detained in apartments, factories, homes or brothels to foreclose escape prior to paying back their debts. Women and girls from Myanmar typically "serve" 6 to 8 men per day, 25 days a month, and earn from AUS\$ 600 to 2,500 per month for the brothel owner, of which receives AUS\$ 1/day or AUS\$ 25/month. In the Dominican Republic, women often borrow against future earnings or mortgage their family home in order to obtain the advance fees demanded by recruiters. The debts, amounting to thousands of United States dollars, must be paid back before the women are allowed to leave. In Kenya, women who work in so-called massage parlours are forced to work 24-hour shifts and receive a mere 25 per cent of their earnings. Similar situations are reported by women from Uganda who are lured to Dubai and Western Europe and women from Latin America and Eastern Europe who are forced to work the streets of Italy to pay back the debt accrued from their migration. In some cases, traffickers withhold all money.

In Central and Eastern Europe, as well as other parts of the world, organized crime syndicates are involved in trafficking of women for forced prostitution. In such cases these international crime syndicates, with bases in many countries, are often beyond the reach of the legal system of any single country (see E/CN.4/1997/47/Add.1).

The Special Rapporteur is particularly concerned that trafficked women report high levels of State participation and complicity. According to a 30-year-old Bangladeshi woman who was trafficked to Pakistan at the age of 27, "... we were taken to a secluded place in the jungle before crossing the border to Pakistan under police custody. The border officials kept the girls who were pretty and sexually abused them until the other lots of girls came, then the previous ones were released". (35)

Reportedly, officials of both Myanmar and Thailand are involved in trafficking women from Myanmar to Thailand. "In many instances, the girls could document instances of being transported into Thailand with policemen in uniform, armed and often in police vehicles. Once in Thailand the brothels are under protection and had the patronage of the police. One of the girls tells that she saw the police in all the brothels where she worked. They seemed to know the owner very well and were often around with their uniforms, guns and walkie-talkies. They also often took the girls to the rooms or out for the whole night. In Klong Yai the police had special arrangements with the owner and could take the girls for free". (36)

Additionally, bribes are often required to facilitate border crossing. Police officers are also notorious for corruption and for abuse of power over trafficked women. According to a Nepalese non-governmental organization, the only way to see a case of trafficking prosecuted is to bribe the local police. Local government officials in Nepal undermined a village awareness programme when they accused women who were teaching villagers about migration and trafficking of lying, arguing that trafficking did not exist. (37)

Migrant women prostitutes are particularly vulnerable to violence by State agents, such as the police and immigration officials, due to their often undocumented status, language deficiencies and lack of legal literacy. In Bangladesh, the "extraction of free sexual services" from prostitutes, in other words rape, has been widely reported. An investigation in Bogotá found that 50 per cent of girls aged between 11 and 14 and 25 per cent of women between 15 and 40 reported that abuse and extortion by the police was their main concern. (38) Recently, the Mumbai police arrested 447 prostitutes in brothel raids and forcibly detained them although prostitution is not illegal in India. Additionally, the women were forced to undergo testing for HIV and other sexually transmitted diseases without their consent and without any subsequent medical treatment.

In view of the above, obstacles to reporting the violence and abuse which women trafficked for prostitution experience include: the lack of legal literacy and of confidence in the legal systems; fear of arrest or legal sanctions; the need to maintain financial support for their families; outstanding debts; fear of reprisals by the trafficking network and of deportation; language barriers.

With the exception of Belgium and the Netherlands, countries of destination fail to provide legal mechanisms which encourage women to report trafficking or slavery-like practices associated with prostitution to the police. In addition, trafficked women who are deported or return home receive only limited support from their own Governments and are in danger of revictimization by their communities at home:

"When I came back to my own country it was very difficult for me because the Indian police had handed me over to the Nepalese police and the Nepalese police kept me in custody and summoned by family. I only have one older brother and sister. Both my parents have died. After four months the police officer called my brother and wanted to hand me over to him, but he did not want me. When I said I needed his help, he said you are a prostitute, so I do not want to take you home. Even he didn't inform my sister about me. In this way I spent two years in custody. I wanted to die because I was rejected by my family and I was totally helpless." (39) [[back to the contents](#)]

#### **A. Trafficking and forced prostitution as human rights violations**

Conditions under which many trafficked women are forced to work, as described above, must be considered, without a doubt, to be within the realm of slavery and slavery-like practices. The Working Group on Contemporary Forms of Slavery of the Sub-Commission on Prevention of Discrimination and Protection of Minorities has identified trafficking, defined as a contemporary form of slavery, as one of its priorities. For

whatever reason women are trafficked, they are frequently raped, beaten and psychologically tormented. Similar strategies have been documented as methods of torturers who target the individual victim and seek to disable the community to which the victim belongs, in the same way as traffickers utilize violence to terrorize victims of trafficking into submission.

Violations of the human rights of women associated with trafficking occur in both countries of origin and countries of destination. The international cross-border character of trafficking implicates two or more States, making the protection of the rights of trafficked women a difficult task. Countries of origin, many with a vested economic interest in and some with an official policy of promoting international migration, have little incentive to curb activities that may increase the generation of external revenue. It is estimated that the Government of the Philippines earns US\$ 2 billion from remittances by overseas contract workers. Conversely, countries of destination associate high costs with the retention within their borders of individuals residing illegally in their territory and have no incentive to do more than deport trafficked women back to their home countries.

International human rights standards in general and the specific international legal regime devoted to trafficking provide useful legal frameworks for combating trafficking. Standards set by the International Labour Organization and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families are also relevant to trafficked women. The prevailing lack of adherence to the many legal obligations regarding trafficking in women, however, is at least partly a result of the diversity of mechanisms ascribing State responsibility. With no central international authority on trafficking in women, oversight has become fragmented and ineffective. As already mentioned, there exists general consensus among the international community that international standards with regard to trafficking need to be reviewed.

International initiatives in this connection have been made by the United Nations Educational, Scientific and Cultural Organization, in cooperation with the Coalition against Trafficking in Women, in drafting a convention on the elimination of all forms of sexual exploitation of women. In addition, the Global Alliance Against Trafficking in Women has proposed draft standard minimum rules for the treatment of victims of trafficking in persons and forced labour and slavery-like practices. [[back to the contents](#)]

## **B. National laws on trafficking in women**

Although efforts have been made to broaden the definition of trafficking to include other types of economic and social exploitation of women, the link between trafficking in women and prostitution remains. Thus, definitions of trafficking and strategies that derive from such definitions must be interpreted in this context.

There are four identifiable legal paradigms that have been employed to address prostitution at the national level: prohibitionism; abolitionism; regulationism; and decriminalization. Prohibitionism seeks to punish any acts or persons involved in prostitution, including the woman herself. Although everyone involved in prostitution,

including the women, clients and third parties, are subject to legal penalties, it is rarely the case that States enforce the laws against traffickers and/or clients.

Abolitionism was the system that predominated at the end of the nineteenth century when trafficking in women was first recognized internationally. Abolitionism calls for the elimination of laws on prostitution and rather than criminalizing the transaction between the prostitute and the client, the abolitionist strategy targets third parties such as pimps, brothel-keepers, traffickers and the Government. The long-term goal of abolitionism is the complete abolition of prostitution. Since, however, it is recognized that prostitutes are victims, the strategy employed to achieve abolition entails decriminalization of the prostitute. Although the 1949 Convention assumes an abolitionist approach, there is no State that has adopted a purely abolitionist policy.

Regulationism was the predominant legal paradigm in Western Europe until the late 1800s and still exists in many countries today, including Chile and Germany. Regulationism is characterized by official State tolerance of what is often understood to be a "necessary evil", by attempting to control prostitution through government regulatory schemes. Such schemes are either classically regulated by government authorities primarily through legally permitted brothels or by means of a neo-regulatory system whereby indirect mechanisms, such as taxes or mandatory health examinations, regulate prostitution.

The decriminalization paradigm views prostitution as work and seeks to decriminalize prostitution and the exploitation of prostitution by third parties. Decriminalization is focused on the coercion and violence rather than on prostitution itself and seeks to utilize labour laws to address working conditions and the rights of prostitutes. Whilst some proponents of decriminalization regard it essentially as a short-term measure to improve the position of prostitutes and women victims of trafficking, others strive for recognition in the long term of prostitution as a legitimate profession.

In many countries where prostitution is not a crime, the solicitation of clients is prohibited. In the United Kingdom, the law "seeks to prevent the serious nuisance caused to the public when prostitutes operate on the streets" by prohibiting soliciting, loitering and curb crawling. Norway proscribes "indecent behaviour" and Belgium prohibits "soliciting, taking someone to or bringing someone away from a place for the purpose of prostitution and promoting vice in public places by words, gestures, signs or publicity", and possession of condoms may be used as evidence of solicitation. The use of laws against loitering and curb crawling in countries like Ireland and the United Kingdom increases the danger of violence against prostitutes, since they have less time to assess potential risks and negotiate safe sex. Such policies relegate prostitution to the private sphere where violence and abuse can be officially discounted.

The only places where work permits are reportedly issued to migrant prostitutes are Suriname, Aruba and Curaçao, which have governmental programmes through which migrants can legally enter the country to work temporarily as prostitutes

Third-party assistance in illegal border-crossing is proscribed in countries seeking to protect their borders, including most countries of the European Union, the United States and Canada. Such legislation contains provisions on alien smuggling, aiding and abetting illegal entry, the production of fraudulent documents, hiring illegal workers, transporting illegal aliens and confiscation and forfeiture of property used in connection with alien smuggling. Migrants entering the country illegally or overstaying their visas are punished with imprisonment varying from six months to two years, fines and deportation. Some countries, such as Myanmar and Poland, also have legal proscriptions on leaving the country without permission or valid documents, thus subjecting undocumented migrant women to punishment both in the destination country and her home country upon return.

Laws often fail to account for the special circumstances that lead victims of trafficking into prostitution and many women are arrested and punished under laws on prostitution. Hundreds of women from the Dominican Republic, arrested during raids on nightclubs, are currently being detained in Switzerland and Italy.

The case of Hamida, 12, who had been trafficked from Bangladesh to India but escaped after she had been raped repeatedly by police officers at the brothel where she was forcibly prostituted, depicts the situation in which many trafficked women and girls end up. Hamida has been detained at Tihar jail in Delhi in "safe custody" for two years. She would like to leave but cannot find a way out. The five policemen who raped her have been released on bail. So far they have not been prosecuted. The trial against two of the three traffickers is repeatedly obstructed due, amongst other things, to the repeated absence of the public prosecutor. Meanwhile Hamida's interpreter and sole support was removed from the case because he was "developing a sympathetic corner for the victim" and is not allowed contact with Hamida, following a court order. Arrangements to send her back to her parents can only be made on instructions from the Home Ministry. Two years ago, the Bangladesh High Commission refused to admit her as a citizen, whereas it is now recognized that she is Bangladeshi. (40)

How national legislation is implemented by the criminal justice system essentially determines the nature and extent of trafficking in women. The Special Rapporteur's visit to Poland on the issue of trafficking of women from Central and Eastern to Western Europe provided useful information with regard to policies in countries of origin (see E/CN.4/1997/47/Add.1). One case to illustrate the point concerns the situation in Germany. (41)

The trial concerned the recruitment and coercion of Thai women into prostitution and ended after 11 months with the acquittal of the defendants on the charge of trafficking. The defendants were found guilty of promoting prostitution and procuring, offences that are considerably less heavily punished. Two of the women involved gave evidence that they were recruited in Thailand to work in a bar in Germany with the promise of DM 2,000/month to be earned exclusively by go-go dancing and encouraging guests to drink. On their way to Germany, in Denmark, they were forced to marry German men. Upon arrival in Germany they were told that they would have to pay back DM 15,000 in debts

by prostitution. Other women were also taken to Germany, under similar conditions, having been promised work as waitresses and nannies.

From the beginning of the trial, the judge showed reluctance in pursuing the case by complaining about the expected length of the trial and the multitude of cases awaiting the court's attention. Throughout the proceedings, he was friendly towards the defendant and the defence counsel, while obviously sceptical towards the prosecutor and the plaintiff's counsel. The trial judge shared the defendants' view, not believing that the women had been forced, even though it was clear from the evidence that the women were left with no alternatives. In addition, the judge considered past records of the women in Thailand as relevant in deciding whether they could be victims of trafficking. During the cross-examination, every effort was made to attack the credibility of the women, a strategy replicated by the judge who on several occasions prejudged the issue and equated the women's past status to that of a prostitute.

Ignorance of Thai culture and translation difficulties lessened the credibility of the evidence provided by the women. It is worth noting that the Thai Government was not interested in the case. Successive calls for evidence were ignored and Thai authorities refused to allow a Thai police officer to be questioned. [[back to the contents](#)]

### **C. State strategies to combat trafficking and forced prostitution**

There are few noteworthy strategies undertaken by States to address trafficking. In response to pressure by non-governmental organizations, the Government of the Netherlands in 1988 amended the Dutch Aliens Law to provide protection to victims of trafficking willing to pursue prosecution, so that "... in the presence of the least suspicion of trafficking, a woman should be allowed time to consider pressing charges. When she has done so she should be allowed to stay in the Netherlands until the whole juridical process has been completed". (42) As of 1993, the same protection against deportation was extended to witnesses willing to testify for the prosecution in trafficking cases. Belgium has a similar mechanism through which trafficked women willing to participate in the prosecution of their traffickers can stay in the country during the process.

The Netherlands has also created special police taskforces in larger cities to monitor the prostitution circuit. Additionally, in Amsterdam, a specific task force, comprised of two detectives from the vice squad, two officers from the aliens office, one assistant detective, one officer from criminal intelligence and one district officer, was established in 1993 specifically to address prostitution and trafficking. Considering the widespread abuse of prostitutes by the police, more information is needed before assessing the success of these mechanisms.

In Europe, at the regional level, recent initiatives by European organizations to combat trafficking have been taken. The European Parliament unanimously adopted a report and a resolution on trafficking in human beings in December 1995. In June 1996, the European Commission took the initiative of bringing together experts, non-governmental organizations, academics, law enforcement and immigration officials and government



and parliamentary representatives in an effort to combat the problem of trafficking in women. The conference devised a programme of action and a set of recommendations to be adopted by member countries. In November 1996, the Commission of the European Communities in a communication to the Council of Europe and the European Parliament put forward proposals aimed at developing an integrated multidisciplinary policy with regard to the problem of trafficking in Europe. The communication pointed out that a special incentive and exchange programme for persons responsible for combating trafficking in human beings and the sexual exploitation of children is expected to be adopted soon. The programme, called "STOP", is awaiting budgetary allocation.

Non-governmental strategies have arisen primarily through direct contact with victims of trafficking and women migrants. Due to the clandestine nature of trafficking in women and forced prostitution, the extent of the problem remains hidden. Consequently, non-governmental organizations give priority to documentation and research. Another strategy employed by both Governments and non-governmental organizations targets victims both before they are trafficked and once they have arrived in the country of destination. Information campaigns have been utilized to provide general information through direct outreach and poster campaigns at points of departure and entry. The focus of these campaigns is to provide information about destination countries, situations of violence and abuse that may arise, migrant workers' rights and possibilities for support and assistance. Such strategies combine prevention strategies with practical intervention strategies. Non-governmental organizations in countries of origin and destination have established centres that offer assistance to women victims of trafficking. The support services include safe shelters, counselling, advocacy, health care, legal services and skill training to assist women to reintegrate into their communities.

Lastly, an important element of the work carried out by non-governmental organizations is long-term policy work to stimulate changes in State policies and practices with respect to trafficked women. The success of lobbying is to be seen in the Netherlands and in Belgium where non-governmental organizations have had an impact on State policy on trafficking.

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[\[more\]](#)

## Notes

1. 1. The Special Rapporteur would like to thank Lisa Kois for her invaluable research assistance in the preparation of this report. In addition, research materials supplied by Rosanna Favero, Rebecca Cook, Fareeda Shaheed, Rahal Shaheed and Yasmin Tambiah and STV (The Foundation against Trafficking in Women)/Global Alliance against Trafficking in Women were extremely useful in preparing the report. [\[back to the text\]](#)

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