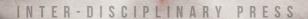# SEXUALITY, OPPRESSION AND HUMAN RIGHTS

EDITED BY JÚLIA TOMÁS AND NICOL EPPLE

Sexuality, Oppression and Human Rights

Critical Issues

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Sexuality, Oppression and Human Rights

Edited by

Júlia Tomás and Nicol Epple

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Introduction

Júlia Tomás

This anthology collects articles from a selection of research originally presented at the 1st Global Conference on Sexuality, Oppression and Human Rights held at the University of Oxford (Oxford, UK) on July 30-31 2014. This two-day event was set up by Inter-Disciplinary.Net to discuss issues surrounding patriarchal discourses, sexual exploitation, domestic violence, state-sanctioned prostitution, 'comfort women' and wartime rape. Transdisciplinary perspectives were sought from those engaged in any field relevant to the study of sexual exploitation and sexual violence including media and film studies, performance and creative writing, cultural theory, sociology, Law and criminology. As thus, this book includes a wide range of insights and practices, drawing from academic, professional, NGO, voluntary and practitioner contexts. Yet, as will become clearer after the articles are read, sexuality in general and sexual violence in particular are not fields of study quite like others. They possess neither clear definitions nor common methodologies for investigation. Therefore, it seems necessary to bestow some thoughts to our three key concepts: sexuality, oppression, and human rights.

Sexuality is a matter of social and symbolic relations which are variable, constructible, and representable. The twentieth century witnessed the gradual demystification of sexuality, leading to its slow, yet still ongoing, departure from long dated traditional honour codes. However, the objectification of sexuality is still present nowadays, especially in countries in which religion is a cornerstone of society. If sexuality in Victorian times was considered to be anti-civilizational, one currently observes a domestication of sexuality, forgetting that it is – other than a biological attribute – a social product, hence the interest for a transdisciplinary approach to sexuality that includes social, cultural, historical, legal and political contexts that shape sexual violence. However, although sexual oppression is inserted in concrete cultural contexts, it is important to notice that this anthology does not differentiate Western from non-Western societies. Also, sexual oppression does not only refer to woman's subjugation but also to men and children, as well as to heterosexual and homosexual individuals. Indeed, sexual oppression – as any oppression – is a matter of domination and exclusion of the Other, intersecting the axes of social difference and inequality.

The role of sexuality is also central in shaping ethnic and racial relations, conflicts and boundaries. Sexuality is an open door to violent oppression in conflicts in general and in ethnic conflicts in particular. Here, rape becomes an ethnosexual phenomenon, a weapon of war designed to terrorise and to "pollute" the enemy. It has a physical and a symbolic significance. Rape is, indeed, a matter of power rather than sex. One could call this phenomenon, a militarised sexuality. In such cases, sex is a means of institutionalised violence.

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   Sex tourism can also illustrate the interconnection between sexuality and ethnic relations within a postcolonial framework, especially regarding Southeast Asia and the Caribbean. While in Southeast Asia military prostitution was part of recreation and rest used by US personnel after World War II,[1] in the Caribbean, since the sixteenth century, white men had physical access to their slaves.[2] Therefore, sex tourism is often associated with the Western man who desires the exotic and oriental eroticism. It appeals to the colonial view about oriental women whose image became synonym with beauty, submission and passivity. This socially constructed image linked to oriental female sexuality is even more substantial in societies built on patriarchal values. However, it is not only directed at oriental femininity but to exotic sexuality in general, hence the existence of modern sexual stereotypes related to eastern European, African, South American and Caribbean women.

   The commodification of sexuality led to the internationalisation of the sex industry in which, added to ethnic and racial unbalanced relations, thrives economic discrimination. International sexual exploitation is intimately linked to poverty and to migration. The ever increasing gap between industrialised and developing countries results in a continuously increased human migration. International human movements are an important reality in Europe, North America and Asia. In 2005 it was estimated that around 49.6 % of migrants were women.[3] The intensification of female migration, especially forced migration, implies new challenges regarding human rights.

   When analysing sexuality and oppression, one cannot avoid the issue of violence against women and girls. And although the victims of gender-based abuse can be shrouded in the shadows of traditions and cultural values, there is a growing visibility of sexual violence worldwide. The roots of sexual violence against women lie in incessant discrimination against women and are not limited to one particular region or country. Such atrocities tend to go unpunished particularly in areas that suffer from intolerance, political instability and ethnic conflicts. In other words, sexual oppression and sexual crimes, in these areas, are not recognised as such resulting from the failure of the State to protect their citizens. There are many forms of sexual oppression: rape, forced marriage, female genital mutilation, dowry murder, honour killing, trafficking and sexual slavery, female infanticide, prenatal sex selection. The list is long and not limited to these forms.

   Moreover, sexual oppression is not restricted only to women and girls: it can also be directed against men, especially homosexual and transgender individuals. Therefore, human rights, as the prohibition of discrimination, addresses not only gender-based violence but also discrimination against sexual orientations.

   Human rights uphold appropriate political norms of how people should be treated by their governments. They are not intersubjective social norms of how people should treat each other. Strictly speaking, they are official norms[4]. However, some rights are related to the regulation of private behaviour (i.e. sexual

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discrimination). Governments have two ways of regulation against discrimination: they are forbidden to have discriminating policies, and they have the obligation to prohibit discrimination. Nevertheless, human rights as international laws, are minimal standards, leaving most legal issues in the hands of national and local decision makers. Although this allows human rights to have a great cultural flexibility which enables them to accommodate an institutional variety, it also leaves space for discrimination and oppression to go unpunished in some countries.

Because the topic of sexuality involves complex components – religious, cultural, behavioural, and personal – laws often prove to be inadequate to protect sexual rights. Therefore, the struggle to include sex and sexuality within the context of international human rights treaties is still a continuous process. In what concerns sexuality and oppression, we shall briefly consider in this introduction – and in accordance with the essays presented in this volume – the human rights of women, the rights of the child and wartime sexual violence.

Regarding women's rights, the most important international instruments drawing attention to gender-related dimensions is the UN Convention on The Elimination of All Forms of Discrimination Against Women (CEDAW) adopted in 1979[5]. It defines the right of women to be free from discrimination and sets the principles to protect this right. It also provides the basis to achieving gender equality through equal access to political and public life as well as education, employment and health (including the affirmation of the reproductive rights of women). The Convention was ratified by 180 states.

Empowerment and autonomy of women together with the civic and social rights are essential to attain sustainable development. This was particularly emphasised in 1995 at the Fourth World Conference of Women in Beijing. However, according to the UN Women[6]:

- 35% of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence.
- It is estimated that of all women killed in 2012, almost half were killed by intimate partners or family members.
- More often than not, cases of violence against women go unreported.
- Worldwide, more than 700 million women alive today were married as children (below 18 years of age).
- Among ever-married girls, current and/or former intimate partners are the most commonly reported perpetrators of physical violence in all the countries with available data.
- Around 120 million girls worldwide (slightly more than 1 in 10) have experienced forced intercourse or other forced sexual acts at some point in their lives.

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- More than 133 million girls and women have experienced some form of female genital mutilation in the 29 countries in Africa and in the Middle East where the harmful practice is most common. Beyond extreme physical and psychological pain, girls who undergo female genital mutilation are at risk of prolonged bleeding, infection (including HIV), infertility, complications during pregnancy and death.
- Trafficking ensnares millions of women and girls in modern-day slavery. Women and girls represent 55% of the estimated 20.9 million victims of forced labour worldwide, and 98% of the estimated 4.5 million forced into sexual exploitation.
- Between 40% and 50% of women in the European Union countries experienced unwanted sexual advances, physical contact or other forms of sexual harassment at work.
- In the United States, 83% of girls in grades 8 through 11 (aged 12 to 16) have experienced some form of sexual harassment in public schools.
- Women in urban areas are twice as likely as men to experience violence, particularly in developing countries.

This data demonstrates the fact that there is still much to be achieved regarding the protection against sexual oppression.

The same applies to children's rights. The Convention on the Rights of the Child[7] was adopted by the United Nations in 1989 and is the basis of the protection of the human rights of children. The articles of the Convention bring together the children's rights articulated in other international human rights' instruments. Children are entitled to the rights and procedures set out in the International Bill of Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), and the Covenant of Civil and Political Rights (1966)[8], as well as the protections contained in specific conventions such as those addressing racial discrimination[9], discrimination against women[10], the prevention of torture[11], international humanitarian law[12], the status of refugees[13], trafficking in human beings[14] and child labour.[15] In addition to these foundational principles, te Convention calls upon the provision of resources necessary to ensure the development and, ultimately, the survival of children. The Convention also requires the creation of legal, economic and social means to protect children against abuse and neglect. The Convention was ratified by 194 states (the United States of America did not ratify it). Nevertheless, despite this progress, much remains to be done, particularly regarding sexual violence which is due to its sensitive and illegal nature of opacity. As a result, one cannot but grasp the true magnitude of sexual crimes against children.

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Sexual abuse and sexual exploitation of children including child pornography and child prostitution are cruel crimes and constitute a serious violation of fundamental rights. The facilitation of international travel and the development of the Internet led to an increasing aggravation of these phenomena and are an issue of growing concern. Studies suggest that girls face a greater risk of sexual violence than boys. For instance, the World Health Organisation estimates that 150 million girls and 73 million boys under 18 have experienced forced sexual intercourse or other forms of sexual violence involving physical contact.[16] However, recent studies from Asia found boys to be as affected as girls.[17] Another study conducted in six Central American cities found that 3% to 10% of men aged 19-30 reported experiencing sexual abuse as a child. Most men reported this abuse taking place when they were 4-9 years of age.[18]

Cultural and social conducts, stereotyped roles, socioeconomic factors and education play an important part when addressing the issue. Vulnerable children are particularly at risk. These include children with disabilities, ethnic minorities, refugees and internal displaced children, marginalised groups and those living in armed conflict areas. The most likely settings in which sexual violence against children occur are precisely those in which they are supposed to be protected such as at home, in schools, in children care and institutions, in places of work and in the community.[19]

This leads us to the last section of this anthology dedicated to wartime sexual violence. In 2008, the United Nations Security Council adopted the Resolution 1820[20], highlighting the fact that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide.[21] In addition, in 2003 the United Nations Security Council passed Resolution 2122[22] supporting abortion rights for girls and women raped in war.

It is important to notice that wartime rape is not specific to geographic regions nor to certain types of conflict. However, according the Special Report of the United States Institute of Peace[23], state forces are more likely to be reported as perpetrators of sexual violence than rebel groups. Also, perpetrators are not exclusively male and victims exclusively female. Moreover, male victims of wartime rape suffer increased prejudice, the crime being often denied both by the perpetrator and by the victim. In some countries (i.e. Uganda, Iran) survivors are at risk of arrest by the police. They are also subjected to rejection by their families and friends. This is also true for women, especially in deeply conservative societies, in which the victims of rape are stigmatised and even prosecuted. Thus, wartime rape phenomenon calls for changing perceptions of acceptability.

War rape in the twentieth century is connected to several historical conflicts. According to *The Economist*[24], in the Second Sino-Japanese war in 1937, estimates point to 20.000 victims while some 200.000 sex slaves were provided for the Japanese army in WWII. Also during WWII, the Soviet army is thought to have raped between 100.000 to two million German women. Other wars known to have

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witnessed mass rape were the Bangladesh war of secession (1971), the Bosnian war (1992-95), Sierra Leone civil war (1991-2002) and the Rwandan genocide (1994). In addition, 80% of female personnel in the United States military have been victims of sexual violence[25]. The countries where sexual violence in conflict were widely reported in 2013 include: Afghanistan, Central African Republic, Colombia, Côte D'Ivoire, Democratic Republic of Congo, Iraq, Libya, Mali, Myanmar, Somalia, South Sudan, Sri-Lanka, Syria and Yemen.

    Wartime perpetrators are not only military personnel but also peacekeeping forces, humanitarian and aid workers and civilians[26]. This fact accentuates the necessity of political commitment to ending the impunity of perpetrators. It also calls for consistent training for military personnel, embedding gender perspectives in policies and in planning missions on the field. Therefore, as with the image of a spiral, it all comes back to changing social norms around gender-based violence.

    This anthology offers insights into each of the issues addressed above. The first step to changing attitudes and behaviours is to share and to disseminate research and general information on sexuality, oppression and human rights.

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Part I

Gender and Sexual Violence

Representation of Honour Killings: Critical Discourse Analysis of Pakistani English-Language Newspapers

Sadiq Bhanbhro

Abstract

This study analysed newspaper coverage related to 'honour killings' in Pakistan using a critical discourse analysis approach. The objective was to elucidate the social effects of honour-based murders from this discourse including the relationships of the incidents and the people represented.[1] The study examined the reports of three Pakistani English-language dailies that reiterate transecting norms relating to ethnicity, culture, class and gender. Such transections illustrate central values of Pakistani society in context of honour-based murders as 'tribal, feudal and patriarchal.' The study found that the overuse of the terms 'Honour Killing' and 'Karo-Kari'[2] are clichéd in the newspapers portraying such murders; the overuse of which has formed legitimacy around the act that is not deserved. The newspaper production and depiction of honour-based murder incidents as cultural, with its basis in the remnants of feudal, tribal and patriarchal only, is misleading and such interpretation conceals the possible connections with other social, economic, and political factors. The print media discourse presenting honour-based murders, as incidences outside the framework of law and public policy, evades the problematisation of law and policy domains. The reporting and illustration of honour-based murders were restricted to a victim-perpetrator sphere that camouflages the involvement of other actors such as family, community and clan. The newspapers represent the discourse of honour-based murder as a family/private matter, which provides a pretext to the state institutions including police, judiciary, and district administration to circumvent intervention. The analysis revealed that the newspapers have constructed and embodied the discourse related to the practice of honour-based violence as a part of a cultural value system, in which 'family honour' is valued more than anything. This culturalised explanation makes it hard to challenge such argument, and the discourse limits the understanding of factors, mechanisms and actors that maintain and encourage such practices.

Key Words: Honour killing, honour-based murder, karo-kari, critical discourse analysis, newspapers, honour-based violence, Pakistan.

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1. Introduction

Violence against women (VAW) is a commonly observed phenomenon around the world, but the degree of its incidence differs in place and time. Honour-based murder (HBM) is a worst form of VAW and is on rise in some regions. The murder

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of women and girls in the name of so-called 'honour' by their male family members or community/clan is no longer limited to any country, religion or culture. It is happening worldwide in various cultures, some regions being hotspots, such as South Asia[3] and Middle East.[4] In the South Asian region, Pakistan is infamous for VAW, and honour-based violence (HBV) has become an increasingly common practice.

Pakistan suffers from intolerance, terrorism, ethnic conflict, communal tensions, political instability, and economic woes. As a result of these sufferings violence of all sorts has become prevalent and a grave social problem. There is not a day that goes by without an awful act of violence shaking public confidence in the state's ability to protect its citizens and reminding the world that a grim decline in civility has occurred in the country.

2. Scope and Size of the Problem

According to some conservative estimates in the last thirteen years, 86,933 women became victims of violence in Pakistan. During 2013, 6,516 cases of VAW were reported in newspapers. Out of these 6516 incidents, 1,601 women and girls were murdered for various reasons including 896 (more than 17 a week) in the name of so-called 'honour.'[5] The VAW and honour-based crimes are rampant across the country, occuring in all classes, ethnic and religious groups, and regions.

The statistics on VAW and HBMs, in particular, are difficult to obtain and are often inaccurate due to under-reporting of such incidents.[6] The reasons for the under-reporting of HBMs include the unwillingness of victims' family members to come forward. The criminality of these murders is not recognised within the social and cultural contexts in which they occur.[7] HBV has a high level of support in Pakistan's society in general, and rural society in particular, as these killings are masked as suicides or accidents[8] thus lacking a government-initiated system to document HBM cases.[9]

The figures cited in this chapter are taken from various reports and compiled from media coverage and volunteer reports; the numbers could have been even higher if they had been systematically and independently documented.[10]

3. Media in Pakistan

Pakistan has spent more than half of its history under military rule and short intervals under civilian government. Not until 2013 had Pakistan seen an elected government complete a full term in office and transfer power through election to another civilian government. The national election in 2013 was an exceptional occasion for the people of Pakistan to shape their own destiny and take part in a change process[11] that was taking place in social, political, and economic landscapes of the country. Media in Pakistan that had been developed over a decade has constituted a major role in this transformation.

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Since the past decade privately-owned media in Pakistan is booming. At present, there is a huge network of media outlets including: 121 TV channels (six PTV channels, 89 private channels and 26 foreign TV channels with landing rights); over 500 regular dailies and over 800 periodicals; 138 commercial FM radio channels; 64 Pakistan Broadcasting Corporation (PBC) stations, and 34 PBC-owned FM channels; and 31 million internet users, and among them are about 11 million Facebook users, two million Twitter users and hundreds of thousands of bloggers.[12]

The media sector now reports everday issues that had never been given attention before. Therefore, media has become a substitutive political force by reporting stories on corruption of government departments and poor service delivery. (People prefer to report an incident to the media rather than the governmental institutions.) Regular and detailed coverage by media concerning public related issues has raised public expectations towards media in that the media is expected to be an actor in resoluting public issues. For instance, if a person needs to register a case against anyone, the person will reach out to a media outlet first, rather than the police station. He or she believes that if the issue is reported in the media, the police will be more apt to quickly register the case. Regardless of its impressive progress, the editorial independence of the Pakistani media is constrained by its historic role as a nation-building tool and a variety of state and non-state actors who use the media to both shape and manipulate public opinion in an increasingly volatile country.[13]

According to a Pew Research Centre survey in 2011, 76% of people surveyed in Pakistan believed that the media had a good affect in the country.[14] The media action policy briefing of 2013 issued by the British Broadcasting Cooperation (BBC) stated that Pakistani people value that their problems are reported by the media and believe their voices are being heard and acknowledged. This is, perhaps, happening for the first time in the history of Pakistan.[15] The literacy rate in Pakistan lingers at 50%. Historically, the print media has been the only source for independent news. Though circulation figures are declining, English-language newspapers remain very influential among political, military and the business elite of Pakistan.[16] Therefore, this study was conducted to examine the coverage of three English-language newspapers to understand how discourse related to HBMs is constructed and represented with a view to identify the policy entry points for advocating and orienting the discourse towards influencing the legal instruments available for making political, economic, and administrative authorities accountable and the policies and approaches for ending VAW in general and HBV in particular.

4. Material and Methods

I used a discourse analysis approach[17] to critically examine the coverage of newspapers on 'honour killings' in Pakistan. The analysis was undertaken by using

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framework analysis approach[18] in qualitative data analysis software NVivo v10.[19] The source material used in this analysis was collected from three Pakistani English-language newspapers published during 2013. This includes articles, editorials, pictures, letters to editor, features, blogs, book reviews, and stories related to 'honour killings'. The source material was collected in March 2014 from web versions of newspapers and online archives.[20] In addition, the material was accessed from Pakistan Press Foundation webpage TagArchives: Honour killing.[21] The newspapers included in the analysis are as follows:

Dawn is one of the oldest and most widely read English-language newspapers in Pakistan.[22] It is published by the second largest newspaper group of Pakistan, the Dawn Media Group. The editorial stance of *Dawn* is famous for its controversial leftist agenda.[23] *Dawn* claims that it is a medium of 'responsible, credible and balanced' information for public.[24] As an English-language newspaper *Dawn*'s readership and character is elitist and not read by the common people.[25]

The Express Tribune was launched in 2010, and this was the first internationally affiliated newspaper in Pakistan.[26] The editorial position of the paper maintains a social liberalism thought. Its readership generally comes from the mainstream left of Pakistani political and social opinion. The stated mission of the newspaper is 'to defend the liberal values and egalitarian traditions we believe in, and which deserve to be upheld in writing that is both informative and insightful'.[27]

The News International is the second largest English-language newspaper in Pakistan and was started in February 1999.[28] *The News* is published by the Pakistan's largest media group the Jang Group of Newspapers. This paper has an overseas edition published from London. The editorial position of *The News* is considered to be radical, open and progressive.[29] *The News* also caters a wide range of national and international audience.

5. Theoretical Framework

The analysis was grounded in the assumption that media representations are considered to be constitutive rather than representative of common discourses.[30] Various modes of reproduction, representation, and articulation are presumed to construct and transform notions of identities and social life.[31] The critical discourse analysis (CDA) focuses on a range of rhetorical devices, structures and semantic strategies to reveal 'not only how language and representation produce meaning, but also the relationship between representation, meaning and power and the construction of identities and subjectivities.'[32] In CDA media framing is an analytical tool that provides means of understanding events to convey, interpret, and evaluate information.[33]

Hence, this study is based on the assumption that the coverage of newspapers constructs rather than depicts actual incidents in the context in which they occur; whilst the construction and representation of such events are constrained by

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ideological basis of the newspapers. Therefore, in this study I do not claim to identify the motives for or causes and consequences of the HBMs. This study is a CDA of print media representation of HBMs that offers a critical approach to examine the newspaper coverage of a social phenomenon in its wider context.

6. Findings and Discussion

I found in total 199 items including editorials, opinions, news items, book reviews, features, blogs, pictures and letters to editor from all three newspapers for this analysis.

Table 1: Data sources from Dawn, the Express Tribune and the
News International

Category	*Dawn*	*The Express Tribune*	*The News International*
Editorial	00	03	00
Opinion	08	04	02
News items	61	21	50
Book review	01	00	00
Features	04	00	00
Blogs	00	04	00
Letter to editor	05	00	00
Pictures	10	21	05
Total	89	53	57
Grand total	199		

In total 147 separate incidents of HBMs were reporetd by all three newspapers during 2013, in which 150 women and 71 men[34] were murdered under the pretext of so-called 'honour.'[35] According to the Human Rights Commission of Pakistan, 869 cases of honour-based murders were reported during 2013.[36] The reasons for killing were reported 'having illicit or pre- or extra-martial affairs' in 68 cases; 'married against family wishes' in ten and 'getting a divorce' in two cases. Conversely, the literature shows that the incidents of HBM happens more because of other reasons such as avenging opponents, refusing to enter into an arranged marriage, religious misinterpretations, taunting (taano) by community members, settling debts, family or tribal enmity, and masking murder as 'honour killings' to receive light punishment under statutory law.[37]

The analysis revealed that all the three newspapers have monotonous ways of using headlines or framing the incidents. For example, the *Dawn* has used 'honour killing' and 'killed for honour' or 'in the name of honour' in more than 70% of all headings related to HBMs. Similarly, *The Express Tribune* also used the term 'honour killing' in most of headlines related to such incidents and only a couple of

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headings were framed as 'honour crime.' However, in case of the *News International* it was quite interesting to note that the term 'Karo-Kari' was used in about 80% of headlines and 'honour killing' in the rest of the coverage. It was discovered that the incidents were not labelled as 'crime' or 'murder' by all three papers, sidestepping the criminalisation of this act, thus, debilitating discourse that could lead towards prevention and elimination of such heinous practices. (Though, human rights organisations and women activists use term 'honor crime' instead of 'honour killing'.[38])

The terms 'honour killing' and 'Karo-Kari' are predominantly used in print media to represent such murders. I, along with other researchers, argue that the overuse of such terms in the media and literature has formed legitimacy around the act that is not deserved.[39] The articulation of HBMs as 'Karo-Kari'; 'honour killing'; 'killed in the name of honour'; or 'killed for honour' are indulgent and polite portrayals of a crime against humanity based on perceived so-called honour.

The term 'Karo-Kari' is a Sindhi-language expression for 'honour killings', which means 'black male-black female'.[40] It is predominantly used by print and electronic publications. This term is ethnocentric and suggests that the HBMs are happening only in a particular ethnic group that speaks the Sindhi-language. *The News* has used 'Karo-Kari' in more than 80% news headlines, whether it happened in Sindh or in other places. For example, incidents of HBM took place in Lahore and Bahawalpur (both are cities in Punjab) but the news categorised them as cases of 'Karo-Kari' and sidestepped using term 'Kala-Kali', which is believed applicable to the incidents that happened in Punjab.[41] This type of presentation harms the cause and gets needless support from that particular ethnic group because of such biased and stereotyping coverage by the media.

The reporting of all three newspapers has overemphasized the notion of 'honour' and the violence based on 'honour' presented as a custom. For instance, *The News* and the *Express Tribune* have repeatedly labelled 'honour killing' as a cultural tradition..[42] Presentation of violence which places honour as a custom, made it a hypersensitive issue that prevented research and addressing the problem of HBV and the larger political processes that shape it. Discourse presenting HBMs phenomenon as a family/community matter does not help because it places the acts in a timeless, historical category. In fact, such presentation prevents people/institutions from addressing the problem of violence. The media discourse around HBV as a part of cultural value system closes any argument and does not leave room for change.[43]

Moreover, similar pictures are attached repetitively within the news, and most of the time original pictures are not published. The images attached to the news items were interesting: often they are cultural symbols of a particular ethnic group, attached to judicial cases without regard to their locations and context. For example, pictures of Rilli (traditional bed sheet) and Ajrak (cultural shawl of Sindh) showed HBM incidents that took place in other provinces and regions. This

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steryotyped presentation of HBMs damages the actual cause of preventing this crime.

Discourse presenting these killings, as occurrences outside the framework of the law does not problematize law itself. For example, after initial reporting a few cases of HBM were followed by these newspapers to the settlement of cases in court or outside court. Newspapers reported that 147 HBM incidents took place during 2013, however police cases were registered for only 25 occurrences. Furthermore, the newspapers included in this study have not tried to create a space for such discussion in which appropriate changes to existing ineffective laws must be debated.

The analysis revealed that the media reporting suggested that the perpetrators of murders in the name of so-called honour know that they will not be prosecuted, because constitutional laws related to murder or man slaughter become ineffective in such cases. As the complaintant in an HBM case is often the legal heir of the victim, and a relative of the killer(s), the issue is settled out of court by jirga/panchayat[44] or pardoned in the court using Qisas (retribution) and Diyat (blood money) law.[45] Consequently, the killer always remains unpunished in HBM cases. In addition, judiciary and law enforcement agencies, district administration, and other actors involved in this crime, such feudal-lords and politicians, were not part of the media discourse related to violence based on honour. Also, the news coverage analysed did not stress the criminality of the practice because it is generally presented as a distinctive category of violence, stimulated by the notion of 'honour.' Therefore, it is not a usual crime in which constitutional law applies.

By and large, coverage and illustration of murders in the name of honour are restricted to a victim-perpetrator sphere that camouflages the wider contextual factors and the factual information about the incidents such as the place and the actors involved.The construction and representation of discourse related to HBV as a socio-cultural one, with its roots in the remnants of feudal, tribal and patriarchal, is misleading. Disguises of a wider contextual and historical understanding of these killings persist.

Although print media reporting has played an important role in increasing the visibility and developing an understanding on the issue, there are concerns of bias and lop-sided coverage which damages the larger cause. Media coverage can also encourage people to register a case with the police or to get attention from a government official or judiciary. If the incident is not reported by the media it can be more difficult for people to lodge a first information report (FIR).

The media discourse presents VAW as a standalone issue not to be included in public policies. As a consequence, it is not a priority concern for the government and state institutions. Also, it does not promote the evidence and understanding that these policies and programmes have an impact in one way or another on women and have a potential to increase their vulnerability to violence.

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It is hard to determine the ideological position of the newspapers because it is not stagnant. However, throughout the history, the editorial independence of media outlets in Pakistan has been highly influenced by the security agencies and armed forces and constrained by the idea of 'nation-building' and 'Islam as the ideology of Pakistan'. As a result, the media sector sweeps stories under the carpet, as these might become an international embarrassment for the country. However, nowadays it is becoming increasingly difficult to hide the stories due to global access to social media and to the presence of foreign media outlets.

7. Conclusion

The analysis suggests that the newspapers have constructed and embodied the discourse related to the practice of murders in the name of honour as part of a cultural value system, in which 'family honour' is valued more than anything. Furthermore, womenfolk are the repositories of the 'family honour'. This makes it difficult to challenge the 'honour killing' argument. Also, the discourse limits the understanding of factors and mechanisms that maintain and encourage such practices. Therefore, media should adapt an inclusive and independent editorial policy to highlight the fact that violence against women is a political issue which needs to be addressed as a matter of priority. Media is an avenue where advocacy can work effectively to shape and influence the discourse around murders in the name of so-called 'honour', to introduce change and implement the law. Also, media should be a viable platform to educate people to prevent such ill practices in society. The media in Pakistan should characterize such incidents as crimes or murders instead of 'Honour Killings' or 'Karo-Kari' and discourse should be critical of the existing legislation, creating space for change and appropriate implementation of laws. These efforts would side-step the provision of leniency and leverage to the perpetrators. The analysis suggests that the international actors should support the Pakistani media in strengthening the politics of inclusion rather than exclusion. One approach to this is to enable or conduct media training and workshops to educate newspapers staff to comprehensive reporting regarding the recognition of women's rights.

Notes

[1] In English the term 'Honour Killing' is overused in the literature and media to represent such murders. However, in this chapter I used the term 'honour-based murders (HHMs), instead of 'honour killing' since the term 'honour killing' gives the act a legitimacy that is not deserved.
[2] In Pakistan this crime is known with its regional expressions such as kala-kali (Punjab), karo-kari (Sindh), tor-tora (Khyber Pakhtunkhwa) and siyakari (Balochistan).

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[3] 'United Nations Population Fund,' *State of World Population 2000*, New York: UNFPA, 2000, viewed on 12 June 2014,
http://www.unfpa.org/swp/2000/english/ch03.html.

[4] Hillary Mayell, 'Thousands of Women Killed for Family Honour,' National *Geographic News*, February 12, 2002, viewed on 12 June 2014,
http://news.nationalgeographic.com/news/2002/02/0212_020212_honorkilling.html.

[5] *Hum Awaam*, dir. Maqsood Hussain. Karachi: Geo Television Network, 2014, YouTube.

[6] Sadiq Bhanbhro, et al., 'Karo Kari: the Murder of Honour in Sindh Pakistan: an Ethnographic Study,' *International Journal of Asian Social Science* 3.7 (2013): 1467-1484.

[7] Mathew A. Goldstein, 'The Biological Roots of Heat-of-Passion Crimes and Honour Killings,' *Politics and the Life Science*, 21 2002, 28 – 37.

[8] Yasmeen Hassan, 'The Fate of Pakistani Women', *The New York Times*, March 25, 1999, viewed on 12 June 2014,
http://www.nytimes.com/1999/03/25/opinion/25iht-edhass.2.t.html.

[9] Amnesty International, *Pakistan: Honour Killings of Girls and Women*, London: AI, 1999, viewed on 12 June 2014,
http://www.amnesty.org/en/library/info/ASA33/018/1999/en.

[10] Ibid, 16.

[11] Huma, Yousuf, Emrys Schoemaker, *The Media of Pakistan - Fostering Inclusion in a Fragile Democracy?*, London: BBC, 2013, viewed on 10 June 2014,
http://www.bbc.co.uk/mediaaction/publicationsandpress/policy_pakistan.html.

[12] Ehsan Mehmood Khan, 'Pakistan's Media,' *The News International*, April 2, 2014, viewed on 8 July 2014,
http://www.thenews.com.pk/Todays-News-9-241712-PakistanE28099s-media.

[13] Yousf, Schoemaker, *The Media of Pakistan - Fostering Inclusion in a Fragile Democracy?*

[14] Pew Research Centre, 'US Image in Pakistan Falls No Further Following Bin Laden Killing', viewed on 16 July, 2014,
http://www.pewglobal.org/files/2011/06/Pew-Global-Attitudes-Pakistan-Report-FINAL-June-21-2011.pdf.

[15] Yousf, Schoemaker, *The Media of Pakistan - Fostering Iinclusion in a Fragile Democracy?*

[16] Infosaid, 'Pakistan: Media and Telecoms Landscape Guide,' June 2012, viewed on 16 July 2014,
https://internews.org/sites/default/files/resources/InfoasAid_Pakistan_MediaGuide.pdf.

[17] Florian Schneider, 'How to Do a Discourse Analysis,' *Politics East Asia.com*, May 13, 2013, viewed on 11 April 2014,

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http://www.politicseastasia.com/studying/how-to-do-a-discourse-analysis/.

[18] Jane, Ritchie and Jane Lewis, *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (London: Sage, 2003).

[19] QSR International Pty Ltd, NVivo Qualitative Data Analysis Software, Version 10, 2012.

[20] *Dawn* http://www.dawn.com/archive; the Express Tribune http://tribune.com.pk/ and the News International http://www.thenews.com.pk/.

[21] Pakistan Press Foundation is an independent media research, documentation and training centre which maintains archives of various newspapers. http://www.pakistanpressfoundation.org/tag/honour-killing/.

[22] *Dawn* was founded by Quaid-i-Azam Mohammad Ali Jinnah, the founder of Pakistan in Delhi, India in 1941. It has an Urdu-language version Dawn.com Urdu, a news channel, *Dawn News*, and a radio station City FM89.

[23] Shaista, Malik and Zafar, Iqbal, 'Construction of Taliban Image in Pakistan: Discourse Analysis of Editorials of *Dawn* and *The News*,' *China Media Research* 7.2 (2011): 46-56.

[24] Wikipedia, viewed on 11 August 2014, http://en.wikipedia.org/wiki/Dawn_News.

[25] Rai Shakil Akhtar, *Media, Religion and Politics in Pakistan* (Karachi: Oxford University Press, 2000).

[26] *The Express Tribune* is partnered with the *International New York Times* – the global edition of the *New York Times*. *The Express Tribune* is accompanied by an Urdu-language *Daily Express* newspaper, a 24/7 news channel *Express News*, and an Urdu entertainment channel *Express Entertainment*.

[27] *The Express Tribune*, viewed on 30 August 2014, http://tribune.com.pk/about/.

[28] *The News* is affiliated with an Urdu newspaper *Daily Jang* and an Urdu news channel *Geo News*.

[29] Malik and Iqbal, 'Construction of Taliban Image in Pakistan,' 8.

[30] Norman Fairclough, *Media Discourse* (London: Edward Arnold, 1995).

[31] Eva Reimers, 'Representation of an Honour Killing,' *Feminist Media Studies* 7.3 (2007): 239-255.

[32] Justin M. Devis and Nathaniel T. French, 'Blaming Victims and Survivors: An Analysis of Post-Katrina Print News Coverage,' *Southern Communication Journal* 73.3 (2008): 243-257.

[33] Lindita Camaj, '"Media Framing through Stages of a Political Discourse: International News Agencies" Coverage of Kosovo's Status Negotiations,' *International Communication Gazette* 72.7 (2010): 635-653.

[34] Women and men of all ages including minors.

[35] *The Dawn* reported 51, *The News* 75 and the *Express Tribune* 21, during 2013.

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[36] Human Rights Commission of Pakistan, *State of Human Rights in 2013*, (Lahore: HRCP, 2014).

[37] Bhanbhro, et al., 'Karo Kari: the Murder of Honour,' np.

[38] Human Rights Commission of Pakistan, Aurat Foundation, Shirkat Gah and SACHET Pakistan.

[39] Bhanbhro, et al., 'Karo Kari: the Murder of Honour,' 1468.

[40] Metaphorically the term 'Karo-Kari' is used for someone who has brought dishonour to family, community or clan.

[41] *The News International*, August 19, 2013, *The Express Tribune*, October 19, 2013.

[42] *The News International*, March 17, 2013.

[43] Nafisa Shah, 'Making of Crime, Customs and Culture: The Case of Karo-Kari Killings of Upper Sindh,' *Scratching the Surface: Democracy, Traditions, Gender*, ed. Jennifer Bennett (Lahore: Heinrich Böll Foundation, 2007).

[44] The Jirga/Panchayat is a decision-making assembly or tribal council. This is a tribal system of justice which is actively practiced in Pakistan to settle legal cases and disputes, despite being banned by the government. Such councils are managed by local elites and are composed only of men, particularly those who are influential and who inherited power within the braderi (shared community) clan or tribe.

[45] Qisas and Diyat Ordinance, provisions of *Pakistan Penal Code (PPC) 1860*, which permits the individual and his or her family to retain control over a crime, including the right to determine whether to report the crime, prosecute the offender, or demand diyat (compensation). This allows serious crimes such as HBMs to become privatised and to escape state scrutiny, shifting responsibility from the state to the individual.

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http://www.bbc.co.uk/mediaaction/publicationsandpress/policy_pakistan.html.

Sadiq Bhanbhro has a background in social anthropology and public health. He is an experienced researcher being head of research on a number of projects. His

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interests are the political economy of health and wellbeing, and violence (mainly gender and honour-based violence), media, and culture. His published works can be found on http://shura.shu.ac.uk.

The Banalization and Legitimization of Hetero-Patriarchal Violence on Page 3: A Discourse Analysis of Online Turkish Newspapers

Banu Saatçi and Emrah Karakuş

Abstract
Page 3 sections of the newspapers are mostly known for the use of erotic images accompanied with the magazine life. In Turkey, these pages have come up to be the sections where the news for domestic violence, child abuse and rape cases are published. In this study, we aim at analysing how violence against/by women and LGBT individuals are represented in the Turkish media through a discourse analysis of third pages in online Turkish newspapers published after 2007. Along with the findings of our research, we argue that the narratives of the online news concerning the violence against women and LGBT individuals trivialise this violence through tabloidization, individualization and moralization. The news on Page 3 legitimize the violence and reproduce conservative values by applying to reasoning of general moral principles as well as justifying and romanticizing even the cases of honour-killing as 'love-murders'.

Key Words: Page 3, newspapers, domestic violence, suppression of women, LGBT, Turkey.

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1. Introduction

From the films and TV shows we watch to the video-games we play, we are subject to violent messages each and every day. The Internet has become the ultimate source we rely on in making sense of our world, and in such a collective space where we are not only observers but also actors, we overlook the fact that we conceive each and every message through the lenses of infinite contributors.

While the rise of technology has accelerated the use of social media all over the world, the role of media has increased to a considerable extent. The new media and the digital journalism have given us hope for a world, where no crimes and inequalities will stay secret and the oppressed will make themselves heard. From Arab Spring to Gezi Park protests, we have witnessed the power of social media and online journalism in conveying a more complete version of reality to the citizens, compared to the censored mainstream media, and mobilizing thousands of people instantly. However, the disinformation and manipulation in such an anonymous platform have turned digital media to an uncontrolled monster, constructing and deconstructing our realities, emotions and subject positions over and over again. In this chapter, we will examine from a gender studies perspective

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how violence is represented and reproduced in Page 3 of online journalism in Turkey.

2. Subject and Methodology

Third pages in both online and offline Turkish newspapers have been allocated for the news of domestic violence, murders and honour crimes contrarily to their international counterparts, which usually publish magazine news. In our preliminary research, we have aimed at analysing the Page 3 news on three high circulating newspapers in Turkey: Posta, Hürriyet and Sabah. Though there are other mainstream newspapers, some of which sell even more than the selected three, we picked these because they provide a wide coverage of Page 3 news. They are differentiated from the other high-circulating newspapers as they are not strictly secular, conservative or nationalist. However, as we have started to conduct our literature review and research on Page 3 news, we noticed that newspapers and their discourse on depicting violence against women differ from their online versions. Since online versions of the newspapers boost their view counts and make money by using catchy titles and images, we have observed that the representation of photographic and textual violence against women and LGBT groups in online news is more prominent than in the print versions. Furthermore, the competition among newspapers results in the shortening of the news, in a lack of care for the text and in the disregard of journalism ethics and responsibility.

Having considered the absence of research on the representation of violence in digital journalism, we aimed at analysing how media disseminates the violence news, with a focus on the violence against women and LGBT groups in Turkey portrayed in the 3rd page news on Turkish online newspapers. Instead of limiting our research to only three newspapers, we scanned Page 3 news published after 2007 on the websites of major Turkish newspapers. We specified the timeline as '2007-recent' since after that time the control of Turkish Prime Minister Recep Tayyip Erdoğan and Justice and Development Party (AKP) over the Turkish media lead to a more conservative and populist discourse in making news. Throughout our research, we determined 50 cases of murder, rape and other physical violence against/by women and LGBT individuals to conduct a discursive analysis. Studies on violence against women so far have considered women mostly as the object of violence; however, it is observed that women as the subject of violence, i.e. as murderers, rapist or torturers, are also portrayed as victims by the media. As Åhall argues, gendered discourse in media considers female perpetrators as the victims of their emotional situation instead of holding them responsible for their own actions. This purifies the categories of 'femininity' and 'motherhood' through the depiction of women as birth-givers rather than killers, which can be only attributed to manhood.[1] Therefore, we tried to pick some cases of crime, in which women are also perpetrators and analysed how their criminality is illustrated in online Page 3 news in Turkey.

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Studying 50 controversial cases that have been published in these newspapers and have become subjects of heated debates in the media, we found that the discourses in these news about the violence towards women and LGBT individuals trivialise violence against these groups in three ways: *tabloidization*, *individualization* and *moralization*. The banalization of violence in the discourse mainly leads to the decontextualization of violence against women and LGBT groups. Also, it provides legitimacy for the hetero-patriarchal structure of the modern State and to the heteronormativity within society. Since our space is quite limited to report on the 50 different cases we have studied, we will demonstrate in this chapter the banalization of violence in Turkish online newspapers based on three contentious cases: Münevver, Seçil and Ahmet.

3. Three Cases of Page 3 News in Turkey

Münevver: The murder of Münevver Karabulut (17 years old) was one of the most notorious cases in Turkey known as the corpse found in a garbage container in pieces. Her head was put into a rubbish bag and the rest of her body was in a guitar case. She was murdered by her boyfriend Cem Garipoğlu on March 3, 2009 in Istanbul.

Seçil: Seçil M.D. (35 years old) was a primary school teacher and was accused for killing her two-month-old baby by leaving him at home alone for nine days in order to visit her family in Hatay during the religious holiday. On October 22, 2013 she brought her baby to the hospital and found out that he died on the sixth day after she left.

Ahmet: Ahmet Yıldız (26 years old) was murdered on July 15, 2008 in Istanbul by his father Yahya Yıldız for being gay. He was killed on the street by the bullets fired from his father's car. Ahmet's murder is considered to be the first gay honour killing case in Turkey.

4. Tabloidization, Individualization and Moralization of Violence in Page 3 News: Turkey as a Case Study

In the third pages of newspapers, *tabloidization* is a common technique of representation that distorts reality while constructing an exaggerated, decontextualized text about groups of people and individuals and violence that are distant from our everyday life. In essence, tabloidization refers to popular news generation corresponding to the reader preferences so that the sales would increase. Esser defines this phenomenon as 'the direct result of commercialized media, most often promoted by the pressures of advertisers to reach large audiences'[2]. Also Kiu Chor and Thomas[3] list the characteristics of tabloidization trends as follows: tabloid news direct all attention to scandalous sport news, stories and personal lives with an emotional and narrative discourse. In this sense, tabloidization simplifies news and stories while highlighting details which are supposed to increase sales.

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With the concept of *individualization*, we refer to the reduction of social facts into individual problems, making the crime sound more domestic or a 'married life' issue and reproducing the same hetero-patriarchal discourse. *Moralization* can be defined as judging the subject or the object of crime based on conservative moral values of both the reporter and the public.

The 3rd pages in Turkish newspapers, as they include more domestic violence, rape and violence against women and LGBT individuals, use the same techniques of tabloidization. In most of the news, the violent actions of males are represented within a narration of a love story in which private and personal details of women are underlined. First of all, this serves conservative reasoning that makes violence against women legitimate. Secondly, the narration includes the full names of the female and LGBT victims, where they live, their family member's jobs and where they work. It also generally includes photographs of the victims, which are used mostly in headlines. In their research on the discourses generated about the violence against women in Hürriyet, Sabah and Posta newspapers, Gökulu and Hosta find that violence against women is tabloidized in the news by giving detailed information about the crime and using an emotional and violent discourse with exaggerated headlines.[4] These techniques direct the attention of readers to the victims' privacy, and by doing so, it contributes to aggrieving female and LGBT victims for the second time.[5]

The terrifying murder of Münevver called by the media as 'The Beheaded Murder' (Kesik Baş Cinayeti) was tabloidized to a considerable extent since the murder suspect Cem Garipoğlu was the son of a rich family in Turkey and the family was accused for helping their son in tampering the evidences and hiding him from the police. Turkish media have given wide coverage to this case because the parents of Karabulut brought a libel suit to the Garipoğlu family, which has recently ended. Even though the case is publicized with developments on the ongoing lawsuit, the titles and content of the news have continued to reproduce the same violence. In order to attract the reader's attention, especially on the newspapers' websites, reporters have used the famous title 'The Beheaded Murder' quite often and instead of broaching the subject, they mention the details of the murder over and over again, as if it is the main point of the news.[6] Moreover, Münevver's full name is always mentioned in the news and her photographs are shown, whereas the murderer Cem Garipoğlu's name is often shortened as C.G. and his pictures are blurred even though his name and accusation were disclosed in media to a considerable extent when Münevver's corpse was found.[7]

Just like many other cases of violence against women, Münevver's murder was individualized in media quite often. Even after such an extraordinary and cruel murder, newspapers have published many pieces on the love story of Münevver and Cem, mentioning how and where they met, how their relationship continued and why it ended that way. 'The anatomy of a mysterious love story' (Sırlarla Dolu Bir İlişkinin Anatomisi)[8] and 'A love story starting with coffee and ending with

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death' (Kahve İçerken Başlayan, Ölümle Biten Aşkın Hikayesi)[9] are some examples of the titles used by tabloids. By reducing murder, which is an apparent case of violence against women, to the 'unfortunate end' of an ordinary quarrel between partners madly in love, media discourses individualize violence and overlook gender issues: 'Both of them were unaware of the fact that one day they were going to be the part of a story of love and massacre.' (İkisi de yıllar sonra hem bir aşkın hem de bir katliamın parçası olacaklarından habersizdi).[10]

Münevver was also subject to moralization on media. She was always mentioned as 'the high-school girl Münevver' (Liseli Münevver)[11], showing the reader that Münevver was not a woman allowed to have a boyfriend. Rather, she was still a high-school girl, who should be at home at night under her parents' control. Even Turkish Prime Minister Recep Tayyip Erdoğan's comments on Münevver's murder referred to a Turkish proverb: 'If you don't take care of your daughter as parents, she will elope to either a drummer or a *zurna*-player (*zurnacı* in Turkish)[12] (underlining that girls should be controlled by their parents or else they deserve to marry an ordinary man, who can do anything to them). Moreover, in 2010, the medical report of Forensic Medicine Institute in Turkey on Cem Garipoğlu was published in the news stating that Cem Garipoğlu has a high IQ level and suffers from Schizoid Personality Disorder, which makes him a shy and antisocial person.[13] Afterwards, Garipoğlu's psychological problems were attributed to his father's serving his time in prison and the neglect of his parents when he was a child. The father is also accused for sending his son abroad at an early age.

Seçil's killing of her baby was also tabloidized in the media, especially after her shocking statements on the crime. She acknowledged that the baby was from her relationship with a married policeman in the city of Kocaeli. However, due to the fact that having an extramarital baby is not accepted by Turkish society, she hid herself from her family and friends during her pregnancy. She claimed that her parents pressured her to visit them during a nine days long holiday and because she was afraid of being visited by her family, she had no other choice than leaving her baby alone at home. She also stated that she was sorry for the death of her child. Since she confessed having an extramarital relationship and an illegitimate baby, the media tried to uncover additional facts about her life. Some reporters conducted interviews with Seçil's neighbours and the parents of her students. In these news, her neighbours underlined that Seçil had an isolated life and has not spoken with any of them for years. Also, parents of the students claimed that they noticed the abnormality of the teacher from her absurd clothing, which was not appropriate for wearing in a school, and that they didn't want their children to get education from that woman.

One of the parents added that they weren't happy with the teacher at all:

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> She was the teacher of my child. We heard that she had another problem before. Therefore, we didn't want her to be the teacher of our children. As parents, we weren't happy with her. We collected signatures from all parents in the class but it wasn't taken into consideration. We wanted another teacher, but it wasn't possible. Compulsorily, we sent our children to the same school. But we were always worried about it. Even the director of the school promised us to take care of the situation if anything would happen. Her manners seemed to be normal but she was in panic all the time. She was impatient and most of us didn't want her.[14]

Since being a mother, who leaves her child to death, is an 'extraordinary' situation, news covering this case focused on the 'remorselessness' and 'feloniousness' of the woman. Turkish media individualized and tabloidized the crime with provocative titles such as 'The remorseless mother finally confessed' (Vicdansız anne itiraf etti),[15] 'The mother, who left her baby for 9 days alone, confessed: I gave my baby food when I came back, but she didn't eat!' (9 günlük tatilde bebeğini evde bırakan anne: Dönüşte mama verdim yemedi!).[16] While her leaving her extramarital baby to death is an apparent indicator of the hetero-patriarchal conservatism and oppression in Turkey, the news moralized the case and blamed the woman twice, both for having an incorrect relationship with a married man and for leaving her baby to death, overlooking the actual pressure on the woman by her family and the society in general. Therefore, her crime was individualized and represented as an 'inappropriate behaviour', the woman being neither a 'normal' teacher nor a 'trustworthy' neighbour. Even though her surname was shortened and concealed from the public, some newspapers showed her photograph on their websites.

The murder of Ahmet Yıldız was a unique case in Turkey as it was an honour killing committed by a father. Even though he reported to the police several times the fact that he received threats from his family, the police took no action for protecting him. This time, reporters emphasised his homosexuality because he was different from the general 'gay' stereotype. The fact of being a Kurdish gay with a black hairy body was an interesting and quite suitable detail for tabloidization. The newspaper Hürriyet publicized Ahmet's murder by drawing the reader's attention to his hairy body: 'Yıldız (26) was not hiding his hairy body and his beard; he was an active gay member among the group of 'Bears of Turkey'.' (Yıldız (26), kıllı bedenini, yüzündeki sakalı saklamayan, Türkiye'de 'Ayı Grubu' diye adlandırılan eşcinsellerden biriydi).[17] Again, this case was individualized on media by underlining the fact that Ahmet as a masculine man, different from the 'feminine' gay stereotype, was the victim of his family's traditional and conservative background, as if honour killings against women or so-called feminine gays are not

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part of the same social problem of gender. Furthermore, the same newspaper published another piece on Ahmet, which consists of only his photographs, as if to satisfy the heterosexual reader's curiosity on how a bearded masculine man can be gay.[18] Instead of focusing on the details such as whether the suspect father was arrested, reporters again focused on the story of the crime and used titles containing violence: 'Three of the bullets were shot in his chest.' (Kurşunlardan 3'ü göğsüne saplandı). [19]

5. Conclusion

As these three examples of violence in Page 3 news in Turkey show, online newspapers play a significant role in trivialising and reproducing violence by decontextualizing criminal cases through tabloidization, individualization and moralization. Even though the third pages of printed newspapers also victimize women and LGBT people, we could observe that online newspapers in Turkey use an even more violent and heteronormative discourse. This is because reporters do not care about reviewing the content they create. This interest rests rather on publishing as fast as possible and on increasing the viewing rate.

Notes

[1] Linda Åhäll, 'Confusion, Fear, Disgust: Emotional Communication in Representations of Female Agency in Political Violence,' *Gender, Agency and Political Violence. Rethinking Political Violence*, ed. Linda Åhäll and Laura J. Shepherd (Basingstoke: Palgrave Macmillan, 2012), 169-183.
[2] Frank Esser, '"Tabloidization" of News: A Comparative Analysis of Anglo-American and German Press Journalism,' *European Journal of Communication* 14.3 (1999): 291.
[3] Kiu Chor Ho and Thomas Abraham, 'Tabloidization and Coverage of Domestic Violence in Hong Kong Newspapers,' (Paper presented at the annual meeting of the International Communication Association, Marriott, Chicago, IL December 12, 2013), vıewed on 4 November 2014,
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[4] Gökhan Gökulu and Nilay Hosta, 'Basında Kadına Yönelik Şiddet Haberlerinin Analizi: Hürriyet, Sabah ve Posta Gazeteleri Örneği (2005 – 2008),' *International Journal of Social Science* 6.2 (2013): 1829-1850.
[5] Gökulu and Hosta, 'Basında Kadına.'
[6] Özkan Arslan, 'Etiler'de Kesik Baş Dehşeti,' *Hürriyet*, March 4, 2009, viewed on 22 March 2014,
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[7] Ali Aksoyer, Çetin Aydn and Mustafa Özdabak, 'Vahşette "şüpheli" genç kızın sevgilisi,' *Hürriyet,* March 4, 2009, viewed on 22 March 2014,
http://www.hurriyet.com.tr/gundem/11138743.asp.

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/gundem/gundemdetay/15.03.2009/1071239/default.htm.

[9] Sonat Bahar, 'Kahve içerken başlayan, ölümle biten aşkın hikâyesi,' *Sabah*, March 15, 2009, viewed on 22 March 2014,
http://arsiv.sabah.com.tr/2009/03/15/pz/haber,48C5EFBD044642E68111091D7BB
2D335.html.

[10] Bahar, 'Kahve içerken başlayan.'

[11] Vahit İşbaşaran, 'Liseli Münevver'in katil zanlısı rakı fabrikada arandı,' *Milliyet*, March 11, 2009, viewed on 22 March 2014,
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[12] 'Erdoğan'dan şoke eden 'Münevver' yorumu!,' *Milliyet*, July 20, 2009, viewed on 22 March 2014,
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&Date=20.7.2009.

[13] Sedef Şenkal Demir, 'Cem Garipoğlu'nun raporu tamamlandı,' *Habertürk*, December 22, 2010, viewed on 22 March 2014,
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[14] 'Açlığa terk edilen bebeğin annesinden tüm veliler şikayetçiymiş!,' *Radikal*, October 22, 2013, viewed on 22 March 2014,
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[15] 'Vicdansiz anne itiraf etti,' *Türkiye*, October 22, 2013, viewed on 22 March 2014, http://www.turkiyegazetesi.com.tr/gundem/92384.aspx.

[16] '9 günlük tatilde bebegini evde birakan anne: Dönüste mama verdim yemedi!,' *T24*, October 22, 2013, viewed 22 March 2014,
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[18] 'Ahmet töre cinayetine mi kurban gitti,' *Hürriyet*, (n.d.), viewed on 22 March 2014,
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[19] Selamet Öz, 'Kursunlardan 3'ü gögsüne saplandi,' *Hürriyet*, July 17, 2008, viewed 22 March 2014,
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Banu Saatçi is a graduate student in the Department of Sociology at Istanbul Şehir University and holds a B.A. degree in Sociology from Bogazici University, Turkey.

Emrah Karakuş is a graduate student in the Department of Political Science and International Relations at Istanbul Şehir University, holds M.Sc. degree in Security Studies at University College London, United Kingdom and B.A. degree in International Relations at Kültür University, Turkey.

Challenging the Efficacy of *Ex officio* Prosecution of Domestic Violence Offenses: A Comparative Analysis

Patrícia Pais

Abstract
In today's world domestic violence is regarded as a serious violation of human rights. The United Nations and other regional organizations such as the Organization of American States and Council of Europe have adopted binding instruments that address domestic violence. These conventions require effective enactment and enforcement of laws at national level that criminalize domestic violence. The national machinery should ensure investigation, prosecution and punishment. Furthermore, the United Nations and Council of Europe legal framework for model legislation include standards for criminal proceedings, which embrace *ex officio* proceedings, i.e., States shall ensure that investigations and prosecution may continue even if the victim declines to report violence or press charges or later withdraw charges and testimony. Domestic violence, however, is not a crime like others. Domestic violence happens in the family private sphere, perpetrated behind closed doors and away the public eye – as a result, the victim's testimony is often the strongest and sole evidence of the abuse. Also, perpetrators and victims are often in an on-going relationship and there are strong and continuing emotional, financial and legal ties between them; and, frequently, for various reasons, victims seek to prevent prosecution or opt not to cooperate, as they view prosecution as unnecessary or contradictory to their interests. This paper debates the practical significance of prosecution standards set by international organizations in combating the global domestic violence *épidémie*, by examining longitudinally the implementation, development, and outcomes of *ex officio* prosecution. I will discuss the experience of two jurisdictions that have long periods of implementation of *ex officio* prosecution of domestic violence offenses, but also possess significantly different legal and criminal justice systems, namely, the Canadian Province of Manitoba (adversarial system/common law) and Portugal (inquisitorial system/civil law).

Key Words: Domestic violence, ex-officio prosecution, no-drop prosecution, evidence, cooperation, efficacy.

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1. Background

Domestic violence against women[1] (DV) is considered to be one of the most universal and transversal human rights abuses.[2] It subsists in all countries irrespective of women's individual characteristics, their social, economic, religious or cultural group identity, and it is grounded in the wider context of systemic

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gender-based discrimination against women and other forms of subordination.[3] The forms and manifestations of such violence are various and it comprises an array of abusive behaviour, such as physical violence, threats of violence, sexual assault, verbal abuse, and psychological abuse, isolation of the victim from family and friends, restricted mobility, withholding basic resources.[4]

Over the past twenty years, many jurisdictions have introduced or changed legislation covering the components of domestic violence, including prosecution policies and laws. This is in part the result of the work of institutions such as the United Nations (UN), Council of Europe (CE) and Organization of American States (OAS) that have urged States to enact the necessary adjustments in criminal law and judicial procedures in order to investigate and punish domestic violence.[5] The international frameworks for model jurisdictions, namely the UN and CE, recommend or impose *ex officio* proceedings, i.e., States shall ensure that investigations and prosecution may continue even if the victim declines to report violence or press charges or later withdraw charges and testimony.[6]

Arguments that support the criminalisation of DV and the push for *ex officio* proceedings claim that it makes a statement to society as a whole that domestic violence is a serious crime that is not tolerated by authorities, and ensure the safety of the victim - since victims often do not press charges or request that police drop charges due to fear, pressure from the aggressor or family, feelings of betraying the aggressor, or economic dependence, amongst other reasons.[7] A number of jurisdictions have adopted such juridical solution. In the United Kingdom, Spain, Portugal, Cyprus, many jurisdictions in the United States and Canada, among others, the law enforcement authorities pursue investigations and prosecute domestic violence cases regardless of the victims' wishes.

This article, however, confronts the endorsement of *ex officio* prosecution standards on the international level as an adequate juridical solution since it identifies significant challenges to its implementation on the national level. It further discusses the adoption and implementation of *ex officio* proceedings by two distinct jurisdictions, namely the Canadian Province of Manitoba (adversarial system/common law) and Portugal (inquisitorial system/civil law).

2. Domestic Violence: From Invisibility to a Human Rights Issue

Given recent progress in the area of women's rights it may be difficult to conceive, particularly in the Western World, that less than 30 years ago domestic violence was considered a private affair.[8] Yet, until the second half of the 20th century the generalized cultural belief about the privacy of family life and tolerance in the face of family violence inhibited the analysis of the phenomenon and supported the permissive social discourses of its practice.[9] Legal doctrines protecting the privacy of the home and family played their part in the failure of the state and society to intervene when domestic violence was committed.[10] The ground-breaking work on violence against women (VAW) belongs to the feminist

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activism of consciousness-raising groups and the feminist theorists, which drove the women's movement in the 70s, and were the 'key catalysts' to the advent of a debate on national and international levels and the resultant policy change that followed in domestic and transnational contexts.[11] The first feminist studies regarding violence against women, clearly pointing to the emergence of a new perspective in research on interpersonal violence, focused on intimate partner violence whether physical, emotional, or sexual. Noteworthy among such studies were Brownmiller, *Against Our Will: Men, Women, and Rape* (1975); Martin, Battered *Wives* (1976); and Buttler, *Conspiracy of Silence: The Trauma of Incest* (1978). Another important work was R. Emmerson Dobash and Russell Dobash, Violence *against Wives: A Case against the Patriarchy* (1979).

Consideration of DV and other forms of VAW emerged in international women's conferences, particularly in the context of the UN Decade for Women (1975-1985), as more women's organizations became connected to the UN agenda.[12] Particularly salient are the three conferences in Mexico City, 1975; Copenhagen, 1980; and Nairobi, 1985, that covered the UN decade. In each city more and more large parallel conferences of NGO's took place at the same time as the official conferences.[13] Such face-to-face meetings produced information sharing, and discovery of common concerns.[14]

It was in 1980, in the Copenhagen mid-decade Second World Conference that the United Nations adopted a resolution on violence in the family.[15] By 1985, the participants at the Final Conference of the Decade for Women in Nairobi, Kenya, reached a consensus:

> Violence against women exists in various forms in everyday life in all societies. Women are beaten, mutilated, burned, sexually abused and raped. .... National machinery should be established in order to deal with the question of violence against women within the family and society.[16]

Subsequently, United Nations agencies dealing with crime prevention and criminal justice gradually addressed VAW, in particular domestic violence. Their work concluded that there was a substantial underreported phenomenon that required effective enactment and enforcement of laws at the national level.[17] By 1987 the UN held a meeting on violence in the family and commissioned a study, violence against the women in the family, the first comprehensive study on the subject. In 1989, the United Nations Commission on the Status of Women in Vienna gathered domestic violence statistics and analyses prepared by women's rights activists and academics, and published its report, *Violence against Women in the Family*. The report ended:

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> Women ... have been revealed as seriously deprived of basic
> human rights. Not only are women denied equality with the
> balance of the world's population, men, but also they are often
> denied liberty and dignity, and in many situations suffer direct
> violations of their physical and mental autonomy.[18]

In the 1993 World Conference on Human Rights held in Vienna the women's groups lobbied globally and regionally.[19] They gave the delegates a petition with almost half a million signatures from 128 countries demanding recognition of violence against women within the family and the community as women's human rights violations. In addition they ran a global tribunal in which the women's statements, containing cases of violence from around the world, were presented in a human rights framework.[20] As a consequence, *the Vienna Declaration and Programme of Action* confirmed the universality of women's rights as human rights and called for the elimination of gender-based violence. Caught up in the momentum later that year, the General Assembly of the United Nations adopted the *Declaration on the Elimination of Violence against Women*, and the resolution on the *Elimination of Domestic Violence against Women*.[21] Finally, in 1995 the Fourth World Conference on Women in Beijing had as an outcome the *Beijing Declaration and Platform for Action*, adopted by 189 countries. This Declaration not only confirmed that domestic violence is a violation of women's humans rights but also sets out a series of specific actions to be taken by States Parties (SP).[22]

3. Evaluating the International Law: The Unanswered Questions

The UN *Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW) adopted in 1979 is the first normative legally binding instrument reflecting domestic violence as a human rights abuse.[23] The statement may possibly be contested since the Convention does not explicitly mention violence against women or domestic violence in its text. The Convention, however, should be read in combination with General recommendation 19 of 1992 of the Committee on the Elimination of Discrimination against Women;[24] the latter clarifies

> (…) gender-based violence against women is violence that is
> directed against a woman because she is a woman, or violence
> that affects women disproportionately. Gender-based violence,
> which impairs or nullifies the enjoyment by women of human
> rights and fundamental freedoms under general international law
> or under human rights conventions is discrimination within the
> meaning of article 1 of the Convention.[25]

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This interpretation of the Committee added the issue of domestic violence to the terms of the Convention. Also, the 1995 *Beijing Declaration and Platform for Action* that resulted from the Fourth World Conference on Women reaffirmed that DV is a human rights violation and developed new international norms on DV and other forms of VAW incorporated into the CEDAW process.[26]

Similarly adopted conventions by the OAS and CE recognize DV as a human rights violation and impose to SP the obligation to enact legislation that prevent, prosecute and punish DV.[27]

With the categorization of domestic violence as a violation of women's human rights the SP are responsible for human rights violations perpetrated by the State and also for the actions of non-state actors (private acts) if they fail to act with the due diligence to prevent, investigate and punish such acts and provide an effective remedy.[28] The standard of due diligence, enunciated in the General Recommendation 19, has been broken down into practical obligations in terms of legislative, administrative and support measures.[29] Likewise, the *Beijing Declaration and Platform for Action* calls on governments to implement and review legislation to ensure its effectiveness in eliminating violence against women, emphasizing (…) the prosecution of offenders.[30] To assist states in the implementation of their obligations the UN Special Rapporteur on violence against women has developed guidance for legislation on domestic violence, known as the UN Framework for Model Legislation (UNFML), which includes essential elements for criminal proceedings.[31] The UNFML suggests that criminal proceedings should include no-drop prosecution policies:

> 'The onus of prosecution is completely on the State, and once the law and legal system is triggered, the prosecution cannot be "dropped" even if the complainant herself wants to withdraw the case.'[32]

Equally**,** the CE legal framework stipulates standards for criminal proceedings, which include in the language of the Convention, *ex officio* proceedings, i.e., States shall ensure that investigations and prosecution may continue even if the victim withdraws the statement or complaint (article 55 of the CE Convention).[33]

It is undeniable the importance of these international legal and policy instruments in promoting substantive changes in the defence of women's fundamental rights, and combating the global domestic violence phenomenon. These international frameworks provide normative power to local civil society groups to influence police change.[34]

However, I question the practical significance of the standards for criminal proceedings, specifically the endorsement of *ex officio* proceedings, set in the international framework about domestic legislation. This is because:

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A) Domestic violence is not a crime like others. Perpetrators and victims are often in an ongoing relationship and there are complex and continuing emotional, financial and legal ties between them. Abandoning an abusive relationship is a process, not a 'one-off' event.[35] Frequently, for various reasons, victims seek to prevent prosecution or opt not to cooperate, as they view prosecution as unnecessary or contradictory to their interests.[36] Moreover, since domestic violence happens in the family private sphere, perpetrated behind closed doors and away from the public eye, the victim's testimony is often the strongest and sole evidence of the abuse. Thus, is it possible to prosecute and secure conviction in a DV case without the victim's involvement?

And,

B) Laws and policies are adopted and applied differently across different states and legal contexts.

By setting standards for domestic criminal law as *ex officio* prosecution, the international framework for model legislation seem to disregard the substantial different nature and dynamics of the criminal justice systems (CJS), particularly those differences in procedural law stemming from distinct features of the adversarial and inquisitorial processes that relate to legal origins.[37] Some research suggests that the differences, which relate to the legal origins, have an impact on the performance and efficiency of the legal systems. [38] Hence, given the variable nature of legal systems—for example, codified and systematic law versus case law, mandatory rules versus default rules, judicial dependence versus judicial discretion, and even rigid versus flexible rules of judicial procedure – I question the possible influence of these different dimensions in the implementation and effectiveness of *ex officio* prosecution in DV related offenses.

To shed light on such queries I have looked into the Canadian Province of Manitoba CJS and the Portuguese CJS. The selection of these jurisdictions was based on (a) implementation of a comprehensive legal framework that includes a policy or rule that reflects *ex officio* investigation and prosecution; (b) they represent a common law/adversarial system and a civil/inquisitorial system, respectively; (c) and a significant period of time has elapsed since the implementation of *ex officio* investigation and prosecution allowing to observe the evolution of CJS outcomes. The data presented below pertaining Manitoba results from secondary analysis of data collected by Ursel and RESOLVE, and qualitative interviews with CJS key actors.[39] Concerning Portugal the data result from official published data and data provided by the Public Prosecutor's Office upon request to the Attorney General's Office. Additionally, 2 random samples and 1 convenient sample were drawn from Porto's Public Prosecutor's files to retrieve data regarding reasons for staying of proceedings, cooperation of the victim, prosecution and sentencing; and interviews were conducted with 4 prosecutor's involved with/or dedicated to the DV cases.

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4. The Portuguese and Canadian Experiences

Since the early 80s mandatory charging and no-drop prosecution policies - *ex officio* approaches - were introduced across the Canadian Provinces, commencing with the 1983 federal guidelines issued to the Royal Canadian Mounted Police (RCMP) and federal Crown prosecution offices.[40] The policies - derived from internal demand for policy change by women's groups - aimed to counter the notion that domestic violence was a private affair and recognized that it is a serious social problem and a violation of the law.[41] Moreover, by assigning the burden for laying charges on police and prosecutors, the victim could indicate to her abusive partner that the choice to prosecute was not hers and thus lessen the potential for violent recriminations.[42] Of the Canadian provinces, Manitoba stands out, with successive adjustments within the CJS to ameliorate the response in dealing with DV cases.[43]
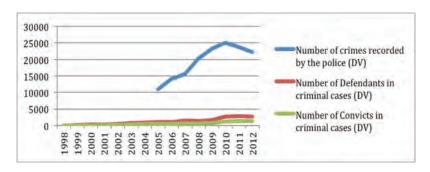
In Manitoba two major policy initiatives reflect *ex officio* proceedings. They are the 1983 directive to the police to charge in DV cases, and the 1993 Zero Tolerance Policy. In 1983 the Attorney General of Manitoba issued a directive to the police to lay charges if there were reasonable and probable grounds that a crime had occurred, irrespective of the relationship between the victim and offender.[44] In the years following the directive – 1984, 85, and 86 the rate of prosecuted cases from charges being laid by the police was 68%, 69% and 72%, respectively, with an average of 64% of defendants being sentenced in those years.[45] A decade later, after a greatly publicized inquiry into a domestic homicide, the Zero Tolerance Policy was introduced; such policy mandates police officers to lay charges in all cases in which a complaint has been made – discretion was removed from the police and transferred to the Crown Attorney's Unit. Consequently, while the rate of charges laid by police increased, prosecution rates decreased, though above 50% in the years that followed.[46]

In Portugal the characterisation of DV as a public crime, which warrants the *ex officio* approach, was introduced in 2000. The Portuguese Parliamentary debate concerning the amendment of the penal code made it clear:

> Little or no progress has been achieved in combating DV through criminalizing the behaviour while granting the victim the decision to prosecute, since victims often do not press charges or withdraw the complaint (…). [47]

The explanatory statement to the proposal to amend the Criminal Code (CC) claims that DV against women constitutes a violation of human rights, as recognized by several international conferences and institutions.[48] In the legislative process leading up to the amendment of the penal code parliamentary committees with jurisdiction in the matter invoked the international frameworks of the UN and CE to conclude favourably to the amendment of the CC.[49]

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By the end of the decade the number of cases prosecuted and convictions at the national level had increased significantly. According to official published data, in a 12 years period the number of defendants prosecuted for DV offences increased 1100% and the number of convictions increased over 1800% country wide.

Image 1: Portuguese DV figures[50] © 2014. Courtesy of Patricia Pais.

However, despite the increment in prosecutions and convictions, the gap between reported cases and prosecutions remained high as suggested by the data in chart 1. The numbers suggest that, for instance, in 2005 from the 10946 reported cases only 9,5% reached the court; 50,9% of prosecuted cases resulted in convictions though such convictions represented 4,8% from all reported cases. Similarly, in 2007 from the 15674 reported cases 9,2% went to trial and 47,9% resulted in conviction representing 4,4% of reported cases. In 2011 from the 23742 reported cases 11,8% were prosecuted from which 49,2% resulted in conviction, number that represents 5,8% of reported cases. The data, thus, suggest a high attrition rate in the public prosecution office. Why? Evidence from the data collected from the samples suggest that the victims involvement is determinant for a case to be prosecuted – e.g., in the sample of 2012 100% of cases in which the victim refused to cooperate or failed to appear resulted in dismissal. So, what differs from the Manitoba experience?

While both jurisdictions have adopted similar comprehensive legislation and policies, the outcomes of the CJS seem to reflect a significant difference in the efficacy of implementing *ex officio* proceedings, with a clear advantage to Manitoba. One element of the adversarial process, inexistent in the inquisitorial process, stands out and explains the successful rate of prosecutions – the bargaining process. Testimony bargaining, a process similar to plea-bargaining, is used with victim-witness, particularly with reluctant victims. The existence of a witness in the case leads, in the majority of cases to the defendant to enter into guilty plea after bargaining with the Crown. Such legal concept and process is alien

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to the Portuguese inquisitorial process, which aims, above all, to the 'descoberta da verdade material' - finding the facts.

Notes

[1] The use of the term domestic violence reflects the terminology adopted by the international legal framework, national and local laws and policies to refer to violence against women by their male intimate partners that this article analyses and debates.

[2] According to the 'The In-Depth Study on All Forms of Violence against Women - Report of the Secretary-General' (United Nations General Assembly, 2006) viewed 5 March 2014.
 http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement, 37 (from now on quoted as *The In-Depth Study*); and the 'Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence' (World Health Organization, 2013), 2.

[3] Argued in paragraph 25 of the preamble of the CE Convention on Preventing and Combating Violence against Women and Domestic Violence adopted on 7 April 2011; and in the preamble of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) adopted by the OAS in 1994. Also, see the 'World Report on Violence and Health' (Geneva: World Health Organization, 2002), 89; and the 'The In-Depth Study,' 28-30.

[4] The United Nations General Assembly 'Resolution 58/147 on Elimination of Domestic Violence against Women' adopted in 1993 recognizes that 'domestic violence can include economic deprivation and isolation and that such conduct may cause imminent harm to the safety, health or well-being of Women.'

[5] Investigate and punish are the words used in several international documents, see for instance, the United Nations General Recommendation No. 19 on violence against women adopted in 1992 at the 2nd Session of the United Nations General Assembly.

[6] '*Ex officio* proceedings' is the terminology used in the Council of Europe Framework, as well as continental European legal contexts, while 'no-drop' prosecution policy is the terminology used in some of the United Nations documents. 'No-drop' prosecution policy is also a terminology commonly used in Anglo-American jurisdictions. No-drop prosecution policies were adopted in the several jurisdictions of United States in the 80s, the first being San Diego (in 1983), as a response to the high dismissal rate of domestic violence cases. Both *ex officio* and no-drop prosecution terminologies entail parallel concepts, that is, law

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enforcement authorities pursue investigations and prosecute domestic violence cases regardless of the victims' wishes. In this article I will use the term '*ex officio*' to refer in general to such policy.

[7] These arguments can be found in the Conventions cited, as well as in scholarly articles. See, for instance, Karin V. Rhodes, et al., 'Victim Participation in Intimate Partner Violence Prosecution: Implications for Safety – Technical Report' (National Institute of Justice Grant, 2011), viewed on 5 March 2014, https://www.ncjrs.gov/pdffiles1/nij/grants/235284.pdf; Lori Heise, Mary Ellsberg, and Megan Gottemoeller, *Ending Violence against Women* (Baltimore: John Hopkins University School of Public Health, Centre for Communications Programs, Population Reports, 1999).

[8] On the dichotomy between private/public see e.g. Elizabeth M. Schneider, 'Legal Reform Efforts to Battered Women: Past, Present and Future' (1990) quoted in Cheryl Hanna, 'No Right to Choose: Mandate Victims Participation in Domestic Violence Prosecution,' *Harvard Law Review* 109 (1996): 1849-1910. Also, Claire M. Renzetti and Lynne Goodstein, *Women, Crime, and Criminal Justice* (Los Angeles: Roxbury Publishing Company, 2001), 136; Walter S. DeKeseredy, 'Feminist Contributions to Understanding Woman Abuse: Myths, Controversies, and Realities,' *Agression and Violent Behavior*, 16 (2011): 297-298; the United Nations Population Fund (UNFPA) Report, viewed on 4 November 2014, http://www.unfpa.org/gender/violence.htm.

[9] Kathleen Malley-Morrison and Denise Hines, *Family Violence in a Cultural Perspective. Defining, Understanding and Combating Abuse* (Thousand Oaks: Sage Publications, 2003); and Sofia Neves and Marisalva Fávero, *Vitimologia Ciência e Activismo*, (Coimbra: Almedina, 2010), 38-41.

[10] Hanna, 'No Right to Choose,' 1875; and *The In-Depth Study*, 33.

[11] Mala Htun and S. Lauren Weldon, 'The Civic Origins of Progressive Policy Change: Combating Violence against Women in Global Perspective, 1975-2005,' *American Political Science Review*, 106 (2012), 552-555; and S. Lauren Weldon, *Protest, Policy and the Problem of Violence against Women: A Cross National Comparison* (Pittsburgh: University of Pittsburgh Press, 2002). Also, Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University, 1998), 174; and *The In-Depth Study*, 93.

[12] Keck and Sikkink, *Activists beyond Borders*; also, *The In-Depth Report*, 93.

[13] Keck and Sikkink, *Activists beyond Borders*, 169.

[14] Keck and Sikkink, *Activists beyond Borders*, 169; Htun and Weldon, *The Civic Origins*, 555-558.

[15] 'Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace' (New York: United Nations Publication, 1980).

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[16] Chapter I, paragraph 258 of 'Report of the World Conference to Review and Appraise Achievements of the United Nations Decade for Women: Equality, Development and Peace, The Nairobi Forward-Looking Strategies for the Advancement of Women' (U.N. Doc. A/CONF. 116/ 28/Rev: 1, 1986).

[17] See in general Jane Francis Connors, *Violence against Women in the Family* (New York: United Nations Publication, 1989).

[18] Ibid.

[19] Charlotte Bunch and Niamh Reilly, *Demanding Accountability: The Global Campaign and Vienna Tribunal for Women's Human Rights* (Centre for Women's Global Leadership/UNIFEM, 1994).

[20] Bunch and Reilly, *Demanding Accountability*; and Keck and Sikkink, *Activists beyond Borders*, 184-187.

[21] See *In-Depth Study*, 15. See also United Nations General Assembly Resolution 48/104 and Resolution 58/147.

[22] Similar position adopted by the OAS and CE. e.g., see the Preamble and article 1 and 7 of the 'Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women' (Convention of Belém do Pará) adopted by the OAS in 1994. Likewise the Preamble of the CE Convention paragraph 26 and 27 states that violence against women including domestic violence is a distinctly gendered phenomenon which violates and impairs or nullifies the enjoyment by women of their human rights, in particular their fundamental rights to life, security, freedom, dignity and physical and emotional integrity. The CE adopted the 'Convention on Preventing and Combating Violence against Women and Domestic Violence' on 7 April 2011. It opened for signature on 11 May 2011 on the occasion of the 121st Session of the Committee of Ministers in Istanbul. It entered into force on August 1, 2014, following 10 ratifications. Albania, Austria, Bosnia and Herzegovina, Andorra, Italy, Montenegro, Portugal, Serbia, Spain, and Turkey have ratified the convention.

[23] Article 1 of the 'United Nations Convention on the Elimination of All Forms of Discrimination against Women' (CEDAW), adopted by the General Assembly of the United Nations, Resolution 34/180 of 18 December 1979.

[24] Article 1 of the 'United Nations Convention on the Elimination of All Forms of Discrimination against Women in combination with Committee on the Elimination of Discrimination against Women General Recommendation' 19 (A/47/38, 1992).

[25] That rights and freedoms being women's health, dignity, security, autonomy and freedom (Paragraph 7 of General Recommendation 19). See 'Committee on the Elimination of Discrimination against Women General Recommendation' 19 (1992) (A/47/38, 1992). Also, *Handbook for Legislation on Violence against Women from the Department of Economic and Social Affairs Division for the Advancement of Women* (New York: United Nations, 2009).

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[26] See United Nations 'Beijing Platform For Action, 1995; and Final Activity Report from the Council of Europe Task Force to Combat Violence against Women Including Domestic Violence' (Gender Equality and Anti-Trafficking Division Directorate General of Human Rights and Legal Affairs, 2008) 28, 34. See also Htun and Weldon, *The Civic Origins*, 556.

[27] See above note 22.

[28] Scholarly work arguing the case for the expansion of the concept of State responsibility to cover private acts of violence has been accompanied by developments in international case-law and human rights treaties allowing a broader understanding of the State responsibility under international human rights law. See General Assembly resolution 56/83, article 5 and 'Committee on the Elimination of Discrimination against Women General Recommendation' 19, article 24 (i); note 15, article 4 (d). Also, article 5 of the Council of Europe 'Convention on Preventing and Combating Violence against Women and Domestic Violence' states 'under international human rights law the state has both negative and positive duties: state officials must both respect the law and refrain from commission of internationally wrongful acts and must protect individuals from their commission by other non-state actors. Also Article 7 of the 'Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women'.

[29] SP must take action to prevent human rights violations committed by non-state actors, investigate allegations of violence, prosecute and punish wrongdoers. See 'Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995' (United Nations Publications); 'Declaration on the Elimination of Violence against Women', article 4 (a); 'Committee on the Elimination of Discrimination against Women General Recommendation' 19 para. 24 (b).

[30] The objective of legislation on domestic violence should be preventing violence, to ensure investigation, prosecution and punishment of perpetrators. See also, 'Good Practices in Legislation on Violence against Women, Expert Group Meeting, United Nations Division for the Advancement of Women' (Vienna: United Nations Office on Drugs and Crime, 2008), 5.

[31] International standards on domestic violence legislation 'Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries Based on International Standards and Good Practices' (Bangkok: UN Women, 2nd edition, 2011), 5.

[32] Ibid, VIII, 6-9-37.

[33] Prior to the adoption of Convention the Council of Europe adopted several policy instruments which directed State members to enact specific criminal legislation to address DV namely: Recommendation 1450 (2000) On Violence Against Women In Europe; Council of Europe Recommendation 1582 (2002) On

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Domestic Violence against Women; Council of Europe Recommendation 1681 (2004) On the Campaign to Combat Domestic Violence against Women in Europe; Council of Europe Resolution 1512 (2006) Parliaments United in Combating Domestic Violence against Women; Council of Europe Recommendation 1759 (2006) Parliaments United in Combating Domestic Violence against Women.

[34] Htun and Weldon, *The Civic Origins*, 558; and Keck and Sikkink, *Activists beyond Borders*.

[35] Ibid.

[36] Lauren Bennett, Lisa Goodman and Mary Ann Dutton 'Systemic Obstacles to the Criminal Prosecution of Battering Partner,' *Journal of Interpersonal Violence* 14 (1999): 761.

[37] For instance Judges in Duluth (United States of America) regularly admit statements made to 911 and police officers - see Hanna, *No Right to Choose*, 1851-2. The judges' discretion to admit or exclude evidence is determined by the organization of the judicial system and its legal origins. See in general Benito Arruñada and Veneta Andonova, 'Common Law and Civil Law as ProMarket Adaptations,' *Washington University Journal of Law & Policy* 26 (2008): 81-130.

[38] See, e.g., Richard E. Wagner, 'Common Law, Statute Law, and Economic Efficiency,' in *The New Palgrave Dictionary of Economics and the Law*, ed. Peter Newman (London: Macmillan, 1998), vol. 1, 313-317; and in general Arruñada and Andonova, *Common Law and Civil Law*. Re DV, Eve Buzawa and Aaron Buzawa, 'Courting Domestic Violence Victims: A Tale of Two Cities,' *Criminology & Public Policy* 7 (2008): 672.

[39] Ursel has published key documents on the response of the CJS in dealing with DV cases, which include empirical evaluation of the policies implemented in Manitoba throughout the last three decades. Ursel has been the Director of Manitoba's RESOLVE, a research centre on interpersonal violence and violence against women and children, which has been collecting data from Winnipeg Family Violence Court since its implementation. Ursel's published articles are the source of historical background for policy change, and the source of statistical data. The articles will be cited accordingly. Moreover, I have conducted interviews with Winnipeg 3 police officers, 3 prosecutors, and 4 judges to better understand the published numbers and the process.

[40] See Brown, 'Charging and Prosecution Policies' iii, 1; Jane E. Ursel, Leslie M. Tutty, and Janice LeMaistre, 'What's Law Got to Do with it?' 97-119.

[41] Ibid.

[42] Ibid.

[43] The efforts of the Manitoba Justice to ameliorate the response of the CJS in dealing with domestic violence cases were recognized by the United Nations in 2006. The United Nations granted a 2006 United Nations Public Service Award to

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the Manitoba Justice Domestic Violence Front End Project. The project led by Chief Judge Raymond Wyant and the Director of Prosecution Janice LeMaistre, introduced to the Manitoba's Provincial Court new methods to increase the efficiency of the legal system especially in dealing with domestic violence. The UN Awards initiative has become a critical tool in publicizing information on successful experience and best practices. The award was advertised in a United Nations Press Release, dated 23 June 2006, New York; and in Manitoba News Release, dated 19 June, 2006.

[44] E. Jane Ursel, 'The Legal and Public Response to the New Wife Abuse Directive in Manitoba,' *Canadian Journal of Criminology* 28 (1986): 171.

[45] E. Jane Ursel, 'Examining Systemic Changes in the Criminal Justice System: The Example of Wife Abuse Policies in Manitoba,' *Manitoba Law Journal* 19 (1990): 543. These numbers do not account for attrition or case loss at the police level.

[46] E. Jane Ursel, 'The Possibilities of Criminal Justice Intervention in Domestic Violence: A Canadian Case Study,' *Current Issues in Criminal Justice* 8 (1996-1997): 263-274; and E. Jane Ursel, , *Final Report on an Evaluation of the Manitoba Front End Project*, (RESOLVE, 2013).

[47] The parliamentary debate has been published in Diário da Assembleia da República I Série – Nº26, 1.º Sessão Legislativa (1999-2000).

[48] All the files related to the legislative process that led to the amendment of the Penal Code, including the original draft to amend the Penal Code, reports and opinions issued by organizations, experts and the Parliamentary Committees with jurisdiction over such matter, were consulted by the author. Such files are available to consult in the Parliamentary Historical Archive with the reference AHP PROJECTO DE LEI N.º 21/VIII da oitava legislatura, cx 3.

[49] In the European context the Special Eurobarometer 344 on domestic violence against women conducted in 2010, which follows on from a previous Eurobarometer survey conducted in 1999, reports that Portugal has seen significant shifts in knowledge of the laws concerning domestic violence over the past decade or so, and this is no doubt a reflection of government initiatives to raise public awareness and improve the legislation. The Eurobarometer 344 measures the evolution of European public opinion concerning domestic violence against women since 1999, and it can be considered as a starting point for gathering information about the public's view on the problem of DV. The study suggests that these evolutions are especially noteworthy to analyse considering the changing legal context over the past ten years. See Eurobarometer 344, 93, http://ec.europa.eu/public_opinion/archives/ebs/ebs_344_en.pdf.

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[50] The numbers in the graph in Image 1 were retrieved from the Portuguese Directorate-General for Justice Policy website, which provides the justice statistical data.
http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowNam e=pgmWindow_635462951574977500.
The numbers in the graph were retrieved from the following categories 'Violência doméstica cônj/ anál.' and 'Maus tratos cônj/ análogo'. Both categories refer to specific offences that criminalize violence perpetrated on an intimate partner or ex-partner.

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Mirror, Mirror on the Wall: Self Identity in Communities of Marginalized Women in Kolkata, India

Joan Marie Kelly

Abstract
This is a discussion about the interactions that occurred between female sex workers, their children, and an artist during a series of collaborative social art events in Kolkata, India. The events began when women working in the brothels posed to have their portraits painted by the artist. Over time the women and children also became involved in making art. Unlikely people, positioned well outside of the art world, took action and held dialogues about art and artistic imagery. Perceptual painting becomes a means to cross boundaries and create lines of communication between people who are of different economic classes and cultures. Questions arise as to the convergence of power imbalances. Economic imbalances exist. Can people from different levels of economic strength or from different cultural backgrounds work together and forge relationships? What are the choices? How the women have chosen to be depicted by the artist, and how they choose to represent themselves in a photographic self-portrait is portrayed through their body gesture, face, clothing and environment. The portraits communicate an innate feeling of who the women are, and how they want to be seen. Painting is a viable connective process, unique in its properties of social interaction.

Key Words: Sex worker, brothel, trafficked, sex, oppression, India, slavery, violence, women, representation, social art, creativity, agency, decision-making, organizing, financial power, self-empowerment, self-reliance.

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1. Introduction

The events discussed happened in the brothels of Kolkata, India from 2008 through 2014. I am an American artist living in Singapore and the author, telling this story. For the first three years after my arrival in Singapore in 2005, I painted portraits of sex workers on Friday nights at a busy café. An opportunity presented itself to conduct social art workshops with sex-workers in Kolkata, India. I travelled to Kolkata and through a friend who had worked for the NGO Durbar Mahila Samanwaya—Durbar—I met a sex-worker named Shikha Das.

The Kolkata brothels along Ribindra Sarini, occupy dark, wet, cement, four-story buildings, each with courtyards in their centres reaching to an open-air roof. Bathrooms are on the ground floor. A narrow water gutter runs the circumference of each floor, connecting floor-to-floor and delivering rainwater and urine to the ground floor. The women urinate in this gutter when on the upper floors. Laundry hangs everywhere. The women rent rooms, some as small as a door opening up to a

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bed, with only room under the bed for their belongings. Many rooms are larger, with a few feet of walking space, and a few have space enough for people to sit on the floor, cooking and talking in front of the bed. The use of drugs and alcohol by the clients makes the atmosphere unpredictable. This is *home* for the women and their children. Some women come and go, but for the most part, over the course of the seven years of my work, the same women live there year after year. Such stability enables the women to organize themselves. For instance, they never lock their door when with a client. If someone hears alarming sounds—gasping for air, screams—several women will enter the room at once and beat the client.

The Durbar NGO has been very effective in educating the women about their bodies, who are all nearly illiterate. This included not only basic health education, including diseases, but preventive healthcare and their right to say 'no'. Several women have explained during the art workshops how drastically this education has cut pregnancies and abortions. The women are given AIDS tests but a positive test does not result in an attempt to assimilate the women into the mainstream work force and out of sex-work. Although the NGO has achieved internationally acclaimed and commendable work for decades at the ground level some NGO workers are now corrupt and acting as pimps to the women living and working in the brothels. The brothels are not owned by the NGO. The women rent their spaces from the building owner.

2. What is Socially Engaged Art?

Socially Engaged Art (SEA), Participatory Art, or Social Practice are all titles for art that depends on social engagement as the focal point of the practice. Social Practice comes out of the social movements of the 60s, Performance Art and Installation Art. In the 1990s it was re-established by Nicholas Bourriaud,[1] who defined the term "Relational Aesthetics" as:

> …*relational* art (an art taking as its theoretical horizon the realm of human interactions and its social context, rather than the assertion of an independent and *private* symbolic space.[2]

Pablo Helguera,[3] curator at New York's Museum of Modern Art, has written a book titled *Education for Socially Engaged Art*. In it, he describes SEA as an experience of the artists' creation that is at the centre of the work and dependent on social intercourse as a factor of its existence.[4] Helguera goes on to relate social practice to realms of education practice:

> Today, it is no secret that standard education practices—such as engagement with audiences, inquiry-based methods, collaborative dialogues, and hands-on activities—provide and

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ideal framework for process-based and collaborative conceptual practices.[5]

The events are titled 'Kolkata Women's Dialogue' or KWD in which the women and I initiate interactivity, through working together to accomplish a task— the artwork at hand. Educational techniques developed and employed over the course of a teaching career serve well in the improvisational atmosphere. I envision the participants, not as containers to be filled up but as whole people entering into an exchange. I seek to evoke their individual thoughts and desires for a wider audience and to engage confidence, empathy, and learning across ethnic boundaries and economic hierarchies. The workshops are intended to construct meaningful exchanges that challenge society's assumptions about sex-workers, and sex-workers' assumptions about mainstream Caucasian women.

3. Development of the Kolkata Women's Dialogue

The events began by getting to know Shikha Das, a sex-worker born in the brothel. Shikha Das is a single mother raising two children. She possesses a strong sense of confidence. With great intelligence she protects those around her. She has worked very hard to house her children in hostels and pay school fees while caring of herself and her mother. Her daughter graduated from nursing school in 2014. We connect as urban women, who take charge of our livelihood. Shikha agreed to manage, the workshops. She liaised with me through my interpreter. Each day, Shikha organized the participating women. I paid all the participants a wage, which Shikah decided upon. Shikha, kept everyone's hours fair, so as not to create conflict or tension.

The first years were the toughest because Durbar, the NGO who worked in this district of Kolkata, insisted they were due all the money I was paying the women. Their claim was that the women were not allowed to make money by any other means but sexual acts. They didn't believe I was spending my own money, and threatened to have the women kicked out of the brothel if we continued. As a result of Durbar's intimidation, Shikha's most difficult task was navigating social challenges. She managed by organizing our workshops on the roof of a different brothel each day, to dodge Durbar's representatives. Two years later I was able to make contact with the President of the NGO, Dr. Smarajit Jana, and literally within a day of receiving my letter he somehow put a stop to all impediments. Shikha was notified by the time I telephoned her the next day. Since then I have worked without any interruptions.

During those first years, I created drawings and painted portraits of the women. The women primed canvases, cooked food, stored canvases in their rooms as they dried, and generally assisted with all aspects of the process. They began to write their names on the front of the canvases. After the first few years, the women and their children began to engage more creatively. I gave sketchbooks and drawing

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materials to anyone who wanted them. I also proposed to purchase materials for anyone who wanted to make anything. Gradually, the women and children began to make art: drawing in sketch books, knitting children's clothing while waiting for clients on the street, and creating photo shoots of each other with a camera and a small colour printer I supplied. Once a month, I talked with the women through an interpreter. The interpreter relays stories of the women's histories and day-to-day living situations. The stories are extremely varied and often quite humorous—e.g., the absurdity and challenges of having sex with very obese men. The stories depict a view of the humanity and a level of graciousness between sex worker and client. Their familiarity with each other exposes their vulnerabilities. Many stories are about a woman's responsibility to be the 'guard' of herself and when she falls pray to naiveté and gullibility there is no one to rely on to buffer the losses.

4. The First Drawings

Seen together, the drawings and paintings I have authored, communicate an innate feeling of who the women are, and how they want to be seen, through their body gestures, face, and clothing. The physical gestural engagement between the women evokes their character and relationships. My act of perceptual painting consists of scanning the contours and relief of the women's bodies and faces over and over again. This type of scrutiny is a distinctive aspect of perceptual drawing. During examination, my eyes would meet the women's in an intense gaze, and a connection is made. Attention to another person is a form of intimacy and often, it causes the subject and artist to share their histories and opinions in a very open manner.

In a Skype interview about the relationship between perceptual painting and mediated images, Sarah Schuster,[6] professor and artist at Oberlin College, explains:

> How are sight, knowledge and memory translated into visual representation? The cave (Lascaux) paintings tell us that close visual observation reveals the inner workings of what we observe; I can, in effect, feel you if I look closely enough at you. Most of us have also had the experience of feeling someone looking at us and so we understand that there is a remarkably close relationship between sight and somatic experience. The images on the cave walls are evidence that during the process of looking or gazing at the world around me, what I look at imprints itself on me, and I can recall this imprint when I can no longer see the object of my gaze. Of particular relevance to this discussion is this inner image, or imprinted vision, based on memory of sight. This 'in' sight suggests that there exist multiple levels of seeing.[7]

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The experience I had with the sex workers was a mutual 'study' of each other. As I visually scanned the contours of the face and body, the sex worker's gaze is with me. By 'with' I mean the subjects' are aware of where and what my eyes are directed upon—what part of the body. The sitter, experiencing self-consciousness and self-awareness, also experienced self-confidence. This was due to my intense interest in her—such interest nurtured a sense of self worth. Through time spent together, an innate realization of one other's temperament ensued. The process is a form of intimacy, of trust.

Image 1: Two of the earliest oil portraits, four drawings made with a   brush, oil on canvas. Left to Rt: 'KWD Artwork No 8', KWD Artwork No 9' both 35cm x 28cm, oil on canvas 2008, 'Sex-Worker on The Rooftop In Kolkata VI' 40cm x 30cm, oil on canvas 2009,   'Sex-Worker on The Rooftop In Kolkata IV' 52cm x 28cm, oil on canvas 2009, 'Sex-Worker on The Rooftop In Kolkata III' 52cm x 28cm, oil on canvas 2009. © 2012, Joan Marie Kelly. Courtesy of the author.

A young girl named Pinkie, made an interesting drawing of her bed, rendering it as an ocean of blue decorated with swarming sea animals, while two bolsters and a pillow mark a sense of structure and control. The girl who drew this image is a community child, meaning that when her mother is busy, another woman takes care of her. Such an arrangement, common to the brothel, comes out of an informal understanding between the Kolkata sex-workers. Regardless of who the actual mother is the women are affectionate to all the children.

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***Image 2:* '**KWD Artwork No 4, Bed' Paper with coloured markers by 2013,
photograph by Joan Marie Kelly 20cm x 28cm, ©2013 Joan Marie Kelly.
Courtesy of the author

5. The Significance of Face

I came to another conclusion in doing these workshops: that the act of drawing
someone's portrait elevates the subject, keeping all attention on her/him. Bhaskar
Mukhopadhyay[8] addresses the importance of attention to the face.

> To be a person and acknowledged as a person, means to be
> acknowledged through one's face. It is not possible to
> contemplate a relationship of love or friendship with a faceless
> person. Human beings without faces are not quite human. And
> yet, social marginality- professional sex work and the kind of
> affective labour it entails- is precisely a way of rendering a sex
> worker faceless. To concentrate on the face of a sex worker is
> thus to redeem his or her humanity on the face of 'reality' which
> seeks to reduce hi/her to mere flesh. To enface the faceless
> through artistic encounter is thus to restore the human in the
> dispossessed other. [9]

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Image 3: 'KWD Artwork No.1' A sex worker walks, smiling, carrying her portrait past her brothel, against the front of her body. Photograph by Joan Marie Kelly © 2013 Joan Marie Kelly. Courtesy of the author

6. Photo Shoots in the Brothels

The photographs the women had made of themselves are a juxtaposition of woman and domesticity. One would think they were looking at a proper married woman. The women did not take on sexual poses. In this context, a woman's business is not to seduce, her business is to rent her body. The client performs the act. The photos show a woman standing in an ornate sari and bindi dot as though married. Her gaze is directed at the viewer. She is standing or sitting, oblivious to the evidence of her own domestic chores and gruelling, daily rituals: washing clothes and dragging buckets of water up flights of stairs for everything from scrubbing the floors to washing one's face. Toothbrushes hang in cups, tea cups sit unwashed, TVs and chargers for hand phones lay about, and the sketchbooks I supplied fill rooms that double as work and living spaces. The women turn their back on all of this. Their surrounding environment has lost meaning, or is taken for granted.

In only one photo do the sex workers take an action: with regard to images of beloved deities on walls and hovering above in celestial spaces reserved for pujas. In a show of respect, the women touch the feet of the deity. The deities are framed high on the walls in many rooms. The women stand confidently in the centre of the frame, never revealing the lives beneath the dignity of the stance. Many of the women shot themselves with their children. For each woman, the meaning is in her relationships: how she engages her friends and family in the photos, and how she engages the viewer. These photos are the only ones some of the women have of themselves and their children.

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In the three photos below, we see evidence of the domestic: toothbrush in a cup
hanging on the mirror, vegetables hanging above ground in plastic bags, laundry,
and water bottles. Only in 2014 was a light finally installed on the stairs.
Photographer Cindy Sherman takes on the subject of women and domesticity.

Image 4: 'KWD Artwork No. 2,' 'KWD Artwork No. 3,' photographs by Joan
Marie Kelly © 2013 Joan Marie Kelly. Courtesy of the author

7. Conclusion

The work speaks for itself in its ability to provide a platform for
communication beyond boundaries, building empathy and confidence between all
parties. I try to give the women agency by paying the women a wage for their time.
Traditionally, the artist will pay models a fee for posing. In this case posing will
interfere with being available for clients. I asked the women to set the wage, trying
to give the women autonomy over everything possible. Of course they have
autonomy over work timing, how they pose, where they pose and if they want to
make something or not. The participation of the female sex-workers and children in
the Kolkata Women's Dialogue was and is voluntary. The other artworks—

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drawings and knitted clothing—are individual pieces executed by them, which I photographed and they keep. I asked permission to photograph the artwork and any other photographs taken. I do not bring a video camera into the brothel. The photographs identified as 'self-portraits' the subject-women will set-up with her friends. This entails choosing the pose; the clothing the subject is wearing, choosing the space and indicating to me where I should stand when to click the shutter. I have obscured the faces for the women's privacy with their understanding. This was my idea, I presented to them, which I thought would be best. The women have asked me not to hold an exhibit of the original paintings in Kolkata.

There are imbalances in power and differences in education, culture and economies. There always will be. Should we let these differences stand in the way of engagement? Our choice is to engage with difference and try to be aware of differences or not engage at all.

Image 5: Left to Rt: 'KWD Artwork No 5' 'KWD Artwork No. 6' 'KWD Artwork No. 7' photographs by Joan Marie Kelly. © 2013 Joan Marie Kelly. Courtesy of the author

Notes

[1] Nicolas Bourriaud curated the Tate Triennial at Tate Britain in 2009 where he showcased a new modernity described as the end of postmodernism and the emergence of a global altermodernity.

[2] Nicolas Bourriaud, 'Relational Form,' in *Relational Aesthetics*. (Paris: Les Presses Du Réel, 2002), 14.

[3] Pablo Helguera was born in Mexico City in 1971. He began his career as an artist working in installation, photography, drawing, SEA and Performance. He is currently the Director of Adult and Academic Programs and the Museum of Modern Art New York.

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[4] Pablo Helguera, 'Definitions' in *Education for Socially Engaged Art* (New York: Jorge Pinto Books Inc., 2011), Kindle edition.

[5] Pablo Helguera, 'Introduction' in *Education for Socially Engaged Art* (New York: Pinto Books Inc., 2011), Kindle edition.

[6] Sarah Schuster is a graduate of Yale University, Professor at Oberlin College and active artist with two adopted Indian children. The interview was conducted between Sarah Schuster in Oberlin Ohio and the interviewer, Joan Marie Kelly in Singapore.

[7] Sarah Schuster, (associate professor, Oberlin College), interview with the author, 15 May 2013.

[8] Bhaskar Mukhopadyay is an anthropologist, historian and cultural theorist. His ethnography of vernacular globalization in India entitled, *The Rumor of Globalization* has been published by Oxford University Press, New York. His current work is on the historical sociology of economization of colonial India. He also writes on contemporary art, digital technologies and development. He lives and works in London. Bhaskar Mukhopadyay, 'Global Art At The Margins Of Empire,' *The Myth Of Europa,* viewed on 2 May 2009, 19.
http://issuu.com/euroalter/docs/europa6-web/18.

[9] Mukhopadyay, B. (2009) Global Art at the Margins of Empire, *The Myth of Europa*, 19.

[10] The complete series of *'Untitled Film Stills'* by Cindy Sherman are owned and held in the collection of the Museum of Modern Art New York. The photographic images confront the subject of women and domestic duty. Sherman's women address the domesticity with their bodies yet their gaze is outside the picture plane. There is a sense of violence sometimes also viewed as a suggestion of sexuality. Sherman's women look staged as stereotyped housewives from Hollywood rather than real women. The women in Kolkata are not engaging with their surroundings and are dressed as though they are from an upscale neighborhood yet at the same time the tension is not their as in the relationship between women and environment in Sherman's pieces. I am particularly interested in 'Untitled Film Still #3' 1977 and 'Untitled Film Still #50' 1979 collection of the Museum of Modern Art, NY. Viewed on 1 November 2012.
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Joan Marie Kelly is a practicing artist. International museums acquire her artwork. Her interests lie in the integration of art and social anthropology. She continues work with *The Kolkata Women's Dialogue* to this day.

Part II

Trafficking and Sexual Exploitation

Trafficking in Women for Sexual Exploitation in Canada: A Critical Qualitative Action Research

Sandrine Ricci

Abstract
Trafficking women for commercial sexual exploitation is one the world's fastest-growing area of criminal activity, and a phenomenon that generates colossal profits. Our research[1] shows the extent to which trafficking for sexual exploitation is made invisible by a shroud of silence stemming from various factors, including the impenetrability and violence of the criminal underworld, ineffective laws, a general lack of resources for prevention and control, poorly equipped front-line community workers and the increasing trend to normalize the commodification of women's bodies and sexuality. Whether or not trafficking is involved, the prostitution industry thrives by appropriating women who are viewed as merchandise – even perishable goods – given the turnover demanded by a market (customers) with an insatiable appetite for young bodies. The purpose of this chapter is to share some results of our qualitative research on sex trafficking. First, it exposes the various factors acknowledged as being directly connected with the growth of trafficking in women for the purpose of sexual exploitation to satisfy the rising demand for fresh 'goods' in the sex industry. Then, it presents our analysis of the life stories of women trafficked or exploited in different sectors of the sex industry within Canada, from luring and recruitment to exiting sexual slavery.

Key Words: Sex trafficking, domestic sex trafficking, prostitution, human trafficking.

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1. What's the Deal with Sex Trafficking?

Trafficking in human beings is one the world's fastest-growing area of criminal activity, and a phenomenon that generates colossal profits estimated by the International Labour Office (ILO) at about 99 billion per year.[2] According to the U.S. State Department, more than 27 million adults and children are victims of trafficking, primarily for the purposes of forced labour and sexual exploitation.[3] More specifically, ILO assessed that approximately 5 million people, mainly women and children, are trafficked annually for the purpose of prostitution.[4]

Canada is a country of origin, transit and destination for the trafficking in women for the purpose of commercial sexual exploitation; Vancouver, Toronto, Montreal and Winnipeg are said to be the 'hubs' of the trade in women in Canada:

- A country of origin, because women and children are trafficked domestically and to international destinations;

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- A transit country, because the sex industry uses Canada to traffic people into other countries, e.g., the United States;
- A destination country, because women and children from other countries are brought into Québec and other provinces to be sexually exploited.

By trafficking for the purpose of sexual exploitation, we mean the recruitment, transportation, transferring – inside or outside a country, by legal or illegal means – and holding of people, primarily women and children, for the purpose of their sexual exploitation. The sex industry and its agents use various strategies to achieve their aims: threat or use of force, abduction, fraud, deception, abuse of power or of a position of vulnerability, and giving or receiving payments or benefits to obtain the consent of a person exercising control over another person, for the purpose of exploitation. The trafficking of women and children ensures that male buyers enjoy uninterrupted access to commercial sex while generating exponential profits for traffickers and pimps. It is a mechanism used by the sex industry to supply the prostitution market.[5]

2. Determinants of the Trafficking in Women

Several factors are acknowledged as being directly connected with the growth of trafficking in women for the purpose of sexual exploitation. We will quickly go through these systemic elements.

2.1 Patriarchal Culture/System, Intertwined with Globalization and Neoliberal Policies

We identify women's social and economic vulnerability as a major cause of trafficking. Neoliberal globalization of international markets have considerably increased both women's poverty and migration, especially of women from economically disadvantaged or politically unstable countries. Individuals and organizations involved in human trafficking, often linked to organized crime, exploit these transformations to amass huge profits, while social and economic inequalities continue to deepen.

Currently, women's employment perspectives are significantly affected by worldwide expansion of care services: care for children, the old, and the sick, domestic help, and, now, prostitution. North and South, the expansion of care work stems from the naturalization and undervaluation of women's labour, reflecting the gender relations model that prevails in all patriarchal societies.[6]

In addition to exacerbating exploitation and oppression, economic globalization has reinforced the commercialization of the prostitution industry across the planet and consequently, the trafficking in women for the purpose of sexual exploitation.[7]

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2.2 Increased Border Controls and the Criminalization of Migrant Populations

Globalization is also associated with tighter controls at the borders of Western countries and tougher immigration criteria, leading more people to resort to smugglers and agencies that provide illegal and sometimes legal migration 'services'. This increases women's vulnerability to the traps laid by organized crime networks. In addition, the criminalization of migrants lacking the requisite documentation encourages the abuse and exploitation of the most vulnerable among them.

In Canada, certain categories of women are identified as the main targets of domestic and international trafficking: immigrant, racialized, and Indigenous women.[8] Our study highlights the vulnerability of these women to sexism and racism, especially in the Québec labour market, as well as the discriminatory immigration policies under which most poor and lesser educated women are granted access to only temporary work visas. When it comes to Indigenous women, precariousness aggravates the systemic discrimination faced by First Nations people. All of these exclusion factors heighten the disparity between the living conditions of women belonging to immigrant, Indigenous, and other racialized groups, and those, not only of their male counterparts, but of other women.

2.3 Organized Crime

Trafficking in women and girls for commercial sexual exploitation is a highly lucrative business: it is considered the third largest source of revenue for organized crime, right after drug sales and the arms trade.[9] It is common for trafficked women and girls to be exploited in destination countries by pimps and brothel-owners of their own nationality or from the same geographical area.[10] In the province of Québec, where our qualitative study was conducted, prostitution trafficking networks are mainly controlled by large criminal organizations, including bikers and mafia groups. The role of street gangs is often confined to recruitment.[11]

2.4 The Media: Accomplices of the Sex Industry

All types of media play a role in the re/production of social representations that trivialize the commodification of women's bodies and sexuality, but they are also integral to the expansion of the sex industry and the growth of trafficking. For instance, traffickers use Internet to recruit and advertise the services of prostitution victims. The first person sentenced for human trafficking in Canada prostituted teenage girls this way, attracting buyers with ads for erotic services and photos of victims posted on websites.

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2.5 The Demand for Commercial Sex

Last but certainly not least, consumers of commercial sex also contribute to the expansion of trafficking and prostitution. Male customers purchase 'sexual services' often without concern for the abusive conditions and exploitation prevalent in the prostitution system. Even the most 'well-intentioned' johns cannot distinguish between trafficked and non-trafficked women.

3. Life Trajectories in the Sex Industry

Our research presents the life stories of women trafficked or exploited in different sectors of the sex industry, mostly in Québec. While not a representative sample covering all facets of trafficking for the purpose of prostitution, our original data from primary and secondary sources does confirm the existence of such trafficking of women in Québec and substantiates the qualitative knowledge about this phenomenon.[12] Four cases inform us about migrant women's experiences and knowledge about sex trafficking, and four other cases describe domestic trafficking of young Québec women, providing an empirical perspective of the sex industry in Québec. A major focus of our research was to identify the processes and dynamics involved in the phenomenon of sex-trafficking. Another was to understand the different aspects of women's experiences of sex-trafficking specifically in the province of Québec. This would provide us with the basis for recommendations of suitable intervention strategies.

In addition to an unstable family environment, characterized by a series of structural or relational problems, the life stories involve behaviours considered by youth protection workers to be 'high risk,' including running away, school difficulties, family breakdowns, substance abuse, etc. Several trajectories emphasize the critical problem of the vulnerability of girls to the promises of pimps, particularly girls living in youth centres and who are runaways.

However, the individual behaviour and vulnerability of prostituted women should be treated as such, and not seen as factors that explain prostitution or trafficking. These phenomena have a structural basis, and their agents implement various strategies of control, manipulation and physical violence.

The trajectories of the migrant women were similar to those of Québec-born respondents in terms of psychosocial vulnerability factors, including their economic disadvantage, which make it very difficult for them to escape sexual exploitation. Both the differences and similarities between women's trajectories demonstrate the ability of *prostitutors* to take advantage of a wide range of circumstances to achieve their goals. Whether migrants, refugees, Québec-born, minors, adults, racialized or not, all the women ended up destitute, and all were mislead and prostituted.

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4. From Luring and Recruitment to Sexual Exploitation

Based on our analysis of the accounts and experiences pertaining to these women's individual trajectories, we were able to document the conditions under which fresh recruits are placed in strip clubs, escort agencies and massage parlours. Our data illustrates how pimps use promises of love to entice young and not so young women into their ultimate enslavement for trafficking purposes, within a time frame ranging from a few hours to a few weeks.

These accounts also reveal both the involvement of organized crime, and individuals who, though not always officially members of gangs or mafias, are nevertheless engaged in criminal activities on a daily basis, specifically to traffic women, including minors, in a variety 'circuits,' usually via employment agencies and classified ads, around Québec and out of the province. Starting with the physical branding of recruits after their first customer, entry into the prostitution market unfolds in a series of stages and intermediaries that comprise the underpinnings of the culture and operations of a well-honed system.

We observe that prostituted women are vulnerable, not only to the enticements of the pimps who exploit them, but also to the abusive behaviour of buyers, drug dealers and an inherently harmful overall environment. Violence in every form – physical, psychological, sexual and economic – is used by pimps to control their recruits and coerce them into generating maximum earnings, since money is the key determinant in trafficking.

The strategy of creating a bogus emotional or romantic relationship to recruit and retain girls and women in prostitution pervades both domestic and international trafficking situations. Women's feelings of love are exploited and they are made to believe they are helping out their temporarily penniless Prince Charming (Ricci and Kurtzman, 2013).

The shuttling of women from one strip bar to the next in the Montreal region, across Québec, and even across Canada and abroad, seems to be a central aspect of the prostitution system in strip clubs. Prostituted women are shipped from region to region to garner more money for pimps eager to cash in on buyers' desire for novelty. Pimps also move women around to isolate them and avoid losing them to another pimp, and maintain them in a state of sexual slavery for the exclusive benefit of the sex industry and its male consumers.

5. The Function of Systemic Violence in Prostitution Trafficking

Trafficking in women for the purpose of sexual exploitation is the business of the organizations and individuals that supply the sex trade, often through agencies in the form of above-ground businesses, such as strip clubs, massage parlours, hotels, and also at discreet sites such as brothels that are set up in private homes. Trafficking is also linked to street prostitution and to corporate producers of pornography. Frequently linked to organized crime, the sex industry exploits for huge profits the vulnerability of women and girls wishing to escape difficult living

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conditions. The systemic violence inherent to this type of trafficking, which can rightfully be labelled as sexual slavery for commercial purposes, facilitates the reproduction of relationships founded on domination and exploitation.

After analyzing our research findings, we have come to focus on three dimensions of this systemic violence inherent to sex trafficking:

- Cultural downplaying of the commodification of women's bodies and sexuality as an instrument of social violence;
- False consent to prostitution as a manifestation of victims' internalized sexism;
- The prostitution industry and trafficking activities as an exacerbated manifestation of patriarchal violence.

5.1 Cultural Downplaying of the Commodification of Women's Bodies and Sexuality as an Instrument of Social Violence

Currently, the notion of free choice and the trivialization of prostitution pervade the discourse of various stakeholders, both in the NGOs and community sector, including the women's movement, and among agents of the State. Internalizing such a discourse can lead girls, and also boys, to believe that 'sex work' might be a way to gain status or recognition – e.g., the figure of the *black pimp* – material goods, or independence from their family. But, our findings depict an environment for strippers and escorts that is diametrically opposed to the popular romanticized images of the high-class call girl, dedicated courtesan, or ambitious escort so engrained in collective male fantasy.

The use of commercial sex has become increasingly normalized as a form of entertainment, presented as 'natural' in terms of the roles dictated by sexual and sexist stereotypes. Its trivialization bolsters the myth of male sexuality as a biologically determined irrepressible desire that must be satisfied to maintain social order and prevent outbursts stemming from repressed impulses. In this patriarchal ideology, women are responsible for satisfying men's sexual desires, whatever the circumstances. This is the kind of myth that abolitionist feminists want to dissolve, by promoting sexuality as something that should be celebrated as part of a quest for equality rather than exploited in commercial relationships that generate violence and exploitation.

A culture that trivializes the commodification of women's bodies and sexualities constitutes a form of social violence, because it legitimizes the development of the sex industry and the growing exploitation of women and girls, thus hindering the chances of achieving egalitarian gender relations and liberation for all women, beginning with those now being prostituted.

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5.2 False Consent as a Manifestation of Victims' Internalized Sexism

Our study demonstrates how male domination operates in sex trafficking, revealing the violence inherent in prostitution and the tyrannizing of trafficked women. The process of establishing power and control over prostituted women is facilitated by their internalized feelings of inferiority, causing them to yield rather than consent to relations rooted in domination. We define internalization as the acceptance and integration of standards, judgments, expectations and representations of the dominant society. Of course, everyone has a degree of manoeuvring room that enables them to eventually break free, distance themselves or challenge these standards, but given the power of the inculcation process here, such an enterprise is gruelling, as evidenced by the difficulties prostituted women experience in extricating themselves from the sex industry.

Patriarchal, pervasive (neo)liberalism fosters the impression that everyone is free and equal. When the categories of dominant/oppressed are no longer recognized, it becomes possible to attribute some form of 'consent' to any oppressed individual. This obscures the fact that consent requires knowledge of the situation in its various components, and the acceptance of both positive and negative consequences. In addition, everything is made to look as if there was nothing wrong in the behaviour of the dominant party since the oppressed is considered to have consented.[13] This type of analysis leads to the manipulation of such principles as agency, empowerment, freedom to control one's body, even sexual liberation. As a result, the oppressed person stays in her place, believing she is in control of her situation. The sex industry has excelled in appropriating these principles to keep prostituted women on the job in a lucrative market.

The argument that prostituted women negotiate the terms of the exchange with the buyers ignores the social, economic, and political dynamics of human relations, and the miserable living conditions and violence to which many prostituted women are subjected. This is why we believe it is necessary to reiterate that the discourse of consent to sexual exploitation constitutes an ideal means to ensure male (racist, capitalist) appropriation of women; it is a manifestation of gender-based violence internalized by victims and a central element of the systemic violence at work in trafficking for the purpose of prostitution.

5.3 The Prostitution Industry and Trafficking Activities as an Exacerbated Manifestation of Patriarchal Violence

Whether for domestic or international trafficking, the prostitution industry employs various forms of violence – physical, psychological, sexual, and, of course, financial – to enslave and exploit its recruits. In contrast to popular belief, deception, in the form of a trap, deceit, manipulation, or emotional blackmail – all corollaries of psychological violence – is a central element of trafficking for the purpose of sexual exploitation, especially at the recruitment stage. More overtly violent – and more visible – means, including sequestration, assault, sexual assault,

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and retaliation against the victim's family, are often employed later in the trafficking process, after the victim has been 'hooked'. These tactics are used to appropriate her income, control her use of time, mobility, etc. Without minimizing the physical and economic violence to which they are subjected, it seems that initially women are recruited and maintained in the sex industry through psychological manipulation that exploits their need for love. This means that when it comes to identifying cases of trafficking, we should not expect to see evidence of overt violence, but rather be able to detect the more insidious forms of manipulation. From luring to total control, there is no shortage of means for convincing women to yield (rather than consent) to the appropriation and exploitation of their bodies by the prostitution industry.

Whether or not trafficking is involved, the prostitution industry thrives by appropriating women who are viewed as merchandise – even perishable goods – given the turnover demanded by a market (customers) with an insatiable appetite for young bodies. This appropriation is a structural form of violence inherent in prostitution. Furthermore, customers do not hesitate to use physical abuse to obtain all the 'services' they believe they deserve. By maintaining a special category of women – prostitutes – patriarchal and capitalist society ensure that all men have access to full range of 'sexual services'.

6. From Denial to Invisibility

Our research shows the extent to which trafficking for sexual exploitation is made invisible by a shroud of silence stemming from various factors, including the impenetrability and violence of the criminal underworld, ineffective laws, a general lack of resources for prevention and control, poorly equipped front-line community workers and the increasing trend to normalize the commodification of women's bodies and sexuality.

Certain voices (Chaumont and Machiels, 2009; Toupin, 2006) suggest that the harm of trafficking is being exaggerated, including its links with commercial sexual exploitation. They claim that for women, migration and prostitution are expressions of resistance and freedom. Those instigating this denial of the reality of prostitution trafficking point to inconsistent statistical data that make it difficult to measure the scope of the phenomenon. In fact, the paucity of quantitative data on violence against women, and this, despite the best efforts of feminist researchers, reflects the global political will to deny the existence of patriarchal and male violence.

While not all prostitution-related activities can be considered as trafficking, the practices of transporting, coercing and isolating sex industry recruits appear to be characteristic of commercial sexual exploitation. In Québec and elsewhere, both domestically and internationally, the purpose of trafficking is to supply a market driven by the increasing, mostly male demand for female bodies and exotic sex at

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the lowest possible price. The existence, reproduction and growth of trafficking in women therefore seem to us to be inseparable from the prostitution industry.

Notes

[1] From 2008 to 2013, the author of this chapter was part of a team of action research on sex trafficking attached to the Institute for Feminist Research and Studies (IREF), which published 'The Trafficking in Women for the Purpose of Sexual Exploitation: from Denial to Invisibility' (Ricci, Kurtzman and Roy, 2012). This article takes its source in that study, as well as in the synthesis of our research report, translated from French by Nicole Kennedy and Martin Dufresne, all of whom are thanked for their work.

[2] International Labour Office (ILO), *Profits and Poverty: The Economics of Forced Labour* (Geneva: ILO, 2014), viewed 1 September 2014,
http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf.

[3] U.S. Department of State, *Trafficking in Persons Report – Introductory material* (Washington DC: Office to Monitor and Combat Trafficking in Persons, 2013), viewed 1 September 2014,
http://www.state.gov/documents/organization/210737.pdf.

[4] ILO, *Profits and Poverty* (2014).

[5] Our definition of sex-trafficking encompasses the definition of the UN - Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons.

[6] Jules Falquet, Helena Hirata and Bruno Lautier, 'Les Nouveaux Paradoxes de la Mondialisation', *Cahiers du Genre* 40 (2006): 5-14.

[7] Richard Poulin, *La Mondialisation des Industries du Sexe. Prostitution, Pornographie, Traite des Femmes et des Enfants* (Ottawa: Éditions L'Interligne, 2004).

[8] U.S. Department of State. *Trafficking in Persons Report*, 2013; Jacqueline Oxman-Martinez, Marie Lacroix and Jill Hanley, *Les Victimes de la Traite des Personnes : Points de Vue du Secteur Communautaire Canadien* (Ottawa : Ministère de la Justice Canada, Division de la Recherche et de la Statistique, 2005).

[9] Monica O'Connor and Grainne Healy, *The Links Between Prostitution and Sex Trafficking: A Briefing Handbook* (New York: Coalition Against Trafficking in Women and Brussels: European Women's Lobby, 2006), viewed 1 September 2014, http://blog.lib.umn.edu/globerem/main/Handbook%20excerpt.pdf.

[10] The Protection Project, *Trafficking in Persons, Especially Women and Children in the Countries of the Americas. Regional Report on the Scope of the Problem and Governmental and Non-Governmental Responses* (Baltimore: Johns Hopkins

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University School of Advanced International Studies, 2002), viewed 1 September 2014, http://www.childtrafficking.com/Docs/the_protection_project_2002.pdf.

[11] Maria Mourani, *La Face Cachée des Gangs de Rue* (Montréal: Les Éditions de l'Homme, 2006).

[12] In all, we conducted approximately 20 meetings and 17 personal interviews including with 3 women who had been trafficked domestically, and obtained a video statement from a 4th victim. We also collected the testimony of a female migrant. Certain elements of her life story caused us to believe she had been involved in a situation of international trafficking for sexual exploitation. Last, we reconstructed the trajectories of 3 trafficked migrant women based on an interview with a worker in a community group, a police statement, and data from a police investigation. In all, we analyzed 8 cases of women who were prostituted or trafficked into the sex industry, and conducted interviews with 2 men who had performed various functions in the industry.

[13] Nicole-Claude Mathieu, 'Quand Céder n'est pas Consentir,' *L'Arraisonnement des Femmes : Essais en Anthropologie des Sexes*, ed. Nicole-Claude Mathieu (Paris: Éd. de l'EHESS, Cahiers de l'Homme, 1985), 169-243.

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Sandrine Ricci worked on sex-trafficking as a part of a team of action research attached to the Institute for Feminist Research and Studies (IREF, Canada). She is currently a doctoral student in sociology and lecturer at Université du Québec in Montreal (UQAM). Her academic interests include feminist theory, violence against women, rape culture, sexual violence and war rape. Sandrine Ricci recently published an essay on the Tutsi genocide in Rwanda that provides a central place to life stories from women survivors.

Trafficking in Human Beings for Sexual Exploitation and Media Discourses

Júlia Tomás

Abstract
Trafficking in human beings has been increasing these last years due to, amongst others, escalating international migration, growing poverty, gender discrimination, lack of education, corruption and armed conflicts. This crime includes various forms of abuse such as sexual exploitation, forced labour, servitude, organ removal, forced marriage, forced begging, illegal adoption or forced participation in armed combat and the commission of crime. The International Labour Organisation estimates that 20.9 million people, including an estimated 5.5 million children, are victims of forced labour globally. The international protocols on combating trafficking in human beings highlight a war against organised crime through punishment and immigration control policies. Though, by emphasising the criminal activity, international policies cast a shadow on the issue of forced labour itself. Consequently, there is a lack of laws and projects on the protection of victims. Therefore, victims are generally first considered as illegal immigrants leading them to social exclusion. Regarding sexual exploitation, the problem clearly resides in the fact that fighting trafficking in human beings is often conflated with fighting prostitution. In many countries the boundary between both activities is unclear. As a consequence, many sex workers – and especially immigrant prostitutes – face violent law enforcement operations, raids and arrests. Currently mass media not only fails to help detecting victims but also contribute to the marginalisation of sex workers. Due to the growing visibility of human trafficking in the media, it is important to critically analyse the current discourses on the issue and to highlight certain social representations and stereotypes. This presentation has three objectives: first, to disseminate information about trafficking in human beings; second, to expose sexual and gender discrimination as well as migration issues disseminated through mass media in the context of human trafficking; and thirdly, to offer some recommendations for an ethical communication on the subject.

Key Words: Human trafficking, prostitution, immigration, media ethics.

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1. About Trafficking in Human Beings

Trafficking in human beings is a serious crime against personal freedom and is a serious violation of basic human rights. It involves the recruitment of persons, through violence, coercion and abuse of power over others, their transportation and their accommodation, with the sole objective of exploiting them. According to the

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definition of the Council of Europe Convention on Action against Trafficking in Human Beings (2005):

> "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.[1]

It is important to highlight the fact that for this crime to be legally recognised as such, it requires three constitutive elements. First, there is the element of action: to offer, to deliver, to allure, to transport, to harbour and to shelter. The second element is the form of coercion: through violence, kidnap or threat, by fraud, by abuse of power, by the consent of someone who controls the victim or by abusing from a position of vulnerability or psychic incapacity. Finally, the third element is the final objective: sexual exploitation, labour exploitation, etc.

It is also essential to understand the difference between trafficking for sexual exploitation and sexual exploitation of others. The latter being also an unlawful activity, it does not consist of all of the necessary elements to be deemed human trafficking. A major issue arises when observing and analysing this phenomenon: very few criminal cases are closed with a conviction and an appropriate sentence. Generally, the requisites (the three elements described above) are not fulfilled resulting on lighter sentences for connected crimes (i.e. exploitation of prostitution of others, document forgery, smuggling). The simple fact that a victim may have some freedom of movement prevents her from being considered as a victim of human trafficking.

A clear description of a victim of trafficking for sexual exploitation is offered by a group of Serbian journalists:

> A trafficking victim is coerced into practicing prostitution. She cannot make free decisions on where and how she will work, she cannot refuse a client, she does not have the freedom of movement and cannot decide to quit. In addition, she is poorly paid – if paid at all – for the work she does, while the major portion of her earnings is withheld by the trafficker. To put it simply, she is the property of the person who bought her.[2]

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According to the Council of Europe Convention and to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime (2000), the main condition to be legally accepted as a victim of trafficking in human beings is to identify the perpetrators. But, taking into account the danger of such declarations not only to the victims but also to their families, trafficked people are often reluctant to testify; hence they become illegal immigrants and are repatriated. Therefore, victims are not only afraid of retaliation: they also fear the measures that authorities could undertake against them.

In addition, it must be noted that some of the problems of identification of the victim reside not only in the vacuums of the Law but also in the blurred line between consent and deceit. Indeed, there are different forms of victimisation. For instance, regarding trafficking for sexual exploitation, the first level is total coercion, i.e. kidnapping. Consent is non-existent. The second level is when the victim voluntarily travels to another country with fake promises of employment (i.e. hostess, bar tender, model). The third level concerns the victims who know they will be working in the sex industry (i.e. lap dancer, striptease) but ignore the fact that they will be forced into prostitution. And the fourth level refers to the ones who knew they would practice prostitution but did not know to which extent they would be exploited. Thus, it is necessary to have sound victim detection procedures, the main key issue being the detection and, later, the confirmation of a case. In fact, this is one of the prime recommendations from various national action plans and international directives.

The lack of data regarding the true extent of human trafficking seriously compromises the capacity of potential measures to combat this crime, especially considering its transnational dimension. Due to its invisibility, one can only have but a pale idea of the situation. Taking this in consideration, one must be careful when analysing statistics and governmental data and bear in mind that the information we have is only the top of the iceberg.

In 2010, the United Nations Office on Drugs and Crime (UNODC) estimated that out of the 52 countries where the form of exploitation was specified, 79% of the victims were subjected to sexual exploitation.[3] However, the number of cases of labour exploitation is increasing worldwide. Whether the number of victims of sexual exploitation is greater than the number of victims of labour exploitation is debatable, but it is clear that many countries have laws aimed only at the crime of forced prostitution.

In Europe, the Member States of the European Union (EU) have selected trafficking in human beings as one of the priority areas in the fight against organised crime. According to Eurostat, the percentage of child victims of trafficking is close to 15%. The vast majority of all victims are female (80%).

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Around 62% of the victims are trafficked for sexual exploitation and about 25% for labour exploitation.[4]

The end of the Cold War was a key element in precipitating one of the best documented human trafficking flows in the world: the movement of Eastern European women into Western European sex markets: 61% of the identified and presumed victims come from Europe, the countries of birth being recurrently Romania, Bulgaria and the Russian Federation.[5] Regarding non-European victims, most women come from Brazil, Nigeria, Morocco and China.[6]

Vis-à-vis suspected traffickers, 45% have an EU citizenship and come from Bulgaria, Romania, Germany and France. Most suspected traffickers with a non-EU citizenship come from Africa and Asia, the countries of citizenship being frequently Nigeria, China and Turkey. 75% of suspected traffickers are male.[7]

In the UK, according to the United Kingdom Human Trafficking Centre, 2255 potential victims were encountered in 2012. Of these potential victims, 71% were adults. The five most prevalent countries of origin were Romania, Poland, Nigeria, Vietnam and Hungary. For those reporting as a minor it was Vietnam, Nigeria, Slovakia, Romania and the UK. Sexual exploitation (35%) and labour exploitation (23%) were the two most prevalent exploitation types reported. For those reporting exploitation as a minor it was sexual exploitation (28%) and criminal exploitation (24%).[8]

2. Sex Work and Immigration in Media Discourses

Mainstream media discourses tend to emphasise sex trafficking over other forms of labour exploitation due to strict law enforcement related to anti-prostitution ideologies. For instance, a journalist from *The Guardian* stated in 2013:

> We urge the UK and all European governments to implement the Nordic model throughout the continent. This will not only ensure that the lives of countless women and girls are improved, it will also send a strong signal to people like Zsolt, who do not fully appreciate that by enabling the commercial sex industry, they are concealing the exploitation and violence which is at its core.[9]

Another example from April 2014 shows, in a very subtle way, the automatic correlation between sex work and human trafficking:

> At the end of a two-day meeting, organised by the bishops' conference of England and Wales and chaired by the archbishop of Westminster, Cardinal Vincent Nichols, Pope Francis met privately with four women, all former sex workers who were the victims of trafficking. In his address, the Argentinean pontiff

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said: "Human trafficking is an open wound on the body of
contemporary society, a scourge upon the body of Christ. It is a
crime against humanity."[10]

Moreover, the classification of trafficking by the United Nations as a
transnational organised crime has linked the discourse around trafficking to the
discourse of irregular migration. The following quote, also from *The Guardian*
illustrates this argument quite clearly:

> Johnson first called for an amnesty for long-term migrants last
> April. It provoked accusations of naivety from Phil Woolas, the
> immigration minister, and claims that it would lead to more
> people-trafficking.[11]

Indeed, the vast majority of stories about trafficking are tied to sex work and
immigrant smuggling. But one should stress that highlighting prostitution and
immigration as the main 'problems' diverts the attention from the most important
factors of human trafficking such as poverty, the exploitation of the poorer, civil
and political unrest in developing countries and discrimination. Also, media
representations show an overreliance on bureaucratic and moralistic sources of
information. As Jyoti Sanghera puts it:

> The dominant discourse of trafficking is based upon a set of
> assumptions…. [that] flow from unexamined hypotheses, shoddy
> research, anecdotal information or strong moralistic positions.
> The issue is not whether they are true or false, but simply one of
> pushing conclusions that are not supported by rigorous empirical
> research and a sound evidence base. This faulty methodology of
> disseminating a flow of information and data whose origins are
> questionable contributes to the construction of both the dominant
> paradigm or discourse of trafficking, as well as the mythologies
> of trafficking.[12]

The connection between prostitution and human trafficking has serious
consequences to all sex workers. The victimisation of the female sex worker opens
vast, and often pointless, political and social debates about the woman's body.
Also, mixing voluntary and forced sex work contributes to the stereotype of female
passivity and incapacity to seek reasonable solutions, especially poor women
coming from developing countries.

Regarding migration issues, there is an outstanding confusion between human
trafficking and migrant smuggling, although they are two different crimes. Indeed,
while the former involves the use of force and coercion against another for the

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purpose of exploitation, the latter takes place with the consent of the migrant. This results on uneven public attention and services to all migrants, but above all, it can be seriously disadvantageous to trafficking victims due to the fact that these can be easily identified as illegal immigrants.

As a result of these ideologies, the Group of Experts on Action against Trafficking in Human Beings of the Council of Europe (GRETA) showed, in 2012, its concern about the victims of trafficking in the UK who have been arrested, prosecuted and convicted in relation to immigration or other offences. Furthermore, according to GRETA:

> More should be done to raise awareness about internal trafficking and the risks of British nationals trafficked abroad, with a special emphasis on trafficking in children. GRETA also notes that the measures to discourage demand have so far focused on sexual exploitation and considers that more efforts should be made to discourage demand for the services of trafficked persons for the purpose of domestic servitude and labour exploitation. [...] As regards child victims of trafficking, GRETA is concerned by reports according to which a significant number of unaccompanied children who are placed in local authority care go missing.[13]

3. Ethical Communication

Trafficking in human beings is an issue of high journalistic interest. The way the phenomenon is presented shapes to a wide extent the manner in which the viewers, the Police and the politicians will deal with it in their own field. Consequently, mass media has increased responsibility for the way they handle and present events, persons, as well as groups of the population.

The phenomenon can be approached through its various aspects, such as the economic, political, legal and humanitarian aspect, as well as in the field of security or organised crime. Also, in order to raise awareness, journalists and editors could inform the public about the trafficking chain, the people who profit out of it, as well as the victims' health risks. Another important matter is to explain the root causes of trafficking in human beings such as the situation of the countries of origin of the victims, economic disparities, instability and discrimination against women.

The usual virtues of journalism, such as good connections, integrated research, and information verification using a variety of sources also stand for trafficking. For that, journalists should cooperate with non-governmental organisations. On one hand, the qualitative and quantitative surveys conducted by them, together with their personnel's expertise and experience both at theoretical and practical

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levels, offer precious information. On the other hand, the cooperation would provide organisations with the opportunity to disseminate their work.

Mass media can also play a significant role in informing groups that are vulnerable. Smuggled migrant women are a group that runs a high risk of becoming victims of trafficking since they are in a foreign country, with no valid travel documents or work permit, with no information on their status and their rights and obligations. In this case, the contribution would be essential for the dissemination of useful information.

An important element for the presentation of the phenomenon is the appropriate way in which journalists should handle their sources. This is even more crucial when the source of information is the victim. In this case, it is imperative that the journalist understands the victim's situation and demonstrates the appropriate sensitivity. For a trafficking victim the description of the difficult circumstances under which he or she turned into a victim of exploitation is an extremely intense process.

When the interview is published, it is important to protect the victim's identity. For the security and protection of the victim the reference to details should be avoided, as they are not useful and at the same time they may lead to the victim's identification. Journalists should avoid putting pressure on victims in order to get useless details that only aim at attracting viewers and readers. Victims are indeed the most interesting part of a trafficking case and journalists want a story like that. Nevertheless, sometimes they ignore that victims are in a vulnerable situation and are not protected.

Children are another category of victims of trafficking. It should be noted that the term 'children' defines all persons under 18 years old. To cover the issue of trafficking in children, one must have access to a wide range of information concerning children. Journalists should only decide to present public information on minor victims provided that the children's fundamental human rights are totally guaranteed.

4. Conclusion

The problem of trafficking in human beings is extremely complex and multifaceted. It requires the cooperation and coordination among many state agencies, international and non-governmental organisations and governments. It also calls for prevention campaigns and development policies in countries of origin, in order for potential victims to be informed and root-causes to be dealt with. Mass media can play a crucial role in combating trafficking in human beings. However, if it does not respect the journalist ethical code, it can also contribute to further marginalisation of those who are already in a situation of vulnerability.

The area of trafficking in human beings is highly sensitive. Journalists are required to adopt a socially responsible stand and to break some traditional patterns which lead to stigmatisation such as sensationalism, inadequate terminology and

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poor headlines because this only contributes to the invisibility of the phenomenon. Media quality in this area requires a sound investigative journalism as well as the competence to deploy ethical consideration in professional practice.

Notes

[1] *Council of Europe Convention on Action against Trafficking in Human Beings* (Warsaw: Council of Europe, 2005), article 4.

[2] Ivana Radovic, *Human Trafficking Manual for Journalists* (Belgrade: ASTRA, 2008), 11.

[3] United Nations Office on Drugs and Crime, *The Globalisation of Crime* (New York: UNODC, 2010), 11.

[4] Eurostat, *Trafficking in Human Beings* (Luxembourg: Publications Office of the European Union, 2013), 10.

[5] Ibid.

[6] United Nations Office on Drugs and Crime, *Globalisation of Crime*, 40.

[7] Eurostat, *Trafficking in Human Beings*, 11.

[8] UK Human Trafficking Centre, *UKHTC: A Strategic Assessment on the Nature and Scale of Human Trafficking in 2012* (London: Serious Organised Crime Agency, 2013), 4.

[9] Lauren Hersh, 'Europe is Finally Starting to Tackle Prostitution in the Right Way,' *The Guardian*, December 12, 2013, viewed on 14 May 2014, http://www.theguardian.com/commentisfree/2013/dec/12/europe-prostitution-sex-trafficking-nordic-model.

[10] Lizzy Davies, 'Pope Francis Says Human Trafficking is a "Crime Against Humanity",' *The Guardian*, April 10, 2014, viewed on15 May 2014, http://www.theguardian.com/world/2014/apr/10/pope-francis-human-trafficking-crime-humanity.

[11] Alan Travis, 'Migrants Amnesty Would Aid Economy by £3bn, Says Study,' *The Guardian*, June 16, 2009, viewed on 14 May 2014, http://www.theguardian.com/uk/2009/jun/15/migrants-amnesty-immigration-london-johnson.

[12] Jyoti Sanghera, 'Unpacking the Trafficking Discourse,' *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, ed. Kamala Kempadoo (London: Paradigm Publishers, 2005), 5.

[13] GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom* (Strasbourg: Council of Europe, 2012), 7.

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Júlia Tomás is a scientific researcher at the Communication and Society Research Centre of University of Minho, Portugal. She has a PhD in Sociology since 2009. Her main interests focus on the concept of social invisibility.

Child Trafficking as a Human Rights Violation in South Africa: Unveiling the Evils of Capitalism

Shan Simmonds and Petro du Preez

Abstract

Child trafficking is a gross human rights violation that robs children not only of their vulnerability and morale but also of their basic human rights and human dignity. As a form of human trafficking, child trafficking can also be referred to as modern day slavery. To combat human and child trafficking the United Nations Office on Drugs and Crime (UNODC) and the United Nations Children's Fund (UNICEF) has introduced legislative policies. However, because of the complicated intersection of trafficking with financial greed and capitalism, it is one of the fastest growing, financially profitable criminal businesses in the world. The International Labour Office (ILO) highlights that child trafficking is especially rife in continents such as Africa and the Middle East with these having the highest proportion of child victims of trafficking - approximately 68% are children and 32% adults. Children are being trafficked predominantly for forced labour and the sex trade where there are high profit margins. In a quest to explore child trafficking as a rampant pandemic and social crisis in Africa, this chapter reports on a study done in South Africa. More specifically, one region of South Africa was piloted to pave the way for a study that will be conducted in 2014-2015. A survey was conducted with schoolgirls to determine their knowledge and awareness of child trafficking. Thereafter, to gain better insight, girls aged 16-17 were invited to share their narratives and lived experiences. This chapter will present the findings from the survey and share the narrative of a victim who has escaped trafficking. To conclude, this chapter questions the responsibility of the education system, and in particular the curriculum, to create awareness of trafficking so as to alleviate children from perpetuating the evils of capitalism and being stuck in a traffic jam.

Key Words: Child trafficking, human rights violations, South Africa, capitalism, modern day slavery, curriculum.

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1. Introduction

This chapter begins with an extract from the human trafficking organisation website to illustrate child trafficking in Senegal.

> ***Child Trafficking in Senegal***
> ***June 03, 2008***

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Child trafficking found at the complicated intersection of greed and tradition.

On the day he decided to run away, 9-year-old Coli awoke on a filthy mat, curled against the cold, pressed between dozens of other children sleeping head-to-toe on the concrete floor.

It was still dark as he set out for the mouth of a freeway with the other boys, a tribe of 7-, 8- and 9-year-old beggars. Coli went between the stopped cars, holding up an empty tomato paste can as his begging bowl.

There are 1.2 million children like Coli in the world, trafficked to work for the benefit of others. Those who lure them into servitude make $15 billion annually, according to the International Labour Organization.

It's big business in Senegal. In the capital of Dakar, at least 7,600 child beggars work the streets, according to a study released in February by the ILO, the United Nations Children's Fund and the World Bank. The children collect an average of 300 African francs a day, just 72 cents, reaping their keepers $2 million a year.

Ninety percent of the boys are sent to beg under the cover of Islam, placing the problem at the complicated intersection of greed and tradition. Coli was brought to Dakar with his family's blessing to learn Islam's holy book.

In the name of religion, Coli spent two hours a day memorizing verses from the Quran and over nine hours begging to pad the pockets of the man he called his teacher.

Not all Quranic boarding schools force their students to beg. But for the most part, what was once an esteemed form of education has degenerated into child trafficking. Nowadays, Quranic instructors net as many children as they can to increase their daily take.

'If you do the math, you'll find that these people are earning more than a government functionary,' said Souleymane Bachir

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> *Diagne, an Islamic scholar at Columbia University. 'It's why the phenomenon is so hard to eradicate*.[1]

Coli's story is only one of the many accounts of children being exploited under false pretence for the financial gains of their perpetrators. His story reiterates the complexity of child trafficking and how such complexities reinforce the financial gain of traffickers at the cost of the trafficked. This chapter will engage with the factors that perpetuate the capitalist evils of human trafficking so as to illustrate the complexities underpinning this phenomenon. Thereafter an empirical study conducted in South Africa is drawn on.

2. Factors Perpetuating the Capitalist Evils of Human Trafficking

For Bales[2] the root causes of trafficking stem from 'greed of criminals, economic pressures, political instability and transition, and social and cultural factors'. Trafficking in persons is thus a lucrative business in the illicit global economy together with arms, narcotics and organ trafficking.[3] What makes this business so lucrative are the factors that reinforce trafficking or enable it to be disguised. These factors include: globalised trade; law enforcement; economic instability; risk vs. reward; and deception and fraud. Each of these factors are now elaborated on.

A. Globalised Trade

Due to free markets and globalisation trade, the global economy has led to a decline in border controls. This is especially the case in developing countries and countries where 'the lack of security, law and order' at borders creates sites of money laundering, trafficking and other illegal activities.[4] These actions are also fostered by corrupt border officials and even governments who benefit from the high profits. Borders have also become viable and easy means for movement of people due to immigration rights. Bales[5] argues that 'the impact of differential severity of migration control policies' have made it possible for people to cross borders to peruse opportunities often with minimal contestation. As a result, if people can cross borders 'relatively freely', traffickers do not even have to 'trick or coerce people' into being trafficked because little suspicion is aroused.[6] However, should victims be aware that they are being trafficked and try to escape, 'corrupt immigration officers [who] facilitate the trafficking of victims across borders' will force the victim 'back across the border where traffickers are lying in wait'.[7] With weak border control and corrupt officers, mobility of merchandise and people is increased causing trafficking to fall behind the radar and become disguised as globalised trade or immigration, for example. Therefore, making trafficking difficult to detect and combat.

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B. Law Enforcement

For the first time, the United Nations General Assembly managed to reach a shared definition of trafficking in persons from the international community when it developed and introduced the protocol to *Prevent, Supress and Punish Trafficking in Persons, especially Women and Children* within the *Convention Against Organised Crime*.[8] This brought forward a standardised definition of trafficking in persons.[9] This law enforcement has not been implemented by South Africans. Although the Palermo Protocol was signed on 14 December 2000, ratified in February 2004 and brought before Parliament as a draft bill (*The Prevention and Combating of Trafficking in Persons Bill*) on 16 March 2010, still today it is not enacted.[10] In addition, Allais[11] is also critical of the fact that 'South Africa has no official system of data management' and therefore statistics of victims and traffickers cannot be continuously and accurately generated. Perhaps that is why trafficking in persons is such a grave problem in South Africa.

C. Economic Instability Factors

Deeply penetrating the business of human trafficking is the neoliberal economic climate permeating most countries.[12] A climate such as this can bring economic competition and economic instability. Due to economic turmoil such as economic recession, poverty, civil unrest, political instability and natural disasters,[13] employment may become scarce which forces people to grasp any economic opportunity possible.[14] This places people in vulnerable positions and they become perfect targets for traffickers – to be victims of trafficking or even become traffickers themselves. For the traffickers, a hostile and unstable economic climate fosters 'safe' or low-risk working conditions as those searching for economic relief are often in disarray and desperate. This combination of factors perpetuates the cycle of human trafficking, often making it difficult to pin-point, target and eradicate.

D. Risk vs. Reward

Human trafficking can be regarded as a high-profit and low-risk line of business. It is high-profit because 'unlike other "commodities", people can be used repeatedly'[15] and traffickers do not have to tend to the financial upkeep of victims as they only invest in minimal resources for their maintenance, work them to exhaustion while expecting them to pay for their own food, shelter and/or medical care.[16] Once traffickers no longer have use for their victims or if their victims cannot work due to age, physical appearance, injury or disease/illness they are replaced rather than cause the trafficker financial loss.[17] Also contributing to its high-profit status is the fact that if accused of human trafficking, a trafficker's penalty is lower than that of drug or arms trafficking.[18] In terms of risk taking, due to lower penalties involved with human trafficking as opposed to drug or arms trafficking, traffickers have reason to also view their trade as low-risk. By the same

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token, it can also be argued that risks are even lower for penalties to be paid because reported trafficking cases are minimal due to factors such as victims being too afraid to report them and lack of legal support.[19] Also, 'trafficking in persons does not require a large capital investment'[20] to lure its victims and fuel its needs as 'slaves are cheap and easily replaced'[21], thus making it a low financial risk for the trafficker.

E. Deception and Fraud Factors

Many victims of trafficking fall prey to false promises of an enriched lifestyle and opportunities.[22] These forms of deception and fraud are often instigated or carried out by members of society that the victim would usually trust; such as acquaintances, family members and even law enforcers.[23] Family members could be misled by traffickers who offer their children or loved ones education or career opportunities which they cannot provide for them. In addition, family members can also be tempted to sell their children due to economic reasons. With regard to law enforcers, 'police commonly take bribes from or make use of brothels and return escaped slaves to the owner if the victim seeks help or is apprehended'.[24] In many respects victims feel threatened, trapped and afraid because they have no one to turn to and most often have no identity document and thus, have no form of escape. Public corruption, including bystanders who are witnesses to these crimes but do not address them, 'is a huge obstacle to eliminating slavery and to prosecuting traffickers'.[25] Research done by Bales also highlights the complexity of escaping trafficking as a victim and reporting trafficking as a bystander because in several countries,

> The police do not protect you, the law is not your shield, you can't buy your way out of problems, and any weapon you have is no match for those of the gangs and the police.[26]

That is why it is no disguise that the underground world of trafficking is one of the fastest growing criminal businesses operating in conditions of 'extreme and violent competition' and overriding any threats that arise through any means possible.[27]

Discussion

However, this line of business is only lucrative for the traffickers. The trafficked are denied their basic human rights, human dignity and even morale.[28] In many respects, trafficking can be seen as dehumanising because it robs those being trafficked of their humanness as they become no more than mere modern day slaves. Furthermore, the trafficked victims are trapped in a clandestine underworld enslavement making it difficult for them to escape as they often 'find themselves in circumstances where they do not know their location and do not speak the local

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language'. Moreover, they are also robbed of their identity and nationality as their legal documentation is often confiscated by their traffickers.[29]

3. Empirical Findings

The International Labour Office (ILO) highlights that child trafficking is especially rife in continents such as Africa and the Middle East with these having the highest proportion of child victims of trafficking - approximately 68% are children and 32% adults.[30] Children are being trafficked predominantly for forced labour and the sex trade where there are high profit margins. In a quest to explore child trafficking as a rampant pandemic and social crisis in Africa, this chapter reports on a study done in South Africa. More specifically, a primary and secondary school in one region of South Africa was piloted to pave the way for a nation-wide study that will be conducted in 2014-2015 with girls and boys as well as teachers in schools in all nine provinces of South Africa.

The study that was conducted, set out to analyse schoolgirls awareness about child trafficking in terms of their knowledge and understanding thereof. Survey and narrative data collection methods were employed. The survey was conducted with 94 schoolgirls who are in Grade 6 (aged 11-13) to determine their knowledge and awareness of child trafficking using a three point Likert scale.[31] Descriptive statistics were used to analyse the survey.[32] Thereafter, to gain further insight into the phenomenon from another age group, 3 schoolgirls who are in Grade 9 (aged 16-17) were invited to share their narratives and lived experiences. These narratives were analysed using content analysis.[33] The main findings of the survey and a narrative of one of the schoolgirls who escaped trafficking will now be presented.

A. Main Findings from the Survey

From the survey responses, there are 8 statements where a high percentage of the schoolgirls responded with the same viewpoint. The results are as follows:

- 95% responded that adults are not allowed to force children to be sex workers;
- 93% responded that it is not ok for parents to send children to the streets to beg;
- 89% responded that children are at risk of being trafficked;
- 83% responded that it is necessary to learn about child trafficking at school;
- 78% responded that child trafficking happens all over the world;
- 77% responded that child trafficking does not create a better life for children;

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- 77% responded that child trafficking is a problem in South Africa;
- 76% responded that more girls get trafficked than boys.

After the survey was conducted, some of the school girls were asked to describe what they think child trafficking is. Here is a snapshot of the discussion between the researcher and a schoolgirl:

> Researcher: 'What is child trafficking?'
> Schoolgirl: 'Well, I'm not really sure, but I think it is ... maybe when a child's in a car, maybe like ... maybe the person that has to assist the children to go across the street. I think then he has to watch over us and see if we are going in the right way and see if we have to stop and see for cars going past.'
> Researcher: 'Have you ever heard about somebody being trafficked?'
> Schoolgirl: 'Trafficked? Like being stopped for speeding?'[34]

This schoolgirl's response is alarming considering the survey findings. It can be argued that this indicates that schoolgirls acknowledge that child trafficking is wrong or even dangerous but that they are not aware of what child trafficking entails and therefore, *why* it is wrong or dangerous. In addition, it can also be argued that there is still much to be done before concrete findings can be derived and valuable suggestions for raising child trafficking awareness through curriculum can be put forward.

B. The Narrative of a Victim who has Escaped Trafficking
The narrative of one of the schoolgirl participants in Grade 9 (aged 16-17), was as follows:

> My friend has a boyfriend. We went to a party at the pad of one of his friends. The party was a real experience, lots of food and drinks. We got very drunk. When we were sloshed, they showed us how to shoot a line. That is when you sniff cocaine from a mirror. After that we all had a good time before we went home the following morning. A good time means that we had sex with the men that took us to the party. My friend's boyfriend is a Nigerian who gives drugs to other men and boys to sell to other people. They then bring the money to him. My and I friend went to many of his parties and we always got everything we wanted. We then moved in with him and he paid for everything. We lived with him for about two weeks then he said I had to start earning

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> money because I couldn't live there for free anymore. He also said that I had to start paying for my lines. He said I could work on the street for him.

> During this time my parents started looking for me. They phoned the school and the police, and the other children at school who knew where I was told them. The police came with my parents and fetched me the same day. No one as arrested because the men were not at home and they later told the police that I just ran away from home and was staying there. I think that if children knew more about these dangers they will still use drugs because drugs make you feel good. Children do anything to get drugs. That is why my friend is still living with her boyfriend, running away from home and not coming to school – he is much older than her and gives her lots of things because he has lots of money.[35]

This narrative further emphasises the complex intersections of trafficking with drugs, alcohol, sexual desire and peer pressure. It also stresses the need to collaborate with educationalists and, more specifically, to develop the curriculum so as to engage with this intricate and complex human rights violation. In addition, both the survey and narrative data of this pilot research study, highlight limitations and warrant for further research to better explore the implications of capitalism for human trafficking.

4. Conclusion

Social work, sociology and criminal justice are at the forefront of human trafficking research.[36] However, human trafficking will continue to be a growing business in the global illicit economy if other sectors and disciplines do not intervene. Education is one such sector that can create awareness through the school curriculum so that from a young age, children can be more knowledgeable of human trafficking so as to protect themselves and others from falling victim to it. Ultimately, without the collaboration with the curriculum the evils of capitalism are perpetuated and our children continue to be stuck in a traffic jam.

Notes

[1] Rukmini Callimachi, 'Senegal Child Trafficking,' *Humanrightstrafficking.org*, viewed 15 January 2014, http://www.humantrafficking.org/updates/774/.
[2] Kevin Bales, 'What Predicts Human Trafficking?,' *International Journal of Comparative and Applied Criminal Justice,* 31.2 (2007): 269.

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[3] Carol Allais, 'Human Trafficking: Some Research Challenges for South Africa,' *Acta Academia,* 45.3 (2013): 268-290.
[4] Carol Allais, 'Human Trafficking,' 270.
[5] Kevin Bales, 'What Predicts,' 278.
[6] Ibid.
[7] Mark Lusk and Faith Lucas, 'The Challenge of Human Trafficking and Contemporary Slavery,' *Journal of Comparative Social Welfare,* 25.1 (2009): 52.
[8] United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*. Geneva: United Nations, 2000.
[9] Kevin Bales, 'What Predicts,' 270.
[10] Carol Allais, 'Human Trafficking,' 284.
[11] Ibid, 285.
[12] Virginia Batchelor and Illana Lane, 'Breaking the Code: Domestic Minor Sex Trafficking and School Children,' *Children's Human Rights and Public Schooling in the United States*, ed. J. Hall (Rotterdam: Sense Publishers, 2013), 103-115.
[13] Kevin Bales, 'What Predicts,' 269-279.
[14] Ibid, 269.
[15] Ibid.
[16] Mark Lusk and Faith Lucas, 'The Challenge of Human Trafficking,' 52.
[17] Ibid.
[18] Virginia Batchelor and Illana Lane, 'Breaking the Code,' 103.
[19] Carol Allais, 'Human Trafficking,' 269.
[20] Kevin Bales, 'What Predicts,' 269.
[21] Kevin Lusk and F. Lucas, 'The Challenge of Human Trafficking,' 52.
[22] Kevin Bales, 'What Predicts,' 269-279.
[23] Carol Allais, 'Human trafficking', 270.
[24] Mark Lusk and Faith Lucas, 'The Challenge of Human Trafficking,' 52.
[25] Ibid.
[26] Kevin Bales, *Ending Slavery: How Can We Free Today's Slaves*, (Berkeley: University of California Press, 2007), 16.
[27] Kevin Bales, 'What Predicts,' 278.
[28] Petro Du Preez and Shan Simmonds, 'Trafficking as a Human Rights Violation: Is South Africa's Curriculum Stuck in a Traffic Jam?,' *Journal of Curriculum and Teaching,* 2.2 (2013): 102-111.
[29] Mark Lusk and Faith Lucas, 'The Challenge of Human Trafficking,' 52.
[30] International Labour Office, *Training Manual to Fight Trafficking in Children for Labour, Sexual and Other Forms of Exploitation*. Geneva: International Labour Office, 2009.
[31] Kobus Maree and Jacques Pietersen, 'Surveys and the Use of Questionnaires,' *First Steps in Research,* ed. K. Maree (Pretoria: Van Schaik, 2007), 145-153.

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[32] Jacques Pietersen and Kobus Maree, 'Statistical Analysis 1: Descriptive Statistics,' *First Steps in Research,* ed. K. Maree (Pretoria: Van Schaik, 2007), 183-195.

[33] Jan Nieuwenhuis, 'Analysing Qualitative Data,' *First Steps in Research,* ed. K. Maree (Pretoria: Van Schaik, 2007), 99-117.

[34] Petro Du Preez and Shan Simmonds, 'Trafficking as a Human Rights Violation,' 109.

[35] Interview with the Authors, 2013.

[36] Virginia Batchelor and Illana Lane, 'Breaking the Code,' 103.

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Shan Simmonds is a senior lecturer in Curriculum Studies at the North-West University, South Africa. She is also a member of the research unit for Education and Human Rights in Diversity. Her areas of research include: curriculum studies, gender studies and human rights education.

Petro du Preez is an Associate Professor in Curriculum Studies at the North-West University, South Africa. She is also a member of the research unit for Education and Human Rights in Diversity. Her areas of research include: curriculum studies, human rights education and religion education.

Part III

Child Abuses

Intersexuality and Discrimination: Silence as Family Violence

Isabel Maria Sampaio Oliveira Lima, Andréa Santana Leone de Souza, Jamile Guimarães and Ana Karina Canguçu-Campinho

Abstract

Intersex refers to the condition at birth in which the sexual and/or reproductive organs do not meet society's expectation of the male or female body. The condition of being intersex challenges the rigid cultural boundaries established between the sexes. In the context of family, silence and secrecy become common strategies upon the birth of the intersex child. The goal of this study is to analyse the processes of stigmatization and discrimination of intersex children from the perspective of their families. A qualitative methodology was used with a literature review and semi-structured interviews with family members. The literature reviewed showed the family as the locus of re-enactment and reinforcement of social representations of the intersex individual as 'abnormal'. Considering the beliefs related to sexuality and to gender identity, the intersex child is perceived by the family as a challenge, provoking a variety of feelings among the family members. The family develops care practices seeking to hide and/or make invisible the child's situation. Some of these practices reproduce the stigma associated with the intersex child. Stigmatization and discrimination are understood to be processes of debasement of the subjects. These processes, which create and strengthen social inequalities already present, also reflect levels of violence when committed within the family. The interface between intersexuality and family leads to peculiar stigma characteristics: the potential condition of debasement and/or social exclusion generates feelings of shame, anxiety and fear. The stigma extends to the child's family circle. These feelings mobilize contradictory forces: strategies of denial and concealment lead to stigmatization, and end up intensifying the social discrimination of intersex children. In order to avoid exposing the children to situations and contexts of possible prejudice, the family imposes daily interdictions.

Key Words: Family; Intersexuality; Domestic Violence; Discrimination; Right of the Child.

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1. Introduction

Throughout the course of human history, only in the twentieth century were the attributes of equality and universality of rights effectively declared, being officially recognized in some countries with the advent of the Universal Declaration of Human Rights.[1]

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The condition of respect for equality, the right to human diversity and the importance of tolerance among people, even if it seems natural, had not yet been fully assimilated into contemporary society.

The broad normative system of protection of the rights of the child, although consistent, does not guarantee the rights of those under eighteen. Beyond the need for progressive legislation, society needs to overcome its cultural and ideological norms. These norms serve as a framework for the restrictive classification of people. This social and cultural classification often defines criteria that dictate who will and who won't be accepted according to their characteristics.

Despite the significant advances stated in the Convention on the Rights of the Child (CRC) in 1989, many of these rights are still not respected in various member-states.[2]

In Brazil, after overcoming 20 years of dictatorship, the constitutional progress assimilated the principles of CRC in article 227 of the Federal Constitution, and guaranteed assistance from the family, society and the State to persons under 18.

This legally defined co-responsibility for the three entities, however, was not able to accommodate all children, especially the children who are born in a condition that the family is not able to handle. Among children facing difficulties with their own family members given their condition, are intersex children.

Intersex refers to the condition at birth in which the sexual and/or reproductive organs do not meet society's expectation of the male or female body. The condition of being intersex challenges the rigid cultural boundaries established between the sexes. In the context of family, silence and secrecy become common strategies upon the birth of the intersex child.

This article analyses the processes of stigmatization and discrimination of the intersex child from the perspective of his/her family ties.

2. Methodology

Semi-structured interviews were conducted with 5 mothers of intersex children and 5 intersex adults.

These interviews provided the data for the dissertation[3] and thesis[4] of one of the authors of this article. The interviews were conducted between 2007 and 2011 at a centre in Bahia/Brazil that provides services to intersex.

The foci of the analysis were the dimensions of secrecy, stigma and social invisibility.

3. Cultural Expectations, Social Norms: Gender as a Basis for Discrimination and Stigma of Intersex Children

According to the post-structuralist point of view developed by Butler,[5] gender is not fixed, but rather is something that needs to be worked out, recreated and put on stage in performances frequently repeated to show that the categories 'man' and 'woman' seem like 'natural' and complementing entities. Recreating gender, then,

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implies the constant reiteration of performances that exhibit characteristics or qualities considered fundamental to the sexes. Therefore, the determination of what one wants or doesn't want to be ends up being subjective, that is, it is up to individuals to develop themselves to fit in to one of these categories.

Understanding the body as biopolitical management, Méllo[6] argues that this political control begins before birth. This definition, however, is previously determined in a discourse defined by a combination of structured expectations in complex networks of assumptions about behaviour, interests and subjectivities. Revealing the sex of the baby is not simply a revelation, but produces an idealization of a child based on gender.

Normative masculinity and femininity are defined by social determinations that range from the choice of colours, toys and clothes considered appropriate for each sex to the future plans for the child, prediction of the child's preferences, behaviour, and manner of being. Bodies that threaten or dismantle this sex/gender coherence, create a state of ambiguity that obliterates the possibility making viable a course of intelligible life.

Thus, the birth of an intersex child causes the family to deal with some issues: What is the true gender identity of this child that clashes with the cultural expectations of gender? What does it mean to 'act normal' in school or in other locations of quotidian life? What would be the child's interests and wishes?

In Western society, including Brazil, intersex is considered by the field of health sciences as a disorder or anomaly.[7] The diagnostic and therapeutic procedures that are a part of the lives of many intersex people, have distinct goals that involve both taking care of one's health as well as trying to adjust their bodies to the social norms of masculinity and femininity.

Popular social discourse tends to classify the intersex person as exotic, queer or an object of curiosity. Amidst these views about the intersex person, the family develops feelings and perceptions about their child. Fear is one of the feelings expressed by mothers of intersex children. Fear that the child will suffer, that their body will feel pain, or that they will suffer from social discrimination.

According to Butler, gender identities are the result of 'a process of materialization that stabilizes over time to produce the boundary, fixity and appearance effects that we care about'.[8] Changes to the traditional ways of thinking about gender generate strong normative reactions. Stark[9] talks about the use of what is called social 'micro-regulation' of quotidian behaviours associated with stereotyped roles that require taking on a certain type of femininity or masculinity.

In the family, silence and concealment are strategies used to avoid social conflict, losses and punishments/sanctions of intersex children. The normative and moral rules that govern these processes are not only related to the bodies, but are also present in the various social spaces in which they circulate.

Often, secrecy is a common recourse for families of children born into the intersex condition,[10] establishing a strategy that begins during gestation, at the

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moment in which the doctor reveals the probability of the child being born into the intersex condition:

> So I was afraid that he (the husband) would start saying to people that the it would no longer be a girl, that it could be a boy and the people would not understand because the first question when we are doing … 'Are you doing pre-natal care? Are you? What is it? What is the sex?'[11]

Reports indicate how the secret is kept by different generations and restricts the dialogue of family members who have the same intersex condition. In the excerpt below, the mother of an intersex child speaks about her aunt who was born into the same condition. The impossibility of dialogue intensifies the social 'muteness and deafness' surrounding this topic:

> There is an aunt of mine, who doesn't talk about it, but my grandma says that she had this problem with her sex, do you understand? An aunt of mine. Yes. Sister of my mother, only she doesn't want anyone to talk about it, never told me anything and I also didn't want to pry ... She lives here, but she doesn't want anyone to talk about it, never talked about this subject with me … And her body is totally different, the body hair, she had a moustache, didn't have breasts ... this is a subject that she never talked about. We know, a little, right? From my grandma. I am not going to approach her and ask about it.[12]

It is important to acknowledge the complexity of the feelings, significations and actions taken by the family. In this sense, the strategy of silencing intersexuality should signal the fact that the family is a central agent in determining ways of being. The family defines what is and isn't considered normal according to its values. In its role as discipliner and regulator of individuals, the family is also responsible for legitimizing and consolidating standards of socially constructed normality.[13] Given the situation of the child, it is unethical to remain silent, or provide evasive answers the hide the diagnosis. Although many families want to protect their child from the being discriminated against by others, the families don't act against the binary system. The families often reproduce the models of what is considered 'normal' or 'abnormal', reinforcing the humiliation of and violence against the intersex child.

Some care strategies are developed by families to prevent the exposure of the child to possible situations of discrimination. One common example is to 'reduce people's knowledge of the 'ambiguous genitalia'. This way, mothers protect

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themselves and their children from future questioning and speculation about this situation'.[14]

> When I came home I could call my daughter by her name Isabela, I could show affection because there (in the maternity) there were many people, there were many mothers, so I could not be open, exposing ... It's that sometimes people don't understand, lack guidance, or are even ignorant, and don't have knowledge about the subject, so it's hard.[15]

The family conflicts trigger and provide centrality to the experience of 'feeling different' among those who know the secret. The arrival of the intersex baby is a process of difficult assimilations, lessons and development of guidance abilities by the parents. Accounts describe how this moment, whose duration extends through the period of development from infancy to adolescence, involves emotions of despair, sadness, disappointment, humiliation, feelings of disrespect, worthlessness, inferiority, hopelessness and helplessness.

For the family, the ambivalent condition of the intersex child carries with it the loss of cultural references in regards to child rearing and to the beginning of socialization. A deeply gender-centric undertaking that relies on the ability to control the body.[16] In a culture characterized by the 'epistemological system of the eye',[17] the body with gender is fundamental for the development of a self that is known and recognized, not only by others, but also by oneself.[18] Frost[19] tells of the possibility of the forming of a 'deteriorated identity' in circumstances in which, social differences – especially of gender, race and deficiencies – restrict experiences of the (active) development of the personal identity of young people.

Goffman uses the concept of social identity as a basis to discuss the theme of stigma. According to him[20], the stigmatized identity is lodged in the gap between the normative social expectations and real identity, where these expectations cannot be met and this individual is 'reduced in our minds [...] to a contaminated and discredited person'. This presents 'a defect, a weakness, a disadvantage', a 'disparaging attribute' in the form of physical deformities, allegations of personal character flaws, or marginal social designation (minority status).

Nevertheless, Goffman notes that it is not the attribute itself that leads to stigma, but the attribute put in the context of relationships. Therefore, the stigmatization process would always require a social context and a situation of interpretation of attributes and would always lead to a process of exclusion or marginalization of the individual.

Thus, two types of stigmas are defined: the visible stigma and the invisible stigma. Visible stigma is felt by people who have a perceptible characteristic and, thus, the major concern is centred on the manner of dealing with the tension created by interaction with society. Invisible stigma only becomes real when the

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attribute is revealed, directly or indirectly. This way, a new problem arises: the control of the information regarding one's own condition. Therefore, in many situations, people hide their attribute due to shame or fear of being judged or stigmatized.

Emphasizing the importance of the 'appearance visual', Goffman describes the fundamental role of the body, as a biological and social reference, in stigmatizing practices (by oneself and by others), and in the context of identity development. Some families restrict the child's social contact to prevent his identification as different and discriminatory. Mothers speak of the potential and imminent possibility of recurrent stigmatization in the complexity of daily social interaction. As a result, creating and developing the child's identity becomes a process of hide and seek in the lives of these children. The transgression of bodily codes of gender can lead to the regular abuse of these children: bullying, insults, social isolation, public humiliation and physical violence are cultural practices of punishment for deviants applied in the near surroundings. Similarly, the 'not said and not heard' about the intersex individual also manifests itself in the context of social relationships:

> Because you see, if she went to a neighbour's house, a child just like her discovers this problem and comes around joking, you understand? So, I don't allow it because of this, because she herself doesn't know anything, doesn't understand. She even said this: 'Hey mom, the girl at school asked me why I am this way.'[21]

Amid the contradictory feelings experienced by the family, the hegemonic conversations about the intersex child converge toward the establishment of a pact of silence. The family as well as health professionals believe that 'the emotional integrity of the intersexual individual is maintained through privacy and keeping it secret'.[22]

This silence facilitates the creation and intensification of a sensation of singularity and rarity:

> Boy, I thought I wouldn't find anyone who went through the same thing that I went through, you know… I sat in front of the computer and cried. I thought that I ... my God, only I have to endure this...[23]

This sensation is described by Holmes[24] when he tells that he grew up thinking that the reason she had had clitoral surgery at 7 years old was because she was the only one in the world born this way.

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This interviewee speaks of an important aspect of memory in the development of the identity and the experiences of the intersex person.

In discussing the issue of discriminatory prejudice, the centrality of violence in social relationships of those considered different or deviant is important. Taussig[25] argues that all constructs of alterity is preconceived. Prejudice is seen as a way of defining alterity, starting with the process of invalidating this Other being.

Thus, beyond silence, general rejection of differences, promotes suffering of those born into the intersex condition. The excerpt below shows the dimension of symbolic violence, can lead to physical assault. Like the case of a grandfather that did not accept the birth of an intersex child, transforming her into a metonymic, abnormal and deformed figure:

> What I know is that in my childhood my parents were, let's say, required, by imposition, to live with my grandfather and grandmother, except my grandfather wouldn't accept me. For instance, I was in the cradle a few days after being born and he started a fire near the crib.[26]

Perceived discrimination, defined as an 'individual interpretation of events as discriminatory'[27], has been associated with a variety of negative results for the young, including issues with physical and mental health, low self-esteem and low self-confidence, getting involved with crime and poor academic performance.[28]

Experiencing the significant deprivation of a sense of coherence or connection with a dominant culture is considered the main source of stress for those who are targets of discrimination.[29] Serious psychosocial risks are associated with the repeated exposure of children to socially discriminatory situations that deprive them of the necessary opportunities to develop positive affiliations and associations, so that healthy identities can be constructed.[30]

Considering that subjectivity is influenced by relationships of power that affect our bodies, we face a subjectivity that is permanently undergoing change. Influenced by relationships of knowledge-power-truth in the realm of standards, this produces effects such as abjection, defined by Butler as:

> precisely those 'inhospitable' and 'uninhabitable' areas of social life, that are, nevertheless, densely populated by those who do not have the status of the subject [...] In this sense, then, the subject is defined through the force of exclusion and of abjection.[31]

In fact, what leads to discrimination and exclusion is not the situation of ambiguity itself, but the prejudice against people perceived as abnormal. This leads

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to different approaches and treatments, reflecting the 'risk' of contamination that these people potentially represent.

   The difference perceived as deviance leads to the mechanism of discipline, and thus, prejudice serves to establish and maintain the stability of the norm.[32] Intense forms of discrimination aim to silence differences, particularities and singularities.

Notes

[1] The United Nations Declaration of Human Rights, (New York, 10 December 1948).

[2] The United Nations Convention on the Rights of the Child, (New York, 20 November 1989).

[3] Ana Karina Figueira Canguçú-Campinho, 'Aspectos da Construção da Maternidade em Mulheres com Filhos Intersexuais,' (Masters dissertation. Federal University of Bahia, 2008).

[4] Ana Karina Figueira Canguçú- Campinho, 'A Construção Dialógica da Identidade em Pessoas Intersexuais: o X e o Y da Questão,' (PhD thesis, Federal University of Bahia, 2012).

[5] Judith Butler, *Gender Trouble. Feminism and the Subversion of Identity* (New York: Routledge, 1990).

[6] Ricardo Pimentel Méllo, 'Corpos, Heteronormatividade e Performances Híbridas,' *Psychology and Society* (Belo Horizonte, April 2012): 197-207. Volume 24, n.1.

[7] Ana Karina Figueira Canguçú- Campinho, 'A Construção Dialógica da Identidade em Pessoas Intersexuais: o X e o Y da Questão,' (PhD thesis, Federal University of Bahia, 2012).

[8] Judith Butler, *Bodies that Matter: On the Discursive Limits of 'Sex'* (New York: Routledge, 1993), 9.

[9] Evan Stark, '*Coercive Control: How Men Entrap Women in Personal Life*'.(New York: Oxford University Press, 2007).

[10] Ana Karina Figueira Canguçú-Campinho, 'Aspectos da Construção da Maternidade em Mulheres com Filhos Intersexuais,' (Masters dissertation. Federal University of Bahia, 2008).

[11] Maria Gabriela, mother of an intersex child, 34 years old, Interview with the Authors, 14 June 2007.

[12] Anne, mother of Mercia, Interview with the Authors, 1 June 2006.

[13] Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, ed. C. Gordon (Brighton: Harvester, 1980).

[14] Canguçú-Campinho, 'Aspectos da Construção da Maternidade,' 63.

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[15] Verônica, mother of an intersex child, 28 years old, Interview with the Authors, 26 June 2007.

[16] Sinikka Aapola, Marnina Gonick and Anita Harris, *Young Femininity: Girlhood, Power and Social Change* (Basingstoke: Palgrave Macmillan, 2005).

[17] Steve Connor, 'The Modern Auditory 1,' *Rewriting the Self: Histories from the Renaissance to the Present,* ed. R. Porter (London: Routledge, 1997), 203-224.

[18] Liz Frost, 'Doing Bodies Differently? Gender, Youth, Appearance and Damage,' *Journal of Youth Studies* 6.1 (2003): 53-70.

[19] Ibid.

[20] Erving Goffman, *Stigma. Notas sobre a Manipulação da Identidade Deteriorada*. Rio de Janeiro: Guanabara, 1988

[21] Anne, Interview.

[22] Canguçú-Campinho, 'A Construção Dialógica da Identidade,' 17.

[23] Lucimeire, intersex woman, 34 years old, Interview with the Authors, 16 April 2010.

[24] Morgan Holmes, 'Is Growing Up in Silence Better than Growing Up Different?' *The Journal of Transgressive Gender Identities* 2.5 (1998): 7-10, viewed 11 April 2012, http://www.isna.org/pdf/chrysalis.pdf.

[25] Michael Taussig, 'Mimesis and Alterity,' (New York and London: Routledge, 1993).

[26] Lucimeire, Interview.

[27] Jean S. Phinney, Tanya Madden and Lorena J. Santos, 'Psychological Variables as Predictors of Perceived Ethnic Discrimination among Minority and Immigrant Adolescents,' *Journal of Applied Social Psychology* 28 (1998): 937-953.

[28] Josephine W. Y. Ng and Sandra K. M. Tsang, 'School Bullying and the Mental Health of Junior Secondary School Students in Hong Kong,' *Journal of School Violence* 7.2 (2008): 3-20.

[29] Ilan H. Meyer, 'Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence,' *Psychological Bulletin* 129 (2003): 674-697.

[30] Josephine W. Y. Ng and Tsang, 'School Bullying and the Mental Health of Junior Secondary School Students in Hong Kong,' *Journal of School Violence* 7.2 (2008): 3-20.

[31] Butler, *Bodies that Matter*, 9.

[32] Sonia A. M. França, 'Diferença e Preconceito: a Efetividade da Norma,' *Diferenças e Preconceitos na Escola: Alternativas Teóricas e Práticas*, org. Julio Aquino (São Paulo: Summus, 1998), 203-215.

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Isabel Maria Sampaio Oliveira Lima holds a PhD in Public Health at the Public Health Institute of the Federal University of Bahia (UFBA), Brazil. She is judge of the State of Bahia, visiting professor of UFSB and coordinator of the research group CNPq/University Católica do Salvador 'Human Rights, Right to Health and Family'.

Andréa Santana Leone de Souza is a lawyer. Currently, she is a master's student at the University of Law (Federal University of Bahia, Brazil). Her research is about personality´s rights of children with intersex. She is a member of the research group Human Rights, Right to Health and Family (CNPq/Catholic University of Salvador).

Jamile Guimarães has been researching on children and young people issues since her graduation in Sociology (Federal University of Bahia, Brazil, 2009). She holds a Master's Degree in Community Health (Federal University of Bahia, 2011). She is currently a PhD student in Public Health (University of São Paulo, Brazil).

Ana Karina Canguçu-Campinho holds a PhD in Public Health at the Public Health Institute of the Federal University of Bahia (UFBA)/Brazil. She is a Psychologist at the Institute of Psychology of UFBA and coordinates the Centre for the Study and Practice on Intersex.

Jamile Guimarães has been researching on children and young people issues since her graduation in Sociology (Federal University of Bahia, Brazil, 2009). She holds a Master's Degree in Community Health (Federal University of Bahia, 2011). She is currently a PhD student in Public Health (University of São Paulo, Brazil).

The Role of the Law Professional in the Protection of the Child Victim of Sexual Abuse

Júlia B. Caribé, Isabel M. Lima and Andréa S. Souza

Abstract

In Brazil, the Rights of the Child are guaranteed under the Federal Constitution. Brazilian law combats sexual violence and protects children. Among the five Brazilian regions, the Northeast reported the most incidents of violence against children and adolescents, with a rate of more than 94 per 100 thousand inhabitants in the first half of 2010. Of these, 28.71% were cases of sexual violence. The State of Bahia ranks third in Brazil with the highest number of reported incidents of child sexual abuse. This state has 61 law schools of which 12 are public and 49 private. The goal of this article is to discuss the role of law schools in the preparation of the lawyer to act in defence of the child victim of sexual abuse in Bahia. A qualitative method was used, with a literature review, legislation review, semi-structured interviews with young lawyers and a survey of the Resolutions of the Ministry of Education and Culture. For the interviews, professionals who had graduated within the last five years were selected from five different law schools in the Bahian capital. It should be noted that the topic of the Rights of the Child—based on Resolution 9/2004 of National Commission on Higher-Education—is not part of the basic curriculum of the study of Law. Some law schools offer a course on the Right of the Child as a requirement. The professionals interviewed, even after having taken a course on children's rights, do not feel adequately prepared to deal with the child victim of sexual abuse. In order for the professional to act as a social change agent able to integrate legal concepts regarding the defence of children, it is necessary for him to understand the interpretation of laws from an interdisciplinary perspective under the egis of Human Rights.

Key Words: Sexual abuse, law professional, right of the child, child protection.

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1. Introduction

The different forms of violence against children are a problem of great social relevance.[1] Abusive acts of a physical nature cause immediate and visible consequences. When apparent, evidence of the manifestation of the violence makes possible a diagnosis and treatment of the child and the family. There are other forms of violence, however, that leave hidden scars whose effects are not readily manifested.[2]

It is known that children, regardless of socioeconomic conditions, show signs of depression and anxiety when exposed to situations of violence.[3] Sexual abuse is classified as a physical and/or psychological form of violence where the abuser

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uses as dual strategy. With the intention of satisfying himself sexually, the adult takes advantage of the child's trust in him or of his superiority in relation to the victim. The abuse, which is a crime, causes psychological harm of an intangible nature.[4] The abuse is characterized by uncomfortable situations and psychological dominance. And the child, due to his or her natural immaturity, cannot be held responsible for the occurrence of the abuse.

Taking into consideration the vulnerability of children and adolescents who are in phases of growth and development,[5] sexual abuse should be carefully investigated and contextualized. An interdisciplinary approach is necessary to properly analyze the abusive act, taking into consideration cultural and social elements, as well as the issue of quality of life, since poverty has been correlated to exposure to violence.[6]

According to research conducted in Brazil by the Ministry of Justice, among Brazil's five regions, the Northeast had the highest rate of complaints of violence against children and adolescents, with over 94 complaints for every 100 thousand inhabitants in the first semester of 2010. Of these, 28.71% were related to sexual violence. The State of Bahia ranks third in Brazil among states with the highest reported rate of child sexual abuse.[7] It should be noted that despite the significant number of occurrences, violence against children is still shrouded in invisibility and silence.[8] The state of Bahia, which has a population of over 15 million, has sixty-one undergraduate Law schools, twelve of which are in public and forty-nine in private Institutions of Higher Education - IHE.[9]

In Brazil, the resolution of the Ministry of Education and Culture—MEC which provides guidance to law schools—does not include the topic Rights of the Child and Adolescent (RCA) in its base curriculum as a required subject. According to Coelho,[10] the law school curriculum is its backbone. In the law schools geographically positioned throughout the country, there is great uniformity among the curriculum. In other words, practically the same subjects are offered and taught; there is not enough attention paid to local issues.

2. Goal and Methodology

The goal of this article is to discuss the role of legal education in the lawyer's preparation to act in defense of the sexual abuse child victim in the State of Bahia. To this end, a qualitative approach was adopted, using the techniques of literature review, legislative review, and semi-structured interviews of ten lawyers within five years of their graduation from five different Law schools in the city of Salvador, capital of Bahia. A qualitative approach is that which allows for a deeper probing 'into the world of the meanings of human actions and relationships, aspects not perceived nor captured by equations, averages, and statistics'.[11]

The literature review was conducted by researching scientific articles and books, in digital or hard copy formats. The research began with a search of the terms *legal teaching*, *legal education*, and *infant sexual abuse* in the databases of

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the libraries of the Catholic University of Salvador (UCSal), the Baiana Law's College, and the SciELO index database. This study is part of a research project, in its first survey phase coordinated by the third author, of the Research Group on Human Rights and Right to Health and Family.

The main research procedure employed was semi-structured interviews based on the academic experience of the lawyers interviewed. Ten lawyers were interviewed and were selected according to following criteria: having graduated from law school within the last five years; having passed the equivalent of the Bar Exam; having graduated from one of five different law schools in the city of Salvador, of which four are private and one public. The ethical aspects of the research were observed with prior signing and clarification of an Informed Consent Term. The interviewers inquired of the current nuances of the teaching of law in Salvador.

3. Results and Discussion

The questionnaire included eight open-response questions, allowing for the development of responses and adopting a few central points. After data analysis, the following themes were identified in the interviewees' responses:

A. Emphasis of the Law Curriculum

Analysis of the responses showed that 100% of the interviewees claimed that the emphasis of their undergraduate curriculum was on litigation and not mediation. This result exposes a telling characteristic of law courses in Brazil since their implementation.

Based on the mold of the University of Coimbra, Portugal, undergraduate law schools in Brazil, since the nineteenth century to this day, are characterized by nuances of what Paulo Freire calls 'banking education', a permanent act of depositing content, in which the educator is the depositor and the student the depositary.[12] This pedagogy is a mere rigid exposure to content received and internalized in the same manner by students, without further stimulus to reflect and develop legal thinking as an element capable of innovation and promoting conflict resolution in the interest of peace. Modern legal education provides guidance that legal knowledge should be understood as an interconnected, and not a compartmentalized, phenomenon.[13]

Traditionally, the content taught in law schools was geared toward professional training, in the words of Gustin,[14] starting with the formal-logic interpretation of the standards related to a system. The curriculum prioritized transmission of dogmatic disciplines to enable the professional to solely apply the technique, absorbed in the social complexity in which it is found.

In the twentieth century, the reformation of legal education in Brazil was driven by the combination and harmonization of factors such as: participation of the academic and professional community in the discussion and definition of basic

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guidelines; an awareness of the need to change the law courses, and therefore, make them compatible with the new paradigms of law; a broader understanding that the pedagogical changes necessary are not limited to changing the curriculum; and the need to link teaching, research and extension,[15] among other aspects that attempt to move legal education in Brazil to a more human perspective.

B. Interdisciplinarity

The responses to the question asking about the interdisciplinary nature of the courses corroborated recent studies about legal education in Brazil. Among the ten interviewed, five responded that their undergraduate course did not have an interdisciplinary nature; four responded that there was interdisciplinarity in their undergraduate course, and one responded that, despite having had the opportunity to take classes in other academic disciplines at the university, interdisciplinarity was not a significant feature of the institution's law school course.

Interdisciplinarity or transdisciplinarity are means of making this mechanism of intellectual development of the future lawyer a reality.[16] Different perspectives from different areas of knowledge should permeate the entire legal education process, for it is this characteristic of teaching that makes possible the preparation of a professional who knows how to deal not only with lawsuits, but also with conflict resolution, and who has an understanding of the human condition.[17] This is 'one of the most important bases for education aimed at promoting peace, to which we are linked by essence and by vocation.'[18]

On this subject, the interviewees were invited to suggest changes that they considered necessary to the current Bachelor's degree law curriculum. All spoke, directly or indirectly, about the need to broaden the theoretical approach of the classes, as well as promoting practical experience for future lawyers.

The insertion and valuing of historical and propaedeutic classes were commonly mentioned by interviewees. The lack of education of a critical thinking, humanistic, and interdisciplinary nature, constitutes, to the interviewees, a determining factor in the deficiency of the law curriculum, that in general, are seen by them as being little invested in the preparation of professionals who will act as agents of social transformation.

The Law School Curriculum Guidelines were developed by the Board of Higher Education of the National Council of Education – acronym CNE/CES in Portuguese, of the Office of Higher Education of the MEC, by way of Resolution nº 9 of 2004. This guidance aims to give fundamental direction to the education offered by law schools in Brazil. It recommends that the law schools prepare students to be able to deal with a legal world in constant transformation, developing legal reasoning skills capable of interpreting and valuing socio-legal phenomena from a well-grounded humanistic standpoint, reflective, critical, and exhibiting citizenship.

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A lawyer, to act as an effective advocate for social and intersubjective peace, needs, in the course of his education, a prospect for new forms of preparation. The transmission of content is not sufficient, but needs 'the study and improvement of new practices, that guarantees a more effective system of social distribution of justice'.[19]

C. Rights of the Child and the Adolescent as a Required Course

Four respondents said that such a course was not a requirement in their institution, two of whom are in a public IES and two in a private IES. These interviewees emphasized the importance of the inclusion of such a course.

According to the guidelines established by Resolution CNE/CES nº 9/2004,[20] law schools have autonomy to define curriculum content in their pedagogical projects. As such, they must address three interlinked axis of education, which are: the axis of fundamental education, which establishes the relationship between the law and other disciplines; the axis of professional training, with essential study of courses with positivist content and dogmatic focus; and the axis of practice preparation, focusing on the integration of practice and theoretical content taught in the other axes. Brazilian law does not require law schools to offer RCA as a requirement of the basic curriculum of the IHE.

The course RCA deals with the rights regarding infancy and youth, not only by studying the Statute of the Child and the Adolescent – SCA, but also in a socio-historical context of all legislation regarding the child and the adolescent. It deals with the evolution of the theories on the topic, guiding principles regarding the protection, special legal guardianship, among other topics that focus on the understanding of the current condition of the subject of the rights of minors.

In order to better understand the importance of teaching about the RCA in law schools and the significance of the promulgation of the SCA in Brazil, through Law nº 8.069 of 1990, it is necessary to highlight the legislative history regarding infancy, which culminated in the efficacy of the basic principles of RCA, which are: the peculiar condition of a person in development and the full protection of the child.

The Brazilian Federal Constitution of 1988- CF/88, aside from exhaustively listing the rights and guarantees of the citizen in article 5,[21] proclaimed the Legal Doctrine of Full Protection, establishing the specific rights that should be universally recognized. In article 227,[22] known by the international community as the summary of the UN Convention of 1989, declares the special rights of the child and of the adolescent, as an obligation of family, of society, and of the State: the right to life, food, sports and leisure, culture and education, dignity, respect, liberty and family and community life, among others, in addition to keeping them safe from all forms of negligence, discrimination, exploration, violence, cruelty and oppression.[23] In summary, it is an "absolute priority", especially regarding the primacy of social and public policies.

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Beginning with CF/88, the SCA brought a new perspective in the realm of legal protection of the child and adolescent. It broadened the gamut of rights for these subjects, aiming to protect them from all forms of violence through specific measures of protection and administrative and penal sanctions.[24]

D. Preparedness to Deal with Cases of Child Sexual Abuse

The interviewees were questioned if, at some point in their undergraduate education, the topic of *child sexual abuse* was covered, and if they felt prepared, as professionals, to deal with this type of case. Among the ten participants, five responded that the topic was covered in a class in a superficial manner, in a Criminal Law course. Those that took a RCA course also talked of the little attention paid to the topic. Two participants stated that they had studied the subject and three responded that they had no exposure to the topic.

Six participants said they were not technically or emotionally prepared to deal with cases of child victims of sexual abuse because they believed there was a need for greater sensitivity, knowledge of psychology and humanistic training to know how to assist such victims effectively, skills that were not acquired in college. Two participants stated that they had the technical knowledge to deal with this type of situation, understanding the protective measures available to the child in the legal framework. Even so, they don't feel comfortable to act in these cases, for the same reason of the aforementioned participants. Only two participants responded positively in regards to being able to deal with cases of child sexual abuse.

The mistreatment of children has its roots in ancient cultures, and has been reported from ancient times to the present day, in all parts of the world. Many centuries went by until the child was effectively considered to be an individual with special characteristics, and the mistreatment began to be addressed more broadly.[25] This change, which extended to the legal sphere, doesn't mean, per se, that the abuse of children ceased to exist.

Roque and Ferriani state that the way in which the Brazilian judiciary tries to resolve the legal problem is reductionist, dealing only with the technical aspects of the problem. There is not, according to them, human involvement in dealing with these cases to resolve them quickly and fairly, avoiding the re-victimization of the child and the perpetuation of the elements involved in the violence against girls and boys.[26]

The lack of specific training of lawyers to deal with these situations with children contributes to the lack of success in guaranteeing protection to children during the judicial process in many cases. The lack of adequate treatment of child victims not only complicates the task of unveiling the abuse, but also aggravates the vulnerability of the child that has been sexually abused.[27]

Specifically with children victims of abuse, who are in a fragile state and who are suffering, one should question if there is cultural, scientific, and ethical training

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to deal with this experience of abuse, and if there is the ability to deal with this situation, which is also difficult for the adult.[28]

4. Final Thoughts

The teaching of law can and should maintain a dialogue with other disciplines such as Social Work, Psychology, Philosophy, Communication, Education, History, Social Sciences, Health, among others, to promote continuous reflection on the content relating to childhood. This content needs to be treated with all of the peculiarity that the topic requires, in an interdisciplinary manner, aiming for the full protection of the child. In order to break the silence and end injustice, application of the law is not sufficient, a network of social actors is needed that recognizes the need to discuss the value of childhood and public policies regarding the family, education, health and media. To effectively address violence against children, it is necessary and urgent for law school graduates to become conscientious and proactive professionals from the perspective of alterity and solidarity.

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Julia de Barros Caribé is Masters student in Family at Contemporary Society, at Catholic University of Salvador. Her researching is about full protection of the child victim of intrafamilar sexual abuse. Since her graduation in Law (Catholic University of Salvador) until now, she is a member of the research group 'Human Rights, Right to Health and Family' (CNPq/Catholic University of Salvador).

Isabel Maria Sampaio Oliveira Lima holds a PhD in Public Health at the Public Health Institute of the Federal University of Bahia (UFBA)/Brazil. She is judge of the State of Bahia, visiting professor of UFSB, and coordinator of the research group, CNPq/University Catolica do Salvador 'Human Rights, Right to Health and Family.'

Andréa Santana Leone de Souza is a lawyer and currently a Masters student in University of Law (Federal University of Bahia, Brazil). Her research focuses on the personal rights of intersex children. She is a member of the research group 'Human Rights, Right to Health and Family' (CNPq/ Catholic University of Salvador).

What Needs to Be Done in Prevention Programmes?

Miriam K. Damrow

Abstract
Child sexual abuse and assault can be characterized by an individual committing a sexual act against other individuals who are too young to consent. Sexual acts could range from verbal sexual harassment, to sexual organs being fondled, to penetration (oral or genital), and other sexual acts.[1] Perpetrators stem from heterogeneous populations and can be related to their victims, known by their victims or, more rarely, strangers to their victims.[2] Victims of sexual abuse can suffer short-term and long term adverse consequences on different levels.[3] In many, mostly western, societies the occurrence of child sexual abuse is regarded as a traumatic experience for the victims on an individual level and as a problem of the corresponding society on a macro-societal level.[4] One (Western) response to the problem has been the development of group-based empowerment prevention programmes[5] which are seen as cost cutting and cost-effective. Still, many critiques view the empowerment model is ineffective and dangerous for children at the same time. Some critiques are outlined here and suggestions are made for further preventive directions in child protection.

Key Words: Prevention, child sexual abuse, prevention programmes.

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1. Prevention and Prevention Programmes

Prevention is generally understood as avoiding the occurrence of undesirable, potentially harmful events. Caplan's widely used approach of primary, secondary, and tertiary prevention[6] is very common within educational settings and particularly often used in preschool and school settings.

Primary prevention is seen as preventing the beginning of sexual child abuse as well as emphasizing its reduction prevalence rates. This is done mostly by teaching children how to protect themselves from becoming victims of sexual abuse.[7] Its overall goal is to identify and stop the inappropriate sexual behaviour before it begins.[8] Secondary prevention can be understood as identifying those at risk of being abused and reducing this risk.[9]

Tertiary prevention is seen as targeting those individuals who have a history of being sexually abused and helping them to cope with their history.

Mrazek and Haggerty developed a different approach according to population group at where the content is aimed. They divide prevention into universal, specific and indicated.[10]

Universal prevention can be seen as intended for the general public or a whole population group that has not been identified on the basis of individual risk; the

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intervention is desirable for everyone. Specific prevention can be understood as being intended for individuals or a subgroup of the population whose risk is significantly higher than average; the risk may be imminent or it may be a lifetime risk. Indicated prevention aims at high risk individuals.[11]

Within the broad field of prevention against sexual abuse of children, Caplan's primary prevention approach is by far the most used. Many if not all prevention efforts are organised as being delivered to children in forms of structured programmes[12] and focus on group-based personal safety instructions. These instructions usually vary widely while still having some core contents in common.[13]

2. Critiques

The often used empowerment model is nevertheless being criticized for its aim to make children aware of their (somehow unsafe) feelings and, if occurred, to take action to improve children's safety.[14] While doing so, many prevention programmes focus on children as being their audience. This focusing on children can be seen as holding them responsible for preventing their abuse which, in a way, can be seen as a modified form of the B*lame the Victim* strategy. Many prevention programmes do agree on children not to be blamed for being sexually abused but obviously children are to be blamed when the prevention tactics taught did not work properly: 'These programs teach children what to do in the case of abuse, and since they have been "empowered," the responsibility for the event lies in their hand.'[15]

The tactics and concepts commonly taught within these primary prevention programmes are: say no, run away, get help, tell about funny feelings, and differentiate between good and bad secrets. Most of them are intended as empowering children. This kind of empowering is meant as defence against perpetrators and offenders. Empowering children works fine on a general level but is not applicable to an audience which is in general not able to defend themselves. For instance, running away, a widely used tactic within primary prevention programmes is a very good help if there is a place where the victim can turn to. If not, to where should a child run if running away from offenders means running away from home? Besides, many adults actively encourage children to say 'no' when saying 'no' is used as addressing other people. Almost no parents accept their children saying 'no' to them.

Telling children about 'funny' touches is another widely used and taught tactic within primary prevention programmes. Here, touches are differentiated as good, bad, and confusing (or funny). Good touches are (by definition nonsexual) hugs, whereas bad touches are touches like giving someone a box on the ear. Funny touches are by definition sexual touches. The programmes neglect explaining that sexual touches could (and almost always will) feel good. Furthermore, it is neglected that the connotation of being funny usually refers to expressing sexual

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arousal such as changed heavy breathing, eye gazing and so on. Little is known via empirical research on how children perceive their own sexual arousal – given the fact that they are sexual human beings at least from birth and do experience sexual arousal during infancy rather often. It is therefore difficult to judge on how children rate the sexual arousal of others, e.g. offenders older than the affected child. It might be reasonable to assume that they see sexual arousal of others as *funny*. On a more abstract point of view, these views refer to the concept of *My body is mine.*

Another often criticized point refers to the concept of secrets. The most often used concept is that of good and bad secrets. Good secrets are by definition secrets that will not harm anyone and will, secondly, serve as an enjoyable surprise for a third person. Bad secrets are the ones where children will feel harmed which is usually meant as a euphemism for being sexually abused: no one except the child in question will be harmed if the child tells others. As many former victims can confirm: most victims get into situations of sexual abuse by bribery where an offender bribes a child by affection, material or immaterial gifts and the situation usually continues due to blackmailing: the affected child is told e.g. *I'll go to jail if you tell; No one believes you anyway; It's your fault; I will kill your mom; I will kill your pet, I will kill you if you tell.* Many children are not in a position to judge and to evaluate to what extent this could be true; it might indeed in some cases come true. No child will tell if it is indeed a witness of how the pet got thrown out of the window. Besides, the concept of good and bad secrets requires a level of cognition which is usually developed at an older age (i.e. older than three to five years). Apart from that, not every bad secret is a sexual one. In many families, some facts are secret due to a common understanding and a shared sense of guilt (like a relative in jail) and children are told not to tell anyone about it.

Summing up, the empowerment model appears by far too vague and, simultaneously, far too complex to be understood by young children and to be able to protect young children from sexual abuse.[16]

Another critical view is outlined in an article published in 1999in which Lisa Chasan-Taber & Joan Tabachnik argue that at least four factors limit the range of prevention efforts following the empowerment approach: the social discomfort surrounding sexuality, the absence of clear risk factors to identify potential abusers, the difficulty in voluntary treatment options for abusers, and the intense media attention to it.[17]

Some other critiques refer to the *one size fits all* approach. Within this structured primary prevention approach children are usually sorted into groups as the audience. Within this group some children might have been sexually abused. These children might experience adverse feelings when being informed about tactics against sexual abuse, tactics which usually do not help anyway. Besides, not all children in a group might be at the same developmental level even if they are the same age. Developmentally appropriate prevention is thus needed based on

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empirical research: '…given the lack of data about whether these programs are achieving their ultimate goal, the possibility that they may be causing more harm than good cannot be ruled out.'[18]

As early as 1999, Becker and Reilly already argued for assessing different needs in primary prevention: 'It is also important in future primary prevention approaches to assess not only the developmental level of the program participants, but also their gender, environment, and upbringing influences.'[19]

Furthermore, the role of the socioeconomic status (SES) needs to be examined more closely:

> Although child sexual abuse affects all social classes, there is evidence to show that the risk of abuse is higher in lower socio-economic status (SES) groups. Data from a research project to evaluate the school-based child protection programme taught in New Zealand show that, prior to exposure to the programme, children from the lower SES group were potentially at greater risk of sexual abuse due to their lower knowledge and skill base. After the programme, the low SES children were found to have gained less than their middle class peers and these differences persisted when children were retested 12 months later. The observed SES differences in benefits obtained from the child protection programme can be at least partially attributed to differences in the degree of parental involvement across social class. Children from low income families were the ones least likely to have parent representatives at meetings relating to the programme. Their parents were the least likely to reinforce safety concepts at home and low SES children were the ones least likely to trust their parents to provide protection. The low level of parental involvement was associated with lower levels of teacher commitment to child protection in low SES areas. The effectiveness of child protection programmes is likely to be enhanced if parents can be enticed to attend information sessions where the benefits of their involvement can be emphasized. The particular challenges remaining are how to interest the lower SES parents in education for child protection, ensure their cooperation with school-based teachings and raise the interest and commitment levels of child protection educators in low SES environments.[20]

Other unsolved issues can be seen in heterogeneity of families and values[21] and in an understanding of children as being innocent and thus nonsexual.

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Conceptualizing children as being innocent and inherently nonsexual contradicts children's rights, particularly their sexual rights.

Heterogeneity of families enriches societies in many ways. In terms of prevention efforts, families' heterogeneity is often ignored and neglected. All families, and thus, all children are the same. This might inevitably present some problems for the families and children in question: not every family holds a belief that children are to be empowered. Not every family holds a belief that children could and should say 'no' to adults. In cases where saying 'no' to adults is seen as extremely disrespectful, any prevention based on empowering children to do so is useless and could do harm. The very same applies to heterogeneous values. For many conservative families children should be seen not heard. Empowering children as the only prevention effort the children learn is at least ambivalent not to say damaging.

Furthermore, research has shown and still proves that many offenders are within children's close relationships (offenders like parents, siblings of the parents, grandparents and the like, neighbours, teachers, trainers or other trusted adults). For those offenders, saying 'no' or defending against their attempts is rather useless.

Still, further unsolved and rattling issues around primary prevention efforts deal with the avoidance of sexuality as a topic. The social discomfort surrounding sexuality as a whole has led to group-based prevention programmes in which children were deliberately not informed about sexuality. Within these programmes, they do not learn appropriate names for their genitals, they are not informed about their own bodily reactions due to sexual arousal which of course happens rather often during infancy and still often during childhood, and they are not informed about their own sexual development. Sexual hormones are very active during the whole course of life. These hormones work mostly as growth hormones until puberty, still, they will be active in some form or another as sexual hormones support sexual activities.

Children learn from prevention programmes where sexuality is avoided as a whole that they should not talk about such issues. Wherever sexual issues are concerned the message of these primary prevention programmes is obvious: sexual issues cause uneasy feelings in adults or sexual matters are of no concern to children. Whatever is the case, these assumed thoughts prevent children's telling whether sexual attempts towards has been made.

Beyond these mixed messages children might conclude: if you do sexual things with your body – you're bad. If somebody else does (sexual) things and regardless how that felt – you're bad. Whenever you are a sexual human being – you're bad.

And beyond *that* message children might conclude: it's your body and your body is ok – if it's not sexual. *And* they might conclude: you can talk about everything to me – but your body is so bad we can't even talk about the names of some of your body parts.

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3. Outlook

So, what needs to be done in prevention programmes?

Further primary prevention programmes (provided that Caplan's approach can be used) need at first to consider sexuality of adults and of children. Naming genitals is essential for every prevention effort in order to inform children. The tactics used by offenders should be mentioned and explained: the grooming process by which offenders start to get children can be made visible and be understood. Secondly, children should be informed that bribery is the most often used tactic by abusers. Children get bribed by material or social attention and they get blackmailed if they start feeling uneasy with what is going on. Bribery and blackmailing are concepts which can be explained to children to make them see which tactic is used by the offender in question.

Apart from that, specifically tailored primary prevention programmes need to consider different values and norms. Cultural heterogeneity is desirable but until now it is rather neglected within these prevention programmes.[22]

Beyond all mentioned issues, it is best to develop primary prevention programmes not only for children, but also for adults: at least supporting programmes are needed for non-abusing parents, caregivers, educators, teachers and trainers. Well-trained adults could support children by answering questions, providing help, comfort and support where needed.

Broader contexts might be considered, too, in primary prevention programmes, for example, by establishing a kind of network to which children can turn to. Not all children live in urban areas where they could find help far easier than children in rural areas. Online prevention efforts could be used to support all offline activities. Online activities (such as help-lines) can at least provide some basic support where there is no offline support at all.

Establishing primary prevention programmes in social media such as Facebook or Twitter might as well support children. As the internet is one of the places where children can be sexually abused,[23] it is of utmost importance to recognize the internet as a possible intervention and necessary prevention space.

Last, but not least, children's rights are of utmost importance. They must be considered in any primary prevention programme. These rights might include not only the right to be informed about sexuality but also the right to get help elsewhere; to know that children have a right not to be hurt, to know that sexual abuse of children is forbidden (and most surprisingly, most if not all primary prevention programmes do not talk about legal affairs) which offending adults know very well. It might be useless to teach children to yell: '*You're not allowed to do that*' or to yell '*it's illegal,*' but it might be extremely helpful for children to know they have a legal right to turn to someone else for help.

Beyond all other aspects, sexual education is needed within every primary prevention programme: most children are keen on learning and most children are curious. That being the case it is somehow natural that children are curious about

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sexual matters, too. If children receive profound sexual education and get answers to their (age-appropriate) questions like: where do babies come from? Where do they live before birth?, and the like, they might not be lured into abuse by adults who promise to tell and/or to show them what they are interested in. As stated before, children are sexual human beings and they are in that condition when attending primary prevention programmes, too. These programmes need to be adjusted, not the children attending them.

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Miriam K. Damrow works at the University of Applied Sciences Duesseldorf as a Lecturer. Her research interests extend from child protection, children's sexuality and diversity, to politics and policies of living conditions of children.

Part IV

War and Human Rights Abuses

Sexual Violence in Armed Conflict: *Rape-as-a-Weapon* Discourse Critique

Katerina Krulisova

Abstract
The Amnesty International Campaign against sexual violence in armed conflict entitled 'Rape is cheaper than bullets' launched in 2009 in the UK is one of the recent examples of powerfully provocative initiatives aimed at combating sexual violence during armed conflicts. Despite the loud critique of being too offensive and insensitive, this campaign succeeded at highlighting the lasting problem of rape in modern wars and indeed demonstrated the wide (and increasingly unchallenged) agreement between academics and policy-makers that rape and sexual violence constitute a highly effective and efficient weapon of war. This chapter analyses the existing academic debates and theoretical conceptualisations of sexual violence as a weapon/tactics of war that is largely based on discussion on gendered nature of conflict in the Former Yugoslavia and genocide in Rwanda. These were crucial not only as they placed the topic of sexual violence firmly on the International Relations and Security Studies agenda, but they also considerably influenced the understanding of subsequent conflicts with widespread sexual violence, and hence the variety of policy initiatives aimed at limiting the occurrence of the phenomenon and helping survivors. This chapter argues that it is necessary to critique the existing dominant discourse on rape being a weapon of war in order not to blindfold researchers, policy-makers, and the public into believing that in every conflict deviant primitive men use sexual violence against innocent women as a means to specific political ends. In other words, the totalizing nature of rape as a weapon discourse is challenged with new empirical findings presented in the existing literature.

Key Words: Rape, sexual violence, weapon of war, new wars, conflict, discourse.

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1. Introduction

The recognition of sexual violence as a security issue is considered by Feminist and International Relations/Security Studies academics and practitioners alike as one of the defining features of modern conflicts.[1] The debate on sexual violence in general, and rape in particular, dominates the media headlines as well as academic journals and political reports.[2] Framing sexual violence as a weapon of war/tool of genocide represents a positive development not only in understanding the modern warring tactics and strategies, but also their mid- and long-term impacts on post-conflict reconciliation and reconstruction. However, the discourse has become overwhelmingly dominant and consequently totalizing–virtually excluding any

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other conceptualizations of the recent conflicts where sexual violence is present and reported on.[3]

Analysis of the existing Feminist and Security Studies literature discussing the problem of sexual violence in armed conflicts suggests that there is an almost unanimous agreement among the international community of IR and feminist scholars (as well as policy-makers) that rape indeed constitutes a weapon of war.[4] Such recognition must be noted as a success for feminist and human rights activists, as the topic was seriously under-researched until the end of the twentieth century.[5] Rape was commonly referred to—and thus normalized—as the war booty or a side effect of the majority of armed conflicts throughout history.

Despite the initial optimism that accompanied this landmark recognition, the unquestioned understanding of rape as a weapon of war may be problematic, particularly as it creates a hegemonic discourse that limits thinking about rape in armed conflict in other ways. This hegemonic paradigm of rape being understood as rational tactics deployed by armed forces for specific (geo)political ends is currently applied to a majority of armed conflicts where large-scale sexual violence is present without questioning the specific gendered relations of the particular victims and perpetrators. Consequently, the majority of armed conflict-related sexual violence is portrayed as a weapon of war without providing the necessary empirical information that may falsify or verify such hypotheses. This chapter argues that it is necessary to revisit the existing *rape-as-a-weapon* discourse and problematize it in order to allow critical and perhaps more accurate examination of instances of sexual violence in current conflicts.

This chapter firstly traces back both the theoretical and empirical preconditions that enabled the birth of the discourse and its successful placement on IR and Security Studies agenda, particularly the notion of changing nature of warfare. After that, the *rape-as-a-weapon* discourse is revisited from a critical perspective, arguing that despite its attractiveness, the existing understanding of sexual violence in armed conflicts has its limitations in the frame of IR and Security Studies understanding of the problem.

The existing IR and feminist literature on sexual violence largely discusses the theoretical conceptualisation of the reasoning behind individuals' or groups' 'motivations and decisions' to rape during an armed conflict. Majority of researchers emphasize the timeless ubiquity of rape and sexual violence in armed conflicts throughout history,[6] while at the same time arguing that mainly due to the lack of reliable statistics and testimonies of both perpetrators and survivors a truly scientific exploration of the issue was only made possible after the end of the Cold War. Indeed, the majority of the academic pieces as well as policy reports introduce the problem of sexual violence as an ever-present phenomenon; virtually claiming that 'rape in war is as old as war itself.'[7] Such argumentation may consequently create a popular belief that rape might be a *natural* part of any armed conflict irrespective of time, place or participants.[8] At the same time, however,

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missing/unreliable statistics or lack of witness testimonies literally block further academic research in majority of the pre-twentieth century conflicts, leaving enough space for a valid doubt of whether the argument 'where is war there is rape' holds ground in all the cases.

After the academic and popular agreement that sexual violence is an ever-present and universal part of any armed conflict was firmly established, the horrors of twentieth and twenty-first century wars required further study of sexual violence in armed conflict. The unprecedented large-scale sexual violence (together with its shocking brutality) witnessed by the international community particularly during the genocide in Rwanda and the conflict in the former Yugoslavia served as defining momentum for the new scholarly paradigm of conceptualising sexual violence and rape as a weapon of war.[9] When looking back into the numerous conflicts of twentieth century, researchers seem to be reluctant to label pre-1990s conflicts as involving genocidal rape despite the often widespread and systematic nature of sexual violence documented during those wars.[10] Thus it is possible to clearly place the birth of the discourse into the first half of the 1990s.[11]

From an IR scholar's perspective, it is essential to connect the birth of the discourse to other ongoing academic debates about the very nature of modern warfare at the time. Most importantly, the notion of the so-called new wars is considered as a crucial academic base serving as a permissive cause for validation of *rape-as-a-weapon* hypothesis.[12] Also, despite being slow and unable to cover the majority of the cases, the international prosecution of initiators and perpetrators of sexual violence in armed conflicts served as a powerful verification of the *rape-as-a-weapon* hypothesis.

The theoretical conceptualisation of changing nature of warfare by International Relations' scholars created an intellectual environment allowing for reconceptualization of sexual violence in armed conflict. Kaldor argues that 'during the last decades of the twentieth century, a new type of organized violence developed, *especially in Africa and Eastern Europe,* which is one aspect of the current globalized era.'[13] New wars are contrasted to old or traditional wars (Clausewitzian style warfare)[14] in terms of their goals, methods of warfare and means of financing.[15] Kaldor argues that new wars' goals are largely defined in terms of identity politics, in particular the claim to power on the basis of a particular identity—be they national, clan, religious or linguistic—while geopolitical or ideological claims are largely left out of the debate.[16] Secondly, changed mode of warfare, largely defined by guerrilla or hit-and-run tactics, is aimed rather at political control of the population by disseminating horror and hatred and by utilizing extreme and gruesome violence. Moreover, new wars are largely fought by rather decentralised and often unorganized groups of paramilitary units, local warlords, criminal gangs, police forces, mercenaries and regular armies.[17] Similarly, the unorthodox nature of those groups' financing often through plunder, hostage-taking, black market, or trafficking in drugs of human

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beings, completes the picture of the messiness of new warring as described by many.

In such a warring environment, sexual violence and rape have become the most powerful of weapons. Chinkin and Kaldor argue that gender identity is crucial in construction of new wars along with emphasis on national demographics – both concepts being closely tied with the notion of genocide and genocidal rape. According to Papic, 'ethnic nationalism is based on politics of specific gender identity/difference in which women are simultaneously mythologized as the Nation's deepest "essence" and instrumentalised as its producer.'[18] They further claim that 'the evidence suggests that rape in new wars is a systematic part of the strategy of political control, a "tactic of war."'[19] The cases of Rwanda and former Yugoslavia are used as powerful evidence to prove this point, together with quoting the DRC of Syria as more recent examples.[20] They emphasise that even though there were instances of widespread sexual violence during old wars,

> the nature of the instrumentalisation (of sexual violence) in new wars is very different. There is little concern about opprobrium, security leaks, or the spread of venereal disease. The rapes are deliberately public and are meant to instil fear in local populations as part of a plan to destroy or control local communities.[21]

Another crucial precondition for the acceptance of the 'fact' that sexual violence indeed is a weapon of war was the international legal development and subsequent prosecution of new wars' criminals guilty of gender-based violence.[22] International Criminal Court recognises sexual and gender-based violence as distinct war crimes. The Statutes of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda included rape as a crime against humanity.[23] At the Rome Conference, States agreed upon explicit provisions in the Rome Statute of the ICC recognising various forms of sexual and gender based crimes as among the most serious crimes of concern to the international community.

Before analysing the possible shortcomings of the governing discourse on rape as a weapon of war, it is essential to highlight the crucial shift in understanding of the motivation of the perpetrator. Whereas in the past conflicts rape has largely been understood as an individual act motivated by the (ill) sexual desire of the warrior-rapist (sometimes accompanied by their peers), in *rape-as-a-weapon* discourse any sexual desire is excluded as a valid motivation. This essential shift in thinking may be the result of much-desired evolution of the understanding of human rights, gender roles and equality, as well as a general normative frame of laws of war accompanied by the perceived strategies and systemic deployment of sexual violence as a weapon of war. In other words, rape in the new war becomes

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fundamentally different to rape in peace, as the latter is considered to contain at least some element of sexuality and sexual desire of a sick (abnormal) individual rapist, whereas the former is solely rational and calculated political decision. Skjelsbaek sums this hypothesis up by stating that 'if sexual violence in war were [was] performed only by abnormal people, there would be too many psychiatric patients recruited into regular and paramilitary forces.' From this perspective, wartime rape becomes increasingly asexual act, which enables researchers to qualitatively differentiate between sexual violence committed during peace and war times and thus isolate the two.

2. Essentialism vs. (Post) Structuralism

The feminist discussion on the causes of wartime rape largely revolves around the notion of the biological makeup and gendered socialization of the perpetrators—largely male. Although the labelling of the existing theoretical approaches to the motivation of the perpetrators varies throughout literature, the majority of authors highlight the invalidity of the essentialist biological argument and provide an explanation of wartime rape as a result of gendered relations within the society before conflict starts and study the way in which rape is conceptualized as a part of a political—often genocidal—strategy of armed forces and militias.

The essentialist discussion in literature describes rape in most cases as the result of a male biological urge/sexual desire or the 'pressure cooker' theory.[24] In the biological urge argument, men are portrayed as possessing genetically wired instincts for sexual aggression and rape is thus understood as a 'biological impulse' or 'uncontrollable part of the male sexual drive.'[25] As already hinted, this understanding is completely refuted by the *rape-as-a-weapon* discourse.[26]

The structural perspective, which constitutes a crucial theoretical preconditional conceptualisation of rape as a weapon, stands in a stark opposition to the essentialist argument, as it connects gender to the factors of ethnicity, religious belonging and/or political affiliation, which are believed to differentiate the 'rape-victim-potential' in the specific warscape.[27] The politicization of rape implies that the act itself not only entails political effects, but also that those effects might be qualitatively different to other forms of violence utilized by armed forces. In this understanding, rape becomes 'a tactic executed by soldiers in the service of larger strategic objectives' and 'coherent, coordinated, logical and brutally effective means of prosecuting warfare.'[28] This understanding of rape as a tactic is dependent on the recognition of the effects brought about by the utilization of rape as a strategy. Often rape and sexual violence are believed to spread terror and fear, displace populations, diminish the resistance of civilians and insurgents, and humiliate and demasculinise the enemy men—such understanding again closely correlates with the notion of the aims and tactics as introduced by Kaldor and others.[29] Moreover, rape in ethno-political conflicts becomes targeted primarily at the specific collectivity by violating individual gendered bodies and thus becomes

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labelled as genocidal,[30] as it primarily targets female's life-giving capacities in its attempt to destroy a national or ethnic group.[31]

The constructivist understanding of females as the 'symbolic bearers of ethno/national identity through their roles as biological, cultural, and social reproducers of the community' is the crucial precondition for rape being understood as a weapon.[32] The example of forced impregnation during the conflict in the Former Yugoslavia is cited as the most obvious utilization of rape as a genocidal tactic.[33] Thus targeting the reproductive capacity of a group – by making survivors 'damaged goods' in a patriarchal system, interfering with social figures by forced impregnation and thus transforming women into 'objects', or using rape as a medium for the transmission of diseases such as HIV/AIDS – clearly becomes a tool of ethnic cleansing.[34]

3. Problematisation of the Discourse

Eriksson Baaz and Stern study the governing discourse on rape as a weapon of war through its grinds of intelligibility, arguing that they inevitably limit what can be said about sexual violence in war as well as what kinds of subjects exist in the main narrative.[35] Not only that nuance and complexity of the particular conflict are sacrificed in the comprehension of rape as a weapon of war, but more importantly, violence is both produced and reproduced by the discourse. The dominant discourse of rape being a weapon of war rests on the 'gendered' story, which reverses the idea of rape being unavoidable together with highlighting the self-explanatory 'strategicness' of the act.[36] Through the rationalization of the act, the discourse implies that the prospect for limiting sexual violence in war is real and achievable at. However, rape is now understood as a normal weapon of (new) wars and overtly a rational act perpetrated by militarized masculine others who are dehumanized through a teleological and racialized narrative.[37]

Wars studied from a postcolonial perspective, especially African wars, are often portrayed as primitive, anarchic and barbaric—qualitatively different to the more civilized Western conflicts, in which practices of sexual violence were abandoned by modernity and rapid political and technological development. The Western modernity is largely mirrored in waging technological conflicts, normatively aimed at spreading values of democracy and human rights. In Der Derain's description, 'virtuous wars promote a vision of bloodless, humanitarian, hygienic wars.'[38] However, those 'videogame' technological wars are waged only by the most developed Western nations, and stand in stark contrast to the above-described new wars. The notorious 'self and other' or 'us versus them' principle seems to be promoted by security and defence analysts when analysing sexual violence in armed conflict.[39] The result of this portrayal of non-Western victims, as well as perpetrators, is largely lacking agency and control over their actions during the new war. The bestiality of the male rapist is highlighted together with innocence and fragility of the female or child victim. [40]

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As Eriksson Baaz and Stern clearly demonstrate, the 'Other' male rapist is at the same time overtly rational and a part of a perfectly working hierarchical militarized group which denies his agency.[41] He is often portrayed as a primitive, bestial, uneducated, poor, and highly aggressive male who is easily manipulated by his superiors into raping innocent civilian women.[42] However, sexual violence is highly strategic in such cases as it is deployed as a means to achieve certain geopolitical ends. At the same time, those ends are at times not articulated clearly and thus unknown to researchers. This perception is closely tied to the gendered construction of male soldiers, whose humanity is portrayed in bestial terms. The possible irrationality of individuals, imperfect working of militarized institutions, similarly to the notion of 'messiness of warring' is not taken into account.[43]

A majority of the texts only loosely implies how exactly rape is tactical or strategic and rather unproblematically assumes that it is highly effective tool of spreading fear and crushing opposition. The notion of demoralization of the targeted group via tactic of sexual violence is considered as effective. When in fact, it may be highly counterproductive and create further incentive to fight the supposed perpetrator group.

Importantly, the long-term physical and psychological genocidal effects on a targeted group are highlighted in the discourse. However, some recent studies on Bosnian and Rwandan survivors of sexual violence suggest that it is not always the case—not all the women are rejected by their husbands, families and communities are unable to reproduce after the conflict has ended—in other words, the very 'fabric' of the community was not entirely destroyed by extensive sexual violence as argued.[44]

Finally, the missing statistics and both quantitative and qualitative research into motivations of perpetrators and effectiveness of control and command mechanisms in new wars leaves room to doubt the applicability of the *rape-as-a-weapon* on majority of the currently ongoing conflicts.

4. Conclusion

By differentiating 'everyday' rape from wartime rape and scrutinizing rape as a weapon of war, the problem was made more visible and effective action of policy more probable. However, this normative move may have negative repercussions for international and human security as well as disabling progressive academic research. While there appears to be enough evidence that rape was indeed utilised as a means to certain political ends in the Rwandan genocide and parts of the former Yugoslavia, not many such reliable proofs are available to date of recent conflicts. However, the dominant discourse securely claims that rape is a weapon of war in ongoing conflicts all around the world.

The reported large-scale sexual violence during such conflicts necessarily makes it a weapon of war and casts all the fighters as bestial killing and raping machines, consequently portraying all the females as victims of such deviant

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construction of masculinity—literally denying the agency of both genders. By this move, Western masculinity (and femininity) is constructed as superior and responsible for saving non-Western women from their own deviant men. Those men are rational and irrational at the same time, products of combination of faulty socialization and militarized masculinity gone wrong. Their agency is negated and undervalued in a similar way that the feminine are casts as doomed to be victims in current warscapes. Thus the discourse on rape as a weapon of war may reintroduce the protector/protected binary oppositions—in this case the protector being the Western male or female soldier saving the other vulnerable female from her fellow male kin.

The overt rationality of fighters when deploying rape as a weapon is questionable similarly to complete evacuation of biological drives that may serve as an incentive to rape for some soldiers.[45] The messiness of warring, emotional stress and imperfect training, and control over individuals involved in the fighting are not taken into account, similarly to downplaying the agency of both perpetrators and survivors of both genders. As such, the rape-as-a-weapon discourse paints a largely simplistic picture of rational dehumanized bestial males and vulnerable females being caught in the middle of bizarre, uncivilized and primitive warscape.[46]

The rape-as-a-weapon discourse production and popularity only proves the continuing Western realist-based scholarly domination of International Relations/Security Studies schools worldwide. The supposed rationalization and cold calculation behind the launch of raping campaigns in new wars excludes visibility of agency of both the victims and the perpetrators, whose fates are once directed by the workings of international system.

Notes

[1] Definitions of sexual violence vary throughout the literature. For the purpose of this chapter, the understanding of sexual violence is the same as that of International Criminal Tribunal for Rwanda (ICTR) in the Akayesu case: 'sexual violence is an act which includes rape, as any act of a sexual nature which is committed on a person under circumstances which are coercive.' *Prosecutor v. Akayesu*, Case No. ICTR-96-4, Judgment (Sept. 2, 1998). Also see: Suzanne Chenault, 'And Since Akayesu? The Development Of ICTR Jurisprudence On Gender Crimes: A Comparison Of *Akayesu* And *Muhiman,*' *New England of Internatinoal and Comparative Law* 14 (2008): 221-237.
[2] Despite that, majority of the academic articles still label sexual violence in armed conflict as a topic that is largely kept in silence and under-researched. International initiatives aiming at limiting the occurrence of sexual violence in armed conflict also tend to highlight the perceived silence and inaction when it comes to sexual violence and rape, for example UN Secretary-general's Special Representative on

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Sexual Violence in Conflict Margot Wallstrom told the CNN that: 'wartime rape is one of the great peace and security challenges of our time, but has been the least condemned and most silenced war crime.' Gabriella Canacas, 'UN: Wartime Rape No More Inevitable, Acceptable Than Mass Murder,' *CNN*, August 13, 2000, viewed on 18 July 2014,
http://edition.cnn.com/2010/WORLD/africa/08/12/un.wartime.rape/.

[3] It is not only the understanding and labelling of rape in wartime as such that is problematic; it is also the scholarly disagreement on causal factors and consequences as well as the insufficient statistical and methodological accuracy of existing research that is clearly visible in the existing literature.

[4] References such as 'it is now more dangerous to be a woman than a soldier in modern conflict…warring groups use rape as a weapon because it destroys communities totally,' made by Major-General Patrick Cammaert, former commander of UN peacekeeping forces in the eastern Congo, clearly demonstrates the dominance of the *rape-as-a-weapon* discourse. Soraya Chemali, 'Worldwide, It's 'More Dangerous to Be a Woman Than Soldier in Modern Wars',' *Huffington Post*, October 5, 2012, viewed on 18 July 2014,
http://www.huffingtonpost.com/soraya-chemaly/rape-in-conflict_b_1501458.html.

[5] Literature on sexual violence in armed conflict started emerging mainly after the end of the Cold War and it was closely connected to conflicts on the former Yugoslavia and genocide in Rwanda.

[6] See Janie Leatherman, Sexual Violence and Armed Conflict (Cambridge: Polity Press, 2011), 7.

[7] Elvan Isikozlu and Ananda S. Millard, *Towards a Typology of Wartime Rape* (Berlin: BICC, 2010), 7.

[8] Not only that academic and popular literature makes such a universalizing claim, the influence of film industry on popular perception of historical gendered relations is immense. For more information see: Sarah Projansky, *Watching Rape: Film and Television in Postfeminist Culture* (New York University Press, 2001).

[9] Rape and sexual violence are used interchangeably in the literature and both are labelled as a weapon of war, war tactics or strategy, terror or genocidal tactics tactic, etc.

[10] Christopher W. Mullins, '"He Would Kill me With His Penis": Genocidal Rape in Rwanda as a State Crime,' *Critical Criminology* 17 (2009): 15-33.

[11] It is essential to note that recently there are powerful policy initiatives aiming at recognizing large scale sexual violence committed before 1990s, one of the most visible examples being the campaign to recognize Japanese comfort stations as criminal and coercive.

[12] The term 'new wars' is now most widely used in the IR literature. However, when it comes to analysis of the changing nature of armed conflict, terms such as low-intensity conflict, internal, civil wars, privatized or informal wars, hybrid or

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post-modern wars, small wars or degenerate warfare are used interchangeably as well.

[13] Mary Kaldor, *New and Old Wars: Organised Violence in a Global Era* (Cambridge: Polity Press, 2012), 1. (Emphasis added).

[14] Clausewitz famously noted that 'war is a social activity, which involves the mobilisation and organisation of individual men, almost never women, for the purpose of inflicting physical violence.' Cited in: Kaldor, 7.

[15] Ibid.

[16] Ibid.

[17] Ibid., 10.

[18] Zarana Papic, 'Nationalism, patriarchy and war in ex-Yugoslavia', *Women's History Review* 3 (1994): 115-117.

[19] Christine Chinkin and Mary Kaldor. 'Gender and New Wars,' *Journal of International Affairs* 67 (2013): 173.

[20] See Christine Chinkin and Mary Kaldor. 'Gender and New Wars,' *Journal of International Affairs* 67 (2013): 173.

[21] Ibid., 175.

[22] Most prominent cases being *Prosecutor v. Jean-Paul Akayesu*, for more information see: ICTR *Prosecutor v. Jean-Paul Akayesu,* viewed on 13 July 2014, http://www.unictr.org/Portals/0/Case/English/Akayesu/judgement/akay001.pdf.

[23] See: Darryl Robinson, 'Defining 'Crimes Against Humanity' at the Rome Conference,' *The American Journal of International Law* 93 (1: 1999): 43-57.

[24] Here the sexual violence is explained as a combination of biological drives for sexual release combined with the innate stresses and chaos that soldiers experience during and after combat.

[25] Cindy S. Snyder., Wesley J. Gabbard, J. Dean May, and Nihada Zulcic, 'On the Battleground of Women's Bodies Mass Rape in Bosnia-Herzegovina,' *Affilia* 21 (2006): 185.

[26] See Cynthia H Enloe, *Maneuvers: The International Politics of Militarizing Women's Lives* (University of California Press, 2000), 122.; Susan Brownmiller, *Against Our Will: Men, Women and Rape* (London: Martin Seder and Warburg, 1975).

[27] Skjelsbaek, 'Sexual Violence and war: Mapping Out a Complex Relationship,' 219.

[28] Jonathan Gottschall, 'Explaining wartime rape,' *Journal of Sex Research* 41 (2004): 131.

[29] Alexandra Stiglmayer, ed. *Mass rape: The war against women in Bosnia-Herzegovina* (University of Nebraska Press, 1994), 82.

[30] There is a body of international *legal* scholarship which examines the ways in which international courts, especially the International Criminal Tribunal for the

former Yugoslavia (ITCY) and International Criminal Tribunal for Rwanda (ICTR), have come to frame rape as a tool of genocide.

[31] See Lisa Sharlach, 'Rape as genocide: Bangladesh, the former Yugoslavia, and Rwanda,' *New Political Science* 22, no. 1 (2000): 89-102.

[32] Maria Eriksson Baaz and Maria Stern. *Sexual Violence as a Weapon of War?: Perceptions, Prescriptions, Problems in the Congo and Beyond*, 21.

[33] See: Gottschall, 'Explaining Wartime Rape', 131; Carpenter, 'Surfacing Children: Limitations of Genocidal Rape Discourse', 428-477.; Skjelsbaek, 'Sexual Violence and War: Mapping Out a Complex Relationship', 213; Ruth Seifert, 'The Second Front: the Logic of Sexual Violence in Wars.' *Women's Studies International Forum* 19 (1996): 35-43.; Doris E. Buss, 'Rethinking 'rape as a weapon of war',' *Feminist Legal Studies* 17 (2009): 145-163.; Todd A. Salzman, 'Rape Camps as a Means of Ethnic cleansing: Religious, Cultural, and Ethical Responses to Rape Victims in the Former Yugoslavia,' *Human Rights Quarterly* 20 (1998): 348-378.; Caroline Kennedy Pipe and Penny Stanley. 'Rape in War: Lessons of the Balkan Conflicts in the 1990s,' *The International Journal of Human Rights* 4 (2000): 67-84.

[34] See: Catharine A MacKinnon, *Are Women Human?: And Other International Dialogues* (Harvard University Press, 2006); Stefan Elbe, 'Should HIV/AIDS Be Securitized? The Ethical Dilemmas of Linking HIV/AIDS and Security,' *International Studies Quarterly* 50 (2006): 119-144; Stefan Elbe, 'HIV/AIDS and the Changing Landscape of War in Africa,' *International Security* 27 (2002): 159-177; Bülent Diken and Carsten Bagge Laustsen, 'Becoming Abject: Rape as a Weapon of War,' *Body & Society* 11 (2005): 111-128.

[35] Eriksson Baaz and Stern, *Sexual Violence as a Weapon of War? Perceptions, Prescriptions, Problems in the Congo and Beyond*, 18.

[36] Eriksson Baaz and Stern, *Sexual Violence as a Weapon of War? Perceptions, Prescriptions, Problems in the Congo and Beyond*, 3. Eriksson Baaz and Stern further argue that the discourse 'somehow assumes the existence of a uniform universal military strategy that is shared by all military/armed groups in all contexts, in which rape is construed as (somewhat) inherently and objectively strategic.' 65.

[37] Eriksson Baaz and Stern, *Sexual Violence as a Weapon of War? Perceptions, Prescriptions, Problems in the Congo and Beyond*, 25.

[38] James Der Derian, 'Virtuous War/Virtual Theory,' *International Affairs* 76 (2000): 772.

[39] Iver B Neumann, 'Self and Other in International Relations,' *European Journal of International Relations* 2 (1996): 139-174.

[40] Eriksson Baaz and Stern, *Sexual Violence as a Weapon of War? Perceptions, Prescriptions, Problems in the Congo and Beyond*. 78.

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[41] See Eriksson Baaz and Stern, *Sexual Violence as a Weapon of War?: Perceptions, Prescriptions, Problems in the Congo and Beyond*, 71; Maria Stern and Marysia Zalewski., 'Feminist Fatigue (s): Reflections on Feminism and Familiar Fables of Militarisation,' *Review of International Studies* 35 (2009): 611-630; Cynthia H. Enloe, *Maneuvers: The International Politics of Militarizing Women's Lives* (Univ of California Press, 2000); Cynthia Cockburn, 'Gender Relations as Causal in Militarization and War: A Feminist Standpoint,' *International Feminist Journal of Politics* 12 (2010): 139-157.; J. Ann. Tickner, *Gender in International Relations: Feminist Perspectives on Achieving Global Security* (Columbia University Press, 1992).

[42] According to Eriksson Baaz and Stern, sexual violence can reflect also 'the break the breakdown of chains of command; indiscipline, rather than discipline, commander's lack of control, rather than their power; the micro-dynamics of violent score-setting, rather than decisions of military and political leaders engaged in defeating the enemy.' Eriksson Baaz and Stern, *Sexual Violence as a Weapon of War?: Perceptions, Prescriptions, Problems in the Congo and Beyond*, 5.

[43] Eriksson Baaz and Stern demonstrate the messy realities of war and analyse the workings of cycles of violence and the micro-dynamics of war, which may severely disrupt the dominance of the discourse, such as the notion of the forward panic.

[44] See: Inger Skjelsbæk, *The Political Psychology of War Rape: Studies from Bosnia and Herzegovina* (Routledge, 2011).

[45] See: Maria Eriksson Baaz and Maria Stern, 'Why do soldiers rape? Masculinity, violence, and sexuality in the armed forces in the Congo (DRC),' *International Studies Quarterly* 53 (2009): 495-518.

[46] Ibid.

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Katerina Krulisova is a PhD student at Nottingham Trent University, specialising in Gender Studies and International Relations. She focuses on female initiators of genocidal rape as well as sexual violence in armed conflict.

The Two Sexual Slavery Systems: 'Comfort Women' under the Japanese Military and Licensed Prostitution

Akane Onozawa

Abstract

Since VAWW-NET JAPAN, the forerunner of VAWW RAC, was established in 1998, we have contested the hegemonic 'comfort women' discourse perpetuated by historical revisionists in Japanese politics, bureaucracy, academics, business, media and grassroots. By sharing with the conference delegates our long-term empirical research as an active transnational feminist movement based in the perpetrator country, VAWW RAC will seek to promote a better understanding of the universal nature and particular aspects of the 'comfort women' system. This chapter will discuss the relationship between Japan's pre-war licensed prostitution and wartime sexual slavery. By explaining why Japan's licensed prostitution was sexual slavery, I will argue that Japan's peace-time sex-slave system, which was widespread even to Japanese communities in its neighbouring countries, was developed into the more brutal military 'comfort women' system. It will also introduce the reason why former Japanese 'comfort women' have yet to come forward.

Key Words: 'Comfort Women,' State-sanctioned Prostitution, Sexual Slavery, Human Trafficking.

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1. Who Are 'Comfort Women'?

The term 'Comfort Women' refers to women who were confined in so-called Comfort Stations, which the Imperial Japanese Army and Navy set up in war fields and occupied territories starting the year after Japan began invading North-Eastern China (i.e. 'Manchuria') in 1932 through Japan's defeat in 1945, where women were subjected to acts of sex and violence by Japanese soldiers. 'Comfort Women' included Japanese, Korean, Taiwanese, Chinese, Filipina, Indonesian, Vietnamese, Malaysian, Thai, Burmese, Indian, Timorese, Chamorro, Dutch and Eurasian women, among others, who were threatened, abducted, deceived, trafficked and otherwise forcibly taken to Comfort Stations. There are numerous examples of women in Japan as well as Korea and Taiwan, which at the time were under Japanese colonial rule, who were deceived with false promises such as 'you can study while you work' and outright lies such as 'do you want to work in a factory?', or who were trafficked and otherwise forcibly sent to Comfort Stations by private agencies that were hand-picked by the Japanese military. In the Japanese occupied territories in China, Southeast Asia, and the Pacific, cases in which the Japanese military directly kidnapped women, or ordered village elders and local authorities to conscript women stand out.

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2. Actual Circumstances: Wartime Sexual Slavery System

The actual circumstances of 'Comfort Women' constituted wartime sexual slavery and had nothing to do with 'comfort.' The final report by Gay J. McDougall titled 'Systematic rape, sexual slavery, and slavery-like practices during armed conflict' that was adopted by the Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities concluded that the Japanese military's 'Comfort Women' were slaves based on the definition of the 1926 Slavery Convention and that the 'Comfort Stations' could not be described as anything other than 'Rape Camps.'[1] The fact that the Japanese military used the term 'Comfort Women' to refer to the women forced to serve as sexual slaves and the term 'Comfort Stations' to refer to the places where they were raped despite the fact that the experiences of these women had nothing to do with 'Comfort' can be said to be the expression of the Japanese military's ultimate male-centric mind set.

The number of Comfort Stations and 'Comfort Women' rapidly increased after the outbreak of the Second Sino-Japanese War in 1937. After the onset of the Asia-Pacific War in 1941, they were instituted on a widespread basis throughout all territories occupied by the Japanese military.[2] There were various types of Comfort Stations including Comfort Stations directly operated by the military, Comfort Stations operated by private agencies at the behest of the military that were designated to the exclusive use of the Japanese military, and private brothels that were temporarily designated by the military to be for the exclusive use of the Japanese military. There were even cases in which women were confined and repeatedly raped in places similar to the caves used by the Japanese military. In all these cases, the Japanese military played the central role in management of the Comfort Station.

In the worst cases, 'Comfort Women' were subjected to rape by dozens of soldiers on a daily basis and forcibly tested for sexually transmitted diseases (STDs). The soldiers also physically abused the women by punching or kicking, attacking them with swords, and burning them with cigarettes. If the women became pregnant, they were subjected to violence that included uterus mutilation. If they were captured while attempting to escape, they faced the possibility of being brutally lynched or murdered. More fundamentally, the 'Comfort Women,' who had been forcibly taken to foreign lands from their countries and villages of origin did not know where they could escape to. The Japanese military justified the practice of Comfort Stations under the preface that it prevented the spread of STDs and rape in the field of combat. Actually, Comfort Stations did not succeed in preventing either of these.

3. Life for the Survivors after the War

The majority of 'Comfort Women' victims died as a result of being caught up in battles, were killed as soldiers committed suicide to save face, or starved to death

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while wandering around the jungles where they were left to fend for themselves. The lives of the 'Comfort Women' survivors who somehow managed to survive were filled with hardship even after the war. Simply abandoned in the places to which they had been forcibly brought, many survivors were unable to return to the countries and villages from which they came. At a time when chastity was emphasized as a virtue, survivors who managed to return to their countries and villages of origin and were discovered to have been 'Comfort Women' under the Japanese military were often ostracized and scorned by their communities and families. The women were left with no choice but to live in isolation and in poverty for the rest of their lives. Even today, the survivors continue to suffer from injuries resulting from the violence to which they were subjected as 'Comfort Women'. Among such injuries, those related to the genitals are particularly severe. Having been forced to receive so many soldiers, the survivors' genitals and reproductive organs are continually inflamed or severely damaged. In addition, the women continue to suffer severe PTSD. Such suffering remains the daily reality of 'Comfort Women' survivors even today, some 70 years after the end of the war.[3]

4. Another Sexual Slavery System: Japan's Pre-War Licensed Prostitution

Japan's pre-war licensed prostitution system also needs to be examined as another system of sexual slavery that factored into the creation of the wartime sexual slavery by the Japanese military. The licensed prostitution system in modern Japan designated official red-light districts (prostitution areas) and rest stops (towns with lodgings situated along Edo-period highways) of the early-modern era as areas where prostitution could be openly practiced and provided licenses to business owners and women to conduct business in these locations. There are three notable characteristics of Japan's licensed prostitution system.

First, the licensed prostitution system was justified on the same premise of preventing STDs and rape. As such, prostitutes were forced to undergo STD testing, however, licensed prostitution also failed to prevent STDs as well as rape.

Second, during the Edo period, human trafficking for sexual exploitation was openly practiced under the licensed prostitution system in Japan's red light districts. This custom fundamentally continued into the modern era. In the typical case, the parents of a prostitute would incur a heavy debt with a brothel, which the daughter would have to pay off through continuous prostitution with practically no possibility of quitting until the debt was fully paid. One could go so far as to say that, in Japanese society, there was a belief that prostituting oneself for the sake of parents and siblings was a virtue. Due to the exploitative wage system, debts often increased rather than decreased despite the fact that the women worked, making it extremely difficult to pay off debts or to leave prostitution. Such practice should have been banned since the Emancipation of Prostitutes and Geisha Act of 1872 adopted by the Japanese government prohibited human trafficking. Furthermore, the licensed prostitution system was in breach of a number of international treaties

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at the time including the International Convention for the Suppression of the Traffic in Women and Children (1921)[4] and the Slavery Convention (1926)[5].

For example, the International Convention for the Suppression of the Traffic in Women and Children (1921), which was also ratified by Japan, stipulated that (1) any woman under the age of 21 cannot be solicited to engage in prostitution even if she herself agrees and (2) any woman aged 21 or older cannot be persuaded to engage in prostitution through deceptive or compulsory means. Under Japan's licensed prostitution system, however, it was permitted for women aged 18 and over (i.e. less than 21) to be recruited for prostitution, and the majority of prostitutes were forced to continue to engage in prostitution until their debts were paid. Accordingly, it could be said that the system was in violation of the convention. Furthermore, trafficking in people for the purpose of sending them overseas was prohibited by Article 226 of Japan's Penal Code (Act No. 45, 1907).

Third, the Japanese government covered up the existence of sex trafficking, which should rightly have been banned, while repeatedly making the disingenuous assertion that the women who engaged in prostitution did so based on 'free will,' and, as a result, continued to preserve the practice. In Japan, a movement, primarily led by Christians, criticizing the licensed prostitution system as 'slavery' and calling for its abolition had persistently continued since the start of the modern era. But the Japanese government made the false assertion repeatedly that prostitution was 'freely' engaged in by 'independent women.'[6]

5. The Relationship between the Two Sexual Slavery Systems

As forced prostitution based on sex trafficking was openly practiced, a large number of licensed prostitutes were deployed as 'Comfort Women' at the onset of the war. Under orders from the Japanese military, proprietors of licensed prostitution and similar agents 'bought up', deceived and sent women to battle fronts as 'Comfort Women.' Among these women, some even referred to this period as a 'good time,' because they were able, in some cases, to pay off substantial debts by serving as 'Comfort Women.' However, this is no more than an indication of the brutality of life in prostitution prior to becoming 'Comfort Women' and after the war.

For example, let us consider the case of a former Japanese 'Comfort Woman' by the name of Kaoruko Yamauchi (Kikumaru). Born in 1925 into extreme poverty, at the age of 10, she was sold by her parents to a *Geisha*[7] house. One day, hearing that the military would pay off her substantial debt, she decided to become a 'Comfort Woman.' In March of 1943, she was sent by ship to Natsushima in the Truk Islands, where she became a 'Comfort Woman' for military officers (Japanese women often became 'Comfort Women' for officers and received better treatment than 'Comfort Women' for generally conscripted soldiers). In terms of the treatment of 'Comfort Women,' there was ethnic discrimination. That said, even Japanese 'Comfort Women' were tricked into becoming 'Comfort Women'

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assigned to general soldiers and had to serve several dozens of soldiers per day. Many also died on the battle front or starved to death.

However, repayment of debt was not the only reason she chose to become a 'Comfort Woman'. She was also told that she could do something for her country. It could be said that, for women who faced discrimination on a daily basis and who had little self-esteem, this represented the first time they were recognized as individuals. After the war, she says that her time as a 'Comfort Woman' was the happiest time of her life. However, after Japan lost the war, whenever people discovered that she had been a 'Comfort Woman,' she would be scorned, and it was difficult to maintain a sense of pride. She was left with no choice but to continue surviving difficult circumstances by working as a hostess, *geisha* or a kept woman (someone who is paid to be a lover). After continuing to bear a feeling of unfairness that 'I, too, served my country,' she ended up committing suicide in 1972.[8] In other words, she referred to her time as a 'Comfort Woman' as being a 'good time' because her life before and after the war was filled with even more suffering.

Under Japanese colonial rule, the licensed prostitution system was transplanted to Korea and Taiwan. It is evident that tradespeople related to the red light district constituted a greater share of Japanese society in Japanese colonies than in Japan itself. Furthermore, women's human rights were even further violated under the licensed prostitution system in Japanese colonies. For example, while the minimum age for becoming a prostitute in Japan was 18, in colonial Korea, the minimum age was 17[9]. During the war, the traffickers of women, who existed in great numbers in colonial society, trafficked and collected local women through deception under orders from the Japanese military.

However, the licensed prostitution system and the Japanese military's 'Comfort Women' system were not the same thing, most importantly because the operation of 'Comfort Stations' and the conscription of 'Comfort Women' were carried out, not by civilian agents but, rather, by an agent of the State, namely the Japanese military itself. Many of the women were coerced into the 'Comfort Women' system through the direct use of force and violence by the Japanese military. Accordingly, the Japanese government must acknowledge the crimes committed by the Japanese military, apologize and pay a compensation to the survivors. The 'Comfort Woman' system under the Japanese military differs, in this way, from the licensed prostitution system. Still, there is no question that the same male-centric myth that men 'need' sexual outlets, which was used to justify sex trafficking and the licensed prostitution system, was used to underpin the 'Comfort Women' system.

6. Obstacles to Resolution of the 'Comfort Women' Issue

Despite the dissolution of the Japanese military, the two sexual slavery systems did not go away entirely after Japan's defeat in 1945. Immediately following the end of the war, the Japanese government voluntarily established Comfort Stations

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for the U.S. occupying forces. Even after trafficking for the purpose of prostitution was made illegal by the 1956 Anti-Prostitution Act, the hiring of prostitutes itself was never prohibited or made subject to penalty. Therefore, the idea that prostitution is a necessary evil still persists in Japan. Many continue to believe, mistakenly, that sex trafficking was legal in the pre-war period. Based on ignorance or wilful disregard of the fact that the trafficking in women as sexual slaves under the licensed prostitution system was a criminal act by its very nature, some right wing extremists wishing to 'preserve the honour of the former Japanese military' continue to assert that the Japanese military was not guilty as far as 'Comfort Women' are concerned and that the Japanese military only made use of licensed prostitutes.

The following is a typical example of a statement by members of the Diet wishing to deny the victimization of 'Comfort Women,' which was published as an advertisement in a major US newspaper, the Washington Post, on June 14 2007:

> The *ianfu* who were embedded with the Japanese army were not,
> as is commonly reported, "sexual slaves." They were working
> under a system of licensed prostitution that was commonplace
> around the world at the time.[10]

They either truly believe that the human trafficking issue at that time was not a big deal and that the former Japanese military was not guilty of any crime if they simply used the services of trafficked prostitutes or want to convince the general public that that is the case. In other words, they either believe that no crime was committed except in cases where women were forcibly relocated (i.e. abducted) through the direct exercise of violence by the Japanese government or they want to persuade the general public that this is true.

This opinion advertisement drew harsh criticism in the US and other countries. On 30 July of the same year, shortly after publication of the opinion, the lower house of the US Congress adopted a resolution calling on the Japanese government to formally acknowledge, to apologize to survivors of the wartime sexual slavery system known as the 'Comfort Women' system and to act in accordance with the recommendations of the international community.[11] In contrast, in Japan, the argument made in the opinion advertisement has garnered wide support, causing many to reject the equating of the Japanese military's 'Comfort Woman' system with sexual slavery. The Japanese public's perception of the Japanese military's 'Comfort Woman' system indicates the degree of Japan's isolation from the rest of the international community – a reality that severely hinders the resolution of the 'Comfort Woman' issue.

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Notes

[1] Gay J. McDougall (Special Rapporteur), *Senji Seiboryoku o do Sabaku Ka: Kokuren Makudugaru Hokoku Zenyaku* (How to Judge Wartime Sexual Violence: Complete Translation of Contemporary Forms of Slavery) (Tokyo: Gaifusha, 2000).

[2] See the map for detailed locations of Comfort Stations: 'Fight for Justice,' viewed 2 July 2014, http://fightforjustice.info.

[3] Regarding the damage suffered by and post-war lives of 'comfort women' survivors, see 'Fight for Justice,' viewed 2 June 2014, http://fightforjustice.info; Yoshimi Yoshiaki, *Jugun Ianfu* (*Military Comfort Women*) (Tokyo: Iwanami Shoten, 1995); Women's Active Museum, *Shogen Mirai e no Kioku Asia 'Ianfu' Shogenshu Minami Kita Zainiti Korean edition* (*Testimonies of Memories for the Future: Asian 'Comfort Women' from North, South, and Zainichi Korean Edition*) (Tokyo: Akashi Shoten, 2010).

[4] *International Convention for the Suppression of the Traffic in Women and Children* (Geneva: League of Nations, 1921).

[5] *Slavery Convention* (Geneva: League of Nations, 1926).

[6] Akane Onozawa, *Kindai Nihon Shakai to Kosho Seido – Minshushi to Kokusaikankeishi no Shitenkara* (*Modern Japanese Society and Prostitution System: From the Perspective of People's and International Relations History*) (Tokyo: Yoshikawa Kobunkan, 2010).

[7] The principal occupation of the *geisha* was nominally dance and music performance, but this was frequently accompanied by prostitution.

[8] Akane Onozawa, ''Ianfu' Mondai to Kosho Seido' ('The 'Comfort Women' Issue and Licensed Prostitution System'), *Ianfu' Bassing wo koete—'Kono danwa' to Nihon no Sekinin* (*Beyond 'Comfort Women' Bashing—'Kono Statement' and Japan's Responsibility*), ed. VAWW RAC (Tokyo: Otsuki Shoten, 2013).

[9] Song Youn-ok, 'Nihon no Shokuminchi Shihai to Kokkateki Kanribaishun,' ('Japan's Colonial Rule and National Licensed Prostitution'), *Chosenhi Kenkyukai Ronbunshu* (*Collection of Papers of Korean History Research Group*), October 1994, 32.

[10] Similar content was published in the Star-Ledger (a New Jersey newspaper) on November 4, 2012. On this occasion, the current Prime Minister, Shinzo Abe's (at the time a member of the Lower House) name was among the list of individuals agreeing with the position.

[11] Shinichi Arai, 'Amerikagikai Kain to 'Ianfu' Mondai' ('U.S. House of Representatives and 'Comfort Women' Issues') *Rekishi to Sekinin – 'Ianfu' Mondai to 1990 nendai* (*History and Responsibilities – 'Comfort Women' Issues and the 1990s*), eds. Puja Kim and Toshio Nakamura (Tokyo: Seidosha, 2008).

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Akane Onozawa is a professor at Rikkyo University in Tokyo, Japan. Her major research interest includes modern Japanese history, with an emphasis on women's history.

Japanese Military Sexual Slavery on Trial: Women's International War Crimes Tribunal in Tokyo in 2000

Michiko Nakahara

Abstract

Since VAWW-NET JAPAN, the forerunner of VAWW RAC, was established in 1998, we have contested the hegemonic 'comfort women' discourse perpetuated by historical revisionists in Japanese politics, bureaucracy, academics, business, media and grassroots. By sharing with the conference delegates our long-term empirical research as an active transnational feminist movement based in the perpetrator country, VAWW RAC will seek to promote a better understanding of the universal nature and particular aspects of the 'comfort women' system. This chapter will historically contextualise our historic battle against the Japanese patriarchal structure as embodied by the importance of the emperor and the ultimate triumph of transnational activism which culminated in The Women's International War Crimes Tribunal 2000.

Key Words: Comfort Women, Women's International Tribunal on Japan's Military Sexual Slavery in Tokyo 2000, Women's Tribunal in Tokyo 2000, Emperor Hirohito.

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1. Failure of the International Military Tribunal for the Far East (The Tokyo Tribunal) to Judge Japanese Military Sexual Slavery

Japanese Military Sexual Slavery was established and practiced at the battlefront and in occupied areas from 1932 to 1945. After WWII, Japanese war crimes were tried at the Tokyo Tribunal (1946-48). However, Emperor Hirohito, the sacred and inviolable Ruler and Supreme Commander of the Imperial Army and Navy, was never tried and retained his position as the symbol of the State even after the war. Also, the issue of Japanese Military Sexual Slavery was never brought before the male-dominated tribunal and remained unpunished.

In December 1991, three Korean women who had been forced to work as sexual slaves for the Japanese Military filed a lawsuit with the Tokyo District Court. One of these brave women, Kim Hak-sun, broke her silence after more than fifty years. For the first time, the Japanese people found themselves face-to-face with a real 'comfort woman'. The Imperial Japanese Army had violently destroyed her dignity as a human being, her future, her happiness, and her entire life. Her clear message was received by women and led to the rapid spread of a movement in Japan entailing various activities including academic research to resolve the issue of Japanese Military Sexual Slavery.

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2. The Survivors Demand Gender Justice: Fact Finding and Punishment of Perpetrators

The survivors demanded an investigation into the truth about what had happened and punishment of those responsible. Kang Duk-kyung, a Korean survivor who died in 1997, left a painting titled 'Punish the Responsible Person.' In the painting, a Japanese soldier facing execution is tied to a tree. A closer look reveals that there is a bird's nest on the upper branch of the tree. The tiny eggs in the nest symbolize hope for the future. Up until her death, Kan sought punishment of the individuals responsible for the crimes perpetrated against her.

Japanese activists have conducted countless investigations in various countries, including interviews with survivors, to uncover the truth about what happened. Additionally, they have studied various materials and official documents in Japan, the United States, the Netherlands, and other Asian countries and interviewed former members of the Imperial Japanese Army. At the beginning, the issue of 'punishment' perplexed the Japanese, who, after the war, had never thought about responsibility for Japanese war crimes. The Japanese government continued to deny legal responsibility, and the aging survivors began dying off while still suffering hardship and humiliation, and not having received justice.

In 1997, the newly founded Asian-Japan Women's Resource Centre (founded in 1995) organised an International Conference on Violence in War and Armed Conflict Situations in Tokyo. The conference was attended by women from twenty countries, including the Former Yugoslavia, Rwanda, East Timor, Burma, Afghanistan, Korea, and the Philippines, who had experienced armed conflict. They reported on sexual violence during armed conflicts. The issue that left the greatest impression on Japanese women who attended the conference was the question of how to end the pattern of impunity of sexual violence during armed conflicts. Ustinia Dolgopol, an Australian scholar of International Law, presented a paper titled, 'Why wasn't the issue of 'comfort women' tried by the Tokyo Tribunal?' The paper was shocking to the Japanese participants. Although there is a substantial volume of records and research on the Tokyo Tribunal, there had never been research or analysis from a feminist point of view such as that presented by Dr. Dolgopol. Reports that the issue of violence against women during war was taken up by the International Criminal Tribunals for the Former Yugoslavia and Rwanda was also tremendously encouraging to the Japanese women in attendance.

After the Conference, the VAWW NET (Violence Against Women in Wars Network) was founded to encourage and facilitate international cooperation. Japanese participants established VAWW NET Japan in 1997 and began activities related to three areas: namely 1) 'comfort women' 2) violence against women in contemporary armed conflicts, and 3) sexual violence around U.S. military bases. The original idea for the 'Women's International War Crimes Tribunal' came from Matsui Yayori. She proposed the idea of the tribunal to core members of VAWW NET Japan, all of whom supported it. Ms. Matsui attended an International NGO

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Conference in Geneva. The idea of hosting a Women's International War Crimes Tribunal on Japan's Military Sexual Slavery (WIWCT) in Tokyo to prosecute those responsible for instituting Japanese Military Sexual Slavery was supported by women from South Korea, North Korea, China, Taiwan, the Philippines, Indonesia, Malaysia, East Timor, and the Netherlands. As a result, the WIWCT was established to prosecute gender-based crimes against women during war, which the Tokyo Tribunal failed to judge.

3. Prosecution of Emperor Hirohito and Nine Generals

With the cooperation of the Korean Council for the Women Drafted for Military Sexual Slavery, the Asian Centre for Women's Human Rights Philippines, and VAWW NET Japan supported by activists, lawyers, scholars, women and men, the WIWCT was held in December 2000 in Tokyo.

The Tribunal was the 'culmination of nearly a decade of work by and on behalf of the victimised survivors and on behalf of the victims who have not survived. The Tribunal was established as a result of the failure of states to discharge their responsibility to ensure justice.'[1] The tribunal was based on the principles of gender justice and the belief that 'law is the tool of the civil society.' Sixty-four survivors attended the Tribunal, during which Emperor Hirohito and nine generals were prosecuted as the persons responsible for Japanese Military Sexual Slavery.

After the war, Emperor Hirohito, the sovereign and supreme commander of the Imperial Army and Navy, did not take any responsibility for the war, and any allusions to the Emperor's war responsibility have become taboo. That is why the Japanese people were not able to assess war responsibility after WWII on their own. Because the Japanese people have not faced an accurate history of the Asian-Pacific War, they cannot teach younger generations about the history of war and cannot form common perceptions of history up to this point. The most important result of convening the WIWCT has been the research to uncover evidence to support the legal case.

4. A Hard-Won Judgment

More than 1,000 individuals, including 400 participants from foreign countries, attended the WIWCT. Although we had made every possible effort to provide the evidence to support our case, it was uncertain what decision would be made.

The Court pronounced the Emperor Hirohito and the nine generals guilty. The judges focused on the fact that Hirohito had enormous power that went beyond the power granted him by the Constitution. Furthermore, the judges affirmed the witness's testimony that:

> A formal decree issued in 1882 to the soldiers explicitly declared
> that ultimate decision-making power resides only in the Emperor.
> […] From the time of its issuance in 1882 until the end of World

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War II, the decree was the ultimate moral order of the Japanese
military and something that all officers were expected to learn by
heart.[2]

The Emperor had received reports from the Army and Navy, and the Foreign
Office, and was well informed on Japan's reputation in various foreign media. The
Emperor's youngest brother, Prince Mikasa, who was sent to China as a military
officer, reported to the Emperor about the brutal atrocities perpetrated by Japanese
soldiers in China. In 1941, the Ministry of War re-issued an even stricter Field
Service Code with permission from Emperor Hirohito, to warn soldiers against
rape, murder, arson, and looting.

In 1942, the Military Criminal Law was revised to designate rape as a crime,
remove the classification of rape as an *antragsdelikt* (an offense that is only
prosecuted upon receipt of a criminal complaint), and to increase the punishment
for rape. The Emperor was aware of these changes to the Military Criminal Law.
Concerned with the high frequency of rape, Imperial Japanese Army authorities
attempted to solve the problem by the introducing 'comfort stations.' This was
done, not because the authorities cared about the victimised women but, rather, to
avoid international criticism and to curtail resistance by local populations.

As its final judgment, the WIWCT found that:

With respect to the expansion of 'comfort stations' beginning in
1937 as a system of military sexual slavery, it is impossible to
believe, given our findings regarding the urgency, extensiveness,
logistical complexity and expense, and involvement of the
highest level ministry and military officials in various aspects of
the process, that Hirohito was ignorant of the existence of the
'comfort system' or was impotent to protest its activities.[3]

Furthermore, the Tribunal found that

Based on his position and continuing participation in the war
effort and the significance of the 'comfort system' to the war
effort, [Emperor Hirohito], at the very least, participated by
tacitly or actively approving the existence and expansion of the
'comfort system'. Accordingly, we reaffirm our previous holding
and find Emperor Hirohito GUILTY of rape and sexual slavery
as crimes against humanity under individual responsibility
pursuant to Article 3(1) of our Charter.[4]

With regard to rape and sexual slavery under the 'comfort system,' the Tribunal
stated that:

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> The horrendous circumstances to which the women were
> subjected reflected many indicia of slavery. The women were
> treated as objects and used as property, deprived of their free will
> and liberty, and forced to provide sexual services to the Japanese
> military. [...]They all endured a series of rapes over months and
> years, were not free to leave or refuse to provide the services,
> and suffered abusive and inhumane conditions of detention.[5]

The Tribunal found that:

> The Japanese military and civilian authorities committed rape
> and sexual slavery as a crime against humanity against tens of
> thousands of women and girls forced into sexual servitude to the
> Japanese military as part of the 'comfort system' during World
> War II.[6]

Thus, the WIWCT recognised Japanese Military Sexual Slavery as a crime against
humanity and acknowledged Japan's responsibility to pay reparations to the
survivors.
    In conclusion, the judgment declared the following:

> Repeatedly in history, States have ignored crimes of sexual and
> gender violence committed against women in armed conflicts
> violence. This failure is particularly reprehensible where justice
> is provided for other offenses. The failure of the Allies to
> prosecute Japan's military sexual slavery system denied the
> victimised women equal access to the law and perpetuated the
> view that their suffering did not merit equal disapprobation or
> that they were willing participants. This exclusion from justice in
> the immediate aftermath of the war played an unpardonable role
> in silencing and shaming the survivors and impeding their
> healing.[7]

    This judgement was a tribute to the girls and women who were deceived,
kidnapped, forcibly relocated, imprisoned in 'comfort stations', forced to work as
sexual slaves against their will during the fifteen years of war, who, after having
borne the weight of silence, humiliation, distress, isolation, illness, and intolerable
memories for over fifty-five years and after being abandoned in foreign countries
after the war, finally broke their silence and provided testimonies in support of the
Tribunal.

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5. Women Inheriting the Memories of Women

As long as women continue to remain silent, their vast memories will be lost when they die. It is when women's memories are told, heard, and delivered that women first obtain a place in history. In the past, when history depended on what was written down, women did not exist. Today, women's memories have the possibility of changing history.

The fact that women from fifteen countries (Argentina, Sierra Leone, Mexico, Bangladesh, East Timor, Afghanistan, Vietnam, Okinawa, Burundi, Korea, Tibet, Somalia, West Sahara, Columbia, Guatemala, and the United States) participated in 'The International Public Hearing of the Crimes against Women under the Contemporary Armed Conflicts', which was held on the 4th day of the WIWCT, and spoke of their experiences as survivors of sexual violence in contemporary wars, civil wars, and religious strife is extremely significant. One of these witnesses, Yolanda Aguilar from Guatemala, was arrested, tortured, gang-raped at the age of fifteen when she distributed flyers supporting the labour movement. It was a miracle that she escaped. Since then, she has thought deeply about the nature of sexual violence and eventually became a feminist. She escaped her status as a victimized woman and gained agency as someone with the power to change society. In 2003, she started a social movement demanding justice and began a project called 'From Victims of Sexual Violence in Conflicts to Agents of Change: The Struggle of Women Seeking Justice.' For her determination and commitment to justice, she was awarded the Women's Human Rights Activities Award (the Yayori Award) in 2009. She dreamed of one day organising a tribunal like WIWCT. Her dream was realized in March of 2010 in Guatemala City, in the form of the People's Tribunal. With this, women's memories will be inherited and the movement will create a new future.

6. After the Tribunal: The NHK Trial

Many members of the mass media attended the 4-day Tribunal. All together 305 reporters from 143 media outlets, including 200 reporters from 95 foreign outlets, attended the Tribunal. Many foreign media, including those from Asia, Europe and USA, ran headlines along the lines of, 'Emperor Hirohito Found Guilty' accompanied by articles focusing on 'punishment of the persons responsible.' In Japan, however, not a single Japanese newspaper ran the headline 'Emperor Hirohito Found Guilty.' The Yomiuri Newspapers, which boasts the world's largest circulation, did not report a single line regarding the Tribunal. Korean newspaper Hankyreh published a criticism of the Japanese mass media with the subtitle 'The World's Attention and Japanese Silence.'

The NHK is the only TV station that planned a special program to cover the Tribunal. Two months before the Tribunal, the NHK proposed a program titled 'Full Pursuit of the Tribunal.' VAWW NET Japan agreed to cooperate with the NHK. The program was aired on January 30, 2001. However, the program was

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completely different from the plan that they had showed us. There were signs that the program had been hastily revised. Essential information such as the full name of the Tribunal ('The Women's International War Crimes Tribunal'), the name of host organization VAWW NET Japan, and the names of the accused, including Emperor Hirohito and the nine generals were nowhere to be found. The climax of the Tribunal—the moment when the presiding judge pronounced the verdict that 'Emperor Hirohito is guilty' and the next moment when all 64 witnesses and the audience stood up to cheer—was also missing. Comments from two scholars were edited awkwardly. On the other hand, the program contained endless comments from a right wing scholar, who attended only the last day of the 4-day Tribunal, criticising the Tribunal and claiming that the 'comfort women' were prostitutes whose testimony could not be trusted.

On January 30, 2005, the Asahi Newspaper published a prominent report that the politicians had pressured NHK to alter to its educational program 'Questioning Wartime Sexual Violence.' According to the Asahi Newspaper, the NHK executive in charge was asked to come to the Members' Office Building of MP Nakagawa Shoichi and MP Abe Shinzo. The executive was told by both MPs, 'Do not broadcast the one-sided program.' MP Nakagawa added, 'If you cannot do that, you should give it up,' suggesting that the broadcast be cancelled. After an unprecedented 'preview by the Bureau Chief' was conducted, it was ordered that the comments by the scholar critical of the Tribunal be increased and that a large portion of the trial scenes be cut. Testimonies by Japanese soldiers who were perpetrators were completely deleted. On the day of broadcast, it was further ordered that the testimonies including Chinese 'comfort women' be cut. The title of the program was changed from 'Questioning Wartime Sexual Violence by the Japanese Army' to 'Questioning Wartime Violence.'

The Asahi story, which pointed out that 'there may be a serious problem regarding the present case since the Broadcast Law prohibits external interference in program editing,' shocked Japanese society. Various media outlets reported this incidence. VAWW NET Japan could not ignore the fact that a public broadcast had been altered as a result of intervention by politicians. VAWW NET Japan filed a lawsuit against NHK, NEP, and the DJ. The VAWW NET won in the District court and the Tokyo High Court but lost in the Supreme Court. MP Abe Shinzo is currently Prime Minister of Japan.

7. What Did They Want to Erase from the NHK Program?

The answer is the 'Japan' that perpetrated the crime of wartime sexual violence against women. 'Japanese Army' was removed from the original title of the program, 'Questioning Wartime Violence by the Japanese Army.' The testimony of the two former Japanese soldiers was erased. Testimony of survivors was erased. Above all, the crux of the Tribunal, the verdict affirming the guilt of Emperor Hirohito was also erased from the program. What they wanted to erase from the

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program was Japanese history itself in the period between 1932 and 1945. They wanted to write a clean and glorious history of Japan.

Second, they wanted to erase the very existence of all the women who have survived and have testified regarding crimes against women by the Imperial Japanese Army. Thirdly, and finally, they wanted to erase the existence of the Japanese women who helped to convene the WIWCT and the strongly-linked global network of women who struggle together as part of the international feminist movement.

Notes

[1] The Women's International War Crimes Tribunal, *JUDGEMENT,* (Violence Against Women in War Network Japan, 2001), Part I, A -3, 1.
[2] Ibid., Part V, B-819, 193.
[3] Ibid., Part V, B-830, 195-196.
[4] Ibid., Part V, B-832, 196.
[5] Ibid., Part III, B-662, 157.
[6] Ibid., Part III, B-666, 158.
[7] Ibid., Part 8, 1089, 264.
[8] For instance: Anonymous, 'Hirohito 'Guilty' over Sex Slaves', *BBC News*, December 12, 2000, viewed on 27 March 2015, http://news.bbc.co.uk/1/hi/world/asia-pacific/1066658.stm.

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Michiko Nakahara is Professor Emerita at Waseda University, Japan. She is Co-Chairperson of VAWW RAC and the author of 'Malayan Labor on the Thailand-Burma Railway,' *Asian Labor in the Wartime Japanese Empire* ed., by P. H. Kratoska, M. E. Sharpe, 2005.

Sexual Slavery Versus Necessary Evil: 'Comfort Women' Hate Speech under the Abe Administration

Booja Kim and Sachiyo Tsukamoto

Abstract

Since VAWW-NET JAPAN – the forerunner of VAWW RAC was established in 1998 – we have contested the hegemonic 'comfort women' discourse perpetuated by historical revisionists in Japanese politics, bureaucracy, academics, business, media and grassroots. By sharing with the conference delegates our long-term empirical research as an active transnational feminist movement based in the perpetrator country, VAWW RAC seeks to promote a better understanding of the universal nature and particular aspects of the 'comfort women' system. This chapter addresses our current struggle against the pervasive nature of historical revisionism gaining momentum under the ultranationalist leadership of Prime Minister Shinzo Abe. His patriarchal nationalism symbolized by the Hashimoto controversy claiming that 'comfort women' were a necessary evil, has been attempting to erase the war memory of 'comfort women' not only from the history textbooks, but from society as well. We strongly hope that our chapter will contribute to restoring the justice and dignity that the aging survivors deserve.

Key Words: 'Comfort women,' transnational feminist activism, historical revisionism, ultra-nationalism, Prime Minister Shinzo Abe, hate speech.

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1. Common Recognition of 'Comfort Women' as Sexual Slaves

Japan's social movements for the resolution of the issue of the Japanese Military Comfort Women, in short, the Comfort Women Justice Movement, were initially launched as the response to the Asian victims' testimonies in 1990s. Most of those engaged in the movement were, and continue to be, women in grass-root organisations including Koreans living in Japan.

The Comfort Women Justice Movement has greatly contributed to creating an international norm identifying 'comfort women' as sexual slaves, whether they were prostitutes or not. Nevertheless, in Japan, the movement has yet to reverse the domestic norm of 'anti-sexual slavery.' Contrary to the international human rights norm, hate speech against 'comfort women', launched by historical revisionists, has been gaining momentum under the ultranationalist leadership of Prime Minister Shinzo Abe. These current practices have effectively prevented the resolution of the issue. In our chapter, we contextualize what has caused the current rise of historical revisionism and juxtapose their counter attack on the Comfort Women Justice Movement.

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2. 1990s – 2000s: The Comfort Women Justice Movement and a Backlash from Historical Revisionists

Since 1991, when Kim Huk Sun broke her silence, more and more Asian victims came forward. At the same time, Japanese progressive historians and activists discovered official documents combined with the testimonies of Japanese veterans proved that the Japanese Military organized the 'comfort women' system. Under this backdrop, the Comfort Women Justice Movement culminated inside and outside Japan. Accordingly, based on the official investigations in 1992 and 1993, the then Japanese government reversed the denial of the involvement of the Japanese military in organizing the 'comfort women' system, and announced its apology by issuing the Kōno Statement.[1]

The 1993 Kōno Statement admitted the Japanese army's involvement in the coordination of a system of sexual slavery and coercive recruitment practices for prostitution. The Kōno Statement ultimately led to the 1995 Murayama Statement,[2] which expressed deep remorse and apologies for Japan's past aggression and colonisation of Asian countries. As the result of the Kōno Statement, the 'comfort women' issue was introduced into history textbooks for middle schools for the first time in 1997. All in all, these achievements were the fulfilment of transnational activism.

However, the success of the movement caused a full-scale reaction against the surviving 'comfort women' (referred to below as the survivors). The backlash campaign was promoted by the Japanese Society for History Textbook Reform (JSHTR), which was established in 1996. This campaign has been orchestrated by Japanese historical revisionists including politicians, business people, celebrities, a cartoonist,[3] and novelists. JSHTR[4] launched a series of campaigns to demand the removal of the description of the 'comfort women' issue from history textbooks. Their ultimate goal was the creation of a history textbook without describing any past history of Japan as a perpetrator.

With the emergence of JSHTR, the then Secretary General of the Diet Member Group for Considering Japan's Future and History Textbooks, Shinzo Abe actively participated in the 'bashing' campaign as a strong JSHTR supporter. After being promoted to a senior member of the government, Abe intervened in NHK's[5] re-editing the documentary dealing with The Women's International War Tribunal 2000, and forced NHK to revise it in his favour.[6] Thus, under the intensifying political pressure from Abe and other JSHTR supporting lawmakers, any description about 'comfort women' was eliminated from all textbooks in 2006.

The next target for the attack was the Kōno Statement. In May 2007, after Abe first assumed the Prime Minister's office in 2006, he adopted a decision by his cabinet that among the documents discovered by the Japanese government none evidenced coerced recruitment of 'comfort women' by the Japanese military. By denying the notion of the coerced recruitment, he attempted to delegitimize the Kōno Statement. However, under fierce criticism from the global community, he

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had no options but to express his sincere apologies to the survivors; however, he chose to apologize to the U.S. President, George W. Bush, in an April 2007 summit meeting, rather than to the survivors.

2007 marked great successes in Transnational Comfort Women Justice Activism. The U.S. House of Representatives, the Dutch Lower House, the Canadian House of Commons, and the European Parliament, all passed resolutions urging the Japanese government to apologize to the survivors. In 2008, the National Assembly of the Republic of Korea and the Legislative Yuan of the Republic of China followed suit. Thus, transnational activism supported by world opinion prevented the revision/abolition of the Kōno Statement.

The statue to commemorate 'comfort women' established in South Korea in December 2011, has become the symbol of the transnational activism for their memory and justice. This life-size image of a girl was erected in front of the Japanese Embassy in Seoul, where the 'Wednesday Demonstration Demanding Japan to Redress the Comfort Women Problems', has been organised ever since January 1992. This bronze statue was unveiled on the 1000th anniversary of the Wednesday Demonstration.

Image 1: The Memorial Statue of a 'Comfort Woman' in front of the Japanese Embassy in Seoul. © 2014. Courtesy of Booja Kim.

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3. 2010s: Prevailing Comfort-Women Hate Speech

In December 2012, Abe was re-elected as Japan's Prime Minister with the catchy slogan 'Recover Japan'. We argue that this slogan is a code for hate speech. His victory caused considerable tension between Japan and, both, South Korea and China. Contentious relations between the three countries emerged to the extent that hate speech became social phenomena in Japan. A primary target of hate speech is the issue of 'comfort women.'[7]

The acts comprising Comfort Women hate speech can be explained as follows: fanning hatred towards Korea and China; restricting the survivors to solely Koreans; labelling the survivors as voluntary prostitutes or liars; and perpetrating a public discourse which seeks to acquit Japan's war crimes.

The Comfort Women hate speech has several characteristics. Firstly, Japanese cabinet members have taken the initiative in making historical-revisionist remarks. The most noted is Prime Minister Shizō Abe stating that there is no evidence proving forced recruitment such as abduction and kidnapping.[8] In June 2014, the Abe Cabinet re-examined the process of coordination in the wording of the Kōno Statement with South Korea whereby they attempted to delegitimize the Statement. Secondly, in lockstep with the Abe cabinet, the media and internet sites have been encouraging Comfort Women hate speech or supporting it through ignorance and silence. It has become a fact of life that Japan's right-wing internet sites, newspaper and magazine publishers and broadcasting companies have been generating profits by creating special features to promote hatred against Koreans or by attacking the survivors. Currently, hate speech is serving corporate interests by creating business opportunities. In other words, business industries have nurtured hate speech.

Furthermore, the media, purportedly liberal, has been practicing self-censorship by restraining the reporting of stories regarding the issue of 'comfort women' or contributing to the rightist argument. In January 2014, the new chairman of NHK, which should maintain neutrality in reporting on any issue, made a controversial remark that the 'comfort women' system was set up in any country which was waging a war.[9] This illustrates that Abe appointed to the top position of the Japanese public broadcasting company one of his allies, who shares the same historical consciousness.

Thirdly, a racist group, Zaitokukai has shifted the place for action from the Internet to the real world, where they have agitated racial discrimination through threats and violence, which has provoked incidents of serious violation of human rights.[10] Zaitokukai members have boldly taken to the streets repeating violent hate speech against Koreans in Tokyo and Osaka. In 2013, ZaitokuKai expanded into a group attracting attention as a social phenomenon. Their 2013 placard telling to kill both good and bad Koreans is as notorious as a flag with a swastika in their 2014 demonstration.

The 'comfort women' issue has been the prime target for their hate

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speech/crime. They disrupt events supporting the survivors with repeated violent actions and hate speech, claiming that 'comfort women' were prostitutes; or the idea that 'comfort women' were sexual slaves is simply a fabrication. Furthermore, they despise the survivors by showing the naked image of the commemorating statue of 'comfort women.' Nevertheless, their violent activities are not subject to regulation since laws criminalising hate speech do not exist in Japan. In our view, hate speech is inadvertently being promoted by the fact that leading constitutional scholars are against criminalisation of hate speech on the grounds of freedom of speech.

The phenomena explained above have been underpinned by the intersection of diverse ideologies. They include colonialism which denies Japan's past aggression and colonisation, racism, ultra-nationalism based on historical revisionism, and sexism by ignoring the survivors' plights of sexual violence. Finally, they lead to the following slogans: 'Never forgive South Korea and China which despises Japan' and 'Restore the Japanese pride.' As a result, our Comfort Women Justice Movement has been mislabelled as 'anti-Japan' and has come under fierce attack.

It is of a great concern that the Comfort Women hate speech is widespread among students and 'ordinary' people including women who have not learned anything about Japan's war-time past as a perpetrator.[11] Demonstrations without the involvement of Zaitokukai were carried out; Internet bulletin boards and social networking service are utilised as tools to spread the hate speech. Now, under the Abe administration, the 'common knowledge' which is being perpetuated by the Japanese political right wing is being disseminated through the internet, and ubiquitously becoming a part of daily life. Furthermore, the Abe cabinet decided that Japan did not need to accept the UN recommendation due to the fact that it had no legal obligation.[12]

4. 'Comfort Women' Are a Necessary Evil and 'a Male-Centric Myth about Female Sexuality'

In 2013, Osaka Mayor, Hashimoto[13] stated that everyone knew that the 'comfort women' system was necessary during war time. His comment came under fierce criticism mostly from outside Japan. However, a great number of Japanese men have supported his remarks. Why?

One of the reasons is based on the notion of the 'male-centric myth', claiming that male sexual desire is out of control. Therefore men need to deal with such desires properly because they do not want to rape women. Consequently, men need prostitutes in their daily lives; and soldiers need 'comfort women' in war time. The 'male-centric myth' is pervasive within Japanese society. This myth, which implies the marginalisation of women, is wrong insofar as nothing can stop rape.

In reality, male sexual desire is socially constructed. In Japan, sex industries are prosperous[14] and varied. Japan is also one of the most prominent supplying countries of pornography into the domestic market. Most of the pornography

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depicts sexual violence such as rape and child pornography. These images are easy to acquire via Internet in the new millennium. Furthermore, pornography is not regulated in comic books, animation, computer games, male magazines, and cable TV. Furthermore, male sexual desires are stimulated on a daily basis through the pornography section at rental video shops and convenience stores, flyers of male magazines featuring sex or female genitals on commuter trains.

The boundary between sexual violence and erotic art work is blurred. For example, paintings of a naked girl wearing a dog collar, whose limbs are severed, is appraised as an art.[15] This demonstrates the commodification of sexual violence rather than commercialisation of female sex. Thus, the 'male-centric myth' has been expanding and strengthening day in and day out, empowered by misogyny.

Notwithstanding Japan's status as an economic power, the social status of Japanese females is very low increasingly so amongst poor women. The Global Gender Gap Report 2013 ranked Japan the 105th position in 136 countries.[16] While income differentials in full time employment is staggering, the situation is worse for women employed in temporary employment, where women earn 50% of that of male regular workers. 58% of women are temporary workers with low incomes in comparison to 20% of men. Currently one-third of young single women and two-thirds of single mothers are living below the poverty line, many of whom are isolated without any governmental benefits.[17]

There is a paradoxical relationship between women's poverty and sex industries. Sex industries are a safety net guaranteeing high salary with short working time for poor women, even though there is a risk of violation of human rights. This is a reason why women facing poverty and social exclusion are attracted by the promoters of sex industries. Yet, we argue that high salaries with high risk offered by sex industries will not promote either female social positions or human rights.

All in all, Japan is regarded as the heaven for men, where male sexual desires are prioritized before women's human rights. This is the social background nurturing the norm that 'comfort women' are not sexual slaves, but necessary evils.

5. How Can We Defeat the 'Comfort Women' Hate Speech?

It is urgent to privilege the issues of how to fight hate speech, how to disseminate the historical facts about the 'comfort women' system, and how the survivors seek an official apology and compensation from the Japanese government. With this aim, and in collaboration with the Centre for Research and Documentation on Japan's War Responsibility, we launched a website entitled 'Fight for Justice – the Japanese Military "Comfort Women": Resistance to Forgetting & Responsibility for the Future.'[18] This website provides the global civil society with clear sources and evidence such as archival documentation and testimonies in four languages – Japanese, English, Chinese and Korean. Recently counter-attack actions were launched against hate-speech demonstrations.

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6. Solidarity beyond Borders

Nowadays, the confrontation revolving around the 'comfort women' issue is widespread across national borders and involves relations between Japan, China, and Korea. The contentious politics over the presence of a statue of a 'comfort woman' in the U.S. and in Australia reveals that the historical controversy has created a similar confrontation in the West. It also discloses the fact that there are Western people who stay away from the issue, marginalising it simply as an East Asian issue.

However, the debate around the 'comfort women' issue has already reached the UN. In July 2014, the UN organized the 111th session of the Human Rights Committee, where a Japanese right-wing women's group, Japanese Women for Justice and Peace, organized for the first time a lobby for the Japanese government insisting that Japanese Military 'comfort women' was not a system of sexual slavery. Thus, the global war, over the debate about whether Japanese Military 'comfort women' were necessary evils or sexual slaves, has begun.

Wartime sexual violence prosecuted by the 'comfort women' issue is continuously reproduced on a daily basis. The 'male-centric myth' is generated within a society which is rife with domestic violence, child pornography, rape and sex trafficking. As a result, the myth promotes sexual abuses within the army, rape as a weapon of a war, and the system of the military 'comfort women.' Unless this vicious circle is broken, sexual violence against women will be intensified. Therefore, what is needed is the establishment of networks in order to promote a better understanding of the 'comfort women' issue in society. In furtherance of this aim, we would like to propose the creation of networks beyond borders, thereby sharing and disseminating information of the issue.

Notes

[1] Ministry of Foreign Affairs of Japan, 'Statement by the Chief Cabinet Secretary Yohei Kono on the Result of the Study on the Issue of "Comfort Women",' August 4, 1993, viewed on 1 August 2014,
http://www.mofa.go.jp/policy/women/fund/state9308.html.
[2] Ministry of Foreign Affairs of Japan, 'Statement by Prime Minister Tomiichi Murayama "On the Occasion of the 50th Anniversary of the War's End",' August 15, 1995, viewed on 1 August 2014,
http://www.mofa.go.jp/announce/press/pm/murayama/9508.html.
[3] Yoshinori Kobayashi is famous for his political-far-right cartoons which have attracted a lot of Japanese youngsters.
[4] In fact, their publications were best-sellers within the Japanese market.
[5] Japan's public broadcasting company, Nippon Hōsō Kaisha (NHK) is widely known as a Japanese counterpart of the BBC.
[6] The documentary TV program was broadcast in 2001.

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[7] The other issue relates to the Yasukuni Shrine enshrining Class A war criminals.

[8] He made this statement during the Diet session in February 2013, despite the discovery of official documents evidencing coerced recruitment. In light of further criticism by the US government, Abe announced his intention not to revise the Kōno Statement in March 2014. However, behind diplomacy, the Cabinet Secretariat, Suga established a cabinet team to delegitimize the Kōno Statement.

[9] Given the current body of research, it has been determined that both Nazi Germany and Japan each constructed their own military 'comfort women' systems.

[10] For example, since 2013, Zaitoku Kai is emerging as an important actor in Japanese civil society by displaying placards exhorting the Japanese to kill both 'good' and 'bad' Koreans.

[11] Most Japanese people share the victimhood of war due to history education in Japan. Worse, there is an increasing number of 'ordinary people' supporting xenophobia without knowing or intending to learn about the issue of 'comfort women.'

[12] On 17 May 2013, The UN Office of the High Commissioner for Human Rights urged the Japanese government to prevent Comfort Women hate speech thorough education. Several weeks later, the UN Committee against Torture (UNCAT) recommended that the Japanese government refute lawmakers' denial of the facts about the issue of 'comfort women.'

[13] Osaka mayor Hashimoto was a legal adviser to the association of prostitution rings.

[14] In spite of Japan's 2012 anti-prostitution Law, there were more than 1,200 shops named 'Soap Land,' which are in reality, prostitution rings.

[15] A statement of protest against this exhibition by a civil organisation is updated on the following web site: People against Pornography and Sexual Violence, 'Letter of Protest to the Mori Art Museum,' January 25, 2013, viewed on 1 August 2014,
http://paps-jp.org/action/mori-art-museum/statement-english/.

[16] World Economic Forum, 'The Global Gender Gap Report 2013,' viewed on 1 August 2014,
http://www.weforum.org/reports/global-gender-gap-report-2013.

[17] Asahi.com, 'One Third of Young Single Women and 57% of Single Mothers Are Living under the Poverty Line,' December 9, 2011, viewed on 1 August 2014,
http://www.asahi.com/special/08016/TKY201112080764.html.

[18] 'Fight for Justice', viewed on 1 August 2014, http://fightforjustice.info. In cooperation with scholars and organizations supporting the survivors, we are providing global civil society with clear research source materials and evidence such as archival documentation and testimonies in multi languages such as Japanese, English, Chinese and Korean.

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Kim Booja (Puja) is a Professor of Foreign Studies at Tokyo University, Japan. She is a KoreanⅡgeneration, living in Japan. Her major is gender history

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with an emphasis on the educational system in colonial Korea, violence against women in colonialism and war.

Sachiyo Tsukamoto received a MA degree in politics and succeeded to a PhD course in history at the University of Nottingham in the UK. In October 2014, she transferred her PhD studies to those in politics to the University of Newcastle in Australia. Her research explores memory and gender of Japanese 'comfort women.'

SEXUALITY, OPPRESSION AND HUMAN RIGHTS

The gradual demystification of sexuality leads to its slow departure from long date traditional honour codes. This evolution in thought and in attitude allows one to observe new—and not so new—mentalities and behaviours. Sexuality is indeed a social construct that can encompass physical and/or symbolic domination and viciousness. It concerns women and children, as well as men. It involves every culture, every country, and every population. This anthology presents interdisciplinary studies with a human rights based approach from researchers and social workers around the world. The essays discuss sexual violence and its social ramifications and violence against various sexualities. It aims at elucidating not only contemporary, historical, and social facts related to sexual exploitation and sexual violence, but also discourses that perpetuate sexual oppression. Moreover, it offers the reader insights into prevention methods and last, but not least, it presents individual and collective creative tools to combat sexual domination.

Júlia Tomás is a free-lance scientific researcher at the Communication and Society Research Centre, University of Minho, Portugal. She has a PhD in Sociology since 2009. Presently she also works at the NGO Unchosen in Bristol (UK), campaigning against modern slavery.

Nicol Epple is working towards a PhD in English Literature and Criticism with a focus on Women's Studies. She speaks internationally on intersecting issues women and social injustice. In 2014 she founded, and currently directs, The LOV Foundation, Inc., an NGO to empower young women in the United States, Liberia, and Tanzania to overcome sexual exploitation.