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Prostituting Peace: The Impact of Sending State's Legal Regimes on U.N. Peacekeeper Behavior and Suggestions to Protect the Populations Peacekeepers Guard

Alexandra R. Harrington

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Prostituting Peace: The Impact of Sending State's Legal Regimes on U.N. Peacekeeper Behavior and Suggestions to Protect the Populations Peacekeepers Guard

Cover Page Footnote

Doctor of Civil Law Candidate, McGill University; LL.M. in International Law, Albany Law School: J.D., Albany Law School; B.A. Politics, B.A. History, New York University. The author wishes to express her immense gratitude to her parents, friends, and Onchan for their untiring support for and interest in this project. She wishes to thank Professor Peter Halewood, Professor Vincent Bonventre, Professor Timothy Lytton, and Professor Maria Grahn-Farley for their encouragement, comments and insights. She also wishes to thank the library staff of Albany Law School for their assistance in this project and the Harvard Law Library for facilitating certain research vital to this project. All opinions are, however, attributable solely to the author. This article is dedicated to all those for whom the conduct discussed herein is not simply a story. It was written in the hopes of creating dialogue which will help those who have been prostituted by peace and of preventing the creation of future victims.

**PROSTITUTING PEACE: THE IMPACT OF SENDING
STATE'S LEGAL REGIMES ON U.N. PEACEKEEPER
BEHAVIOR AND SUGGESTIONS TO PROTECT THE
POPULATIONS PEACEKEEPERS GUARD**

ALEXANDRA R. HARRINGTON, ESQ.*

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I. INTRODUCTION

Prostitution has many meanings. Its most obvious is in the context of selling sexual relations for monetary or other gain. However, it is not only in this way that people can be prostituted and, certainly, it is possible to prostitute things other than people. Many nations and societies have outlawed the act of prostitution in

its transactional sense. Prostitution of commonly held human values has also been theoretically outlawed within the international community, with torture, genocide, and discrimination against women and girls being only a few areas of international legal focus. In order to stop the prostitution of peoples and the peace by forces of violence and oppression, the United Nations (U.N.) created peacekeeping operations to assist the local populations affected by such conflicts and to implement political measures that are intended to restore calm. However, in the process of its peacekeeping missions, the U.N. has itself given rise to the prostitution of the idea of peace it seeks to foster.

This prostitution of peace has happened for over a decade and has, until recently, gone largely unnoticed or accepted by the international community generally and legal scholars in particular. It happened – and still happens – when a deployed peacekeeper rapes a woman or child whom he was sent to protect. It happened – and still happens – when a deployed peacekeeper patronizes a brothel full of women who are prostitutes because the conflict he was there to stop did away with these women’s normal lives and left them destitute. It happened – and still happens – when a deployed peacekeeper procures sexual relations with a starving young girl in exchange for food for her and her family. It happened – and still happens – every time a peacekeeper patronizes a brothel or other facilities whose prostitutes are held in human slavery and have been trafficked from their homes to serve as prostitutes against their will and understanding. It happened – and still happens – every time a peacekeeper sent to protect the peace for the victims of conflict uses this power to create a victim of that peace. Yet, despite public outcry from the U.N. and the general public, as well as reform proposals commissioned by the U.N. itself, this prostitution of peace continues to happen unabated by the law.

To date, the focus of law in regards to this problem has been to emphasize that the U.N. cannot itself try peacekeepers for sexual or other misconduct and to commend the U.N. for remanding errant peacekeepers to their sending states, which exercise jurisdiction over them. What has gone unexamined are the legal and socio-legal structures of sending states whose peacekeepers commit sexual and other crimes while deployed to a U.N. peacekeeping mission. This article is an in-depth study of the penal and, to the extent available to the public, military laws of sending states which have had allegations of sexual and other misconduct made against their peacekeepers. This article explores the socio-legal structures of these states that inform law and

society in regards to sexual and other crimes. The goal of this article is to demonstrate that there is indeed a link between the laws and socio-legal structures of these sending states and the illegal and immoral acts committed by their peacekeepers. The caveat to the study conducted by this article is that it discusses sending states with reported and publicly divulged allegations made against their peacekeepers. It is certainly possible that there are other sending states affected by the phenomenon of errant peacekeepers which, due to reluctant victims and the U.N.'s method of reporting allegations, have not been made public.¹

Part II of this article catalogues the types of misconduct allegations made against U.N. peacekeepers and the issues associated with victim reporting of these incidents. Part II also identifies the sending states that have been the subject of these allegations and the U.N. peacekeeping mission locations where these allegations have been made. Part III discusses the legal constraints and rules that govern the relationship between the U.N., host states, and sending states in terms of peacekeeping missions and the activities of peacekeepers deployed to them. Part III further discusses U.N. attempts to implement the policies that it deemed necessary in light of the sexual misconduct charges brought against its peacekeepers. This Part highlights the importance of implementing certain provisions of the 2005 Zeid report which are, in the author's view, critical in order to assist the victims of errant peacekeepers and yet have gone unimplemented to date.

Part IV provides a study of the legal and socio-legal structures of the thirty-four sending states which have, to date, been the subject of sexual and other misconduct allegations. For ease of reading, the sending states are presented in alphabetical order, not in order of allegation propensity or severity. Part V of this article analyzes the information presented in Part IV and divides the sending states into three categories based on their legal and socio-legal structures. These categories are used to discuss the

1. It should be noted here that, while the U.N. has started a process of issuing data on reported and investigated sexual and other allegations made against deployed peacekeepers, the reports it issues do not provide sending state identities. See Letter from the Permanent Representative of Cyprus, United Nations, to the Secretary-General, United Nations, (Apr. 8, 2005) (on file with United Nations, U.N. Doc. A/59/777); The Secretary-General, *Report of the Secretary-General, Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, U.N. Doc. A/59/782 (Apr. 15, 2005); The Secretary-General, *Report of the Secretary-General, Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, U.N. Doc. A/60/861 (May 24, 2006); The Secretary-General, *Report of the Secretary-General, Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, U.N. Doc. A/61/957 (June 15, 2007).

reasons why some of these states are similar and why some should be allowed to continue as peacekeeping force contributors in the future while others should not be allowed to participate in U.N. peacekeeping missions because of their present legal and socio-legal structures and the societal tenets they reflect.

Part VI discusses the author's suggestions for using the legal and socio-legal structures of sending states as a guide to whether such states should be allowed to participate in peacekeeping. Part VI suggests that the top five funding states of U.N. peacekeeping operations (currently the United States, Japan, Germany, the United Kingdom, and France) should form a sending state selection body – comprised of a military and legal representative from each state – to evaluate each would-be peacekeeping force-sending state using a set of five factors and to determine whether the state should be allowed to participate in peacekeeping. This body would also be tasked with periodic reevaluation of each sending state's suitability to contribute peacekeeping personnel and would be required to conduct a reevaluation of a sending state's suitability in the event that misconduct allegations are made against its peacekeepers. Reevaluation of a sending state's suitability would be conducted by this body in the event that the sending state were to engage in massive violations of the human rights of its citizens or citizens of another state or otherwise engage in conduct deemed unacceptable to the idea of promoting peace and stability during conflict. The body would have oversight representatives at each U.N. peacekeeping mission and would be authorized to implement certain Zeid report suggestions which are critical to creating some semblance of accountability for the damage done to the victims of peacekeeper misconduct. Key among the Zeid report suggestions is the implementation of a victims' assistance structure. Part VI further suggests that the U.N. must change its policy on HIV/AIDS testing for soon-to-be deployed peacekeepers in order to better protect the local population in the event that an act of sexual misconduct is committed by a peacekeeper in the future. It would require that deployed peacekeepers be tested for HIV/AIDS every six months during deployment as well. The rationale for mandating HIV/AIDS testing is that, while the U.N.'s goal of avoiding discrimination against those infected with HIV/AIDS is important, a balance of the harms suggests that it is more important to protect the local populations of sending states from HIV/AIDS exposure. This is demonstrated by the drastic increase in HIV/AIDS rates in the local populations of areas to which U.N. peacekeepers were deployed, such as Cambodia. In Part VII, this article concludes that the only way for

peace to be saved from further prostitution is for the U.N. and its members to understand the realities of how sending state laws and socio-legal systems impact on peacekeeper behavior and to use that knowledge to protect the victims.

II. ABUSE ALLEGATIONS

The primary forms of abuse allegations made against U.N. peacekeepers involve sexual misconduct and violence. Allegations involving peacekeepers and economic crimes have been made on several occasions as well, though they tend to receive less press attention because they are not as shockingly sensational. While economic crimes are important and well within the scope of this article, it should be stressed that the vast majority of proven and alleged crimes have been of a sexual nature. These crimes merit the closest scrutiny and discussion because they have a different and far more devastating impact on their victims and host societies than do purely economic crimes. For ease of understanding and to demonstrate the areas of prevalence clusters, each type of crime alleged is broken down and discussed separately below.

A. Rape

The commission of rape by members of U.N. peacekeeping forces is alarming in and of itself given the mission statements of peacekeeping forces and the general concept of peacekeeping. It is also alarming that rape is widespread both in the number of U.N. missions at which it has been alleged and in the number of sending states' members who are alleged to have committed it. As of the time of writing, allegations of rape have been made at numerous missions, specifically: United Nations Transitional Administration in East Timor (UNTEAT),² United Nations Operation in Burundi (ONUB),³ United Nations Mission in Sierra Leone (UNAMSIL),⁴

2. Shukuko Koyama & Henri Myrtilinen, *Unintended Consequences of Peace Operations on Timor Lester from a Gender Perspective*, in UNINTENDED CONSEQUENCES OF PEACEKEEPING OPERATIONS 27-31 (Chiyuki Aoi, Cedric de Coning & Ramesh Thakur eds., 2007).

3. Vanessa Kent, *Protecting Civilians from UN Peacekeepers and Humanitarian Workers: Sexual Exploitation and Abuse*, in UNINTENDED CONSEQUENCES OF PEACEKEEPING OPERATIONS 44, 47 (Chiyuki Aoi, Cedric de Coning and Ramesh Thakur eds., 2007); *New Sex Misconduct Claims Hit UN*, BBC NEWS, Dec. 17, 2004, available at <http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/4106515.stm> (last visited Mar. 11, 2008).

4. "WE'LL KILL YOU IF YOU CRY": SEXUAL VIOLENCE IN THE SIERRA LEONE CONFLICT, HUMAN RIGHTS WATCH, (2003), available at <http://www.hrw.org/reports/2003/sierraleone/> (last visited Mar. 24, 2008).

United Nations Stabilization Mission in Haiti (MINUSTAH),⁵ United Nations Mission in Liberia (UNMIL),⁶ United Nations Mission in the Sudan (UNMIS),⁷ United Nations Peacekeeping Force in Cyprus (FICYP),⁸ United Nations Operation in Cote D'Ivoire (UNOCI),⁹ United Nations Organization Mission in the Democratic Republic of the Congo (MONUC),¹⁰ United Nations Mission in Ethiopia and Eritrea (UNMEE),¹¹ United Nations Mission in Georgia (UNMIG),¹² and United Nations Mission for the Referendum in Western Sahara (MINURSO).¹³ Unsubstantiated claims of rape were made against a Canadian peacekeeper in Bosnia.¹⁴ Allegations have been made against many peacekeeping contingents, including those from Jordan,¹⁵ Indonesia,¹⁶ Guinea,¹⁷ Ukraine,¹⁸ Nigeria,¹⁹ Bangladesh,²⁰ Russia,²¹ South Africa,²²

5. *UN Haiti Troops Accused of Rape*, BBC CARIBBEAN.COM, Nov. 30, 2006, available at http://www.bbc.co.uk/caribbean/news/story/2006/11/printable/061130_unrapehaiti.shtml (last visited Mar. 11, 2008).

6. *Id.*; Melissa Chea-Annan, *Liberia; UN Sec. Gen. Warns Employees Against Sexual Abuse*, THE INQUIRER (Liberia), Mar. 14, 2006; FROM CAMP TO COMMUNITY: LIBERIA STUDY ON EXPLOITATION OF CHILDREN, SAVE THE CHILDREN UK, available at http://www.savethechildren.it/2003/download/pubblicazioni/Liberia/Liberia_sexual_exploitation_edited_LB.pdf (last visited Jan. 2, 2008) [hereinafter SAVE THE CHILDREN UK].

7. *Sudan: Allegations of Sexual Abuse Reveal Weak Monitoring and Investigation*, UN INTEGRATED REG'L INF. NETWORK, Jan. 3, 2007, available at 2007 WLNR 115883; Edith M. Lederer, *Four UN Peacekeepers Sent Home for Alleged Misconduct and 13 Peacekeepers Under Investigation in Southern Sudan*, AP ALERT - CRIME, Jan. 4, 2007, available at Westlaw, 1/4/07 APALERTCRIM 20:33:29.

8. Reed Lindsay, *Peace at a price in Haiti*, NEWSDAY, Jan. 8, 2007, at A4.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. Koyama & Myrntinen, *supra* note 2, at 36-37.

16. Before the introduction of outside peacekeepers to East Timor, Indonesian soldiers were stationed there under the guise of preserving the peace. While there, they committed their own alleged acts of sexual abuse. See generally ELISABETH REHN AND EILEEN JOHNSON SIRLEAF, *WOMEN, WAR AND PEACE: THE INDEPENDENT EXPERTS' ASSESSMENT ON THE IMPACT OF ARMED CONFLICT ON WOMEN AND WOMEN'S ROLE IN PEACE-BUILDING*, UNIFEM (2002), available at http://dagdok.org/pages/documents/pdf/unicef-WomenWarPeace%5B1%5D_64.pdf (last visited Jan. 2, 2008). In addition, once UN peacekeeping forces were stationed in East Timor, there is evidence that they assisted forces from other states in committing sexual violations against the local populations. See Mark Dodd, *Stories of Jordan peacekeeper rape hushed*, THE AUSTRALIAN, March 26, 2005, available at http://www.natashatynes.org/newswire/2005/03/hushed_rape_of_.html. Indonesia is included in this study because of its intensive involvement in UN peacekeeping operations and the collusion of its forces in East Timor.

17. *WE'LL KILL YOU IF YOU CRY*, *supra* note 4; *Afraid of the protectors*, NEW ZEALAND HERALD, July 12, 2003, available at 2003 WLNR 10734139.

18. *WE'LL KILL YOU IF YOU CRY*, *supra* note 4.

19. *Id.*; *Nigeria; Sex Scandal - UN Expels 4 Nigerian Soldiers*, DAILY CHAMPION, Dec. 5, 2006, available at Westlaw, 12/5/06 ALLAFRICACOM 23:51:57 [hereinafter *Sex Scandal*]; *Liberia; No Impunity for Rapists, Vows President Elect*, UN INTEGRATED REG'L INF. NETWORK, Dec. 5 2005, available at Westlaw, 15/5/05 ALLAFRICACOM 22:30:45.

Brazil,²³ Nepal,²⁴ Senegal,²⁵ Ethiopia,²⁶ Benin,²⁷ Togo,²⁸ France,²⁹ Ghana,³⁰ India,³¹ Niger,³² Sri Lanka,³³ Morocco,³⁴ Pakistan,³⁵ and the United States.³⁶

B. Prostitution

It is often argued that prostitution in conflict and post-conflict settings is a natural outgrowth of the interaction between soldiers and other military personnel and those who are displaced or otherwise not in their normal settings. According to this view, prostitution might be a social ill on peacekeeping missions but it is

20. WE'LL KILL YOU IF YOU CRY, *supra* note 4; Lederer, *supra* note 7 (detailing rape allegations involving young boys and girls).

21. See Fatoumata Fofana, *For Money, Food and Favor: Aid Workers, Powerful Men, Peacekeeper Sexually Exploit Children*, LIBERIAN OBSERVER, May 10, 2006, available at Westlaw, 5/10/06 ALLAFRICACOM 23:20:39 (explaining that, when allegations of Russian peacekeepers committing a gang rape of several Liberian girls were made, these troops were removed from their peacekeeping posts and taken away from Liberia before legal issues could ensue).

22. See Prega Govender, *Statistics Show 'Huge' Number of RSA Peacekeepers Found Guilty of Misconduct*, WORLD NEWS CONNECTION, July 16, 2006, available at Westlaw, 7/16/06 WRLDNWSC 13:54:27 (citing rape as one of many crimes alleged against South African peacekeepers and discussing the rampant culture of covering up these crimes within the South African military organization); *Sex Scandal*, *supra* note 19.

23. See *UN Official Admits Abuse of Citizens by Peacekeepers 'Is Going On'*, AGENCE FRANCE PRESSE ENGLISH WIRE, Dec. 1, 2006, available at Westlaw, 12/1/06 AGFRP 00:27:00.

24. *Sex Scandal*, *supra* note 19; U.S. DEPT. OF STATE, *TRAFFICKING IN PERSONS REPORT 230* (2007), available at <http://www.state.gov/documents/organization/82902.pdf> (last visited Dec. 19, 2007) [hereinafter U.S. DEPT. OF STATE].

25. *Sex Scandal*, *supra* note 19.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*; U.S. DEPT. OF STATE, *supra* note 24.

30. *Sex Scandal*, *supra* note 19; *Ghana's Army Investigating Allegation of Sexual Abuse in Liberia*, VOICE OF AMERICA NEWS, May 9, 2006, available at 2006 WLNR 7962755.

31. *Sex Scandal*, *supra* note 19; U.S. DEPT. OF STATE, *supra* note 24.

32. *Sex Scandal*, *supra* note 19.

33. Reed Lindsay, *Teen Rape Claims Dog UN Peacekeepers*, WASH. TIMES (Wash., D.C.), Dec. 17, 2006, at A4.

34. See *World Briefs: Wire Reports*, TULSA WORLD (Okla.), Aug. 8, 2007, at A12 (noting that the entire Moroccan peacekeeping contingent stationed in the Ivory Coast was confined to its barracks indefinitely due to widespread allegations of sexual violence and misconduct involving Ivorian women and girls); Emmanuel Duparcq, *Mixed-Race Babies Support ICoast Sex Abuse Claims*, AGENCE FRANCE PRESSE ENGLISH WIRE, Aug. 8, 2007, available at Westlaw, 8/8/07 AGFRP 01:36:00 (noting that many of the allegations involving Moroccan peacekeepers also center on prostitution); Christophe Koffi, *UN Peacekeeper Accused of Sexual Abuse in Ivory Coast*, AGENCE FRANCE PRESSE ENGLISH WIRE, Jul. 21, 2007, available at Westlaw, 7/21/07 AGFRP 17:59:00; U.S. DEPT. OF STATE, *supra* note 24.

35. C.S.R. Murthy, *Unintended Consequences of Peace Operations for Troop-Contributing Countries from South Asia*, in UNINTENDED CONSEQUENCES OF PEACEKEEPING OPERATIONS 165 (Chiyuki Aoi, Cedric de Coning and Ramesh Thakur eds., 2007).

36. See Carol Rosenberg, *Soldier Probed on Sex Abuse in Haiti*, MIAMI HERALD (Fla.), Nov. 6, 2000, at 1A, available at 2000 WLNR 3641348.

not akin to more serious sexual crimes, such as rape.³⁷ It is the author's firm belief that such a view is an entirely artificial construct, and that prostitution in conflict and post-conflict situations, such as those to which peacekeepers are deployed, is a serious sexual offense more akin to rape than to prostitution in most legal and social systems. This belief is based on the exploitative nature of prostitution in the areas where peacekeepers are deployed and evidence that suggests that the women, girls, and young boys who are prostitutes patronized by U.N. peacekeepers become prostitutes out of the need for self-preservation and to preserve their families. There are several known motivating factors for prostitution during and after conflict, which are discussed below. Also discussed below is the very real threat posed to the local population – and peacekeepers themselves – by the interaction between HIV/AIDS and prostitution.

1. Sex for Necessities

One of the first U.N. peacekeeping missions to face somewhat public allegations of widespread sexual misconduct was the United Nations Transitional Authority in Cambodia (UNTAC) during the period from 1992-93.³⁸ The alleged misconduct primarily related to acts involving patronizing prostitutes from Cambodia as well as from other areas who had been trafficked to Cambodia to service U.N. personnel, including peacekeepers.³⁹ Similar vague allegations have been made against U.N. peacekeepers stationed in Eritrea,⁴⁰ Haiti⁴¹ and Mozambique, to name a few missions.⁴²

Many women and young girls become prostitutes for U.N. peacekeepers in order to obtain food, money, and other supplies necessary for themselves and their families to survive.⁴³ Indeed, it is well documented that, in refugee camps, families with young

37. See Kent, *supra* note 3, at 53–54.

38. MUST BOYS BE BOYS?: ENDING SEXUAL EXPLOITATION & ABUSE IN UN PEACEKEEPING MISSIONS, REFUGEES INTERNATIONAL (2005), available at <http://www.refugeesinternational.org/content/publication/detail/6976/> (last visited Jan 2, 2008) [hereinafter MUST BOYS BE BOYS?]; Koyama & Myrntinen, *supra* note 2, at 32-33.

39. MUST BOYS BE BOYS?, *supra* note 38.

40. *Id.*

41. *Id.*

42. Stanley Meisler, *Prostitution Report Accuses UN Troops in Mozambique*, L.A. TIMES, Feb. 26, 1994, at A11; *UN Focuses on Peacekeepers Involved in Child Prostitution*, N.Y. TIMES, Dec. 9, 1996, at 9.

43. SAVE THE CHILDREN UK, *supra* note 6; Kent, *supra* note 3, at 47; REHN & SIRLEAF, *supra* note 16; *Kosovo UN Troops Fuel Sex Trade*, BBC NEWS, May 6, 2004, available at <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/3686173.stm> (last visited Mar. 11, 2008); SAVE THE CHILDREN UK, *supra* note 6.

girls frequently are denied proper rations of food and other items unless they are willing to trade sex with their daughters, sisters, spouses, or other female relatives for these rations with a variety of U.N. mission personnel.⁴⁴ In the Congo, peacekeepers from unspecified sending states were accused of having created and patronized a child prostitution ring.⁴⁵ Sending states implicated in patronizing prostitutes include South Africa,⁴⁶ India,⁴⁷ Morocco,⁴⁸ Ethiopia,⁴⁹ the Netherlands,⁵⁰ Canada⁵¹ Italy,⁵² Ireland,⁵³ Pakistan,⁵⁴ and Bulgaria.⁵⁵

2. Sex for Status and Protection

Women in conflict and post-conflict situations are frequently vulnerable, especially if they have lost members of their family or have suffered trauma during the conflict.⁵⁶ Particularly in conservative cultures where sexual relations outside marriage are taboo and a victim of sexual violence is regarded as a taint on her

44. SAVE THE CHILDREN UK, *supra* note 6.

45. *UN Probes Child Prostitute Ring*, BBC NEWS, Aug. 17, 2006, available at <http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/5260210.stm> (last visited Mar. 11, 2008); *New Allegations of Sexual Abuse by UN Troops in DR Congo*, AGENCE FRANCE PRESSE ENGLISH WIRE, Aug. 17, 2006, available at Westlaw, 8/17/06 AGFRP 16:07:00.

46. Isabelle Ligner, *The Misery of DR Congo's Child Prostitutes*, AGENCE FRANCE PRESSE ENGLISH WIRE, Sept. 27, 2006, available at Westlaw, 9/27/06 AGFRP 10:58:00.

47. *Id.*

48. See Duparcq, *Mixed-Race Babies Support ICoast Sex Abuse Claims*, *supra* note 34.

49. *Burundi: Two UN Peacekeepers to be Expelled Following Sex Scandal*, BBC INTERNATIONAL REPORTS (AFRICA), Jul. 21, 2005, available at Westlaw, 7/21/05 BBC-AFRICA 00:00:00.

50. Ramesh Thakur, *Comment: When the Peacekeepers Become the Problem*, GLOBE & MAIL, May 21, 2007, at A15.

51. As the result of an internal investigation which ultimately led to a reform in the Canadian peacekeeping policy in general, Canadian peacekeepers returning from Bosnia were punished for alcohol-related infractions and having purportedly consensual sex with local women. LuAnn LaSalle, *22 Soldiers Punished for Actions in Bosnia; 38 Others Cleared of Wrongdoing*, GLOBE & MAIL, June 9, 1998, available at 1998 WLNR 6268623.

52. Claims were also advanced against Italian peacekeepers in terms of patronizing child prostitutes while on assignment in Mozambique in 1994. See Sam Kiley, *U.N. Soldiers 'Using Child Prostitutes'*, TIMES (London), Jan. 28, 1994, available at 1994 WL 4088177.

53. The primary allegation made against Irish peacekeepers is that roughly seven of them patronized prostitutes while stationed in Eritrea. Martha Kearns, *Peacekeepers Paid for Sex with Girl*, IRISH INDEPENDENT, June 13, 2003, available at <http://www.independent.ie/national-news/peacekeepers-paid-for-sex-with-girl-15-216994.html> (last visited May 10, 2008).

54. Murthy, *supra* note 35, at 165.

55. Bulgarian peacekeepers earned a negative reputation for their patronizing of prostitutes during deployment in Cambodia. See James Bone, *Condom a Day for UN Troops to Combat Aids*, TIMES (London), Mar. 10, 2000, available at 2000 WLNR 3186435.

56. See Letter from the Secretary-General, United Nations, to the President of the General Assembly, United Nations (Mar. 24, 2005) (on file with the United Nations, U.N. Doc. A/59/710, at 8).

or his family, victims of sexual violence during conflicts are far more vulnerable and isolated from their standard support systems.⁵⁷ At U.N. peacekeeping missions around the world, this vulnerability is routinely exploited so that these women, young girls, and even boys will become prostitutes for peacekeepers in exchange for economic support and the perceived physical and economic protection of particular peacekeepers.⁵⁸ In many missions, it is not uncommon for peacekeepers – even those who are already married – to provide these women with places to live, cell phones, and other things while they are deployed to the mission.⁵⁹ When the peacekeeper's deployment is over, however, the relationship typically ends and the women involved are again left to fend for themselves – many times with the additional burden of a child from the relationship and the social stigma attached to themselves and their child.⁶⁰

3. HIV Patterns

Interestingly, in Nepal and Ethiopia – two U.N. sending states having a habitual problem with their peacekeeping contingents committing acts of sexual misconduct while deployed – medical studies have found a dramatic correlation between the deployment of their troops to quell domestic issues and HIV/AIDS rate increases in the local populations near these troops.⁶¹ Worldwide, there is a strong correlation between the presence of U.N. peacekeepers and HIV spread in host populations regardless of the mission's identity or location.⁶²

Many areas which contribute peacekeeping forces are struggling with the issue of a decent percentage of their military being infected with HIV/AIDS, but it has been documented that the greatest area of military concern with HIV/AIDS infection rates is sub-Saharan Africa.⁶³ The U.N. does not require that sending states test their peacekeepers prior to deployment and refuses to track such information or require testing of troops prior

57. SAVE THE CHILDREN UK, *supra* note 6.

58. *See id.*

59. *See id.*

60. *Id.*

61. See J. Okumura & S. Wakai, *Concern Over Localized HIV/Sexually Transmitted Infection Epidemic During Conflict in Nepal*, 35 TROPICAL DOCTOR 125 (Apr. 2005).

62. See REHN & SIRLEAF, *supra* note 16.

63. See Radhika Sarin, *A New Security Threat: HIV/AIDS in the Military*, 16 WORLD WATCH (Mar. 2003), available at 2003 WLNR 12287368.

to deployment on a peacekeeping mission.⁶⁴ The stated reason for the U.N.'s recalcitrance regarding HIV/AIDS testing of peacekeepers is that such testing would be in violation of the U.N.'s policies prohibiting discrimination against individuals based on their HIV/AIDS status.⁶⁵ Some sending states do require that their troops be tested for HIV/AIDS infection prior to deployment as peacekeepers but this is entirely discretionary.⁶⁶ Even then, many of these states do not require that a deployed peacekeeper be re-tested for HIV/AIDS during or after deployment.⁶⁷

Full information on military HIV/AIDS infection rates is largely unavailable, however information on the overall estimated HIV/AIDS infection rates for sending states can provide some insights into the importance of HIV/AIDS as an issue when mass allegations of sexual violence by deployed peacekeepers are made. In alphabetical order, the following is the most current information on HIV/AIDS infection rates in the sending states discussed below: Austria: 0.3% of the adult population as of 2003;⁶⁸ Bangladesh: less than 0.1% of the adult population as of 2001;⁶⁹ Belgium: 0.2% of the adult population as of 2003;⁷⁰ Benin: 1.9% of the adult population as of 2003;⁷¹ Brazil: 0.7% of the adult population as of 2003;⁷² Bulgaria: less than 0.1% of the adult population as of 2001;⁷³ Canada: 0.3% of the adult population as of 2003;⁷⁴ Ethiopia: 4.4% of the adult population as of 2003;⁷⁵ France: 0.4% of the adult population as of 2003;⁷⁶ Ghana: 3.1% of the adult

64. See UNITED STATES GENERAL ACCOUNTING OFFICE, REPORT TO THE CHAIRMAN, COMMITTEE ON INTERNATIONAL RELATIONS, HOUSE OF REPRESENTATIVES, UNITED NATIONS FACES CHALLENGES IN RESPONDING TO THE IMPACT OF HIV/AIDS ON PEACEKEEPING OPERATIONS 7 (2001).

65. *Id.*

66. *Id.*

67. *Id.*

68. AUSTRIA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/au.html> (last visited Mar. 11, 2008).

69. BANGLADESH, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/bg.html> (last visited Mar. 11, 2008).

70. BELGIUM, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/be.html> (last visited Mar. 11, 2008).

71. BENIN, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/bn.html> (last visited Mar. 11, 2008).

72. BRAZIL, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/br.html> (last visited Mar. 11, 2008).

73. BULGARIA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/bu.html> (last visited Mar. 11, 2008).

74. CANADA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ca.html> (last visited Mar. 11, 2008).

75. ETHIOPIA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/et.html> (last visited Mar. 11, 2008).

76. FRANCE, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library>

population as of 2003;⁷⁷ Guinea: 3.2% of the adult population as of 2003;⁷⁸ India: 0.9% of the adult population as of 2001;⁷⁹ Indonesia: 0.1% of the adult population as of 2003;⁸⁰ Ireland: 0.1% of the adult population as of 2001;⁸¹ Italy: 0.5% of the adult population as of 2001;⁸² Jordan: less than 0.1% of the adult population as of 2001;⁸³ Morocco: 0.1% of the adult population as of 2001;⁸⁴ Nepal: 0.5% of the adult population as of 2001;⁸⁵ The Netherlands: 0.2% of the adult population as of 2001;⁸⁶ Niger: 1.2% of the adult population as of 2003;⁸⁷ Nigeria: 5.4% of the adult population as of 2003;⁸⁸ Pakistan: 0.1% of the adult population as of 2001;⁸⁹ Russia: 1.1% of the adult population as of 2001;⁹⁰ Senegal: 0.8% of the adult population as of 2003;⁹¹ Slovakia: less than 0.1% of the adult population as of 2001;⁹² South Africa: 21.5% of the adult population as of 2003;⁹³ Sri Lanka: less than 0.1% of the adult population as of 2001;⁹⁴ Togo: 4.1% of the adult population as of 2003;⁹⁵ Tunisia: less than 0.1% of the adult population as of 2005;⁹⁶

/publications/the-world-factbook/geos/fr.html (last visited Mar. 11, 2008).

77. GHANA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/gh.html> (last visited Mar. 11, 2008).

78. GUINEA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/gv.html> (last visited Mar. 11, 2008).

79. INDIA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/in.html> (last visited Mar. 11, 2008).

80. INDONESIA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html> (last visited Mar. 11, 2008).

81. IRELAND, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ei.html> (last visited Mar. 11, 2008).

82. ITALY, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/it.html> (last visited Mar. 11, 2008).

83. JORDAN, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/jo.html> (last visited Mar. 11, 2008).

84. MOROCCO, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/mo.html> (last visited Mar. 11, 2008).

85. NEPAL, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/np.html> (last visited Mar. 11, 2008).

86. NETHERLANDS, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/nl.html> (last visited Mar. 11, 2008).

87. NIGER, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ng.html> (last visited Mar. 11, 2008).

88. NIGERIA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html> (last visited Mar. 11, 2008).

89. PAKISTAN, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html> (last visited Mar. 11, 2008).

90. RUSSIA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/rs.html> (last visited Mar. 11, 2008).

91. SENEGAL, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/sg.html> (last visited Mar. 11, 2008).

92. SLOVAKIA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/lo.html> (last visited Mar. 11, 2008).

93. SOUTH AFRICA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/sf.html> (last visited Mar. 11, 2008).

94. SRI LANKA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ce.html> (last visited Mar. 11, 2008).

95. TOGO, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/>

Uganda: 4.1% of the adult population as of 2003;⁹⁷ Ukraine: 1.4% of the adult population as of 2003;⁹⁸ United Kingdom: 0.2% of the adult population as of 2001;⁹⁹ United States: 0.6% of the adult population as of 2003; and¹⁰⁰ Uruguay: 0.3% of the adult population as of 2001.¹⁰¹

C. Sexual abuse not amounting to rape

Among the conduct falling into this section is the molestation of young boys, and the serious allegation that some members of MONUC's peacekeeping contingent were involved in attempts to further sex tourism and pedophilia activities.¹⁰² Also within this category are allegations of inappropriate and nonconsensual contact between peacekeepers and the local populations, including threats of further sexual abuse.¹⁰³ An Irish peacekeeper was also found to have produced a pornographic film involving an adult Eritrean woman whom he paid for her performance.¹⁰⁴ A number of peacekeepers from Uruguay were repatriated for unspecified acts of sexual misconduct while deployed.¹⁰⁵

D. Sexual and human trafficking

Direct connections between U.N. peacekeepers and human trafficking for sexual purposes into and out of Bosnia have also been made routinely since the deployment of peacekeepers to the area.¹⁰⁶ The United Nations Mission in Kosovo (UNMIK) has also been identified as a key source of human trafficking involvement

publications/the-world-factbook/geos/to.html (last visited Mar. 11, 2008).

96. TUNISIA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ts.html> (last visited Mar. 11, 2008).

97. UGANDA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html> (last visited Mar. 11, 2008).

98. UKRAINE, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/up.html> (last visited Mar. 11, 2008).

99. UNITED KINGDOM, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/uk.html> (last visited Mar. 11, 2008).

100. UNITED STATES, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html> (last visited Mar. 11, 2008).

101. URUGUAY, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/uy.html> (last visited Mar. 11, 2008).

102. Kent, *supra* note 3, at 47.

103. See *British Journal Stands Behind Study Finding Human Rights Abuses in Haiti*, KITCHENER RECORD, Feb. 10, 2007, at A6; *Six Nepalese UN Peacekeepers Jailed for Sex Abuse in DR Congo*, AGENCE FRANCE PRESS ENGLISH WIRE, July 23, 2005, available at Westlaw, 7/23/05 AGFRP 10:58:00.

104. Alex Last, *Porn Scandal Rocks Eritrean Peace Force*, BBC NEWS, Dec. 20, 2002, available at <http://news.bbc.co.uk/2/hi/africa/2595003.stm> (last visited May 10, 2008).

105. *Sex Scandal*, *supra* note 19.

106. MUST BOYS BE BOYS?, *supra* note 38; REHN & SIRLEAF, *supra* note 16.

with peacekeepers.¹⁰⁷ Overall, UN peacekeeping per se has been identified as a major supporter of human trafficking for sexual purposes.¹⁰⁸

E. Theft and embezzlement

Between 2005 and 2006, Pakistani peacekeepers were allegedly involved in a scheme to sell guns and gold to rebel groups in the Congo.¹⁰⁹ The U.N. later dismissed the gun smuggling portions of these allegations but did substantiate the gold smuggling allegations.¹¹⁰ Also in 2005, twelve French peacekeepers received minimal sentences in France for having robbed a bank in the Cote D'Ivoire while stationed there.¹¹¹ These sentences were protested by the French Justice Ministry for their leniency.¹¹²

Allegations of financial improprieties have also been levied against the Ukrainian peacekeeping delegation to the United Nations Force in Lebanon (UNFIL) with a less clear outcome.¹¹³ According to the U.N.'s own investigation, Nigerian peacekeepers deployed to Sierra Leone were "heavily involved in diamonds, false passports, drug-smuggling and other illegal activities."¹¹⁴ However, the UN ultimately determined that the Nigerian contingent to Sierra Leone could remain as part of the mission because it was successful in some of its military roles.¹¹⁵ Allegations of a food for

107. *Kosovo UN troops 'Fuel Sex Trade,'* BBC NEWS, May 6, 2004, available at <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/3686173.stm> (last visited Mar. 11, 2008). UNMIK has also been identified as the site of unspecified acts of sexual misconduct and abuse by peacekeepers. See *UN Watchdog Cites Sexual Abuse, Corruption in UN-Run Kosovo*, AGENCE FRANCE PRESSE ENGLISH WIRE, Oct. 18, 2005, available at Westlaw, 10/18/05 AGFRP 22:49:00.

108. See Sarah DiLorenzo, *Former US Ambassador Criticizes UN for Promoting Sex Trafficking in Peacekeeping Missions*, AP ALERT – BUSINESS, Apr. 13, 2007, available at Westlaw, 4/13/07 APALERTBUS 00:57:41.

109. See *Peacekeeper 'Smuggled Congo Gold,'* BBC NEWS, July 13, 2007, available at http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia/6896881.stm (last visited May 10, 2008); U.S. DEPT. OF STATE, *supra* note 24.

110. *Id.*; Mike Pflanz, *UN Officer Smuggled Gold Out of Congo*, DAILY TELEGRAPH (London), July 14, 2007, at 20, available at 2007 WLNR 13442618.

111. *Appeal at French Troop Sentences*, BBC NEWS, June 22, 2005, available at <http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/4118498.stm> (last visited May 10, 2008).

112. *Id.*

113. See *Ukrainian Former Peacekeeper Chief in Lebanon Denies Corruption Charges*, BBC INT'L NEWS, Sept. 9, 2005, available at Westlaw, 9/9/05 BBCINTLRKIEV 00:00:00.

114. Kwesi Aning, *Unintended Consequences of Peacekeeping Operations for Troop-Contributing Countries from West Africa: The Case of Ghana*, in UNINTENDED CONSEQUENCES OF PEACEKEEPING OPERATIONS 144 (Chiyuki Aoi, Cedric de Coning & Ramesh Thakur eds., 2007).

115. *Id.*

gold barter arrangement between Indian peacekeepers and certain rebel groups in Rwanda have also been made.¹¹⁶

F. Other crimes and issues

In a disturbing confirmation of the depth and breadth of peacekeeper transgressions with the populations they were deployed to protect and assist, children of mixed races – one parent from the host country and one from whatever the sending state was – are increasingly being born in host countries.¹¹⁷ There is currently no UN requirement that peacekeepers care for or acknowledge the children they father. Since the host state's laws do not apply to peacekeepers and since, as noted in several sending state sections below, it is essentially impossible for any woman to meet the burden of establishing paternity and attempting to collect child support in the sending states of peacekeepers alleged to have committed crimes, a class of children and single mothers has been created amid already dismal social and economic conditions in most host states. Although the reaction to these children and their mothers varies throughout the host states and societies in question, these children and their mothers tend to suffer from economic, social, and often legal stigmatization as a result.¹¹⁸ Many women who bear peacekeeper children are also in extremely precarious financial and societal positions already and their struggle to exist and reestablish themselves during the conflict in the host state is made more difficult because of these children.¹¹⁹

There is an additional issue surrounding sexual violence in conflict and post-conflict areas to which peacekeepers have been deployed: the occurrence of sexual violence against protected populations while peacekeepers watch. This issue has been highlighted recently by devastating tales of rapes of women of all ages – including babies – by combatants in the Congo, yet has

116. *Human Rights Watch Flays UN Report Acquitting Pak Peacekeepers*, INDIAN NEWS, July 24, 2007, available at Westlaw, 7/24/07 INNWS 00:00:00.

117. See Koyama & Myrntinen, *supra* note 2, at 37.

118. See, e.g., *id.*, at 37-38 (discussing the negative and positive community reactions to peacekeeper-fathered children and their mothers).

119. See *id.*

existed for much longer.¹²⁰ Similar issues occurred in Sierra Leone during its conflict.¹²¹

Also falling under this category are several alleged crimes which are difficult to otherwise classify. Allegations of murder involving a Somali boy were made against two Canadian peacekeepers who were later convicted and jailed for their crimes.¹²² In the wake of claims involving the torture of a Somali woman by several Italian peacekeepers, two generals involved in the oversight of these troops resigned.¹²³ Allegations of torture were made against two Belgian peacekeepers in Somalia; these peacekeepers were tried but acquitted.¹²⁴

G. Victim Reporting Issues

In many of the above situations, the victim is often reluctant to report the sexual abuse to the U.N. or even their own families. The societal beliefs of host countries are often very conservative and view women and their sexual purity as property to be maintained by the family.¹²⁵ Regardless of the circumstances and heinous nature of acts committed against them – including rape – it is well documented that victims of peacekeepers are reluctant to tell their families of their abuse for fear of physical punishment and/or ostracization from their families and communities.¹²⁶ Where familial and societal pressures do not militate against reporting sexual abuse, victims often remain reluctant to come forward because of the power disparity between the U.N. peacekeepers and the victims.¹²⁷ In a situation where a woman or her family is

120. See *DR Congo Child Rape Victim Dies*, BBC NEWS, Nov. 28, 2007, available at <http://news.bbc.co.uk/2/hi/africa/7119567.stm> (last visited May 10, 2008) (discussing the death of an eleven-month-old baby girl after she was raped by a combatant); Jeffrey Gettleman, *Rape Epidemic Raises Trauma of Congo War*, N.Y. TIMES, Oct. 7, 2007, at A1, available at 2007 WLNR 19666768; Eddy Isango, *UN Official Wants Congo Rapes Punished*, AP ONLINE REGIONAL – AFRICA, Sept. 8, 2006, available at 9/8/06 APONLINEAFR 17:44:18.

121. See *'Systematic Rape' in Sierre Leone War*, BBC NEWS, Jan. 16, 2003, available at <http://news.bbc.co.uk/2/hi/africa/2662807.stm> (last visited May 10, 2008).

122. Eddie Barnes, *With Friends Like These . . .*, SCOTLAND ON SUNDAY, Dec. 22, 2002, at 16, available at 2005 WLNR 14336940.

123. *Id.*

124. *Id.*

125. See Francoise J. Hampson & Ai Kihara-Hunt, *The Accountability of Personnel Associated with Peacekeeping Operations*, in UNINTENDED CONSEQUENCES OF PEACEKEEPING OPERATIONS 195, 205 (Chiyuki Aoi, Cedric de Coning & Ramesh Thakur eds. 2007).

126. See, e.g., *UN Haiti Troops Accused of Rape*, BBC CARIBBEAN.COM, Nov. 30, 2006, available at http://www.bbc.co.uk/caribbean/news/story/2006/11/printable/061130_unrapehaiti.shtml (last visited May 10, 2008).

127. SAVE THE CHILDREN UN, *supra* note 6, at 14.

surviving because of U.N. rations and assistance, it is logical that she will not report the crime out of fear that she and her family will lose the aid upon which they depend for survival. This is especially important in situations where the conflict from which the victim has fled is ongoing and there is a threat – however real – that the victim and her family will be forced to return to the conflict and suffer its consequences if they are not under the protection of the U.N. in some way.

The women and girls who come forward – and the parents and other family members who insist that their daughters and relatives come forward – with allegations of sexual abuse face additional hurdles. Evidentiary issues abound as many victims will not immediately report the crime, and, in sexual crimes, time destroys evidence. As discussed below, the U.N. has limited jurisdiction over the prosecution of peacekeepers for their actions and the host state typically has no jurisdiction for crimes committed within its borders by peacekeepers.¹²⁸ The U.N. can take certain disciplinary actions against peacekeepers alleged to have committed sexual or other misconduct, the harshest being to repatriate a peacekeeper, yet its record for actually taking such actions is abysmal.¹²⁹ Even with a drive to increase awareness and reporting of sexual and other crimes by peacekeepers and the resultant increase in reporting of such crimes, the U.N.'s record of findings against peacekeepers continues to be extremely poor.¹³⁰

III. U.N. POLICIES AND RULES FOR PEACEKEEPERS AND PEACEKEEPING

A. Legal Constraints

One of the most striking features of the U.N. Charter is its muteness on the concept of U.N. peacekeeping.¹³¹ The U.N. Charter does contemplate a standing U.N. military, comprised of commanders from the permanent members of the U.N. Security Council, to be used as a reaction force in the event of circumstances deemed to threaten international peace and security.¹³² However, in the Cold War environment which arose in

128. *See infra* Part III.

129. *See infra* Part III.

130. *See infra* Part III.

131. *See generally* U.N. Charter.

132. *See* U.N. Charter ch. VII.

the wake of World War II, this force was never created.¹³³ The idea of peacekeeping came into being in the 1960s and was justified on a legal basis as an extension of the U.N. Charter's mandate that the U.N. function to promote international peace and security.¹³⁴ The same justification has been used from the 1960s to the present. This justification has always come under attack from U.N. Charter textualists and international law scholars in general and the issue has yet to be fully decided.¹³⁵

U.N. peacekeeping missions are authorized by the U.N. Security Council.¹³⁶ The creation of a mission includes the designation of a maximum allowed numbers of peacekeepers, which can be subsequently changed by the U.N. Security Council, and specific action allowances for the mission.¹³⁷ Once created, the new mission is under the jurisdiction of the U.N. Department of Peacekeeping Operations (DPKO) and the office of the Secretary General for staffing and other organizational needs.¹³⁸ Peacekeepers are volunteered by their sending state to the particular mission; the U.N. cannot force a state to contribute troops and it currently cannot bar any member states from contributing troops to a peacekeeping mission.¹³⁹ Although these internal U.N. actions can take place rather quickly, the host state must still acquiesce to the presence of U.N. peacekeepers before they can be deployed to any area or conflict.¹⁴⁰

Sending states and host states have their own contracts with the U.N. for peacekeeping operations. Host states are required to sign these documents to preserve a semblance of sovereignty, although once the peacekeeping mission is present it is possible for the U.N. Security Council to change the mission in ways not

133. See Alexandra R. Harrington, *Victims of Peace: Current Abuse Allegations Against U.N. Peacekeepers and the Role of Law in Preventing Them in the Future*, 12 ILSA J. INT'L & COMP. L. 125, 131 (2005).

134. See *id.*

135. See *id.*

136. UN Peacekeeping – FAQ – Meeting New Challenges, available at <http://www.un.org/Depts/dpko/dpko/faq/q1.htm> (last visited Jan. 2, 2008) (“What is peacekeeping?”); ULF HAUSSLER, ENSURING AND ENFORCING HUMAN SECURITY: THE PRACTICE OF INTERNATIONAL PEACE MISSIONS § 4.1.2 (2007).

137. UN Peacekeeping – FAQ – Meeting New Challenges, available at <http://www.un.org/Depts/dpko/dpko/faq/q8.htm> (last visited May 10, 2008) (“Who decides to dispatch a UN peacekeeping operation and who is in charge on the ground?”).

138. See United Nations Department of Peacekeeping Operations – Head of Department, available at <http://www.un.org/Depts/dpko/dpko/info/page1.htm> (last visited May 10, 2008); Kent, *supra* note 3, at 50.

139. UN Peacekeeping – FAQ – Meeting New Challenges, available at <http://www.un.org/Depts/dpko/dpko/faq/q11.htm> (last visited May 10, 2008) (“Who contributes personnel?”); Kent, *supra* note 3, at 52.

140. See Kent, *supra* note 3, at 49.

contemplated by the contract.¹⁴¹ After the 2005 allegations of massive sexual abuse by peacekeepers in the Congo, U.N. contracts with sending states have attempted to impose additional restrictions on the conduct of U.N. peacekeepers and their likelihood of being tried at home. However these clauses have had little to no effect.¹⁴²

Outside of the contracts between the U.N. and the sending state, jurisdiction over all troops sent on a peacekeeping mission rests solely with the sending state.¹⁴³ The U.N. has the capacity to investigate allegations of sexual and other abuses and can, at most, repatriate the errant peacekeeper, but that is the extent of the U.N.'s jurisdiction.¹⁴⁴ The decision as to whether a peacekeeper will be tried is made by the sending state and it is often difficult to determine the course of trial for peacekeepers charged once they return home.¹⁴⁵ The host state cannot charge peacekeepers with any crimes, regardless of how heinous, because it lacks individual jurisdiction over the peacekeeper.¹⁴⁶ However, the host state is required to protect U.N. peacekeepers and other associated personnel from harm during their deployment; this requirement includes an obligation to prosecute those who are alleged to have attacked or otherwise targeted U.N. personnel.¹⁴⁷ Although it is possible for the mission to deny or waive immunity for an errant peacekeeper when the acts alleged are deemed to be without the scope of general immunity, this is very rare.¹⁴⁸ Even where this is possible, there are many reasons that a host state will not ask for jurisdiction over an errant peacekeeper and will instead rely on his sending state to evaluate the allegations and make further judicial decisions.¹⁴⁹

141. *See id.*

142. *See id.* at 49–50.

143. OLA ENGDAHL, PROTECTION OF PERSONNEL IN PEACE OPERATIONS: THE ROLE OF THE 'SAFETY CONVENTION' AGAINST THE BACKGROUND OF GENERAL INTERNATIONAL LAW 30, 52-55 (2007).

144. *See id.*; Hampson & Kihara-Hunt, *supra* note 125, at 206–07; United Nations Dept. of Peacekeeping Operations, Conduct and Discipline Unit, *available at* <http://www.un.org/Depts/dpko/CDT/about.html> (last visited May 10, 2008) (“About the Conduct and Discipline Units”).

145. Hampson & Kihara-Hun, *supra* note 125, at 198–99, 203.

146. *See id.*

147. *See* ENGDAHL, *supra* note 143, at 179–80, 205-92 (discussing the Convention on the Safety of United Nations and Associated Personnel).

148. *See* Hampson & Kihara-Hunt, *supra* note 125, at 202.

149. *Id.* at 207–08.

B. Rule-based Constraints

As with any military mission, peacekeeping operations are governed by rules of engagement which are specific to the mission.¹⁵⁰ These rules involve tactical and operational guidelines and requirements, as well as certain conduct policies for peacekeepers and the mission generally.¹⁵¹ Key to the discussion of peacekeepers and sexual abuse is the U.N.'s oft-touted policy of "zero tolerance" for any such conduct and for sexual contact between peacekeepers and those they are charged with protecting.¹⁵² This policy has been criticized on many levels, including its interaction with the U.N.'s weekly distribution of condoms to deployed peacekeepers.¹⁵³ There has been a recent move toward incorporating gender awareness units within peacekeeping missions since the allegations of sexual misconduct have become more pervasive.¹⁵⁴ Some of these units are geared toward providing a same-gender environment to increase the comfort of women who are victims of sexual abuse by peacekeepers.¹⁵⁵ Other units are used as part of an overall plan to increase the participation and role of women in the shattered societies to which U.N. missions are deployed.¹⁵⁶ In the latter role, these gender-based units have received praise from peacekeeping mission leaders and local members of the host state for their attempts to include women in post-conflict reconstruction of society and to bring attention to certain pressing issues affecting women in the host state.¹⁵⁷ In the former role, these units have not reduced the incidents of sexual abuse allegations made against peacekeepers and have been unable to trump the evidentiary and other issues associated with the investigation of such allegations.¹⁵⁸ There is nothing to suggest that these gender-based units have made it easier for victims of sexual violence and misconduct by peacekeepers to come forward with their experiences.

150. HAUSSLER, *supra* note 136, § 6; ENGDAHL, *supra* note 143, at 168–74.

151. *See* HAUSSLER, *supra* note 136, § 6.

152. *See Countries to Mull Steps to Prevent UN Troop Misconduct*, AGENCE FRANCE PRESSE ENGLISH WIRE, July 25, 2007, available at Westlaw, 7/25/07 AGFRP 21:31:00.

153. *See id.*; Harrington, *supra* note 133.

154. Koyama & Myrntinen, *supra* note 2, at 39–40.

155. *Id.* at 27–29.

156. *Id.* at 39.

157. *Id.* at 27.

158. *See generally id.*

C. Proposed Changes in the Wake of Recent Scandals

The first U.N. study to find fault with the structure of U.N. peacekeeping overall was the "Brahimi report," issued by the U.N. in 2000.¹⁵⁹ This report was commissioned to evaluate the structure of U.N. peacekeeping as a functional entity and derives its informal name from the report's chief author. The Brahimi report did not specifically address issues related to sexual abuse or other criminal conduct by peacekeepers and, nearly eight years after its issuance,¹⁶⁰ many of its proposals and targeted areas for reform have yet to be addressed in a meaningful manner.

In several missions, the U.N. has created an ombudsman for the purpose of collecting complaints regarding members of the mission.¹⁶¹ The use of this office is not widespread throughout the mission system and has limited authority to investigate but not prosecute or otherwise punish an errant peacekeeper.¹⁶² There is a longstanding Office of Internal Oversight Services within the U.N. peacekeeping structure which has recently been tasked with monitoring allegations of peacekeeper and other U.N. personnel misconduct.¹⁶³ This office, like the recently created U.N. Conduct and Discipline Unit, has no implementation, enforcement, or prosecutorial role and is intended to function only as an investigatory body.¹⁶⁴ These offices, especially the Conduct and Discipline Units, have done nothing to stem the flow of allegations of sexual and other misconduct and abuse by U.N. peacekeepers.¹⁶⁵

After allegations of sexual abuse in U.N. missions flourished, the U.N. asked that Jordan's permanent representative to the U.N., Prince Zeid Ra'ad al-Hussein, investigate the allegations and make suggestions in response to them.¹⁶⁶ The Zeid report confirmed that sexual abuse among peacekeepers was a real and rampant problem and that the U.N.'s program of "zero tolerance" for sexual abuse by peacekeepers was not working in practice.¹⁶⁷ It made many suggestions, such as including additional language in

159. See REPORT OF THE PANEL ON UNITED NATIONS PEACE OPERATIONS, EXECUTIVE SUMMARY, available at http://www.un.org/peace/reports/peace_operations/docs/summary.htm (last visited May 10, 2008).

160. See *id.*

161. Hampson & Kihara-Hunt, *supra* note 125, at 212–13.

162. *Id.*

163. *Id.*

164. *Id.*; United Nations Dept. of Peacekeeping Operations, Conduct and Discipline Unit, *supra* note 144.

165. See *supra* Part II.

166. See U.N. G.A. Doc. A/59/710, *supra* note 56 (containing the text of the Zeid report).

167. *Id.*; see also U.S. DEPT. OF STATE, *supra* note 24.

agreements between the U.N. and the sending state requiring follow-up on allegations of peacekeeper misconduct.¹⁶⁸ Unfortunately, the majority of the Zeid report suggestions have not been implemented and, if they were to be implemented, would still be weakened by the overall dependence on the will of the sending state to recognize sexual abuse as a serious offense and prosecute errant peacekeepers accordingly.¹⁶⁹ Key to addressing the issue of assisting women who are victims of sexual abuse by peacekeepers – and, in the view of the author, identifying additional victims and perpetrators – was the Zeid report’s suggestion of a victim assistance strategy.¹⁷⁰ This strategy is among the major components of the Zeid report which has not been acted upon by the U.N.¹⁷¹

As allegations of sexual abuse and the patronizing of prostitutes continued to surface, the U.N. issued new regulations that banned sexual relations between peacekeepers and anyone eighteen years old or younger in the affected area.¹⁷² Interestingly, these bans involve only sexual intercourse with women while on a peacekeeping mission, not other sexual acts.¹⁷³ Additional measures attempted by the U.N. include promoting gender equality as part of the mission¹⁷⁴ and attempting to draw more female peacekeepers from sending states.¹⁷⁵ At the same time, the U.N. implemented a policy of providing its deployed peacekeepers with a pouch of condoms every week.¹⁷⁶ The U.N. Security Council has, at various times, stressed the need for HIV/AIDS education for peacekeepers in order to protect them and the people they protect from exposure and harm.¹⁷⁷ Some missions have also started to use gender-friendly units as part of their mission structure as a result of the Convention to Eliminate all Forms of

168. U.N. G.A. Doc. A/59/710, *supra* note 56.

169. *Id.*

170. *Id.*; see also U.S. DEPT. OF STATE, *supra* note 24.

171. U.N. G.A. Doc. A/59/710, *supra* note 56; see also U.S. DEPT. OF STATE, *supra* note 24,

172. See Harrington, *supra* note 133, at 136.

173. *Id.*

174. Koyama & Myrntinen, *supra* note 2, at 27-30; Kent, *supra* note 3, at 55-56.

175. *Id.*

176. Harrington, *supra* note 133, at 136. The distribution of condoms to peacekeepers started in 2001, when peacekeepers were provided with a condom pouch and a multi-lingual card with information on the transmission of HIV/AIDS as well as “a code of conduct calling for pride, respect, and consideration for law, customs, and tradition.” UNITED STATES GENERAL ACCOUNTING OFFICE, *supra* note 64, at 11.

177. See *UN Anti-AIDS Training for Peacekeepers*, BBC NEWS, July 17, 2000, <http://news.bbc.co.uk/2/hi/americas/838421.stm> (last visited May 10, 2008).

Discrimination Against Women (CEDAW) and the sexual abuse allegations.¹⁷⁸

Of particular interest in light of the U.N.'s claimed attempts to address the conduct of peacekeepers abroad are the statements and findings made in 2007 by the U.N. Special Rapporteur on Torture, who stated that the U.N. should more carefully screen troops selected for peacekeeping missions in order to keep troops who are involved in torture away from peacekeeping missions.¹⁷⁹

IV. LEGAL AND SOCIO-LEGAL STRUCTURES OF AFFECTED SENDING STATES

Because errant peacekeepers are only subject to legal discipline by their sending states, if at all, it is important to study the legal and socio-legal structures of the sending state to determine how its law views the alleged acts of errant peacekeepers. This study seeks to understand the laws – as written and applied – of states that have sent errant peacekeepers in order to cull legal and socio-legal similarities between these systems. Such similarities are then the basis for the author's observations and suggestions in Parts V and VI of this article.

To date, allegations of largely sexual misconduct have been made against thirty-four sending states. Since the primary focus of this article is on sexual crimes and misconduct alleged and proven to have been committed by peacekeepers, and since the majority of allegations made against peacekeepers have involved sex and sex-related offenses, the laws examined below are primarily those dealing with sex crimes and the legal status of women in the sending states at issue. Because law does not exist in a vacuum in any society or legal system, the studies below also examine the socio-legal trends extant in the sending states at issue. Although the sending states discussed below have been the subject of misconduct allegations, they have not been the subject of the same quantity of allegations. Some, such as the United States, United Kingdom, Austria, and Canada, have been the subject of few allegations. Others, such as Morocco, Pakistan and Nigeria, have been the subject of wide-ranging allegations across various missions. It is important to note that, generally, sending states tend to be developing and economically poor states. It should also be noted that many of the sending states which are regarded as

178. See, e.g., Koyama & Myrntinen, *supra* note 2, at 27–29; Kent, *supra* note 3, at 55.

179. See *UN Requires 'Better' Peacekeepers*, BBC NEWS, July 28, 2007, <http://news.bbc.co.uk/2/hi/europe/6920867.stm> (last visited May 10, 2008).

the greatest and most consistent donors of peacekeepers – not peacekeeping funding, which is addressed in Part VI below – are among the sending states which have sustained the most repetitive and serious allegations of sexual abuse against the population of the host state.¹⁸⁰ The sending states discussed below are arranged alphabetically for ease of the reader and do not in any way reflect a scale of implication in alleged or established crimes.

When considering the socio-legal regimes used by sending states and their relationship to U.N. peacekeepers, it must be remembered that the top three most lucrative illicit industries in the world are considered to be drug trafficking, arms smuggling, and human trafficking – all industries to which peacekeepers have access when they are deployed.

A. Austria

Those wishing to volunteer for the Austrian military may do so at age sixteen.¹⁸¹ There is a seven month conscription requirement at age eighteen with an eight year reserve requirement to follow.¹⁸² There is no specific code of military justice governing the Austrian military and, as a result, a member of the Austrian military is subject to the civil laws of Austria.¹⁸³

The crime of rape in Austria is defined as: “whoever coerces a person by serious force directed against this person or by the threat of immediate danger for life and limb to perform or to endure sexual intercourse or a sexual act equated to sexual intercourse shall be punished by imprisonment from one to ten years.”¹⁸⁴ There is a lesser crime of sexual coercion under the Austrian Penal Code which applies in cases that do not rise to the level of rape.¹⁸⁵ In regards to sexual abuse of children, there are

180. See D.C.F. Daniel & Leigh C. Caraher, *Characteristics of Troop Contributors to Peace Operations and Implications for Global Capacity*, 13(3) INT’L PEACEKEEPING 297, 301 (2006) (stating that these nations were “Bangladesh, Canada, France, Germany, Ghana, India, Italy, the Netherlands, Nigeria, Pakistan, Russia, Spain, Turkey, the United States and the UK”).

181. AUSTRIA, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/au.html> (last visited May 10, 2008).

182. See *id.*

183. LIBRARY OF CONGRESS, AUSTRIA, MILITARY JUSTICE (1993) available at [http://lcweb2.loc.gov/cgi-bin/query2?r?frd/cstdy:@field\(DOCID+at0163\)](http://lcweb2.loc.gov/cgi-bin/query2?r?frd/cstdy:@field(DOCID+at0163)).

184. NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, AUSTRIA 1 (2006) available at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaAustria.pdf> (last visited May 14, 2008) (summarizing Strafgesetzbuch [StGB] [Penal Code], § 201 (Austria)).

185. *Id.* (summarizing StGB, § 202).

several relevant statutes of the Austrian Penal Code, such as grievous sexual abuse of minors,¹⁸⁶ sexual abuse of minors,¹⁸⁷ and endangering the moral development of persons under sixteen years of age.¹⁸⁸ Child prostitution and the promotion thereof is criminal in Austria.¹⁸⁹

Austria is in the first tier¹⁹⁰ of the U.S. human trafficking assessments in 2007.¹⁹¹ Austria does not have refugee camps within its borders and, although it does grant refugee status to people in certain situations, it does not have a large refugee community presence.¹⁹²

B. Bangladesh

Bangladesh has an all-volunteer military which is open to eligible men at age eighteen.¹⁹³ Under the terms of the Bangladesh Army Act, there is no crime of rape.¹⁹⁴ A soldier who is civilly convicted of a crime may face additional sanctions under Bangladeshi military law.¹⁹⁵ Crimes which could potentially be applicable to errant peacekeepers under Bangladeshi military law include “un-becoming behaviour”¹⁹⁶ or “violation of good order and discipline.”¹⁹⁷ However, neither of these crimes are well defined at

186. *Id.* at 2 (summarizing StGB, § 206).

187. *Id.* (summarizing StGB, § 207).

188. *Id.* at 2-3 (summarizing StGB, § 208).

189. *Id.* at 3-4 (summarizing StGB, § 215a).

190. The U.S. State Department releases an annual assessment of human trafficking practice and patterns in states throughout the world. This assessment places states into tiers: Tier 1 indicates states with the best human trafficking practices and patterns; Tier 2 and Tier 3 Watch List indicates states which have objectionable human trafficking practices and patterns; and Tier 3 indicates the worst states in terms of human trafficking practices and patterns. See U.S. DEPT. OF STATE, *supra* note 24, at 42.

191. *Id.*

192. U.N. HIGH COMM’R OF REFUGEES, STATISTICAL YEARBOOK 2005 244 (2007), available at <http://www.unhcr.org/statistics/STATISTICS/464478a72.html> (last visited May 10, 2008) [hereinafter U.N. HIGH COMM’R].

193. BANGLADESH, CIA WORLD FACTBOOK, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/bg.html#Military> (last visited May 10, 2008).

194. See generally Bangladesh Army Act (1952) (as adapted and modified up to 1975), in A MANUAL OF DEFENCE LAWS IN BANGLADESH 1-49 (A.J.M. Kamrul Islam ed. 1976).

195. *Id.* at 28-29 (reprinting Bangladesh Army Act, ch. 5, § 59 (1952)).

196. *Id.* at 26 (reprinting Bangladesh Army Act, ch. 5, § 52 (1952)). “Any officer, junior commissioned officer or warrant officer, who behaves in a manner un-becoming his position and the character expected of him shall, on conviction by court-martial, be liable to be dismissed from the service or to suffer such less punishment as is in this Act mentioned.” *Id.*

197. *Id.* at 26 (reprinting Bangladesh Army Act, ch. 5, § 55 (1952)).

Any person subject to this Act who is guilty of any act, conduct, disorder or neglect to the prejudice of good order and of military discipline shall, [upon] conviction by court-martial, be punished with rigorous imprisonment for a term which may extend to five years, or with such less punishment as is in this Act mentioned.

law and both contain subjective criteria.¹⁹⁸ The evidentiary provisions of the Army Act would, in the reality of U.N. peacekeeping mission settings, serve as a bar to the successful prosecution of a peacekeeper for acts done overseas.¹⁹⁹

Human rights advocates have demonstrated that parts of the Bangladeshi military, combined with the police force, have been involved in massive human rights violations, including rape and other sexual crimes, against the Bangladeshi public.²⁰⁰ The same groups have requested that the U.N. bar certain portions of the military from participation in peacekeeping operations due to their conduct.²⁰¹ Bangladesh is in the second tier of the U.S. human trafficking assessments in 2007.²⁰² Despite this classification, Bangladesh has been identified as a major sending and receiving state for the traffic in human beings.²⁰³ The Bangladeshi military has occupied a solid place in the nation's political hierarchy almost since its founding.²⁰⁴

Under the provisions of the Penal Code of Bangladesh, a person who is subject to the laws of Bangladesh and commits a crime punishable under Bangladeshi law abroad may be found to be triable in Bangladesh.²⁰⁵ One relevant crime under the Penal Code is "Assault or criminal force to [a] woman with intent to outrage her modesty," which is defined as "Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."²⁰⁶ Trafficking a woman under age twenty-one into the country for criminal purposes is a crime under the Penal Code,²⁰⁷ as is slavery generally.²⁰⁸ The crime of rape is defined as:

198. See *id.* at 26 (reprinting Bangladesh Army Act, ch. 5, §§ 52, 55 (1952)).

199. *Id.* at 46-48 (reprinting Bangladesh Army Act, ch. 7, §§ 109-10 (1952)).

200. See generally *Special report: lawless law-enforcement & the parody of judiciary in Bangladesh*, ARTICLE 2, Aug. 2006, available at <http://www.article2.org/pdf/v05n04.pdf> (last visited Dec. 14, 2007) [hereinafter *Special Report*] (detailing instances of rape and other crimes committed by Bangladeshi state officials); see also Roland Buerk, *Bangladesh's Feared Elite Police*, BBC NEWS, Dec. 13, 2005, available at http://news.bbc.co.uk/2/hi/south_asia/4522734.stm (last visited Jan. 2, 2008).

201. *Special report*, *supra* note 200, at 130.

202. U.S. DEPT. OF STATE, *supra* note 24, at 42.

203. Martii Lehti & Kauko Aromaa, *Trafficking for Sexual Exploitation*, 34 CRIME & JUST. 133, 208-09 (2006).

204. Hannah Pearce, *An Examination of the International Understanding of Political Rape and the Significance of Labeling it Torture*, 14 INT'L J. REFUGEE L. 534 (2002).

205. MD. ZAHURIUL ISLAM, THE PENAL CODE [ACT NO XLV OF 1860] §§ 3-4.

206. *Id.* § 354.

207. *Id.* § 366B.

208. *Id.* § 370.

A man is said to commit 'rape' who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following description[s]. Firstly: Against her will. Secondly. Without her consent. Thirdly: With her consent obtained by putting in fear of death or hurt. Fourthly: With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly: with or without her consent, when she is under fourteen years of age . . . Exception: sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.²⁰⁹

The punishment for rape ranges from ten years to life imprisonment and also can involve a fine.²¹⁰ The evidentiary standards for proving a rape case are such that it would be difficult to establish a rape case in the event of an errant peacekeeper.²¹¹ Adultery is a crime in Bangladesh which can only be prosecuted against a man.²¹² In 2005, the Law Commission of Bangladesh recognized that domestic violence is a prevalent and damaging issue in Bangladeshi society and proposed a domestic violence law.²¹³ The U.N. itself has recognized that the Bangladeshi criminal justice system – particularly its handling of crimes against women – is inadequate.²¹⁴

Bangladesh has refugee camps within its borders for those displaced by conflict in neighboring states.²¹⁵ As of 2005, female refugees in Bangladesh outnumbered male refugees.²¹⁶

209. *Id.* § 375.

210. *Id.* § 376.

211. *Id.* § 376, at nn.10–16.

212. *Id.* § 497.

213. THE LAW COMMISSION, GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH, A FINAL REPORT ON THE PROPOSED LAW OF DOMESTIC VIOLENCE ALONG WITH A BILL, NAMELY THE DOMESTIC VIOLENCE ACT (Dec. 29, 2005), available at http://www.apwld.org/pdf/lawcommission_finalreport.pdf (last visited Dec. 14 2007).

214. *Bangladesh Law Enforcement Criticized*, BBC NEWS, Sept. 15, 2002, available at http://news.bbc.co.uk/2/hi/south_asia/2259489.stm (last visited Dec. 19 2007).

215. See U.N. HIGH COMM'R, *supra* note 192, at 252.

216. *Id.*

C. Belgium

Belgium has an all-volunteer military which is open to men and women aged sixteen and over.²¹⁷ Belgium's military is governed more by its own regulations than by a specific military code.²¹⁸ Belgium has recently begun a trial of a former Rwandan general who is accused of ordering his soldiers to kill several Belgian peacekeepers who were protecting the Rwandan prime minister.²¹⁹

Rape in Belgium is a crime which can be committed against a woman or man when the element of consent to intercourse is missing.²²⁰ Lack of consent occurs with the use of violence, deception, restraint, or incapacitation of the victim.²²¹ Punishments for rape under the Belgian Penal Code vary depending on the age of the victim.²²² Punishments also increase where there are certain exigent circumstances, such as the misuse of authority over the victim.²²³ Lesser sexual offenses are also provided for in the Belgian Penal Code.²²⁴ Child prostitution is illegal under the Belgian Penal Code.²²⁵ Belgium has enacted extra-territorial jurisdiction legislation, which makes all Belgians subject to prosecution for sexual offenses committed abroad.²²⁶ Belgium is in the first tier of the US human trafficking assessments in 2007.²²⁷ Belgium does not have refugee camps within its borders and, although it does grant refugee status to people in certain situations, it does not have a large refugee community presence.²²⁸

217. CIA, BELGIUM, *supra* note 70.

218. Georg Nolte & Heike Kreiger, *Comparison of European Military Law Systems*, in EUROPEAN MILITARY LAW SYSTEMS 90 (Georg Nolte ed., 2003).

219. *Belgian Peacekeeper Trial Starts*, BBC NEWS, Apr. 19, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6571129.stm> (last visited May 14, 2008).

220. NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, BELGIUM 1-2 (2006) available at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaBelgium.pdf> (last visited May 14, 2008) (reprinting portions of CODE PÉNAL [C.PÉN.] [Penal Code], art. 375 (1989) (Belg.)) (translated by author).

221. *Id.*

222. *Id.*

223. *Id.* at 2-3 (reprinting portions of C.PÉN., art. 376 (1989)).

224. *Id.* at 4 (reprinting portions of C.PÉN., art. 373 (1989)).

225. *Id.* at 4-5 (reprinting portions of C.PÉN., art. 380 (1989)).

226. *Id.* at 7-8.

227. U.S. DEPT. OF STATE, *supra* note 24, at 42.

228. U.N. HIGH COMM'R, *supra* note 192, at 256.

D. Benin

Volunteers to the Beninese military may volunteer at age eighteen.²²⁹ Conscription of men and women for a period of eighteen months occurs at age twenty-one.²³⁰ The Beninese military is at once a frequent participant in the coups and political machinations which have characterized Benin and is also viewed as an important actor in the economic and social structure.²³¹ The constitutions of Benin have given the Beninese military primacy in many areas of statecraft, especially in regards to allowing the state to function domestically and internationally.²³² It is also charged with protecting the internal and external safety of Benin as a state.²³³ Benin formally recognizes diplomatic issues with many of its neighbors in regard to land and natural resource control and cites these as reasons that the military is required to be a strong component of the state.²³⁴

The Penal Code of Benin is actually the French Penal Code of 1810. Although a definition of rape is not provided, it, along with other forms of sexual offenses, is punishable by time in prison.²³⁵ Hard labor is prescribed for those who commit sexual acts upon children or who misuse their authority over their victim.²³⁶ Prostitution and adultery are also illegal under this law.²³⁷ Marital rape is not a crime in Benin.²³⁸

Births abroad may be registered with the appropriate diplomatic officers in the Beninese embassy, provided that the names of each parent are known and specified.²³⁹ The use of a

229. CIA, BENIN, *supra* note 71.

230. *Id.*

231. PHILIPPE AKPO, LE ROLE ET LES IMPLICATIONS DES FORCES ARMÉES BENINOISES DANS LA VIE POLITIQUE NATIONALE, 9 (2002) (*translated by author*); MATHURIN C. HOUNGNIKPO, DETERMINANTS OF DEMOCRATIZATION IN AFRICA: A COMPARATIVE STUDY OF BENIN AND TOGO 119–31 (2001).

232. REPUBLIQUE DU BENIN, PRESIDENCE DE LA REPUBLIQUE, MINISTERE DE LA DEFENSE NATIONALE, FORCES ARMÉES BENINOISES, LA NATION BENINOISE ET SES FORCES ARMÉES 12–13, 31 (1996) (*translated by author*).

233. *Id.* at 19.

234. *Id.* at 21.

235. C.PÉN., Book III, ch. I § IV (1810) (Fr.), *reprinted in* LES CINQ CODES 20-21 (1820).

236. *Id.*

237. *Id.*

238. CENTER FOR REPRODUCTIVE RIGHTS, REPRODUCTIVE RIGHTS OF YOUNG GIRLS AND ADOLESCENTS IN BENIN 13 (1999), *available at* <http://www.reproductiverights.org/pdf/SRbenin99en.pdf> (last visited May 14, 2008).

239. Portant Code des personnes et de la famille, Loi No. 2002–07, arts. 60–61 (Benin), *reprinted in* FIRMIN MÉDÉNOUVO, LOI NO 2002-07 PORTANT CODE DES PERSONNES ET DE LA FAMILLE EN RÉPUBLIQUE DU BÉNIN : LOI NO 2003-03 DU 03 MARS 2003 PORTANT RÉPRESSION DE LA PRATIQUE DES MUTILATIONS GÉNITALES FÉMININES EN RÉPUBLIQUE DU

Beninese father's last name in situations where a child was born outside of Benin is allowed only in cases where the father has registered the child with the Beninese government.²⁴⁰ Proving filiation requires the active agreement of and involvement by the putative father.²⁴¹ Dowries are still allowed in Benin.²⁴² The terms of the Beninese family code are made applicable to soldiers stationed overseas.²⁴³ Although there are specific sections of the Personal and Family Code which address marriage, Benin still allows and recognizes traditional or customary marriages, including polygamous marriages.²⁴⁴ Benin is in the second tier of the U.S. human trafficking assessments in 2007.²⁴⁵ Currently, there are active refugee camps located within Benin, many filled with Togolese nationals.²⁴⁶

E. Brazil

Brazilians may volunteer for military service between ages seventeen and forty-five.²⁴⁷ There is a conscription period of between nine and twelve months for Brazilians aged twenty-one to forty-five.²⁴⁸ Although now a democracy, Brazil was for decades under military dictatorship, in which the military was given primacy as a legal, political, and social tool.²⁴⁹ In the wake of demilitarization attempts, the Brazilian military has seen its financial resources allotted in the state budget shrink significantly.²⁵⁰ Overall, peacekeeping has been a limited endeavor for Brazil, especially in light of the state's internal military needs and reduced military funding.²⁵¹ Interestingly, the Brazilian constitution would allow a child of a peacekeeper born abroad at least some basic constitutional claim to Brazilian citizenship

BÉNIN : LOI NO 2003-04 DU 03 MARS 2003 RELATIVE À LA SANTÉ SEXUELLE ET À LA REPRODUCTION (2004) (*translated by author*).

240. *Portant Code des personnes et de la famille, supra note 239, at art. 10.*

241. *Id. at art. 287.*

242. *Id. at art. 949.*

243. *Id. at art. 83.*

244. *GUIDE JURIDIQUE DE LA FEMME BENOISE 24 (1991) (translated by author).*

245. *U.S. DEPT. OF STATE, supra note 24, at 42.*

246. *See U.N. HIGH COMM'R, supra note 192, at 260.*

247. *CIA, BRAZIL, supra note 72.*

248. *Id.*

249. *See CRAIG L. ARCENEAUX, BOUNDED MISSIONS: MILITARY REGIME AND DEMOCRATIZATION IN THE SOUTHERN CONE AND BRAZIL 150, 160–80 (2001)*

250. *See WENDY HUNTER, US INSTITUTE FOR PEACE, STATE AND SOLDIER IN LATIN AMERICA ch. 3 (1996), available at <http://www.usip.org/pubs/peaceworks/state10/hunterhm.html> (last visited May 14, 2008).*

251. *Id.*

provided the child was born while the father was still stationed abroad in service to Brazil.²⁵²

Until recently, there was a decided trend in Brazilian jurisprudence to allow what were essentially honor killings in certain circumstances, such as infidelity.²⁵³ There is domestic violence legislation in Brazil involving marital rape crimes.²⁵⁴ Rape, sexual abuse, and the corruption of minors are all crimes in Brazil.²⁵⁵

Brazil is in the second tier of the U.S. human trafficking assessments in 2007.²⁵⁶ Despite this ranking, Brazil is the largest exporter and importer of human beings in the Americas.²⁵⁷ Brazil is also home to one of the worst child prostitution problems in the world.²⁵⁸ Brazil is home to refugees from other states but does not currently have organized refugee camps within its borders.²⁵⁹

F. Bulgaria

Conscription in Bulgaria ended on January 1, 2008.²⁶⁰ Previously, one was eligible to volunteer or be conscripted into the military at age eighteen.²⁶¹ In the wake of years of communist control, the Bulgarian military generally has been the subject of wide-ranging reform attempts.²⁶²

Bulgarian law defines rape as “sexual intercourse with a woman (1) incapable of defending herself, where she did not consent; (2) who was compelled . . .”²⁶³ The European Court of Human Rights has found that the application of this statute in a

252. C.F. ch. III, art. 12, § II (Braz.) (Constituição Federal) (translated by author).

253. Catherine Warrick, *The Vanishing Victim: Criminal Law and Gender in Jordan*, 39 L. & SOC'Y REV. 315 (2005).

254. C.P. [PENAL CODE] art. 150 (Braz.), available at <http://www.planalto.gov.br/CCIVIL/Decreto-Lei/Del2848compilado.htm> (last visited May 15, 2008) (translated by author).

255. See generally *id.* (codifying various types of rape as an offense and aggravating offense throughout its provisions).

256. U.S. DEPT. OF STATE, *supra* note 24, at 42.

257. See Lehti & Aromaa, *supra* note 203, at 202.

258. *Id.*

259. See U.N. HIGH COMM'R, *supra* note 192, at 270.

260. CIA, BULGARIA, *supra* note 73.

261. *Id.*

262. See generally Galentin I Gueorguiev, *Bulgarian Military in Transition – The Legal Framework of Democratic Civil-Military Relations* (Dec. 1998) (unpublished M.A. thesis, Naval Postgraduate School) (on file with Naval Post Graduate School, Monterey, Calif.).

263. Beate Rudolf & Andrea Eriksson, *Women's Rights Under International Human Rights Treaties: Issues of Rape, Domestic Slavery, Abortion, and Domestic Violence*, 5 INT'L J. CONST. L. 507, 508 (2007); Penal Code, art. 152 (Bulg.), available at <http://legislationline.org/upload/legislations/d7/8d/c1519b43d701a2f3976b312d2993.pdf> (last visited May 14, 2008).

particular case was in violation of European conventions; this opinion also cast doubt on the validity of the method by which Bulgarian courts apply the rape statute.²⁶⁴ Under Bulgarian law, cases involving domestic violence either require the victim to prosecute the offense without the assistance of the state or are subject to limits which essentially make the prosecution by the state worthless.²⁶⁵ Marital rape may only be prosecuted in Bulgaria if “the wife has been killed or permanently injured.”²⁶⁶ An additional crime exists where a person uses the material dependency of a woman upon him to procure sexual relations.²⁶⁷ Prostitution is illegal in Bulgaria.²⁶⁸ Homosexual intercourse – forced or consensual – is also a crime under Bulgarian law.²⁶⁹ Bulgaria is in the second tier of the U.S. human trafficking assessments in 2007.²⁷⁰ Bulgarian citizens who commit crimes abroad can be tried in a Bulgarian court for their actions.²⁷¹

Bulgaria is home to few refugees from other states and does not have an organized refugee camp structure.²⁷²

G. Canada

Canada has an all-volunteer military which is open to men and women aged sixteen to thirty-four.²⁷³ The military Code of Service Discipline makes it clear that it applies to all persons in the service of the armed forces of Canada, regardless of whether the crimes were committed in Canada.²⁷⁴ Under the Code of Service Discipline, it is an offense for a member of the Canadian military to “commit[] any offence against the property or person of any inhabitant or resident of a country in which he is serving.”²⁷⁵ This is problematic because many victims and potential victims on U.N.

264 Rudolf & Eriksson, *supra* note 263.

265 Julie Mertus, *Human Rights of Women in Central and Eastern Europe*, 6 AM. U. J. GENDER & L. 369, 411-13 (1998).

266 *Id.* at 423 (quoting Swanee Hunt, ‘Feminization of Poverty’ in *East Europe; Western-Style Safeguards are Foreign to Women in Post-Communist Nations*, BALTIMORE SUN, July 13, 1997, at F5).

267 Penal Code, art. 153 (Bulg.), available at <http://legislationline.org/upload/legislations/d7/8d/c1519b43d701a2f3976b312d2993.pdf> (last visited May 14, 2008).

268 *Id.* art. 155.

269 *Id.* art. 157.

270. U.S. DEPT. OF STATE, *supra* note 24, at 42.

271. Penal Code, art. 4 (Bulg.), available at <http://legislationline.org/upload/legislations/d7/8d/c1519b43d701a2f3976b312d2993.pdf> (last visited May 14, 2008).

272. See U.N. HIGH COMM’R, *supra* note 192, at 272.

273. CIA, CANADA, *supra* note 74.

274. National Defence Act, R.S.C., ch. N-5, § 67 (1985) (Can.).

275. *Id.* § 77.

peacekeeping missions neither inhabit the area to which the soldier is deployed in the strict legal sense nor are they legally classified as residents. It is a crime for a member of the military to engage in either “[s]candalous conduct by officers”²⁷⁶ or “[c]ruel or disgraceful conduct.”²⁷⁷ Canadian troops may be tried for civil offenses under the Criminal Code and will suffer military punishments if convicted.²⁷⁸

Although Canada uses a provincial system in which citizens are governed by both federal and provincial laws, there are uniform national laws prohibiting sexual abuse of minors,²⁷⁹ homosexuality when involving at least one minor,²⁸⁰ and luring a child.²⁸¹ Canada is in the first tier of the U.S. human trafficking assessments in 2007.²⁸² Currently, Canada admits refugees. However, it does not have refugee camps within its borders.²⁸³

H. Ethiopia

Ethiopia uses compulsory military service at age eighteen.²⁸⁴ Those wishing to volunteer to serve in the Ethiopian military may also begin to serve at age eighteen.²⁸⁵ Interestingly, throughout its recent history, there has been a dramatic fluctuation in the amount of reported government funds appropriated to the Ethiopian military.²⁸⁶ During the conflict between Eritrea and Ethiopia, the Eritrea-Ethiopia Claims Commission determined that Ethiopia “failed to impose effective measures on its troops, as required by international humanitarian law, to prevent rape.”²⁸⁷ There are no provisions under the Military Code of Ethiopia which

276. *Id.* § 92 (“Every officer who behaves in a scandalous manner unbecoming an officer is guilty of an offence and on conviction shall suffer dismissal with disgrace from Her Majesty’s service or dismissal from Her Majesty’s service.”).

277. *Id.* § 93 (“Every person who behaves in a cruel or disgraceful manner is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.”).

278. *Id.* § 130.

279. Criminal Code, R.S.C., ch. C-46, §§ 151–52 (1985) (Can.).

280. *Id.* § 159.

281. *Id.*

282. U.S. DEPT. OF STATE, *supra* note 24, at 42.

283. See U.N. HIGH COMM’R, *supra* note 192, at 282.

284. CIA, ETHIOPIA, *supra* note 75.

285. *Id.*

286. WUYI OMITOOGUN, MILITARY EXPENDITURE DATA IN AFRICA: A SURVEY OF CAMEROON, ETHIOPIA, GHANA, KENYA, NIGERIA AND UGANDA 46-47 (2003).

287. Lee M. Caplan et al., *International Courts and Tribunals*, 41 INT’L L. 291, 305 (2007).

would directly punish an errant peacekeeper for sexual misconduct while deployed.²⁸⁸

When a rape occurs in Ethiopia, the rapist may avoid prosecution by agreeing to marry the victim.²⁸⁹ Generally, the Ethiopian Penal Code would apply to allow an Ethiopian enjoying immunity from international prosecution for crimes committed abroad to be charged with these crimes in Ethiopia as long as the act at issue is a crime both in Ethiopia and the state where it was committed.²⁹⁰ The crime of rape in Ethiopia is defined as follows: “[w]hoever compels a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance, is punishable with rigorous imprisonment from five years to fifteen years.”²⁹¹ Penalties vary depending on the age of the victim, her mental capacity and health, the violence of the crime, and whether the crime was a gang rape.²⁹² A slightly lesser crime is that of “[s]exual [o]utrages [a]ccompanied by [v]iolence.”²⁹³ Other relevant offenses include “[t]aking [a]dvantage of the [d]istress or [d]ependence of a [w]oman,”²⁹⁴ sexual relations with underage members of the opposite sex,²⁹⁵ “[h]omosexual and

288. See Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004 (2004) (Eth.), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/70993/75092/F1429731028/ETH70993.pdf> (last visited May 14, 2008).

289. Charles J. Ogletree, Jr. & Rangita de Silva-de Alwis, *The Recently Revised Marriage Law of China: The Promise and The Reality*, 13 TEX. J. WOMEN & L. 251, 278 n.118 (2004).

290. Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004, arts. 14-15. (2004) (Eth.), available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/70993/75092/F1429731028/ETH70993.pdf> (last visited May 14, 2008).

291. *Id.* at art. 620.

292. *Id.*

293. *Id.* at art. 622.

Whoever, by the use of violence or grave intimidation, or after having in any other way rendered his victim incapable of offering resistance, compels a person of the opposite sex, to perform or submit to an act corresponding to the sexual act, or any other indecent act, is punishable with simple imprisonment for not less than one year, or rigorous imprisonment not exceeding ten years.

Id.

294. *Id.* at art. 625.

Whoever . . . procures from a woman sexual intercourse or any other indecent act by taking advantage of her material or mental distress or the authority he exercises over her by virtue of his position, function or capacity as protector, teacher, master or employer, or by virtue of any other like relationship, is punishable, upon complaint, with simple imprisonment.

Id.

295. Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004, arts. 626-27 (2004) (Eth.), available at

other [i]ndecent [a]cts,"²⁹⁶ use of position or underage participants in homosexual acts,²⁹⁷ and human trafficking.²⁹⁸ Adultery is a gender neutral crime in which each party is equally culpable.²⁹⁹ Ethiopia is in the second tier of the U.S. human trafficking assessments in 2007.³⁰⁰ According to the United Nations High Commissioner for Refugees' latest information, more than one hundred thousand refugees live in refugee camps within Ethiopia's borders.³⁰¹

I. France

Conscription into military service ended in the 1990s for French nationals.³⁰² Currently, one must be at least seventeen years of age to volunteer for the French military.³⁰³ Women are allowed in non-combat roles and positions.³⁰⁴ Members of the French military may be arrested and tried for crimes arising under civil law as well as the Code of Military Justice.³⁰⁵

Rape in France is defined as sexual intercourse to which the consent of the victim is vitiated by violence, constraint, threats, or surprise.³⁰⁶ Marital rape is a crime in France.³⁰⁷ Rape is primarily defined as a crime committed by a man against a woman.³⁰⁸ The punishment for rape will increase in the event that there are aggravating circumstances, such as age, number of perpetrators, and injuries suffered by the victim.³⁰⁹ Lesser sexual offenses, although not precisely defined in the French Penal Code, are punishable in France.³¹⁰ A separate system of crimes exists for

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/70993/75092/F1429731028/ETH70993.pdf> (last visited May 14, 2008).

296. *Id.* at art. 629. "Whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment." *Id.*

297. *Id.* at arts. 629-32.

298. *Id.* at art. 635-37.

299. *Id.* at art. 652.

300. U.S. DEPT. OF STATE, *supra* note 24, at 42.

301. See U.N. HIGH COMM'R, *supra* note 192, at 328.

302. See CIA, FRANCE *supra* note 76.

303. *Id.*

304. *Id.*

305. Jorg Gerkrath, *Military Law in France*, in EUROPEAN MILITARY LAW SYSTEMS 319 (Georg Nolte ed., 2003).

306. NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, FRANCE 2-4 (2006), available at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaFrance.pdf> (last visited May 14, 2008) (summarizing and reprinting portions of [Code Pénal] [C. PÉN.] [Penal Code], arts. 222-23, 222-24, 222-25 (Fr.)) (translated by author).

307. *Id.*

308. *Id.*

309. *Id.*

310. *Id.*

sexual abuse of minors.³¹¹ Child prostitution is a crime in France.³¹² France is in the first tier of the U.S. human trafficking assessments in 2007.³¹³ Although France does admit refugees, there are no refugee camps within its borders.³¹⁴

J. Ghana

Ghana has been an active participant in peacekeeping missions from the 1960s onwards.³¹⁵ Currently, Ghana is among the top ten overall troop contributors for U.N. peacekeeping operations.³¹⁶ However, the underlying motives for this contribution have been called into question, especially as the military has used participation in these missions to justify the acquisition of military equipment in a time of economic tension between the interests of various state actors in Ghana.³¹⁷ It has also been established that there exists a system of corruption involving the placement of members of the Ghanaian military in peacekeeping deployments.³¹⁸

Throughout its modern history as an independent state, Ghana has been plagued by political turmoil which is either exacerbated or quelled by its Armed Forces.³¹⁹ At the same time that the military was gaining prominence in the social and political culture of Ghana, it had to compete for resources during the nation's long economic downturn.³²⁰ With conditions in armed forces housing and other essential services described by the Ministry of Defence itself as unpleasant,³²¹ it is perhaps not surprising that members of the Armed Forces were interested in participating in peacekeeping operations. Recent developments, however, have resulted in superior barracks and living facilities for Ghanaian soldiers and their families.³²² Service in the Ghanaian armed

311. *Id.* at 5-7 (summarizing and reprinting portions of C. PÉN., arts 227-22, 227-25, 227-26, 227-27 (Fr.)).

312. *Id.* at 7-8 (summarizing and reprinting portions of C. PÉN., arts 225-5, 225-7 (Fr.); Loi No. 2002-305, art. 13 (Mar. 4, 2002) (Fr.)).

313. U.S. DEPT. OF STATE, *supra* note 24, at 42.

314. *See* U.N. HIGH COMM'R, *supra* note 192, at 334.

315. Aning, *supra* note 114, at 134; STEPHEN ADDAE, GENERAL HISTORY OF GHANA ARMED FORCES: A REFERENCE VOLUME 371 (2005).

316. Aning, *supra* note 114, at 133.

317. *See id.* at 133-51.

318. *Id.* at 146-47.

319. ADDAE, *supra* note 315, at 207; BAFFOUR AGYEMAN-DUAH, CIVIL MILITARY RELATIONS IN GHANA'S FOURTH REPUBLIC 1-2 (2002).

320. ADDAE, *supra* note 315, at 210.

321. *Id.* at 208-10, 275-81; Eboe Hutchful, *Military Policy and Reform in Ghana*, 35(2) J. MOD. AFR. STUD. 251, 258 (1997).

322. AGYEMAN-DUAH, *supra* note 319, at 29-30.

forces has now become a socially acceptable occupation regardless of class, with more entrance seekers than positions available.³²³ Interestingly, one of the recruitment slogans used by the Ghanaian armed forces is to “serve with the U.N.”³²⁴ Statistical data gathered in 2000 suggests that Ghanaians hold their military in high esteem generally and have a particularly good view of the participation of the Ghanaian armed forces in peacekeeping operations.³²⁵ Despite these views, when the armed forces are required to interact with the civilian population in a professional capacity, there is a tension between the actions and opinions of the civilian and military populations.³²⁶ The Ghanaian armed forces have, in some instances, become responsible for committing illegal activities to further the interests of their families and friends.³²⁷ Throughout its history, the Ghanaian military has become intertwined with its political structure and has gained political, societal, and thus legal power as a result.³²⁸

The Criminal Code of Ghana defines the crime of rape as “the carnal knowledge of a female of sixteen years or above without her consent.”³²⁹ The punishment prescribed for those convicted of rape is between five and twenty-five years.³³⁰ Other relevant provisions of the Criminal Code include “[d]efilement of a child under 16 years of age,”³³¹ and “Unnatural carnal knowledge.”³³² Prostitution is illegal only when committed by the prostitute herself³³³ and

323. ADDAE, *supra* note 315, at 345.

324. *Id.*

325. AGYEMAN-DUAH, *supra* note 319, at 12 (stating that, of those surveyed, 65% “trust the military” and “nearly 90% approved of the military’s role in international peacekeeping.”).

326. *Id.* at 15-16.

327. *Id.* at 14.

328. See Michael Kwaku Addison, Preventing Military Intervention in West Africa: A Case Study of Ghana, 3, 21 (Mar. 2002) (unpublished M.A. thesis, Naval Postgraduate School) (on file with Naval Postgraduate School, Monterey, Calif.).

329. HENRIETTA J.A.N. MENSA-BONSU, THE ANNOTATED CRIMINAL CODE OF GHANA 91 (4th ed. 2005) (citing Criminal Code, § 98 (Ghana)).

330. *Id.* (citing Criminal Code, § 97 (Ghana)).

331. *Id.* at 92 (citing Criminal Code, § 101(2) (Ghana)). “Whoever naturally or unnaturally carnally knows any child under sixteen years of age, whether with or without his or her consent commits an offence and shall be liable on summary conviction to imprisonment for a term of not less than seven years and not more than twenty-five years.” *Id.*

332. *Id.* at 94 (citing Criminal Code, § 104 (Ghana)).

Whoever has unnatural carnal knowledge (a) of any person of the age of sixteen years or over without his consent shall be guilty of a first degree felony and shall be liable on conviction to imprisonment for a term of not less than five years and not more than twenty-five years; or (b) of any person of sixteen years or over with his consent is guilty of a misdemeanour.

Id.

333. *Id.* at 174 (citing Criminal Code, § 398 (Ghana)).

“[s]lave-dealing,” including bringing human beings to Ghana for the purposes of slavery, is illegal.³³⁴ Ghana is in the second tier of the U.S. human trafficking assessments in 2007.³³⁵ Ghana maintains refugee camps for many of the refugees which have sought safety within its borders.³³⁶

K. Guinea

All Guineans are required to perform two years of compulsory military service after age eighteen.³³⁷ Once this service is completed, a service member may volunteer to continue his or her service.³³⁸ The Guinean Army, along with the security forces, was involved in a major crackdown on strikers in early 2007.³³⁹ During this time, the military was implicated in general human rights violations, including rape and sexual assault against the civilian population, and has not been called to account for these actions.³⁴⁰ Also, residents of refugee camps inside Guinea have experienced harassment and ill-treatment at the hands of the Guinean military.³⁴¹

Rape is a crime in Guinea and the punishment for this crime depends on the circumstances of the crime and the number of accused perpetrators.³⁴² Guinea is in the second tier of the U.S. human trafficking assessments in 2007.³⁴³ Guinea has criminalized human trafficking, as well as rape and other forms of “indecent assault.”³⁴⁴ Many of the refugees located within Guinea’s

334. *Id.* at 200–01 (citing Criminal Code, § 314 (Ghana)).

335. U.S. DEPT. OF STATE, *supra* note 24, at 42.

336. See U.N. HIGH COMM’R, *supra* note 192, at 344.

337. CIA, GUINEA, *supra* note 78.

338. *Id.*

339. See HUMAN RIGHTS WATCH, DYING FOR CHANGE: BRUTALITY AND REPRESSION BY GUINEAN SECURITY FORCES IN RESPONSE TO A NATIONWIDE STRIKE 3, 14-35 (2007), available at <http://hrw.org/reports/2007/guinea0407/guinea0407webwcover.pdf> (last visited May 14, 2008).

340. See *id.*

341. See HUMAN RIGHTS WATCH, GUINEA: REFUGEES STILL AT RISK, CONTINUING REFUGEE PROTECTION CONCERNS IN GUINEA (2001) available at <http://www.hrw.org/reports/2001/guinea/guinea0701.PDF> (last visited May 14, 2008).

342. See NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, GUINEA 1-2 (2006) available at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaGuinea.pdf> (last visited May 14, 2008) (reprinting and summarizing portions of Criminal Code, arts. 12-13 (Guinea)) (translated by author).

343. U.S. DEPT. OF STATE, *supra* note 24, at 42.

344. See HUMAN RIGHTS WATCH, BOTTOM OF THE LADDER: EXPLOITATION AND ABUSE OF GIRL DOMESTIC WORKERS IN GUINEA (2007) available at <http://hrw.org/reports/2007/guinea0607/guinea0607webwcover.pdf> (last visited May 14, 2008).

borders are housed in refugee camps.³⁴⁵ Human rights agencies have condemned the treatment which refugees in these camps receive from Guinean military units and members of the Guinean public generally.³⁴⁶

L. India

Service in the Indian military is entirely voluntary from age sixteen onward.³⁴⁷ Within the most recent Army budget, salaries of Army officers and personnel have accounted for the largest appropriation of funds – over 36 percent per year.³⁴⁸ The Indian Military Code provides penalties for “Unbecoming Conduct”³⁴⁹ and for “Disgraceful Conduct.”³⁵⁰ Officers and others who are subject to the Army Act may be tried under the Act for offenses which are criminal under Indian law unless he is already being tried by a civilian court.³⁵¹ The Army Act requires incidents of “Rape including assault or criminal force to a woman with intent to outrage her modesty/dishonour the person” be reported for investigation.³⁵² There is, however, no explicit crime of rape in the Army Act.³⁵³

Currently, the Indian Army Act has not been amended to reflect the introduction of women into certain parts of the military system.³⁵⁴ Many military wives are unaware of the rights owed to them by their husbands and by the military apparatus while their husbands are deployed.³⁵⁵ The “Commandments” for military

345. See U.N. HIGH COMM’R, *supra* note 192, at 350.

346. See HUMAN RIGHTS WATCH, GUINEA: REFUGEES SUBJECT TO SERIOUS ABUSE (2001), available at <http://hrw.org/english/docs/2001/07/05/guinea83.htm> (last visited May 14, 2008).

347. CIA, INDIA, *supra* note 79.

348. AMIYA KUMAR GHOSH, DEFENCE BUDGETING AND PLANNING IN INDIA: THE WAY FORWARD 35 (2006).

349. G.K. SHARMA, M.S., JASWAL, STUDY AND PRACTICE OF MILITARY LAW 101 (6th ed. 2006) (quoting The Army Act of 1950, § 45, INDIA CODE (as amended to 2006)).

[A]ny officer, junior commissioned officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him, shall on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is mentioned in the Army Act and if he is a JCO or WO, be liable to be dismissed or to suffer such less punishment as is mentioned in the Army Act.

Id.

350. *Id.* at 102 (discussing The Army Act of 1950, § 46, INDIA CODE (as amended to 2006) which makes “Conduct of cruel, indecent or unnatural kind” a crime).

351. *Id.* at 106 (citing §§ 69, 70 of the Army Act).

352. *Id.* at 401, app. I, 1(b)(iv).

353. See generally *id.*

354. NILENDRA KUMAR, COURT MARTIAL AND MILITARY MATTERS 84–85 (2000).

355. See *id.* at 108–09.

deployment state that the first commandment is “No rape.”³⁵⁶ The Mandate of the COAS About Personal Behaviour & Conduct in Operations provides “Rape and molestation are the most heinous of crimes. God will not forgive you, and the Army will punish you very severely;” and “Rape, molestation, murder, taking of hostage and arbitrary executions are violations of humanitarian law.”³⁵⁷ It is widely accepted that the Indian Army, which is a frequent participant in peacekeeping missions, uses rape as a standard interrogation method.³⁵⁸ In response to concerns of the spread of HIV/AIDS to troops deployed on peacekeeping missions, the Indian military promulgated a code of conduct for its peacekeepers before many of the complaints against Indian peacekeepers were made.³⁵⁹

At present, there is no crime of marital rape in India and marriage to the victim is an absolute defense.³⁶⁰ A lower standard of proof is required for gang rapes under the Indian penal code, apparently with the legislative intent to curtail the incidences of an increasingly prevalent crime in Indian society.³⁶¹ The Penal code provides for the crime of “Assault or criminal force to [a] woman with intent to outrage her modesty,” defined as “Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”³⁶² It also provides for the crime of “Procuration of [a] minor girl,”³⁶³ “Buying or disposing of any person as a slave,”³⁶⁴ and “Unnatural Offences.”³⁶⁵ Rape is defined as:

[A] man is said to commit ‘rape’ who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: Firstly – Against her

356. *Id.* at 191, table 6.

357. *Id.* at 192, table 7.

358. PEARCE, *supra* note 204, at n.536.

359. MURTHY, *supra* note 35, at 164–65.

360. Ogletree & Silva de-Alwis, *supra* note 289, at 275.

361. S.C. SARKAR, COMMENTARY ON THE INDIAN PENAL CODE, 1860, sec. 1 to 299, at 105 (2006).

362. *Id.* at 586 (citing INDIA PEN. CODE § 354).

363. *Id.* at 633 (citing INDIA PEN. CODE § 366-A).

364. *Id.* at 639 (citing INDIA PEN. CODE § 369).

365. S.C. SARKAR, COMMENTARY ON THE INDIAN PENAL CODE, 1860, sec. 303 to 408, at 833 (2006) (quoting INDIA PEN. CODE § 377). “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.” *Id.*

will. Secondly – Without her consent. Thirdly – With her consent, when her consent, has been obtained by putting her or any person in whom she is interested in fear of death or hurt. Fourthly – With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly – With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through [sic] another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she give [sic] consent. Sixthly – With or without her consent when she is under sixteen years of age. Exception – sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.³⁶⁶

The sentences for rape vary under the circumstances, but police officers and other public servants, rapists of girls under twelve, and participants in gang rapes are subject to sentences of at least ten years.³⁶⁷ Although marital rape is not a crime in India, there is a separate provision of the Penal Code making it a crime for a man to rape his wife while they are legally or customarily separated.³⁶⁸ Even when a rape case is brought to trial, the evidence rules in India shift the focus of the trial to the victim's conduct and past – an experience which is traumatic to the victim³⁶⁹ and can, in the author's view, create a culture of impunity for the accused because of the cultural conservatism and stigma attached to such revelations and proceedings. When a complaint involving rape or sexual violence is filed, it is accepted practice that there will be shoddy follow-up investigations which can prejudice the outcome of the trial, if there is one.³⁷⁰

India is in the second tier watch list of the U.S. human trafficking assessments in 2007.³⁷¹ Despite this classification,

366. *Id.* at 642 (citing INDIA PEN. CODE § 375).

367. *Id.* at 651-52 (citing INDIA PEN. CODE § 376).

368. *Id.* at 830 (citing INDIA PEN. CODE § 376-A).

369. Savitri Goonesekere, *Overview: Reflections on Violence Against Women and the Legal Systems of some South Asian Countries*, in VIOLENCE, LAW AND WOMEN'S RIGHTS IN SOUTH ASIA 69-70 (Savitri Goonesekere ed., 2004).

370. Kirti Singh, *Violence against Women and the Indian Law*, in VIOLENCE, LAW AND WOMEN'S RIGHTS IN SOUTH ASIA 96-101 (Savitri Goonesekere ed., 2004).

371. U.S. DEPT. OF STATE, *supra* note 24, at 42.

India is widely regarded as a major sending and receiving state in the traffic of human beings.³⁷² There are no refugee camps in India although refugees are allowed into the country.³⁷³

Dowry deaths are a form of domestic violence which has plagued India in direct contradiction of its laws.³⁷⁴ These deaths still occur on a routine basis and tend to receive light sentencing from judges, who often find sympathy with the husband and his family.³⁷⁵ The societal and legal protections are not afforded solely to husbands and their immediate family, however.³⁷⁶

M. Indonesia

Indonesians may volunteer for military service at age eighteen; if they do not volunteer then they will be conscripted for two years after age eighteen.³⁷⁷ Regardless of whether they remain in the military after the mandatory period of conscription, all Indonesians remain on reserve until age forty-five and have an obligation to serve their country if activated.³⁷⁸ From the 1980s onward, the Indonesian Army, which was at one point a well-respected and sought after career choice for the upper echelons of Indonesian society, lost some of its status.³⁷⁹ As a result, it has begun recruiting from the rural middle class, which is regarded as a lower class of society.³⁸⁰ Due to historical and political events, the Indonesian Army prides itself on enjoying a unique and powerful position in society, law, and the political realm.³⁸¹ In addition to standard military functions, it is expected that the Indonesian military will be involved in civilian tasks such as infrastructure building and support.³⁸² Additionally, the Indonesian military is frequently involved in national policing issues due to the perceived

372. Lethi & Aromaa, *supra* note 203.

373. See U.N. HIGH COMM'R, *supra* note 192, at 366.

374. See SARKAR, *supra* note 365, at 229 (citing section 304-B of the Indian Penal Code, which defines and penalizes the specific crime of dowry death); Melissa Spatz, *A "Lesser" Crime: A Comparative Study of Legal Defenses for Men Who Kill Their Wives*, 24 COLUM. J. L. & SOC. PROBS. 597 (1991); See also The Protection of Women from Domestic Violence Act, 2005 reprinted in S.C. SARKAR, COMMENTARY ON THE INDIAN PENAL CODE, 1860, sec. 303 to 408, app. 20 (2006).

375. See Singh, *supra* note 370, at 119–21 (citing evidence that, despite the dowry death ban, incidents of dowry deaths are on the rise in India).

376. See Spatz, *supra* note 374.

377. CIA, INDONESIA, *supra* note 80.

378. *Id.*

379. ANGEL RABASA AND JOHN HASEMAN, THE MILITARY AND DEMOCRACY IN INDONESIA 54 (2002).

380. *Id.*

381. *Id.* at 9–10; RINAKIT SUKARDI, THE INDONESIA MILITARY AFTER THE NEW ORDER 6–7 (2005).

382. RABASA AND HASEMAN, *supra* note 379, at 22–23.

weakness of the national police organization.³⁸³ Despite its stature, members of the Indonesian military, especially in its lower ranks, are poorly compensated.³⁸⁴

Although there were many sides which contributed to the massive human rights violations and conflict which occurred in East Timor, it is established that the Indonesian military both participated in and encouraged many egregious acts during the conflict.³⁸⁵ While many of these acts can arguably be justified as part of war, there is an established pattern of using rape as a tool to either silence or exact retribution from the local population.³⁸⁶ The Indonesian government itself admits that members of the military and those associated with it have committed human rights violations, including sexual crimes, across the nation.³⁸⁷ The government has established several courts to hear allegations of human rights violations against Indonesian military and civilians, yet the application of laws by these courts has been uneven.³⁸⁸

Prostitution is not illegal in Indonesia.³⁸⁹ There also is no crime of marital rape in Indonesia.³⁹⁰ The crime of rape is defined by the Indonesian Penal Code as: "Anybody who is having sexual intercourse by force or threat or enforcing a woman to commit adultery with out marriage will be punished with imprisonment up to 12 years."³⁹¹ Child prostitution is not a recognized crime in Indonesia.³⁹² Indonesia is in the second tier of the U.S. human

383. *Id.* at 26–27; SUKARDI, *supra* note 381, at 142.

384. SUKARDI, *supra* note 381, at 139–40.

385. See generally MASTERS OF TERROR: INDONESIA'S MILITARY AND VIOLENCE IN EAST TIMOR (Richard Tanter, Gerry van Klinken, & Desmond Ball, eds., 2006) [hereinafter MASTERS OF TERROR]; RABASA AND HASEMAN, *supra* note 380, at 38–41.

386. *List of Major Incidents: East Timor, 1999*, in MASTERS OF TERROR: INDONESIA'S MILITARY AND VIOLENCE IN EAST TIMOR xxxv–xxxvi (Richard Tanter, Gerry van Klinken, & Desmond Ball, eds., 2006); INVESTIGATIVE COMMISSION ON ABUSES OF HUMAN RIGHTS IN EAST TIMOR, *FULL REPORT OF THE INVESTIGATIVE COMMISSION INTO HUMAN RIGHTS VIOLATIONS IN EAST TIMOR*, in MASTERS OF TERROR: INDONESIA'S MILITARY AND VIOLENCE IN EAST TIMOR 37, 52–53, 58 (Richard Tanter, Gerry van Klinken, & Desmond Ball, eds., 2006).

387. Suzannah Linton, *Accounting for Atrocities in Indonesia*, 10 SING. Y.B. INT'L L. 199 (2006).

388. *Id.* at 204–05

389. Koyama & Myrntinen, *supra* note 2, at 33.

390. See Leah Riggins, *Criminalizing Marital Rape in Indonesia*, 24 B.C. THIRD WORLD L.J. 421, 422 (2004) (reviewing VIOLENCE AGAINST WOMEN IN ASIAN SOCIETIES (Lenore Manderson & Linda Rae Bennett eds., 2003)).

391. NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, INDONESIA 1 (2006) available at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaIndonesia.pdf> (last visited May 14, 2008) (summarizing Indonesian Penal Code, art. 285).

392. See *id.* at 2 (explaining that while “no special legal provisions exist” to punish child prostitution, other laws “can be applied”).

trafficking assessments in 2007.³⁹³ There are no refugee camps located within Indonesia's borders.³⁹⁴

N. Ireland

Ireland has an all volunteer military service starting at age seventeen.³⁹⁵ Ireland has retained the crime of buggery on the national level.³⁹⁶ Prostitution is illegal in Ireland.³⁹⁷ Rape is a crime in Ireland³⁹⁸ as is marital rape as of 1990.³⁹⁹ Sexual assault and aggravated sexual assault also exist as crimes under the Irish Criminal Law (Rape) Act.⁴⁰⁰ The definition of rape under Irish civilian law and the trial procedure for a rape complaint are essentially the same under the Defence Act as well.⁴⁰¹ No information on Ireland's placement in the tier system used by the U.S. State Department is available.⁴⁰² Ireland does not have refugee camps located within its borders.⁴⁰³

O. Italy

Compulsory military service in Italy ceased in 2005.⁴⁰⁴ Now, the Italian military is entirely voluntary, with men and women ages eighteen to twenty-seven eligible to enter service.⁴⁰⁵

Rape in Italy is defined as forced sexual intercourse compelled through violence, threats, misrepresentation, or abuse of the perpetrator's authority.⁴⁰⁶ Age of the victim, the relationship of the perpetrator to the victim, and whether the perpetrator is a public

393. U.S. DEPT. OF STATE, *supra* note 24, at 42.

394. *See* U.N. HIGH COMM'R, *supra* note 192, at 368.

395. CIA, IRELAND, *supra* note 81.

396. CRIMINAL LAW (SEXUAL OFFENCES) ACT, 1993, § 3 (Ir.).

397. *Id.* §§ 9-11.

398. CRIMINAL LAW (RAPE) ACT, 1981 § 2 (Ir.).

A man commits rape if – (a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it and (b)at that time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it.

Id.

399. CRIMINAL LAW (RAPE) (AMENDMENT) ACT, 1990 §§ 5 (Ir.).

400. *Id.* §§ 2-3.

401. *Id.* § 19.

402. *See* U.S. DEPT. OF STATE, *supra* note 24, at 42.

403. *See* U.N. HIGH COMM'R, *supra* note 192, at 372.

404. CIA, ITALY, *supra* note 82.

405. *Id.*

406. NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, ITALY 1 (2006) *available at* <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaItaly.pdf> (last visited May 14, 2008) (summarizing and reprinting portions of [Code Pénal Italien] C.P. [Penal Code], art. 609 (Italy)) (*translated by author*).

servant are aggravating factors for punishment.⁴⁰⁷ Gang rape is a separate crime involving more stringent punishment.⁴⁰⁸ Sexual relations with a minor are also illegal in Italy.⁴⁰⁹ Child prostitution and sex-tourism involving minors are both illegal under the Italian Penal Code.⁴¹⁰ The Penal Code specifies that sex crimes committed by Italian citizens abroad are subject to trial in Italy through an expansive extra-territorial jurisdiction statute.⁴¹¹ Italian military personnel can be subject to military or criminal jurisdiction for crimes which would fall under one or both.⁴¹² Italy is in the first tier of the U.S. human trafficking assessments in 2007.⁴¹³ There are no refugee camps located within Italy.⁴¹⁴

P. Jordan

Conscription in Jordan ended in 1999 and its military forces are now all-volunteer after age seventeen, although all men are required to register their eligibility until age thirty-seven.⁴¹⁵ Women are allowed to volunteer to serve in non-combat positions.⁴¹⁶

Allegations of rape dogged the Jordanian mission to UNTAET – including an allegation of rape during the contingent’s layover before arriving in East Timor.⁴¹⁷ Unsubstantiated claims that these peacekeepers were identified, repatriated, and then executed have been advanced but there is not evidence to support these claims.⁴¹⁸

The Jordanian penal code uses an element of intent for rape which, as some have posited, can be an exculpatory element for the rapist if a court determines that the victim “enticed” the rapist in some capacity.⁴¹⁹ The crime of rape itself is defined under Jordanian law as: “Whoever has sexual intercourse with a woman (other than his wife) without her consent whether by force,

407. *Id.* at 2 (summarizing and reprinting portions of C.P., art. 609-3).

408. *Id.* at 2 (summarizing and reprinting portions of C.P., art. 609-8).

409. *Id.* at 2-3 (summarizing and reprinting portions of C.P., art. 609).

410. *Id.* at 3-4 (summarizing and reprinting portions of C.P., art. 600 bis).

411. *Id.* at 6 (summarizing and reprinting portions of C.P., art. 604).

412. Jorg Luther, *Military Law in Italy*, in EUROPEAN MILITARY LAW SYSTEMS 494-95 (Georg Nolte ed. 2003).

413. U.S. DEPT. OF STATE, *supra* note 24, at 42.

414. See U.N. HIGH COMM’R, *supra* note 192, at 378.

415. CIA, JORDAN, *supra* note 83.

416. *Id.*

417. Koyama & Myrtilinen, *supra* note 2, at 36-37.

418. See *id.*

419. See AMIRA EL-AZHARY SONBOL, WOMEN OF JORDAN: ISLAM, LABOR AND THE LAW 27-28 (2003).

intimidation, trickery or deception shall be sentenced to a term of imprisonment of not less than 10 years. Whoever rapes a woman under 15 shall be sentenced to death.”⁴²⁰ Other relevant provisions of Jordanian law include indecent assault.⁴²¹ Child prostitution is illegal under Jordanian law.⁴²² Rape, or the allegation thereof, is one of the many grounds which have been used to justify honor killings of the victim in Jordan.⁴²³ The guilt of a rapist may be absolved if he marries the victim.⁴²⁴ Some of these and other legal restrictions on the rights and freedoms of women in Jordan are tracked to the traditions of the various tribal groups existing in Jordan.⁴²⁵ There is no crime of marital rape in Jordan.⁴²⁶ Under the terms of Jordanian law, it would be very difficult – if not impossible – for the mother of a child born to her as the result of a relationship with a deployed Jordanian peacekeeper to establish Jordanian citizenship for the child without the father’s acknowledgement.⁴²⁷

Under the terms of the Jordanian penal code, children may only bring allegations of criminality of any kind – sexual or otherwise – when supported by their parents or legal guardians.⁴²⁸ Honor crimes, especially killings, have plagued Jordanian law and society.⁴²⁹ Despite recent attempts to reform the legal system –

420. NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, JORDAN 1 (2006) *available at* <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaJordan.pdf> (last visited May 14, 2008) (summarizing and reprinting portions of Jordanian Penal Code, art. 292).

421. *Id.* at 1-2 (summarizing and reprinting portions of Jordanian Penal Code, arts. 296, 298). “Whoever by use of violence or intimidation commits an indecent act on an individual shall be sentenced to a term of imprisonment of not less than 4 years.” *Id.* at 1 (summarizing and reprinting portions of Jordanian Penal Code, art. 296). “Whoever without violence or intimidation commits an indecent act on a child under 15 years old or persuades him/her to commit an indecent act shall be sentenced to a term of imprisonment with hard labour.” *Id.* at 2 (summarizing and reprinting portions of Jordanian Penal Code, art. 298).

422. *Id.* at 3 (summarizing and reprinting portions of Jordanian Penal Code, art. 310).

423. SONBOL, *supra* note 419, at 28.

424. *Id.* at 187.

425. *Id.* at 37-38, 41, 43.

426. *Id.* at 203.

427. JOSEPH A. MASSAD, COLONIAL EFFECTS: THE MAKING OF NATIONAL IDENTITY IN JORDAN 36-39 (2001).

428. See WORLD CONGRESS AGAINST COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN, YOKOHAMA REPORT, REGIONAL ANALYSES, SUMMARY OF SITUATION IN THE MIDDLE EAST AND NORTH AFRICA (2001) [hereinafter YOKOHAMA REPORT], *available at* http://www.csecworldcongress.org/PDF/en/Yokohama/Background_reading/Regional_analyses/Summary%20situation%20in%20MEast%20&%20NAfrica_EN.pdf (last visited May 14, 2008).

429. Kathryn Christine Arnold, *Are the Perpetrators of Honor Killings Getting Away With Murder? Article 340 of the Jordan Penal Code Analyzed Under the Convention on the Elimination of all Forms of Discrimination Against Women*, 16 AM. U. INT’L L. REV. 1343 (2001).

which garnered the support of the royal family and particularly Queen Noor – the Jordanian parliament has not enacted the thorough legislation which has been advocated to completely eradicate these practices.⁴³⁰ In this context, it is especially important to note that the blame for rape in many sectors of Jordanian society will – legally and socially – fall on the victim, while the rapist will often suffer no consequences as the result of his actions.⁴³¹ Additionally, it is important to note that, while women can be accused of and punished for adultery under the Jordanian penal code on the accusation of their male relatives or husband, a female relative or wife cannot successfully accuse their male relative or husband of the crime of adultery unless he appears with his mistress in public.⁴³² Divorce is easily available to Jordanian males but extremely difficult for Jordanian females.⁴³³ Jordan is in the second tier of the U.S. human trafficking assessments in 2007.⁴³⁴ There are no active refugee camps in Jordan.⁴³⁵

Q. Morocco

Moroccans are under a conscription requirement for eighteen months once they turn eighteen years old.⁴³⁶ Outside of the conscription requirement, Moroccans may also volunteer for military service starting at age eighteen.⁴³⁷ In 2005, the Moroccan government arrested six of its peacekeepers for alleged sexual assault on the local population in the Democratic Republic of the Congo pending a court-martial inquiry.⁴³⁸

Once the subject of a formal charge under the military code, a Moroccan soldier is provided protections, key among them evidentiary requirements for any charge.⁴³⁹ Interestingly, there are several articles of the Moroccan military code of justice devoted to penalties in the event of pillaging by Moroccan soldiers.⁴⁴⁰ Rape and other sexual crimes are not addressed specifically in the

430. SONBOL, *supra* note 419, at 190-91.

431. Arnold, *supra* note 429, at 1347, n.16.

432. SONBOL, *supra* note 419, at 198.

433 *Id.* at 137, 152.

434. U.S. DEPT. OF STATE, *supra* note 24 at 42.

435. See U.N. HIGH COMM'R, *supra* note 192, at 384.

436. CIA, MOROCCO, *supra* note 84.

437. *Id.*

438. *UN welcomes Morocco's arrest of 6 of its peacekeepers for sexual assault in the DR of Congo*, UN NEWS SERVICE, Feb. 14, 2005, available at www.un.org/apps/news/printnewsAr.asp?nid=13342 (last visited May 14, 2008).

439. CODE DE JUSTICE MILITAIRE, ch. III, V (Morocco) (*translated by author*).

440. *Id.* art. 169.

Moroccan code of military justice.⁴⁴¹ Rather, the it provides that acts which are not enumerated under the military code but which would still be classified as criminal under the Moroccan penal code are likely punishable under the military code.⁴⁴² Similarly, the penal code explicitly states that a prosecution under the penal code does not bar a prosecution under the military code.⁴⁴³

The penal code creates several lesser classes of sexual offense, such as the kidnapping of a child under age fifteen for a criminal offense.⁴⁴⁴ The crime of rape is defined as the act of a man having sexual relations with a woman against her will and is punishable by between five and ten years in prison.⁴⁴⁵ The same act involving a girl under fifteen is punishable by ten to twenty years in prison.⁴⁴⁶ Any unlawful sex act which would otherwise be punishable under the penal code and involves a virgin girl is intended to result in an increased punishment.⁴⁴⁷ Lesser sexual offenses are punishable by several months to several years in prison.⁴⁴⁸ Sexual relations outside of marriage and adultery are each punishable offenses as well.⁴⁴⁹ Prostitution, facilitation of prostitution, and patronizing prostitutes are all punishable offenses under the Moroccan penal code.⁴⁵⁰ There is no crime of spousal rape in Morocco⁴⁵¹ and spousal abuse tends to be treated leniently at law.⁴⁵² Paternity runs solely through the father under Moroccan law and the failure of a father to register a child makes it exceedingly difficult for the child to ever obtain citizenship or enjoy rights of registered children.⁴⁵³ Morocco does not have specific anti-trafficking laws, instead prosecuting those involved in trafficking with prostitution and related offenses.⁴⁵⁴ Rape may be a capital offense under Moroccan law where the victim is a child and ultimately dies as a result of the attack.⁴⁵⁵

441. *See generally id.*

442. *Id.* ch. XII.

443. *Id.* art. 200.

444. *Id.* arts. 484, 485.

445. *Id.* art. 486.

446. *Id.*

447. *Id.* art. 488.

448. *Id.* art. 489.

449. *Id.* arts. 490-92.

450. *Id.* arts. 497-504.

451. CRIME & SOCIETY, A COMPARATIVE CRIMINOLOGY TOUR OF THE WORLD, AFRICA – MOROCCO, <http://www-rohan.sdsu.edu/faculty/rwinslow/africa/morocco.html> (last visited Mar. 18, 2008).

452. *Id.*

453. *Id.*

454. *Id.*

455. *See Warrick, supra* note 253.

Despite these penalties, it appears that reports of rape and other sexual offenses in Morocco are extremely low compared to the estimated incidences of these crimes.⁴⁵⁶ The social stigma attached to a rape victim and her family is very high and, to counter some of the stigma, the victim's family has the right to offer the victim to the rapist in marriage to erase the stain.⁴⁵⁷ Child sexual abuse has been identified as increasing in Morocco.⁴⁵⁸ Under King Mohammed IV, there has been a push to recast the rights and role of women in Moroccan society to provide for greater equality; however, these attempts have been largely fruitless over time.⁴⁵⁹ Morocco is in the first tier of the U.S. human trafficking assessments in 2007.⁴⁶⁰ There are no refugee camps in Morocco.⁴⁶¹

R. Nepal

The Nepalese military is comprised solely of volunteers, who are eligible for service at eighteen years old.⁴⁶² The Nepalese Army has been and continues to be linked to human rights abuses in conjunction with its long fight against Maoist insurgents.⁴⁶³ In 2006, legislative attempts to reform the extant Army Act were made in Nepal, however many were concerned that these proposed reforms would allow the military to act with greater impunity when dealing with civilians there.⁴⁶⁴

The standard punishment for rape in Nepal is a prison sentence of three to five years, although prosecution of rape as a crime is very rare.⁴⁶⁵ A 2004 court decision in Nepal recognized marital rape as a crime, however there has not to date been legislation to codify this finding.⁴⁶⁶ In general, Nepali women are

456. See YOKOHAMA REPORT, *supra* note 428.

457. CRIME & SOCIETY, *supra* note 451.

458. See Imane Belhaj, *New Report Discusses Child Abuse in Morocco*, MAGHAREBIA, July 5, 2007, available at http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2007/07/05/feature-02 (last visited May 14, 2008).

459. See Anita McNaught, *The King and the Sheik's Daughter*, BBC NEWS, Mar. 28, 2002, available at <http://news.bbc.co.uk/2/hi/programmes/correspondent/1899478.stm> (last visited May 14, 2008).

460. U.S. DEPT. OF STATE, *supra* note 24, at 42.

461. See U.N. HIGH COMM'R, *supra* note 192, at 426.

462. CIA, NEPAL, *supra* note 85.

463. MAHENDRA LAWOTI, TOWARDS A DEMOCRATIC NEPAL: INCLUSIVE POLITICAL INSTITUTIONS FOR A MULTICULTURAL SOCIETY 60 (2005).

464. See INT'L COMM'N OF JURISTS, NEPAL: RECOMMENDATIONS FOR AMENDMENTS TO THE DRAFT ARMY ACT (2006), available at http://www.icj.org/IMG/ICJ_report.pdf (last visited May 14, 2008).

465. Suzanne Sidun, *An End to the Violence: Justifying Gender as a "Particular Social Group"*, 28 PEPP. L. REV. 103, 108 (2000).

466. See Ogletree & de-Alwis, *supra* note 289, at 279.

legally, societally, economically and politically discriminated against even under the most recent legal reforms.⁴⁶⁷ Child prostitution is a crime in Nepal.⁴⁶⁸ Bigamy is legal in Nepal.⁴⁶⁹

Nepal is in the second tier of the U.S. human trafficking assessments in 2007.⁴⁷⁰ Despite this classification, Nepal is widely regarded as a major sending and receiving state in the traffic of human beings.⁴⁷¹ Other sources indicate that Nepal is rife with trafficking – as a point of origin especially – and that much of this trafficking involves women and young girls who will ultimately become prostitutes and be exposed to other forms of sexual slavery.⁴⁷² In cases where trafficked women and girls have been returned to their homes, they have faced massive social stigmas because of their experiences.⁴⁷³ Additionally, it is established that girls in what are viewed as lower classes in Nepal are more frequently made into prostitutes as a result of their status.⁴⁷⁴ Overall, the Nepalese domestic legal system and the societal constructs it reflects places little to no value on women as part of a family unit or society generally.⁴⁷⁵ In the author's view, this creates a society of men and women which has a one-sided perception of the human trafficking and its associated issues – rape, prostitution, etc. – in that the trafficker, rapist, and other perpetrators are not called to account in Nepal and the only understanding of culpability in society is placed with the returned victims. Thus, troops who have and would commit sexual abuses against the populations of the host states do not see the stigma of being the perpetrator because, although the law might create such

467. LAWOTI, *supra* note 463, at 100–01; FORUM FOR WOMEN LAW AND DEV., AN UPDATE OF DISCRIMINATORY LAWS IN NEPAL AND THEIR IMPACT ON WOMEN, available at http://www.fwld.org/pdf_files/discriminatory%20Laws.pdf (last visited May 14, 2008).

468. See NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, NEPAL 1 (2006), available at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaNepal.pdf> (last visited May 14, 2008) (summarizing Nepalese laws concerning rape and child sex offenses).

469. See FORUM FOR WOMEN, *supra* note 467, at 8.

470. U.S. DEP'T. OF STATE, *supra* note 26, at 42.

471. Lethi & Aromaa, *supra* note 203.

472. See Beverly Balos, *The Wrong Way to Equality: Privileging Consent in the Trafficking of Women for Sexual Exploitation*, 27 HARV. WOMEN'S L.J. 137 (2004); John Frederick, *The Status of Care, Support and Social Reintegration of Trafficked Persons in Nepal, as of December 2005*, 14 TUL. J. INT'L & COMP. L. 317 (2006); Philip M. Nichols, *Trade Without Values*, 90 NW. U. L. REV. 658, n.305 (1996).

473. See Frederick, *supra* note 472, at 320.

474. Savitri Goonesekere, *Overview: Reflections on Violence against Women and the Legal Systems of some South Asian Countries*, in VIOLENCE, LAW AND WOMEN'S RIGHTS IN SOUTH ASIA, 19-20 (Savitri Goonesekere ed., 2004); YUBARAJ SANGROULA, NEPALESE LEGAL SYSTEM: HUMAN RIGHTS PERSPECTIVE 172-77 (2005).

475. SANGROULA, *supra* note 474, at 176.

a stigma, it is not frequently enforced and is not understood as a reflection of societal beliefs.

Additionally, it should be noted that Nepal currently houses approximately one hundred thousand refugees in refugee camps located within its borders.⁴⁷⁶ These camps have not been well-guarded by the Nepali government and, as a result, have been the site of violence.⁴⁷⁷ These camps have been particularly threatening and damaging to Bhutanese women who have sought refuge in them.⁴⁷⁸

S. Netherlands

The Netherlands has an entirely volunteer military force.⁴⁷⁹ There are currently no military courts in the Netherlands and military personnel are tried in civilian courts regardless of the charge.⁴⁸⁰ In 1995, Dutch peacekeepers were helpless to defend the Muslim population in and around Srebrenica and a large massacre occurred as a result; these peacekeepers maintain that since they were under threat of harm at the time they could offer no assistance.⁴⁸¹ The Dutch military maintains its ability to try its members for crimes under the Military Criminal Code.⁴⁸²

The Netherlands is in the first tier of the U.S. human trafficking assessments in 2007.⁴⁸³ Prostitution was legalized in the Netherlands in 2000.⁴⁸⁴ Rape in the Netherlands is defined as:

[a] person who by an act of violence or another act or by threat of violence or threat of another act compels a person to submit to acts comprising or including

476. See U.N. HIGH COMM'R, *supra* note 192, at 434.

477. See HUMAN RIGHTS WATCH, NEPAL: BHUTANESE REFUGEE TENSIONS ERUPT INTO VIOLENCE, May 31, 2007, available at <http://hrw.org/english/docs/2007/05/31/bhutan16034.htm> (last visited May 17, 2008).

478. See HUMAN RIGHTS WATCH, TRAPPED BY INEQUALITY: BHUTANESE REFUGEE WOMEN IN NEPAL 8-11 (2003), available at <http://www.hrw.org/reports/2003/nepal0903/nepal0903full.pdf> (last visited May 17, 2008).

479. CIA, NETHERLANDS, *supra* note 86.

480. See INT'L COMM'N OF JURISTS, MILITARY COURTS AND GROSS HUMAN RIGHTS VIOLATIONS 294 (2004), available at http://www.icj.org/IMG/pdf/Trib_mil_ENG-part_II.pdf (last visited May 17, 2008).

481. See Radul Radovanovic, *Former Dutch Peacekeepers Return to Site of Srebrenica Massacre*, INT'L HERALD TRIBUNE, Oct. 17, 2007, available at <http://www.iht.com/articles/2007/10/17/europe/17serbs.php> (last visited May 17, 2008).

482. Leonard F.M. Besselink, *Military Law in the Netherlands*, in EUROPEAN MILITARY LAW SYSTEMS 629-31 (Georg Nolte ed. 2003).

483. U.S. DEPT. OF STATE, *surpa*, note 24, at 42.

484. Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335, 362 (2006).

sexual penetration of the body is guilty of rape and liable to a term o[f] imprisonment of not more than twelve years or a fine[...]⁴⁸⁵

Sexual acts with those under age sixteen are criminal in the Netherlands,⁴⁸⁶ as is indecent assault,⁴⁸⁷ committing a sexual offense which results in serious bodily harm or death to the victim,⁴⁸⁸ and abusing a position of authority to procure sexual favors from a minor.⁴⁸⁹ Child prostitution and trafficking is illegal in the Netherlands.⁴⁹⁰ There are no refugee camps located within the Netherlands.⁴⁹¹

T. Niger

Citizens of Niger are subject to a compulsory military service requirement of two years when they reach eighteen years of age.⁴⁹² Throughout the nation's history, Niger's military has played an important part in shaping the government and political structure through coups and general influence.⁴⁹³ This role transmuted into the various legal ordinances and structures which have developed during the country's history.⁴⁹⁴ Niger is and has been the site of internal conflict between the state and the Tuareg rebels.⁴⁹⁵ Niger is in the second tier of the U.S. human trafficking assessments in 2007.⁴⁹⁶ There are no refugee camps currently active in Niger.⁴⁹⁷

485. NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, NETHERLANDS 1 (2006) *available at* <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaNetherlands.pdf> (last visited May 14, 2008) (reprinting portions of Wetboek van Strafrecht [SR] [Criminal Code], art. 242 (Neth.)).

486. *Id.* at 1-2 (reprinting portions of SR, arts. 244 -45).

487. *Id.* at 2 (reprinting portions of SR, art. 246).

A] person who by an act of violence or another act or by threat of violence or threat of another act compels another person to perform or submit to indecent acts is guilty of indecent assault and is liable to a term of imprisonment of not more than eight years or a fine[...]

Id.

488. *Id.* at 2 (reprinting portions of SR, art. 248).

489. *Id.* at 2 (reprinting portions of SR, art.248 ter).

490. *Id.* at 3-4 (reprinting portions of SR, art.250 ter).

491. See U.N. HIGH COMM'R, *supra* note 192, at 436.

492. CIA, NIGER, *supra* note 87.

493. See *generally* SANOUSSI TAMBARI JACKOU, AFFAIRES CONSTITUTIONNELLES ET ORGANIZATION DES POUVOIRS AU NIGER (2000) (*translated by author*).

494. *Id.*

495. See *MSF forced out of northern Niger*, BBC NEWS, Oct. 24, 2007, *available at* <http://news.bbc.co.uk/2/hi/africa/7060621.stm> (last visited May 14, 2007); *Tuareg rebels seize Niger troops*, BBC NEWS, Sept. 7, 2007, *available at* <http://news.bbc.co.uk/2/hi/africa/6983929.stm> (last visited May 14, 2007).

496. U.S. DEP'T OF STATE, *supra* note 24, at 42.

497. See U.N. HIGH COMM'R, *supra* note 192, at 442.

U. Nigeria

Nigeria's military is a volunteer force which one may enter at age eighteen after having had an HIV/AIDS test.⁴⁹⁸ However, Nigeria does not require repeat AIDS tests and it has been established that an increasing number of Nigerian peacekeepers are returning home with HIV/AIDS.⁴⁹⁹ The Nigerian military has been implicated in long-term actions against its own people depending on the political will of the current regime.⁵⁰⁰

There is no specific crime of rape or other sexual misconduct in the Nigerian Army Act.⁵⁰¹ The Act does, however, provide that a civil violation will also be classified as a violation of the Act when a conviction arises.⁵⁰² Potential violations of the Act for conduct such as that proven and alleged against Nigerian peacekeepers would be limited to "scandalous conduct of an officer" ("every officer subject to military law under this Act who behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall, on conviction by court-martial, be cashiered.")⁵⁰³ or "disgraceful conduct" ("any person subject to military law under this Act who is guilty of disgraceful conduct of cruel, indecent or unnatural kind shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or less punishment provided by this Act.")⁵⁰⁴ The evidentiary laws to be applied by courts martial are the same as those applied in civil courts in the Nigerian capital city of Abuja.⁵⁰⁵ Generally, the intent of the Nigerian Military Code that offenses involving people and property outside of the confines of the military will be tried by a civilian court.⁵⁰⁶ An exception is typically made for, among other things, rape.⁵⁰⁷

Internal U.N. documents have suggested that, while stationed at the U.N. Mission in Sierra Leone, officers from the Nigerian contingent were involved in diamond and drug smuggling

498. CIA, NIGERIA, *supra* note 88.

499. See Sarin, *supra* note 63.

500. See 'EMEKA NWAGWU, TAMING THE TIGER: CIVIL-MILITARY RELATIONS REFORM AND THE SEARCH FOR POLITICAL STABILITY IN NIGERIA 76-78 (2002).

501. See Nigerian Army Act (1990).

502. *Id.* § 72. Some jurists believe that the vagueness of language used in this provision makes it a difficult provision to enforce at law. See DAVID M. JEMIBEWON, AN INTRODUCTION TO THE THEORY AND PRACTICE OF MILITARY LAW IN NIGERIA 34-35 (1989).

503. Nigerian Army Act, § 66 (1990).

504. *Id.* § 68.

505. *Id.* § 96.

506. JEMIBEWON, *supra* note 503, at 39.

507. *Id.*

activities.⁵⁰⁸ The U.N. dismissed these activities because of the Nigerian contingent's ability to work effectively in Sierra Leone.⁵⁰⁹

Nigeria is in the second tier of the U.S. human trafficking assessments in 2007.⁵¹⁰ Nigeria and its armed forces have been implicated in extensive forms of human and other trafficking, calling into question the propriety of stationing these forces in areas where they have access to vulnerable – and often lonely – populations.⁵¹¹ Indeed, Nigeria joins Morocco as being the two largest export states of girls from Africa to Europe.⁵¹² There are refugee camps located within Nigeria's borders.⁵¹³

The Nigerian Criminal Code defines the crime of rape as:

Any person who has unlawful carnal knowledge of a woman or girl without her consent or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm or by means of false and fraudulent representations as to the nature of the act, or, in the case of a married woman by personating her husband, is guilty of a crime which is called rape.⁵¹⁴

Other relevant crimes include “unnatural offenses,”⁵¹⁵ “indecent treatment of boys under fourteen,”⁵¹⁶ “indecent practices between males,”⁵¹⁷ “defilement of girls under sixteen and above

508. Aning, *supra* note 114, at 144.

509. *Id.*

510. U.S. DEPT. OF STATE, *supra* note 24, at 42.

511. Melanie R. Wallace, *Voiceless Victims: Sex Slavery and Trafficking of African Women in Western Europe*, 30 GA. J. INT'L & COMP. L. 569 (2002).

512. Lethi & Aromaa, *supra* note 203.

513. See U.N. HIGH COMM'R, *supra* note 192, at 444.

514. J. ADEMOLA YAKUBU & A. TORIOLA OYEWU, CRIMINAL LAW AND PROCEDURE IN NIGERIA 172 (2000) (citing Nigerian Criminal Code, § 157).

515. *Id.* at 182 (citing Nigerian Criminal Code, § 214).

[A]ny person who 1) has carnal knowledge of any person against the order of nature; or 2) has carnal knowledge of an animal; or 3) permits a male person to have carnal knowledge of him or her against the order of nature: is guilty of a felony, and is liable to imprisonment for 14 years.

Id.

516. *Id.* at 184 (citing Nigerian Criminal Code, § 216). “[A]ny person who unlawfully and indecently deals with a boy under the age of 14 years is guilty of a felony and is liable to imprisonment for 7 years.” *Id.*

517. *Id.* at 184-85 (citing Nigerian Criminal Code, § 217).

[A]ny male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him or attempts to procure the commission of any such act by any male person with himself or with another male person whether in public or private, is guilty of a felony, and is liable to imprisonment for three years.

thirteen and of idiots,”⁵¹⁸ and “persons trading in prostitution.”⁵¹⁹ There is no crime of marital rape under the Nigerian Criminal Code.⁵²⁰ The use of Shari’ a courts in portions of Nigeria, and the codes and mores which these courts apply, create a situation of unequal justice for victims of sexual violence because these crimes are treated differently under Shari’ a law.⁵²¹ Additionally, the use of customary law in the area or among the peoples involved can be considered in addition to the statutory requirements and factors for the establishment of a crime.⁵²² Commentators have noted that much of the rule of law process in Nigeria has been undermined by an overall culture of political and economic corruption.⁵²³

V. Pakistan

Pakistan has an all-volunteer military.⁵²⁴ Citizens are eligible to volunteer beginning at age sixteen but are not allowed into combat until age eighteen.⁵²⁵ Limited participation of women is also allowed.⁵²⁶

The technical application of the terms of the Pakistan Army Act to Pakistani soldiers deployed on peacekeeping missions is questionable in that they are not actively used to fight an enemy, which is the key definitional element to the term “active service.”⁵²⁷ There is no specific crime of rape or sexual misconduct

Id.

518. *Id.* at 186 (citing Nigerian Criminal Code, § 221).

[A]ny person who 1) has or attempts to have unlawful carnal knowledge of a girl being of or above eleven years and under thirteen years of age; or 2) knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful knowledge of her; is guilty of a misdemeanor, and is liable to imprisonment for two years, with or without whipping.

Id.

519. *Id.* at 187 (citing Nigerian Criminal Code, § 225(A)).

520. *Id.* at 173.

521. See generally Elizabeth Peiffer, Note, *The Death Penalty in Traditional Islamic Law and as Interpreted in Saudi Arabia and Nigeria*, 11 WM. & MARY J. WOMEN & L. 507 (2005); Kia N. Roberts, Note, *Constitutionality of Shari’ a Law in Nigeria and the Higher Conviction Rate of Muslim Women Under Shari’ a Fornication and Adultery Laws*, 14 S. CAL. REV. L. & WOMEN’S STUD. 315 (2005); *Nigerian Sharia court bans play*, BBC NEWS, Oct. 8, 2007, available at <http://news.bbc.co.uk/2/hi/africa/7033502.stm> (last visited May 14, 2008).

522. CHARLES MWALIMU, *THE NIGERIAN LEGAL SYSTEM VOL. 1, PUBLIC LAW* 139, 144-45 (2005).

523. See ‘EMEKA O.C. NWAGWU, *A PROPOSAL FOR THE RE-FOUNDING OF NIGERIA: WHAT TO DO AFTER THE TOTAL COLLAPSE OF AN AFRICAN STATE* 242-45 (2006).

524. CIA, *PAKISTAN*, *supra* note 89.

525. *Id.*

526. *Id.*

527. M.A. LATIF, *THE MARTIAL LAW: REGULATIONS AND ORDERS WITH PAKISTAN ARMY ACT AND RULES, COMMENTARY* 5 (1969) (reprinting Pakistan Army Act, § 8(1)).

[T]he time during which such person is attached to or, forms part of a force which is engaged in operations against an enemy, or is engaged in

under the Pakistan Army Act.⁵²⁸ Theoretically, there are several other infractions under the Act which could be made applicable to errant Pakistani peacekeepers. One such infraction could be “offences against property or persons of inhabitant of country where serving,” which states: “any person subject to this Act who, on active service, commits an offense against the property or person of any inhabitant of, or resident in, the country in which he is serving shall, on conviction by court martial, be punished with rigorous imprisonment for a term . . . [of] fourteen years, or with less punishment.”⁵²⁹ There are two issues with this infraction as applied to peacekeepers. First, it requires that the soldier in question be classed as serving on “active service.” Second, since many peacekeepers are deployed to refugee camps located in countries in which potential victims do not inhabit and can advance no claim to residency, jurisdiction would be doubtful. Another option would be prosecution for “certain forms of disgraceful conduct,” which entails, in relevant part, being “guilty of any disgraceful conduct of a cruel, indecent or unnatural kind.”⁵³⁰ The essential elements of this crime however, are undefined. An additional option would be “unbecoming behaviour,” defined as “any officer, junior commissioned officer or warrant officer, who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by court-martial be . . . dismissed from the service or suffer such less punishment as is in this Act mentioned.”⁵³¹ Even if such charges were advanced, the standard paucity of U.N.-generated evidence would likely result in exclusion of key evidence under the evidentiary rules used for Pakistani military trials.⁵³²

Throughout the history of the Pakistani state, the military has been heavily involved in the political, societal, and legal affairs of the nation.⁵³³ Indeed, it was during a military regime that the current Islam-centric laws which are seen by many as

military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is attached to or forms part of a force which is in military occupation of a foreign country.

Id.

528. *See id.*

529. *Id.* at 10 (reprinting Pakistan Army Act, § 27).

530. *Id.* at 23 (reprinting Pakistan Army Act, § 41).

531. *Id.* at 28 (reprinting Pakistan Army Act, § 52).

532. *Id.* at 103-47 (reprinting Pakistan Army Act Rules, §§ 19-133).

533. *See generally* HASAN-ASKARI RIZVI, MILITARY, STATE, AND SOCIETY IN PAKISTAN (2000).

discriminatory to women – especially in the area of sex crimes – were instituted.⁵³⁴

Pakistan is in the second tier of the U.S. human trafficking assessments report in 2007.⁵³⁵ Despite this classification, Pakistan is widely regarded as a major sending and receiving state in the traffic of human beings.⁵³⁶ As of 2005, Pakistan housed an estimated one million refugees in refugee camps within its borders.⁵³⁷

Domestic abuse of all types is rampant in Pakistan and yet the authorities are reluctant to do anything to stop it.⁵³⁸ Although there are laws geared toward protecting victims of domestic violence and rape, the rape victim – be she married to the rapist or not – faces the knowledge that she can be convicted of adultery if the accused is not convicted.⁵³⁹ Additionally, there are well established patterns of police abusing women so that they will not file complaints about rape and domestic violence, further creating a culture of intimidation which defies the terms of Pakistan's penal code.⁵⁴⁰ Pakistan has only recently begun to prosecute rape cases in civil courts rather than Shari' a courts.⁵⁴¹ Regardless of the court, there are severe evidentiary requirements for crimes such as rape – including that there be four male witnesses – which drastically undercut the likelihood of success on any claim of rape or sexual misconduct.⁵⁴² Because Pakistan is a religious state, there have been increased problems in reconciling its criminal codes, which are secular in theory, with the application of Shari' a as is done by many courts when criminal cases are tried.⁵⁴³ The use of rape as a tribal method to settle disputes between different tribes continues today despite the above sexual violence laws.⁵⁴⁴ In

534. *Id.* at 170-71; VEENA KUKREJA, CIVIL-MILITARY RELATIONS IN SOUTH ASIA: PAKISTAN, BANGLADESH AND INDIA 88-89 (1991); HUSAIN HAQQANI, PAKISTAN: BETWEEN MOSQUE AND MILITARY 144-47 (2005).

535. U.S. DEPT. OF STATE, *supra* note 24, at 42.

536. Lehti and Aromaa, *supra* note 203, at 208-09.

537. See U.N. HIGH COMM'R, *supra* note 192, at 452.

538. See generally Asifa Quraishi, *Her Honor: An Islamic Critique of the Rape Laws of Pakistan From a Woman-Sensitive Perspective*, 18 MICH. J. INT'L L. 287 (1997); Manar Waheed, Note, *Domestic Violence in Pakistan: The Tension Between Intervention & Sovereign Autonomy in Human Rights Law*, 29 BROOK. J. INT'L L. 937 (2004).

539. Quraishi, *supra* note 538.

540. *Id.*

541. Edward Babayan, *Legislative Watch*, 14 HUM. RTS. BR. 64 (2006).

542. Jessica Neuwirth, *Sex Discriminatory Laws: A Challenge to the Integrity of International Law*, 29 SUM HUMAN RIGHTS 3 (2002).

543. Goonesekere, *supra* note 474, at 56.

544. See Barbara Plett, *Trauma of Pakistan's rape victims*, BBC NEWS, Mar. 9, 2007, available at http://news.bbc.co.uk/2/hi/south_asia/6433357.stm (last visited May 14, 2008); Aamer Ahmed Khan, *Pakistan's justice system in spotlight*, BBC NEWS, Mar. 3, 2005, available at http://news.bbc.co.uk/2/hi/south_asia/4315491.stm (last visited May 14, 2008).

one of the most famous cases of the use of gang rape to settle a dispute between families, the rapists were convicted of participating in the planned attack – on the order of a tribal council – and were later freed because of evidentiary issues and investigatory flaws.⁵⁴⁵ Attempts at reforming the Pakistani legal system to be less discriminatory to women have met with much opposition from political leaders and society.⁵⁴⁶

Attacks on women for honor crimes and other perceived wrongs, for example by burning a woman with acid, have gained societal acceptance and are not heavily prosecuted.⁵⁴⁷ Honor killings are a prevalent and persistent problem in Pakistan despite being illegal.⁵⁴⁸ These crimes are exacerbated by a lack of enforcement by police and a sense of societal acceptance.⁵⁴⁹ Domestic violence and associated crimes are rarely reported in Pakistan due largely to social factors; when they are reported, the police are typically inattentive to these types of complaints.⁵⁵⁰

W. Russian Federation

Russia has a mandatory conscription period of one year after age seventeen, although the concept of mandatory conscription is currently up for debate.⁵⁵¹ Russians have a reserve obligation to their military until they reach age fifty.⁵⁵² In Croatia, a Russian peacekeeper left his post after it was discovered that he was involved in operating a brothel there.⁵⁵³ During its long-term presence in Chechnya, the Russian military has routinely been accused of individual and systematic atrocities against the local population, without active prosecution.⁵⁵⁴

545. See *Pakistan rape case accused freed*, BBC NEWS, Mar. 15, 2005, available at http://news.bbc.co.uk/2/hi/south_asia/4351507.stm (last visited May 14, 2008).

546. See *Pakistan law change 'un-Islamic'*, BBC NEWS, Aug. 22, 2006, available at http://news.bbc.co.uk/2/hi/south_asia/5275998.stm (last visited May 14, 2008).

547. Kerri L. Ritz, Note, *Soft Enforcement: Inadequacies of Optional Protocol as a Remedy for the Convention on the Elimination of All Forms of Discrimination Against Women*, 25 SUFFOLK TRANSNAT'L L. REV. 191, 200-03 (2001).

548. Hina Jilani & Eman M. Ahmed, *Violence against Women: The Legal System and Institutional Responses in Pakistan*, in VIOLENCE, LAW AND WOMEN'S RIGHTS IN SOUTH ASIA, 152-60 (Savitri Goonesekere ed. 2004); Paul Anderson, *Pakistan 'honor killings' arrests*, BBC NEWS, Feb. 11, 2004, available at http://news.bbc.co.uk/2/hi/south_asia/3480321.stm (last visited May 14, 2008).

549. Jilani & Ahmed, *supra* note 548, at 155.

550. *Id.* at 180-81, 187 (detailing incidents of sexual and other abuse of women by police officers when they report crimes).

551. CIA, RUSSIA, *supra* note 90.

552. *Id.*

553. Bone, *supra* note 55.

554. See generally Stacie Powderly, Note, *Case Study Illustrating the Shortcomings of International Criminal Law: Chechnya*, 82 WASH. U.L.Q. 1553 (2004).

The Russian Federation has enacted a code which governs the conduct of its military personnel when deployed on any type of international peacekeeping mission.⁵⁵⁵ However, this code does not discuss any criminal sanctions or standards of conduct for Russian soldiers deployed on those peacekeeping missions.⁵⁵⁶ Russian soldiers generally can be subject to civilian jurisdiction and army rules in the event of criminal conduct.⁵⁵⁷

The pre-trial and trial procedures required for any criminal action commenced in the Russian Federation are onerous and would likely be difficult to meet in the event of peacekeeper abuse allegations.⁵⁵⁸ Russian definitions of crimes do not focus on definitional or elemental requirements and instead look to the gravity of the crime on society generally.⁵⁵⁹ Domestic violence is a persistent and growing problem in Russia, as is sexual abuse of young children, yet the law is not structured to offer wide-ranging support or protections to victims.⁵⁶⁰ Rape under Russian law is defined as: “sexual relations with application of force or with threat of its application to the victim or to other persons, or by making use of the helpless state of the victim,”⁵⁶¹ and is punishable by between three and six years in prison.⁵⁶² Marital rape per se does not exist under Russian law.⁵⁶³ Prostitution is not a crime in Russia.⁵⁶⁴ Forced acts of homosexuality,⁵⁶⁵ sexual relations with children,⁵⁶⁶ and “lewd conduct”⁵⁶⁷ are crimes under Russian law. Child prostitution is illegal under Russian law.⁵⁶⁸ Russia is in the

555. See FOUNDATION FOR POLITICAL CENTRISM, *On Procedure of Providing Civil and Military Personnel for Participation in the Activity of Maintenance or Restoration of the International Peace and Security by the Russian Federation*, in RUSSIAN FEDERATION LEGAL ACTS ON CIVIL-MILITARY RELATIONS 280 (2003).

556. *Id.*

557. *Id.*; FOUNDATION FOR POLITICAL CENTRISM, *On the Status of Military Persons*, in RUSSIAN FEDERATION LEGAL ACTS ON CIVIL-MILITARY RELATIONS 452 (2003).

558. WILLIAM BURNHAM, PETER B. MAGGS & GENNADY M. DANILENKO, *LAW AND LEGAL SYSTEM OF THE RUSSIAN FEDERATION* ch. XI (2004).

559. *Id.* at 550-51.

560. Mertus, *supra* note 266.

561. NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, RUSSIA 2 (2006) available at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaRussia.pdf> (last visited May 14, 2008) [hereinafter NATIONAL LAWS, RUSSIA] (summarizing and reprinting portions of Ugolovnyi Kodeks [UK] [Criminal Code] ch.18, art. 131 (Russ.)).

562. *Id.*

563. Mertus, *supra* note 265.

564. Scott Burris & Daniel Villena, *Adapting to the Reality of HIV: Difficult Policy Choices in Russia, China, and India*, 31 HUM. RTS. 10 (2004).

565. NATIONAL LAWS, RUSSIA, *supra* note 561, at 2 (summarizing and reprinting portions of UK, ch.18, art. 132 (Russ.)).

566. *Id.* at 2 (reprinting portions of UK, ch.18, art. 134 (Russ.)).

567. *Id.* at 3 (reprinting portions of UK, ch.18, art. 135 (Russ.)).

568. *Id.* at 3 (reprinting portions of UK, ch.18, art. 133 (Russ.)).

second tier watch list of the U.S. human trafficking assessments in 2007.⁵⁶⁹ There are no active refugee camps located in Russia's borders.⁵⁷⁰

X. Senegal

The age for both conscription and voluntary entry into the Senegalese military is age eighteen.⁵⁷¹ The conscription period is two years.⁵⁷²

The Senegalese Penal Code defines rape as sexual intercourse of any nature committed against a person by violence, constraint, threats, or surprise, and makes the crime punishable by five to ten years in prison.⁵⁷³ In the event that the victim suffers permanent injury or is subjected to a gang rape, the rapists' punishment can be doubled.⁵⁷⁴ The Penal Code provides additional penalties for sexual crimes committed against children.⁵⁷⁵ Child pornography⁵⁷⁶ and corruption of a minor through sexual acts are also crimes.⁵⁷⁷ Prostitution and enticement into prostitution are illegal.⁵⁷⁸ Interestingly, prostitution and enticement to prostitution committed by persons with authority or power over the victim – including those who have control over state support mechanisms – is an additional crime.⁵⁷⁹ Except in the instance of membership in a tribe which allows polygamy, adultery is a crime in Senegal and both parties are deemed culpable.⁵⁸⁰ Senegal is in the second tier of the U.S. human trafficking assessments in 2007.⁵⁸¹ There are no refugee camps located within Senegal's borders.⁵⁸²

569. U.S. DEPT. OF STATE, *supra* note 24, at 42.

570. See U.N. HIGH COMM'R, *supra* note 192, at 474.

571. CIA, SENEGAL, *supra* note 91.

572. *Id.*

573. NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, SENEGAL 1 (2006) available at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csasenegal.pdf> (last visited May 14, 2008) (summarizing Code Pénal [C. PÉN.] [Penal Code], art. 320 (Sen.)) (*translated by author*).

574. *Id.*

575. *Id.* at 1, 3-4 (summarizing C. PÉN. arts. 319, 320 (Sen.)).

576. *Id.* at 2 (summarizing C. PÉN. art. 320 bis (Sen.)).

577. *Id.* at 1 (summarizing C. PÉN. art. 320 ter. (Sen.)).

578. *Id.* at 3 (summarizing C. PÉN. art. 323 (Sen.)).

579. C. PÉN. art. 324. (Sen.).

580. C. PÉN. arts. 330-31 (Sen.).

581. U.S. DEPT. OF STATE, *supra* note 24, at 42.

582. See U.N. HIGH COMM'R, *supra* note 192, at 482

Y. Slovakia

Slovakia abolished conscription in 2006.⁵⁸³ Currently, the minimum age for voluntary entry into the military is seventeen.⁵⁸⁴ Women were first allowed into the military in 2006.⁵⁸⁵

The Slovakian Penal Code defines the crime of rape as: “any person, who by using violence or threat of imminent violence, forces a woman to have intercourse with him, shall be liable to a term of imprisonment of five to ten years.”⁵⁸⁶ The term of imprisonment for rape is subject to increase under certain circumstances, including if a victim is a “person under protection according to international law.”⁵⁸⁷ Other relevant crimes include sexual abuse generally,⁵⁸⁸ sexual abuse of a minor,⁵⁸⁹ and procuring a child for prostitution.⁵⁹⁰ Slovakia is in the second tier of the U.S. human trafficking assessments in 2007.⁵⁹¹ There are no refugee camps located within Slovakia’s borders.⁵⁹²

Z. South Africa

The South African military is entirely volunteer and open to men and women who are eighteen or older and who take an HIV/AIDS test.⁵⁹³ The Code of Conduct for the South African military states that “I will not tolerate or engage in rape or looting.”⁵⁹⁴

South Africa is in the second tier watch list of the US human trafficking assessments in 2007.⁵⁹⁵ There are no refugee camps located within the borders of South Africa.⁵⁹⁶

The acceptance of marriage as an absolute defense to a rape charge was only recently abolished in South Africa.⁵⁹⁷ Rape is

583. CIA, SLOVAKIA, *supra* note 92.

584. *Id.*

585. *Id.*

586. NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, SLOVAKIA 2-3 (2006) available at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaSlovakia.pdf> (last visited May 14, 2008) (reprinting portions of Criminal Code, § 199 (Slovk.)).

587. *Id.* (reprinting portions of Criminal Code, §§ 139, 199 (Slovk.)).

588. *Id.* at 3 (reprinting portions of Criminal Code, § 200 (Slovk.)).

589. *Id.* at 3-4 (reprinting portions of Criminal Code, § 201 (Slovk.)).

590. *Id.* at 4-5 (reprinting portions of Criminal Code, § 367 (Slovk.)).

591. U.S. DEPT. OF STATE, *supra* note 24, at 42.

592. See U.N. HIGH COMM’R, *supra* note 192, at 490

593. CIA, SOUTH AFRICA, *supra* note 93.

594. REPUBLIC OF SOUTH AFRICA, DEPARTMENT OF DEFENCE, CODE OF CONDUCT, available at http://www.dcc.mil.za/Code_of_Conduct/Files/English.htm (last visited May 14, 2008).

595. U.S. DEPT. OF STATE, *supra* note 24, at 42.

596. See U.N. HIGH COMM’R, *supra* note 192, at 496

defined as “the unlawful, intentional sexual intercourse with a woman without her consent.”⁵⁹⁸ The South African Penal Code also makes provisions for the lesser offense of “indecent assault.”⁵⁹⁹ Although domestic violence is estimated to be prevalent in South Africa, the legislature has enacted domestic violence legislation which aims to protect both the victim and children of the family.⁶⁰⁰

The prevalence of rape in South Africa – despite laws which criminalize it and a desegregated legal system which provides more equal access to justice – cuts across all strata of society.⁶⁰¹ It is estimated that up to five hundred thousand rapes occur in South Africa each year.⁶⁰² At the same time, the rate of HIV/AIDS in South Africa has skyrocketed, making rape an even more dangerous and deadly crime for the victim.⁶⁰³ Rape and other violent crimes committed by police also are regarded as prevalent.⁶⁰⁴ South Africa has experienced issues in the uniform application of rape laws and sentencing over the past ten years.⁶⁰⁵

AA. Sri Lanka

The Sri Lankan military is entirely volunteer starting at age eighteen.⁶⁰⁶ Due to the decades of domestic conflict in Sri Lanka between the Tamil insurgency and government forces, the Sri Lankan military – and its less than savory elements – are viewed by the population to be on a higher plane than in other times.⁶⁰⁷ The rules of evidence used by the Sri Lankan Army Act would make it difficult to prosecute errant peacekeepers in most cases.⁶⁰⁸

597. Rebecca S. Katz, *Genocide: The Ultimate Racial Profiling*, 5 J. L. & SOC. CHALLENGES 65 (2003).

598. Jonathan Burchell, *Criminal Law*, in INTRODUCTION TO THE LAW OF SOUTH AFRICA 474 (C.G. der Merwe and Jacques E. du Plessis eds. 2004).

599. *Id.* at 477.

600. Brigitte Clark, *Family Law*, in INTRODUCTION TO THE LAW OF SOUTH AFRICA 164 – 66 (C.G. der Merwe and Jacques E. du Plessis eds. 2004).

601. DIANA R. GORDON, TRANSFORMATION AND TROUBLE: CRIME, JUSTICE, AND PARTICIPATION IN DEMOCRATIC SOUTH AFRICA 97 – 99 (2006) (discussing the extraordinarily high incidents of rape committed against women and children in South Africa since the end of apartheid); Katz, *supra* note 597.

602. *See Tackling South Africa's rape culture*, BBC NEWS, Nov. 1, 2007, available at <http://news.bbc.co.uk/2/hi/africa/7072818.stm> (last visited May 14, 2008).

603. Ashley J. Moore, Notes, *Endangered Species: Examining South Africa's Rape Crisis and Its Legislative Attempt to Protect Its Most Vulnerable Citizens*, 38 VAND. J. TRANSNAT'L L. 1469 (2005); *see* CIA, SOUTH AFRICA, *supra* note 93 (explaining that 21.5% of adult population is estimated to be infected).

604. GORDON, *supra* note 601 at 100-01.

605. *Id.* at 157-58.

606. CIA, SRI LANKA, *supra* note 94.

607. NIRA WICKRAMASINGHE, CIVIL SOCIETY IN SRI LANKA: NEW CIRCLES OF POWER 28-31 (2001).

608. *See* Sri Lanka Army Act, part XI, available at http://www.defence.lk/main_pub.asp?fname=armyact (last visited May 14, 2007).

There is no crime of rape under the Army Act.⁶⁰⁹ However, it is possible that sexual abuse of the local population by a peacekeeper could result in a charge under the “disgraceful conduct” law,⁶¹⁰ although this law is limited in its scope of application to military forces.⁶¹¹ Sri Lanka in general, and its military in particular, have been fighting an often brutal internal war with Tamil Tiger rebels for decades.⁶¹² In late 2007, more than one hundred Sri Lankan peacekeepers were repatriated to Sri Lanka by the UN after allegations that they engaged in prostitution – including child prostitution – while stationed in Haiti.⁶¹³

Sri Lanka is in the second tier watch list of the U.S. human trafficking assessments in 2007.⁶¹⁴ Sri Lanka has active refugee camps located within its borders.⁶¹⁵ Despite its enactment of legislation which furthered the principles of CEDAW, Sri Lanka is still a society in which sexual abuse of children is prevalent.⁶¹⁶ Societally, prostitution – even among parents of young male prostitutes – is accepted and often encouraged as a way for a young member of the household to produce income.⁶¹⁷ Rape and sexual abuse is also used as a key tool by members of the Sri Lankan military and police forces without prosecution or apparent repercussions.⁶¹⁸ Male rape is also an accepted form of interrogation in Sri Lanka, especially during times of conflict.⁶¹⁹ Interestingly, the terms of the Sri Lankan constitution specifically prohibit torture by public servants – and, by association, rape.⁶²⁰ Marital rape is only a crime in Sri Lanka in the event that it occurs during a time of marital separation.⁶²¹ Recent revisions to the Sri Lankan penal code have abolished the requirement that a

609. *See generally id.*

610. *See id.* § 107. “[E]very officer who, being subject to military law, behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall be guilty of a military offense and shall, on conviction by court martial, be cashiered.” *Id.*

611. *Id.*

612. *See Sri Lanka ends truce with rebels*, BBC NEWS, Jan. 2, 2008, available at http://news.bbc.co.uk/2/hi/south_asia/7168528.stm (last visited May 14, 2008).

613. *Sri Lanka to probe UN sex claims*, BBC NEWS, Nov. 3, 2007, available at http://news.bbc.co.uk/2/hi/south_asia/7076284.stm (last visited May 14, 2008).

614. U.S. DEPT. OF STATE, *supra* note 24, at 42.

615. *See* U.N. HIGH COMM’R, *supra* note 192, at 500.

616. Isabella D. Kaliszczak Bunn, *The United Nations Convention on the Rights of the Child*, 91 AM. SOC’Y INT’L L. PROC. 74, n.3 (1997).

617. *See id.*; Karene Jullien, *The Recent International Efforts to End Commercial Sexual Exploitation of Children*, 31 DENV. J. INT’L L. & POL’Y 579 (2003).

618. Goonesekere, *supra* note 474, at 21; Dean Adams, *The Prohibition of Widespread Rape as a Jus Cogens*, 6 SAN DIEGO INT’L L. J. 357, n.113-29 (2005); Pearce, *supra* note 204.

619. Sandesh Sivakumaran, *Sexual Violence Against Men in Armed Conflict*, 18 EUROPEAN J. INT’L L. 253 (2007).

620. Goonesekere, *supra* note 474, at 29-30.

621. *Id.* at 60.

rape be committed against the victim's will and leave only the lack of consent requirement.⁶²² Rape is still a crime committed by a man against a woman, however, although now rape in a detention setting is the equivalent of a strict liability offense.⁶²³ Even when a rape case is brought to trial, the evidence rules in Sri Lanka shift the focus of the trial to the victim, her conduct and her past, an experience which is traumatic to the victim⁶²⁴ and can, in the author's view, create a culture of impunity for the accused because of the cultural conservatism and stigma attached to such revelations and proceedings. There is no such thing as a domestic violence law per se in Sri Lanka; rather, the victim would be required to report the specific act associated with the domestic violence (assault, burning, rape, etc) in order to file a complaint.⁶²⁵ Other crimes of relevance include defilement of young girls⁶²⁶ and unnatural offenses.⁶²⁷

BB. Togo

Togolese citizens may volunteer or be conscripted for military service at age eighteen.⁶²⁸ The term of conscription is two years, and all new entrants to the military must take an HIV/AIDS test.⁶²⁹

622. *Id.* at 64-65

623. *Id.* at 65; Penal Code, § 363 (Sri Lanka).

[A] man is said to commit 'rape' who enactment has sexual intercourse with, a woman under any of the following descriptions: (a) without her consent even where such woman is his wife and she is judicially separated from the man (b) with her consent when her consent has been obtained, by use of force or threats or intimidation or by putting her in fear of death or hurt (c) with her consent when her consent has been obtained at a time when she was of unsound mind or was in a state of intoxication induced by alcohol or drugs, administered to her by the man or by some other person (d) with her consent when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believed herself to be lawfully married. (e) with or without her consent when she is under sixteen years of age Unless the woman is his wife who is over twelve years of age and is not judicially separated from the man.

Id.; Shyamala Gomez & Mario Gomez, *Sri Lanka: The Law's Response to Women Victims of Violence*, in *VIOLENCE LAW AND WOMEN'S RIGHTS IN SOUTH ASIA* 211-13 (Savitri Goonesekere ed., 2004).

624. Goonesekere, *supra* note 474, at 69-70.

625. Gomez & Gomez, *supra* note 623, at 216-17.

626. NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, SRI LANKA 3 (2006) available at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaSriLanka.asp> (last visited May 14, 2008) (reprinting portions of Penal Code, § 364 (Sri Lanka)).

627. *Id.* at 1-3 (reprinting portions of Penal Code, §§ 365A, 365B (Sri Lanka)).

628. CIA, TOGO, *supra* note 95.

629. *Id.*

Since Togo's independence, the military has played a constant role in the political life of the nation and has been a consistent factor in the repression of dissent and attempts to bring transparency to the Togolese government.⁶³⁰ International aid to Togo was suspended following particularly repressive and bloody campaigns by the military against the Togolese people.⁶³¹

Togo is in the second tier of the U.S. human trafficking assessments in 2007.⁶³² Togo is both a starting and destination point for human trafficking, especially in children.⁶³³ There are refugee camps located within Togo's borders.⁶³⁴

CC. Tunisia

Volunteer eligibility for the Tunisian military starts at age eighteen.⁶³⁵ Conscription for a period of twelve months is required of Tunisians aged twenty.⁶³⁶

Tunisian law provides that rape may be a capital offense provided that the crime is committed against a woman with established violence or the victim is under ten years of age.⁶³⁷ Additionally, rape only is an offense when the victim is a woman.⁶³⁸ There are other forms of lesser sexual offense crimes in Tunisia, which primarily center on the age of the victim and the pre-existing relationship between the victim and the perpetrator.⁶³⁹ Included in this lesser sexual offenses category are homosexual acts.⁶⁴⁰ Child prostitution is illegal in Tunisia.⁶⁴¹

No information on Tunisia's placement in the tier system used by the US State Department is available.⁶⁴² However, practically there is strong evidence to support the proposition that illegal

630. *Id.*; HOUNGNIKPO, *supra* note 231, at 74-77.

631. *See Togo counts landmark poll votes*, BBC NEWS, Oct. 15, 2007, available at <http://news.bbc.co.uk/2/hi/africa/7044855.stm> (last visited May 14, 2008).

632. U.S. DEPT. OF STATE, *supra* note 24, at 42.

633. *See* HUMAN RIGHTS WATCH, TOGO: BORDERLINE SLAVERY: CHILD TRAFFICKING IN TOGO (2003), available at <http://hrw.org/reports/2003/togo0403/> (last visited May 14, 2008).

634. *See* U.N. HIGH COMM'R, *supra* note 192, at 520.

635. CIA, TUNISIA, *supra* note 96.

636. *Id.*

637. NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, TUNISIA 1-2 (2006) available at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaTunisia.pdf> (last visited May 14, 2008) [hereinafter NATIONAL LAWS, TUNISIA] (summarizing Penal Code, art. 227 (Tunis.)) (translated by author); Warrick, *supra* note 253, at 319-20, n.6;

638. NATIONAL LAWS, TUNISIA *supra* note 637, at 1-2 (summarizing Penal Code, art. 227 (Tunis.)).

639. *Id.* at 2 (summarizing Penal Code, art. 228 (Tunis.)).

640. *Id.*

641. *Id.*

642. U.S. DEPT. OF STATE, *supra* note 24, at 42.

slavery of many forms (sexual, domestic, etc.) is currently thriving in Tunisia.⁶⁴³ Outside evaluations of the Tunisian judiciary and its independence have been extremely critical.⁶⁴⁴ There are no refugee camps in Tunisia.⁶⁴⁵

DD. Uganda

Ugandans have a nine year military service obligation.⁶⁴⁶ Those wishing to enter the military voluntarily may do so between the ages of eighteen and twenty-six years.⁶⁴⁷ Those wishing to enter the military as professionals may do so between the ages of eighteen and thirty.⁶⁴⁸

Historically and currently, the Ugandan Army has been associated with the Ugandan police force, which was and is known for depriving citizens of their basic human rights and engaging in torture and other associated practices on a frequent basis.⁶⁴⁹ The role of the military in the judicial and juridical process in Uganda was vividly demonstrated in 2005, when a Ugandan judge became publicly enraged that members of a military commando unit attended a court hearing for a man who was accused by them and the regime of treason.⁶⁵⁰

Under the terms of the Ugandan Penal Code, an errant peacekeeper would not be under Ugandan criminal jurisdiction.⁶⁵¹ The Ugandan penal code provides:

any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representation as to the nature of the act, or in the

643. Nichols, *supra* note 472, at 305.

644. See COMM'N INT'L DE JURISTES RAPPORT SUR LA TUNISIE,, Mar. 14, 2003, available at http://www.icj.org/news.php3?id_article=2761&lang=fr (last visited May 14, 2008) (translated by author).

645. See U.N. HIGH COMM'R, *supra* note 192, at 522

646. CIA, UGANDA, *supra* note 97

647. *Id.*

648. *Id.*

649. See generally HUMAN RIGHTS INITIATIVE, THE POLICE, THE PEOPLE, THE POLITICS: POLICE ACCOUNTABILITY IN UGANDA, COMMONWEALTH (2006).

650. See *Ugandan judge's fury at military*, BBC NEWS, Nov. 18, 2005, available at <http://news.bbc.co.uk/2/hi/africa/4451004.stm> (last visited May 14, 2008).

651. KALR'S CRIMINAL PRACTICE LEGISLATION OF UGANDA 4-16 [hereinafter KALR] (citing Ugandan Penal Code, § 5).

case of a married woman, by personating her husband, is guilty of the felony termed rape.⁶⁵²

A man convicted of rape is eligible for capital punishment.⁶⁵³ Marital rape is not illegal in Uganda.⁶⁵⁴ Associated sexual offenses under the Ugandan Penal Code include indecent assault (“when an assault is accompanied by messages with sexual connotations” and the victim is female);⁶⁵⁵ indecent assault of a boy under the age of 18;⁶⁵⁶ defilement of girls under the age of 18 (“any person who unlawfully has sexual intercourse with a girl under the age of 18 years is guilty of an offence and is liable to suffer death.”);⁶⁵⁷ and unnatural offenses (“any person who: a) has carnal knowledge of any person against the order of nature; b) has carnal knowledge of an animal; c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offense and is liable to imprisonment for life”).⁶⁵⁸ The evidentiary requirements for establishing rape under the Ugandan Penal Code are such that it would be difficult to establish a case involving peacekeepers.⁶⁵⁹ Both men and women are subject to criminal punishment if they are found to have committed adultery.⁶⁶⁰ The problem is that the definition of adultery makes rape victims subject to persecution for rape.⁶⁶¹ Prostitution was made illegal in Uganda in 1990.⁶⁶² Procuring or enticing women, inside or outside of Uganda, into prostitution is a punishable offense.⁶⁶³ Prostitution within Uganda

652. LILLIAN TIBATEMWA-EKIRIKUBINZA, CRIMINAL LAW IN UGANDA: SEXUAL ASSAULTS AND OFFENCES AGAINST MORALITY 3 (2005) (citing Ugandan Penal Code, § 123).

653. *Id.* (citing Ugandan Penal Code, § 124).

654. *Id.* at 11.

655. *Id.* at 15 (citing Ugandan Penal Code, § 128).

656. *Id.* at 16 (citing Ugandan Penal Code, § 147).

657. *Id.* at 43 (citing Ugandan Penal Code, § 129).

658. *Id.* at 97 (citing Ugandan Penal Code, § 145).

659. *Id.* at 17.

660. *Id.* at 68 (citing Ugandan Penal Code, § 154).

1. any man who has sexual intercourse with any married woman not being his wife commits adultery and is liable to imprisonment for a term not exceeding twelve months or a fine . . . ; and, in addition, the court shall order any such man on first conviction to pay the aggrieved party compensation . . . , and, on subsequent conviction compensation . . . ; 2. any married woman who has sexual intercourse with any man not being her husband commits adultery and is liable on first conviction to a caution by the courts and on a subsequent conviction to imprisonment for a term not exceeding six months.

Id.

661. *Id.*

662. *Id.* at 92.

663. KALR, *supra* note 651, at 4-48 (citing Ugandan Penal Code, § 125).

is illegal.⁶⁶⁴ HIV/AIDS, particularly in women, is a huge and yet unaddressed problem in Ugandan society overall.⁶⁶⁵ Uganda is in the second tier of the U.S. human trafficking assessments in 2007.⁶⁶⁶ A quarter of a million refugees who are being housed in refugee camps located within Uganda.⁶⁶⁷

Uganda is still emerging from a multi-year civil war, which has torn apart the country, its society, and its legal systems.⁶⁶⁸ Some of the atrocities committed by and against the warring factions in the Ugandan conflicts were sex crimes on a massive and well-organized scale.⁶⁶⁹ As of this writing, there has yet to be a legal vehicle allowing for the prosecution of government or rebel actors known to have committed sexual crimes.⁶⁷⁰ Many of the remaining rebel forces are associated with forces in the Sudan, making it politically and practically dangerous to deploy Ugandan state troops in any situation in the Sudan. Further, the impunity with which sex crimes during the conflict have been treated – despite the terms of Ugandan criminal law – suggests that sex crimes are not taken as seriously as the law intended them to be.⁶⁷¹ This knowledge in turn informs society in general – and members of the military in particular – that such crimes are not likely to be punished. This can be seen in the civilian population in the form of the massive problem with rape and sexual harassment experienced by Ugandan students at the hands of their teachers. Additionally, male rape is and had been used as a means of interrogation in Uganda.⁶⁷²

664. *Id.* at 4-50 (citing Ugandan Penal Code, § 134B).

665. See generally HUMAN RIGHTS WATCH, JUST DIE QUIETLY: DOMESTIC VIOLENCE AND WOMEN'S VULNERABILITY TO HIV IN UGANDA (2003), available at <http://www.hrw.org/reports/2003/uganda0803/uganda0803.pdf> (last visited May 14, 2008).

666. U.S. DEPT. OF STATE, *supra* note 24, at 42.

667. See U.N. HIGH COMM'R, *supra* note 192, at 528.

668. Members of the Ugandan government have threatened to recommence the war between the government and the Lord's Resistance Army (LRA) in the event that a peace agreement is not signed by the LRA by January 31, 2007. See Otti 'Executed by Uganda Rebels', BBC NEWS, Dec. 21, 2007, available at <http://news.bbc.co.uk/2/hi/africa/7156284.stm> (last visited May 14, 2008).

669. See generally SUSAN MCKAY & DYAN MAZURANA, WHERE ARE THE GIRLS?: GIRLS IN FIGHTING FORCES IN NORTHERN UGANDA, SIERRA LEONE AND MOZAMBIQUE: THEIR LIVES DURING AND AFTER WAR (2004) (finding, among other things, that the Ugandan military is inappropriately equipped to handle the many girls who were abducted and sexually abused by the Lord's Resistance Army before being able to turn themselves in to the Ugandan military for shelter and support).

670. See *Uganda Considers War Crimes Court*, BBC NEWS, Aug. 20, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6954860.stm> (last visited May 14, 2008).

671. See, e.g., *Ugandan Justice Fails on Rape*, BBC NEWS, Nov. 30, 2007, available at <http://news.bbc.co.uk/2/hi/africa/7120484.stm> (last visited May 14, 2008).

672. Sivakumaran, *supra* note 619.

EE. Ukraine

There is a compulsory service requirement of between eighteen and twenty-four months for those between eighteen and twenty-five years old.⁶⁷³ Ukrainians are eligible to volunteer for service in the military during the same time period.⁶⁷⁴

The Criminal Code of Ukraine does recognize the crime of “smuggling, fictitious business activity, frauds with financial resources.”⁶⁷⁵ There is no crime of marital rape in Ukraine.⁶⁷⁶ The crime of rape is defined as “sexual intercourse combined with violence, threats of violence, or by taking advantage of the victim’s helpless condition.”⁶⁷⁷ Punishment for rape depends on the age of the victim, number of assailants, and other statutory factors.⁶⁷⁸ Many rape victims in Ukraine do not report their rapes because of fear of law enforcement.⁶⁷⁹ A Ukrainian citizen who commits acts which are violations of the Ukrainian Penal Code is subject to trial in Ukraine under applicable law.⁶⁸⁰ There are acts which punish sexual relations with children.⁶⁸¹ Child prostitution is a crime in Ukraine.⁶⁸² Ukraine is in the second tier watch list of the U.S. human trafficking assessments in 2007.⁶⁸³ There are no refugee camps located within Ukrainian borders.⁶⁸⁴

FF. United Kingdom

The United Kingdom maintains an all-volunteer military structure, with entrance eligibility for those aged sixteen to thirty-three.⁶⁸⁵ In the event that a soldier is charged with rape overseas, he is subject to court-martial.⁶⁸⁶ Under the provisions of the Armed Forces Act, it is illegal for a member of the British Armed Forces to

673. CIA, UKRAINE, *supra* note 98

674. *Id.*

675. ALEXANDER BIRYUKOV & INNA SHYROKOVA, *THE LAW AND LEGAL SYSTEM OF THE UKRAINE* 173-74 (2005).

676. Mertus, *supra* note 265.

677. Criminal Code, art. 152 (Ukr.), available at <http://www.legislationline.org/upload/legislations/2e/4b/e7cc32551f671cc10183dac480fe.htm> (last visited May 14, 2008).

678. *Id.*

679. See generally BIRYUKOV & SHYROKOVA, *supra* note 675.

680. Criminal Code, ch II (Ukr.), available at <http://www.legislationline.org/upload/legislations/2e/4b/e7cc32551f671cc10183dac480fe.htm> (last visited May 14, 2008).

681. *Id.*

682. *Id.* arts. 302-03.

683. U.S. DEPT. OF STATE, *supra* note 24, at 42.

684. See U.N. HIGH COMM’R, *supra* note 192, at 530.

685. CIA, UNITED KINGDOM, *supra* note 99.

686. See THE LIBRARY RESEARCH PAPER 05/86: THE ARMED FORCES BILL 15, available at <http://www.parliament.uk/commons/lib/research/rp2005/rp05-086.pdf> (last visited May 14, 2008).

act with “conduct prejudicial to good order and discipline.”⁶⁸⁷ It is also illegal for a member of the Armed Forces to engage in “disgraceful conduct of a cruel or indecent kind.”⁶⁸⁸ All members of the British Armed Forces are liable to punishment under the civilian criminal law and the Armed Forces Act for crimes which are illegal under the criminal laws of England and Wales.⁶⁸⁹ Members of the military who commit sexual offenses that are or would be crimes under the laws of England and Wales are subject to mandatory military sentences as well and civilian penalties.⁶⁹⁰

The crime of rape under English law is defined as the intentional and non-consensual penetration of the orifice of a man or woman by a man where the perpetrator does not believe that the victim has consented.⁶⁹¹ A rapist may be sentenced to a term of up to life in prison if convicted of rape under this law.⁶⁹² Other relevant crimes include sexual assault,⁶⁹³ “causing a person to

687. Armed Forces Act, 2006, c. 52, § 19 (Eng.). “[A] person subject to service law commits an offence if he does an act that is prejudicial to good order and service discipline A person guilty of an offence under this section is liable to any punishment . . . must not exceed two years.” *Id.*

688. *Id.* § 23. “A person subject to the service law commits an offence if – a) he does an act which is cruel or indecent; and b) his doing do is disgraceful.” *Id.*

689. *Id.* § 42.

690. *Id.* §§ 220, 222-23.

691. Sexual Offences Act, 2003, c. 42, § 1 (Eng.).

A person (A) commits an offence if— (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis, (b) B does not consent to the penetration, and (c) A does not reasonably believe that B consents. (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents. (3) Sections 75 and 76 apply to an offence under this section. (4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Id. Prior to 2003, the English rape law provided:

A man commits rape if – a) he has sexual intercourse with a person who at the time of the intercourse does not consent to it; and b) at the time he knows that the person does not consent to the intercourse or is reckless as to whether that person consents to it.

Id.; See Criminal Justice Order 2003/1247, pt. IV, art. 18.

692. Sexual Offences Act, 2003, c. 42, § 1 (Eng.).

693. *Id.* § 3.

A person (A) commits an offence if— (a) he intentionally touches another person (B), (b) the touching is sexual, (c) B does not consent to the touching, and (d) A does not reasonably believe that B consents. (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents. (3) Sections 75 and 76 apply to an offence under this section. (4) A person guilty of an offence under this section is liable— (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both; (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Id.

engage in sexual activity without consent,"⁶⁹⁴ sexual crimes against children—for which there is a separate chapter of the Sexual Offences Act defining crimes and penalties⁶⁹⁵—offenses related to child prostitution,⁶⁹⁶ and trafficking humans into, out of, and within the United Kingdom "for sexual exploitation."⁶⁹⁷ The Sexual Offences Act makes its provisions applicable to British citizens abroad provided that the activities which are alleged to be criminal were crimes both in the jurisdiction in which they were committed and in the United Kingdom.⁶⁹⁸

The United Kingdom is in the first tier of the U.S. human trafficking assessments in 2007.⁶⁹⁹ There are no refugee camps located within the borders of the United Kingdom.⁷⁰⁰

GG. United States

The U.S. military is entirely volunteer except that all males must register eligibility at age eighteen.⁷⁰¹ The most prominent incident involving a U.S. soldier committing abuses while on peacekeeping missions was a staff sergeant who was sentenced to life in prison by a military court for raping and murdering a young girl in Kosovo.⁷⁰² Under the provisions of the United States Uniform Code of Military Justice, which would be applicable to

694. *Id.* § 4.

A person (A) commits an offence if— (a) he intentionally causes another person (B) to engage in an activity, (b) the activity is sexual, (c) B does not consent to engaging in the activity, and (d) A does not reasonably believe that B consents. (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents. (3) Sections 75 and 76 apply to an offence under this section. (4) A person guilty of an offence under this section, if the activity caused involved— (a) penetration of B's anus or vagina, (b) penetration of B's mouth with a person's penis, (c) penetration of a person's anus or vagina with a part of B's body or by B with anything else, or (d) penetration of a person's mouth with B's penis, is liable, on conviction on indictment, to imprisonment for life. (5) Unless subsection (4) applies, a person guilty of an offence under this section is liable— (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both; (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years.

Id.

695. *Id.* §§ 5-24.

696. *Id.* §§ 47-56.

697. *Id.* §§ 57-60.

698. *Id.* § 72.

699. U.S. DEPT. OF STATE, *supra* note 24, at 42

700. *See* U.N. HIGH COMM'R, *supra* note 192, at 534.

701. CIA, U.S., *supra* note 100.

702. *See* Carol Rosenberg, *Soldier Probed on Sex Abuse in Haiti*, Miami (Fla.) Herald, Nov. 6, 2000.

U.S. peacekeepers when deployed,⁷⁰³ there are specific crimes of “child abuse,”⁷⁰⁴ rape,⁷⁰⁵ “carnal knowledge,”⁷⁰⁶ and “conduct unbecoming an officer and a gentleman.”⁷⁰⁷

The United States is in the second tier of the U.S. human trafficking assessments in 2007.⁷⁰⁸ There are no refugee camps located within the borders of the United States.⁷⁰⁹

HH. Uruguay

Entrance into the Uruguayan military is voluntary starting at age eighteen except that conscription may occur in times of emergency.⁷¹⁰ Uruguay’s military was heavily involved in the running of the country for years.⁷¹¹ The Uruguayan military is regarded as a protector of the laws and society of Uruguay overall.⁷¹² Although the Uruguayan military guards its ability to try its own members, there are situations where a member of the military can be tried civilly for crimes which fall under civilian criminal jurisdiction.⁷¹³ There are no terms of the Uruguayan Military Penal Code which would directly implicate the actions of an errant peacekeeper.⁷¹⁴

A rapist in Uruguay may avoid punishment by agreeing to marry his victim.⁷¹⁵ Rape in Uruguay can be committed against persons of either sex or the same sex as the rapist.⁷¹⁶ The crime is

703. 10 U.S.C. § 101 (2006).

704. *Id.* § 843.

705. *Id.* § 920(a). “Any person subject to this chapter who commits an act of sexual intercourse, by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.” *Id.*

706. *Id.* § 920(b).

Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a person - (1) who is not that person’s spouse; and (2) who has not attained the age of sixteen years; is guilty of carnal knowledge and shall be punished as a court-martial may direct.

Id.

707. *Id.* § 933. “[A]ny commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial shall direct.” *Id.*

708. U.S. DEPT. OF STATE, *supra* note 24, at 42.

709. See U.N. HIGH COMM’R, *supra* note 192, at 538-39.

710. CIA, URUGUAY, *supra* note 101.

711. See ARCENEUX, *supra* note 249, at 184-221.

712. JUAN RIAL, ESTRUCTURA DE LAS FUERZAS ARMADAS DEL URUGUAY: UN ANALISIS POLITICO 46 (1992) (*translated by author*).

713. *Id.* at 177.

714. See Código Penal Militar (Uru.), available at http://www.parlamento.gub.uy/codigos/codigopenalmilitar/1943/cod_penalmilitar.htm (last visited May 14, 2008) (*translated by author*).

715. Ogletree & Silva de-Alwis, *supra* note 289, at n.118.

716. Código Penal, art. 272 (Uru.) available at <http://www.parlamento.gub.uy/codigos>

defined as causing the victim through the use of violence or threats to engage in a sexual act which the victim would not otherwise have consented to.⁷¹⁷ Child prostitution is a crime in Uruguay.⁷¹⁸ Uruguay is in the second tier of the U.S. human trafficking assessments in 2007.⁷¹⁹ There are no refugee camps located within Uruguay's borders.⁷²⁰

V. GENERAL TRENDS IN LEGAL AND SOCIO-LEGAL STRUCTURES OF AFFECTED SENDING STATES

From the above country studies, it is possible to create three categories to define the legal and socio-legal structures of sending states which have contributed errant peacekeepers. These categories are typified by similar trends in law, justice, society and politics. Although it is axiomatic that it is nearly impossible for two states to replicate each other, the information provided above serves as an excellent backdrop for creating these categories. The purpose of these categories is twofold. First, by creating these categories and understanding the components of them, it is possible to separate states which do and do not pose a threat to the populations they are sent to protect on peacekeeping missions. This is instructive overall and is important to the suggestions made in Part VI below. Second, it is hoped that these categories can be used as predictors for states which wish to contribute troops to future peacekeeping missions. Certainly, the idea of evaluating a state against the faults of other states might be perceived as harsh or unfair, given that the stated goal of U.N. peacekeeping is the protection of the local populations ravaged by war and deprivation; however, it seems that, on balance, the harms to potential sending states under this rationale are far outweighed by the potential for harms to the local population and to the concept of U.N. peacekeeping generally.

The first category will be referred to as "infrequent offenders." For these states, sexual or other misconduct by peacekeepers is an abhorrent event on a legal, social, and military level. Based on their history in peacekeeping operations and legal/socio-legal structures, these states are likely not to have a high recidivism

/codigopenalmilitar/1943/cod_penalmilitar.htm (last visited May 14, 2008) (*translated by author*).

717. *Id.*

718. NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENCES AGAINST CHILDREN, URUGUAY 2 (2006), available at <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaUruguay.pdf> (last visited May 14, 2008) (summarizing Ley No. 17.815, arts. 5-6 (Uru.)) (*translated by author*).

719. U.S. DEPT. OF STATE, *supra* note 24, at 42.

720. See U.N. HIGH COMM'R, *supra* note 192, at 540.

rate and thus should not be barred from any future U.N. peacekeeping activity. The second category will be referred to as “frequent/chronic offenders with a legal gap.” The states in this category have a greater propensity to contribute troops which commit sexual or other abuses. They also exhibit a marked disparity between law and the socio-legal views on law and its application. It is in these states that simply examining the established laws cannot be used as a predictor of future behavior or of whether the state should be allowed to contribute peacekeeping forces to U.N. missions because there is a disparity between law and its application. Such states would require a more stringent evaluation in order to be allowed to contribute to U.N. missions. The third category will be referred to as “frequent/chronic offenders with little law.” These states have similar propensities to the second category, however they are different in that there is little gap between law and application in that the laws they currently use do not provide extensive protections for victims of sexual violence and, more often than not, allow the perpetrators of sexual violence to act with impunity.

Several points should be raised here. The category classifications and discussions do not generally refer to a state as democratic or non-democratic. The democracy factor does not generally have a correlation to the category propensities used here, with the exception of members of category one. In the author’s view, however, the propensity of category one states to be entrenched democracies is more a product of the states’ overall political, legal, and historical status rather than being democratic *per se*. As illustrated above, a state’s military conscription policy – or lack thereof – does not have a correlation to the activities and status of the military or the legal and socio-legal systems in use overall. Therefore, state conscription policies are not discussed as category factors. Additionally, a state’s status as a signatory of international treaties such as CEDAW is not mentioned as a factor because the above information demonstrates that the gap between signing these treaties and implementing their terms is so vast that these treaties barely enter into the legal and socio-legal framework of the states.

As a final note, these categories have been constructed based on information regarding the sending states themselves and not the host states to which peacekeepers have been deployed. There is some scholarship which imputes a great deal of peacekeeper misconduct to the conditions of the host state because the sense of

lawlessness and compromised laws and mores during and after conflict are viewed as empowering of bad behavior.⁷²¹ In the author's view, the atmosphere of the host state is important in that it creates a sense of desperation in which women and young girls are more willing to offer themselves as prostitutes in order to survive. However, it is the author's belief that the atmosphere of the host state is irrelevant to the propensity of peacekeepers from a particular sending state to commit bad acts because these peacekeepers' understandings of their ability to do these acts are informed by the legal and socio-legal structures of their home state. This is supported by the broad swath of U.N. missions through which sexual and other misconduct by peacekeepers from the same sending states have committed sexual and other abuses.

A. Infrequent Offenders

This category features predominantly developed states which are members of NATO and have a long history of providing support to U.N. peacekeeping missions.⁷²² In all of these systems military law places a premium on obedience and order and, in some cases, defines crimes relating to sexual violence as specific crimes punishable under military law.⁷²³ Other states have military laws that allow members of the military to be tried in civilian courts for such crimes.⁷²⁴ The provisions of the military laws in these states are actively enforced and those who have been accused of sexual misconduct while on peacekeeping missions have principally been disciplined with a variety of punishments, depending on the severity of the allegations.⁷²⁵ Situations where there are allegations made and yet no convictions typically occur because of a lack of evidence, which is certainly possible given the dismal state of U.N. investigatory procedures and the reluctance of victims to come forward in time to preserve evidence necessary to sustain sexual convictions.⁷²⁶ In these states, the military serves an important function but is not involved in politics or enforcing the rule of law.⁷²⁷ The military is largely viewed as a separate function, subject to governmental oversight, and does not act

721. KENT, *supra* note 3, at 51-55; See MUST BOYS BE BOYS?, *supra* note 38.

722. The states in this category are: Austria, Belgium, Canada, France, Ireland, Italy, the Netherlands, the United Kingdom and the United States.

723. See *supra* Part IV.

724. See *supra* Part IV.

725. See *supra* Part IV.

726. See *supra* Part IV.

727. See *supra* Part IV.

against its own people in all but very rare instances.⁷²⁸ These states also share a sense of internal military security in that, although many of these states are actively involved in fighting terrorist threats, they are not involved in fighting an active insurgency or other intranational conflict.⁷²⁹

The penal laws of the states in this category are strictly written to reflect the criminal nature of sexual violence and exploitation.⁷³⁰ These laws reflect more accurately the societal norms of the state and, in turn, frame the concepts of society vis-à-vis crimes of sexual violence and the need to protect the victims.⁷³¹ The legal systems of these states are marked by transparency in the legislative process.⁷³² Indeed, human rights groups and media outlets within the U.K. and the U.S. were among the first to bring revelations of peacekeeper sexual abuse to the forefront of public attention; when these stories were made public, society generally reacted with horror. This is in keeping with a legal structure which makes these acts punishable generally and reflects a true socio-legal understanding that sexual violence – especially against the young and the vulnerable – is inexcusable.

Interestingly, although all of the states in this category do accept refugees into their borders through their immigration laws, none of the countries in this category have organized refugee camps within their borders.⁷³³

In general, these states tend to be more secular in legal and socio-legal interaction between individuals and the legal system.⁷³⁴ Law is applied evenly across religions and identities. Overall, these states are at least estimated to be less involved in human trafficking than the states in other categories and have taken action to enact laws that penalize human trafficking, especially in regards to children.⁷³⁵ These states also tend to be heavily invested in the financial backing of U.N. peacekeeping, while at the same time their militaries do not realize a financial benefit from participation in peacekeeping missions.⁷³⁶

728. *See supra* Part IV.

729. *See supra* Part IV.

730. *See supra* Part IV.

731. *See supra* Part IV.

732. *See supra* Part IV.

733. *See supra* Part IV.

734. *See supra* Part IV.

735. *See supra* Part IV.

736. *See supra* Part IV.

B. Frequent/Chronic Offenders with a Legal/Socio-Legal Gap

These states – often some of the largest contributors to a particular peacekeeping mission or to the U.N. peacekeeping system overall – have been the subject of a greater number of sexual misconduct and other allegations throughout the recent history of U.N. peacekeeping missions.⁷³⁷ The term “recent history” is used here because this issue was not raised as a substantive and discussed problem until the early 1990s. Generally, these states share several political and historical realities, which, in the view of the author, tend to inform the way in which law works when applied to the military. These states tend to be newer states in the international system, and many of them were created as the result of internal conflict of some type.⁷³⁸ In almost all of these states, internal security is viewed as a critical concern to the continuation of the nation because of threats from rebel groups, insurgents, and other groups that challenge the government and its structure in a variety of ways.⁷³⁹ With the exception of the recent protesters in Pakistan, the groups which pose a threat to the governments of these states – and often these states themselves – are also armed and the states have been involved in prolonged states of war (official or unofficial) with them for years.⁷⁴⁰ In the course of fighting these intrastate conflicts, the governments of states in these categories have relied heavily on the use of their militaries against the people of the state, with the frequent result of human rights violations against civilians that often involve sexual violence and dehumanize those who are not regarded as “loyal.”⁷⁴¹ Sadly, the governments of states in this category have used rape as a tool against those suspected of conspiring against the state within and without the military context.⁷⁴² Many of these states have also sponsored or been the victims of child soldiers.⁷⁴³ It should also be noted that some of these states have been or are home to U.N. peacekeeping missions themselves.⁷⁴⁴

737. The states in this category are: Bangladesh, Brazil, Bulgaria, Ethiopia, India, Jordan, Morocco, Nigeria, Pakistan, Senegal, Slovakia, South Africa, Sri Lanka, Tunisia, Uganda, the Ukraine, and Uruguay.

738. *See supra* Part IV.

739. *See supra* Part IV.

740. *See supra* Part IV.

741. *See supra* Part IV.

742. *See supra* Part IV.

743. *See supra* Part IV.

744. *See supra* Part IV.

The military laws of these states are either strict sounding, vague, or difficult to obtain.⁷⁴⁵ Where military laws regarding troop – and therefore peacekeeper – conduct are available, they are silent on crimes of sexual violence and the most serious charge applicable to an errant peacekeeper under them would be a version of conduct unbecoming an officer or a similar crime.⁷⁴⁶ Many would allow a member of the military to be tried civilly for crimes of sexual violence, particularly rape, although, as will be discussed below, this is not necessarily an improvement or method of assisting the victim. Generally, through either their military or penal laws, these states do make troops subject to domestic law for crimes committed abroad.⁷⁴⁷ However, at both the military and civilian level, the burden of proof and witness requirements used in these states would make it extremely difficult to successfully prosecute an errant peacekeeper if the state wanted to do so.⁷⁴⁸

The penal laws of these states tend to be deceptive, which is why they are placed in this category. On the face of these laws, it would be easy to discount the role of penal law in creating a legal/socio-legal structure which makes troops from these states more likely to commit sexual and other misconduct as peacekeepers. Although some of the rape laws might not be as progressive in terms of who can be a rape victim and the elements required to prove the crime, on their face the rape statutes enacted by these states seem to be at least protective of women.⁷⁴⁹ One glaring exception to this rule would, of course, be that many of these states do not criminalize martial rape and recognize it as an absolute defense.⁷⁵⁰ The plethora of laws criminalizing various forms of sexual interaction between adults and minors of the same and different sexes would again appear to offer protection to the children of these states and to reflect an overall societal belief structure which finds such contact abhorrent.⁷⁵¹ The frequency with which these states have enacted anti-child prostitution legislation again seems to indicate that the protection of children, especially girls, in society is a top priority of law and society.⁷⁵² However, as demonstrated above, to fully understand the impact of these laws on society, and vice-versa, it is necessary to look beyond their face.

745. See *supra* Part IV.

746. See *supra* Part IV.

747. See *supra* Part IV.

748. See *supra* Part IV.

749. See *supra* Part IV.

750. See *supra* Part IV.

751. See *supra* Part IV.

752. See *supra* Part IV.

In practice, these laws are more often than not meaningless to the victims of sexual violence. Many of these states are religiously based or conservative states and societies, in which the victim of a sexual crime is regarded as damaged or otherwise outcast from society.⁷⁵³ Indeed, several of these states have an endemic problem with honor killings of rape victims as well as women who are merely suspected of having a conversation with a man.⁷⁵⁴ Although such killings are theoretically illegal, efforts to stop them have been sharply rebuffed.⁷⁵⁵ These states have a nearly uniform quality of devaluing women as members of society and, in many states, a rapist is rarely viewed as a criminal for his or her crimes.⁷⁵⁶ In the event that a protest is made, the rapist may escape criminal punishment by paying a fine to the victim's family or, in some states, agreeing to marry the victim.⁷⁵⁷ Despite the legal structures extant in these states, it is still accepted in parts of them to allow the rape of a female member of a family for a perceived slight done to another family.⁷⁵⁸ These states also use rape as a form of punishment and retribution against suspected anti-government groups and forces although their laws make such acts a crime.⁷⁵⁹ In practice, trafficking rates for women and girls in these states are high, and many are involved in more than one stage of the trafficking cycle.⁷⁶⁰

Several of these states also have parallel court systems in that certain matters are heard by a governmental court and others are heard by a Shari' a court.⁷⁶¹ This creates an unequal sense of justice because secular and religious courts are often allowed to apply different standards, some of which might reflect the custom of a particular area but do not reflect the tenets of the national law.⁷⁶²

Six of these states, Bangladesh, Ethiopia, Nigeria, Pakistan, Sri Lanka and Uganda – one-third of the states in the category, have organized refugee camps located within their borders.⁷⁶³ This does not suggest anything significant for the legal or socio-legal structures of states in this category per se although, as will be seen

753. *See supra* Part IV.

754. *See supra* Part IV.

755. *See supra* Part IV.

756. *See supra* Part IV.

757. *See supra* Part IV.

758. *See supra* Part IV.

759. *See supra* Part IV.

760. *See supra* Part IV.

761. *See supra* Part IV.

762. *See supra* Part IV.

763. *See supra* Part IV.

in category three, refugees do pose an additional way to evaluate a sending state's propensities.

C. Frequent/Chronic Offenders with Little Law

The states in this category are states which share the majority of the political, historical, and societal traits as the states in category two but differ in that their legal regimes are either non-transparent and were not available for this study or evince a fundamental lack of primacy for issues involving sexual violence.⁷⁶⁴

The states for which little legal information was available share traits in that they are dependent on their militaries to fight rebel groups.⁷⁶⁵ As such, the international community and human rights groups have assessed the actions of these militaries in relation to the civilian populations of these states and have found that human rights violations are the norm.⁷⁶⁶

Five of the eight states in this category – Benin, Ghana, Guinea, Nepal and Togo – have organized refugee camps within their borders.⁷⁶⁷ Interestingly, many of the refugees currently housed in Benin are from Togo.⁷⁶⁸ Unlike in the other two categories, where there was little to no presence of domestic refugee camps, it is the author's belief that the presence of refugee camps in sixty-three percent of the states in category three is a significant predictor for the behavior of peacekeepers deployed by these countries. This belief stems from the fact that refugees tend to be among the most marginalized members of society, particularly when they are kept in camps, which creates a separate understanding as to their role in the host state and, frequently, the humanity of the refugees themselves. These camps are also under separate governance and are often viewed as sources of trouble, especially in resource starved states such as those in category three which host refugee populations in camps. As such, the author would argue that the presence of refugee camps within a state can dehumanize the population of the camp and, in so doing, create in the minds of society the idea that residents of refugee camps per se are not human. This is an important consideration in conjunction with the other legal and socio-legal issues attributed to states in category three.

764. The states in this category are: Benin, Ghana, Guinea, Indonesia, Nepal, Niger, Togo and the Russian Federation.

765. See *supra* Part IV.

766. See *supra* Part IV.

767. See *supra* Part IV.

768. See *supra* Part IV(B).

States which are described as having little law are states in which the definition of rape and other sexual crimes, even facially, is outdated or reflects a legal understanding that these crimes are not of primary importance to society.⁷⁶⁹ Available information on the societal beliefs and priorities in these states supports the idea that, rather than having a gap between law and application as in category two, the laws of these states do reflect the socio-legal systems which are most prevalent.⁷⁷⁰

VI. SUGGESTIONS

Throughout the years, and especially since the Zeid report, there have been many suggestions of ways to reform U.N. peacekeeping. The steps implemented by the U.N. to address sexual and other misconduct by peacekeepers sound lofty but, in reality, have not been effective. The more concrete and legally important suggestions in the Zeid report have not been adopted into any type of legally meaningful resolution by the U.N. At the same time, the U.N. Security Council has become re-polarized over a variety of issues from Iraq to Kosovo and shows no sign of becoming any less political in the future. Therefore, the below suggestions for taking the information presented in this article and using it to the benefit of host states, sending states, and the U.N. peacekeeping operation in general, removes the U.N. Security Council from the immediate equation and re-centers the focus on the states with the most financial investment in the U.N. peacekeeping apparatus.

Perhaps the easiest criticism of the below suggestions is that they would, facially, reduce the number of states eligible to contribute peacekeepers to U.N. missions at a time when the U.N. is continually expanding the number of authorized peacekeeping missions. If the emphasis of peacekeeping is solely on sending a mass of people to conflict-prone areas, then this criticism is valid, although undermined by the U.N.'s inability to fulfill its own mandate to create the African Union/United Nations Hybrid Operation in Darfur (UNAMID). Considering that peacekeepers are universally denied the right to use force except in the most dire situation of self-protection, the argument of quantity over quality is rather ineffective, however, in that more peacekeeping troops cannot, under the current rules of engagement, guarantee a safer population. If, however, the goal of U.N. peacekeeping is to send a

769. *See supra* Part IV.

770. *See supra* Part IV.

force to alleviate the suffering of civilians and to enforce ceasefires or other terms as an honest broker, then the quality of troops being sent should be far more important than sheer quantity.

A. Create a Screening Body for Sending States

Although the substantive power of the U.N. lies in the U.N. Security Council and its five permanent members, the U.N. would not exist as such without the funding of its member states. This is particularly true in the area of peacekeeping operations, which have only risen in cost each year.⁷⁷¹ Within donor states, there is a clearly pronounced group of states which have and currently do provide the bulk of the funding necessary for peacekeeping operations to continue, namely the United States (26.7%), Japan (19.5%), Germany (8.7%), the United Kingdom (7.4%) and France (7.3%).⁷⁷² Together, these five states contribute just under 70% of the annual budget for U.N. peacekeeping operations.⁷⁷³ As such, they are given the most responsibility for maintaining the peacekeeping structure and for the accountability of U.N. peacekeeping.

The author's suggestion is that the U.N. create a screening body for sending states prior to the deployment of their troops on peacekeeping missions. This body would be comprised of a designated military and legal representative from each of the top five financing states. It would be tasked with evaluating the military and legal structures of each potential sending state to ensure that 1) adequate military law provisions exist to punish errant peacekeepers; 2) that the military in question has not been involved in gross violations of human rights, particularly in regard to sexual violence; 3) that the sending state's internal system is such that it can spare troops to serve as peacekeepers; 4) that the military is instructed on the legal consequences of sexual violence while deployed on a peacekeeping mission; and 5) that the domestic legal and socio-legal system recognizes sexual violence as a legitimate crime and does not create a situation where a peacekeeper could commit an act of sexual violence with impunity in the eyes of the civil state. Learning from the issues associated with the veto powers granted to the U.N. Security Council, it would only be necessary for a potential sending state to receive

771. See CTR. ON INT'L COOPERATION, ANNUAL REVIEW OF GLOBAL PEACE OPERATIONS 172. (2007).

772. *Id.* at 171.

773. *See id.*

three of five votes to be authorized to send peacekeepers. However, states that send peacekeepers who behave badly would have their ability to send further peacekeepers suspended for at least three years and would have to undergo a stringent review before being authorized to send peacekeepers in the future. Subsequent violations by peacekeepers would render a state permanently unable to send troops on peacekeeping missions. All states, including those currently contributing peacekeepers, would be required to undergo a review by this body. Further, states would be reevaluated every five years and in the event that domestic situations warranted.⁷⁷⁴ Should the top five sources of funding change, seats on the screening body would change accordingly but the rules and function of the body would stay the same.

Further, this body would be authorized to have an office at each U.N. mission established or subsequently authorized in order to monitor the conduct of the peacekeeping operation itself and allegations of abuse. This body would also have a component charged with implementing the victim's assistance service recommended by the Zeid report at each mission. The body would have the right to seek compensation from the sending state in the event that it spirited away the peacekeeper before he could be called to account or refuses to cooperate with the investigation.

B. Require AIDS testing

The U.N. has consistently refused to require sending states to test their troops for HIV/AIDS prior to their deployment on peacekeeping missions, citing its opposition to any type of discrimination based on a person's HIV/AIDS status.⁷⁷⁵ Opposition to such discrimination is laudable but, in the context of a peacekeeping mission, is irresponsible for operational and humanitarian reasons. When it is accepted, as it is by the U.N., that troops patronizing prostitutes is a given in any quasi-military environment, it is irresponsible to subject the local population to sexual contact with troops who are unaware of their HIV/AIDS status. This is especially true given the high HIV/AIDS infection rates among particularly recidivist sexual offender states such as South Africa and Nigeria.⁷⁷⁶ As history has proven, the higher

774. For example, it is recommended that such a panel investigate and take appropriate action regarding plans for a Rwandan general who has been implicated by several groups in genocidal acts during the Rwandan conflict to be a deputy commander of the UNAMID military mission.

775. See *supra* Part III.

776. See *supra* Part II.

incidents of HIV/AIDS rates in areas where peacekeepers have been stationed demonstrate that the U.N.'s stance is deadly to the local population and must be revised.

In addition to creating the body discussed in Part V.1., the author strongly suggests that the U.N. institute a policy of mandatory HIV/AIDS testing before deployment and every six months thereafter. This is necessary because, in the event of isolated incidences of sexual contact between U.N. peacekeepers and the local population, it is incumbent on the U.N. to protect the local population and this protection starts with testing peacekeepers in the hopes that the results will inspire responsibility in them.

VII. CONCLUSION

There is no easy way to discuss rape, prostitution, or any of the other sexual crimes discussed in this article, just as there is no way to comprehend the idea that these and other acts have been and are perpetrated by U.N. peacekeepers against vulnerable victims of conflict and tragedy. Discomfort and taboos will not, however, make the issues raised in this article disappear and indeed can be seen as having perpetuated them in the first place. Just as the discomfort over the idea of discussing sexual violence must be subsumed to the larger good, so must the idea that the U.N. cannot criticize its member states or deny the requests of any member state to participate in a peacekeeping operation.

This article has suggested that with peacekeeping reform, as with charity, it is necessary to begin at home. By demonstrating categories of sending states with errant peacekeepers and the reasons for these categories, this article has proven that the U.N. must do more than simply repatriate errant peacekeepers or request that member states agree to prosecute errant peacekeepers. It must look deeper into the laws and societies of its members to determine which members are in the position to offer victims of conflict peace and not further suffering. It must accept the idea that refusing a state's request to send peacekeeping troops can actually benefit the state – which would then have an impetus to correct the behavior which earned it the declination – as well as the local population and the U.N. peacekeeping apparatus itself. It must also accept the need to move past the Security Council on this issue and to allow those states who provide the bulk of peacekeeping funds to decide which states can represent them and the institution. And it must accept that, on balance, the rights of

those whom peacekeepers are sent to protect trump the rights of those who may or may not be carriers of HIV/AIDS.

As the incidents of devastating conflicts around the world rise, the U.N. must also rise to police itself and its members in a meaningful manner which allows its peacekeepers to be as welcomed and revered when they leave a mission as they were when they arrived. Otherwise, the U.N. peacekeeping apparatus will lose its legitimacy and, with it, the opportunity to preserve the peace which the U.N. was created to maintain. It is only when the issues addressed in this article are addressed and settled in reality that the U.N. peacekeeping forces can rightfully assume the role of preserving peace rather than prostituting it.