

**Protecting the Majority of Humanity:  
Toward an Integrated Approach to Crimes  
against Present & Future Generations**



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Until recently, human rights theory and action has focused primarily on the so-called public sphere from which the majority of humanity – women and children – were traditionally barred. If, however, we are serious about building a more just, peaceful, and sustainable future, we have to recognize that our first, and most lasting, lessons about human relations are learned not in the public but in the private sphere. This is where people learn to respect the rights of others – or where they learn to view human rights violations as normal.

The last half century has seen an expansion of the purview of international criminal law from war crimes to crimes against humanity, as most recently codified in the Rome Statute, which lists a number of human rights violations as Crimes against Humanity whether they are committed in war or peace.<sup>1</sup> This has been a development of major importance, incorporating into international criminal law core principles such as the right to life, not to be tortured, to liberty, and to security of the person laid down in international human rights declarations and conventions.<sup>2</sup>

To change policies and behaviors that fail to respect these and other human rights, we need an integrated approach that takes into account what is considered normal and acceptable in all spheres of life, both public and private, and in all relations, from intimate to international.

### **The Invisible Majority**

An effective approach to protecting the human rights of present and future generations must include the private sphere of family and other intimate relations.<sup>3</sup>

<sup>1</sup> *Rome Statute* of the International Criminal Court, 17 July 1998

<sup>2</sup> See e.g., A. Cassese, *International Criminal Law*, New York: Oxford University Press, 2003, Chapter 4.

<sup>3</sup> Examples of publications urging the expansion of human rights theory and action to include women and children are R. Eisler, "Human Rights: Toward an Integrated Theory for Action," *The Human Rights Quarterly*, Vol. 9, No. 3, August 1987 (the first article in this journal on what later became known as "women's rights as human rights"; R. Eisler, "Human Rights: The Unfinished Struggle." *International Journal of Women's Studies*, Vol. 6, Number 4, Sept/Oct 1983; and R. Eisler, "Human Rights and Violence: Integrating the Private and Public Spheres," in *The Web of Violence*, L. Kurtz and J. Turpin, editors, Urbana, Illinois: University of Illinois Press, 1996.

This is essential not only because widespread, chronic, and abhorrent, violations of the human rights of women and of children are a global pandemic, but also because psychology and neuroscience show that what children observe and/or experience in family affects their adult beliefs, behaviors, political attitudes – even the neural structures of their developing brains<sup>4</sup>.

To be sure, not all people growing up in households where women and children are subjected to abuse, discrimination, and oppression accept human rights violations in the public sphere. But studies, going back decades to the classic *The Authoritarian Personality*, document how individuals who participate in and/or acquiesce to authoritarianism, violence, and scapegoating in the state or tribe tend to be individuals from families where authoritarianism, violence, and scapegoating were the norm<sup>5</sup>.

Yet many people, even people who support social and economic equity, still see family and other relations in the private sphere as separate, or at best less important, than political and economic relations in the public sphere. In reality, these two spheres are integrally interconnected, as will be shown in this chapter and is briefly illustrated by the following examples:

- While poverty and hunger are still discussed in generalities, the majority of the world's poor and the poorest of the poor are women and children.<sup>6</sup>
- Study after study, including for example the annual Arab Human Development Reports, document that economic development hinges on gender equality.<sup>7</sup>
- Studies indicate that armed conflicts are less likely where there is gender equity<sup>8</sup>
- Research from both psychology and neuroscience shows that childhood

<sup>4</sup>See e.g., D. Niehoff, *The Biology of Violence*, New York: Free Press, 1999; National Research Council, *From Neurons to Neighborhoods* Washington D.C.: National Academy Press, 2000; BD Perry, "Aggression and Violence: The Neurobiology of Experience." Retrieved from [http://teacher.scholastic.com/professional/bruceperry/aggression\\_violence.htm](http://teacher.scholastic.com/professional/bruceperry/aggression_violence.htm)

<sup>5</sup>Adorno, T. W., Else Frenkel-Brunswick, Daniel Levinson, and R. Nevitt Stanford. *The Authoritarian Personality*. New York: John Wiley & Sons, 1964.

<sup>6</sup> See e.g., M. Buvinic, "Women in Poverty: A New Global Underclass," *Foreign Policy*, (Fall 1997); 1995 UNDP *Human Development Report* (New York: Oxford University Press, 1995); R. Eisler, *The Real Wealth of Nations*, San Francisco: Berrett-Koehler, 2008.

<sup>7</sup> The annual *Arab Human Development Reports* (New York: UN Publications) cite three obstacles to progress in the region: the knowledge deficit, the gender deficit, and the freedom deficit. Studies such as R.Eisler, D. Loye, K. Norgaard, *Women, Men, and the Global Quality of Life*, Pacific Grove: CA, 1995, show the three are interconnected.

<sup>8</sup>See e.g., M. Caprioli, "Gendered Conflict," *Journal of Peace Research*, Vol. 37, No. 1. (Jan., 2000), pp. 51-68)

experiences are key to human capacity development.<sup>9</sup>

· Research indicates that children who witness or experience violence in their families are more likely to accept and perpetuate violence in other relations.<sup>10</sup>

## **Opposition to an Integrated Approach**

It was argued that that there must be no interference in the internal affairs of states, it is sometimes argued that what happens inside a family should be free from outside interference. But the same grounds for the rejection by international law of “non-interference” regarding the conduct of states are applicable to the rejection of “non-interference” regarding human rights violations in families.<sup>11</sup>

A related argument would invoke the right to privacy. But that is not the same as immunizing family decisions – *or more specifically, the decisions of those who wield power in a family* – from public scrutiny and regulation. In short, *the protection of personal rights is not synonymous with noninterference with actions within the family – and there often is a direct conflict between the two.*

Perhaps the most frequent ground given for opposing challenges to widespread and systemic human rights violations in family and other intimate relations is that what we are dealing with is to a large extent a matter of customary law deeply embedded in traditions. By challenging these traditions, it is argued, we are eradicating traditional cultures and meddling in peoples’ religions. Again, this is a fallacious argument. To help eradicate human rights violations is *not* the same as eradicating traditional cultures.

A related objection is that people from the West have no right to point to cultural traditions as crimes against present and future generations if they are in the global South. This cultural relativism relies on a patronizing double standard that would give less human rights protection to those who happen to be in the global South. It is a betrayal of those in the Global South working to change brutal and unjust practices. Further, crimes against women and children are also still a major problem in the global North, where they are also still justified on traditional/moral grounds in some Western subcultures.

<sup>9</sup> See e.g., Perry, B.D. (2000). Brain Structure and Function II: Special Topics Informing Work with Maltreated Children. Retrieved from [http://www.childtrauma.org/ctamaterials/brain\\_II.asp](http://www.childtrauma.org/ctamaterials/brain_II.asp); D. Nihoff, *The Biology of Violence*, New York: Free Press, 1999; National Research Council, *From Neurons to Neighborhoods*, Washington D.C.: National Academy Press, 2000.

<sup>10</sup> Ibid.

<sup>11</sup> See e.g., H.Charlesworth, C.Chinkin & S. Wright, “Feminist Approaches to International Law” (1991) 85 Am. J. Int’l L. 613R.; R. Eisler, “Human Rights: Toward an Integrated Theory for Action,” *The Human Rights Quarterly*, Vol. 9, No. 3, August 1987.

To build a world where human rights and human dignity have any meaning, we must support social justice movements in all areas of the world. Indeed, the emerging international doctrine of Responsibility to Protect (R2P) recognizes that we have the responsibility to “interfere” wherever systemic and egregious human rights violations are involved.<sup>12</sup>

## **PROPOSED ACTIONS: MAKING THE INVISIBLE VISIBLE**

The Rome Statute (especially Article 7 on Crimes against Humanity), the principle of Responsibility to Protect (R2P), and a growing number of UN Conventions, Covenants, and Declarations<sup>13</sup> offer a springboard for applying emerging international law principles to widespread, abhorrent, and systemic violations of the human rights of women and children that a state condones when it fails to prohibit or establish adequate protection against these practices. The principle of Responsibility to Protect (R2P) is particularly important, as it strengthens the interpretation of the Crimes against Humanity Section of the Rome Statute to hold those officially or unofficially acting for governments responsible when practices are well known, widespread, large-scale abuses against civilian populations that cause great suffering or serious injury to physical or mental health, but are not included in a state’s laws, or if there are laws, they are not enforced.<sup>14</sup>

Of course, we cannot expect the international community to immediately support what is here proposed. Nonetheless, the scale of the human rights violations described in this chapter, as well as the enormous harm they cause to both those directly affected and society at large, demand attention to them – and concrete proposals for expanding the purview of international law are an important step toward making these crimes more visible, thus paving the way for urgently needed change.<sup>15</sup>

<sup>12</sup> The Responsibility to Protect (“RtoP” or “R2P”) is a new international security and human rights norm. After the first report on R2P by UN Secretary General Ban ki-Moon released on 12 January 2009, the first resolution on the Responsibility to Protect (A/RES/63/308) was adopted by the General Assembly on 14 September 2009. Retrieved from <http://www.responsibilitytoprotect.org/>.

<sup>13</sup> See e.g., United Nations, Treaty Series, vol. 1249. Convention on the elimination of all forms of discrimination against women. 18 December 1979. New York; UN General Assembly resolution 44/25. Convention on the Rights of the Child, 20 November 1989. New York; UN General Assembly A/RES/48/104. 85th plenary meeting. Declaration on the Elimination of Violence against Women. 20 December 1993. Retrieved from <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>, <http://www2.ohchr.org/english/law/pdf/crc.pdf> <http://www.unicef.org/crc/>, <http://www.un.org/documents/ga/res/48/a48r104.htm>.

<sup>14</sup> See e.g., A. Cassese, *International Criminal Law*, New York: Oxford University Press, 2003, page 93.

<sup>15</sup> For example, U.S. Secretary of State Hillary Clinton has repeatedly emphasized her intention to make women’s human rights a global priority and a bill introduced in both the House and Senate, the ‘International Violence Against Women Act of 2010’ (HR 4594 IH; S.2982), is designed not only to implement policies to reduce violence against girls and women worldwide, but also to direct the U.S. Secretary of State to establish an Office for Global Women’s Issues headed by an Ambassador-at-Large for Global Women’s Issues, who shall coordinate and advise on activities, policies, programs, and funding relating to gender integration and empowerment of women internationally. Retrieved from <http://thomas.loc.gov/cgi-bin/query/F?c111:4.:/temp/~c111FBvBLY:e0> & <http://thomas.loc.gov/cgi-in/query/D?c111:3>

To this end, in this chapter it is proposed to:

1. Expand the interpretation of relevant sections of the Rome Statute, particularly sections of Article 7 - Crimes against Humanity, to include as crimes against both present and future generations egregious, widespread, and systemic practices that cause women and children great suffering or serious injury to physical or mental health but are not punishable under a state's laws or if there are laws, they are not enforced.

2. Where necessary, amend the Rome Statute to include gender and childhood under the description of protected groups.

The sections that follow describe widespread, abhorrent, and systemic crimes against women and children that are still not outlawed and/or adequately prosecuted. They offer statistics and examples, show the individual and social damage they cause to both present and future generations, and propose legal remedies utilizing the Rome Statute.

The crimes are divided into two sections: crimes against the female half of humanity and crimes against children of both genders.

The crimes against the female half of humanity discussed below are:

- Selective Female Infanticide and Denial to Girl Children of Food and Health Care
- The Sex Trade and Sexual Slavery
- Female Genital Mutilation/Cutting (FGM/C)
- Domestic Violence: From Murder in the Name of Honor and Bride Burning to Acid Throwing and Battery
- Rape
- Denial of Access to Maternal Health Care and Family Planning
- Gender-Based Discrimination: From Denial of Education to Girls to Economic, Political, and Judicial Discrimination against Women and Denial to Them of Freedom of Movement

The crimes against children of both genders discussed below are:

- Violence against Children in Homes
- Violence against Children in Schools
- Child Marriage and Forced Marriage
- Child Sexual Abuse
- Child Labor and Slavery

These sections overlap since girls are children. But because many crimes against girls are due to the fact that these children happen to be born female, I have included these crimes against children under the section of crimes against the female half of humanity.

## CRIMES AGAINST THE FEMALE HALF OF HUMANITY

### I. Selective Female Infanticide and Denial to Girl Children of Food and Health Care

Selective female infanticide has long been condoned by cultural tradition. Today, the murder of female babies is still a culturally accepted practice in parts of Asia, the Middle East, and Africa. For instance, while in China the government has condemned these murders, especially after the one-child policy led to an epidemic of female infanticide, female babies are still often murdered with impunity in rural areas, while abortions of female fetuses have been replacing infanticide in many Chinese areas.<sup>16</sup> The Indian government too has taken a stand against female infanticide, but again, particularly on the local level it is still not prosecuted. In other parts of Southeast Asia there is even less governmental effort to protect female babies.

Closely related is the widespread practice of parents denying girl children food and health care found in parts of Asia as well as other world regions, including Latin America. For example, in her autobiography Rigoberta Menchu wrote (with no condemnation) that boys are by custom nursed longer than girls in her indigenous community.<sup>17</sup>

Obviously, children who are malnourished and denied adequate health care fail to develop their full physical and mental capacities. But it is also well known that children of malnourished women are often born with poor health and below-par brain development, affecting their potential for optimal development. This in turn affects children's and later adults' abilities to adapt to new conditions, tolerance of frustration, and propensity to use violence—which in their turn impede solutions to chronic hunger, poverty, and armed conflict.<sup>18</sup>

Also associated with increases in armed conflicts is the male surplus resulting from selective infanticide of girl babies as well as selective female abortions resulting from son preference. Studies show extremely skewed sex ratios in China, India, Bangladesh, Pakistan, Korea, Taiwan, and other parts of Asia. According to economist Amartya Sen, in 2001 there were over 100 million missing women in the world due to son preference.<sup>19</sup> As Hesketh and Zhu Wei Xing write, "The large cohorts of "surplus" males now reaching adulthood are predominantly of low

<sup>16</sup> "The Worldwide War on Baby Girls," *The Economist*, March 4, 2010. Retrieved from [http://www.economist.com/research/articlesBySubject/displaystory.cfm?subjectid=348951&story\\_id=15636231](http://www.economist.com/research/articlesBySubject/displaystory.cfm?subjectid=348951&story_id=15636231) <sup>17</sup> R. Menchú, E. Burgos-Debray, and A. Wright, *I, Rigoberta Menchu: And Indian Woman in Guatemala*, Verso, 1987.

<sup>18</sup> For more on the economic effects of gender discrimination, see R. Eisler, *The Real Wealth of Nations*.

<sup>19</sup> A. Sen, "Missing women—revisited," *BMJ*, December 6, 2003. See also Klasen S, Wink C. A turning-point in gender bias in mortality? An update on the number of missing women. *Population and Development Review* 2002;28:285–312. Sen noted that compared with the normal ratio of about 95 girls being born per 100 boys (which is what we observe in Europe and North America), Singapore and Taiwan have 92, South Korea 88, and China a mere 86 girls born per 100 boys.

socioeconomic class, and concerns have been expressed that their lack of marriageability, and consequent marginalization in society, may lead to antisocial behavior and violence, threatening societal stability and security.<sup>20</sup> Historical analyses also verify this link between male surplus and armed conflicts.<sup>21</sup>

Cross-cultural studies show a strong correlation between rigid male dominance (which includes strong son-preference), authoritarian control in both the family and the state or tribe, and a high degree of built-in, institutionalized, even idealized violence not only in intimate relations but also in tribal, national, intertribal, and international relations.<sup>22</sup>

### Legal Remedies

Although greater attention has been given to violence against girls and women in recent decades and some progress has been made, it has been much too slow. For example, the *2010 Asia-Pacific Human Development Report* states that “Few countries have adopted or implemented laws prohibiting violence against women, despite widespread evidence of discrimination and assault. Nearly half of the countries in South Asia, and more than 60 percent of those in the Pacific, have no laws against domestic violence.”<sup>23</sup>

This highlights the need for international intervention. Sections of the Rome Statute that can be used to this end are detailed below:

*1. Article 7, Crimes against Humanity, especially Article 7a – Murder; Article 7b – Extermination; Article 7h – Persecution; and Article 7k – Other inhumane acts.*

The Rome Statute specifically includes “the most serious crimes of concern to the international community as a whole” – which the murder of babies and the systemic and socially/legally condoned starvation and denial of health care to children should be. The section on crimes against humanity specifically covers murder, extermination, persecution, and other inhumane acts “when committed as part of a widespread and systemic attack directed against any civilian population, with knowledge of the attack.” These crimes are widespread, systemic, and widely known.

<sup>20</sup> Hesketh and Zhu Wei Xing conclude: “Measures to reduce sex selection must include strict enforcement of existing legislation, the ensuring of equal rights for women, and public awareness campaigns about the dangers of gender imbalance.” *Ibid.*

<sup>21</sup> See e.g., B. Griffith, *The Gardens of their Dreams: Desertification and Culture in World History*, London: Zed Books, 2001, pp. 184-185.

<sup>22</sup> See e.g., P. Sanday, *Female Power and Male Dominance*, Cambridge: Cambridge University Press, 1981; S. Coltrane, “Father-Child Relationships and the Status of Women: A Cross-Cultural Study,” *American Journal of Sociology* 93, No. 5, March 1988; R. Eisler, *The Chalice and The Blade*, San Francisco: Harper & Row, 1987; R. Eisler, *The Real Wealth of Nations*, San Francisco: Berrett-Koehler, 2008. I want to emphasize that when we speak of statistically significant correlations, this doesn’t mean invariable correlations; it means central tendencies.

<sup>23</sup> *2010 Asia-Pacific Human Development Report*, Retrieved at <http://www2.undprcc.lk/ext/pv>

Infanticide is murder and, according to the Rome Statute, extermination “includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population. Persecution means “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity” (and includes gender), and Section 7 k covers “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

According to the statute, “attack” means “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such an act.” This clause should be interpreted to include a state’s failure to protect against murder, extermination, persecution, and other inhumane acts, as this is a tenet of customary international law..

As Antonio Cassese notes, an attack means that it is part of a widespread or systematic practice that is either part of a governmental policy or is tolerated, condoned or acquiesced to by a government or *de facto* authority. He further states that crimes against humanity may be committed by individuals acting in a private capacity, provided that governmental authorities approve of, condone, or fail to prohibit and punish such private actions.<sup>24</sup> Hence, tolerance or acquiescence by a government to official acts or widespread acts by individuals should be sufficient to be included in the Crimes against Humanity clause of the Rome Statute.<sup>25</sup>

Moreover, Section 7h (Persecution) lists gender under the categories of protected groups. While other sections of this article do not specifically list gender, they should also protect against gender-based crimes, since not including such widespread and systemic crimes would be contrary to many United Nations declarations, covenants, and conventions and well as the most basic human rights principles. Already in the 2003 edition of his comprehensive work on international criminal law, Cassese criticized the language of Article 7(1) as being too restrictive, writing: “Would it not be sufficient for the practice to be accepted, or tolerated, or acquiesced in by the State or organization, for those offenses to constitute crimes against humanity? Clearly, this requirement goes beyond what is required under international customary law and unduly restricts the notion under discussion.”<sup>26</sup>

*2. In the longer term, efforts should be made to amend Article 6, Genocide, of the Rome Statute to list gender and childhood in addition to “national, ethnical, racial, or religious group” so as to protect girl babies and children under the provisions of Article 6 a – Killing members of the group, 6b – Causing serious bodily or mental harm to members of the group, and Article 6c – Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.*

<sup>24</sup> A. Cassese, *International Criminal Law*, New York: Oxford University Press, 2003, page 65. <sup>25</sup> A. Cassese, *International Criminal Law*, 2 edition, New York: Oxford University Press, 2008, page 125 <sup>26</sup> A. Cassese, *International Criminal Law*, New York: Oxford University Press, 2003, page 65.



## 2. The Sex Trade and Sexual Slavery

These two closely related crimes affect millions of girls and women every year. UNICEF reported that approximately 30 million children lost their childhood through sexual exploitation over the past 30 years,<sup>27</sup> and two million children are subjected to prostitution in the global commercial sex trade annually.<sup>28</sup>

The vast majority of these are girls, some as young as 5 years old. An example is Srey, who was sold to a brothel by her parents when she was 5. Rescued at the age of 6, she will probably never recover from her traumas, first the betrayal of her parents and then being forced to have sex with hundreds of men, some specifically asking for very young girls under the belief that this will protect them from AIDS. In fact, Srey was infected by HIV/AIDS by one of these men, as have been countless other children and women trapped in the multimillion-dollar sex industry in Phnom Penh, Cambodia.<sup>29</sup>

Cambodia is only one of the many countries where sexual slavery and sex trafficking are a normal part of life and business. Russia, Ukraine, Albania, Bulgaria, Lithuania, Romania, China, Thailand, and Nigeria are major countries of origin of trafficking victims.<sup>30</sup> And many of these victims are children.<sup>31</sup>

Sex trafficking and sexual slavery obviously have devastating consequences for its victims, who are often chained, caged, beaten, and threatened with death. Children and women in the commercial sex industry are often drugged, causing addiction and dependency, unwanted pregnancy, malnutrition, social ostracism, and, in many cases, AIDS and, like Srey, early death.<sup>32</sup>

The governmental complicity in them perpetuates traditions of corruption that corrode the entire social fabric. Beyond this, by not prosecuting the perpetrators of these crimes – not only the sex industrialists and traffickers, colluding officials, pimps, and madams, but also the patrons (as is being done in Sweden, where the “johns”

<sup>27</sup> “Commercial sexual exploitation position statement,” *UNICEF UK*, January 28, 2004.

<sup>28</sup> U.S. State Department, *Trafficking in Persons 2009 Report*, downloaded from <http://www.state.gov/g/tip/rls/tiprpt/2009/123126.htm>

<sup>29</sup> D. Rivers, “Girl, 6, embodies Cambodia’s sex industry,” *CNN*, January 26, 2007. Retrieved from <http://www.cnn.com/2007/WORLD/asiapcf/01/23/sex.workers/index.html>.<sup>30</sup> United Nations Office on Drugs and Crime. (2004, April). *Trafficking in Persons Global Patterns*.<sup>31</sup> U.S. Department of State. (2006, March 8). *Country Reports on Human Rights Practices – 2005*.

<sup>32</sup> D. Rivers, “Girl, 6, embodies Cambodia’s sex industry,” *CNN*, January 26, 2007. Retrieved from <http://www.cnn.com/2007/WORLD/asiapcf/01/23/sex.workers/index.html>. For a moving account of the horrors, and courage, of girls and women sold into the sex trade, see N. Kristof and S. WuDunn, *Half the Sky*, New York: Knopf, 2009.

and not the prostitutes are arrested) – states that do not forcefully act to punish these crimes and even collude in them perpetuate not only the brutalization and dehumanization of women and children but also a cultural desensitization to human suffering, which inevitably spills over into other social relations.

### Legal Remedies

*Rome Statute, Article 7 – Crimes against Humanity can be used to hold governments accountable, especially through Section 7(g), which specifically lists: Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity. Other relevant sections are: 7(c) Enslavement, 7(d) Deportation or forcible transfer of population, 7(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, etc.*

*In addition, the following can be used: Article (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment and (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions.*

### **3. Female Genital Mutilation/Cutting (FGM/C)**

This crime is one of the most horrible forms of torture imaginable, yet it is perpetrated on millions of children. The World Health Organization reports that in Africa three million girls are at risk for FGM annually, and 92 million girls age 10 years and above have undergone FGM in that continent alone.<sup>33</sup> In Egypt over 90 percent of women are genitally mutilated. FGM/C is widespread in other countries in the Middle East and Asia, and is exported by immigrants to North America, Europe, and Australia.<sup>34</sup> FGM/C varies from region to region, from the cutting out of the clitoris to also cutting out the labia and sewing the vagina together so it must be cut open for intercourse and again for childbirth.

Even though at last genital mutilation is gaining international attention and some progress has been made in eliminating this practice, untold numbers of children still die from these barbaric mutilations. For the 140 million women and girls worldwide living with its consequences,<sup>35</sup> life is often a nightmare of daily torture due to the psychological traumas and medical

<sup>33</sup>. World Health Organization (2010). *Fact sheet: Female genital mutilation*. Retrieved from <http://www.who.int/mediacentre/factsheets/fs241/en/>

<sup>34</sup>. UNIFEM. Donors Working Group. "Platform for action towards the abandonment of female genital mutilation/cutting (FGM/C)." (2008). Retrieved from [www.unifem.org/attachments/products/Platform\\_for\\_Action\\_FGM-C\\_English.pdf](http://www.unifem.org/attachments/products/Platform_for_Action_FGM-C_English.pdf)

<sup>35</sup> World Health Organization (2010). *Fact sheet: Female genital mutilation*. Retrieved from <http://www.who.int/mediacentre/factsheets/fs241/en/>

complications resulting from FGM/C. Among these, since in many cases urine and menstrual blood cannot drain properly, are infections, abscesses, and cysts. Intercourse is not only *not* pleasurable, but painful, and childbirth is often an ordeal.

Women who have themselves been subjected to FGM/C are so desensitized to the pain of even their daughters and the daughters of their neighbors that they often perform these inhuman procedures. Of course, they are pressured to do so by their traditions, which define women as sexual objects and breeders for men. But to so betray the trust of helpless children from generation to generation requires a psychological numbing that is characteristically associated with trauma.

Indeed, neuroscientists have found that severe trauma affects the brain itself, especially the *amygdala* and *hippocampus* (regions involved in emotions) and the prefrontal cortex (involved in reasoning and planning).<sup>36</sup> It is not far fetched therefore to argue that culturally enshrined traumas affect those subjected to them also in their roles as parents and community members, and thus as transmitters of mental maps about relationships based on domination and submission.

As the Egyptian physician Nawal El Saadawi notes, genital mutilation is an instrument for desensitizing girls and women not only to the pain of those of their gender, but to the realities of their oppression. In El Saadawi's words, "False consciousness makes women obedient instruments of their own oppression and transmitters of this false consciousness to future generations of children."<sup>37</sup> In short, cultural traditions that justify and perpetuate traumas such as FGM/C serve an integral function in maintaining oppressive and unjust social systems from generation to generation.

### Legal Remedies

*Rome Statute's Article 7, Crimes against Humanity, especially section 7f – Torture.*

## **4. Domestic Violence: From Murder in the Name of Honor and Bride Burning to Acid Throwing and Battery**

In its "Fact Sheet on Domestic Violence as Torture," Amnesty International points out that this global pandemic not only takes the lives of millions of girls and women but also criminally torments them.<sup>38</sup> An estimated 40 to 70 percent of homicides of women are perpetrated by

<sup>36</sup> See e.g. J.D. Bremner, Effects of traumatic stress on brain structure and function, 2003, *Journal of Traumatic Dissociation*, 6 (2), 51-68; B.Van der Kolk, .Developmental trauma disorder, *Psychiatric Annals*, 2005, 35 (5), 401- 408.

<sup>37</sup> N. El Saadawi, War Against Women, Women Against War – Waging War on the Mind, Speech at the World Social Forum, 2004. Retrieved from <http://womensspace.wordpress.com/2007/02/07/nawal-al-saadawi-war-against-women-women-against-war-waging-war-on-the-mind/>

<sup>38</sup> *End Domestic Violence. End Torture. A Fact Sheet on Domestic Violence as Torture.* New York: Amnesty International, Amnesty International (2005). New York, New York. Retrieved from [http://www.amnestyusa.org/women/pdf/DV\\_as\\_Torture\\_Fact\\_Sheet.pdf](http://www.amnestyusa.org/women/pdf/DV_as_Torture_Fact_Sheet.pdf)

intimate partners.<sup>39</sup> According to UNIFEM, up to six out of every ten women experience physical and/or sexual violence in their lifetime. A World Health Organization study of 24,000 women in 10 countries found that the prevalence of physical and/or sexual violence by a partner varied from 15 percent in urban Japan to 71 percent in rural Ethiopia, with most areas in the 30–60 percent range.<sup>40</sup> A World Bank report estimated that violence against women was as serious a cause of death and incapacity among women of reproductive age as cancer and a greater cause of ill-health than traffic accidents and malaria combined.<sup>41</sup>

Yet despite numerous UN declarations, conventions, and covenants,<sup>42</sup> to this day even murder in the name of honor is not classified as a crime in many regions of the Middle East, Africa, and Asia. Nor are dowry-motivated crimes such as the infamous bride burnings still frequent in India prosecuted with the same zeal as other kinds of murder. Neither is disfiguring a girl by throwing acid in her face for spurning a suitor, or other “customary” violence, such as beating a woman to “chastise” her for not obeying her husband. All these crimes are still culturally accepted, often by the women themselves.

In addition to the perpetuation of traumas, with all the adverse human and social consequences that flow from this, the economic costs of this violence are huge. For instance, a 2003 report from the US Centers for Disease Control and Prevention estimated that the cost of intimate partner violence in the United States alone exceeds US\$5.8 billion per year: \$4.1 billion in health care services, and nearly \$1.8 billion in productivity losses due to absenteeism.<sup>43</sup>

The economic costs mentioned above do not include the cost of lost human potential resulting from the brutalization of girls and women. Then there are the enormous costs to our world when children observe this violence. They internalize a model of our species in which difference, beginning with the most fundamental difference between female and male, is

<sup>39</sup> Intimate Partner Violence (2002). World Health Organization. Retrieved from [http://www.who.int/violence\\_injury\\_prevention/violence/world\\_report/factsheets/en/ipvfacts.pdf](http://www.who.int/violence_injury_prevention/violence/world_report/factsheets/en/ipvfacts.pdf)

<sup>40</sup> García-Moreno, C, et al.]. (2005. ) WHO Multi-country study on women’s health and domestic violence against women. (pp. xii, xiv). World Health Organization: Geneva. Retrieved from [http://www.who.int/gender/violence/who\\_multicountry\\_study/Introduction-Chapter1-Chapter2.pdf](http://www.who.int/gender/violence/who_multicountry_study/Introduction-Chapter1-Chapter2.pdf); also found at [www.saynotoviolence.org](http://www.saynotoviolence.org)

<sup>41</sup> UNIFEM, 2007. Heise, L. 1994) Violence Against Women: The Hidden Health Burden, Discussion Paper 255. The World Bank: Washington, DC

<sup>42</sup> See e.g., 1993 *United Nations Declaration on the Elimination of Violence Against Women*. The Declaration states that, “States should exercise due diligence to prevent, investigate, and in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or private persons.” It sets forth ways in which governments should act to prevent violence, and to protect and defend women’s rights. These measures form the standard of “due diligence” that states are obligated to live up to.

<sup>43</sup> UNIFEM 2007. Retrieved from UNIFEM Website: [http://www.unifem.org/gender\\_issues/violence\\_against\\_women](http://www.unifem.org/gender_issues/violence_against_women)

automatically equated with dominating or being dominated, They also learn that it is permissible, even moral, to use force to impose one's will on others.

## Legal Remedies

*Rome Statute, Article 7a – Murder; 7(e) Imprisonment; 7(g), Rape, sexual slavery, etc. 7(c) Enslavement, 7k – Inhumane acts. Also amend to include gender. Article 6b – Causing Serious bodily or mental harm to members of a group.*

## **5. Rape**

There is growing attention to preventing rapes worldwide. Yet according to the United Nations Population Fund (UNFPA), one in five women worldwide will become a victim of rape or attempted rape in her lifetime.<sup>44</sup> A huge proportion are raped by people in their families or circle of acquaintances; for example, according to the U.S. Department of Justice, approximately 28% of victims are raped by husbands or boyfriends, 35% by acquaintances, and 5% by other relatives.<sup>45</sup> The number of women and girls raped during civil and other wars is also huge.<sup>46</sup> And the millions of girls and children kidnapped or sold into the sex trade or forced into child marriage are raped not just once, but over and over again.

Rape is still used in Afghanistan, Pakistan, and other regions of Southeast Asia and the Middle East, and Latin America to avenge real or imagined intertribal, intercaste, or intergang insults. Statistics understate the real frequency of rape because in most regions rapes are not reported since the "dishonor" of rape falls on a woman or girl, rather than on her rapist, and the victims are often cast out by their families or even killed by family members.

While rapes occur in all nations, all socioeconomic groups, and virtually all circumstances, refugees or populations displaced by natural disasters are especially vulnerable. For example, rape was a significant problem in Haiti even before the 2010 earthquake, but in the tent cities where hundreds of thousands huddled after the quake, with no lighting or security, sexual assaults became rampant. Not only women but children as young as 2 were victimized by rapists. Yet, according to aid workers, these crimes went mostly unreported because of shame, social stigma, and fear of reprisals from attackers.<sup>47</sup>

<sup>44</sup> Mara Jos Alcal. *State of World Population 2005. The Promise of Equality: Gender Equity, Reproductive Health and the Millennium Development Goals*. UNFPA. 2005. 65

<sup>45</sup> Violence against Women, Bureau of Justice Statistics, U.S. Dept. of Justice, 1994.  
<http://www.paralumun.com/issuesrapestats.htm>

<sup>46</sup> Vlachova, Biason (editors). *Women in an Insecure World*. Geneva Centre for the Democratic Control of Armed Forces. 2005.

<sup>47</sup> Haiti Post-Quake Rapes Rise, *Womens ENews*, March 20, 2010, retrieved from: [www.womensenews.org/story/](http://www.womensenews.org/story/)

Beyond the terrible human suffering are the social costs of rape as a crime against humanity: from the transmission of traumas, to the desensitization of men to suffering when rape is culturally condoned, to the enormous economic costs, to the fact that as long girls and women are not protected by states from rape we can predict that future generation will continue to bear this pain and cost.

*Legal Remedies: Mass rape is already included in Rome Statute in the context of armed conflicts. But since rape is so frequent yet unpunished, it should also be included under the purview of Article 7f – Torture and Article 7k – inhumane acts. When gender is added to Article 6, rape falls under 6b – Causing Serious bodily or mental harm to members of a group.*

## **6. Denial of Access to Maternal Health Care and Family Planning**

The UN Population Fund, International Planned Parenthood, and a myriad other organizations have been working diligently to ensure women have adequate maternal care and family planning access, every minute a woman dies as a result of problems related to pregnancy, unsafe abortions, and childbirth, the vast majority in Asia and Sub-Saharan Africa.<sup>48</sup> Many of these women became pregnant because they are denied access to family planning.

Many of those who survive complications related to childbirth – approximately 10 million women each year – are left with horrible health problems due to inadequate delivery care.<sup>49</sup> Similarly, often women do not have access to proper maternal care because they are not permitted to go to a male doctor and there are no female ones.

Most critically, despite unconscionably high maternal death rates and unwanted pregnancies, governments around the world still fail to make family planning and maternal health care a priority. This is true even in rich nations such as the United States, where maternal mortality rates have more than doubled since the 1980s, and are now higher than in 40 other countries.<sup>50</sup>

As Lee Jong-wook, former Director-General, World Health Organization, noted, “Mothers, the newborn, and children represent the well-being of a society and its potential for the future. Their health needs cannot be left unmet without harming the whole of society.”<sup>51</sup> Indeed, when

<sup>48</sup> World Health Organization, Why Do So Many Women Still Die in Pregnancy or Childbirth. Retrieved [from](#)

<sup>49</sup> Calder, J. (2008) Fertility control essential for all women. The Argus Blog. Retrieved [from](#)

<sup>50</sup> Amnesty International USA, Deadly Delivery: The Maternal Health Care Crisis in the USA. Retrieved [from](#)

<sup>51</sup> Lee Jong-wook, former Director-General, World Health Organization, “Make Every Mother and Child Count; Geneva, April 2005. Retrieved from <http://www.amnestyusa.org/dignity/pdf/DeadlyDelivery.pdf>

states fail to make family planning and maternal health care a priority, they are committing crimes against both present and future generations, failing to meet their Responsibility to Protect (R2P).<sup>52</sup>

### Legal Remedies

*Rome Statute Article 7 – Crimes against Humanity: especially Section 7k – Inhumane acts; amend Article 6 to include gender. Article 6b – Causing Serious bodily or mental harm to members of a group.*

### **7. Gender-Based Discrimination: From Denial of Education to Girls to Economic, Political, and Judicial Discrimination against Women and Denial to Them of Freedom of Movement**

Stimulated by UN Conferences on Women from 1975 to 1995 and grassroots groups worldwide, systemic discrimination against girls and women has finally begun to receive scholarly, legal, and public notice, and some progress has been made. But even in the United States, where women have made substantial cultural and legal gains, the earning gap between women and men is still large. In fact, it is much larger than is generally believed.<sup>53</sup> A study by the Institute for Women's Policy Research found that when analyzed over the span of women's work lives, the average prime age working woman earned only \$273,592, largely due to their caregiving responsibilities, while the average working man earned \$722,693 (in 1999 dollars). So the real gender earning gap is 62 percent – more than double the 20-23 percent officially reported.<sup>54</sup>

Women's situation is even more dismal when it comes to property ownership. In many world regions women are by tribal law and/or tradition denied the right to own land.<sup>55</sup> As Helen Clark, Administrator of the United Nations Development Programme, noted, while agricultural jobs account for more than 40 percent of women's jobs in East Asia and 65 per cent in South Asia, only 7 percent of farms are controlled by women.<sup>56</sup>

<sup>52</sup> For more information on the Responsibility to Project (R2P), see <http://www.responsibilitytoprotect.org/>.

<sup>53</sup> According to the 2009 Gender Pay Gap Report, the gap was 79.9 percent on the average. Retrieved from <http://www.docstoc.com/docs/5681750/The-Gender-Pay-Gap-Report-April-2009/>

<sup>54</sup> S. J. Rose and H. I. Hartmann, "Still a Man's Labor Market: The Long-Term Earnings Gap," Washington DC: Institute for Women's Policy Research, 2004.

<sup>55</sup> Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia*, Cambridge: Cambridge University Press (CUP), 1994.

<sup>56</sup> Helen Clark: Speech at the 2010 Asia-Pacific Human Development Report Launch, 8th March 2010 New Delhi, India. Retrieved at <http://content.undp.org/go/newsroom/2010/march/helen-clark-remarks-at-the-2010-asia-pacific>

As for education, while some nations have reached educational parity, in others girls are systematically denied access to school. For instance, almost half the adult women in South Asia are illiterate and the situation is not much better in many parts of sub-Saharan Africa.<sup>57</sup>

These crimes against girls and women are related to other forms of gender-based discrimination, such as women's dismally low representation in political office and blatant judicial discrimination. For example, in Muslim fundamentalist areas that impose the Sharia, two women's testimony is required to counter one man's, and women must produce witnesses to being raped, a virtual impossibility.

Many books document the consequences of gender-based discrimination worldwide. Just one example, related to the denial of freedom of movement to women, is that during a flood in Bangladesh 71 of every 1,000 women were killed – as compared to 15 men per 1,000.<sup>58</sup> A major factor for this radically disproportionate casualty rate was that since they were not permitted to leave their homes without a male family member, and this social norm was so embedded in their minds, they stayed – and drowned.

Yet studies in Africa, Latin America, and other world regions show that children do better where mothers have greater access and control over household resources. This is because on average women spend a much larger percentage of resources on food and other necessities for children than fathers do – as in male-dominated cultures men are often socialized to first spend on themselves.<sup>59</sup> Many other studies also show that gender inequality is a major barrier to justice, economic development, and social stability. For instance, a Center for Partnership Studies report based on statistical data from 89 nations found that in significant respects the status of women can be a better predictor of a nation's general quality of life than GDP.<sup>60</sup>

## Legal Remedies

*Rome Statute, Article 7 – Crimes against Humanity; amend Article 6 to include gender.*

<sup>58</sup> United Nations Environmental Programme (UNEP) "Mainstreaming Gender in Environmental Assessment and Early Warning," UNEP Nairobi, 2005. Downloaded from <http://docs.google.com/viewer?a=v&q=cache>

<sup>59</sup> See e.g., J. Bruce and C. B. Lloyd, "Finding the Ties that Bind: Beyond Headship and Household," in Lawrence Haddad, John Hoddinott, and Harold Alderman, editors, *Intrahousehold Resources Allocation in Developing Countries: Methods, Models, and Policy*, Baltimore: International Food Policy Research Institute and Johns Hopkins University Press, 1997; D. Thomas, "Intra-Household Resource Allocation," *Journal of Human Resources* 25, No. 4, Fall 1990; R. Eisler, *The Real Wealth of Nations: Creating a Caring Economics*, San Francisco: Berrett-Koehler, 2008, chapter 6.

<sup>60</sup> R. Eisler, D. Loye, and K. Norgaard. *Women, Men, and the Global Quality of Life*. Pacific Grove, Calif.: Center for Partnership Studies, 1995.



## CRIMES AGAINST CHILDREN OF BOTH GENDERS

While some crimes against children were addressed above, I will now turn to additional crimes against children that should be included under the purview of the *Rome Statute's* "the most serious crimes of concern to the international community as a whole," especially under section 7k: "inhumane acts . . . intentionally causing great suffering, or serious injury to body or to mental or physical health."

### 1. Violence against Children in Homes

Although in recent years a number of nations have passed laws against physical discipline of children, in most cultures, violence against children is still considered an acceptable, even moral, form of discipline, and corporal punishment within the family is not defined as an act of violence to a child, even though it would be criminal if used against an adult.<sup>61</sup> Thus, 84% of adults queried in a 2005 study agreed "that it is sometimes necessary to discipline a child with a good hard spanking"<sup>62</sup>

Some of this violence is extremely severe, not only physical blows (on many areas of the body, not only on the buttocks), kicking, shaking, throwing, scratching, pinching, and biting, but also burning, whipping, scalding, suffocating, and beatings with belts, bats, sticks, metal rods and other instruments. In other words, children are subjected to acts that in other circumstances would be classified as torture.

Children from violent families are frequently diagnosed with Post Traumatic Stress, anxiety disorders, depression, and feelings of hopelessness. To cope with these impacts, some find relief in drugs, alcohol and tobacco abuse, self-injurious behaviors, risky or extreme behaviors, violent behaviors, sexual promiscuity, and teenagers' desire for children in hope of receiving love. Chronic health and dietary problems are frequent, as are learning difficulties, and in many cases life-long problems in personal, work, and other relations.

In addition to these devastating individual and social effects, since home life is the first educational venue for children, their experiences establish clear delineations about power imbalances and gender role expectations. Without appropriate intervention, violence against

<sup>61</sup> Committee on the Rights of the Child (2006). General Comment No. 8. *The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment* (articles 19, 28(2) and 37, interalia), CRC/C/GC/8, para 11.

<sup>62</sup> Lehman BA (1989). Making a Case against Spanking. *The Washington Post*, 23 March 1989. Cited in: Straus MA, Mathur AK (1996). Social Change and Trends in Approval of Corporal Punishment by Parents from 1968 to 1994. In: Frehsee D et al. (Eds). *Violence against Children*. Berlin and New York, Walter de Gruyter, pp 91–105. Durrant JE (2005). Corporal Punishment: Prevalence, Predictors and Implications for Child Behaviour and Development. In: Hart SN (Ed) (2005). *Eliminating Corporal Punishment*. Paris, UNESCO.

children adds to the possibility of violence towards children in future generations.<sup>63</sup>

### Legal Remedies

In 1979, Sweden became the first country to outlaw slapping and spanking.<sup>64</sup> Since then, other countries have addressed this issue: Finland (1983), Norway (1987), Austria (1989), Cyprus (1994), Italy (1996), Denmark (1997), Latvia (1998), Croatia (1999), Bulgaria (2000), Germany (2000), Israel (2000), Iceland (2003), Ukraine (2004), Romania (2004), Hungary (2005), Greece (2007), Netherlands (2007), and New Zealand (2007).<sup>65</sup> In 2006, The United Nations condemned all forms of violence against children, stating that “no violence against children is justifiable; all violence against children is preventable.”<sup>66</sup>

It is now up to international law to begin to hold accountable states that still condone violence against children in homes. Once again, the Rome Statute can be used to this end.

*Article 7a – Murder; Article 7k – inhumane acts; Amend e 6b – Causing Serious bodily or mental harm to members of a group to include childhood.*

## **2. Violence against Children in Schools**

Even though some progress has also been made in this area, corporal punishment in schools is still legal in 90 countries, and 350 million students around the world face violence in their schools each year.<sup>67</sup> The report “Learn Without Fear,” identified 33 types of violence, including beatings, hitting children on the head, and “penciling” (putting a pencil between two fingers and tightly squeezing the fingers). It also found that this violence has lasting impacts on children’s well being and is a major contributor to high student drop-out rates.

<sup>63</sup> UNICEF. World Report on Violence against Children (2006). Chapter 3: Violence against children in the home and family, p. 48. Retrieved from <http://www.unicef.org/violencestudy/3.%20World%20Report%20on%20Violence%20against%20Children.pdf>

<sup>64</sup> Prior to the enactment of the anti-spanking laws, opinion polls from 1965 revealed that 53% of the Swedish people considered physical punishment indispensable. An anti-spanking campaign during 1970s, resulted in a shift to 30% of the population believing that physical punishment was indispensable. By 1994, survey results show that a majority (89%) of Swedes were opposed to every form of physical punishment. Resent research (2000) indicates that the percentage of the population opposing all forms of physical punishment has risen to 92%, and among today’s generations of parents and the generation to come, there is a greater abhorrence of physical punishment. *Save the Children, Sweden*. (2001). The first anti-spanking law in the world. Stockholm:Sweden. Retrieved from [www.wallofsilence.com](http://www.wallofsilence.com).

<sup>65</sup> Retrieved from [www.nospank.net/totalban.htm](http://www.nospank.net/totalban.htm)

<sup>66</sup> Retrieved from [www.un.org/apps/news/story.asp?NewsID=20225&Cr=child&Cr1](http://www.un.org/apps/news/story.asp?NewsID=20225&Cr=child&Cr1)

<sup>67</sup> “Millions face school violence across Asia,” Australia Broadcasting Corporation (ABC), October 8, 2008. Retrieved from <http://www.abc.net.au/ra/programguide/stories/200810/s2385881.htm>

In India, two out of every three students are victims of physical abuse at school. Not surprisingly, a 2007 UNICEF statistical review found that out of every 10 children who join primary school in India, four drop out by the time they reach Class V. In the United States, paddling – that is, hitting a child’s buttocks with a wooden instrument – is still legal in 21 states, and, according to the Office for Civil Rights at the U.S. Department of Education, is used frequently in rural areas of 13 Southern states, including Texas.<sup>68</sup>

Violence is painful both physically and psychologically. It also promotes violence by children against one another, including bullying, impedes learning, and leads many to drop out of school.<sup>69</sup> As Randeep Kaur noted, “the impact of years of caning, slapping and humiliation can extend far beyond school days. . . it actually leads to an intergenerational cycle of violence, you know, that I was hit so its ok for me to hit my kids and then the children will go about hitting their children.”<sup>70</sup>

Legal Remedies: Article 7k (Crimes against Humanity, other inhumane acts) and by amending Article 6b – Causing Serious bodily or mental harm to members of a group – to include childhood.

### **3. Child Marriage and Forced Marriage**

Despite efforts to outlaw it, child marriage is common in many parts of the world. And while marriages arranged by children’s parents sometimes also involve boys, it is again girls who are the vast majority of those who suffer.<sup>71</sup> Over 51 million girls under 18 in the developing world are forced to marry, sometimes to men over twice their age. One in seven girls is given in marriage before the age of 15. More than 100 million girls will be child brides during the next 10 years if current practices continue.<sup>72</sup>

The practice is most common in sub-Saharan Africa and Southern Asia, but is also found in other parts of Asia, the Middle East, North Africa, and Latin America. In Ethiopia and parts of

<sup>68</sup> “Corporal punishment in public schools,” *CNN.com/US*, August 20, 2008. Retrieved from <http://www.cnn.com/2008/US/08/20/corporal.punishment/#cnnSTCOther1>

<sup>69</sup> Arun Kumar Rath quoted in, Charu Sudan Kasturi, “Spare the rod, keep child in school,” *The Telegraph*, Calcutta, February 4, 2008. Retrieved from <http://www.abc.net.au/ra/programguide/stories/200810/s2385881.htm>

<sup>70</sup> Randeep Kaur interview, in “Millions face school violence across Asia,” Australia Broadcasting Corporation (ABC), October 8, 2008. Retrieved from <http://www.abc.net.au/ra/programguide/stories/200810/s2385881.htm>

<sup>71</sup> For an excellent paper on forced marriages and international law, see J. Del Vecchio, “Continuing Uncertainties: Forced Marriage as a Crime against Humanity,” INSERT, which makes a strong argument for including many arranged marriage under the category of forced marriages, pointing out that a recent INSERT....decision is precedent for including them under the Rome Statute’s Crimes against Humanity..

<sup>72</sup> UNFPA State of the World Population 2005 Report, Child Marriage Fact Sheet Retrieved from [http://www.unfpa.org/swp/2005/presskit/factsheets/facts\\_child\\_marriage.htm](http://www.unfpa.org/swp/2005/presskit/factsheets/facts_child_marriage.htm)

West Africa, girls are married as early as age 7.<sup>73</sup>

The consequences for these child brides are brutal. They are often victims of beatings and other violence by their husbands and family; for example, India has the highest levels of domestic violence among women married before the age of 18.<sup>74</sup> Some die from injuries due to too early forced intercourse. And many die from becoming pregnant too young. Survivors also face enormous health risks, including obstructed labor leading to fistulas. In Nigeria alone, up to 800,000 women suffer from fistula, and many are thrown out by their husbands and families to die on the streets.<sup>75</sup>

For the most part, the world is still indifferent to the cruel lives and deaths of children forced into marriage – even though the social consequences of depriving millions of girls of their childhood, and in all too many cases, of their lives. Since these girls are deprived of their education, there is economic damage from lost human potential, which perpetuates poverty, illiteracy, and other impediments to economic development. There are also other important cultural consequences, such as acceptance by people of brutality as moral.

### Legal Remedies

*Rome Statute, especially Article 7c – Imprisonment; Article 7g – Forced pregnancy, Article K – Other Inhumane Acts. Also, amend Article 6 to include gender and childhood.*

## **4. Child Sexual Abuse**

Once a taboo subject, this crime against children is now widely documented. UNICEF estimates that globally, “five to ten percent of girls and up to five percent of boys suffer penetrative sexual abuse over the course of their childhood.”<sup>76</sup> Other data indicate a potentially higher percentage, as determined by a study in which 7–36% of adult women and 3–29% of adult men reported sexual victimization in the home during their childhood.<sup>77</sup> The World Health

<sup>73</sup> UNFPA State of the World Population 2005 Report, Child Marriage Fact Sheet Retrieved from [http://www.unfpa.org/swp/2005/presskit/factsheets/facts\\_child\\_marriage.htm](http://www.unfpa.org/swp/2005/presskit/factsheets/facts_child_marriage.htm)

<sup>74</sup> UNFPA State of the World Population 2005 Report, Child Marriage Fact Sheet Retrieved from [http://www.unfpa.org/swp/2005/presskit/factsheets/facts\\_child\\_marriage.htm](http://www.unfpa.org/swp/2005/presskit/factsheets/facts_child_marriage.htm)

<sup>75</sup> Ramita Navai, “Broken lives: Nigeria’s child brides who end up on the streets,” *The Times*, November 28, 2008. Retrieved from <http://www.timesonline.co.uk/tol/news/world/africa/article5248224.ece>

<sup>76</sup> UNICEF (2009). Celebrating 20 years of the Convention on the Rights of the Child (p. 25). United Nations Children’s Fund. New York: New York.

<sup>77</sup> United Nations. (2006). *Promotion and protections of the rights of children*. Report to the Secretary-General. (p. 13) General Assembly A/61/150.

Organization estimated that 150 million girls and 73 million boys under the age of 18 experienced forced sexual intercourse or another form of sexual violence during 2002.<sup>78</sup> While much of the statistical data focuses on sexual abuse within the family, reports of victimization within educational and workplace settings and care facilities are increasing.<sup>79</sup> For example, since 2000, as many as 1.2 million children have been trafficked annually and used for sexual exploitation.<sup>80</sup> According to Interpol, pornography also victimizes many children.<sup>81</sup> And the high incidence of sexual abuse by Catholic priests, whom the Church transferred from parish to parish where their sexual abuses continued, is still another piece in the mounting evidence that not only our laws but even many of our religious institutions have failed miserably in protecting children.<sup>82</sup>

The injuries and psychological damage from sexual abuse often haunt children throughout their lives.<sup>83</sup> It has been found to not only disrupt normal childhood development but also normal brain functioning.<sup>84</sup> While perpetrators deny or conceal their actions, child victims more often than not fail to report the crime out of shame or self-blame.<sup>85</sup> In addition, there is still a social stigma associated with this egregious form of child abuse, with the veil of secrecy and silence that surrounds it ensuring survivors must endure their pain and sense of betrayal and violation alone.

<sup>78</sup>United Nations (2006). *Global estimates of Health Consequences due to violence against children*. Background paper for the United Nations study on Violence against Children. (2006). World Health Organization: Geneva. World Health Organization (2004). *Comparative Quantification of Health Risks: Global and regional burden of disease attributable to selected major risk factors, Volume 2*. 1851-1940, and using data of the Population Division of the United Nations Department of Economic and Social Affairs for population under 18 years.

<sup>79</sup>United Nations. (2006). *Promotion and protections of the rights of children*. Report to the Secretary-General. (pp. 15-18). General Assembly A/61/150

<sup>80</sup>UNICEF (2009). *Celebrating 20 years of the Convention on the Rights of the Child* (p. 25). United Nations Children's Fund. New York: New York

<sup>81</sup>Jones, V. and Skogrand, E. (2005). Save the Children Europe Group. *Position Paper regarding online images of sexual abuse and other internet-related sexual exploitation of children*. Save the Children: Denmark, Norway. Retrieved from [www.savethechildren.net/alliance/get\\_involved/report/position\\_internet\\_abuse.pdf](http://www.savethechildren.net/alliance/get_involved/report/position_internet_abuse.pdf).

<sup>82</sup>For a report on the discussion on whether the Pope can be prosecuted by the International Criminal Court under the Rome Statute's Crimes against Humanity provision, see Paisley Dodds, "British could challenge pope's Immunity," *Associated Press*, April 5, 2010.

<sup>83</sup>World Health Organization. (2000). *Comparative Quantification of Health Risks*. Vol. 2. Chapter 23. Retrieved from [http://www.who.int/healthinfo/global\\_burden\\_disease/cra/en](http://www.who.int/healthinfo/global_burden_disease/cra/en).

<sup>84</sup>See Perry, B. (2002). *Brain Structure and Function II: Special topics informing work with maltreated children*. Retrieved from [http://www.childtrauma.org/CTAMATERIALS/brain2\\_inter\\_02.pdf](http://www.childtrauma.org/CTAMATERIALS/brain2_inter_02.pdf).

<sup>85</sup>UNICEF (2009). *Celebrating 20 years of the Convention on the Rights of the Child* (pp. 21, 24). United Nations Children's Fund. New York: New York.

Sexual abuse also does enormous damage to society at large, from the spread of sexually transmitted diseases and teen pregnancies<sup>86</sup> to the lost human potential that results from the use and abuse of children who are unable to protect themselves.

Legal Remedies: Article 7c – Imprisonment; Article 7g – Forced pregnancy, Article K – Other Inhumane Acts. Another avenue to better protect children is to add childhood to Article 6b – Causing Serious bodily or mental harm to members of a group.

## **5. Child Labor and Slavery**

According to IPEC, worldwide millions of children are still coerced, bonded, or forced to work in inhuman and dangerous conditions – essentially child slavery.<sup>87</sup> The ILO reported that in 2004, 218 million children between the ages of 5 and 17 were involved in child labor, of whom 126 million were in hazardous work.<sup>88</sup> In many poorer world regions, children are expected to work long hours by their parents. Children who work in farms are often exposed to pesticides, herbicides, and other hazardous chemicals without adequate protective or safety gear.<sup>89</sup> Many children have to work in a country other than their own, isolated by the work and language barriers so they are at the mercy of their employer's demands, anytime day or night.<sup>90</sup> Children are also often placed in combat-related roles, setting explosive devices, or trained as suicide bombers. Some are also forced to be sex slaves.<sup>91</sup> However, when children are deprived of freedom and education, indeed deprived of their childhood, this not only limits their ability to develop their potentials but the human capacities of our societies and our world.<sup>92</sup>

<sup>86</sup> World Health Organization. (2000). *Comparative Quantification of Health Risks*. Vol. 2. Chapter 23. Retrieved from [http://www.who.int/healthinfo/global\\_burden\\_disease/cra/en](http://www.who.int/healthinfo/global_burden_disease/cra/en).

<sup>87</sup> International Programme on the Elimination of Child Labour (IPEC). *About child labor: Defining child labor*. Retrieved from <http://www.ilo.org/ipec/facts/lang--en/index.htm>

<sup>88</sup> Global Report (2006). *The end of child labour: Within Reach*. International Labour Office: Geneva. As cited in United Nations. (2006). *Promotion and protections of the rights of children*. Report to the Secretary-General. (p. 10). General Assembly A/61/150.

<sup>89</sup> US Dept. of Labor (2009). *2008 Findings on the worst forms of child labor*. USDOL's Bureau of International Labor Affairs (ILAB): Washington, DC. Retrieved from <http://www.dol.gov/ilab/programs/ocft/PDF/2008OCFTreport.pdf>

<sup>90</sup> US Dept. of Labor (2009). *2008 Findings on the worst forms of child labor*. USDOL's Bureau of International Labor Affairs (ILAB): Washington, DC. Retrieved from <http://www.dol.gov/ilab/programs/ocft/PDF/2008OCFTreport.pdf>

<sup>91</sup> US Dept. of Labor (2009). *2008 Findings on the worst forms of child labor*. USDOL's Bureau of International Labor Affairs (ILAB): Washington, DC. Retrieved from <http://www.dol.gov/ilab/programs/ocft/PDF/2008OCFTreport.pdf>

<sup>92</sup> UNICEF (2006). *Child protection from violence, exploitation and abuse: Child labor*. Retrieved from [http://www.unicef.org/protection/index\\_childlabour.html](http://www.unicef.org/protection/index_childlabour.html).

## Legal Remedies

*Rome Statute, Article 7 of Crimes against Humanity.*

### **CONCLUSION**

Historically, international criminal law has developed by incorporating concepts of human rights law. This has been the case with the Rome Statute, especially Article 7, Crimes against Humanity, which, as Antonio Cassese notes, “incorporates or overlaps with concepts of human rights law (the right to life, not to be tortured, to liberty and security of the person, etc.) laid down in provisions of international human rights instruments.”<sup>93</sup> These instruments include the Universal Declaration of Human Rights and subsequent Covenants, Declarations, and Conventions that, as Cassese writes, are “intended to protect the human person.”<sup>94</sup>

Following this precedent, the integrated approach here outlined proposes that the next step for international criminal law is to incorporate concepts of human rights law laid down in human rights instruments specifically designed to protect the majority, including the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Declaration on the Elimination of Violence against Women.<sup>95</sup> These instruments, developed with the goals of binding States to protect the women and children in their jurisdictions, apply to human rights violations in both the public and so-called private spheres, require that States enact laws to this end, and that they enforce these laws.

1. A first step to enforce these goals through international criminal law is to protect women and children from the widespread, egregious, systemic crimes against them by using existing provisions of Article 7 (Crimes against Humanity) of the Rome Statute.
2. A second step is expanding the purview of Article 6 (Genocide) to include “gender” and “childhood” under the categories protected from “killing,” “serious bodily or mental harm,” “infliction of conditions of life calculated to bring about its physical destruction in whole or in part,” and “imposing measures intended to prevent births within the group.”

These proposals are in line not only with the principle of Responsibility to Protect (R2P) but

<sup>93</sup> A. Cassese, *International Criminal Law*, New York: Oxford University Press, 2003, page 64. <sup>94</sup> A. Cassese, *International Criminal Law*, New York: Oxford University Press, 2003, page 65.

<sup>95</sup> United Nations, Treaty Series, vol. 1249. Convention on the elimination of all forms of discrimination against women. 18 December 1979. New York; UN General Assembly resolution 44/25. Convention on the Rights of the Child, 20 November 1989. New York; UN General Assembly A/RES/48/104. 85th plenary meeting. Declaration on the Elimination of Violence against Women. 20 December 1993. Retrieved from <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>, <http://www2.ohchr.org/english/law/pdf/crc.pdf> <http://www.unicef.org/crc/>, <http://www.un.org/documents/ga/res/48/a48r104.htm>.

with the most elementary principles of ethics and morality. They are foundational to the protection of human rights in both the private and public spheres – from protection from violence to protection from the destruction of our natural environment.

A central principle of international criminal law is that when a State fails to protect people from widespread, large-scale abuses that cause great suffering or serious injury to physical or mental health through its policies and laws or through the failure to enforce its laws, it is complicit in these abuses.

Indeed, we are all complicit if we avert our eyes from the widespread, systemic, and atrocious crimes against women and children that continue unabated and unprosecuted. It is generally recognized that failure to report a crime is itself a crime. For their sake – and for the sake of us all – we cannot continue to fail the most vulnerable among us.

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