# Women, Crime and Social Harm

## Towards a Criminology for the Global Era

EDITED BY

Maureen Cain and Adrian Howe

OÑATI INTERNATIONAL SERIES IN LAW AND SOCIETY

# WOMEN, CRIME AND SOCIAL HARM

This book is by and about women, the harms and crimes to which they are subjected as a result of global social processes and their efforts to take control of their own futures. It explores the criminogenic and damaging consequences of the policies of global financial institutions and the effects of growing economic polarisation, both in pockets of the developed world and in the global south. Reflecting on this evidence, the editors challenge existing criminological theory by expanding and elaborating a conception of social harm that encompasses this range of problems, and exposes where new solutions derived from criminological theory are necessary. A second theme addresses human rights from the standpoint of indigenous women, minority women and those seeking refuge. For most of these women a politics of human rights emerges as central to achieving legal and political equality and protection from individual violence. Women in the poorest countries, however, are sceptical as to the efficacy of rights claims in the face of the depredations of international and global capital, and the social dislocation produced thereby. Nonetheless this is a hopeful book, emphasising the contribution which academic work can make, provided the methodology is appropriately gendered and sufficiently sensitive to hear and learn from the all too often 'glocalised' other. But in the end there is no solution without politics. What continues to be special about women's political practice is the connection between the groundedness of small groups and the fluidity and flexibility of regional and international networks: the effective politics of the global age. This book, then, is a new criminology for and by women, a book which cannot easily be read without an emotional response.

Oñati International Series in Law and Society

A SERIES PUBLISHED FOR THE OÑATI INSTITUTE
FOR THE SOCIOLOGY OF LAW



**Titles in this Series**

***Social Dynamics of Crime and Control: New Theories for a World in Transition*** edited by Susannah Karstedt and Kai Bussmann

***Criminal Policy in Transition*** edited by Andrew Rutherford and Penny Green

***Making Law for Families*** edited by Mavis Maclean

***Poverty and the Law*** edited by Peter Robson and Asbjørn Kjønstad

***Adapting Legal Cultures*** edited by Johannes Feest and David Nelken

***Rethinking Law Society and Governance: Foucault's Bequest*** edited by Gary Wickham and George Pavlich

***Rules and Networks*** edited by Richard Appelbaum, Bill Felstiner and Volkmar Gessner

***Women in the World's Legal Professions*** edited by Ulrike Schultz and Gisela Shaw

***Healing the Wounds*** edited by Marie-Claire Foblets and Trutz von Trotha

***Imaginary Boundaries of Justice*** edited by Ronnie Lippens

***Family Law and Family Values*** edited by Mavis Maclean

***Contemporary Issues in the Semiotics of Law*** edited by Anne Wagner, Tracey Summerfield and Farid Benavides Vanegas

***The Geography of Law: Landscapes, Identity and Regulation*** edited by Bill Taylor

***Theory and Method in Socio-Legal Research*** edited by Reza Banakar and Max Travers

***Luhmann on Law and Politics*** edited by Michael King and Chris Thornhill

***Precarious Work, Women and the New Economy: The Challenge to Legal Norms*** edited by Judy Fudge and Rosemary Owens

***Juvenile Law Violators, Human Rights, and the Development of New Juvenile Justice Systems*** edited by Eric L Jensen and Jørgen Jepsen

***The Language Question in Europe and Diverse Societies: Political, Legal and Social Perspectives*** edited by Dario Castiglione and Chris Longman

***European Ways of Law: Towards A European Sociology of Law*** edited by Volkmar Gessner and David Nelken

***Crafting Transnational Policing: Police Capacity-Building and Global Policing Reform*** edited by Andrew Goldsmith and James Sheptycki

***Constitutional Politics in the Middle East: With special reference to Turkey, Iraq, Iran and Afghanistan*** edited by Saïd Amir Arjomand

***Parenting after Partnering: Containing Conflict after Separation*** edited by Mavis Maclean

***Responsible Business: Self-Governance and Law in Transnational Economic Transactions*** edited by Olaf Dilling, Martin Herberg and Gerd Winter

# Women, Crime and Social Harm

## Towards a Criminology for the Global Age

Edited by
Maureen Cain
and
Adrian Howe

Oñati International Series in Law and Society

A SERIES PUBLISHED FOR THE OÑATI INSTITUTE
FOR THE SOCIOLOGY OF LAW


OXFORD AND PORTLAND OREGON
2008

Published in North America (US and Canada)
by Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA
Tel: +1 503 287 3093 or toll-free: (1) 800 944 6190
Fax: +1 503 280 8832
E-mail: orders@isbs.com
Website: www.isbs.com



Hart Publishing Ltd, 16c Worcester Place, Oxford, OX1 2JW
Telephone: +44 (0)1865 517530 Fax: +44 (0)1865 510710
E-mail: mail@hartpub.co.uk
Website: http://www.hartpub.co.uk

British Library Cataloguing in Publication Data
Data Available

ISBN: 978-1-84113-842-8 (hardback)
ISBN: 978-1-84113-841-1 (paperback)

Typeset by Compuscript, Shannon
Printed and bound in Great Britain by
CPI Antony Rowe, Chippenham, Wiltshire

# *Acknowledgements*

The editors wish to thank the Overseas Policy Committee of the British Academy for a grant under their International Collaborative Programme and also the International Institute of Sociology of Law (IISL), Oñati, Spain for their financial and administrative support. In addition we are grateful to Mrs Alison Wagstaff for her tireless administrative work from the inception of the proposal to the completion of the manuscript for this book.

# *Contents*

# *List of Contributors*

**Peggy Antrobus** has worked in the field of women in development through a variety of government and NGO programmes in St Vincent, Jamaica and Barbados since 1974 when she was appointed as Advisor on Women's Affairs to the government of Jamaica. She was a founding member of CAFRA (Caribbean Association for Feminist Research and Action) and of DAWN (Development Alternatives for Women in a New Era). Her most recent book is *The Global Women's Movement: Origins, Issues and Strategies* (Zed Books, 2004).

**Brinda Bose** works in the Department of English, Hindu College, Delhi University and is Co-Director of the Centre for Feminist Legal Research, New Delhi. She is currently a Fellow of the Nehru Memorial Museum and Library, New Delhi. Her recent publications include *Gender and Censorship* (edited, 2006) and *The Phobic and the Erotic: The Politics of Sexualities in Contemporary India* (co-edited, 2007).

**Maureen Cain** was Professor of Sociology at the University of the West Indies, Trinidad and Tobago campus. Subsequently, she worked at the University of Birmingham, UK. She is now retired. Her past works include *Society and the Policeman's Role* (Routledge, 1973); *For a Caribbean Criminology* (editor) (double special issue of *Caribbean Quarterly*), 1996; and *Growing Up Good: Policing the Behaviour of Girls in Europe* (Sage, 1986). She is currently co-editing (with Anthony Harriott) a two volume work connecting mainstream and feminist criminology, designed primarily for the use of criminology students in the Caribbean region (Jamaica, Ian Randle Publishers, forthcoming). Maureen was President of the British Society of Criminology from 2002 to 2005.

**Megan Davis** is Director of the Indigenous Law Centre, University of New South Wales, Australia. She is a member of Australian Lawyers for Human Rights and of the International Law Association (Australia Branch) and on the editorial boards of the *Journal of Indigenous Policy* and the *Australian Indigenous Law Reporter*.

**Liz Fekete** is Deputy Director of the UK Institute of Race Relations in London. She is on the editorial staff of its international quarterly journal, *Race & Class* and editor of the IRR's *European Race Bulletin*. She heads the

research of the European Race Audit. She has written widely on issues to do with European refugee policy and European anti-terrorist laws and has achieved international recognition as a critical theorist on issues of national security versus human security in the context of both the war on terror and the war on refugees.

**Penny Green** is Professor of Law and Criminology at Kings College, London. She has published widely on state crime, state-corporate crime, natural disasters, Turkish criminal justice and politics, transnational crime and asylum and forced migration. Her current research interests include illegal logging, torture and state violence, environmental harms and looted antiquities. She is the author of a number of books including with Tony Ward (University of Hull), the first European monograph on State Crime, *State Crime: Governments, Violence and Corruption* 2004 (Pluto Press).

**Adrian Howe** teaches in the School of Global Studies, Social Science and Planning, RMIT University. Her latest book is *Sex, Violence and Crime – Foucault and the 'Man' Question* (Routledge-Cavendish Glass House Press, 2008).

**Esther Kisaakye** is a lecturer in law based at the Human Rights Peace Centre, Makerere University, Uganda. She is the co-editor of *Human Rights of Women and African Experiences* (Zed Books, 2002). Her other work, over the last twenty years, has focused on human rights, women's economic empowerment, family law, health law and HIV/AIDS. She has also served as a consultant to several United Nations agencies and human rights NGOs.

**Suvendrini Perera** works at Curtin University of Technology, Perth, Australia. She has published widely on questions of race, ethnicity, multiculturalism and refugees. Her most recent book is the edited volume, *Our Patch: Enacting Australian Sovereignty Post 2001* (Network, 2007).

**Rhoda Reddock** is Professor and Head of the Centre for Gender and Development Studies at the University of the West Indies, St Augustine campus. Her publications include *Women, Labour and Politics in Trinidad and Tobago: A History*, (Zed Books, 1994) which was named a CHOICE Outstanding Academic Book for 1995; *Plantation Women: International Experiences* (Berg, 1998) co-edited with Shobhita Jain; *Caribbean Sociology: Introductory Readings* with Christine Barrow (2000) and the edited collection *Interrogating Caribbean Masculinities* (2004).

**Sandra Walklate** is Eleanor Rathbone Chair of Sociology at the University of Liverpool. Her research interests over the last twenty-five years have been focused primarily on criminal victimisation and her most recent work is concerned with the impact of terrorism on people's everyday lives. Her recent books include *Imagining the Victim of Crime* (McGraw-Hill, 2006) and *Handbook on Victims and Victimology* (Willan, 2007).

# Introduction

# *Women, Crime and Social Harm: Towards a Criminology for the Global Age*

MAUREEN CAIN AND ADRIAN HOWE

## INTRODUCTION: BACKGROUND TO THE DISCUSSION

In 2003, the editors convened a workshop on 'Women, Crime and Globalisation' at the International Institute of the Sociology of Law in Onati, Spain. Maureen had already written about the deleterious effects of structural adjustment loan conditionalities which she observed and lived through in Trinidad and Tobago.[1] Adrian, having migrated from Australia to the UK, had become interested in the possibilities of global solutions to the 'glocalised' (Bauman, 1998) and raced problem of violence against women. At that time it was still possible to argue that criminology had at best a blinkered response to the global dimensions of its field. We therefore invited a wide range of participants whose publications resonated with our theme. The papers from the workshop have since been substantially updated, since the meeting achieved its main objective of refocusing attention on the relationships between the terms in the workshop title. Eleven of the papers have been reproduced in this volume.

Our book—being the first on this theme—is broad in its approach. Some of the chapters deal with the effects of global policies and processes; others consider responses to these at the local level; still others consider international or cross cultural issues rather than addressing the global dimension. The papers are collected here because all are concerned with issues which are central to an emergent criminology of the global: the impact for good or ill of the practices of global agencies, from the United Nations (UN) to the International Monetary Fund (IMF); the practical and theoretical problems involved in doing transnational research; how people cope with everyday harms and opportunities produced by global shifts, including responses ranging from local political organisation to attempts to activate

[1] Cain and Biju (1992); Cain, (2001; 2006).

human rights protections and to the adoption of criminal solutions, or those characterised as deviant in the local context. While in most chapters women appear as having been harmed, we also demonstrate how they have struggled against their victimhood both locally and internationally, sometimes creating entirely new forms of politics as they do so.

In this introduction we have chosen to problematise and discuss the second and third terms—'crime' and 'social harm'—in our book's title. Most of the contributors have worked with a common sense understanding of the term 'women' which remains adequate for the purposes of this collection. However, contributors have discussed the global dimensions in many and diverse ways including the powers and activities of global agencies such as the IMF, WTO and the World Bank or the various agencies of the United Nations and international movements of people and local responses. They have also discussed international law which, although much of it has been formulated within the UN, remains conceptually distinct from the organisation itself; and international political movements which seek to produce change in the policies and practices of global institutions. The tension between global and local in life, methodology and theory is apparent from all the contributions. The topic list alone demonstrates that the 'global' involves a more abstract understanding than the 'international', embracing as it does *both* an abstract concept (potential capacity for the total planetary reach of political and economic fractions), and the contradictory discourses and ideologies empirically observable within global agencies (see also Cain, 1983). The possibility and potency of instantaneous worldwide communication is central to all three dimensions at both of these levels.

In this conceptual context it is also worth reminding ourselves of the axiom that wherever there is power there is resistance—that structures with global reach may be locally, regionally and internationally contested. Examples spring readily to mind: the continuous re-shaping of capital in the global market places; the politics of terror; the export of 'Western' notions of the 'family' and also of the 'individual'. The global may seem a behemoth, but it is a site of negotiation and struggle, as indeed are the various processes of globalisation. Which brings us to the main questions of criminology: what is 'crime' and what can be done about it? These are the central concerns of this collection.

## OF CRIME AND HARM

It is twenty years since one of us argued that the concept of 'social injury' might be useful for those feminists working within the disciplines of criminology and socio-legal studies who were interested in developing the idea of the 'social' in social justice policies (Howe, 1987).[2] Harms to women, so

[2] A recent account of the demise of the social in socio-legal education in the Australian university where the notion of social injury was first teased out in relation to feminist legal strategy provides the broader context for the demise of the social injury strategy. See Thornton (2006).

the argument went, might be better understood if they were conceptualised as social injuries—as injuries endured by virtue of membership of a minority status social group. Within this conceptual framework, harms to women *as* women are not sporadic, experienced by injury-prone individuals adept in the art of victim-precipitation; they are endemic. While she did not pursue this line of research and legal strategy, a recent reconsideration of criminal trials in which men pleaded not guilty to murdering their wives and former wives and women partners on the ground of provocation gave her pause to return to the question of social harm. That twenty-first century criminal courts continue to indulge the lame excuses of homicidal men for slaughtering 'their' women not only enrages feminists and families of the dead women—it has led to reviews of the law of homicide in several Western jurisdictions. It has also given weight to the argument that victim-blaming provocation tales told in femicide cases by thwarted and possessive men posthumously harm all women, thereby perpetuating a social injury against us all. That thought in turn leads inevitably to a query as to whether it is time to revisit the 'social injury' strategy (Howe, 2004: 74–75).

In this introduction we start where it all began, with the work of Edwin Sutherland (1949), leaning on his final elaboration of his position. Harm, like all other concepts, both has a place in theory and is negotiated. We are happy that the discipline of criminology engages in political debates about which activities should be criminalised and which should not, and likewise about which activities should be characterised (with consequences) as social harms or not. Here, however, as a first step, we build on Sutherland's carefully constructed concept, as this clarifies part of what has been achieved to this point in the formal identification of social harm, and aids identification of what so far has been lacking.

Sutherland argues that a strict concept of a social harm requires the 'legal description of the act as socially harmful' and *also* the 'legal provision of a penalty' (1949: 31). Harmful acts, he argues, are variously characterised in law as crimes, misdemeanours, or infringements; as unfair or discriminatory behaviour; as actions which are false or unlawfully restraining. Whether a noun or an adjective is used, all these acts involve an injury. In these, and indeed in many other cases, harm language is used in the law to identify what has taken place and to describe the fact that it is contrary to 'the common welfare of society' (1949: 32). The differences in the descriptive terminology, Sutherland argues, relate to the relative power of those who are likely to be perpetrators. A notion of a politics of how an act which is contrary to the common welfare is officially described is therefore integral to the concept of that which is to be studied. The terms used by the law are variable outcomes of the social processes involved. For this reason, neither 'crime' nor any other particular legal term can stand as the general concept which is theoretically necessary to underpin the discipline. What can so stand is the concept of *harm* as an act which, if generalised, is contrary to

the common welfare of society and which has been legally defined as such by the use of harm language.

Green and Ward (2000) argue that a widespread definition of an act as socially harmful is also sufficient for it to be regarded as a social harm for criminological purposes, following the analogous concept of social deviance. There is a strong case for this which we accept, although the harms considered in this book mainly fall within some level of legal definition following Sutherland's interpretation. By using this narrower definition we are able to highlight the problems of enforcement in relation to globally recognised harms. Nonetheless, and because of these very enforcement problems, the concept of global institutionalised deviance also proves necessary to an understanding of global harms.

Sutherland is equally cautious in relation to his second criterion, the legal provision of a 'penal sanction' (1949: 26). Such sanctions do not need to be immediate, nor do they need to fit present day conventions. A court might, for example, make an order for redress or desistance, or even a reorganised practice, whereby those harmed (or an inspectorate or some other agent on their behalf) could apply to the court should the party so required fail to desist, make redress—that is, fail to comply with the order. Sutherland is explicit that the court's ability to apply a sanction for such non-compliance would fall within his definition of a penal sanction and so confirm the original act as a social harm.

As Sutherland found, even the narrower definition of the concept of harm brings many activities not formally defined as criminal within the scope of criminology.[3] It is central to the purposes of this book because, as we shall argue, most of the issues affecting women which are discussed here are capable of falling within the narrower definition. The exception—the case of institutional deviance—stands out more clearly as a result. Is it a harm, we ask, to reduce a family's income below subsistence level? Is it a harm to do it again or to some other family once the effects of the policy are known? We take the view that such culpable harms are the proper subject matter of criminology. Sutherland writing from a site within a nation state—the United States—identified no difficulty in relation to the final step in the process, the enforcement of the penalty. Certainly he did not raise the issue for discussion. It is, however, an issue that we feel warrants attention in the present instance, for harms to women perpetrated in a global context must raise the issues of what is to be done and who is to do it. We return to this concern after the contributions to this volume and the harms identified in them have been discussed.

The final definitional point, again discussed further after we have indicated the issues with which our contributors are concerned, is that a

[3] Besides Howe (1987), Brogden (2001), Cain (2006) Green and Ward (2000) and Hillyard *et al* (2004) have all recently elaborated the criminological concept of social harm and these arguments have greatly assisted our analysis here.

harm, like a crime or a tort, must be culpable. Harms which could not reasonably have been foreseen will not fall within the definition. Harm language, sanction, culpability: these are key ingredients of a criminological concept of harm. Harm language may be found in the two great international covenants which found much of contemporary international law: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Social Rights (ECOSOC). The latter, famously, has made considerable efforts to protect women from harm. The Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW) receives regular formal reports from states and also hears reports from recognised women's organisations. The reports of CEDAW meetings with national representatives are made public, which is to say that the sanction is the published documentation of, for example, less than satisfactory progress. This is negative publicity. Such 'naming and shaming' may have diplomatic or other political consequences.

Thus we have harm language and a response which may be conceived as a sanction, albeit one designed to improve behaviour rather than to cause pain. In the case of nation states we also have identified culprits: Green and Ward (2000) and Cohen (1993) have elaborated the concept of state crime, and Green builds on that concept in her contribution to this volume. In this text, as we shall see, the nation state may indeed be the (culpable) perpetrator. However, in the case of violence against women, for example, the responsibility of nation states is to put systems in place to address the problem. We now know what we always guessed: that the state may enhance the level of violence—even of murder (against men in this instance)—by its choice of economic policies. This is an example of something which has been definitively proved only recently. From this point on, any state administering policies which are known to exacerbate inequalities in an extreme way may be deemed to be culpable. As Dorling's research (2004) demonstrates, a sudden increase in inequality in a society increases the murder rate (that is, the rate of being murdered) among those most harmed. His example is that of young males whose chances of finding work on leaving school were crushed by structural adjustment in the UK in the early 1980s. Moreover, Dorling demonstrates that this cohort of men remains throughout their lives at greater risk of being killed than other men. It seems that as research along these lines progresses, two levels of culpability will need to be addressed: the state's culpability (if this is the case) for a policy known to produce harms, and the (lesser) culpability, in causal terms, of the individuals committing harmful acts.

So, we have state crime. In other instances discussed in this volume, however, notably by Antrobus, Cain, and Kisaakye, the perpetrator of the harm is not only the nation state, but an international financial institution—from the 1970s the IMF and more recently also the World Bank and the WTO. In these cases we have a harm, we have an institutional culprit, but we

have less possibility of sanction than in the case of nation states. Technically, then, in terms of Sutherland's strict concept, these knowing (or culpably unknowing) activities are not harms. In Green and Ward's formulation (2000) however, if the acts excite widespread opprobrium, they may be classed as deviance, and the perpetrators as deviant agencies—these are the cases of what we have termed 'institutional deviance'. We will return to these important points in our conclusion.

## THE CONTRIBUTORS—THINKING ABOUT WOMEN, CRIME AND GLOBALISATION

We start our discussion with three position chapters. First, Maureen Cain argues that in discussions of global harms women are once again being 'invisibilised', sometimes because they pick up additional burdens in the domestic sphere as a result of global economic policies, and because there is little chance of this harmful effect being acknowledged when women's normal level of work is under-valued in any event. Furthermore, the secondary effects of structural adjustment, such as increases in illegal economic practices and in interpersonal violence from strangers, also have an impact on women, both directly through increased vulnerability and indirectly, through the additional burdens that are created if their menfolk are imprisoned or become addicted. Finally, Cain argues that women's contributions may be neutralised in the global economic agencies. Nonetheless, this is not an argument about who is hurt most, irrelevant when the poor of both sexes suffer. It is an argument that better policy will be made if information about the consequences of structural adjustment policies is collected in a gendered way and if women as well as men are fully involved in the policy making.

A feminist-influenced flurry of policy and consultation activity around 'domestic violence' in the UK provides Adrian Howe with the occasion to explore, in the second chapter, the changing dynamics of anti-violence work. This work, she notes, has been given a global inflection by NGO and UN-sponsored campaigns to reconceptualise women's rights as human rights. Simultaneously, there has been a profound rethinking of what it means to do 'local' feminist politics under the rapidly changing conditions of globalisation. Commencing with an early twenty-first century claim by the UK government that it is committed to confronting and eradicating violence against women, Howe argues that the conceptual framework of the proposed interventions is flawed. Violence against women in a local setting can only be understood in the context of global economic processes and more specifically in the context of the harms faced by vulnerable women trapped into states of 'dis-welfare' in 'global' sites (after Bauman, 1998). Within the UK, as elsewhere, this means that violence against women must be recognised as profoundly racialised.

When Western governments with reformist agendas fail to understand the broader political-economic framework of interpersonal violence, the problems of ethnic minority, migrant and refugee women are not addressed, despite the promise of a new 'integrated' strategy against violence against women. Howe, like many contributors to this volume, welcomes the recognition of violence against women as an abuse of women's rights, indeed as one of those few extremely serious abuses which trumps the (male?) right to the 'protection of culture' justification at international law. This international recognition of women's bodily inviolability provides a possible mechanism for progressive change.

Peggy Antrobus' discussion reiterates and strengthens the arguments about the increased vulnerability of women and the aged in a 'structurally adjusted' world. But she goes beyond this all too sadly familiar story to address some frequently overlooked and unrecognised connections. Her argument is that not just acute poverty but also many of the other harms inflicted on women, the poor as a whole, and much of the economic south arise from liberal structural adjustment policies deployed as both an ideological and an economic weapon in the 1980s and 1990s. The battle was fought by the Western powers for the prize of a greater share of the south's economic resources: their oil and mineral wealth, their farm products, their natural resources, their markets and their cheap labour. As we saw in Cain's chapter, *immediate* immiseration was the inevitable result of such policies of super-exploitation, and of the ideological pretence that poor states could and should compete as pretended equal powers with the rich and in areas selected for competition by the rich. Antrobus goes beyond this not only by arguing that women disproportionally picked up the burden of supporting these impoverished populaces, but by pointing out that it was the religious organisations that provided support, thereby placing large numbers of people in a situation of dependence on sometimes extremist organisations. Structural adjustment strategies are thus intimately linked with the expansion of fundamentalist and extreme religious groups. Since in most such groups the power of women is weakened they are also responsible for reducing the security of women in particular but also of us all.

Meanwhile state sovereignty has been continuously undermined, by everything from global powers seeking to police the very problems they created (Vasciannie, 1997) to outright invasion of territory; by the loss of control over their national budgets as a result of loan conditionalities (Brautigam, 2000), to separatist movements as the struggle for control over natural resources such as oil and minerals becomes extreme: witness the situation in Rwanda and the Democratic Republic of the Congo. The mushroom growth of terrorist movements in both developed and less developed worlds can also be understood only in this global context.

Feminist analyses and movements have linked freedom from want with freedom from fear. The UN has accepted this analysis, but is unready to

confront its most powerful member states with the evidence that the policies they advocate are generating the terrorism and increased support for religious extremism which they deplore. There *are*, however, anti-globalisation movements located in the south and there is evidence of a new academic feminist analysis that will not be restricted by conventional academic disciplines. There are places, therefore, for women to make a significant contribution by continuing to make incursions into this hostile terrain and to build a series of progressive redouts, whether political, economic or intellectual, from which an alternative practice and vision can be forged.

## WOMEN ON THE MOVE

In the second part of the book, three contributors consider 'women on the move'. Liz Fekete and Brinda Bose consider the situation of trafficked women, while Suvendrini Perera considers the powers of the state to represent, expel and punish female bodies which are characterised as too numerous or too (differently) raced. The state defines itself, including both its geographic and its cultural borders, in terms of those who do not belong, creating in the process a 'political economy of gendered bodies'—for after all, some of those who do not belong are useful. Domestic workers and sex workers fall into this last category.

Most shocking perhaps is the distortion of legal protections to produce their opposite—exposure and vulnerability—as Perera demonstrates so well in her scathing indictment of the Australian government's 'borderpanic' in the face of attempts by 'illegal' migrants to make unauthorised moves across state borders. Those who are delivered to offshore spaces which do not 'count' as Australian territory are not eligible for any of the protection provided for refugees by the Australian legal system. Again, a policy of 'temporary protection' for refugee men who arrive alone means that their families are denied legal means of joining them. And yet again, within the courts themselves in Australia, a legal challenge on behalf of detained children was presented as 'competing' for court time with local (real?) children. The High Court overruled the Family Court's decision to hear the case: the suburban home where the children lived was re-classified as a detention centre and therefore beyond the jurisdiction of the Family Court! In sum, the border is a mythical and mobile allocation of bodies in space and time: some who ostensibly cross it nonetheless remain forever outside it. Thus the media and the law continue to criminalise and demonise women and children who seek refuge.

Liz Fekete points out that displacement is profoundly gendered, inasmuch as 80 per cent of internally displaced people are women and children. Only 34 million of the 125 million displaced people living outside their country of origin are officially refugees. Many are trafficked, willingly

or unwillingly. Here again we see efforts to criminalise which have no legal basis. The European Union (EU) justifies its preoccupation with trafficking as a preoccupation with organised crime. However, Fekete argues, the Geneva Convention does not consider smuggling people across a border to be organised crime: the criminality of such an action depends on the purpose. In this interpretation, smuggling to join a partner already working would be acceptable; smuggling for illegal employment as a bonded worker would not. The second contradiction, she argues, is that it is the EU's own policies which create the market for the labour force which its other policies criminalise—and round again in an insane cycle of reciprocal justification.

But this is not just a contradictory tale. It is a dangerous and sometimes lethal one as more hazardous routes are chosen. Moreover, the immiseration produced in Africa and other poor regions by global economic policies, themselves supported by the very nations which do not want to receive refugees, enhances the reasons for flight. As criminologists we have to ask here, who is responsible for the originating harm? Fekete's final legal point concerns the adequacy of the protections available under international law itself. Citing the post-war situation in Kosovo, she indicates that women fleeing increased levels of rape, abduction and domestic violence did (and do) not fit in neatly with the categories available under the Convention, for such violence is deemed random rather than systemic.

Brinda Bose's focus is on sex workers in India and on trafficking and migration within the sub-continent as well as internationally. Importantly in the context of this collection, her chapter challenges some key taken-for-granted distinctions: between forced and voluntary sex work, for example, or between legitimate trafficking for marriage and immoral or illegitimate trafficking for sex work. For Bose, *all* sex workers are exploited, a condition they share with all other low paid workers and this is of greater significance than the forced/voluntary distinction. Further exploitation also results from the interventions of politicians, police and bureaucrats, all needing on occasion to demean sex work for personal gratification or for career enhancement. At transnational levels, the legitimate/illegitimate and criminal/non-criminal debates about sex workers travel through a range of knowledge networks, while economically the tourism industry, the entertainment sector and drug and other criminal networks benefit from exploiting these needed, deplored and always exploited women. In India the law constructs the female sex worker as a victim without agency, so activities such as trafficking are criminalised. Convictions for trafficking, however, are very hard to get, so the law is used as a tool to harass the sex worker instead. In these ways, as migration becomes feminised, more and more vulnerable women become available for exploitation, whether as domestic labourers or as sex workers (see also Anderson, 2000).

## HUMAN RIGHTS—LIMITS AND POSSIBILITIES

For all the contributors to this volume, developments in international law, especially those relating to human rights protections which promise to improve the situation of women, are welcome. Indeed, as our final section shows, it is the women's movement which has struggled, for more than thirty years, to achieve these advances. Nonetheless, the chapters which we have included in the third section of our volume reveal that the gains made so far are not enough. Esther Kisaakye discusses the inadequacies of the existing human rights framework as it affects women, focusing first on human rights violations affecting women in developing countries, with special reference to sub-Saharan Africa. These acts, described in harm language in international law, are acts the consequences of which could indeed have been known in advance. Potentially, at least, they fall within the strict definition of a social harm which we formulated above. Crimes against women in conflict situations are familiar, yet steps are not taken to avoid the rape, torture, mutilation, or enslavement of the women of the defeated. The extent of domestic violence is known, yet in spite of CEDAW nation states have not deemed it fit to institute effective preventive or enforcement measures. Kisaakye argues that there are layers of culpability here: the perpetrators, the leaders of the warring parties, the states which take no action and importantly, the facilitators of these conflicts, such as purveyors of armaments.

Kisaakye's second concern is the poverty of women in sub-Saharan Africa. She points out that a commitment to human rights is scarcely possible in a situation of widening economic inequality. Having already explored the role of creditor nations and the global lending agencies in the exacerbation of poverty, we ask again: who is responsible for the originating harm? On the question of the handling of the HIV AIDS crisis in Africa, Kisaakye again sees many levels of culpability including, for example, those engaging in armed conflict when it is already known that the rate of HIV infection always increases in such situations. And this leads to more poverty and compounds the original harm. As for harms created by global corporations and trafficking—namely, worse health care, more HIV AIDS, more orphans and more poverty—human rights documents are inadequate to protect the vulnerable, especially women. Many governments have not passed local legislation which would enable them to implement these rights, such as laws on domestic violence and marital rape, on property rights for women or law to criminalise customs and traditions that subordinate women. Moreover, not only is the human rights framework unable to hold nation states accountable for their violations, but in addition multinational corporations and international financial institutions cannot readily be held to account and may even have their business interests protected. Nor are the arms manufacturers capable of being held accountable or the nations

within which they are incorporated. Even full implementation of human rights protections could not guarantee security while such major players remain unaccountable.

Human rights may not be enough, but in some situations they are the best we have. Megan Davis chronicles attempts by the indigenous people of Australia to secure their human rights and above all their collective rights by means of a permanent forum on indigenous issues attached to the UN Commission on Human Rights Working Group on Indigenous Peoples and by local engagement. She focuses in particular on the struggles of the Aboriginal and Torres Strait Islanders and the tensions between individual and collective rights evidenced in these struggles. In the course of a complex argument three key issues arise. The first is the question of women's representation. The second concerns the incommensurability of the concepts of customary law and individualised Western law as applied in Australia. Thirdly, there are deeply gendered questions about who owns Aboriginal culture. To take just one example of the egregious situation of Aboriginal women in Australia, legal services give priority to defending criminal cases, thereby allocating state resources to the perpetrators, not the victims, of domestic violence, a massive problem in Aboriginal communities. The customary law applied in the courts is most frequently enunciated by Aboriginal men, often supported by white anthropologists. Male defendants exploit the power given by the congruence of their claims about customary rules with white ideology about the non-development of aboriginal legal systems. Finally, this rigid understanding of 'custom' enables men to announce and develop what Aboriginal women refer to as 'bullshit law'—the successful evocation of a 'traditional' right to abuse women that never was.

What Aboriginal women want is the right to develop their customary law in line with their continually evolving harms and contemporary circumstances. Confronted with these local myth interpretations, some Aboriginal women look to international human rights to offer a way forward. Once again, however, they may be thwarted because there are few rights protected in Australian law. Davis argues that while this may be the case, a necessary first step is the creation of gender equality in educational opportunity and in institutions of both private and public governance. Both Kisaakye's and Davis's chapters then confirm us in our view that human rights offer an opportunity in that they provide a site of struggle for equality and dignity and also a new political beginning, rather than an automatic end to women's problems.

## RETHINKING SOCIAL HARM IN A GLOBAL CONTEXT

We begin the final section of this book with Penny Green's chapter exploring how globalisation has impacted on populations which are vulnerable

to natural disaster. Green expresses concern that in relation to harm from natural disasters, some feminist analysts have overplayed their argument. First, the evidence that women fare worse in such tragic events is open to question, although in the particular situation which she analyses this may well be the case. Her concern is less with this evidence than with the possibility that such a focus on who fares worst in the event of a 'natural' disaster may distract attention from the larger question of culpability. This question must be addressed for reasons of natural justice, for reasons of adequate theorisation, but above all in order to make prevention possible. Green's argument is that some extreme natural phenomena, such as earthquakes as in this case, become disasters only because of human intervention. In the Turkish earthquake which she describes, the death rate was high because housing had been built in an area of known risk and without adequate, or indeed any, attention to the building standards ostensibly in force. According to Green, the regime which allowed this is endemically corrupt on many levels both locally and up to the highest reaches of the state. The multiple breaches of the regulations, the corrupt regime which made them possible and the social harm which resulted make the building of the unsafe dwellings and the resultant deaths, in Green's view, a clear case of state crime. To focus attention solely on the sex/gender of the dead, she argues, may mean that the true culprit is not identified and crucially, not publicly named.

This timely reminder that feminist work must engage politically and analytically with the impact of globalisation on all socially vulnerable classes and racial/ethnic groups had, we felt, to find an explicit place in a collection such as this where the focus has been not so much on 'all women' as on women in specific sites and locations who emerge as peculiarly vulnerable, if also incredibly feisty. Women and men who die at the hands—once removed—of the Turkish (or any) state are entitled to an acknowledgement in these pages. The lesson is of global relevance, as is feminism itself.

The second reason for starting the final section with this methodological lesson is that it keeps the concept of social harm clearly in the centre of the agenda. Social harm rather than 'crime' as the proper object of study of feminist work is the unstated link between these contributions. The negligent failure to anticipate the drowning of refugees outside Australian waters is not a crime. The increased risk of ill health and criminalisation for men and women as a result of a sudden reduction in their life chances relative to other people is not a crime either, for the global perpetrator is not legally accountable. Nor is the increased risk of violence experienced by immiserated ethnic minority women in a prosperous society. But all of these events are social harms identified either by the official use of harm language, or by a substantial body of opinion that regards them as deviant (Green and Ward, 2000). That is why this book is a further development of that committed criminology which studies social processes in order to help

make the world a better place. The further point that should have become evident here is that *all* harms are gendered—or sexed[4]—some as between perpetrator and victim, others by differential patterns of victimisation, others in terms of the extent of the damage inflicted. To discover the ways in which social harms are gendered should become normal for our discipline, part of the routine critical engagement with patterns of social ordering that constitutes criminology. Green's chapter reinforces this point, by focusing our attention so firmly on the perpetrators.

At first glance, the next two chapters take us in a different direction, the first focusing on the achievements of the women's movement rather than on the perpetrators of gendered harms and the other focusing on the nature of the research that will be increasingly necessary in a globalised world. Both, however, identify strategic ways forward, whether political or professional. Rhoda Reddock's chapter is a celebration of women's political gains over recent decades. Her argument is grounded in her own long experience of local, regional and international feminist struggles and as her argument develops, it reveals how closely integrated these levels are. In Trinidad and Tobago there has been a long tradition of feminist action both in the trade union movement and through the churches. Reddock's earlier published work retrieved this forgotten practice from labour history (Reddock, 1988). In the 1980s there was a mushrooming of groups throughout the Caribbean, all grounded in their specific local circumstances and deeply concerned with the issue of violence against women (see also Morrow, 1994). At the same time this concern led to the formation of both regional and national groupings. As these regional alliances developed, so they restructured and the centre of gravity in feminist politics shifted from the north to the global south. However, the north–south alliance has remained strong at the international level, as evidenced in Reddock's discussion of the Centre for Women's Global Leadership. Although the centre began with leadership programmes in training and advocacy, those attending have also developed a focus on women's human rights and regional institutes have been organised in the south. Two of these, for example, held in Turkey and Nigeria, focused on women living under Muslim laws. Similarly, the White Ribbon Movement began in Canada, but is supported by feminists in Latin America and the Caribbean. The Women, Law and Development International group, however, grew out of the Third World Conference on Women held in Nairobi in 1985, and has been primarily concerned with feminist legal work, first by supporting the development of appropriate legal frameworks for addressing domestic violence and more recently concerning itself with the human rights of women.

As indicated above, Reddock's carefully chosen examples include the White Ribbon group of pro-feminist men. Women's groups in Trinidad

[4] See Howe (1998) for an elaboration of the concept of sexed crime.

and Tobago have always been open to the possibility of male membership, inasmuch as both women and men have been and still are shaped by the experiences of slavery and racial and colonial exploitation. Thus the inclusion of this organisation in the discussion makes an important political point, albeit unstated and perhaps taken for granted by the author. So far so celebratory, but Reddock concludes with a note of warming. There is a fear that leaders trained and experienced within local and regional networks are being 'creamed off' to staff pro-feminist agencies at the international level. Again this is complex, for these are the best women to fill such posts, but if the grass roots wither then the agenda will cease to be set as hitherto by women's experience on the ground; policy making will be influenced more by general feminist ideas, rather than by generalisation from the ever changing experiences of women in particular local circumstances. In the process what is so special about feminist policy and practice and what keeps it relevant over time and place, may be lost.

Our final chapter reminds us that, since we approach these complex issues as scholars as well as activists, it is essential to pay careful attention to questions of both research methodology and political sensitivity. The women's movement has been strong in its celebration of diversity, in its post-1970s recognition that not all women are white and/or middle class. Globalisation and the strength of organised feminist praxis in the developing world, as documented in this book by Reddock and Antrobus in particular, guarantees this. Thus Sandra Walklate castigates international crime victim surveys which, being based on what is thought to be known in the West, can make no sense of either 'crimes' or 'victims' when violence, to take one example, has no fixed cross-cultural meaning. The interpersonal relations which are the foundation of social life must be approached in terms of the cultures which in part constitute them. Close attention must be given in any research—and by implication in any political activism—to cultural differences. She therefore suggests that to understand women's problems it is necessary to study 'locales' rather than nations, and to explore lifestyles as adaptations to such locales. The 'one (Western) concept fits all' approach causes the rich variety of womanhood to disappear and with it both the range and the specificity of women's problems and the inventiveness of their responses to them.

We have concluded with this call to high quality knowledge production, with its close attention to particularity, because such an understanding of knowledge underpins the contributions in this collection. Some authors have described a local political moment in their struggles: Perera, Bose, Cain, Green and Howe, for example. Others extrapolate from a broader range of times and places: Fekete, Antrobus, Davis, Reddock and Kisaakye theorise in this way. The point that Walklate reminds us of is that castles are only as strong as the ground on which they are built and that ground, for us, has been the diversity of lived experiences. In

the conclusion to this introduction we continue our quest for a way of theorising these experiences which acknowledges the women's own sense or knowledge of having been either harmed or, indeed, as for Reddock, Davis and Antrobus, empowered.

## DREAM ON

In Peggy Antrobus' 'dream', women create local spaces of resistance and from these islands they supplement their power by creating alliances. These are the sites from which another vision and another practice can be forged. This book has taken Antrobus' dream as its purpose—a purpose which the editors glimpsed only in an inchoate way when they called this multidisciplined, multipracticed group of women together. Our authors have sought to unpick the ideologies justifying extremist 'liberal' economics, and the ideologies of fear and the levels of private and public violence which support and derive from them. In this final section of our introduction, we have to re-phrase our question and ask instead, in the light of this analysis, *why on earth* criminology? This returns us to the question of social harm. `

Social harms against women, as feminist analysts pointed out so long ago (Howe, 1987; Pitch, 1995), are quite frequently not defined as crimes and when they are so defined it may well be on terms that do not adequately redress the injury. Some of the harms we have discussed here—from violence in the home to rape by soldiers—are crimes. But conceptual problems arise even here, for what if it is a rebel army? Where is the state that will enforce the law? This is an empirical question with a range of answers, but in some reported cases the uncertainty as to where the civil power lies is the crux of the problem.

The merit of human rights conventions is that, while many obligations are located at the level of states parties, others apply to individuals even where no effective state power is present. Rape of the defeated is a war crime and in the case of war crimes there is even an enforcement mechanism—the International Criminal Court at the Hague. However, for the range of harms that our contributors have discussed in this book, the situation is rarely so clear. In each instance the following questions have to be addressed and it is because Sutherland's and Green and Ward's definitions force these questions that they have such value. First, is the act defined by harm language in a legal rule (Sutherland, 1949) or is it defined as a harm, as deviant, in a public way by a large number of people (Green and Ward, 2000)? Secondly, is there a sanction provided in law or widespread social censure? Thirdly, in the case of a legal sanction, is there the capability of enforcing the sanction and if not why not? Let us explore the harms alleged in these chapters in these terms in order to expose the unity underlying these ostensibly diverse contributions.

The contributors to this volume are clear that they are discussing social harms, but a harm, like a crime, must have a perpetrator and here we run into difficulties. Some outcomes—internecine fighting, more extreme forms of poverty, deteriorating standards of health including HIV AIDS epidemics, the re-empowerment of extreme religious groups and the consequent disempowerment of women—result from the policies of a particular government or the practices of a particular ethnic group. Some harms are punishable by local law; rape, for example, or engaging in terrorism. But in this text contributors such as Antrobus, Cain and Kisaakye have argued that behind the immediate perpetrators there stand other individuals and organisations whose policies and practices have, in a sense, called the immediate perpetrators into being. The perpetrator problem is therefore a complex one. The policies of international financial institutions such as the World Bank, IMF and WTO are seen to have, in a sudden and extreme way, impoverished many countries in the global south, and those in sub-Saharan Africa in particular. Accordingly, theoretically guided research in each case is needed to identify the 'ultimate' perpetrator. This is not a legal concept but a social and criminological one. It is necessary to identify ultimate as well as intermediate and direct perpetrators, in order to solve the problem in a constructive way, ie to stop the harm, identify a way forward and secure redress.

Others of the harms discussed here—the increase of violence in 'glocalised' sites for example, or the failure to protect indigenous women sex workers, or those entitled to a safe dwelling place—have a clearly identifiable perpetrator at the level of the national or local state, although here too, as the chapters reveal, theoretical work is necessary to uncover the precise nature of the harm (failure to protect or the use of 'custom' to justify crimes against women, for example) and the complex layers of responsibility as between local capitalists, local authority, employees and the nation state. Only in the case of the Turkish earthquake, discussed by Green, is the absence of harm language at the site of harm a difficulty. In such cases the role of the criminologist must be that of moral entrepreneur.

This brings us to the second question, that of the sanction. These studies show a very limited correlation between the presence of a sanction and the presence of a harm. In Green's case, sanctions for corruption are available, but prior to her work the harm of failure to protect as a result of corruption had not been identified. In other cases the harm has been clearly identified, for example that of the immiseration resulting from the stringent conditionalities attached to IMF loans (see Chossudovsky, 1997; Cain and Birju, 1992; Cain, 2006; Przeworski and Vreeland, 2000). But known perpetrators cannot be held to account. International corporate capital is notoriously hard to hold to account at law, but for commercial organisations the court of public opinion can have an effect. This is more problematic for the global financial institutions (IMF, WTO, World Bank)

as constitutionally they 'belong' to their most generous donors, in the sense that voting rights within these institutions are proportionate to the size of each nation's contribution. There is no superordinate power. Moreover, it is hard to see how public opinion could impact directly on these private but public bodies. In these cases, therefore, the use of our strict criterion for a social harm has exposed a very serious problem. There is therefore no mechanism at all for holding these institutions to account. We cannot resolve this, so it is a problem that must now go on the agenda of the international feminist movement. In the meantime, the harms perpetrated by these global agencies, given the widespread recognition of them, entitle us to characterise them as deviant institutions: a case of censure without sanction.

The plight of refugees is a state-induced harm, albeit that these movements of people may themselves result from the policies of the global institutions. Interpretation of the Geneva Convention remains largely a local matter, although the European Court of Human Rights (ECHR) is anomalous here since technically it is a transnational court established by the member states. The chapters in this volume reveal that the treatment of refugees in would-be host countries is both raced and sexed and almost as deadly in its effects as the IMF loan conditionalities. The perpetrators of the harms described are nation states. Feminist action within nation states is essential, not only on humanitarian grounds to reduce the abuses revealed by Fekete and Perera, but also to shift policy from the historical favouring of political over personal grounds for victims of state-condoned violence and for refugee families, to insist that the unit of admission should be the family rather than the individual worker and perhaps to call for a more extensive review role for a new UN agency.

Whatever we do the two methodological lessons arising from this text are to listen to what the women affected want and where men are victimised too, to harness their contributions as allies. Much of this book makes the reader want to bury her face in her hands. We, as editors hope that the outcomes both for research and action will be more constructive than that, though there must be time to weep as well.

## REFERENCES

Anderson, B (2000) *Doing the Dirty Work: The Global Politics of Domestic Labour* (London, Zed Books).

Bauman, Z (1998) *Globalisation: The Human Consequences* (Cambridge, Polity Press).

Brautigam, D (2000) *Aid Dependence and Governance* (Stockholm, Ministry of Foreign Affairs Expert Group on Dependence and Governance (EGDI) http://www.egdi.gov.se/pdf/2001/pdf/2000.1.pdf).

Brogden, M (2001) *Genocide: Killing the Elderly* (London, Jessica Kinsgley).

Cain, M (1988) 'Towards an Understanding of the International State' 11(1) *International Journal of the Sociology of Law* 1–10.
—— (2001) 'Orientalism, Occidentalism, and the Sociology of Crime' 40(2) *British Journal of Sociology* 239–60.
—— (2006) 'Is the Spoon Long Enough: On Global Economics, Local Harms and Crime' Plenary Address to the World Congress of Sociology (Research Committee on Deviance and Social Control) Durban, South Africa, 23–29 July.
—— and Birju, A (1992) 'Crime and Structural Adjustment in Trinidad and Tobago' (April–June) *Caribbean Affairs* 141–53.
Chossudovsky, M (1997) *The Globalisation of Poverty* (London, Zed Books).
Cohen, S (1993) 'Human Rights and Crimes of the State: The Culture of Denial' 26(2) *Australia and New Zealand Journal of Criminology* 97–115.
Dorling, D (2004) 'Prime Suspect: Murder in Britain' in P Hillyard, C Pantazis, S Tombs and D Gordon (eds), *Beyond Criminology: Taking Harm Seriously* (London, Pluto).
Green, P and Ward, T (2000) 'State Crime, Human Rights, and the Limits of Criminology' 27(1) *Social Justice* 101–15.
Harris-Short, S (2001) 'Listening to "the Other": The Convention on the Rights of the Child' 2(2) *Melbourne Journal of International Law* 304–50.
Hillyard, P, Partazis C, Tombs, S and Gordon, D (2004) *Beyond Criminology: Taking Harm Seriously* (London, Pluto).
Howe, A (1987) 'Social Injury Re-visited: Towards a Feminist Theory of Social Justice' 15(4) *International Journal of the Sociology of Law* 428–38.
—— (1998) *Sexed Violence in the News* (Sydney, Federation Press).
—— (2004) 'Provocation in Crisis—Law's Passion at the Crossroads? New Directions for Feminist Strategists' 21 *Australian Feminist Law Journal* 55–77.
Kempadoo, K and Doezema, J (1998) *Global Sex Workers: Rights, Resistance, and Re-Definition* (London, Routledge).
McLeod, E (1982) *Working Women: Prostitution Now* (London, Croom Helm).
Morrow, B (1994) 'A Grass Roots Feminist Response to Intimate Violence in the Caribbean' 17(6) *Women's Studies International Forum* 579–92.
Pitch, T (1995) 'From Oppressed to Victims: Collective Actors and the Symbolic Use of the Criminal Justice System' in N Naffine (ed), *Gender, Crime, and Feminism* (Aldershot, Dartmouth).
Przeworski, H and Vreeland, J (2000) 'The Effect of IMF Programs on Economic Growth' 62 *Journal of Development Economics* 385–421.
Reddock, R (1988) *Elmer Francois: The NWCSA and the Worker's Struggle for Change in the Caribbean* (London, New Beacon Books).
Sutherland, EH (1949) *White Collar Crime* (New York, Holt, Rinehart and Winston).
Thornton, M (2006) 'The Dissolution of the Social in the Legal Academy' 25 *Australian Feminist Law Journal* 3–18.
Vasciannie, S (1997) 'Political and Policy Aspects of the Jamaica/United States Shiprider Negotiations' 43(3) *Caribbean Quarterly* 34–53.

# Part I

# Position Papers

# 1

# *Criminogenesis and the War Against Drugs: (Another) Story of Absented Women*

MAUREEN CAIN

## INTRODUCTION

In this chapter I argue that from a criminological perspective the impact on women of global economic policies has largely been ignored. The first two sections deal with the impact of structural adjustment conditionalities as imposed by the International Monetary Fund (IMF) and the World Bank on nation states seeking loans, with special reference to the Caribbean. Although the terms of those loans have been similar for developed countries, my focus here is on less developed countries. In the first section I demonstrate that this impact has been both harmful and criminogenic.

One of the responses to sudden immiseration in less developed countries has been to seek a lucrative alternative income by trading in illegal narcotic substances. In the second section I reveal that this response exacerbates the crime related problems of the recipient states. Although women are largely absented from the narcotics literature, I argue in the third section that women not only pick up the workload abandoned by the shrinking post-adjustment state (as *has* been demonstrated) but that they are also negatively affected by the narco-trading response to structural adjustment programmes. I also speculate briefly on the processes which can lead to the absenting of women from research and policy in these areas. It is necessary for women to play a part in the financial institutions of the global state so that these issues may be fed into the debates about global economic policies, and appropriate changes in strategy adopted.

## CRIME, HARM AND GLOBALISATION IN TRINIDAD AND TOBAGO AND THE CARIBBEAN

It was in Trinidad that I was first exposed to the impact of the International Monetary Fund (IMF) loan conditionalities on the economy of a developing

country. Trinidad and Tobago took its first IMF loan in 1987, having experienced a declining economy since 1983 when the Organization of the Petroleum Exporting Countries (OPEC) induced boom in oil prices came to an end. One condition attached to this loan was a floating of the currency (hitherto pegged to a fixed rate of exchange with the US dollar). As a result the rate of exchange fell sharply: fewer imported goods could be bought with the same wages. Trade and currency restrictions were also lifted, with two equally harmful consequences: outflows of investment capital to overseas banks and unlimited access to the local market for many foreign goods. The latter put small producers out of business, most particularly producers of commodities produced for import substitution, such as dried local fruit. Many goods were priced out of the range of the poorest quartile of local consumers. Meanwhile, state enterprises were required to reduce their workforces and some, such as water and telephone services, were sold off. Jobs were therefore lost in both the public and private sectors. The tax regime was changed: tax on high earners was sharply reduced (from which I personally benefited) and a purchase tax on a wide range of commodities was introduced, shifting the burden from the better off to the relatively poor. At the same time, the oil price remained low.

The result was instantly apparent in the official statistics, with the median income for men dropping by TT$ 200 per month between 1987 and 1989. There was also a readily apparent polarisation in the society, with the numbers in the highest income bracket of TT$ 5,000 per month rising from 5600 to 8000 males and doubling from 700 to 1400 females, while the numbers in the lowest income bracket (less than TT$ 250 per month) also increased, for males from 6000 to 9200, and more than doubled from 4600 to 10,900 for females. No further evidence is needed to support the argument that structural adjustment had particularly negative effects on women. (See Table 1.1.)

There were also indirect negative effects on women as well as the absolute loss of earnings recorded above. Deere *et al* (1990), Ellis (2003) and Sparr (1994) have all pointed out that in the Caribbean (as worldwide) women carried the burden of replacing reduced public health care services with home care, of feeding families in a situation of higher prices and smaller domestic budgets, of finding a cash resource to buy the school books, and so on. Mothers, partners and sisters, as one may guess, also gave succour to newly unemployed men.

The economic safety valve was the informal economy. Anything that could be grown or homemade was produced and sold. The 'huckster' trade in imported goods continued. Sidewalk trading in surplus fruits and vegetables or the products of home baking boomed. Le Franc (1994) reports that as a result of the much earlier structural adjustment programme in Jamaica and the opening of the borders there some women were able to vastly expand their import businesses. People used whatever social, political,

**Table 1.1 Earnings of those Employed in Trinidad and Tobago, 1987–1991**

| Year | Mean income per month | | Median income per month | | Numbers in top income bracket ($5000 pm*) | | Numbers in bottom income bracket (less than $250 pm*) | | Numbers employed | |
|---|---|---|---|---|---|---|---|---|---|---|
| | M | F | M | F | M | F | M | F | M | F |
| 1987 | 1,800 | 1,500 | 1,500 | 1,200 | 5,600 | 700 | 6,000 | 4,600 | 251,000 | 121,000 |
| 1988 | 1,700 | 1,500 | 1,500 | 1,200 | 5,500 | 800 | 6,700 | 4,600 | 248,000 | 123,000 |
| 1989 | 1,700 | 1,400 | 1,300 | 1,200 | 6,600 | 800 | 5,800 | 4,300 | 246,800 | 118,700 |
| 1990 | 1,600 | 1,400 | 1,300 | 1,200 | 7,000 | 1,200 | 6,200 | 3,900 | 253,200 | 120,600 |
| 1991 | 1,700 | 1,400 | 1,400 | 1,100 | 8,000 | 1,400 | 9,200 | 10,900 | 265,300 | 135,500 |

*per month.
Source: Annual Statistical Digest 1991.
Data re-analysed by the author for the Sampson Committee (Sampson, 1994).

cultural, and economic capital they had to deal with the situation—and those who already had social and economic capital in terms of trading networks and access to loans or other financial capital, were set fair.

Brown, whose 'before and after' study of a structural adjustment loan remains the only one available, also discovered something more surprising and in the longer term more damaging—a value shift (1994: 61). In her follow-up study, the parents and children of middle class families in Jamaica no longer considered education to have intrinsic value, to be worth having in its own right, as had been the case before the IMF loan. Instead they came to see education as an instrumental value, a means to achieving a higher income and nothing more. Transpose her findings on education to the wider social order and some of the more harmful consequences of the instant immiseration caused by structural adjustment policies can be explained.

In terms of their self images, their long-term plans, and the opportunities (or various 'capitals') available to them, people make their everyday tactical choices (Bourdieu, 1987; Jenkins, 1992). When their means of life are suddenly reduced, it is argued, they have to make alternative arrangements, to find alternative ways of getting where they want to be. From Merton (1957) to Lea and Young (1984) and Lea, Mathews, and Young (1989) and the subsequent work of the new left realist group, crime has been seen as a way of achieving economic status and identity goals when other possibilities are reduced. This theory at least makes common sense, but has never accounted for enough of the variance. Nor has it ever adequately explained the apparently non-rational, non-goal directed responses so well documented in Trinidad and Tobago, namely the massive increase in non-acquisitive, non-instrumental crime which occurs when the economic rug is pulled out from

under the feet of those on lower incomes and also of public servants, whether low waged or middle class. Note that the most dramatic increase concerns not property crimes but offences against the person. (See Table 1.2.)

But let us suppose that, as in the case described by Brown (1994) for Jamaica, it is not, or not just, people's opportunities that change but people's fundamental values about what is worth having. If the objectives change, as she documents in the Jamaican case, then there *can* be no stable or well understood or, in Merton's terms, 'socially approved' means of achieving high status. This is a much more disorienting and profound destabilisation of the social order, similar to the post-revolutionary phenomenon Foucault and his students reported in France, where 'in a prodigious reversal of all signs', all that was familiar was inverted, and among other things, a wave of murders by women—'ogresses'—as well as men resulted (Peter and Favert, 1978: 175–98).

We have known for a long time that sudden and marked changes at the economic level affect both suicide rates (Durkheim, 1952) and crime rates, but our theoretical explanations have been more akin to Aristotle's than to

**Table 1.2 Serious offences reported to the police (excluding traffic offences) 1980–1992**

| Year | Offences Against Persons | Breaking and Entering | Other Offences Against Property | Forgery | Other Offences | Total |
|---|---|---|---|---|---|---|
| 1980 | 439 | 5,463 | 6,262 | 56 | 18 | 12,238* |
| 1981 | 595 | 6,306 | 4,678 | 34 | 8 | 11,621 |
| 1982 | 691 | 6,877 | 3,018 | 94 | 17 | 10,697 |
| 1983 | 716 | 7,261 | 3,287 | 94 | 38 | 11,396 |
| 1984 | 643 | 7,743 | 3,542 | 83 | 14 | 11,725 |
| 1985 | 686 | 9,089 | 3,978 | 216 | 10 | 13,979 |
| 1986 | 741 | 8,861 | 4,603 | 125 | 31 | 14,361 |
| 1987 | 844 | 8,707 | 6,021 | 136 | 524** | 16,232 |
| 1988 | 976 | 9,352 | 7,723 | 164 | 1,167 | 19,385 |
| 1989 | 1,171 | 8,278 | 7,436 | 187 | 911 | 17,983 |
| 1990 | 1,098 | 7,543 | 5,916 | 129 | 1,516 | 16,202 |
| 1991 | 1,161 | 7,313 | 3,280 | 245 | 1,406 | 16,157 |
| 1992 | 1,254 | 7,938 | 7,267 | 236 | 985 | 17,680 |

*The published total is 12,233. This appears to be an error.

**Part way through 1987 certain drug offences were reclassified as serious rather than minor crimes. For comparability the annual totals should therefore be adjusted down. This was not done here because exact numbers are unknown.

Source: Taken in part from Cain and Birju (1992: 143). Data from Central Statistical Office, reanalysed by the author for the Sampson Committee (Sampson, 1994).

those of Copernicus or Galileo, because we thought that values were a fixed point. In fact as Brown's work reveals, values too are responsive to sudden and extreme changes in the means of life. What we need, therefore, is a sociological theory of relative motion, a theory without constants. By a different theoretical route, therefore, we have arrived at the postmodern condition.

It is in this context that the data about crime rates in Trinidad and Tobago should be interpreted. A growing part of the economic slack was taken up by a trade in stolen goods. Property crime reached an all-time high in 1988, the year of the loan, while crimes of violence rose steadily from 976 in 1988 to 1254 four years later (Sampson, 1994). The trade in cocaine took off in these years. Trinidad is a trans-shipment rather than a producer country for drugs, but this was the period when the trickle down to local users became an issue of serious concern. It was widely believed that the drug use and the increased violence were related. It may be so, or it may be that they are independent consequences of the social dislocation just described. Be that as it may, the point I want to secure by this excursion into recent Caribbean history is that the IMF conditionalities had criminogenic consequences.

Supporting data are available from Nigeria, where Green (1998) describes the aftermath of a structural adjustment programme, reporting the story of a school teacher who had invested all his available resources in narcotics, and was at the time of interview successful in his alternative occupation as a trader. We have even more significant data from Jamaica, where the unpredictability of the effects of SAPs becomes even clearer. In the Jamaican case, the outcome was shaped by long-standing networked links, both familial and trading, between Jamaica and the United States, and also by the territory-based politics of that nation (as opposed to the more familiar (to me) class-based politics of England and Wales and Scotland or the ethnicity based politics of Northern Ireland and Trinidad and Tobago). In brief (but see also Campbell, 1976; Harriott, 2007; Headley, 2009) territorial 'bosses' were empowered both by their political connections and by the drugs money, which together helped them to deliver the vote and to acquire weaponry. This enabled territorial groupings connected to the two major parties to compete for followers both directly and in terms of favours/patronage. Over time, according to Headley, gangs became embedded in their areas, an apparently permanent part of the everyday social structure, the political structure and the illegal trading structures involving mainly money and guns. Gang leaders or 'dons' became the obvious people to turn to in any kind of domestic emergency, and so on.

I have discussed in detail elsewhere the other harms brought about by structural adjustment programmes (Cain, 2006; 2009), so they can be very briefly noted here: an increase in civil strife (Fitzgerald, 1999); a marked increase in corruption and a disempowering of the central state and its agencies (Brautigham, 2000) are the most thoroughly documented, apart from the long-term nature of the harmful economic effects, persisting

beyond the moment of successfully 'coming out' of the final SAP. Indeed, the long-term damage of structural adjustment, even when it is imposed on the people by a democratically elected government rather than an independent global agency, has most recently and fearfully been documented by Dorling (2004), who demonstrates using data for England and Wales that the probability of being murdered for males leaving school into a 'moment' of structural adjustment induced unemployment remains higher throughout their lives than that of other males. Just another datum in search of a good enough theory? On the contrary, we now have the theory, and knowing this, to repeat the mistake would be nothing less than a moral outrage perpetrated on the poor.

Is there indeed the possibility of such a repetition, when allegedly the IMF leopard changed its spots in 1999 when the Enhanced Structural Adjustment Facility was re-named the Poverty Reduction and Growth Facility? Recent work from within the World Bank itself suggests at best that the jury is still out (Easterly, 2005). Indeed, the weight of informed opinion at the time suggests that the poor and their spokespeople were not adequately consulted about the change, and that 'the efficacy of the economic reforms, on which so many lives and livelihoods now hang' is unproven (UNCTAD, 2000, cited in Peet, 2003: 103). Another study cited in Peet (p 102), came to the conclusion that over the longer term the IMF has 'failed to improve the economies of less developed countries, and that in many cases it has hurt them' (Johnson and Schaffer, 1999: 102). Most telling of all for the argument here, knowing as we now do not just the immediate but the long-term personal, as well as structural and cultural effects of structural adjustment programmes (respectively death, enhanced inequality, and a shift to instrumental values) is the clear evidence of Garuda (2000) and Lundberg and Squire (2003). Both analyses demonstrate conclusively and cross nationally the tendency of IMF programmes to enhance inequality as well as the fact, familiar to residents of the UK in the 1980s, that an 'economy' can grow while the poor continue to become relatively, and sometimes absolutely, poorer. A beneficiary, in all cases, is global capital, in both its industrial and its abstract (financial) forms.

As regards the ostensible state beneficiaries, structural adjustment loans weaken them in many ways. Birdsall *et al* (2002) and Brautigam (2000) have argued cogently that as a result of international agencies donating off-budget to particular departments and institutions of state the central policy making, budgeting and accounting functions have been weakened and the resultant by-passing of parliament has reduced accountability and encouraged corruption. Arias and Logan (2002) argue that the reformed PRG loan scheme, by insisting on wider consultations in civil society, achieves little beyond further bypassing an already weakened state. This distrust of states' powers is a relic of the heyday of structural adjustment in the 1980s, based on a fear both of the emergent autonomy of post-colonial states and of state

power itself as being suspect, too close to the Soviet model. Post-colonial governance now uses a rhetoric of empowerment to disempower the less developed nations.

## ON THE CONTRADICTORY POLICIES OF GLOBAL INSTITUTIONS: THE CASE OF PROSCRIBED NARCOTIC SUBSTANCES

The Bretton Woods Institutions (IMF, World Bank) were created in 1943, followed by Gatt[1] (later WTO) in 1947, in much the same international climate as the post Second World War United Nations, and both have the US, as the global victor in that conflict, as the key player (Kiely, 1998). But whereas since the 1980s the economic triumvirate has operated with an increasingly clear and singular ideology (economic liberalisation), the UN institutions have a procedural ideology of participation and representation which of its nature tends to undermine singular claims about substantive policies.[2] Contradictions between the two sets of institutions might therefore be expected. However, in the area of drugs and drug control there is a remarkable convergence of policy. The contradiction here is *internal*: between economic policies that generate and sustain the drugs trade, stemming from the global economic agencies, and policies that seek to eliminate it stemming from the political agency of the UN. The argument goes like this: first, IMF/WB/WTO economic policies, doubtless unintentionally, enhance the development of the informal economy, in both legal and illegal aspects. In the Caribbean context as elsewhere these policies have encouraged the trade in narcotics. This trade is outlawed by the United Nations, with US support. Secondly, the narcotics trade also distorts the pattern of legal economic development, which yet other UN agencies such as the United Nations Conference on Trade and Development (UNCTAD) seek to encourage. The policies of different agencies of the global state are therefore in contradiction. These contradictions exist partly because ideological and political disagreements are inscribed in the policies imposed on the poor and partly because of the desire to control, through the WTO, which trades shall be free and which unfree. Thirdly, a further contradiction lies in the fact that the illegality of drug trading *weakens* trading states in the face of a rhetoric of *enforcement* as *strength* because it corrodes the state legal institutions (Kirby, 1992; Crane Scott, 1995; Griffith and Munrow, 1995). Fourthly, the final and most tragic and perhaps the only contradiction based on the reality of the lives of the non-trading poor, is that between the

[1] General Agreement on Tariffs and Trade/World Trade Organisation.

[2] This is why core human rights documents such as the Geneva Convention of 1951 have such moral force: all the nations of the world have agreed them without imposition.

needs of producer and consumer nations where narcotics are concerned. I will deal with and document each of these points in turn.

In relation to the question of IMF policies encouraging the irreversible development of an alternative illegal economy including the trade in narcotics, I have discussed the pressures encouraging this development in the case of Trinidad and given evidence about an increase in violence. More evidence comes from Jamaica, where Stone (1988) has noted that in rural areas those villages which are prosperous are those where a drug dealer dwells. There are other reasons for the territorial and gang based politics of Jamaica (Campbell, 1976; Headley, 2009), but Harriott (1996) has noted a qualitative change in the nature of violence in that country in that stranger violence, usually a rare phenomenon, is increasing. He attributes this qualitative shift in the character of violence to an expansion of the narcotics trade, as well as to continuing immiseration. Harriott points out further that patterns encouraged by economic or political developments are not readily reversible. There are better or worse ways forward, but once the structure has been developed, the state infiltrated, the networks formed, the higher income experienced, the legal loopholes identified, the capital built up, there may be a change of strategy or venue but no reversal unless the bottom drops out of the market and the trade ceases to be lucrative. In the next section I argue that only legalisation of production and de-criminalisation of distribution could produce such a massive fall in price. That is not at the moment either US or UN policy.

Women are visible here in two capacities: first, they are known to fill the low level roles in the trading networks; and secondly, the role of women in sustaining the families involving husbands, sons, brothers or grandsons who are users is understood in the structurally adjusted societies but has not been studied.

Ivelaw Griffith argues that the narcotics trade is related to an increase in violent offending and a consequent increase in the numbers imprisoned for the Caribbean as a whole (1993; 1996; Griffith and Munrow, 1995; see also Crane Scott 1995; Kirby, 1992). This corresponds to the results for Trinidad and Tobago documented earlier. The penal systems are inevitably overstretched. Research in Trinidad (Cain and Birju, 1992) suggested that in these structurally adjusting years the length of sentence was increasing as well as the numbers involved. Moreover, Hagley shows that eight men in a cell was normal; a dozen or fifteen were reported, with no plumbed sanitation and insufficient floor space for all to lie down (Hagley, 1996: 11). Order was maintained in the prisons with the aid of dominant prisoners—that is, the worst men. The reports of Stern (for *Caribbean Rights*, 1990) and of Stern (1998) present a similar picture throughout the region. Here there is another contradiction: between the effects of IMF/WTO policies on imprisonment levels and the UN's continuing efforts to improve prison conditions (UN, 1996).

Griffith (1996) refers to a backlog of cases in the courts and of men and women languishing on remand for up to four years—and this in a system which takes no account of time already served when administering the sentence and in which the level of violence in the remand prison, in Trinidad at least, is notorious (Hagley, 1996).

At the same time the number of women in prison also rises, and so does the number from other islands or even from beyond the Caribbean. These 'foreign' women, cut off from family and friends, are almost all minor narcotics traders, presumably finding a way to make ends meet. So the system is creaking, even without corruption.

Corruption of officials and professionals at all levels—police, judiciary, prison officers, customs officers, lawyers, is also reported by Griffith (1996) and for Jamaica by Harriott (2006). Corruption of elected politicians is well documented by Bullington (1991) and by Block (1991). All this weakens the state in terms both of its administrative competence and of its legitimacy both at home and abroad. The economically weak state becomes weak politically too. In a weak state social services are not a priority and women carry the extra burdens arising from, for example, half day education and inadequate health care, while working at low paid jobs to make ends meet. Routinely they pick up these invisible burdens. In Trinidad and Tobago a determined attempt to take violence against women seriously as a policing problem has been made at national and local levels (see Cain, 2000). But while resources are diverted into the policing of narco-trading, many states feel unable to divert serious resources into the problems of interpersonal violence. Certainly in South Africa, international donors targeted resources into the policing of the narcotics trade in the face of local policing priorities which included more attention to family and other interpersonal violence (van der Spuy, 2000).

Women appear only as minor dealers, relatively unimportant from a policing point of view. As important for feminists concerned about the drugs trade and the post-colonial state is that this is the context in which women are struggling to create a normal home environment, buy, make, alter the uniforms, purchase school books, pay the light bill, feed the family and save enough to take a small gift of fruit to their men in gaol. In Trinidad's main gaol (Port of Spain) wives, mothers and sisters get the opportunity to stand in a line and shout at the men across two glass barriers and a space rendered inaudible by the cacophony of their cries. They are allowed to bring two pieces of fruit and certain small necessities, no more. The above litany of the deleterious effects of illegalising narcotics is relevant precisely because men's doings at the political level impact so profoundly on women's invisible lives. When we think crime and globalisation we are dealing with a pre-feminist body of research, even when the papers bear a twenty-first century date. We are therefore returned to the first task of feminism: to identifying invisible women, to noticing the effects on women of men's doings in the

power-wielding global economic and politico-legal spheres. It is seeing the effects of these policies and practices from the standpoint of that very female environment, the prison visiting room, where mothers hold back the tears to catch a near silent sight of their son, as they share his degradation while trying to share the family news in this massive inaudibility of noise. Political/economic decisions, policing, worklessness and imprisonment may be men's games, but as in war women carry the emotional, care providing and reproductive burdens imposed by these practices. Feminists more than anyone have argued the need to study white male power structures and their impact on women of colour in particular. Criminology, as we said in the *raison d'être* for the conference which led to this volume, has been slow to go global: it cannot go global without re-discovering the first principles of feminism.

However, going global does not entail a return to monolithic theorising, but rather an enhanced sensitivity to the particular. Nowhere has the error of one size fits all solutions to a problem been more apparent than in the narcotics trade (Cain, 2001). In relation to narcotics use and abuse Western nations have opted for a demand reduction strategy, by and large, in spite of increasingly persuasive evidence that organised narcotics trading generates both more and new forms of violence (Stevenson, 1994; Transform Drug Policy Foundation, 2007). For more than a decade it has been made clear that the main beneficiaries of the criminalisation of narcotic use are those who sell drugs. Criminalisation keeps the supply if not scarce then at least risky and it therefore keeps the price high and the dealers rich. It increases the costs to the state not only because of the high costs of policing and imprisonment, but because of the reduced willingness/ability of users to control the quality of the drugs supplied to them, or to access the health care they need or to continue to 'pass' as 'normal' members of the society. The risk of the vicious cycle is enhanced: identified user; social exclusion; alternative means needed to sustain use; and round again.

The arguments are resisted because the UK is a signatory to the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (UN, 1989). They are also resisted because the effect that legislation or de-criminalisation would have on demand is unknown—the case can be argued either way. Nonetheless, in the big user nations, the 'war against drugs' is patently being lost. Legalisation would have certain positive consequences: a massive drop in price and a movement out of drugs to more lucrative trading opportunities by organised crime. Organised violence would decline, and low-level pushers who put pressure on children and young people would become redundant. Moreover, users could more readily receive reintegrative help if they chose.

For people in Latin America, the Caribbean and South East Asia, the issues are different. Here low-level pushing is likely to be a main job, not

a sideline. For those who become addicted there is no adequate healthcare. Here, too, violence at a communal level becomes endemic, with the qualitative shift identified by Harriott (1996) generating widespread caution, if not fear. At the societal level as we have seen, whole areas of state activity may become destabilised. Toxic spraying of drug-productive land and the dumping of constituent chemicals in rivers in producer countries pollutes the environment (del Olmo, 1998). In these nations de-criminalisation on a global scale would free narcotics capital for more creative uses, 'save land, reduce the amount of money available for corruption and take pressure off youth in the inner cities' (Cain, 2001: 35). There appear to be no uncertain outcomes, except maybe those for agrarian producers, who might prefer to be supported in the transfer to an alternative crop to poppies or cannabis or coca, though the poppies, coca and cannabis would now be once again legal crops, fetching a reduced but possibly an adequate market price.

## GLOBAL POLITICS, GLOBAL ECONOMY AND WOMEN

This returns us to global politics, the global economy and of course to women and their conspicuous absence from policy and policy making in relation to the criminogenic effects of global economic policies. The transnational crime of narcotics trading brings into sharp focus the need for multiple rather than singular understandings of criminalisations and their effects, and the corresponding need for solutions based on hearing this diversity of voices. These understandings should take into account the damage to women's well being, their education and health, which arises from the additional burdens they have to carry when sons, lovers, partners and husbands are trading or in jail. One of these burdens is the additional violence found throughout a society which makes its living illegally: the violence of absences; the violences of extra work; the violences of drug induced fighting and of fighting about money; the violence resulting from the instrumentalisation of interpersonal relationships; the violence of extra work, of being always tired and of seeing no better future. Amid all this I suspect—and data in the area are so notoriously lacking in validity that one can do no more—that the 'old fashioned' domestic violence, as rife in the Caribbean as elsewhere (cf Danns and Parsad, 1988) is exacerbated by the illegalisation of so many people's means of livelihood.

Feminist scholars have recently begun to do the important work of identifying how and why women have so little impact on the policies, such as structural adjustment, which impact so markedly on their lives. Jawara and Kwa (2003) analyse the build up to and proceedings at the Doha 'ministerial' of the WTO. The work of these two women is based on documentary research and 'semi-structured interviews with thirty three Geneva-based missions' across a spectrum of countries plus ten members of the secretariat

and staff of the WTO. We now know the processes of inclusion and exclusion in invitations to quasi-private agenda setting and pre-drafting meetings (pre-ministerials),[3] we know how timetabling can exclude, we know how domestic, political and social movements can affect negotiations. We know how the 'Quad' (EU, US, Canada, Japan) manage to dominate while using neutral formal procedures, despite being a small minority in a majority voting regime.[4] Crucially, and almost inadvertently, we know how women's voices (as well as the officially present voices of less developed countries) are excluded. One ploy of the powerful in relation to less developed countries is to bypass their experienced ambassadors and do business directly with their inexperienced politicians, more readily flattered by the attention and less familiar with the detailed implications of the issues raised. For women, the following example cited by Jawara and Kwa is telling. A female minister, Tebeleto Seretse from Botswana, was simultaneously set up and excluded when appointed at the last minute by the main body (the Conference of the Whole, or COW) to be a main facilitator:

> …with only a day and a half to go before the end of the conference, she was asked to cover labour standards, TRIPS,[5] biodiversity, WTO internal transparency, dispute settlement reform, and the need for working groups on trade, debt and finance, and on technology transfer' (2003: 97).

As a result, she was unable to answer questions and to report back adequately on the proceedings in these matters. What an urbane and sophisticated way to squeeze out and belittle someone who is both female and black!

So—we need more women researching the hard stuff in the high places, and doing it their own way. And we need to create our own 'rooms', off stage spaces within and alongside the global institutions, where our views as women can be negotiated among ourselves, before being brought into the 'male' debate.

## CONCLUSION

I have argued that women in the developing world are the victims of the policies of the global economic institutions, both directly through immiseration and indirectly as a consequence of the enhanced criminality generated by structural adjustment policies. Sometimes this criminality is within

[3] 'Pre-ministerials' (meetings before, or outside, formal meetings of ministers) are referred to in the WTO as 'green room' discussions.

[4] Albeit weighted by the size of each nation's contribution to the budget (Kiely, 1998).

[5] Trade Related Aspects of Intellectual Property Rights.

their own families and sometimes it is in the wider society. As values are seen to change in the face of a sudden polarisation of incomes in society, women's status within families is destabilised. The global criminalisation of responses to structural adjustment, such as trading in illegalised narcotics, I have argued, exacerbates women's vulnerability rather than ameliorating it. Moreover, although women carry additional burdens as a result of global policies, they are relatively silent (or silenced) in the processes of global policy making. Women need to enhance their influence within the global economic institutions as they have in the United Nations. Women are no longer hidden from history. On these grounds I conclude that they should not be hidden from studies within a criminology of the effects of globalisation.

## REFERENCES

Arias, A and Logan, B (2002) 'Conclusion: From Globalisation Towards Universalisation in the Twenty-first Century' in B Ikubolajeh Logan (ed), *Globalisation, the Third World State, and Poverty Alleviation in the Twenty-First Century* (Aldershot, Ashgate) 197–203.

Bauman, Z (1998) *Globalisation: The Human Consequences* (Cambridge, Polity Press).

Birdsall, N *et al* (2002) *Will HIPC Matter? The Debt Game and Donor Behaviour in Africa* (Helsinki, World Institute for Development Economic Research, United Nations University).

Block, A (1991) *Masters of Paradise* (New Jersey, Trans Action Publishers).

Bourdieu, P (1987) 'The Force of Law: Toward a Sociology of the Judicial Field' (tr R Terdiman) 38(5) *Hastings Law Journal* 201–48.

Brautigham, D (2000) *Aid Dependence and Governance* (Stockholm, Ministry of Foreign Affairs, Expert Group on Dependence and Governance (EGDI)).

Brown, L (1994) 'Crisis, Adjustment, and Social Change: The Middle Class Under Adjustment' in E Le Franc (ed), *The Social Consequences of Structural Adjustment: A Review of the Jamaican Experience* (Jamaica, Canoe Press) 56–118.

Bullington, B (1991) 'A Smuggler's Paradise: Cocaine Trafficking through the Bahamas' 16(1) *Crime, Law, and Social Change* 59–83.

Cain, M (1983) 'Introduction: Towards an Understanding of the International State' 11(1) *International Journal of the Sociology of Law* 1–10.

—— (1990) 'Realist Philosophy and Standpoint Epistemologies *or* Feminist Criminology as a Successor Science' in L Gelsthorpe and A Morris (eds), *Feminist Perspectives in Criminology* (Milton Keynes, Open University Press) 124–41.

—— (2000) 'Orientalism, Occidentalism and the Sociology of Crime' 40(2) *British Journal of Criminology* 239–60.

—— (2001) 'International Crime and Globalisation' 46 (Winter) *Criminal Justice Matters* 34–35.

—— (2006) 'Is the Spoon Long Enough: On Global Economics, Local Harms and Crime' Plenary Address to the Research Committee on Deviance and Social Control of the International Sociological Association, XVI ISA (World Congress of Sociology, Durban, South Africa, 23–29 July).

—— (2009) 'Crimes of the Global State' in F Brookman, H Pierpoint, T Bennett and M Maguire (eds) *Contemporary Forms of Crime* (Cullompton, Willan)

—— and Birju, A (1992) 'Crime and Structural Adjustment in Trinidad and Tobago' 5(2) *Caribbean Affairs* 141–53.

Campbell, H (1976) 'Crime and Violence in Jamaican Politics' *Caribbean Issues* 22–34.

Chossudovsky, M (1997) *The Globalisation of Poverty* (London, Zed Books).

Crane-Scott, M (1995) 'The Impact of International Narco-trafficking on the Domestic Structures of Commonwealth States' paper presented at a regional conference on international narco-trafficking. Port of spain, Trinidad. 11–21 January. Unpublished.

Danns, G and Parsad, B (1988) *Domestic Violence and Marital Relationships in the Caribbean* (University of Guyana, Georgetown, Women's Studies Unit).

Deere, C *et al* (1990) *In the Shadows of the Sun: Caribbean Development Alternatives and US Policy* (San Francisco, Westview Press).

Del Olmo, R (1998) 'The Economic Impact of Illicit Drug Cultivation and Crop Eradication Programmes in Latin America' 2(2) *Theoretical Criminology* 269–78.

Dorling, D (2004) 'Prime Suspect: Murder in Britain' in P Hillyard, C Pantazis, S Tombs and D Gordon (eds), *Beyond Criminology: Taking Harm Seriously* (London, Pluto) 178–91.

Durkheim, E (1952) *Suicide* (London, Routledge and Kegan Paul).

Easterly, W (2005) 'What did Structural Adjustment Adjust? The Association of Policies and Growth with Repeated IMF and World Bank Adjustment Loans' 76 *Journal of Development Economics* 1–22.

Ellis, P (2003) *Women, Gender, and Development in the Caribbean* (London, Zed Books).

Fitzgerald, V (1999) 'Global Linkages, Vulnerable Economies, and the Outbreak of Conflict' 42 *Development* 357–64.

Garuda, G (2000) 'The Distributional Effects of IMF Programs: A Cross Country Analysis' 28(6) *World Development* 1031–57.

Green, P (1998) *Drugs, Trafficking, and Criminal Policy* (Winchester, Waterside Press).

Griffith, I (1993) *The Quest for Security in the Caribbean: Problems and Promises in Subordinate States* (London, ME Sharpe).

—— (1996) 'Drugs and Criminal Justice in the Caribbean' 42(2–3) *Caribbean Quarterly* 72–86.

—— and Munrow, T (1995) 'Drugs and Democracy in the Caribbean' 33(3) *Journal of Commonwealth and Comparative Politics* 357–76.

Hagley, L (1996) 'How the Inside Affects the Outside: Prisoners and Survivors in Trinidad and Tobago' 42(2–3) *Caribbean Quarterly* 101–18.

Harding, S (1986) *The Science Question in Feminism* (Ithaca, Cornell University Press).

—— (1993) 'Re-thinking Standpoint Epistemology: "What is Strong Objectivity?"' in L Alcoff and E Potter (eds), *Feminist Epistemologies* (London, Routledge) 49–83.

Harriott, A (1996) 'The Changing Social Organisation of Crime and Criminals in Jamaica' 42(2–3) *Caribbean Quarterly* 54–71.

—— (2006) 'A Sacred Cow Above Criticism or Accountable Servants of the People? A Comment on Corruption in the Courts of Jamaica' (unpublished paper).

—— (2009, forthcoming) 'Dis a Fi Wi Thing: The Rise of Organised Crime in Jamaica' in M Cain and A Harriott (eds), *Caribbean Criminology Volume 1* (Kingston, Jamaica, Ian Randle publishers).

Harris-Short, S (2001) 'Listening to "the Other"? The Convention on the Rights of the Child' 2(2) *Melbourne Journal of International Law* 304–50.

Hartsock, N (1983) 'The Feminist Standpoint: Developing the Ground for a specifically Feminist Historical Materialism' in S Harding and M Hintikka (eds), *Discovering Reality* (Boston, D Reidl Co) 283–310.

Headley, B (1996) *The Jamaican Gun Crime Scene: a Perspective* (Washington DC, Howard University Press).

—— (2009, forthcoming) 'The Jamaican Posses in America: An Emergent Force in US Organised Crime' in M Cain and A Harriott (eds), *Caribbean Criminology Volume 1* (Kingston, Jamaica, Ian Randle Publishers).

Hilhorst, D (2003) *The Real World of NGOs: Discourses, Diversity, and Development* (London, Zed Books).

Jawara, F and Kwa, A (2003) *Behind the Scenes at the WTO: the Real World of International Trade Negotiations* (London, Zed Books).

Jenkins, R (1992) *Pierre Bourdieu* (London, Routledge).

Johnson, B and Schaefer, B (1999) *The International Monetary Fund: Outdated, Ineffective and Unnecessary* (Washington DC, Heritage Foundation).

Kirby, The Hon Justice Michael (1992) 'Drugs: An international Prohibition?' *Commonwealth Law Bulletin* January 312–20.

Kiely, R (1998) 'The Crisis of Global Development' in R Kiely and P Marfleet (eds), *Globalisation and The Third World* (London, Routledge) 23–45.

Lea, J and Young J (1984) *What Is To Be Done About Law and Order?* (Harmondsworth, Penguin).

Lea, J, Mathews, R and Young, J (1989) *Law and Order Five Years On* (London, Centre for Criminology, Middlesex Polytechnic).

Le Franc, E (1994) (ed), *Consequences of Structural Adjustment: A Review of the Jamaican Experience* (Jamaica, Canoe Press).

Lundberg, M and Squire, L (2003) 'The Simultaneous Evolution of Growth and Inequality' 113(487) (April) *The Economic Journal* 326–44.

Merton, RK (1957) 'Social Structure and Anomie' in *Social Theory and Social Structure* (Glencoe, The Free Press) 185–213.

Peet, R (2003) *Unholy Trinity: The IMF, World Bank, and WTO* (London, Zed Books).

Peter, J-P and Favert, J (1978) 'The Animal, the Madman and Death' in M Foucault (ed), *I, Pierre Rivière, Having Slaughtered My Mother, My Sister, and My Brother A Case of Parricide in the 19th Century* (Harmondsworth, Penguin) 175–98.

Pizzey, E (1974) *Scream Quietly or the Neighbours Will Hear* (Harmondsworth, Penguin).

Robinson, W (1996) 'Globalisation: Nine Theses on Our Epoch' 38(2) *Race & Class* 13–31.

Sampson, J (1994) *Report of the Cabinet Appointed Committee to Examine the Juvenile Delinquency and Youth Crime Situation in Trinidad and Tobago* (Port of Spain, Ministry of Social Development).

Sparr, P (1994) 'Feminist Critiques of Structural Adjustment' in P Sparr (ed), *Mortgaging Women's Lives: Feminist Critiques of Structural Adjustment* (London, Zed Books) 13–40.

Stern, V (1990) *Deprived of their Liberty* (Barbados, Caribbean Rights).

—— (1998) *A Sin Against the Future: Imprisonment in the World* (Harmondsworth, Penguin).

Stevenson, R (1994) *Winning the War on Drugs: to Legalise or Not?* (London, Institute of Economic Affairs).

Stone, C (1988) 'Crime and Violence: Socio-political Implications' in P Phillips and J Wedderburn (eds), *Crime and Violence in Jamaica* (Department of Government, UWI, Mona) Occasional Paper 2, 19–48.

Transform Drug Policy Foundation (2007) *After the War on Drugs: Tools for the Debate*: www.tdpf.org.uk.

United Nations (1989) *The Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances* (New York, The United Nations).

—— (1996) *The UN and Crime Prevention: Seeking Security and Justice for All* (New York, The United Nations).

Van der Spuy, E (2000) 'Foreign Donor Assistance and Policing Reform in South Africa' 10(4) *Policing and Society* 343–66.

Vasciannie, S (1997) 'Political and Policy Aspects of the Jamaica/US Shiprider Negotiations' 43(3) 34–53.

# 2

# *Violence Against Women: Rethinking the Local–Global Nexus in Feminist Strategy*

ADRIAN HOWE

## INTRODUCTION

At the turn of the new millennium, violence against women became a policy priority in the UK. Responding to three decades of feminist campaigning, the Blair Government pushed through a raft of new policies in the field it had begun, in the late 1990s, to call 'Violence Against Women' (VAW). After a wide-ranging consultation led by the Home Office, it published *Safety and Justice: the Government's Proposals on Domestic Violence* in 2003. In November 2004, the government followed up with the Domestic Violence, Crime and Victims Act which provided more protection to domestic violence victims by criminalising breaches of non-molestation orders and common assault. There is now an Inter-Ministerial Group on Domestic Violence, and a national report, published in 2005, setting out the government's progress, including the establishment of a Forced Marriage Unit. The report also details a National Action Plan that promises to further improve support for victims, for example, by intervening earlier with offenders; by improving the handling of cases that fall within the domestic violence provisions of the Immigration Rules and by expanding a network of specialist domestic violence courts. By recording the road travelled so far and signalling future directions, the Home Office minister hoped that the report would convince those working in the domestic violence field that their work has been recognised and that the government was fully committed to confronting VAW in Britain (Home Office, 2005).[1]

Whether or not the government is doing enough about this pervasive social problem, the feminist-influenced flurry of policy and consultation activity around 'domestic violence' provides the occasion to explore the

[1] See the analysis of these policy initiatives in Howe (2006).

changing dynamics of anti-VAW work in the UK today. This work has been given a global inflection by NGO and UN sponsored campaigns to reconceptualise women's rights as human rights. Simultaneously, there has been a profound rethinking of what it means to do 'local' feminist politics under the rapidly changing conditions of globalisation. One of the most crucial developments within the British VAW sector has been the very effective intervention of local minority ethnic feminist groups, especially Southall Black Sisters (SBS). Their campaigns have brought the plight of women who are subject to immigration control and so without recourse to public funds—asylum-seeking women, migrant and minority ethnic women trapped into forced marriages and other violent relationships—to the heart of feminist engagement with the questions raised by the changes wrought by globalisation and its numerous 'discontents' (Sassen, 1998; Stiglitz, 2002).

These women—non-citizens or 'partial' citizens living for the most part outside the public sphere and support networks, yet subjected to intolerable levels of male and state-sanctioned violence—are the new subalterns of Britain's globalising communities. SBS campaigns on their behalf have helped the feminist movement to rethink 'domestic' violence as violence with a global inflection, and to recognise that reform to immigration laws must form an important aspect of feminist policy. In the process, they have also forged a rethinking of the local/global nexus within feminist strategy. Such a rethinking is absolutely vital today, especially when, in response to feminist demands, UK policy-makers are 'increasingly addressing domestic violence and other forms of interpersonal violence as crimes' (Walby and Allen, 2004: 42)—a policy development which will inevitably punish the poor. To understand the situation of the most marginalised women in Britain, it helps to think in terms of '*glocalisation*' a concept capturing the intrinsic yet deeply unequal relationship between the globalisation of productive and finance capital and 'localisation', a process of immiseration that locks the poor into local lowly statuses. As Maureen Cain points out, policy developments that 'abuse the poor … while extolling the virtues of globality, inevitably enhance the polarising relations which give rise to the problems of social exclusion on a global as well as a local scale' (2004: 418; her emphasis).[2]

Does this mean the prospects for buoyant feminist advocacy work for battered women are diminishing? Not necessarily. As Beck argues, the depoliticising spell of globalisation can be broken. Most crucially, it can be

[2] Cain borrows 'glocalisation' from Bauman, 1998. Robertson (1992) developed the concept of the 'glocal' to denote the inextricable connections between global and local processes. See also Adam's (2002) work connecting gender-neutral discourses of globalisation with feminist analyses of development in order to render visible the gender politics of globalisation.

reconceived as opening up the space for political action. Globality means that 'from now on nothing which happens on our planet is only a limited local event'. Accordingly, we must 'reorient and reorganise our lives along a local-global axis', but precisely because globalisation always involves a process of localisation, there can be a new and invigorating emphasis on the local (Beck, 2002: 6–11). Stuart Hall agrees. Not only is globalisation not a new process; it is 'almost impossible to think about the formation of English society, or of the UK … outside of the processes that we identify with globalisation'. But new forms of global economic and cultural power are emerging that have contradictory effects. While some are reaping the benefits, others have gone 'underneath' globalisation, to the local and, paradoxically, 'marginality has become a powerful space ... a space of weak power but it is a space of power nonetheless'. Moreover, it is a space in which new subjects, ethnicities, regions and communities all hitherto excluded now emerge and acquire through struggle the means to speak for themselves for the first time. So, in Hall's view, the marginal and the local can be empowered under the new globalisation (Hall, 1997: 173, 183). An exemplary instance is that of migrant and ethnic minority women trapped in violent relationships. Thanks to SBS and other local feminist advocate groups, they are finally getting a voice and, in the process, transforming feminist understanding of 'local' feminist campaigning against violence against women.

## NEW CHALLENGES—NAMING VAW IN THE ERA OF GLOBALISATION

It is well to register the rapidly changing political landscape against which British-based feminists are highlighting 'the consistent lack of sanctions' against violent men through low levels of prosecutions and high attrition rates across all forms of VAW (Womankind Worldwide, 2004: 3). The broader context in which anti-VAW feminist groups operate today is one in which 'a process of world-wide *restratification*' is redistributing privileges and deprivations, wealth and poverty, power and powerless, freedom and constraints in the developed as well as the developing worlds (Bauman, 1998: 304; his emphasis). Despite disagreements about the magnitude of the changes being wrought by globalisation (eg Scott, 1997), most commentators agree that economic globalisation is 'one of the most important contextual factors shaping current welfare state developments', if not because of its constraining impact on nation states, then because of its 'perceived impact and the use that politicians make of that' (Lister, 2002: 45). Even the sceptics who dispute the extent to which globalisation has dented the power of nation states recognise that the UK is in 'the grip of economic dogma', namely, the inevitability of globalisation and a concomitant need to reduce

the size of the public sector (Hirst and Thompson, 1999: 172). Cutbacks on social rights and the dismantling of the welfare state rights have been widely chronicled, especially in Anglo-Saxon nations where, according to Mishra, a situation of 'diswelfare' prevails (1999: 50). In Britain, new Labour's preoccupation with 'welfare dependency' has led it to embrace the North American welfare-to-work model. Yet what is often ignored in the globalisation debates is that structural adjustment policies influenced by perceptions of economic imperatives have a differential impact on women. Welfare cutbacks affect women as the primary recipients of state services; they also retract the space in which feminists can make claims on the state. Accordingly, viewing the state as the primary site of women's resistance to globalisation and to violence against women becomes problematic, inasmuch as the 'state's role in protecting women from the negative effects of global capitalism has been increasingly called into question' (Bergeron, 2001: 991–92).

As if all this were not enough to give pause for reflection, the new-millennium flurry of anti-VAW policy and consultation activities in Britain coincides with a new wave of critical assessments of interventions in the field. In the United States in particular, there has been a profound questioning of whether intervention works to improve women's lives. According to one commentator, the North American domestic violence movement has 'stalled'. While severe violence has decreased, overall discrete episodes have actually increased and more evidence is required to show that survivors' quality of life has improved with interventions (Starke, 2003). Moreover, the whole field, including especially conventional strategies and even the practice of calling domestic violence 'domestic' is said to be in need of radical reconceptualisation. At the empirical level, many incidents do not occur in the domestic sphere, but rather at a woman's workplace or at other non-domestic sites, especially when she has left her abuser. Moreover, the 'violence' of men against women in the home is not always physical violence, but rather verbal abuse and threats, leading some analysts to suggest that the problem be described as 'coercive control', rather than 'domestic violence' (Starke, 2003). At the policy level, the Blair Government response to the impact of global processes, especially new immigration patterns, has led to restrictions on access to welfare benefits that discriminate against immigrant women at risk of violence (Womankind Worldwide, 2004: 6), suggesting it is no longer appropriate, if it ever was, to call VAW a 'domestic' problem.

It is then, notable that at the close of the twentieth century, the Blair Government started addressing the problem of men's violence against women under the rubric of 'VAW' and recommending that domestic violence forums become VAW forums by 2002. Its 1999 policy document, *Living without Fear*, promised an 'integrated approach to tackling VAW' that committed the government to reducing crimes of domestic violence, rape and

sexual assault (Home Office, 1999: 6). Starting with the now well-known British Crime Survey finding that one in four women experiences domestic violence at some stage in her life, *Living Without Fear* had focused exclusively on VAW. This enabled the government to state categorically that violence against women is a crime and to note that 70 per cent of women fear rape, that domestic violence starts off and escalates during pregnancy and that rape had increased by 165 per cent since 1989 (Home Office, 1999). Certainly, when the primary concern becomes that of making 'Britain a place where *we* can live our lives without fear', violations of family life take precedence over violations of women (1999: 5; emphasis added). Yet VAW in its myriad forms remained the overarching framework of the problem to be addressed in *Living without Fear*. Yet just four years later, the *Safety and Justice* consultation paper reverted to naming the problem as 'domestic violence', thereby foregoing an integrated strategy and omitting rape and sexual assault in the process. While repeating the one-in-four women statistic, the consultation paper adds that one in six men will be a victim of domestic violence in their lifetime, a discursive maneuver which flattens out the starkly gendered asymmetry of interpersonal violence revealed in every national survey, including the British Crime Survey which has been criticised for seriously underestimating the extent of VAW (Walby and Myhill, 2001).

Feminist groups that had advocated for an integrated strategy linking forms of violence against women for some time prior to the launch of the government's policy initiatives can take the credit for ensuring that the UK has 'greater recognition of the range of forms of VAW at policy and practical levels' than most other European countries (Kelly and Lovett, 2005: 5). At the *Enough is Enough* domestic violence forum held in 2000, prominent feminist consultant Kelly spoke of the importance of linking different forms of VAW. Using the term 'gender violence' as utilised in UN and international policy documents, she noted how globalisation and migration were breaking down boundaries and bringing forced marriages, honour crimes and trafficking in women into the heart of feminist analysis. She also acknowledged the influential SBS campaigning that had placed these crimes at centre stage in British feminist VAW statements. Presciently, Kelly noted that *Living Without Fear*, the Blair Government's 1999 policy document, prioritised 'an integrated approach to tackling VAW', but the document itself and everything that has happened since 'betrays how poorly this is understood by policy makers in this country'. The key problem as she saw it was that policy makers were interchanging 'VAW' and 'domestic violence' instead of thinking in terms of connections and making other forms of VAW a 'core part of our understanding and responses' (Kelly, 2000: 3–6).[3]

[3] Kelly was still complaining about the government's failure to integrate its VAW strategy five years later (Kelly and Lovett, 2005).

The *Safety and Justice* consultation paper fell precisely into this trap. Focusing narrowly on a generically framed 'domestic violence', its efforts to incorporate diversely situated women were tokenistic at best. A brief reference to the problems faced by domestic violence victims who are subject to immigration control is a case in point. The paper outlines the government's reform measures, notably the introduction of the domestic violence 'concession' in 1999 for immigrant women victims who left their spouse during the probationary period of one year that was then in force for foreign nationals wanting to settle in the UK on the basis of marriage. This 'concession' to the so-called 'One Year' rule allowed women who left their spouse or partner during the probation year, and who could prove by a court conviction or order that the relationship ended because of domestic violence, to apply for residence and access to state support. In November 2002 the types of evidence victims could rely on as proof of violence were extended to include civil orders, medical reports or a letter from a refuge. According to the Home Office, these reforms provided 'a significant improvement' for victims of domestic violence who were still subject to immigration control. While not accepting that victims making applications under these immigration domestic violence rules should have access to public funds, it promised moves, un-detailed in *Safety and Justice*, to ensure that those victims get access to refuge and other support services (Home Office, 2003: 45).

These suggestions fell far short of demands made in the SBS campaign for the abolition of the 'One Year' rule and the prohibition on recourse to public funds on the grounds that these policies were racist and discriminatory. Indeed, in 2003, the same year that the Home Office extolled the government's 'reform' measures, the residence requirement was extended from one year to two years, thereby ignoring continuous feedback from the voluntary sector about the damaging effects of the 'One Year' rule on battered immigrant women. Contrary to the Home Office's promise to improve their access to resources, women who enter the UK on the basis of marriage will now have to remain in an abusive relationship for two years before accessing state support, or risk deportation. As for the threat of gender persecution that deported women might face, the Home Office ignored the demands of feminist and refugee support groups for the recognition of domestic violence as persecution as defined in refugee law and the European Convention on Human Rights. Gender discrimination as grounds for asylum was simply not on the agenda.

As for the impact of domestic violence on black and minority ethnic communities, all that the Home Office has to say in *Safety and Justice* is that ethnic minority women might be discouraged from speaking out about the violence for fear of bringing dishonour on their family or community (2003: 9–10). Yet forced marriages and honour crimes and killings—which SBS insists must be incorporated into domestic violence policies and legislation (Siddiqui, 2003: 6)—were omitted altogether in the consultation paper.

The gap Kelly identified in 2000 between an integrated feminist conceptualisation of VAW and the Home Office's narrow focus on domestic violence thus appears to be widening.

## RENEGOTIATING THE LOCAL AND THE GLOBAL

In the UK, feminist strategists have evinced a willingness to question what Kelly has called 'our orthodoxies'. It is time, she suggests, to make connections at local, national and international levels (2000: 7). Feminist stakeholders in VAW policy appear to be taking this path. Simultaneously with participating in the current consultation process, feminist groups are formulating a VAW strategic framework that looks to international conventions, especially those concerned with protecting rights to life, equality, health, personal freedom and security. Importantly, they are starting to frame VAW as a 'human rights' issue in order to hold the government accountable for failing to protect women, thereby denying them full enjoyment of their human rights. This tactic involves exploring the potential of the local Human Rights Act 1998, especially articles related to the right to be protected by law, and not to be subjected to torture or to cruel, inhumane or degrading treatment or punishment, as well as global instruments such as the UN Declaration on the Elimination of VAW.[4] Also significant are the UN Convention against Torture, the UN Human Rights Committee and the European Courts of Human Rights as they hold the state responsible for the prevention, prosecution and punishment of acts of violence and torture whether carried out by an agent of the state or a private individual. But the pivotal international instrument is the Convention for the Elimination of Discrimination Against Women (CEDAW), one of the UN's six core human rights treaties and the major treaty governing women's status. CEDAW is noteworthy for addressing discrimination in private spheres, including the family and cultural practices. For example, Article 2 obliges state parties to 'take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices, which constitute discrimination against women'. Importantly, the CEDAW committee has interpreted the convention to include VAW as a form of discrimination that inhibits women's ability to enjoy their human rights on an equal basis with men. Accordingly, the prohibition on custom being used to justify VAW is an important principle that can be deployed in the campaigns against forced marriages and honour killings that are now integral to the feminist VAW strategy in the UK.

[4] This Declaration, signed by the UK in 1993, defines VAW as 'any act of gender-based violence that results in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life'.

While the UK government is required to report on its implementation of the CEDAW and the progress it has made on women's human rights, NGOs can also report on whether the government is fulfilling its international obligations. British feminist groups are currently exploiting this window of opportunity. In 2004, Womankind Worldwide, a UK feminist charity, utilised CEDAW to produce a Thematic Shadow Report on VAW for submission to the UN committee monitoring whether the UK government is honouring its commitments to human rights. Insisting that violence impacts on all areas of women's lives and should not be seen only as a domestic or private issue, Womankind Worldwide set about assessing current government actions, such as its civil and criminal law reforms, including a pro-arrest policy across all police forces and the Crown Prosecution Service's revised guidelines on domestic violence encouraging prosecution without relying solely on a witness statement. It found that despite efforts to introduce new legislation and guidelines since 1995 and despite commitments to tackling VAW, the government still lacked a national strategy with clear goals for implementation across the UK, unlike Scotland, which has a National Action Plan on Gender Based Violence. This had resulted in an 'over focus on domestic violence in policy, research and provision' and a failure to make links between forms of gender-based violence and between VAW and economic, social and cultural rights' (Womankind Worldwide, 2004: 2–3). Consequently, despite encouraging local initiatives to develop awareness, especially about domestic violence, there has been virtually no government investment with respect to rape, sexual assault, forced marriages, honour crimes, female genital mutilation, trafficking, the sex industry or the situation of refugee and asylum-seeking women, all of which now concern the feminist movement against VAW.

Importantly, Womankind Worldwide proclaims that VAW 'undermines the ability of women to participate as full and equal citizens in UK society' (2004: 4), thus denying them full enjoyment of their human rights. A global dimension to the analysis is clearly visible in the recognition of the work of groups like SBS who have highlighted how immigration policy discriminates against women seeking asylum and those with uncertain immigration status who experience gender-based violence (2004: 6). A global perspective is also apparent in the criticism of restrictive immigration policies that create 'gendered access' to legal migration favouring men and male-dominated industries, while forcing women to take illegal and dangerous routes to the UK, notably the sex industry. Adopting an analytical framework that negotiates between the local and global dimensions of VAW, Womankind Worldwide urges the government to make a 'strategic response' that understands and challenges the links between national and international trafficking, the growth of the local sex industry and VAW (2004: 20–1).

This initiative demonstrates very clearly the feminist movement's willingness to open up the space for political action and search for new ways of

handling social justice for women in the age of globalisation. Most crucially, Womankind Worldwide recognises the potential in international human rights law both to push for appropriate actions from our government in the UK and to hold it to account through an international arena' (2004: iii). This signals a recognition that membership in a territorially exclusive nation-state ceases to be the only ground for the realisation of women's rights and that 'the old hierarchies of power and influence within the state are being reconfigured by increasing economic globalisation and the ascendance of an international human rights regime' (Sassen, 1996: 105).

It is well to note however, that this openness to new ways of conceptualising violence against women has a long and frequently conflicted history. Twenty-five years ago, white feminist movements in the West 'rarely engaged questions of immigration and nationality' (Mohanty *et al*, 1991: 23), notwithstanding trenchant criticism of such short-sightedness. In 1984, Valerie Amos and Pratibha Parmar, speaking for black and Asian feminists, famously challenged the claims of white or 'imperial feminism' to speak for all women. In their view, the British women's movement, rooted as it was in an imperial history, was 'oppressive' to black women and profoundly ignorant of the ways in which white women's gains 'have been and still are' made at the expense of black women. The time had come to move away from celebrating universality in order to work through the implications of differences among women's experiences, particularly in the family (1984: 3–7). Crucially, feminist campaigns around sexual violence had failed to problematise how violence against women is always already raced violence. Historically, highlighting white women's vulnerability to sexual violence in order to bring in oppressive legislation justifying an extension of state power had oppressive implications for men and women living in colonial countries. There were double standards for white men who were rarely penalised for sexually assaulting black women, while black and immigrant men were still, in contemporary Britain, racially denigrated as the main perpetrators of violence against women. It was then, not the family that was 'the main source of oppression' for black and especially Asian women—'the British state through its immigration legislation' had destroyed Asian families, separating husbands and wives, parents from children, and demanding proof that arranged marriages were 'genuine'. Black and Asian feminists therefore demanded the right to 'struggle around the issue of family oppression ourselves' without political interference from judgmental white imperial feminists (Amos and Parmar, 1984: 11–15).

By the turn of the twenty-first century, black feminist interventions, and Amos and Parmar's specifically, have come to be recognised as pivotal turning points in the movement against violence against women in Britain (Feminist Review, 2005: 201–07). Today, influential agenda-setting groups such as SBS, Imkaan, Newham Asian Women's Group, Womankind Worldwide and Rights of Women are ensuring that the British feminist movement engages

closely with the impact of globalisation on the construction of immigration and nationality laws that adversely affect immigrant women trying to escape violent men. Indeed, it is precisely because the movement has begun to think strategically about the impact of globalisation that makes it all the more imperative to revisit the rich body of feminist theoretical work that has been laying the foundations for a multicultural, globally-aware, anti-violence feminist movement for over two decades.

## THEORISING A MULTICULTURAL FEMINIST VAW MOVEMENT

Third world feminist scholar Chandra Mohanty was one of the first to offer advice to Western feminists on how to develop a strategy that articulated the local with the global. She also provided a checklist of how *not* to articulate VAW. In her now classic 'Under Western Eyes: Feminist Scholarship and Colonial Discourses' first published in 1986, Mohanty rejected an analytical framework in which white Western feminists constituted themselves as political subjects while representing migrant and Third World women as racialised, powerless 'others'—as an undifferentiated group of down-trodden women, so much more oppressed by their 'local' men than Western women. She also rejected 'ethnocentric universalism', a model based on an ahistorical category of women which assumed that women are globally oppressed by men, regardless of their location and which founded strategies pitting all women against male domination by invoking a global sisterhood of First and Third World women (1988: 64–65). Such strategies, she warned, ignored the impact of imperialism on Third World women. To properly understand gendered relations, they needed to be specified in local, cultural and historical contexts. Homogenising the class, race, religious and material practice of women in the Third World created a 'false sense of the commonality of oppressions, interests and struggles between and among women globally' (1998: 77–78). As for men's violence against women, it had to be theorised 'within specific societies' (1988: 67).

Revisiting 'Under Western Eyes' over a decade later, Mohanty still held to an analytic framework that attends to 'the micropolitics of everyday life as well as to the macropolitics of global economic and political processes', but she now takes account of the fact that globalisation had become more brutal, exacerbating economic, racial and gender inequalities. What was now required, she suggested, was transnational feminist organisation against capitalism informed by an analysis of the effects of corporate globalisation restructuring on the 'raced, classed, national and sexual bodies of women'. Whereas 'Under Western Eyes' had challenged the false universality of Eurocentric feminist discourse, Mohanty now felt the need to re-emphasise the necessity of cross-national feminist solidarity that makes connections between local and universal. More specifically, she advocated

an analysis that centralises 'racialised gender' and begins from the place of the most marginalised and disenfranchised communities of women–poor women of all colours in affluent and neocolonial nations and women of the Third World. This, she believes, provides 'the most inclusive paradigm for thinking about social justice' (2002: 509–10). As we have seen, this is precisely the kind of thinking and strategising—from the space of the most disenfranchised communities of racialised women—that is informing feminist anti-violence work in Britain today.

Mohanty is not the only analyst to argue for a new form of transnational feminist organisation against global capital. A self-defining 'transnational' and 'critical multicultural feminism' has emerged in North America where salutary lessons have been learnt about the limitations of domestic violence legislation *and* of inadequately theorised feminist policies in late modernity. Challenging feminisms that are narrowly-focused and imbricated in liberal nation-states, these new transnational feminisms seek to develop feminist practices that can form alliances across discrepant material conditions while addressing asymmetrical global power relations (Kaplan, Alarcon and Moallem, 1999: 14–15). Taking account of the global context of VAW work today is axiomatic. As Shohat puts it, multicultural feminism is a 'situated practice' that takes as its starting point 'the cultural consequences of the worldwide movements and dislocations of people associated' with the development of 'global' or 'transnational' capitalism (1998: 1). Furthermore, she insists that:

> the global nature of the colonising process, the global flow of transnational capital and the global reach of contemporary communication technologies *virtually oblige* the multicultural feminist critic to move beyond the restrictive framework of the nation-state as a unit of analysis. An ideological construction of 'here' and 'there' obscures the innumerable ways that women's lives are imbricated in the forces of globalisation (1998: 47; my emphasis).

By carefully elucidating the gendered effects of new global conditions, without erasing the history of globalising imperialism, these new theorisations gesture towards the imagining of new feminist tactics and strategies in a rapidly changing world.

As UK feminists develop strategies for differentially situated women—women whose lives are increasingly 'imbricated in the forces of globalisation'—they may usefully draw on the analyses of multicultural feminists who highlight how in the global era, the dispersal and scattering of the old imperial hegemonies require a profound reconceptualisation of power relations between cultural communities within and beyond the nation-state. These processes also necessitate a consideration of diverse and sometimes opposing community interpretations of experience (Mufti and Shohat, 1997: 5). Consider for example the question of what 'home' means

for immigrant women in Western countries. Anannya Bhattacharjee argues that in the United States immigration laws have '*privatised* the nation', turning it into 'a bounded space into which only some of the people can walk some of the time' (1997: 317; her emphasis). Here a man's control over his migrant wife 'extends to controlling her recognition as a member of what constitutes the public—in this case being a legal resident of a national community (in itself a private concept)'. She takes as her case study south Asian immigrant communities where the figure of the undocumented woman who is an 'illegal alien' is 'a reminder of the not-public—that is, private—basis of the nation-state'. For this woman 'home' is not a clearly demarcated space as what is presumed to be 'public' and what 'private' shifts and changes. If she is battered and wants to leave her abuser, she leaves the privacy of her immigrant 'home' and risks her standing as 'an appropriate member' of her ethnic community 'in part because this community occupies a public space policed by US federal laws'. Thus does Bhattacharjee point to the limitations of a Western feminist analysis that assumes that public space is a space of recourse from injuries endured in 'private'—a zone 'automatically lying outside an easily and singularly recognised "home"' (1997: 317–20; her emphasis).

The first key point to be taken from this body of work is that any strategy against domestic violence that takes the lives of immigrant women seriously 'has to be seen as global' inasmuch as the immigrant woman's experiences of violence 'span the patriarchal home, the community, the host nation, the nation of origin'. Attending to the global parameters of 'domestic' violence not only challenges, once again, conventionally accepted spaces of private and public; it demonstrates that 'an unnuanced belief in social change through intervention in public spaces is an illusion'. What the battered women's movement needs to absorb then, is the full implications of 'globalising and undomesticating domestic violence work' (Bhattacharjee, 1997: 322–24). What is also required in the twenty-first century global world order, besides a de-emphasis on the state as a primary site of resistance, is an examination of elitism within the movement, given that states that have implemented 'gender-aware' policies have typically been 'responding to the needs and desires of elite women' (Bergeron, 2001: 994). The challenges ahead are huge. On the one hand, white feminists need to unlearn Eurocentric narrative strategies and representational politics that run the risk of privileging Third World or black and minority ethnic victimologies as the worst forms of VAW. On the other, they have to avoid the danger of reinscription into a discourse of 'global feminism' that lumps women into one unified voice against a supposedly unified capitalist world market, distracting feminists from recognising continuing inequalities of power (Bergeron, 2001: 1000).[5]

[5] For further elaboration of these points see Kaplan *et al* (1999).

Secondly and related, the VAW sector in the UK has yet to fully explore how VAW is connected to 'state-sponsored violence'. In the United States, feminist research has exposed how the 'state-sponsored safety net' is being dismantled, resulting in severe curtailments in women's access to welfare, shelter and higher education—the routes from which women escaped violence in the past (Fine and Weis, 2000: 1139–40). To take another example of the disturbing connection between VAW and the state: violence within the domestic sphere in the Caribbean 'did not originate there' according to M Jacqui Alexander, but was 'legitimised by larger organised state and economic violence'. Whether or not one agrees with her assessment that state violence was itself responsible for the increase of sexual violence in the home, Alexander exposes the state's co-optation of the feminist campaign in the Bahamas. What she calls a 'larger feminist vision of the historicised violences of heteropatriarchy', was, she argues, co-opted and brought within the juridical confines of the state in 1991 as sexual offence and domestic violence legislation. The moral of the story, reminiscent of Carol Smart's (1989) warning to feminists about the power of law to disqualify women's experiences of violence, is that there is frequently a significant gap between feminist demands and what the state concedes. In the case of the Bahamas, the new law provided penalties for women who failed to report violent male partners, encoding 'a disciplinary narrative' representing the state's interests, not women's interests (Alexander, 1997: 72–73).[6] Once again then, we are reminded that 'practical-oriented solutions, aimed at the empowerment of all women, can have a reactionary potential' (Kapur, 2001: 81).

Thirdly, while Mohanty believes that the feminist movement's shift to the human rights area has been a successful attempt to raise the issue of violence against women onto the world stage' (2002: 529), it has to be remembered that entering into the fray of human rights advocacy for women subject to immigration control can be fraught. Groups like Womankind Worldwide have recognised that the climate of international women's human rights is important for women's rights to asylum. For example, Canada and the US have granted refugee status to women fleeing persecutions such as forced marriage. But in an incisive analysis, Sherene Razack underlines the problematic ways in which gender-based harms become visible within the racial context of the refugee hearing in Canada. In her view, the concept of gender persecution might be 'the most significant legal gain for women in this century, opening the door to the recognition that women can be persecuted as women, and that this is a violation of their human rights'. However,

[6] The evidence of nation states' complicity in VAW gives pause to those of us who have advocated calling domestic violence simply 'men's violence' (Howe, 1998; 2004).

gender persecution, as it is deployed in refugee discourse, can 'function as a deeply racialised concept' requiring 'third world women to speak of their experience of sexual violence at the expense of their realities as colonised peoples' (Razack, 1995: 48). Globalisation, from this perspective, is not a new development; it must be seen as part of the much longer history of colonialism. As Shohat points out, 'the migration of poverty-stricken women attempting to survive in 'the age of the IMF-generated debt crisis' is 'only the most recent episode of imperialism'. When women's racialised and sexualised bodies are commodified not only locally but globally, and exchanged transnationally', 'a gendered, sexed, raced and classed critique matters,' but it also has to 'matter across borders in relation to the processes of globalisation' (1998: 50–51).

For analysts like Shohat, critical multicultural feminism must navigate between the local and the global 'without romanticising either transnational globalism as a form of universalism or localism as salvation' (1998: 51). Thus immigration which, as we have seen, is currently a focal concern of the feminist VAW movement in the UK, cannot be discussed 'only from the receiving end'. It must be traced back to 'the moment transnational economies generate such displacement' if analysis is to shift from an implicitly nationalist feminism to 'a polycentric multicultural feminism that privileges a multiply situated analysis' that sees the necessity of strategising both locally and globally (1998: 52). In this analytical framework, globalisation 'constitutes the grounds' for a transnational feminist movement today—a movement that needs to take on a capitalist regime and also 'conceive of itself as crossing national and regional borders', thereby complicating notions of 'home', 'nation' and 'community' (Mohanty, 1998: 485).[7]

Finally, it should be noted that critical multicultural feminism is not an exclusively North American development. Questioning, in the British context, how 'the local' and 'the global' should figure in the formation of transnational identities, Ugandan Asian academic Avtar Brah advocates a feminist 'politics of location' that is 'simultaneously local and global' (1996: 89). In her view, one of the most important developments in the feminism movement has been the emergence of a political practice that understands '*locationality in contradiction*'. This she defines as:

> a positionality of dispersal; of simultaneous situatedness within gendered spaces of class, racism, ethnicity, sexuality, age; of movement across shifting cultural, religious and linguistic boundaries; of journeys across geographic and psychic borders (1996: 204; her emphasis).

Brah describes this politics of location as 'a *position of multi-axial locationality*'. It is a '*diasporic space*'—inhabited not only by migrants and their

[7] For a critique of transnational feminism, see Mendoza (2002).

descendants, but equally by those 'represented as indigenous'; it includes the entanglement of the genealogies of dispersion with those of 'staying put'. Taking the example of 'the diasporic space called "England"' where African-Caribbean, Irish, Asian, Jewish and other diasporas 'intersect among themselves as well as with the entity constructed as "Englishness", thoroughly re-inscribing it in the process', she suggests that these kinds of decentring processes challenge 'the minoritising and peripheralising impulses of the cultures of dominance' (1996: 209–10; her emphasis). Multi-axiality also demonstrates that 'power does not inhabit the realm of macro structures alone, but is thoroughly implicated in the everyday of lived experience' (1996: 242). Importantly then, a feminist politics of location must register that the effects of global processes are 'always experienced as mediated predicaments in specific localities'. She provides, by way of example, a Latina woman speaking at a Washington DC anti-racism rally in 2001 on behalf of 'undocumented' workers—workers whose labour global capital needs, but nation-states disavow. For Brah, this spokeswoman signifies 'a novel transnational political subject marked by the multiplicity of her constitution in terms of her gender, class, ethnicity' (2002: 42). But we could just as easily substitute the figure of a Southall Black Sister speaking on behalf of the most marginalised women in Britain—racialised women with an unresolved immigration status who are trying to escape violent men 'at home'. Certainly, feminist advocacy work on their behalf has helped to keep in check any peripheralising impulses within the contemporary feminist anti-violence movement.

## CONCLUSION

In highlighting the needs of refugee and migrant women, feminist anti-violence work in the UK has begun the task of conceiving of itself in multi-axial terms. It remains to develop a theoretically-informed critical multicultural feminism that can devise a really effective VAW strategy for diversely situated women in Britain. Importantly, this will involve situating that violence in a global context and recognising that while the scope of political activity has expanded, globalisation is 'just another way of saying (and doing) imperialism' (Katz, 2001: 1214).[8] Of course, saying *is* doing, so a constant interrogation of feminist discursive practices—checking them for orientalist, neoimperialist and racist narrations of VAW—is in order. As Inderpal Grewal counsels, in cases of global activism or activism in multicultural contexts, representational practices matter profoundly.

[8] Sassen refers to 'the ongoing weight of colonialism and post-colonial forms of empire on major processes of globalisation today, especially those processes binding countries of emigration and immigration' (1998: xxxi).

In particular, the 'subject formation' of those who deploy human rights discourses needs to be questioned. Are feminists representing themselves as saviours and rescuers of oppressed Third World and minority ethnic victims? Who is speaking for whom when it comes to depicting 'the objects of violations'? What relations of power enable some to speak for others? 'What forms of violence do these representations perform?' (Grewal, 1998: 502–04). The practices and claims of NGOs and other 'grass roots' groups, including BME groups, cannot be exempt from this scrutiny. Interrogating discursive practices also involves exploring their potential effects. We have seen how calls for the criminalisation of violent men may need to be re-assessed in light of lessons about how 'gender-sensitive' laws can be recuperated by the state. The 'success' of the battered women's movement in the United States as indicated by government attention has to be measured against the fact that domestic violence legislation allocated more resources to state law enforcement agencies than to women's groups or to women's 'economic empowerment'. Putting this in the all-important global context, it becomes apparent that the state's increased interest to intervene on behalf of battered women 'comes at a time of increased conservatism and discrimination against minorities and sharpening global inequalities' (Grewal, 1998: 521).

To take another example of the complexities of anti-violence work in the global era, consider Rutvica Andrijasevic's recent critique of counter-trafficking programmes in Eastern Europe directed at vulnerable undocumented migrant women. These campaigns, developed by the International Organisation for Migration in consultation with national governments, the European Commission and various branches of the United Nations, represent migration for women as forced prostitution. Andrijasevic argues that the victimising images of wounded female bodies used in the campaigns to warn women migrants about the dangers of migration and prostitution are especially problematic. Techniques used in the production of these images not only have the paradoxical effect of objectifying women, thereby demarcating 'the limits within which women can be imagined as active agents'; the images also act as 'sites of contention over boundaries and membership in the European community' (2007: 26–27). Andrijasavic's analysis serves as a final reminder that feminist anti-violence work today cannot be limited to challenging 'local' national representational practices that appropriate negative, stereotyping and disabling images of women. Feminist strategists must extend our critical gaze to transnational programmes such as counter-trafficking initiatives aimed ostensibly at preventing the coercion of women, but which operate to circumscribe and denigrate the lives of vulnerable women at the mercy of restrictive immigration policies (2007: 1).

In conclusion: advocating for the most vulnerable and marginalised women today involves negotiating between 'the national, the global, and the historical, as well as the contemporary diasporic' in order to grasp critical

possibilities of feminist alliances across discrepant material conditions (Spivak, 1993: 278). But it also entails recognising that if current feminist theory or practice is inadequate to the task of 'local-global analysis' and action, it should be 'called to account, or indeed abandoned', as the journal *Feminist Review* recently editorialised (Hemmings, Gedalof and Bland, 2006: 3). Lest today's challenges appear too daunting, let us take heart from what has been achieved so far. Feminist stakeholders in Britain have participated in a feminist-initiated consultation about domestic violence policy directives, ensuring that they incorporate differentially situated women such as refugee and migrant women *and*, simultaneously, they are exploring mechanisms such as CEDAW for holding the government to account for infringements of women's human rights. They might only be in the early stages of developing an analysis that reconceptualises features of the global economy as 'strategic instantiations of gendering', as Sassen urges, but they are well on the way to finding 'openings that make women visible and lead to greater presence and participation' (1998: 82). Global cities like London, in Sassen's view, are 'thick enabling environments' in which groups concerned with transboundary issues such as immigration, asylum, anti-globalisation struggles and women's agendas can gain presence and power by engaging in a new type of globally-inflected politics (Sassen, 2003). The VAW sector is doing just that as it continues to challenge new Labour to deal with one of the most pressing social problems in Britain, and the globe.

## REFERENCES

Adam, B (2002) 'The Gendered Time Politics of Globalisation: of Shadowlands and Elusive Justice' 70 *Feminist Review* 3–29.

Alexander, MJ (1997) 'Erotic Autonomy as a Politics of Decolonisation: An Anatomy of Feminist and State Practice in the Bahamas Tourist Economy' in MJ Alexander and CT Mohanty (eds), *Feminist Genealogies, Colonial Legacies, Democratic Futures* (New York, Routledge).

Amos, V and Parmar, P (1984) 'Challenging Imperial Feminism' 17 *Feminist Review* 3–19.

Andrijasevic, R (2007) 'Beautiful Dead Bodies: Gender, Migration and Representation in Anti-trafficking Campaigns' 86 *Feminist Review* 24–44.

Bauman, Z (1998) *Globalisation: The Human Consequences* (Cambridge, Polity).

—— (2001) 'Globalisation and the New Poor' in P Beilharz (ed), *The Bauman Reader* (Oxford, Blackwell Publishers).

Beck, U (2002) *What is Globalisation?* (Cambridge, Polity Press).

Bergeron, S (2001) 'Political Economy Discourses of Globalisation and Feminist Politics' 26(4) *Signs* 983–1007.

Bhattacharjee, A (1997) 'Mapping Homes and Undomesticating Violence Work in the South Asian Immigrant Community' in MJ Alexander and CT Mohanty (eds), *Feminist Genealogies, Colonial Legacies, Democratic Futures* (New York, Routledge).

Brah, A (1996) *Cartographies of Diaspora: Contesting Identities* (Routledge, London)
—— (2002) 'Global Mobilities, Local Predicaments: Globalisation and the Critical Imagination' 70 *Feminist Review* 30–45.
Cain, M (2004) 'Globality, Glocalisation and Private Policing: A Caribbean Case Study' in C Sumner (ed), *Blackwell's Companion to Criminology* (Oxford, Blackwell Publishers).
Feminist Review (2005) 'Roundtable on the Un/certainties of the Routes of the Collective and the Journal' 80 *Feminist Review* 198–219.
Fine, M and Weis, L (2000) 'Disappearing Acts: The State and Violence Against Women' 25(4) *Signs* 1139–46.
Grewal, I (1998) 'On the New Global Feminism and the Family of Nations: Dilemmas of Transnational Feminist Practice' in E Shohat (ed), *Talking Visions: Multicultural Feminism in a Transnational Age* (Cambridge, Massachusetts, MIT Press).
Hall, S (1997) 'The Local and the Global: Globalisation and Ethnicity' in A McClintock, A Mufti and E Shohat (eds), *Dangerous Liaisons: Gender, Nation and Postcolonial Perspectives* (Minneapolis, University of Minnesota Press).
Hemmings, C, Gedalof, I and Bland, L (2006) 'Editorial: Sexual Moralities' 83 *Feminist Review* 1–3.
Hirst, P and Thompson, G (1999) 'The Tyranny of Globalisation: Myth or Reality?' in F Buelens (ed), *Globalisation and the Nation-state* (Cheltenham, Edward Elgar Publishing).
Home Office (1999) *Living Without Fear: An Integrated Approach to Tackling Violence Against Women* (London, Home Office).
—— (2003) *Safety and Justice: The Government's Proposals on Domestic Violence* (London, Home Office).
—— (2005) 'Domestic Violence: A National Report' (London, Home Office).
Howe, A (1995) 'White Western Feminism Meets International Law— Challenges/Complicity, Erasures/Encounters' 4 *Australian Feminist Law Journal* 63–92.
—— (1998) *Sexed Violence in the News* (Sydney, Federation Press).
—— (2004) 'Managing "Men's Violence" in the Criminological Arena' in C Sumner (ed), *Blackwell's Companion to Criminology* (Oxford, Blackwell Publishers).
—— (2006) 'New Policies for Battered Women: Negotiating the Local and the Global in Blair's Britain' 34(3) *Policy and Politics* 407–27.
Kaplan, C, Alarcon, N and Moallem M (1999) (eds), *Between Women: Nationalisms, Transnational Feminisms and the State* (Durham, Duke University Press).
Kapur, R (2001) 'Imperial Parody' 2(1) *Feminist Theory* 79–88.
Katz, C (2001) 'On the Grounds of Globalisation: A Topography for Feminist Political Engagement' 26(4) *Signs* 1213–34.
Kelly, L (2000) Speech at 'Domestic Violence: Enough is Enough Conference' (London).
—— and Lovett, J (2005) 'What a Waste: The Case for an Integrated Violence Against Women Strategy' (London, Home Office).
Lister, R. (2002) 'Citizenship and Changing Welfare States' in JG Anderson and PH Jensen (eds), *Changing Labour Markets, Welfare Policies and Citizenship* (Bristol, Policy Press).
Mendoza, B (2002) 'Transnational Feminism in Question' 3(3) *Feminist Theory* 295–314.

Mishra, R (1999) *Globalisation and the Welfare State* (Cheltenham, Edward Elgar Publishing).

Mohanty, CT (1988) 'Under Western Eyes: Feminist Scholarship and Colonial Discourses' 30 *Feminist Review* 61–88.

—— (1991) 'Cartographies of Struggle: Third World Women and the Politics of Feminism' in CT Mohanty, A Russo and L Torres (eds), *Third World Women and the Politics of Feminism* (Bloomington, Indiana University Press).

—— (1998) 'Crafting Feminist Genealogies: On the Geography and Politics of Home, Nation and Community' in E Shohat (ed), *Talking Visions: Multicultural Feminism in a Transnational Age* (Cambridge, Massachusetts, MIT Press).

—— (2002) '"Under Western Eyes" Revisited: Feminist Solidarity through Anti-capitalist Struggles' 28(2) *Signs: Journal of Women in Culture and Society* 499.

Mufti, A and Shohat, E (1997), 'Introduction' in A McClintock, A Mufti and E Shohat (eds), *Dangerous Liaisons: Gender, Nation and Postcolonial Perspectives* (Minneapolis, University of Minnesota Press).

Razack, S (1995) 'Domestic Violence as Gender Persecution: Policing the Borders of Nation, Race and Gender' 8 *Canadian Journal of Women and the Law* 45–88.

Robertson, R (1992) *Globalisation: Social Theory and Global Culture* (London, Sage).

Sassen, S (1996) *Losing Control? Sovereignty in an Age of Globalisation* (New York, Columbia University Press).

—— (1998) *Globalisation and its Discontents* (New York, The New Press).

—— (2003) 'Political Subjectivity in Global Cities' Paper presented at the 'Policy and Politics in a Globalising World Conference' (University of Bristol, July).

Scott, A (1997) *The Limits of Globalisation* (London, Routledge).

Shohat, E (1998) *Talking Visions: Multicultural Feminism in a Transnational Age* (Cambridge, Massachusetts, MIT Press).

Siddiqui, H (2003) 'Empowering Women to Escape Violence: Interview with Hannana Siddiqui' 23 *Refugee Women's News* 6.

Smart, C (1989) *Feminism and the Power of Law* (London, Routledge).

Spivak, G (1993) *Outside in the Teaching Machine* (New York, Routledge).

Starke, E (2003) 'From Domestic Violence to Coercive Control: Confronting the Challenges in Health' Paper presented at the 'Gender, Violence and Health Conference' (University of Bristol, April).

Stiglitz, J (2002) *Globalisation and its Discontents* (London, Penguin).

Walby, S and Allen, J (2004) *Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey*, Home Office Research Study 276 (London, Home Office Research, Development and Statistics Directorate).

Walby, S and Myhill, A (2001) 'New Survey Methodologies in Researching Violence Against Women' 41 *British Journal of Criminology* 502–22.

Womankind Worldwide (2004) *CEDAW Thematic Shadow Report 2003: Violence Against Women in the UK* (London, Womankind Worldwide).

# 3

# *Globalisation, Human Security, Fundamentalism and Women's Rights: Emergent Contradictions*

PEGGY ANTROBUS

## INTRODUCTION

In this chapter I wish to explore from a feminist perspective the links between the simultaneous harm to and empowerment of women resulting from globalisation. In this era both harms and powers take new and contradictory forms. Before the September 11 attacks on those powerful symbols of the military-industrial complex of the United States, few people outside Asia had heard about Afghanistan, and even fewer had heard of the Taliban. But among the few who were aware of these forces were women throughout the world who for many years, through a persistent campaign on the internet, had learned about the plight of Afghan women at the hands of the Taliban. No one was listening then. I'm still not sure that they are listening—now that the 'war against terrorism' has been globalised—to those who are trying to draw attention to the link between the abuse of women's rights and the security and wellbeing of everyone else.

Since 9/11, I have been preoccupied with these linkages and it has been clear to me that it is an exploration crying out for feminist perspectives, and particularly those of feminists from the global south, as well as those from the north who understand the relevance of this perspective for the north as well. In recent years, international debates—official and non-governmental—on globalisation, trade, finance and development, human security, terrorism and war have shown the limitations of approaches that side step the link between abuses of the full range of women's human rights, as documented throughout this book, on the one hand, and on the other the socio-economic deprivation and religious extremism that contribute to the escalation in crime and violence that jeopardises the security of everyone in today's world.[1] Only an

[1] References to these issues can be found in the material provided on many websites. Some of the major websites of women's networks are listed in selected readings.

analysis that is holistic and rejects dichotomies between the public and the private, the political economy and socio-cultural realities, as feminist analysis does, can expose barriers to a more just, humane and secure world. In this sense this book—which links and juxtaposes global economics and human rights, the abuses of warfare and the endemic problems of everyday violence, abuse of those seeking refuge in a world where women have made unprecedented advances in relation to their rights as human beings, global capital and local immiseration—could make an important contribution to the ongoing discussion of issues that are of major concern to the global community as a whole as we enter the third millennium.

In considering the links between globalisation, human security, fundamentalism and abuses of women's human rights, I will focus on the political economy of globalisation and the socio-cultural realities that underlie today's conjuncture of relentless neo-liberalism, virulent and ideological religious fundamentalisms, aggressive militarism and resurgent racism, thus addressing in a new way a number of themes that have emerged in these papers.

## CAPITALISM AND PATRIARCHY, ECONOMIC AND RELIGIOUS FUNDAMENTALISM

The events of 9/11 and the escalation of violence and human rights abuses that it unleashed in the on-going, so-called 'war against terrorism' have given us a new lens through which to view the links between capitalism and patriarchy, between economic fundamentalism and religious fundamentalism. Many have noted the similarities between the orthodoxy of today's capitalist neo-liberalism and religion. In its dogmatism and reliance on blind faith, against all evidence to the contrary, proponents of globalised neo-liberal capitalism (GNC) have transformed economics from science to religion. Globalised neo-liberal capitalism is a form of economic fundamentalism that upholds the supremacy of the market over the state, economic growth over social development and profits over people. And it has something else in common with religious fundamentalism—patriarchal control of women and the devaluation and exploitation of their time, labour and sexuality is common to both.

To elaborate briefly. Profits are built on the exploitation of women's unwaged labour in the household and in subsistence agriculture, on the low wages paid and the poor working conditions to which millions of women are subjected and in the use of women's bodies in the sex trade as well as in advertising. Government policies that privilege economic growth over social development can do so because women can be depended on to perform their traditional role as primary care giver. Political ideologues and extremists—in the heart of Western democracy no less than in the Middle East, Asia and Africa—find religious fundamentalism to be a useful tool for reinforcing political power, and especially for guaranteeing the vital support

of women for their projects. For women's central role in biological and social reproduction must be placed at the service of political domination.

I want to turn now to explore the links between these two fundamentalisms in the context of today's globalised economies in order to show how religious fundamentalism has accompanied the economic fundamentalism of neo-liberal globalisation and how the abuse of the wide range of women's human rights undermines the security of everyone.

## GLOBALISATION AND WOMEN'S RIGHTS AS HUMAN RIGHTS

Globalisation is not new—many see it as the latest manifestation of colonialism. The division of the world between one group of countries that use their power and privilege to command the resources and productive capacities of another group of countries by exercising control over political, cultural and social structures used to be called colonialism. Today it is called globalisation. Political struggles for resources are inherent in colonialism, neo-colonialism, imperialism and globalisation. For some countries they represent a continuum: today's horror stories from the Middle East and Africa can only be understood as the latest manifestations of neo-colonial and imperial greed and savagery. A focus on women's rights gives us a new way of looking at these events.

Since the International Conference on Human Rights of 1993, feminist leadership has transformed the meaning of human rights enabling us to understand the universality of rights that are indivisible—that women's economic and social rights cannot be separated from their civil and political rights (Fried, 1994), and that so-called cultural rights that deny women fundamental human rights are nothing but patriarchal abuse of male power and privilege. The slogan 'Women's Rights are Human Rights', devised for the campaign spearheaded by the Centre for Women's Global Leadership (CWGL) at Rutgers University, captures the simplicity, and profundity, of the challenge to the international community.

Focusing on the abuse of the full array of women's human rights allows us to see the ways in which people's lives and livelihoods have been stunted by a global economic system geared to place the wellbeing of the powerful and privileged above those of the majority of the world's peoples. For this vulnerable majority, today's integration of global markets ushers in not a golden age of opportunity but an intensification of the pressures that place at risk the livelihoods and security of millions of people and the planet itself.

## WHAT'S NEW ABOUT GLOBALISED NEO-LIBERAL CAPITALISM?

While the globalisation of the economic, political, social and cultural structures is not new, what is new is the pace and extent of this process of integration of economies and governance and the forms of resistance to its

spread. Advances in information technology and biotechnology have facilitated this process, but the spread of economic liberalisation across the world through the adoption of a common policy framework has done even more to provide an environment conducive to the breaking down of economic barriers and the integration of economies worldwide, at the expense of sovereignty and accountability.

The spread of neo-liberalism started with the rise to power of conservative governments in the US and Britain in the late 1970s. When these neo-liberal policies—popularly known as the 'Washington Consensus'—were introduced in the US and Britain, they led to a redistribution of wealth from the poor to the rich, to increases in unemployment and poverty, to a loss of benefits to vulnerable groups and to a redefinition of the role of the state. When these policies were exported to developing countries, in the context of the debt crisis, they came to be known as structural adjustment policies, the infamous 'SAPs'—so well known to the poor of the world—that were to have devastating consequences for the countries that introduced them (Sparr, 1994).

Today, although the word 'globalisation' has replaced the phrase 'structural adjustment' as a code for economic policies that place the interests and wellbeing of the powerful and privileged above those of the majority of the world's peoples, many of us understand that it was this policy framework of the Washington Consensus that laid the basis for the integration of global markets. We understand that globalisation ushers in not a golden age of opportunity but an intensification of the pressures, first experienced in the 1980s under policies of structural adjustment, that place at risk the livelihoods and security of millions of people and the planet itself.

## The Impact of SAPs on Women

The spread of these policies in the decade of the 1980s saw the reversal of many of the gains made in the 1960s and 1970s. The Latin Americans named the 1980s 'The Lost Decade' and UNICEF published a book of case studies, *Adjustment with a Human Face* that spelt out the impact on vulnerable groups—'women, children, the elderly and the poor' (Cornea et al, 1987). Women were to bear the brunt of these policies. After all, women were the people responsible for the care of children and the elderly, so they suffered not only their own deprivation, but the negative impact of the policies on those in their care as well and the additional burdens of feeding and caring for their families with reduced resources.

The social consequences of the cuts in social services that were characteristic of this policy framework provide a good example of the disproportionate burden of these policies on women. Cuts in these services place women in triple jeopardy: they lose jobs (since they predominate in the sectors that are cut), they lose services on which they depend in their role as care givers and

they are expected to fill the gaps created by the cuts. The Latin American feminists spoke of the 'super-exploitation' of women. It was little surprise therefore that women were at the forefront of the critiques of these policies.

**Feminist Analysis and SAPs**

Feminist analysis showed that this policy framework was grounded in a gender ideology that is deeply exploitative of women's time, labour and sexuality. It also demonstrated that policies that privileged economic growth over human development, or economic production over social reproduction, were inimical not just to women, but to the whole society. The network of Third World women, DAWN, took this analysis even further by showing the systemic links between debt, deteriorating social services, food security, environmental degradation, militarism, political conservatism and religious fundamentalism (Sen and Grown, 1987).[2] It was the first coherent feminist analysis of the linkages of economic, social, political and cultural systems, their relationship to colonialism and neo-colonialism and the link between macroeconomic policies and the daily experiences of poor women. It was an analysis that changed the terms of the debates on women and development and prepared women's movements to bring women's perspectives to the global debates of the decade of the 1990s—world conferences on environment, human rights, population and social development (poverty). In 1985 DAWN described the crises as a 'crisis in reproduction'. Globalisation has intensified this crisis, and women's lives continue to be sacrificed on the altar of unrestrained capitalist exploitation and greed.

**Political and Cultural Consequences of SAPs: the Case of Religious Fundamentalism**

The impact of policies of structural adjustment was not just economic and social: it had political and cultural consequences as well, and I want to look at these consequences to show the link between economic fundamentalism and religious fundamentalism. A major consequence of the Washington Consensus was the restructuring of the role of the state, and of the relationships between states, markets and civil society. In a sense a feature of globalisation is the 'globalisation' of *national* policies and policy-making mechanisms. Under the rules of trade liberalisation, enforced by the WTO, states can no longer formulate policies that are in the best interest of their citizens. States have had to retreat from their responsibility toward their citizens and must now be more concerned about the demands of international

[2] This was the basis of a platform document prepared for the 1985 Third World Conference on Women held in Nairobi in 1985.

capital. To the extent that women look to the state to guarantee basic services such as education, health, water, electricity and personal security, they stand to lose the most from the switch from people-friendly to market-friendly states.

The cultural consequences of this retreat of the state from its role in guaranteeing the public good were even more devastating for women because of the ways in which economic restructuring in the cause of the spread of neoliberal capitalism has facilitated the spread of religious fundamentalism. First, the withdrawal of the state from the provision of basic services pushes the poor to turn to other institutions for health, education and welfare. Many churches provide these services, and some have used the opportunity to indoctrinate people in the most fundamentalist tendencies in their faith. Secondly, the deterioration in social and economic conditions that followed in the wake of SAPs led to feelings of disenchantment and insecurity that caused people to turn to fundamentalist religion for reassurance. Thirdly, the threatened erosion of cultural values through the spread of Western materialism and consumerism by globalisation led many to embrace identity politics as a form of resistance to 'Westernisation'.

Although the spread of fundamentalism has been evident in all religious traditions, nowhere has this been more evident than in Islamic cultures. In many countries with Islamic populations, the gaps in education, health, sanitation and nutrition were filled by Islamic organisations. The 'madrassas' (Islamic schools) offered not only free classrooms, but food and shelter for poor children. There, indoctrination in Islamic fundamentalism spread Islamic patriarchy, extremism and militancy. The spread of Islamic extremism and militancy is thus related to the deterioration of public services, to economic insecurity and to the spread of Western values of materialism and consumerism.

Fundamentalism exists in most religions, and the one thing they all have in common is the control of women, especially women's sexuality and the use of violence to impose this control. Violence is not only physical, but psychological and even spiritual. Political power is reinforced when it can be linked to religious beliefs and religious groups use political connections to protect their interests. The symbiotic relationship between religion and politics can be lethal to women, as we have seen in many countries,[3] and not only those in the Muslim world.

Accompanying the increased burden on women's time and labour imposed by macroeconomic policies of structural adjustment was therefore an increase in the level of violence, including domestic violence, fuelled by

[3] Starting with the processes leading up to the 1993 International Conference on Human Rights and continuing through all the UN conferences of the 1990s, there has been an 'unholy' alliance between the Vatican, the Christian Right and Muslim fundamentalists to resist and reverse any advances in women's human rights.

a number of factors including a rise in religious fundamentalism that is related to the increased sense of insecurity, the need for services, the spread of globalisation and the struggle for economic resources.

The combination of social insecurity, poverty and the struggle for resources came to a head in the 1980s. During this phase of the Cold War, the US government encouraged the formation of Islamic groups in Asia and the Middle East to fight communism, in the struggle over resources,[4] specifically oil. These groups used religious fundamentalism to secure and reinforce their political power in two ways—by adopting a code of conduct that offered a way of controlling their followers and secondly by espousing religious teachings that would guarantee control over women. As the carriers of the culture, the backbone of the family and the people on whom future generations depend, women's support is critical for any revolutionary movement.

The point is that macroeconomic policies of structural adjustment that were and still are so devastating to women had their parallel in the political struggles waged over resources when religious fundamentalism was used to mobilise and reinforce anti-communist political forces. When capitalism is unchecked, the vulnerable suffer and women more so than any other group since they have primary responsibility for the care of people. When patriarchy is unrestrained, men lose their humanity and a rule of terror is launched on the world. The impact on women of unrestrained patriarchal capitalism is devastating and this has horrendous consequences for the whole society, as we have seen.

The final stage of the 'triumph' of a policy framework that favoured corporate power (the market) over people's power (the state) was reached with the collapse of the Soviet Union in 1990. With the collapse of this socialist 'alternative' the stage was set for the spread of unrestrained capitalism. The World Trade Organisation (WTO), established in 1993 following the completion of a new round of trade negotiations that had been launched in 1986, embodied the rules that ensured the opening up of global markets to corporate greed.

One of the clearest critiques of globalisation to come from official sources is that from a High-level Advisory Group of Eminent Personalities and Intellectuals, convened by the UN in Geneva from 12–14 September 2001, to prepare a report on globalisation and its impact on developing countries. The group made four key points. First, the present processes of globalisation have led to widening inequities between north and south as well as within countries, and the developing countries and the poor people within countries are becoming ever more marginalised. Secondly, the global

[4] The Israeli–Palestinian struggle for territory is part of this on-going struggle for the control of the resources of this part of the world, and is the most blatant manifestation of the confrontation between Europe and Asia.

economy has become more unstable due to the volatility of financial flows and currency exchange rates and their effects on the real economy. Thirdly, the current global economic crisis is a reflection of this instability and the lack of global policy coordination. Fourthly, people across the world are also feeling more insecure as they perceive an increasing inability to exercise control over their lives. The group agreed that the central concept of interdependence should be restored to the phenomenon of globalisation since 'globalisation without real interdependence is unmanageable and may result in confrontation, suffering and social chaos'.

There is no doubt that we are witnessing the results of this today in many countries from Argentina to Afghanistan, from Liberia to Iraq. Unfortunately, these crises are analysed as if there was no connection between neo-liberalism at the domestic level (as in Argentina) and trade liberalisation (as in the Caribbean and in many African countries); between the so-called 'war on terrorism' (in Afghanistan, Iraq and Palestine), political struggles for control of resources (in those same places) and the ethnic struggles for the control of territory (as in the Democratic Republic of Congo and in Liberia). What is clear, however, is that everywhere those whose security is most in jeopardy are women, children and the elderly—which brings me to the issues of human security.

## HUMAN SECURITY

Early in 2001 the UN set up a Commission on Human Security. The concept was defined as 'freedom from want and freedom from fear'. However, despite the excellent choice of members, including Amartya Sen and DAWN's research coordinator on the theme of Political Restructuring and Social Transformation, Vivian Taylor of South Africa, it was clear from the start that they were not going to be able to do the kind of analysis that would remove human security from its association with militaristic approaches to national security. The UN is not ready to confront its most powerful member states whose policy prescriptions are largely responsible for the want and fear which are part of the daily reality of the majority of the world's population. Nor is the UN likely to apply feminist analysis or perspectives to the enduring problems of poverty and violence, despite the many wonderful and inspiring words contained in resolutions and programmes of action that promise the reduction of poverty, the elimination of violence, and the promotion of human rights, even women's human rights.

## BY WAY OF CONCLUSION

While I doubt that the 'powers that be' are likely to see the wisdom of feminist perspectives, it is nevertheless important for these to be presented to civil

society and for the academy to give these ideas legitimacy. The mobilisation of civil society organisations against the war in Iraq may not have stopped the war, but it did indicate that there are increasing numbers of people who see through the dishonesty and misrepresentations of the so-called upholders of democracy and social justice. In this connection, it is worth recalling that the rapid mobilisation against the war would not have been possible without the communications technology that is also part of globalisation. This mobilisation was most effective because it tapped into the movement for global justice, originally known as the 'anti-globalisation movement', a movement that has been building ever since the second Ministerial Meeting of the WTO in Seattle in November 1999. This movement, launched in the Brazilian city of Porto Alegre in 2000, has become the voice of conscience for this generation of young activists. Yet even in this arena, the women's movement is still trying to secure a space and a voice that can bring feminist perspectives to the issues of environmental degradation and food security; debt, finance, trade and development; human security and human rights. The struggle continues, and every contribution counts—especially the contributions of academic disciplines like those of economics, sociology, political science and criminology.

In recognising the need to transgress the boundaries of scholarly disciplines and, crucially the significant role to be played by feminists—scholars, activists and communications specialists—in such a transgression, I hope to have contributed to the opening up of debates that need to take place about the links between the economic, political, social and cultural factors that keep us from realising the dream of 'another world'. In that other world, the guarantee of women's human rights is a strategic path towards the guarantee of human security.

## SELECTED SOURCES

Antrobus, P (1989) 'The Impact of the Debt Crisis on Jamaican Women' in G Beckford and N Girvan (eds), *Development in Suspense* (Kingston, FES).

—— (2004) *The Global Women's Movement: Origins, Issues and Strategies* (London, Zed Books).

Cornea, A *et al* (1987) (eds), *Adjustment with a Human Face Volume 1* (Oxford, Oxford University Press).

*Development*: Journal of the Society for International Development (SID) (London, Sage Publications): SID website: www.sidint.org.

Fried, ST (1994) (ed), *The Indivisibility of Women's Human Rights: A Continuing Dialogue*. Report of the 1994 Women's Global Leadership Institute (Centre for Women's Global Leadership, Douglas College, Rutgers University).

Petchesky, RP (2003) *Global Prescriptions: Gendering Health and Human Rights* (London, Zed Books).

Sen, G and Grown, C (1987) *Development, Crises and Alternative Visions: Third World Women's Perspectives* (New York, Monthly Review Press).

Sparr, P (1994) (ed), *Mortgaging Women's Lives: Feminist Critiques of Structural Adjustment* (London, Zed Books).
UN Commission on Human Security (2003) *Human Security Now: Protecting and Empowering People* (New York, Commission on Human Security).

## Websites—Women's Networks

### *Single Issue Networks*

Women's Human Rights
— Women's Human Rights Network: http://www.whrnet.org
— Center for Women's Global Leadership: http://www.cwgl.rutgers.edu

Sexual and Reproductive Health and Rights
— Center for Reproductive Rights: http://www.reproductiverights.org
— International Women's Health Coalition: http://www.iwhc.org

Violence against Women
— Family Violence Prevention Fund: http://endabuse.org
— Global Alliance Against Trafficking in Women: http://www.thai.net/gaatw

Environment
— Women Environment and Development Organisation (WEDO): http://www.wedo.org

Trade
— International Gender and Trade Network (IGTN): http://www.genderandtrade.net

Peace
— The Global Women's Strike (GWS): http://womenstrike8m.server101.com.

### *Multiple Issue Networks with General/Specific Objectives*

— DAWN: http://www.dawn.org.fj
— Association for Women's Rights and Development: http://www.awid.org
— Women's International Coalition for Economic Justice: http://www.wicej.org

# Part II

# Women on the Move

# 4

# *The Gender of Borderpanic: Women in Circuits of Security, State, Globalisation and New (and Old) Empire*

SUVENDRINI PERERA

## CIRCUITS

What is the *gender* of borderpanic? While the racialised nature of the upsurge of borderpanic following September 2001 has been at the centre of most discussions, less attention focuses on the simultaneously *gendered and sexed* aspects of this borderpanic which sees both the security of the state and the sanctity of the national way of life as under siege. Yet state and nation are constitutively gendered as well as raced constructs (Pettman, 1997; Goldberg, 2002; Peterson, 1992). As are discourses of national identity, the security of borders and rallying calls to war and the protection of the 'homeland'—to invoke that highly emotive construct now resurgent in the rhetoric and practice of borderpanic. The repackaging of the older term 'motherland' as 'homeland' by the Western coalition in the 'war on terror', far from rendering the latter neutral and gender-free, only highlights the gendered processes by which, in Wenona Giles's words, 'the home as an everyday, tangible, and "natural" unit, is frequently mapped onto the abstractions of nation and state' (Giles, 1999: 83). The slippages and crossovers between home, nation and state and the often violent processes of their mapping onto one another are processes located in gendered and racialised spatial practices and representational economies.

I use the term 'borderpanic' to encompass the multiple forms of anxiety produced by subjects who make unauthorised attempts to move across state borders and are seen in the process to transgress the cultural and social limits of the nation.[1] The chapter is divided into two broad sections,

[1] I borrow the term 'borderpanic' from the Borderpanic Symposium held at the Museum of Contemporary Art in Sydney in September 2002. An early version of this chapter was presented at the symposium.

'circuits' and 'stories'. The first locates women's moving bodies within multiple circuits—of state, nation and home, of security, illegality and crime, of the (re)assertion of new and old forms of empire in the climate of the global 'war on terror'—by posing as a question the *gender* of borderpanic. It examines these circuits in a specific context: the Australian borderpanic of 2001–03, a period that encompasses the international stand-off over asylum seekers who sought to arrive in Australia on the *MV Tampa* in late August 2001 in the weeks leading up to the 9/11 terror attacks (Perera, 2002a) and extends through to the invasion of Iraq by a coalition, of which Australia was the third member, alongside the US and UK, in 2003. During this period domestic and international politics entwined to produce a frenzy of new legislative and military moves in the name of securing the homeland. These ranged from the invasions of Afghanistan and Iraq to the excision of parts of Australia for migration purposes in a preemptive strike against asylum seekers, often, ironically, people fleeing the very regimes that the coalition was attacking abroad (Perera, 2002a; 2002b).

The chapter centres on stories of women and children and the complex representational and spatial economies through which they were (and are) produced and positioned at this historical juncture by the state, understood in David Theo Goldberg's formulation as consisting 'not only of agencies and bureaucracies, legislatures and courts, but also of norms and principles, individuals and institutions'. In *The Racial State*, Goldberg theorises the modern (racial and gendered) state as:

> a more or less coherent and discrete entity in two related ways: as state *projects* underpinned and rationalised by a self-represented history as state memory; and as state *power(s)*… [T]he state's capacity to define and carry out projects as well as its capacity to authorise official narrations of historical memory rests on the state's prior claim to power: the power to define the terms of its representations (obviously including legal terms), and to exercise itself and those over whom authority is claimed in light of those terms. (2002: 8)

In the stories I consider in the second part of the chapter this capacity of the state to 'define the terms of its representations' is crucial. In both senses of the word, the ability to define the terms and limits of representation assumes the power to include and exclude. In what follows I am particularly interested in two related aspects of the state's ability to define the terms of its representations through powers of inclusion and exclusion: the power to expel bodies to a space outside its limits—although in these spaces power is nonetheless exercised over the expelled, as in Giorgio Agamben's 'spaces of exception', the camps and prisons of immigration detention (Agamben, 1998; 2000; Perera, 2002b); and the rationalisation of the state's powers of inclusion and exclusion through self-authorising representations—memories, histories, narrativisations, figurations—of the nation and its others.

**Representational Economies and the Counter-Geographies of Globalisation**

The co-articulation of the modern state with race and gender (Goldberg, 2002: 7–8) is evident in the formation of the Australian state as it attempted to define and consolidate itself as a natural, unitary and coherent entity. The years leading up to Federation in 1901 were a period of extended borderpanic whose central policies, domestic and foreign, focused on preventing the racial contamination of an imagined white national body. In these years Australia defined itself by practices of social engineering designed to 'breed out the colour' of Aboriginal peoples, by programmes to promote the fertility of white women while simultaneously discouraging that of Aboriginal, Asian and Pacific women (Baird, 2004) and by prohibitions against the circulation of raced goods and peoples, especially non-white women, across national borders. After Federation the chief category of non-white women legally able to enter Australia were sex workers from countries such as Japan brought in to service the non-white men in the segregated pearling and mining industries, since it was officially unthinkable for white women to do so (Francis, 2003; Jones, 2002).

Some parallels and continuities can be traced between the borderpanic of Australia's formation and consolidation a hundred years ago and the borderpanic engendered by globalisation, often represented as a moment of dissolution of the sovereignty of the nation-state under siege by the uncontainable mobility of raced populations. Catherine Dauvergne points out that migration laws now assume a new level of visibility and have come to be 'narrated in stories of globalisation' as a form of crucial defence of 'what it is to be a nation, to stateness and to the core of membership and national identity' (2003: 4–5). In this climate the specific immigration status of a new arrival, whether asylum seeker, aspiring migrant or subject of smuggling or trafficking, is obscured—or, more precisely, is absorbed into a racialised continuum of crime and illegality. At the same time, the 'war on terror' feeds inflated fears of terrorist infiltration, compounding the xenoracist campaign (Fekete, 2001) against refugees and asylum seekers that was already underway in the 1990s.

New patterns of women's mobility contour this shifting landscape. Saskia Sassen has detailed the 'counter geographies of globalisation' (2000: 503), the factors that combine to produce distinct conditions for women's movement from south to north under globalisation. These counter-geographies are activated by paired forces as 'the dynamics that converge in the global city produce a strong demand for low-wage workers, while the dynamics that mobilise women into survival circuits produce an expanding supply of migrants who can be pushed—or sold—into such jobs' (Sassen, 2003: 256). The need for new forms of low-paid, low-skilled women's labour in childcare, housework and sex work in the global cities of the north combines with the 'survival circuits' of women's labour on which economies in the

south increasingly rely in the face of growing rural poverty, overcrowded capital cities, internal conflict, political instability or civil war—all in turn to some degree themselves effects of globalisation. Women's mobility is thus enmeshed with the practices of a series of transnational actors, legal and illegal—global corporations, people smugglers and people traffickers—as well as states and governments both north and south. Borderpanic, however, obscures the implication of states and corporations in the process, instead focusing on smugglers and traffickers and casting a veil of criminality over women escaping from globalisation's effects of poverty, political instability and civil war.

At the same time, the push and pull factors determining the movement of women from the south into the 'care sector' (Hochschild, 2003: 20) of the global labour market are underpinned and enabled by other economies and flows: by economies of representation and the reworking and continued circulation of historically produced meanings and associations. The demand for certain women to act as nannies, domestics and sex workers in the north is determined not only by their availability as cheap and low-skilled labour, but also by the commodification of what Jan Jindy Pettman refers to as 'racialised womanliness' (1997: 265). Geraldine Heng makes a similar point in her essay, 'A Great Way to Fly', discussing how the marketing of a specific construct of oriental femininity, The 'Singapore Girl', is tied to the national airline's 'competitive edge' in the global economy:

> [A]n exemplary collusion is put in place between postcolonial state corporation (SIA as a government-affiliated national carrier) and neocolonial Orientalist discourse on the serviceability and exoticism of the Asian woman: a collusion that produces, through the *techne* of transnational global advertising and marketing, a commercial enterprise generating substantial fiscal surpluses, and vindicated at the outset as nationalist. (1997: 39)

Heng reveals the robust after-life of imperial and orientalist representations in the post-colonial age, their renewed use-value and circulation through contemporary media and technologies and their mobilsation into new circuits that are at once national(ist) and transnational. The movement of women's bodies from south to north and their location in the global economy are enmeshed in these webs of representation. As Barbara Ehrenreich and Arlie Hochschild put it, 'Immigrant women may seem desirable sexual partners for the same reason that First World employers believe them to be especially gifted as caregivers' (2003: 9)—and, one might add, for the same reason that transnational corporations seek them out as a nimble and compliant workforce on the global assembly line (Perera, 1997: 348–49). The 'Singapore Girl' belongs on a spectrum that encompasses the harem, the tea-room and the massage parlour, in a genealogy that stretches from the houri to the geisha.

'Global woman' (as Ehrenreich and Hochschild describe her) is produced at an intersection of imperial and colonial economies of representation with the gendered and raced counter-geographies of globalisation. Transnational actors and states play a role in initiating, directing and controlling her mobility. Her location in these multiple circuits in an 'international political economy of gendered bodies' (Pettman, 1997: 263) accounts in part for the tensions and ambiguities of her reception in a climate of borderpanic.

**Foreign Bodies: Sovereignty, Security and Illegality**

The last circuit to be mapped in this introductory section concerns the new conditions that the 'war on terror' produces for undocumented migrants, asylum seekers and refugees, especially those associated with a *re*-racialised orient (Grewal, 2003: 546–47) and the co-articulation of these conditions with state responses to globalisation. Once again, the landscape is shifting and multifaceted, for the state is not a unitary entity but includes institutions, processes and actors with discrepant and contradictory roles: in this instance, the separate interests of the judicial, immigration and defence functions of the state and their engagement with competing discourses of sovereignty, security and human rights, as well as with popular culture and media representations.

Immigration policy is a many-headed creature shaped by domestic forces (labour and economic needs, principles of law and citizenship, questions of national identity) as well as foreign policy imperatives (security, diplomacy, human rights, trade, international treaties and obligations). As such it acts in multiple ways on the mobility of foreign—raced and gendered—bodies. The paired aspects of immigration also correspond with a conventional divide between public and private, the 'hard' politics of border protection and security against the internal realm of domesticity and home. It is precisely at this intersection that the bodies of refugees and asylum seekers to Australia's shores are positioned as new forms of criminalisation and measures for security and border protection entwine the 'war on terror' into the 'war at home.' Ensnared in borderpanic, the bodies of asylum seekers and refugees become the very media through which the war abroad is normalised into the war at home. Through the new forms of control and power it seeks to exercise over the bodies of asylum seekers, borderpanic remakes the war abroad into the war at home.

In an essay published a few days after the 9/11 terror attacks on the US, Agamben described how security increasingly supplants and overrides the authority of law and discipline as it comes to be acknowledged as 'the basic principle of state activity' (2001: 1). Drawing on an unpublished lecture

of Michel Foucault's from 1978, Agamben suggests that 'in the course of a gradual neutralisation of politics and the progressive surrender of traditional tasks of the state, security becomes the basic principle of state activity':

> While disciplinary power isolates and closes off territories, measures of security lead to an opening and to globalisation; while the law wants to prevent and regulate, security intervenes in ongoing processes to direct them. In short discipline wants to produce order, security wants to regulate disorder'. (2001: 1)

Globalisation and security feed (on) each other. As globalisation produces and relies on new forms of mobility, security in turn attempts to redirect and contain them. In 2003, the vision of the overriding power of security is most strikingly realised in the new mutant 'Office of Homeland Security' in the United States. Companion measures like the US Patriot Act and the Pentagon's sweeping Total Awareness Program (later renamed the Terrorism Awareness Program in response to public fears of an all-encompassing project of surveillance) are paralleled by new security legislation in Australia and other states of the Western coalition in the 'war on terror'. These measures curtail civil liberties for the entire population, but are singularly punitive towards non-citizens, whether migrants or refugees, with specific powers of denationalisation, deterritorialisation and incarceration against them.

Elsewhere (Perera, 2002b) I discuss the connections between the new punitive measures against asylum seekers and refugees in Australia and other forms of what Angela Davis (1998: 97) defines as 'racialised punishment', linking them both to colonial forms of imprisonment and the structure of the camp that Agamben has identified as 'the fundamental biopolitical paradigm of the West' (Agamben, 1998: 181). Indeed, this structure of the camp becomes visible in new ways in the 'war on terror' both through the creation of 'spaces of exception' designed to be outside international or domestic law, notably Guantanamo Bay, as well as through the manifestation of new technologies for the management of refugees, as figures made available, in Lisa Malkki's phrase, to the 'whole gamut of interventions' of care and control (Malkki, 1995: 500).

The women's stories I tell below are discontinuous, incomplete and double-edged, reflecting the ambiguous role of the women refugees/asylum seekers caught in these multiple circuits of race, gender, state, empire as they are intersected by the overriding demands of security. Domestic and international law play contradictory roles in their stories, at times acting to complement, and at others to counter, the work of security. In this way they provide potential sites to mobilise as well as to prohibit or recuperate practices that defy the program of security and its various proxies and offshoots.

STORIES

*The ship on which we travelled here held many conversations*
*with the ocean about the size of your hearts.*
*The ocean has now turned*
*to dust.*
*There are boundaries to the heart.*
*There is no decency in comfort.*
*No humanity in choosing one's friends so carefully.*
*Do you hear the mothers singing among us?*
*They are trying to lighten the catastrophe*
*with the small glow that shines in a simple*
*hum.*
*Half-mesmerised, half-terrified, their children die*
*while the earth turns beautifully*
*in your universe.*

MTC Cronin, 'Four Temperatures' (2003).

**Locating the Domestic**

Between 2001–03, Australia's policy towards refugees arriving by boat operated through a strategy that depended on the construction of differentiated spaces within and outside the nation. These spaces draw on and rework long established categories of outside and inside, public and private, internal and external, alien and domestic. As such they resonate with deeply held notions of home, family and nation and the processes through which, to cite Pettman's comment on Australian multiculturalism more generally, the state and its domestic politics are established as 'safe, knowable, and orderly against a disorder of the international/outside'. These border-reinforcing processes in turn are buttressed by the self-authorising myths and representations of 'island-occupation and the state's territorialising control' (Pettman, 1997: 272).

In the differentiated spaces of Australia and its outside—'not-Australia' as Bernard Cohen (1993: 33) describes them—the gendered and raced bodies of refugees and migrants are made at once extremely visible and invisible. They operate as both shameful spectacle and shameful secret, and at once as public bodies, to be monitored, intercepted, fired at and incarcerated and as intensely private ones, unknowable, alien, objectified. The processes by which asylum seeker bodies became a public spectacle while at the same time being hidden from public view, and their emplacement in not-Australia through these processes, need to be understood in conjunction with the major prongs of Australian asylum seeker policy: mandatory detention, Temporary Protection, deterritorialisation and militarisation.

Since the early 1990s, all on-shore asylum seekers to Australia have been subject to compulsory, indefinite and indiscriminate detention. This policy is unique among signatories to the UN International Convention on Refugees, although it parallels selected practices in other racialised contexts, such as the US decision to imprison asylum seekers from Haiti at Guantanamo Bay in the 1980s (Simon, 1998). These spaces of exception lay bare the fragile divide that separates the concentration camp from the camp as a refuge and place of protection. The underlying structural connection between the humanitarian and the punitive functions of the camp identified by Agamben, Malkki and others are brought home in the Australian detention centre (Perera, 2002b). Here treaty obligations to protect refugees who have committed no crime under international law are offset against the government's declared objective of 'deterrence': its desire to put its detention camps on display as a sign of warning, fear and punishment.

In Australia, where the world's first private prison for women was established in Melbourne in 1996 (Davis and Shaylor, 2001: 4), detention camps for asylum seekers have, since the 1990s, been operated by a private company, a subsidiary of the US multinational corporation, Wackenhutt. The detention of asylum seekers thus must be understood in the context of the global prison-asylum industrial complex that Davis and Shaylor have described as the 'menacing embrace' of punishment and profit (2001: 4). As the immigration minister took grim pleasure in avowing, these are no holiday camps. Most detention camps are sited off-shore or in remote locations cordoned off by layers of razor wire or electrified fencing.The operation of the camps is characterised by violence, neglect, systematic dehumanisation, and denial of any private space to inmates. The Department of Immigration and the operator strictly control information about what happens inside the camps, and there is limited public knowledge about the numbers of breakouts or the instances of violence, self-harm and inmate deaths that have occurred in the last three or four years (Pugliese, 2002).[2] Processes for determining an asylum seeker's claims to refugee status are painfully long drawn out, extending to a period of years in many cases. Those recognised as 'genuine refugees' at the end of a long process of verification and a series of tests are offered 'Temporary Protection' for a three-year period. During this period their lives are in effect placed in suspension, without any ability to make long-term plans, or be reunited with their families. This is a form of 'protection' that makes a mockery of the name as it inducts the refugee into a period of protracted anxiety and fear for the future that produces its

[2] Because of government restrictions on reporting, information about life in the camps has emerged mainly through alternative sources rather than through the mainstream media—for example, refugee support networks, escapee accounts, special mailing lists and websites. Some of the key websites I have drawn on (Project Safecom, Refugee Action Collective, SAVE Australia) are listed in the bibliography.

own form of post-traumatic stress disorder, focused not on the past but on the future (Pugliese, 2003).

Accompanying the 'deterrent' of indefinite imprisonment for asylum seekers on arrival is a series of legislative measures designed to prevent them from arriving at all. In recent years the most frequent route for on-shore asylum seekers, mostly from the Middle East and Afghanistan, is a sea voyage from Indonesia to one of Australia's ocean territories such as Christmas Island, Cocos Islands or Ashmore Reef. 'Border Protection' legislation, passed the week after the 9/11 attacks in the US, has simply deterritorialised these parts of Australia by excising them from the migration zone—retrospectively in some instances (Rajaram, 2007; Perera, 2002a). Asylum seekers who, after long and dangerous voyages, manage to land in outlying Australian territories are displaced in both space and time and are no longer legally able to claim refuge. Their boats are either turned back with a use of 'necessary force' or towed to off-shore camps in Papua New Guinea and Nauru where they are held in limbo during processing in order to avoid any possibility of gaining access to the Australian legal system. Dislocated in space and time, these refugee bodies work to cohere the ground of the 'homeland' within its unstable, ever-contracting limits.

The assertion of new spatio-temporal boundaries is accompanied by the deployment of the military, in the form of a massive naval blockade to monitor, hunt out and turn around any asylum seeker boats discovered in Australia and its contiguous waters. During one such operation it was claimed that asylum seekers had sabotaged their boat and then thrown their children overboard in an attempt to force the navy to rescue them and bring them into Australian territory. This claim was later disproved, but not before it had served as the key feature of the government's reelection campaign, built around the assertion that people who could 'throw their children overboard' are 'not the sort of people we want in this country' (MacCallum, 2002: 57).

While the 'children overboard' allegations were successfully, if belatedly, exposed (Marr and Wilkinson, 2003), the facts remain unknown about an even more terrible incident during the same period. In this case 353 asylum seekers, of whom 142 were women and 146 children, drowned when their boat sank in international waters between Australia and Indonesia, apparently out of reach of any Australian patrol boats.[3] This is the world's largest known instance of asylum seekers dying at sea. The boat involved came to be known as SIEV X because, while the navy kept close watch on and monitored the progress of a number of other Suspected Illegal Entry Vessels en route to Australia, apparently nothing was known about the voyage

[3] See the testimony of Amal Basry at the end of this chapter.

of SIEV X until after it was too late. The few survivors were picked up by Indonesian fishermen. The sinking of SIEV X leaves many unanswered questions: about what caused the boat to sink, its inexplicable absence from the surveillance radar and the absence of any Australian rescue effort (Kevin, 2004).

Most of the passengers, and the overwhelming majority of the casualties, on SIEV X were women and children who had decided to risk the voyage from Indonesia to join husbands, fathers and sons in Australia. Survivor accounts speak of a day and night of carnage and chaos as children drowned one after another in front of helpless parents. Three drowning women gave birth in the water to babies who drowned as they were born.[4] The high death toll of women and children on SIEV X is not a matter of coincidence or bad luck, but a direct consequence of state policies that are not gender-neutral, but operate on gendered premises and are gendered in their application and consequences. Where male refugees and asylum seekers tend to travel alone, women fleeing civil war and political instability are responsible for the care of children and older relatives who accompany them. Their male family members may have gone ahead or be missing or dead. The Australian government's policy of 'Temporary Protection' seeks to exploit the practice by which male family members are often the first to embark on the asylum seeking process, sending for their families after they have gained refugee status.

'Temporary Protection' produces the vulnerability of women and children by decreeing that those (usually male) asylum seekers who have been assessed as 'genuine refugees' and granted temporary protection cannot have the same protection extended to their spouses and children or be legally reunited with their families. By making it impossible for women and children to legally follow their male relatives even after the latter have gained refugee status, state policies make women and children vulnerable to unlawful methods of entry, and place them at risk of being preyed on by people smugglers to make the hazardous voyage on crowded and untrustworthy boats. In addition to these risks, illegal boat entries are also subject to a highly covert 'disruption programme' by agents of the state. Although little can be known about this programme, sabotage of boats with passengers aboard cannot be ruled out (Faulkner, 2003).

The dangers of arrival by boat are further compounded by a naval blockade that has been in place since 2001, and the explicit orders given for force to be used to turn back asylum seeker boats. This includes the authority to open warning fire on, and forcibly board, asylum seeker boats—an extremely dangerous manoeuvre considering the desperate

[4] For detailed information on SIEV X, including survivor testimonies, see the excellent website www.SIEVX.com. I discuss the story of SIEV X in more detail in a companion paper to this chapter entitled 'They Give Evidence: Bodies, Borders and the Disappeared' (2006).

and volatile situation and the presence of children and other vulnerable people on board. Aboard the boat known as SIEV 10, two women, Fatima Husseini, aged 20 and Nurjan Husseini, aged 55, drowned in the chaos when fire erupted on their boat after it was intercepted by the navy (Marr and Wilkinson, 2003: 269–71). This tragedy, however, did not lead to a re-examination of the policy of boarding and opening warning fire on boats carrying asylum seekers. Instead, following the fatalities on SIEV X and SIEV 10, the militarisation of borders intensified, accompanied by the promotion of further legislation to stop asylum seekers reaching the—ever-shrinking—mainland, the increased use of the navy and a public relations campaign heightening fears for national security.

The effect of these tactics is to habituate the population to the condition of siege and borderpanic and a climate where 'security' is elevated to the level of an all-pervasive and paramount principle. In this climate the gendered practice and application of asylum seeker policy, and the fact that its targets are often women, children and families, either remain invisible or are obfuscated by a propaganda campaign that seeks to depersonalise and dehumanise asylum seekers and maintain fears of an invasion by threatening and violent others. The most specific illustration of this strategy is an order given by the immigration minister's media advisor to the navy's public relations office at the height of the blockade instructing that no 'personalising or humanising images' of asylum seekers were to be taken (Marr and Wilkinson, 2003: 135).

This ban on humanising representations goes hand in hand with official efforts to disallow and discredit the humanity of asylum seekers, most sensationally through the (later disproved) 'throwing their children overboard' allegations, but also through a more sustained attack on the integrity and legitimacy of their human and familial relationships. The best known instance of this strategy is the story of a six-year-old Iranian boy, Shayan Bedraie, who was so deeply traumatised by the scenes of violence he had witnessed in detention that he became unable to eat or speak and, despite several visits to hospital, lapsed into a catatonic state whenever he was returned to detention (Marr and Wilkinson, 2003: 46). The boy, his parents and baby sister were videoed by a camera smuggled into the Villawood Detention Centre, with the parents pleading for his release into foster care to save his life. The story, one of a handful that allowed Australian audiences to see and hear asylum seekers as families and individuals in distress rather than as anonymous threatening figures, immediately touched a chord. The immigration minister's response the following day was calculated to discredit these humanising impressions, first by literally depersonalising Shayan and referring to him as 'it' and secondly by suggesting that the boy's troubles were caused by the fact that his father's wife was not his biological mother, although she was the only mother he had known since infancy (MacCallum, 2002: 5–9).

The denigration and devaluation of asylum seekers' family relationships, together with the campaign of innuendo and allegation, can be understood on one level as an attempt to displace and disown the state's own practices of violence towards children—by holding them in detention in spite of international conventions preventing their incarceration, by failing to protect them from the violent and unhealthy conditions of the camps and in some cases by making it impossible for them to be in the care of both parents while in detention. At the same time, asylum seekers are framed by ethnocentric and orientalist discourses that cast their domestic, gender and family relationships in a strange and lurid light, feeding perceptions of an essential difference between Australian and alien, them and us: *they don't love their children as we do*.

This demarcation between us and them is underlined by the contrast between the violence that state policies visit on the families of asylum seekers and the rhetoric of its *domestic* policies for families. The state's pro-family rhetoric and family-friendly initiatives end at the razor wire. The divide between us and them marks off the realm of Australian families as a world away from refugee and asylum seeker families. Although the family is a deeply contested terrain in domestic politics (as witnessed by a number of ongoing debates over matters such as birth rates, parental benefits, gender roles in child rearing, custody and child welfare) at a *national* level border-panic depoliticises the Australian family by positioning it as removed from the external 'hard' politics of border protection, immigration and security. Domestic issues of race and migration as they relate to the family become invisible at this wider level, as the naturalised divide between the realm of domesticity and its outside reinforces a racialised border between *us* and *them*, sealing off asylum seeker and refugee families from the practices of child welfare and protection. The family and the home are reinforced as categories determined and marked by the limits of race, gender and citizenship.

In mid-2003, lawyers representing five children aged fourteen to six challenged this kind of depoliticised and naturalised understanding of the family by making an application in the Family Court for their release from detention. The children came to Australia on a boat with their mother after their father was granted Temporary Protection. Under the new immigration regime they were assessed separately from their father, determined not to be 'genuine refugees' and held in detention for almost three years, pending several appeals, at the isolated camp at Woomera in the South Australian desert.[5] During this time the children were exposed to scenes of extreme

[5] See Crock for a discussion of some of the anomalies of this case: eg the mother, Roqia Baktiyari's statement that she was a fugitive from Afghanistan was 'disbelieved because of her inability to recognise Afghan currency shown to her, or to describe key aspects of the geography and political structures of the region from which she claimed to have come'. As Crock drily points out, here 'few concessions appear to have been made for the educational and cultural constraints on Afghani women living in the shadow of the Taliban' (Crock, 2004).

violence, in the form of riots, attempted suicides and episodes of self-harm, lip-sewing and hunger strikes among the detainees. Two of the older children repeatedly tried to escape, and attempted self-harm and suicide (Debelle and Riley, 2003). All showed signs of disturbance and trauma.

The case was viewed as a landmark for determining whether the jurisdiction of the Family Court could extend to the children of asylum seekers, with the immigration minister arguing that they fell outside the court's purview. In June 2003 the Family Court disagreed with the minister, ruling that 'the welfare jurisdiction of the Family Court extends to all children of marriages in Australia, including children in immigration detention, where the particular orders sought arise out of, or are sufficiently connected to the marriage relationship' (Family Court of Australia, 2003: point 8). After some delay, finally, in late August the Full Bench of the Family Court ruled that the five children should be immediately released from detention. The immigration minister, however, immediately appealed both the issue of the Family Court's authority to rule on the issue of detention and the release of the five children, in the High Court. In April 2004, the High Court unanimously agreed with the minister, ruling that the Family Court did not have jurisdiction over children held in immigration detention.

The High Court response underlines the government's investment in maintaining control over definitions of the domestic and the limits of the 'family', policing the boundaries of the Family Court and preventing any linkage between families inside and outside the razor wire. In his comments the minister for immigration represented the Family Court as having exceeded the limits of its authority, as well as discriminating against Australians because of the comparative speed with which it heard the case (Kitney, 2003). By representing the case of the detained children as somehow competing for the Family Court's attention with the cases of 'ordinary Australians', any common ground between the two was negated. Instead, the detained children were cast as having, once again, acted as queue jumpers, usurping scarce resources that should have been devoted to lawful residents and real families.

The Family Court's ruling, on the other hand, can be seen as a repudiation of the government's argument that children held in Australian detention centres are somehow outside Australia's borders, external to the space the domestic, the proper jurisdiction of the Family Court and indeed the realm of 'the homeland'. The decision making of this court turned on making a space for the children of asylum seekers at the point of intersection between Australian domestic law and immigration policy and between international human rights conventions and the principle of security. In this sense the Family Court's finding opened the way both for challenging the detention of the other eighty or so children held in the camps at the time of writing, and for making available the domestic as a counter space where the divide between them and us can be reworked and tested.

For the five children at the centre of this case, however, the Family Court ruling was only a provisional and qualified reprieve. After the High Court decided that the Family Court in fact had no jurisdiction over asylum seeker families, the children, who had been living in a community-supported environment, were officially returned to detention. With the 'serviceable brutality' that characterises refugee policy (Pugliese, 2003), the children's carers were renamed 'detention officers' and their suburban home declared a 'Detention Centre'. By this Orwellian reclassification of domestic space, overnight carers became jailors, home became a camp, freedom became incarceration: any contamination of the Australian domestic realm by asylum seeker families was conveniently averted.

## Trafficker and Trafficked

In 2001 a woman whose identity was later established as Puongtong Simaplee, aged 28, from Thailand, died in custody at the Villawood Detention Centre where she was taken after being arrested in an immigration raid for working without a visa in a Sydney brothel. There are several accounts of Puongtong Simaplee's arrival in Australia, including one version according to which she was trafficked to Australia at the age of 12. Regardless of the age at which she arrived, it is indisputable that Puongtong Simaplee worked in the sex trade for a long time. Her body bore all the marks of this traumatic history: at her initial assessment the admission officer recorded self-harm scars, symptoms of Hepatitis C, marks of heroin addiction (often a means used by traffickers to increase the dependency of sex workers) and severe emaciation and malnutrition. She weighed a pitiful 35 kilos and the admission officer had to resort to pulling down her pants to verify that she was a woman.[6] Despite the physical evidence that confirmed her statement that she was a trafficked woman, Puongtong Simaplee, suffering from severe symptoms of heroin withdrawal, was placed in an observation cell in immigration detention, contrary to UN protocols signed by Australia that recommend appropriate housing, counselling and medical assistance for victims of trafficking (Carrington and Hearn, 2003). Three days later Puongtong Simaplee was dead. A reading of the coroner's inquest raises serious and disturbing questions about the medical treatment she received and adequacy of the processes followed both before and after her death.[7]

[6] Testimony by Georgina Costello on the *Law Report*, ABC Radio National, (28 October 2003). Costello represented Project Respect, an organisation advocating for sex workers, at Puontong Simaplee's inquest.

[7] I am grateful to Charandev Singh of the Brimbank Community Legal Centre for discussing the case of Puontong Simaplee with me, and for providing invaluable resources.

The area of immigration law in which gender is most explicitly acknowledged is in policies dealing with the trafficking of women and children in the global sex trade. Puongtong Simaplee's story poses a number of questions: How are the claims of the international anti-trafficking policies and Australia's own commitment to recognising gender as a factor in its immigration decisions and policies impacted by borderpanic and the new preeminence of security? How do anti-trafficking and anti-people-smuggling legislation act on each other to position women in need of protection and how do they work together to promote and sustain borderpanic?

The relationship between borderpanic and international anti-trafficking conventions is not simple. At one level, publicity surrounding the global sex trade, as well as the interventions of some anti-trafficking organisations can be seen as contributing to, and promoting, the effects of borderpanic. Sex worker activists have argued that the international focus on the trafficking of women acts as a smokescreen for the control of non-white women's migration and represses their agency in the global sex industry (Crago, 2002). From a different position Suneera Thobani points out that 'by focusing on the crime of smuggling and trafficking, the state has made smugglers and traffickers extremely visible, while making the actual women who are smuggled and trafficked invisible' (2001: 31). Sensationalist stories of traffickers and people smuggling obscure the stories and circumstances of individual women who are the subjects of these activities. As discussed above, they also fail to address colonial and neo-colonial relations of power, raced practices and policies of immigration control and the complex spatial and representational economies that generate the conditions for the trafficking of women, relations that implicate governments both north and south in the business of trafficking.

Like other artefacts of humanitarian discourse, international anti-trafficking legislation then needs to be understood as a double-edged creation that both fosters and represses the agency of those constructed as its objects. Even as this legislation has the potential to repress non-white women's mobility and agency, it also can afford them a (limited) protective space against the stringent anti-immigration policies of individual states on the one hand and the exploitative practices of the global sex trade on the other. This protection is particularly important in the current environment where the needs of security render irrelevant the specific histories and needs of those categorised as 'illegal' and obscure distinctions between gendered subjects of smuggling and trafficking.

Women enmeshed in practices of trafficking and their aftermath are subsumed in a borderpanic that denies them access to the protection international conventions can afford. Against the provisions of both domestic guidelines on gender and the UN protocols to prevent trafficking, women and girls caught working illegally in the sex industry become subject to punitive detention and summary deportation. In effect this practice benefits traffickers, since the women are not given the opportunity to act as witnesses in any action against them, while in some cases women are returned

to situations where they are placed at risk of retaliation or of being silenced by traffickers (Carrington and Hearn, 2003: 10–14).

The story of Puongtong Simaplee's death locates her as one the hidden casualties of Australian borderpanic. Her story cannot be isolated from those of refugees and asylum seekers, but needs to be read in the context of other deaths of asylum seekers in custody in the detention camps during this period. The treatment she received is characteristic of the punitive and criminalised approach adopted towards all perceived 'illegals' regardless of their immigration status. At the same time, the comparative public silence surrounding her death indicates how violence directed towards women remains unacknowledged in the detention system as a whole. In 2001, a second woman, Thi Hang Le from Vietnam, also a survivor of sexual violence, and with a history of mental illness, jumped to her death three hours after being returned to Villawood Detention Centre, where she had been previously held (Stevenson, 2002). The deaths of these two vulnerable women received little publicity from refugee activists when they occurred, in comparison to the exposes of violence towards asylum seekers in the camps, although groups advocating for sex workers and trafficked women took up the inquest into Puongtong Simaplee's death.[8]

I am arguing, then, for an approach that allows us to connect the stories of trafficked women with those of asylum seekers and other 'unlawfuls' and 'illegals' caught in the toils of a raced and gendered borderpanic. The stories of Thi Hang Le and Puongtong Simaplee are not isolated 'tragic accidents', but a consequence of their positioning outside the limits of the state and their exclusion from a right to its protection, despite their claims under international law. Their exclusion, Goldberg points out, is one that is formative of the power of the state:

> The state has the power by definition to assert itself to or to control those (things) within the state, in short, the power to exclude from state protection. In these senses, the modern state has already lent itself conceptually to, as it has readily been defined by, racial (and gendered) formation. For central to the sorts of racial constitution that have centrally defined modernity is the power to exclude and by extension include in racially ordered terms, to dominate through the power to categorise differentially and hierarchically, to set aside by setting apart. And, of course, these are all processes aided integrally by the capacity—the power—of the law and policy-making, by bureaucratic apparatuses and governmental technologies … by invented histories and traditions, ceremonies and cultural imaginings. (2000: 9)

[8] In response to the publicity following the inquest into Puontong Simaplee's death, the government announced new measures to provide support and protection for trafficked women, including the creation of a new visa category that would allow them to remain in Australia to give evidence against traffickers. It is difficult not to see this as an exercise to rehabilitate the government's soiled reputation in this area, together with a change of minister. The effectiveness of the new measures remains to be assessed.

To the integral role that invented histories and cultural imaginings play in the state's power to include and exclude, to 'set aside by setting apart' I now (re)turn.

## The 'Genuine Refugee'[9]

The deaths of Puongtong Simaplee and Thi Hang Le and the drowning of the women and children from SIEV X and SIEV 10 occurred at the edges of Australian society, in the disorderly and chaotic border territory that is both just inside and just outside our field of vision. Their figures are actively obscured, made invisible, through an ensemble of gendered and racialised practices that produce them as expendable and incidental casualties of more important processes—the collateral damage or road kill of border protection and security. At the legal and official level minimal attention is paid to these invisible women's deaths, with even less discussion of where responsibility lies. These are deaths that must be quickly repressed from public memory in order to maintain Australia's sense of self as a decent and humanitarian nation.

Yet, even as 'humanising and personalising' representations of Iraqi and Afghani asylum seekers in boats were banned from public exposure, the wars in Afghanistan and Iraq returned the images and stories of distressed women and children in need of protection to the centre of our TV screens and newspapers. The invisibility of the faces and stories of the asylum seekers coming ashore at our borders was countered by the extreme visibility of *other* faces and stories of women like these, but with one significant difference: they were women in far away places. The stories of these distant women were invoked, with formulaic outrage, in politicians' speeches and in bellicose media representations justifying 'intervention' both before and after the wars in Afghanistan and Iraq. Through these means the erased body of an essential 'refugee woman' is returned to the centre of national consciousness. This body of difference becomes in turn a unifying figure that, paradoxically, functions as a contradictory presence/absence, both set apart and set aside, to maintain the self-image of the 'homeland' at the centre of today's borderpanic, through the gendered splitting of the refugee body into the terrorist/invader (at home) and the hapless victim (abroad).

'The Afghan Girl', a widely screened US documentary exemplifies the ways in which the gendered refugee body as victim is set apart as a public spectacle for the West. 'The Afghan Girl' refers to a cover photograph first published in the *National Geographic* in 1985. The subject is a young girl photographed in a Pakistani refugee camp during the Soviet invasion of

[9] Sections of the following discussion were published as 'The Impossible Refugee of Western Desire' in Lines 2. 3 (November 2003) http://www.lines-magazine.org/.

Afghanistan (a period, it must be repeated, when US foreign policy actively fostered the conditions for rise of the Taliban, thus setting the stage for the present war in that region). In the wake of the 9/11 bombings and a new war in Afghanistan, photographer Steve McCurry set out to rediscover the original of his famous work, in the words of a promotional website, 'the enigmatic Afghan girl with the haunting green eyes that captivated the world' (ABC TV, 2002).

Sponsored by *National Geographic*, this photographic hunt for the source returns inevitably to the form of the colonial expedition of discovery. McCurry travels in a strange land, through dangerous terrain, accompanied by a cast of native informants who are sometimes devoted and sometimes duplicitous. Supporting him is the full arsenal of Western technology designed to guarantee the authenticity of the object of his quest. The trail leads, to quote the website again:

> after one false start to a remote village in Afghanistan where Sharbat Gula now lives with her three daughters, completely unaware of her international fame … [T]he latest scientific techniques … were able to confirm her identity. Leading scientists in the field of iris recognition—the most accurate, non-invasive identity verification technology in existence today—and the FBI's facial recognition experts both agreed beyond doubt that Sharbat Gula was the woman from the 1985 cover picture. (ABC TV, 2002)

Here the colonial discovery plot is intersected by the contemporary demands of security. 'The Afghan Girl's' identity is authenticated not by reference to the evidence of her own memory or the testimony of local knowledge, but by a series of technological investigations performed on her body by a extraordinary range of experts called on to certify her identity. Reports are presented from a forensic expert for the FBI; by scientists specialising in biometric technologies; by a medical doctor; and finally by a sculptor commissioned to construct a likeness suggesting what the original of the photograph ought to look like fifteen years later (Newman, 2002). The extravagant array of processes employed to authenticate Sharbat Gula read almost as a form of parodic excess, parallelling the state's obsessive processes for identifying 'genuine refugees' at its borders. Simultaneously, these and related technologies—linguistic verification; facial reconstruction; genetic matching; iris recognition and biometrics—are essential to processes of racial profiling, targeting and criminalisation of specific suspect groups already within state borders. The role of the FBI expert, represented on the *National Geographic* website under a floodlit official seal, with various photographs of Sharbat Gula assembled beneath him like so many mug-shots, is particularly telling in this context. Bathed in the sanctifying light of US authority, the quest for 'The Afghan Girl' is a project that mirrors and parallels other missions conducted under the sign of 'Homeland Security' to unmask and expose the terrorist/invader within.

The recourse to technologies of border protection and airport security to verify the truth of 'The Afghan Girl' are neither explained nor justified by the *National Geographic*. Rather they appear as given, completely naturalised practices in the process of McCurry's womanhunt. Revealed here is an underlying correlation between the projects of humanitarianism and security. The rationale for the elaborate search for Sharbat Gula, employing biometrical technologies of surveillance and identification developed to track down criminals, is that the spectacle of the original 'Afghan Girl' seventeen years on is bound to inspire an outpouring of sympathy from Western donors for Afghan refugees, girls and women in particular. And indeed, this belief was justified—according to the figures cited on its website, the *National Geographic's* readers donated some US$ 22 million in 2002, in response to the magazine's 'Afghan Girl' appeal. But these humanitarian ends are not easily extricable from the technologies and practices that enable both the war at home and the war abroad. Multiple links accompanying the appeal on the *National Geographic* website lead the viewer to firms specialising in airport security and identity confirmation technologies. These forms of (official or unofficial) sponsorship underwrite the quest for 'The Afghan Girl'.

As the emblematic refugee girl/woman located in some distant camp, 'The Afghan Girl with the captivating green eyes' is an appropriate object for compassion and protection in the west. The specificities of her original displacement and subsequent history hardly merit a mention. 'The Afghan Girl' inhabits what Malkki (1995, 518) describes as a 'floating world either beyond or above politics, and beyond or above history—a world in which [refugees] … are simply "victims"'. Floated free of her history, 'The Afghan Girl' is coopted into the 'war on terror' from an older and still unfinished war about which it is no longer convenient to remember too much. Instead, 'The Afghan Girl's' successful 'discovery', aided by all the resources of Western technology, implicitly endorses a parallel narrative of 'rescue' by the forces of Enduring Freedom in Afghanistan (and later Iraq).

Although seemingly dislocated from time and isolated in her singularity, 'The Afghan Girl' functions indirectly to reinscribe orientalist discourses in which the protection of women serves as an enabling rationale for the expansion of the colonial state. Inderpal Grewal points out that in the colonial period 'the practice of unveiling the veiled woman or the woman in "purdah" became a technology of power exercised both to "save" and to destroy at the same time' (2003: 537). The return of 'The Afghan Girl' in the 'war on terror' is no coincidence. Her green-eyed gaze legitimises a set of new interventions—humanitarian, military, legal, socio-cultural, economic, political—in the war on Afghanistan.

The authenticated body of 'The Afghan Girl' is a site where the principles of security and humanitarianism meet. Indeed, 'The Afghan Girl' must be seen as the emblematic figure of a war where food parcels and bombs were

alternately unleashed over the heads of the population of Afghanistan. As Slavoj Zizek writes of this bizarre bombardment, 'military action against the Taliban is almost presented as a means to guarantee the safe delivery of humanitarian aid. We thus no longer have the opposition between war and humanitarian aid: the two are closely connected' (2002: 94). In this intimate connection, Grewal suggests, lies the defining feature of the US coalition's power in the 'war on terror', a power residing in 'the *correlation* between the sovereign right to kill and the humanitarian right to rescue' (2003: 537, my emphasis).

In the economies of new and old empire, 'The Afghan Girl' circulates as a complex object of the power to both save and to destroy, a figure of fantasy, fear and longing. Framed by her aestheticising representation, this green-eyed girl/woman in a faraway camp figures as the longed-for refugee of Australian foreign policy, in contrast to the invisible and expendable girls and women seeking entry at our borders. Authenticated by forensic investigation and the most advanced security technologies invented to uncover illegal entries at the border, 'The Afghan Girl' reproduces the impossible refugee of Western desire: a green-eyed other that is almost the same; far away yet instantly available through the mediations of technology; infantilised; enigmatic; certified genuine.

## Locating the Border

This chapter began in some ways as a response to a question posed by Angela Davis and Gina Dent about what might happen if we were to take 'gender and globalisation as starting points, rather than last instances' (2001: 1235) for thinking about processes of racialised punishment and the prison-asylum industrial complex. My discussion develops differently from that of Davis and Dent because it focuses on borderpanic and immigration detention rather than domestic imprisonment. Yet, the two can never be dissociated for, as Davis and Dent point out, 'the prison is itself a border' (2001: 1236). To begin to understand the structure of the prison as a border lays bare a political economy that 'brings the intersections of gender and race, colonialism and capitalism into view' (Davis and Dent, 2001: 1236–37).

This chapter has attempted to unpick the ways in which race, place, gender, globalisation and new and old empire are entwined in practices of immigration detention and borderpanic, as they produce and enforce new forms of (racialised and gendered) illegality and criminality. Simultaneously, locations of home and its outside are reworked through racialised and gendered processes of demarcation and boundary making. The border operates as a mobile and unstable site, marking differentiated spaces outside and inside the nation and the state, spaces contoured and authorised by the

interconnection between particular gendered and racialised spatial practices and representational economies. Understanding and unpicking these dense interconnections is a step towards bringing *home* the figure of the refugee at the border.

## APPENDIX: AMAL BASRY'S TESTIMONY

*Amal means hope in Arabic. That was why my father gave me that name and maybe it was why I survived SIEV X. 146 children, 142 women and 45 men died in the tragedy of SIEV X. I was one of the 45 survivors I saw it all. I saw so many people die and I have to tell the story.*

*It has been three years since the sinking of SIEV X but I am still in the water. I can still feel the dead woman whose body I clung to so I could keep afloat. I never saw her face, it was in the water but I talked to her all night. I prayed for her soul and she saved my life.*

*I still see what I saw when I first opened my eyes under the water. I saw children dying. I can taste the oil and the salt of the sea, I feel my fear and I smell death. Little children, dead babies, desperate parents, families dying one by one, and I was alone believing all the while my own son was dead.*

*I was in the water for 22 hours waiting for my death. I was like a camera I saw everything. When the sharks circled I prayed for my death and suddenly a whale rose up beside me it was as big as an apartment block it blew water from its blow-hole all over me and I thought it would suck me and the woman I clung to into the deep. But the whale also saved me. It saved me from the sharks.*

*Sometimes when the pain wakes me in the night, in that moment between frightening dreams and the shock of reality, I think the sharks are feeding on my body, tearing parts of me away, and ripping at my soul.*

*On the second anniversary of the sinking of SIEV X I knew I was ill. On October 27, 2003 I lost my left breast to cancer and now the cancer is in my bones and is eating away at me.*

*The cancer eats like a shark. My doctors are kind and try to manage the pain but there is a deeper pain, the pain of loss, the pain of rejection. In those hours when I cannot sleep I see the lights that were shone on us as we fought to live in the water.*

*The lights came from ships, I could hear the voices of the men on board so safe and so dry but I could not make out the language they were speaking. I screamed to them to help, we all cried from the sea but they went away. The pain of SIEV X will not go away.*

*I cry so often. I cried and cried when I saw the Australian families in Bali mourning their friends and relatives, I knew how each of them felt. That is how I feel. I cry when I see the families of the American soldiers*

*who have died in Iraq. That is how I feel. And like them I need to talk about the things that have happened to my life and my family because of tragedy.*

*I cry when I think of my beloved Iraq the land of my birth reduced to rubble and my people dying and I cry when I think of my father who is still in Baghdad so ill and so poor. When I was a child we spoke English in our house and my father took me round the world and I learnt so much and met such wonderful people.*

*Our family was torn apart by Saddam Hussein. My mother died hungry. My husband and I were forced to flee to Iran with our children. But we knew we could not stay there and we believed in Australia so my husband went ahead. He was waiting for us for when SIEV X sunk.*

*When we were rescued I spoke English again. I said 'I want to go to Australia and learn very good English and then I want to go on Larry King and tell the world what happened to us'.*

*In all the months we waited in Indonesia and were questioned over and over I still believed in Australia. And I still believe in Australians because they do care about us and they are kind and loving friends. But none of us from SIEV X feel safe; we cannot be safe until we know we belong, until we can be citizens.*

*I may not have long now but I speak English well enough to give evidence for Australia in a court of law without a translator. And I can speak in public without notes and I want to tell my story. The Australians who have spoken up for us are my angels and I thank God for them. And now I want to spend what time I have left telling people what it was like to be there, awaiting my death, there in the water being kept afloat by the body of a dead woman and seeing it all happen.*

*We still need help. All of us from SIEV X still need your help. On the eve of the third anniversary of the sinking of SIEV X I pray to God for the people who died and for all the people who loved them and I pray too for the survivors. We are all in different places and our lives will never be the same but now I know Australians will never forget. I don't have time to write a book but I want to talk and I want to talk now.*

*My name is Amal. It means hope. And I will not give up hope until the day I die.*



Amal Basry lost her battle against breast cancer on 18 March 2006. She was 52 years old.

[10] Reproduced with permission from 'I am Still in the Water with the Dying of SIEV X' http://www.AxisofLogic.com.

ACKNOWLEDGMENTS

Special thanks to Amal Basry for permission to cite her testimony in this essay, and to Mary Dagmar Davis for facilitating this.

## REFERENCES

ABC [Australian Broadcasting Corporation] TV (2002) *In Search of the Afghan Girl* http://www.abc.net.au/documentaries/stories/s676998.htm.

Agamben, G (1998) *Homo Sacer Sovereign Power and Bare Life* (tr Daniel Heller-Roazen) (Stanford, Stanford University Press).

—— (2000) *Means without End: Notes on Politics* (tr Vincenzo Binetti and Cesare Casarino) (Minneapolis, Minnesota University Press).

—— (2001) 'On Security and Terror' (tr Soenke Zehle) *Frankfurter Allgemeine Zeitung* 20 September. http://www.egs.edu/faculty/agamben/agamben-on-security-and-terror.html.

Asian Centre for Human Rights (ACHR) (2005) 'Trafficking: Beyond Gender' 78 *ACHR Review*.

Baird, B (2004) 'Renegotiating Whiteness in Intimate Domains: Sexuality, Gender and Race Politics Since 1996' Paper presented at 'The Body Politic' (University of Queensland, 24–26 November).

Carrington, K and Hearn, J (2003) 'Trafficking and the Sex Industry: From Impunity to Protection' 28 *Current Issues Brief* http://www.aph.gov.au/library.

Cohen, B (1993) 'Aliens' 4 *Westerly* 33–38.

Colman, E (2004) 'Bakhtiyaris Fight to Leave Kids Behind' *The Australian* (16 December).

Crago, A (2002) 'Controlling Female Migrants with Anti-Trafficking Legislation' (Autumn) *Green Pepper* 22–23.

Cronin, MTC (2003) 'Four Temperatures' (Spring) *Griffith Review* 146–150.

Dauvergne, C (2003) 'Challenges to Sovereignty: Migration Laws for the 21st Century' 13th Commonwealth Law Conference (Melbourne) http://www.apo.org.au.

—— (2005) *Humanitarianism, Identity, and Nation* (Vancouver and Toronto, UBC Press).

Davis, AY (1998) 'Racialised Punishment and Prison Abolition' in J James (ed), *The AngelaY Davis Reader* (Oxford, Blackwell).

—— and Dent, G (2001) 'Prison as a Border: A Conversation on Gender, Globalisation, and Punishment' 26 *Signs* 1235–41.

—— and Shaylor, C (2001) 'Gender and the Prison Industrial Complex California and Beyond' 2 *Meridians: Feminism, Race, Transnationalism* 1–25.

Debelle, P and Riley, M (2003) 'Children Freed After Years Behind the Wire' *Sydney Morning Herald* (26 August) 2.

Faulkner, J (2003) 'A Certain Maritime Incident—The Aftermath' *Sydney Morning Herald online* (Web Diary 23 July www.smh.com.au).

Family Court of Australia (2003) *Minister for Immigration & Multicultural & Indigenous Affairs & B & B* Fam CA 591, 8 July.

Fekete, L (2001) *Special Report on Xeno-Racism* (London, Institute of Race Relations).

Francis, R (2003) 'NSW History Council Lecture' 'Hindsight' *ABC Radio National* (21 September).
Giles, W (1999) 'Gendered Violence in War' in D Indra (ed), *Engendering Forced Migration Theory and Practice* (New York, Berghanan Books).
—— and Hyndman, J (2004) *Sites of Violence: Gender and Conflict Zones* (Berkely and LA, University of California Press).
Goldberg, DT (2002) *The Racial State* (Malden, Massachusetts, Blackwell).
Grewal, I (2003) 'Transnational America: Race, Gender and Citizenship after 9/11' 9 (4) *Social Identities* 535–61.
Heng, G (1997) 'A Great Way to Fly: Nationalism, the State, and the Varieties of Third-World Feminism' in J Alexander and CT Mohanty (eds), *Feminist Genealogies, Colonial Legacies, Democratic Futures* (New York and London, Routledge).
Hochschild, AR (2003) 'Love and Gold' in B Ehrenreich and AR Hochschild (eds), *Global Woman: Nannies, Maids and Sex Workers in the New Economy* (London, Granta Books).
Jones, N (2002) *Number 2 Home A Story of Japanese Pioneers in Australia* (Fremantle, Fremantle Arts Centre Press).
Kaplan, A (2003) 'Homeland Insecurities: Reflections on Language and Space' 85 *Radical History Review* 82–93.
Kevin, T (2004) *A Certain Maritime Incident* (Melbourne, Scribe).
Kitney, G (2003) 'Ruddock Attacks Family Court' *Sydney Morning Herald* (27 August) 2.
Malkki, L (1995) 'Refugees and Exile: From "Refugee Studies" to the National Order of Things' 24 *Annual Review of Anthropology* 495–523.
MacCallum, M (2002) 'Girt by Sea: Australia, the Refugees and the Politics of Fear' 5 *Quarterly Essay* 5–73.
Maltzahn, K (2003) 'Paying for Servitude: Trafficking in Women for Prostitution' Pamela Denoon Lecture, Australian National University, Canberra (6 March) www.wel.org.au/announce/denoon/04lecture.htm.
Marr, D and Wilkerson, M (2003) *Dark Victory* (Crows Nest, Allen and Unwin).
Nagata, Y (2004) 'The Japanese in the Torres Strait' in A Shnukal, G Ramsay and Y Nagata (eds), *Navigating Boundaries The Asian Diaspora in the Torres Strait* (Canberra, Pandanus Books, Research School of Pacific and Asian Studies, Australian National University).
Newman, C (2002) 'A Life Revealed' *National Geographic Magazine*. http://magma.nationalgeographic.com/ngm/afghangirl.
Perera, S (1997) 'Representation Wars: *Embassy,* Malaysia and Australia's *Corps Diplomatique*' in C Brunsdon, J D'Acci and L Spigel (eds), *Feminist Television Criticism* (Oxford, Oxford University Press).
—— (2002a) 'A Line in the Sea: Australia, Boat Stories and the Border' 8 (1) *Cultural Studies Review* 1–27.
—— (2002b) 'What is a Camp?' 1(1) *Borderlands*. http://www.borderlandsejournal.adelaide.edu.au/issues/volno1.html.
—— (2006) 'They Give Evidence: Bodies, Borders and the Disappeared' 12(6) *Social Identities* 637–56.
—— (2007) 'A Pacific Zone? Sovereignty, (In)Security and Stories of the Pacific Borderscape' in PK Rajaram and C Grundy Warr (eds), *Borderscapes* (Minneapolis, Minnesota University Press) 201–27.

Peterson, VS (1992) (ed), *Gendered States: Feminist (Re)Visions of International Relations Theory* (Boulder and London, Lynne Rienner Publishers).

Pettman, JJ (1997) 'Border Crossings/Shifting Identities: Minorities, Gender, and the State in International Perspective' in MJ Shapiro and HR Alter (eds), *Challenging Boundaries: Global Flows, Territorial Identities* (Minneapolis, University of Minnesota Press).

Pugliese, J (2002) 'Penal Asylum' 1(1) *Borderlands*.http://www.borderlandsejournal.adelaide.edu.au/issues/volno1.html.

—— (2003) 'Each Death is the First Death' 6 *HEAT* 7–12.

Rajaram, PK (2007) 'Locating Political Space through Time: Asylum and Excision in Australia' in PK Rajaram and C Grundy Warr (eds), *Borderscapes* (Minneapolis, Minnesota University Press).

Sassen, S (2000) 'Women's Burden: Counter-Geographies of Globalisation and the Feminisation of Survival' 53 *Journal of International Affairs* 503–24.

—— (2003) 'Global Cities and Survival Circuits' in B Ehrenreich and AR Hochschild (eds), *Global Woman: Nannies, Maids and Sex Workers in the New Economy* (London, Granta Books).

Simon, J (1998) 'Refugees in a Carceral Age: The Rebirth of Immigration Prisons in the United States' 10 *Public Culture* 577–607.

Stevenson, A (2002) 'Fall Ended Detainee's Desperate Life' *Sydney Morning Herald* (15 November) 2.

Thobani, S (2001) 'Benevolent State, Law-Breaking Smugglers, Deportable and Expendable Women: An Analysis of the Canadian State's Strategy to Address Trafficking in Women' 19 *Refuge* 24–33.

Zizek, S (2002) Welcome *to the Desert of the Real* (London and New York, Verso).

## Key Websites on Australian Refugees

www.SIEVX.com
www.safecom.org.au
www.peoplesinquiry.com.au

# 5

# *Xeno-racism and the Demonisation of Refugees: A Gendered Perspective*

LIZ FEKETE

## INTRODUCTION

It is widely recognised that globalisation, with its ruthless pursuit of markets and sanctification of wealth, destroys local economies, unleashes ethnic wars and creates refugees. But the central role that global institutions and multinational corporations play in creating refugees—the majority of whom are women and children—is seldom acknowledged. Instead, the UK press with the support of successive governments, in order to exclude asylum seekers, has demonised them as bogus, as illegal immigrants and economic scroungers. It was in the October–December 2001 issue of *Race & Class*, that the journal's editor, A Sivanandan, and I first argued that a new racism, bearing all the hallmarks of older forms of racism, was emerging out of the demonisation of asylum seekers (Sivanandan, 2001a; Fekete, 2001). 'Xeno-racism', we argued, was similar to the racism that emerged out of slavery, and later the colonial period, in the way that it denigrated and reified people before segregating and/or expelling them. Xeno-racism, however, was not directed solely at those with darker skins from the former colonial territories. It also targeted newer categories of the displaced and uprooted, including some white eastern Europeans and people from the former Soviet Union. Today, the racist practice of demonisation and exclusion has become a tool in the hands of the state to keep out the refugees and asylum seekers displaced by global capitalism. While the rhetoric of demonisation is racist, as Sivanandan argues, the politics of exclusion is economic—demonisation is 'a prelude to exclusion, social and therefore economic exclusion, to creating a peripatetic underclass, international *Untermenschen*' (2001a).

The fact that xeno-racism is not colour-coded has allowed governments to argue that hostility towards asylum seekers is not derived from any structural racism, but is rather due to individual prejudice and a broad-gauged xenophobia. European governments also absolve themselves by blaming the poor. However, the hysteria about 'aliens' has in fact been

induced by politicians and the press who represent asylum seekers as a threat to 'our' people, our way of life, our standard of living, our housing market, our race. It becomes a matter of prudence, of good governance even, to restrict access to those seeking work and along with them those seeking a refuge from persecution. Less than twenty years ago, the West saw its 'superior' civilisation and economic system as under threat from the communist world. That was the ideological enemy as seen from the US; that was the hostile intransigent neighbour as seen from Western Europe. Today, the threat posed by 125 million displaced people, living either temporarily or permanently outside their country of origin, has replaced the Communist threat. For, in this brave new post-cold war world, the enemy is not so much ideology as poverty.[1] The greedy question now is will these often desperate people reduce our standard of living if we allow them to live and work and raise their families here?

## THE CRIMINALISATION OF ASYLUM AND THE UNDERMINING OF INTERNATIONAL LAW

In this climate, the poor, the displaced, the persecuted come to be regarded as a potent and potentially criminal threat. Seeking asylum—a basic human right—is being transformed into an illegal activity. As 80 per cent of the world's 34 million refugees and Internally Displaced People are women and children, this criminalisation process bears down most harshly on women and their dependants.[2]

There does not seem to be a single region of the world where refugees and migrants are not subjected to hostility and xeno-racist campaigns. Arbitrary detention and expulsion of those seeking asylum is today an international phenomenon. Since the late 1990s, European Union governments have been openly stating that the motivating force for asylum policy is deterrence (Council of Europe, 2004). Specific measures have been aimed at preventing refugees leaving their region of origin and moving into the EU. Moreover, when asylum seekers do manage to penetrate the complex system of migration controls aimed at preventing refugee flight, the European Union has resorted to internal controls based on segregation and expulsion. The mandatory detention of asylum seekers from so-called 'safe countries' has led to the creation of a vast complex of asylum prisons, euphemistically dubbed 'detention centres'. Denying asylum seekers any access to the welfare state is another punitive measure, as is the creation, via anti-terrorist laws, of a separate and more punitive criminal justice system for asylum seekers and 'aliens'. This is underpinned by new integration policies and citizenship laws adopted after September 11 which stress the responsibility of new

[1] See Fekete (2001).
[2] Since this paper was presented Baines (2004) has reinforced this point.

immigrants to assimilate into the 'host' culture. The laws and climate in which they are created make great play of the superiority of European values of gender equality.[3]

## CONFLATING TRAFFICKING WITH SMUGGLING: THE DISAPPEARING OF ARTICLE 31

It is notable that laws that criminalise the act of seeking asylum have been brought in incrementally and in ways that undermine international law, specifically Article 31 of the Geneva Convention, which states that breaking immigration laws to seek asylum in another country is not a crime. This attempt to nullify Article 31 has largely taken place via the various anti-trafficking initiatives adopted by global institutions and nation states, with trafficking described by the G8 as the 'dark side of globalisation' (Morrison, 2000a). I have outlined elsewhere the scale of international co-operation on migration issues and detailed specific, internationally-agreed anti-trafficking measures through which the seeking of asylum came to be regarded as a criminal act (Fekete, 2001). As John Morrison has argued, this criminalisation process began in the 1980s (2000a). Until then, refugee policy was still regarded as a human rights issue. As the number of asylum claims rose in the 1990s, immigration control and not human rights began to be prioritised by Western governments. Policies that denied visas to those coming from refugee-producing countries were introduced. So too were carriers' liability fines which penalised airlines and sea carriers that brought in those without papers. Airline liaison officers were also installed in refugee-producing countries and readmission treaties negotiated. With the introduction of such barriers, the vast majority of asylum seekers attempting to reach the EU turned to human smugglers and trafficking networks. Independent research shows that now most asylum seekers need to engage the assistance of smugglers or traffickers at some point in their journey (Zetter *et al*, 2003).

The detrimental impact of European policies on asylum rights was never acknowledged during the 1990s. Instead, asylum policies were formulated within a criminological perspective, giving priority to the need to combat transnational organised crime over the rights of refugees (Morrison, 2000b). In this, the framers of European asylum law were informed by the new strategy of 'global migration management' which the richer nations of North America, Europe and Australia were fleshing out in supranational bodies and intergovernmental agencies such as the International Centre for Migration Policy and Development and the Budapest Process. In identifying trafficking and smuggling networks as the main obstacle to managed migration, their

[3] See Fekete (2002).

framework blurred the legal distinctions between trafficking and smuggling. For, as Morrison has pointed out, 'trafficking, which involves exploitation that goes on after the arrival in the country of destination, such as bonded labour or prostitution, is clearly a facet of international organised crime. But smuggling, which involves an assisted illegal border crossing with no ongoing exploitation, is not—as acknowledged by the drafters of the 1951 Geneva Convention' (Morrison, 2000b).[4]

The drafters of the 1951 Geneva Convention, in recognition of the human smuggling networks that had aided Jews fleeing Nazi persecution, had stipulated in Article 31 that those who used illegal methods to enter a country should not be penalised if their purpose in doing so was to seek asylum. Today Article 31 has been totally undermined by laws which criminalise smuggling. The year 2000 was designated by the EU, the Group of Eight Industrialised Nations and the Organisation for Security and Co-operation in Europe (which includes Canada and the US) as the year of the Anti-Trafficking Plan. Subsequently, the 2000 UN Convention on Transnational Crime initiated separate trafficking and smuggling protocols. The smuggling protocol makes it an international offence to assist any person in an illegal border crossing, regardless of whether she or he is a refugee in need of protection. It also states that a migrant who engages the help of smugglers is not a blameless victim but complicit in the criminal act of illegal migration.

## Exonerating Deaths at Borders

By conflating trafficking networks with smuggling and treating all those who seek the aid of traffickers or smugglers as complicit in an international crime, the UN Convention has absolved policy makers in the richer developed nations of any blame or responsibility in relation to the mounting toll of deaths at its borders. Today the Pacific, Adriatic and the Mediterranean regions have become graveyards for the thousands of people who do not make it to 'the other side'. Blame for the deaths, if they are acknowledged at all, is placed at the door of ruthless trafficking networks, although those who seek the services of smugglers or traffickers are regarded by the UN as complicit in their own victimisation. What is not acknowledged is the way that immigration and asylum policies of North Africa, Australia and Europe have, since the early 1990s, created a market in which traffickers and smugglers flourish (Marfleet, 1998). Harsh asylum policies and closed

[4] To acknowledge that international law has, in the past, distinguished between trafficking and smuggling, is not to deny that people smugglers can also commit serious crimes against asylum seekers who engage their services. It is well known the traffickers and smugglers have subjected refugee women to all sorts of violation during their journey, including sexual violence, torture and rape.

borders only serve to increase the demand among desperate refugees for the services of traffickers and smugglers who further exploit their vulnerability. In Europe this situation is now further compounded by the EU Council's Border Control Programme.[5] All those asylum seekers, who with the aid of traffickers or smugglers somehow manage to cross the Mediterranean or the EU's heavily militarised borders, are treated under the programme as suspected illegal entrants. For the whole idea of the EU Border Control Programme is to create as many barriers as possible to refugee movement in as many different countries and regions as possible and in the process extend the EU's zone of influence over border controls. Resources are also being ploughed into developing surveillance and detection programmes capable of predicting refugee movement, profiling potential 'illegal immigrants' and 'averting refugee flows'. In fact all these measures do is quite literally funnel people to their deaths. For each time smugglers or traffickers seek to exploit a new route, the EU attempts to seal it off. Subsequently the traffickers and smugglers just choose more circuitous and hazardous routes.

*Militarised Borders—Gendered Effects*

Throughout North America, Australia and Europe, a growing number of NGOs, including the UK Institute of Race Relations, are monitoring the impact of militarised borders and anti-trafficking initiatives on refugee rights. Over an eighteen-month period in 2002–03, the Institute of Race Relations (IRR) documented 742 deaths of people who died attempting to reach the EU by hiding in the wheel bays of aeroplanes and shipping containers, on ferries, trekking overland by hazardous routes or travelling on rickety and overcrowded flimsy dinghies or other sub-standard vessels.[6] The statistics are most certainly a gross under-estimation, as the IRR included in the analysis only officially verified deaths reported in newspapers and press releases of NGOs. In the vast majority of cases, we do not even know the name of the deceased, never mind the age or gender. That so many gravestones in a Spanish cemetery were without a name drew comment in 2003 from El País journalist, Tereixa Constenla. Reporting on a memorial service organised by Algeciras Welcomes for yet another young man whose body was washed up on Spain's east coast, she said:

> There were those, 'the D's [the deceased, difunto] who died in the sea and who died forgotten because here no-one knew who they were, and, as if that were not enough, no-one knew where to go to try to find someone who might have known who they were. They suffocated in the water and drowned in anonymity. We do not know whom to weep over when we have gathered them here. Their relatives, on the other side, do not know that we are weeping for them. They died in the sea, but politics, outlined in dispatches sent from the West, murdered them. They

[5] See Fekete (2003a).
[6] See Fekete (2003b).

> built walls in the water, they demanded that visas should appear out of thin air; politics ensured that persons would be moving on from one place to another … Behind each padlock are the dead in never-ending numbers.[7]

As Constenla says, we do not know much about those who die seeking asylum, but what can be said with certainty is that women form a large proportion of those who 'choose' to be trafficked or smuggled into Europe.[8] Evidence from Australia also points to the fact that the proportion of women and children among the trafficked increases as deterrence becomes the principal force driving asylum policy, as exemplified by Australia's worst maritime disaster ever, now known as the SIEV X affair.[9]

In October 2001, in the infamous SIEV—(suspected illegal entry vessel)—X affair, 353 people, mostly Iraqis, drowned when the tiny wooden vessel they were travelling in sank in international waters north of Australia's Christmas Island and in the Operation Relex border protection zone set up following the Tampa incident. Of those who died, 142 were women and 146 children. Peter Mares (2002) has linked the presence of so many women and children on board the vessel to the introduction, in October 1999, of temporary protection visas. These were justified as a means of making Australia a less attractive destination for refugees and asylum seekers and a preventive measure against people smuggling. In fact, temporary protection visas have increased the market for 'people smugglers'. Due to their reduced refugee status, and their subsequent lack of civil rights, male recipients of temporary protection visas have no legal right to bring in their families for at least three years. This means that the only way for families to be reunited is for women and children to attempt to reach Australia illegally. This explains why asylum seeking children made up 13 per cent of all those arriving by boat in 1999 but by 2001 the proportion of children on boats had risen to more than 30 per cent. The suffering of families caught up in these policies is graphically brought to life by Mares:

> When the disaster was reported in Australian newspapers, Ahmed Alzalimi recognised the distraught face of his wife, Sondros Ismail, who he had not seen in two years. The couple's three daughters, nine year old Imman, seven year old Zahraa and five year old Fatima, had all drowned. Sondros Ismail's sister, Sundus Alfaris, had also perished. Ahmed Alzalimi stopped eating and drinking when he heard the news. Five days later he collapsed and was taken to hospital by friends. As a refugee with a temporary protection visa, there was no way that Ahmed Alzalimi could travel to Indonesia to comfort his wife without giving up any right to return to Australia. (2002)

[7] El País, 20 August 2003. Translated by Virginia MacFadyen.

[8] According to the United Nations High Commission for Refugees, the majority of trafficked people are women, especially those bound for the world's sex industries. For a perspective on refugee women's experiences of trafficking and smuggling networks, see Backers (2001).

[9] See also Perera, ch 4, this volume.

**Refugees in a Changing World**

The 'war against trafficking' allows global institutions and national governments to close borders in the name of national security and of the fight against the shadowy international crime syndicates which control trafficking routes. In effect, the 'war against trafficking' serves as the means of, and justification for, states to recast asylum seekers in the public mind as 'illegal immigrants'. To break domestic immigration law (through, for instance, entering a country as a stowaway) is now redefined as a criminal act, even though the 1951 UN Convention on the Status of Refugees upholds the right of refugees to break domestic immigration laws in order to seek asylum. In such ways the EU has succeeded in shifting the terms of the asylum debate so as to treat asylum seekers not as people from many different countries with many different experiences and each with an individual story to tell, but as a homogenous and undifferentiated mass. From this follows the fascination among EU politicians and the press with flat statistical projections of asylum flows; the offensive language in which migratory movements of displaced people are described in terms of environmental catastrophe and asylum seekers are dehumanised and agglomerated as a 'mass', 'horde', 'influx', or 'swarm' also follows from this. In all of this, xeno-racism against asylum seekers resonates with the past. Jews under Nazism, blacks under slavery, 'natives' under colonialism, were similarly dehumanised, held to possess mass characteristics which then justified exploitation, victimisation, and, at the last, genocide.

The discourse shifts attention away from glocality (the increasing polarisation of the world's population which locks some into a place of poverty while allowing others unprecedented mobility) and towards the trafficking networks which seek to exploit the vulnerable victims of glocality by enslaving them, whether as sex slaves or bonded migrant workers. Yet it is the increasing polarisation of the world's population which is the direct result of globalisation. Forced prostitution and bonded labour are some of its many terrible effects. Moreover, the vulnerability of women to these particular forms of slavery is compounded by the wars, ethnic conflicts and social and economic chaos engendered by globalisation.[10]

According to the United Nations High Commission for Refugees, the proportion of war victims who are civilians leaped in recent decades from five per cent to over 90 per cent of casualties. Eighty per cent of casualties by small arms are women and children, who far outnumber military casualties. Moreover, the breakdown of the economic and social structures and education systems in war zones impacts most on women and girls there by rendering them vulnerable to sexual violence and trapping them in such situations (Brittain, 2003). Women are particularly at risk of human rights

[10] See Kisaakye (ch 7) this volume.

violations—including rape, sexual slavery, prostitution, domestic violence and trafficking. Such human rights abuses lead women to flee persecution at home to seek refuge elsewhere. Women who flee their homes in search of sanctuary from violence too often find themselves confronting yet more sexual and physical violence as refugees. Demonised by governments which resent their presence, women can find themselves subject to sexual attack by police, military, and civilians. And even in post-conflict periods, women's human rights are not protected. Kosovar women, for instance, confronted a steep rise in domestic violence, rape, trafficking and abductions following the war. Any one of these factors is often a key reason for women to seek refuge in the West. Yet they find it particularly difficult to claim refugee status successfully. Women who suffer severe discrimination on grounds of gender have difficulty proving that the discrimination amounts to persecution as the UN Refugee Convention does not include persecution arising from gender as one of the specific grounds of persecution on which to base a claim for refugee status.

The 1951 Geneva Convention relating to the Status of Refugees is the key legal instrument for defining who is a refugee, his or her rights and the legal obligations of states. It was adopted in response to the atrocities committed in the Holocaust and as a protection for the millions of people uprooted by the war, many of whom were still living in makeshift camps years later. Initially the Convention was limited in scope to refugees in Europe and to events occurring before 1951. However, as the refugee crisis spread from Europe in the 1950s to Africa in the 1960s and then to Asia, the 1951 deadline and the geographical restrictions were abolished by the 1967 protocol to the Convention. Under the Convention, in order to gain refugee status asylum seekers must prove that they are victims of persecution. While this is usually taken to mean state persecution, most European states and the US, Australia and Canada, now accept non-state persecution as a cause of refugee flight, provided that the refugee's home state cannot or will not provide protection. Despite such gains, however, the requirement to prove persecution still excludes from the Geneva Convention refugees from the random violence of war, civil war or from starvation and economic immiseration, as well as gender-specific persecution.[11]

These limitations to the Geneva Convention are proving to be profoundly problematic in a changing world, for the move over the last 30 years from industrial capitalism to global capitalism has led to the creation of new

[11] For years when women seeking asylum reported being raped by police or soldiers adjudicators rejected their claims, treating these acts of persecution as a 'private' moment. In the early 1990s Canada became the first country to recognise that women suffer from gender-specific forms of persecution that should be recognised under the 1951 Refugee Convention. Since then, women have successfully sought protection from many gender-specific forms of persecution including 'honour' crimes, female genital mutilation and sexual violence, particularly in conflict situations.

categories of refugees. Today refugees and internally displaced people are being uprooted by a variety of factors, both political and economic (Sivanandan, 2001b). Flight from political repression (such as under communism or fascism that gave rise to the Geneva Convention in the first place) is no longer the predominant form of flight. Since the end of the Cold War, new categories of refugees have emerged. Direct state persecution is responsible for the flight of many ethnic and religious minorities (as well as political dissidents) who fall victim to authoritarian states. But in other cases displacement is due to economic immiseration linked to globalisation. And today economics and politics feed off each other. In a world in which some transnational companies operate budgets that are larger than those in Third World states, such states have little choice but to act as the agents of global capital. And the global imposition of neo-liberal economic policies, forcing indebted countries (the majority) into stringent cuts in public spending, opening up Third World countries as new 'markets'—for example, for heavily subsidised American or European grain at prices that local farmers cannot match—robs those countries of the possibility of developing sustainable economic programmes based on their populations' needs. Moreover, all of this is compounded by savage wars fought not so much for political control as for control over resources—diamonds, minerals, oil and land itself.[12] That such resource wars often assume an ethnic cast simply adds to their terror. And then there are the semi-natural disasters (drought, for example, leading to crop failure and famine) that the impoverished state, prevented from holding on to its resources by the dictates of free trade, is unable to withstand.

Leaders of the Western world who argue that globalisation is a force for good, never acknowledge that globalism, with its demand for 'free' markets and unfettered conditions of trade, creates refugees. Instead of acknowledging the contemporary reasons for refugee flight, they demonise the victims. Open contempt for the victims is made apparent by the use of a racialised 'pseudo-ideology which sees the world in Manichean terms of good and evil, civilised and uncivilised, developed and undeveloped' (CARF, 2003).

## Trafficking, Gender and the IOM

The demonisation of asylum-seekers includes many male stereotypes such as those of the 'violent terrorist' or the 'economic migrant' who deserts his wife and family in pursuit of individual opportunity. By just foregrounding the experiences of the 80 per cent of the world's refugees who are women we could undermine the racist stereotypes and begin the process of telling the true story about global crimes and global harms. Whereas the stories of

[12] See, eg Amnesty International Country Report on the Democratic Republic of Congo (2005). [Eds]

refugee women are largely marginalized, the experiences of women as sex slaves are, occasionally, brought to the fore by politicians and the press. Yet, even here, concrete measures to protect the victims of forced prostitution and resettle them in Europe on humanitarian grounds are seldom put forward. On the contrary, the experiences of women trafficked for sexual enslavement are used by global institutions and national governments to further justify the clamp down on refugees. And at the core of this process operates the transnational body, the International Organization for Migration (IOM).

The IOM is a little known, but hugely important, organisation, comprising 93 member states (a further 36 have observer status). It was founded in 1951 with an economic mandate to manage migration. Since 1989, the IOM has been transformed into a transnational agency for the global management of migration within the economic framework of the New World Order. Through its many outposts it detects migration routes and patterns, gives advice to governments and trains border troops on new technologies. It advises the EU on border management and holds pilot projects to help neighbouring countries adjust to EU police requirements. The IOM has no specific humanitarian mandate; it has no brief on refugee protection.[13]

Among other things, the IOM has a programme to counter trafficking and a 'voluntary repatriation programme' for asylum seekers. It has recently been involved in the programme to return refugees to Afghanistan. Its information campaigns and seminars in places such as Macedonia, Azerbaijan and the French Red Cross camp at Sangatte, have been described as measures to prevent the trafficking of women. But on its website, the IOM's Counter-Trafficking Programme does not mention any initiatives to assist the victims of sexual exploitation to resettle in Europe; rather it talks of organising a safe passage home (ie repatriation).

It is because of its policies on border control and voluntary returns that the IOM has received the opprobrium of a majority of refugee and human rights organisations. Amnesty International and Human Rights Watch have criticised the adverse impact of its policies on the human rights of refugees. The IOM's voluntary repatriation programmes (in the year 2000, the organisation claims to have carried out 430,000 repatriations worldwide) has been criticised in Germany (where 75,000 repatriations were carried out by the IOM in 2000) and in Austria. In 2002, the Austrian government launched, with the assistance of IOM, a Voluntary Humanitarian Returns Programme, which was underpinned by measures to withdraw all state support from asylum seekers from a list of 'safe countries'. Thousands of asylum seekers, including women, children and

[13] This critique of the IOM was first put forward in Europe by the Noborder Network (2002).

the elderly, were summarily ejected from the state housing and left destitute under a policy, which amounted to 'starving asylum seekers out of the country'.[14]

## Global Crimes, Global Harms

Those in power are cynically attempting to justify anti-trafficking initiatives that criminalise refugee women in the name of saving women from forced prostitution. In such a climate, it is essential that those scholar-activists and campaigners working in the field of asylum rights link up with counterparts in the anti-trafficking field to ensure that women refugees do not remain the forgotten majority and that refugee protection issues are placed at the centre of anti-trafficking initiatives. To fail to so engage is to allow the criminalisation of refugees to pass unchallenged and encourage a divisive discourse wherein gender issues are pitted against refugee issues. In effect, refugees are being criminalised twice over: first, as illegal immigrants and secondly, as an army of preying destitutes, scrounging off the welfare state. It is refugee women and those in their care who feel the full impact of Europe's deterrent asylum policies. It is only as 'illicit' users of health, welfare and education services that refugee women emerge from obscurity into the full public gaze. However, they are not regarded as victims, deserving of compassion, but as objects of derision and hostility, prompting xeno-racist reactions. Newspapers abound with xeno-racist stories that, in stressing the threat posed by refugees to the welfare state, focus particularly on refugee women's health needs and fertility, with repeated accusations that refugee women seek pregnancy as a means of securing citizenship via their newborn children. Policies aimed at starving asylum seekers out of Europe, by denying them access to housing and healthcare, bear down most harshly on women and leave them at the mercy of zero-tolerance policing policies towards petty crime (including, in the UK, the new crime of 'aggressive begging') and antisocial behaviour. By sharing information and allowing for a cross-fertilisation of perspectives, we will begin to challenge the current discourse on global harms, global crimes and criminalisation, and bring back into focus the realities that are presently concealed.

## REFERENCES

Backers, S (2001) 'Risking it all: The Implications of Refugee Smuggling' 43(1) *Race & Class* 75–81.

Brittain, V (2003) 'The Impact of War on Women' 44(4) *Race & Class* 41–51.

[14] See (43) *Institute of Race Relations European Race Bulletin* (December 2002).

Campaign Against Racism and Fascism (CARF) (2003) 'Racism and the Market-State: An Interview with A Sivanandan' 44(4) *Race & Class* 71–76.

Fekete, L (2001) 'The Emergence of Xeno-racism' 43(2) *Race & Class* 23–40.

—— (2002) 'Racism: The Hidden Cost of September 11' (40) (April) *European Race Bulletin* (London Institute of Race Relations). http://www.irr.org.uk/europebulletin/index.html

—— (2003a) 'From Refugee Protection to Managed Migration: The EU's Border Control Programme' (43) (April) *European Race Bulletin* (London Institute of Race Relations). http://www.irr.org.uk/europebulletin/index.html

—— (2003b) 'Death at the Border—Who is to Blame?' (44) (July) *European Race Bulletin* (London Institute of Race Relations). http://www.irr.org.uk/europebulletin/index.html

Mares, P (2002) *Borderline: Australia's Response to Refugees and Asylum Seekers in the Wake of the Tampa* (Sydney, UNSW Press).

Marfleet, P (1998) 'Migration and the Refugee Experience' in R Kiely and P Marfleet (eds), *Globalsiation and the Third World* (London, Routledge).

Morrison, J (2000a) 'The Dark Side of Globalisation: The Criminalisation of Refugees' 43(1) *Race & Class* 71–74.

—— (2000b) 'The Trafficking and Smuggling of Refugees: The Endgame in European Asylum Policy' (United Nations High Commission for Refugees, July).

Noborder Network 'The IOM: A Critique' (68) (Autumn) *CARF*.

Sivanandan, A (2001a) 'Poverty is the New Black' 43(2) *Race & Class* 1–5.

—— (2001b) 'UK: Refugees from Globalism' 42(3) *Race & Class* 87–91.

Zetter, R *et al* (2003) *An Assessment of the Impact of Asylum Policies in Europe 1990–2000* Home Office Research Study 259 (London, Home Office Research, Development and Statistics Directorate).

# 6

# *Dangerous Liaisons: Sex Work, Globalisation, Morality and the State in Contemporary India*

BRINDA BOSE

The global alliance Against Traffic in Women (GAATW) uses the following working definition for trafficking:

> All acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, harboring or receipt of a person involving the use of deception, coercion (including the use or threat of force or the abuse of authority) or debt bondage for the purpose of placing or maintaining such a person in a situation of abuse or exploitation, whether for pay or not, such as forced labor in the garment, agricultural, fisheries, begging, sex or other labor sectors, forced domestic, sexual or reproductive services (including forced or servile marriages), forced extraction of body parts, or any other form of public or private forced labor, forced servitude or slavery-like practices.[1]

To counteract trafficking, GAATW demands the following rights: the rights of women to paid work; to migration; to safe, just and equitable working and living conditions; to just compensation; to the organisation and formation of unions and to collective bargaining and, finally, to human dignity.

In the context of paid sexual services, therefore, the significant shift in terminology from 'prostitution' to 'sex work' also further distinguishes between the voluntary and the forced. Voluntary sex work is a right while a prostitute forced into sex work is a victim of (sexual) violence and both need to be protected. In the early 1990s, the Declaration on Violence against Women first made an implicit distinction between forced and non-forced (voluntary) prostitution, signalling that the international

[1] 'Brief on Trafficking in Women, Forced Labor and Slavery-like Practices', issued by GAATW-Canada in 1997. Full document on http:/inet.co.th/org/gaatw/SMR99.htm or from GAATW-Canada.

community's view of prostitution had changed; since the adoption of the Declaration, the majority of international agreements denote forced prostitution and trafficking, rather than prostitution itself, as violence against women. The Vienna Declaration and Programme of Action of the 1993 World Conference on Human Rights recognised women's rights as human rights. The final document produced by the Platform for Action at the Fourth World Conference on Women in Beijing, 1995, condemned only forced prostitution and not the profession as such. However, no international agreement directly condemns the abuse of human rights of women who were not 'forced' into sex work.

According to Jo Doezema, co-editor of an anthology on global sex workers, the international community may agree on condemning only forced prostitution as a human rights violation, but,

> that does not imply agreement on how to deal with voluntary prostitution; how it is to be defined, if it should be regulated by the state or left to the workers to organise, or even if it exists at all. In fact, it is because there is no agreement about 'voluntary' prostitution in the first place that the consensus on 'forced' prostitution has come into being. (1998: 41–42)

Doezema alleges that there have been further dichotomies instituted that are, in the main, reductive and detrimental to a larger understanding of the critical issues around sex work. The voluntary sex worker is most often represented as the Western sex worker, capable of making independent decisions, while the sex worker from a developing country is seen as a passive and exploited victim, a ready prey for traffickers. The other distinction constantly deployed is inspired by the traditional good sex/bad sex division, in which the voluntary sex worker is seen as 'guilty' in essentialist moral terms while the 'forced' prostitute is perceived as an 'innocent' victim, which reinforces the belief that women who transgress sexually-normative roles in any way deserve to be punished.

It is, however, clearly seen today that as in the case of almost every major multinational enterprise under global capitalism, the principal players and beneficiaries of the sex industry—and they are most often not the sex workers themselves—are cohesive and organised. In vastly different societal structures around the world, there is a traceable common pattern of the exploitation of the sex worker by other players in the industry who are able to secure, through illegal and unfair means, the support and services of politicians, police personnel and bureaucrats responsible for governance and the enforcement of the law. With globalisation, various activities and agents connected with the sex industry are no longer restrained by national or territorial boundaries; capital, labour and organisation move relatively unhindered within and across regions. This movement is facilitated by both legal and illegal structures, an intricate negotiation that sustains a huge

transnationalised sex industry and brings it astronomical margins of profit. The industry operates and expands continuously with the help of other multinational enterprises such as the tourism industry, the entertainment sector and drug and criminal networks, with very little of the profit coming to sex workers who then get caught in this web of illegal transactions. Their plight is particularly sombre, of course, in countries where sex work is still penalised as a criminal activity.

## THE PROSTITUTION DEBATES IN INDIA

In an essay on female agency, sexuality and work, published in 1996, Rajeswari Sunder Rajan writes:

> The 'prostitution question', as we may term for short the contemporary debates around women in prostitution, is a fraught one to confront today because of the acute divide it has created among, as well as between, feminists and legal reform activists both in India and the West. It challenges us, as well, to ask whether prostitute interests are being truly represented in these debates. (1996: 122)

I propose to reopen the ongoing debates on sex work in India in the context of developments in the red-light area of Delhi (GB Road) where on 18 January 2002 a group of women sex workers resolved to form the *Milan Mahila Sanghatan* (MMS), an organisation to 'combat trafficking in GB Road' and 'to protect and uphold the human rights of all women engaged in the sex trade' in this locality, and to set these debates up against globalised issues concerning sex work and trafficking. This mobilisation was a response to what has been alleged by these women to be a sustained police attempt to humiliate and harass them following directives from the High Court of Delhi to the Ministry of Women and Child Welfare to take appropriate steps to monitor trafficking and 'rescue' minor girls who have been forced/sold into the trade. The formation of the MMS, which is not yet registered, is inspired and guided by the (registered) organisation of sex workers in Kolkata, the Durbar Mahila Samanwaya Committee (DMSC), founded in 1995 primarily to formalise a STD/HIV-AIDS prevention and intervention programme that had been running since 1992 in the large and well known red light district of Kolkata, Sonagachhi. The DMSC today is a forum comprising 6000 sex workers and their children, whose objectives include the decriminalisation of adult prostitution, securing the social recognition of sex work as a valid profession and establishing the sex worker's right to self-determination.

As Rajan succinctly points out, the prostitution question has always been a fraught one within gender studies and not without reason. However, in the midst of multitudinous debates on morality, rights, exploitation, trafficking, rescue and rehabilitation, the focus often tends to shift away from

the prostitute's interest and usually completely fails to recognise that she may have viable rights, particularly in taking decisions regarding her life and choice of work. In this context, the move to mobilise into an organised body is an assertion of a cohesive identity, precarious as it is in the face of consistent efforts by agents of the state to undermine sex workers' existence in every possible way.

The prostitution question is universally caught at the troubled intersection of societal morality, human/women's rights, economics and state intervention. Even in the Indian scenario, where poverty is an overriding concern, the earning capacity—inspired by need—of the sex worker is ignored in favor of the moralising impulse; the 'cleansing and sanitising' drives undertaken by agents of the state then systematically proceed to both exploit and humiliate the sex worker in ways other than what her work allegedly implies. The sex workers' protest expressed in the 'Sex Worker's Manifesto' raises numerous pertinent queries:

> If and when we figure in political and developmental agenda we are enmeshed in discursive practices and practical projects which aim to rescue, rehabilitate, improve, discipline, control or police us. Charity organisations are prone to rescue us and put us in 'safe' homes; developmental organisations are likely to 'rehabilitate' us through meagre income generation activities which in any case never help to erase … the stigma as 'former' prostitutes and police are bent upon regularly raiding our quarters in the name of controlling 'immoral' trafficking … In a country where unemployment is of such gigantic proportions, where does the compulsion of displacing millions of women and men who are already engaged in an income earning occupation which supports them … and their extended families, come from. (1997: 2)

The 'compulsion' comes, of course, not only from an utopic desire to see Indian society cleansed of the 'malaise' of prostitution, but from a deep-rooted perception that sex work cannot possibly be *chosen* as a profession and therefore all prostitutes must necessarily have been 'trafficked' or forced/coerced into the service. Given the stigma associated with sex work—as well as its apparently obvious non-pleasurable aspects—it may well be true that it is a profession chosen out of expediency rather than out of a range of free options, but this does not necessarily mean that every sex worker at any specific moment seeks to be 'rescued' or 'rehabilitated' where the operation results in harassment of other kinds and most crucially, a loss of absolutely necessary income.

The Suppression in Immoral Traffic (Prevention) Act of 1956 (ITPA)[2] provides the state with the necessary legal power to intervene in the sex workers' trade at all times and under any circumstance, constructing the prostitute as 'victim' and denying her any agency. Trafficking is 'immoral'

[2] At http://www.commonlii.org/in/legis/num_act/soitiaga1956492/

if it is for sex work but not for any other purpose such as marriage or domestic work; laws are deployed primarily against the sex worker and not against those who coerce/force/perpetrate fraud at the point of entry into the industry. Needless to say, there is no monitoring of the rampant abuse of state power in the (man)handling of sex workers under the guise of maintaining law and order and reigning in criminal activity.

It is possible to interrogate the established parameters of the sex work debate through the recorded agenda/experiences of the sex workers' organisation of Kolkata (DMSC) and Delhi's fledgling MMS. In the context of today's global awareness and promotion of anti-trafficking laws, it is particularly pertinent to re-examine the questionable circumstances in which the agents of the state in India pursue the implementation of such laws. If prostitution is a criminal offence, is exploitation (that includes a range of activities from physical violence/intimidation to extortion of money to rape) of the prostitute by agents of the state to be allowed by law? Is it possible for a sex workers' organisation to police themselves (against the trafficking of minor girls, for example) and achieve appreciable results instead? If rescue and rehabilitation is on the state's agenda, can more viable alternatives for comparable income generation be pursued? What position/identity in society can sex workers aspire to/demand as a right in the context of a global concern with trafficking and the spread of HIV/AIDS in the sex trade?

As Kamala Kempadoo asserts:

> Identity, rights, working conditions, decriminalisation, and legitimacy have been central issues collectively addressed by prostitutes for many years. Through these struggles the notion of the sex worker has emerged as a counterpoint to traditionally derogatory names … inextricably related to struggles for the recognition of women's work. (1998: 3)

The conceptualisation of prostitution as work—sexual labour considered similar to other forms of labour that an individual performs to sustain her or himself—emerged first in the 1970s through the prostitutes' rights movements in America and western Europe. Though it has since permeated even traditionally conservative societies such as India, sex work is clearly not a universal or ahistorical category. In most of the world, as Kempadoo indicates, 'Sexual labor today forms a primary source for profit and wealth, and it is a constituent part of national economies and transnational industries within the global capitalist economy' (1998: 8). As with any other form of labour—or perhaps more so because of related sociocultural pressures—sex work is subject to exploitation in as much as it can be considered as a basis for mobilisation in workers' struggles for working conditions, rights and benefits. In India, as in many other countries still, the struggle is yet primarily for recognition, for an acceptable worker identity that is de-criminalised.

In 1999 the Centre for Feminist Legal Research in New Delhi prepared a memorandum on the reform of laws relating to prostitution in India. Several policy approaches to the legal regulation of sex work have emerged in India over the years, some explicit in the ITPA, while others are implied in more general attitudes adopted in various measures supposedly promoted for the protection of women in Indian society. In the popular imagination, women are inducted into the sex trade through deception, force, fraud or coercion. It is always assumed that entry into sex work is a coercive practice and therefore that the women who are forced into it are victims—of pimps, brothel owners and traffickers—in need of rescue and rehabilitation. In India, the existing legislation perpetuates this view. Procuring, inducing or taking a person, or attempting to do so for the purpose of prostitution is an offence under the ITPA and the Act provides for mandatory minimum sentences for different situations, the least being rigorous imprisonment of not less than three years. The question of consent is irrelevant.

The provisions of the ITPA, therefore, are aimed specifically at criminalising all activities related to prostitution, which is narrowly defined as 'commercialised vice'. The Indian Penal Code of 1860, on which the ITPA is based, ignores the question of consent altogether, while the recent Act considers the issue relevant only for the purpose of sentencing and not at the stage of definition of the offence. This reinforces, in law, the construction of the female sex worker as a victim without any agency. In fact, if any evidence of choice or consent is offered, she is penalised. There can be no recourse to law for the woman who consents to enter sex work but is subjected to the use of force, fraud, coercion or even sexual violence in the pursuit of her profession. The ITPA provisions are focused on the 'immorality' of trafficking for sex work, just as sexual intercourse is 'illicit' if it is for monetary considerations. Concerned as they are with the morality of sex work, the ITPA fails to deal with various kinds of exploitation that the Indian sex worker faces from her point of entry into the industry. The case for trafficking is not simple either, because in order for a prosecution to be successful, the testimony of the sex worker is required. Usually, she is rarely willing to provide such testimony for fear of jeopardising her own livelihood or rendering herself vulnerable to state prosecution for engaging in or soliciting prostitution. Ultimately, therefore, a law that is rarely invoked ends up more often as a tool for harassment of the sex worker, instead of providing her with protection.

At the first level, in India, a distinction needs to be made between voluntary sex work and that which is coerced, so that the systematic exploitation of the sex worker can be effectively addressed and countered. The primary concern should be to ensure that the sex worker is not exploited or abused and that she has access to her rights as a citizen and as a worker. She must be protected from harassment by the state and law enforcement agencies, as well as from the local mafia who regularly extort 'protection' money from her.

At the First Sex Workers Conference held in Calcutta in November 1997, more than 3000 sex workers from across India collectively demanded the decriminalisation of sex work and the recognition of their status as citizens and workers. This demand was reiterated at the follow up conference held in Calcutta in March 1998. These conferences, together with the two consecutive Millennium Melas (fairs) organised in Calcutta in 2001 and 2002 which boasted huge international participation, are indicative of the growing support of these demands from the hitherto largely invisible sex workers' population as well as the emergence of a mass movement committed to securing human rights for this labour industry.

It is clear, of course, that the issues raised today around the legalisation and/or the decriminalisation of prostitution in India cannot be considered in isolation. As Jyoti Sanghera points out, forces of globalisation now affect and direct all structures and institutions of contemporary Indian social reality; this is particularly true of sex trafficking since global economics and national/international policies crucially shape its dynamics. In a majority of analyses on trafficking and the sex industry, the women concerned are presented as victims either of patriarchy or a crude, undifferentiated capitalism.[3] Sanghera summarises the labour equations between the north and the south, or the First and Third Worlds as gendered:

> Formerly under colonialism and presently under globalisation, countries of the third world have been defined principally as providers of natural resources and cheap labour … The systemic inequality between the North and the third world creates the impetus for the migrations of peoples … this migration pattern is marked by a one-way movement; this is not freedom or the expression of free market forces … Against this background, then, today we witness the growing feminisation of migration in the third world. Third world women are moving in to constitute the backbone of the service sector at an international plane, engaging primarily in domestic and sex work. This feminised category of labour is constructed through a sophisticated combination of economic need, racist stereotyping and patriarchal oppression. Consequently, this labour is the most accessible, vulnerable and exploitable for the forces of global capitalism. (1997: 5–6)

The fate of Third World sex workers, therefore, is integrally linked not just to the fate of their families but their countries. To understand and respond to the specificities of the sex industry in India, it may be first necessary to de-link it from an internationalised (and perhaps even universalised) concern about illegal sex trafficking and to make vital distinctions between the following: sex trade and trafficking; trafficking for prostitution and for other purposes; trafficking and migration; sexual violence/exploitation and sex work; sexual

[3] Sanghera stresses the importance of transcending the 'victim mould' and comprehending the distinctions between regions and social groups in analysing the effect of global economics on the sex industry.

slavery and sex work; forced labour and slave practices in the sex trade and voluntary sex work; small time pimps and organised crime gangs and ethics and economics. I would like to focus for the moment on the question of the different kinds of sexual violence and exploitation that are perpetrated on sex workers that very often get submerged and lost in larger ethical/economic considerations of the sex industry. Because the sex worker in India, for a number of appreciable reasons, cannot or does not seek legal redress against those who exploit her, it is usual for various agents of the state to invoke the law to harass her for their own gains, be it monetary or otherwise.

## THE STATE OF/AND PROSTITUTION IN INDIA

> *Apart from highly criminal lifestyles, all these children share something else: they are all products of the red light area…*
> *…According to a senior police officer who handles trafficking and cases related to prostitutes, the trade is bound to spawn criminals. There is very little the police can do. It is not as if the police do not do anything. 'Whenever we are tipped off, we conduct a raid…'*
> *…Police officials admit that they are unlikely to receive complaints from red light areas. Too many people have too much at stake to go to the police…*
> *…'Besides, policemen themselves are a part of all the crime taking place here. They are in collusion with pimps and moneylenders. They are even part of the trafficking. So how can they be expected to take any action?'…*
> *… 'This is a charge that everybody makes—that policemen are involved and so don't take any action,' says the police officer.* (Venkatesh and Bhadauria, 2000: 16–17)

Central to all debates on prostitution in India is the fact that the prostitute/sex worker is perceived to be the offender, while the client—or any other institution/agency that is involved—is not. Penalties imposed on prostitutes are far more severe than for pimps or brothel keepers. In a working paper on the 'anti-prostitute bias in Indian laws', Jean D'Cunha alleges that the

> proliferation of brothels, the negligible number of raids and the failure of raids are the result of the economic and political linkages between the prostitution racketeers, the police and the local political bigwigs. Police officials from the vigilance cell, crime branch, collect Rs 30 to Rs 50 per month as a bribe per brothel, depending on the earnings of the brothel. It is said that brothels provide election funds and vote banks to political persons in exchange for patronage. The attitude that prostitution is a necessary social evil is used by the police, courts and society at large to turn a blind eye to trafficking for prostitution. (1995)

In all court and police records in general, it is seen that the number of arrests of prostitutes far outweigh those of the 'racketeers', because the

police gain specifically when they arrest sex workers. Mass arrests of prostitutes help maintain police 'arrest quotas', while it appears to uphold a hypocritical link between morality and public order, thereby boosting their image in society. In reality, these arrests are used to extort money and/or sexual favours from the prostitute, who is vulnerable to this authority figure and is therefore forced to appease his demands for money and/or sex. Sometimes, the police are in league with pimps and brothel owners who all make money at the expense of the sex worker. These pimps and brothel owners in any case avoid arrest themselves through bribes and localised political power.

There is no doubt that the police force, the strongest agent of the state and the law in its avowed intention to curb prostitution and rehabilitate sex workers, is solely responsible for much of the profession's current ills. In a working paper on the 'anti-prostitute bias in Indian laws', Jean D'Cunha alleges that the proliferation of brothels, the negligible number of raids and the failure of raids are the result of the economic and political linkages between the prostitution racketeers, the police and the local political bigwigs. Officials from the vigilance cell of the crime branch of the local police, collect (relatively small amounts of money as) Rs 30 to Rs 50 per month as a bribe per brothel, depending on its earnings. It is said that brothels provide election funds and vote banks to political persons in exchange for patronage. The attitude that prostitution is a necessary social evil is used by the police, courts and society at large to turn a blind eye to trafficking for prostitution (1995).

Crucially however, representatives of women's organisations—the last named constituent of the proposed committees—identify the concerns about prostitution as a women's (and therefore, a feminist) issue. But feminist thinking, all over the world, has been particularly divided on the prostitution question and it has been difficult, in India as elsewhere, to emerge with some sort of consensus about it.

Kari Kesler has succinctly outlined the problematic of prostitution for feminists:

> Prostitution is seen by many as the absolute embodiment of patriarchal male privilege, clearly disallowing feminist support or participation. However, prostitution as an enterprise is composed of individual prostitute women. As a feminist, it is also problematic to shun a group of women, particularly marginalised women. Add to this the claim by some that feminist opposition to prostitution is simply a politically correct version of controlling and policing a woman's sexuality, and prostitution emerges as a complex issue, to say the least. (2002: 219)

A popular stance condemns prostitution without condemning individual prostitute women, making 'a crucial moral distinction between prostitutes as sex workers and prostitution as a practice and institution' (Overall, 1992: 708). In the Indian context, if not in any other, this poses a peculiar problematic as

the impossibility of accepting sex work as *work* (both legally and socially) is based on such high moral posturing. Most prostitution rights activists also confine their demand to the decriminalisation of prostitution rather than its legalisation, alleging that since the police and the law enforcement machinery are the main problems for sex workers, releasing laws from the criminal code would ensure that prostitutes escaped persistent police harassment. As Meena Seshu, a member of the Sangli-based NGO *Sangram* puts it:

> I cannot support the legalisation of anything that is rooted in oppression and violence. Sex work cannot be termed as work. In other countries where there is less stigma attached to prostitution, women can be in and out of the trade but in India once you are in the profession it is a lasting taint. I can't understand how licensing can help women in prostitution.[4]

While there are multiple views on demands for legalisation and/or decriminalisation of prostitution in India, there is general support for the establishment of self-regulatory boards controlled by sex workers. The need for sex workers to 'collectivise', articulate and fight for their rights is widely recognised. What they are looking for—better working conditions, humane treatment by law enforcement officials, equal opportunities for their children—is read as a demand for basic human rights, apparently guaranteed by the Indian Constitution. However, their desire to be accepted as citizens without stigma is clearly far more difficult to achieve. Menon identifies the problems for sex work activists in India:

> Common perceptions about women in prostitution need to be altered first if the women are to live a dignified existence. The question is not whether to legalise or decriminalise prostitution but whether the women will be allowed to live a secure life without harassment of any sort and not be treated as criminals. That is the bottom line. If the trade is legalised, the women could be subjected to all sorts of external or state control.[5]

The Centre for Feminist Legal Research, New Delhi, in a review of the state of prostitution in India undertaken in 1999, recommended giving statutory recognition to some specific rights which included a provision for women working in brothels to be entitled to all the benefits available under the existing industrial laws and to the facilities and protections available to workers under the existing labour laws, the right to safe working conditions, the right to form collectives, trade unions, associations and have them recognised under the law, apart from basic rights to education, privacy and movement as well as redress mechanisms for their grievances.

[4] Quoted in Meena Menon, 'Legitimising Prostitution' *The Hindu*, Chennai, India (14 June 1998).
[5] *Ibid.*

Calcutta's Durbar Mahila Samanwaya Committee (DMSC) has been a signal project in India for the collectivisation of sex workers to articulate and press for their demands. In her documentary film, *Tales of the Night Fairies* (2002),[6] Shohini Ghosh presents a moving evocation of sex workers' struggles to form a collective and to chalk out for themselves a life that has some colour and meaning. Their lives are grim, yet lit with humour and empathy. In their own words, their needs are simple and touching:

> We stay in the midst of society, yet we are outcastes … Our locality is earmarked as a forbidden area so that no questions are asked. There are hundred and one ways of extortion, even in broad daylight. Local toughs as well as petty officials from police stations claim a share of the earnings of sex workers. They need not filch, a threatening eye is enough—as we are the fallen ones. Midnight looting is legitimate as these are brothels. When we are not even accepted as humans, can we expect to be honoured as citizens of this country? The common rights and privileges accorded to every other citizen are not applicable to us … Our endeavour is to institute our rights. (Minu Pal, 1998: 200–02)

This ongoing project to demand and institute sex worker rights as human rights is focused on 'voluntary' prostitution and the assumption that in such a case sex work is a personal choice and a private transaction—that involves service and payment—between consenting adults. It aims at complete decriminalisation of the activity: that voluntary relationships between sex workers, pimps, brothel owners and landlords as well as the practice of sex work must be removed from the scope of criminal law and be subjected to general laws regarding work instead. Forced sex work is then addressed as a separate issue, with the recommendation that all existing legislation related to sex-trafficking be strengthened. The Calcutta Sex Workers' Manifesto of 1997 issued by the DMSC made a particular plea for recognising the sexual and social morality implicit in the stigmatising of sex work and the patriarchal instincts that make it imperative for a woman to be denied any sexual agency outside of heteronormative, reproductive roles pre-approved for her. The ongoing sex workers' movement in India, networking across the metropolitan centres of the country, now demands rights that are specific to the reality of women in voluntary prostitution, through decriminalisation and the assertion of basic human rights standards in conditions of work. This includes the repeal of all legislation that victimises the sex worker and does not recognise or acknowledge the possibility of consensual relationships between sex workers and their clients, brothel

[6] *Tales of the Night Fairies*. (Bengali/English subtitles/74 min/2002). Script and Direction: Shohini Ghosh. Camera: Sabeena Gadihoke/Editing: Shohini Ghosh and Shikha Sen. Produced with support from the Centre for Feminist Legal Research (New Delhi) and Mamacash (Amsterdam).

keepers and others related to the trade; the recognition of sex workers' families as legitimate units that are entitled to state benefits such as education and health care; the intervention of criminal law when sex workers experience sexual abuse (like rape or coercion) in the same way that other women are entitled to the recourse of the law; a complete de-linking of trafficking and voluntary sex-work; the criminalisation and penalisation of the prostitution of children; and the recognition and support of self regulatory boards instituted by sex workers to check violence within the industry as well as from multiple agents of state machinery, that would eventually help evolve genuine alternative economic and social support structures for women who choose to remain in the profession as well as for those who may choose to leave it.

## CONCLUSION

As work along the guidelines formatted by the DMSC of Kolkata for sex workers' rights is taken up by other projects in various metropolitan centres of India, especially in Mumbai and Delhi, concern about the rapid spread of the HIV/AIDS virus is clearly now an immediate impetus for the public, the government and the sex work industry to clean up its diverse acts. According to a World Bank report of 2005:

> In India, sexual transmission is responsible for 84 per cent of reported AIDS cases. HIV-prevalence rates are highest among sex workers and their clients, injecting drug users, and men who have sex with men (many of whom are married). When surveyed, 70 per cent of commercial sex workers in India reported that their main reason for not using of [sic] condoms was because their customers objected.[7]

Since there are over 5.1 million people infected by HIV in India today (as submitted by the same report) and no real inroads have been made yet in checking the proliferation of this dreaded condition, the sex work industry now needs, even in order to survive, to demand—among other rights—the right to protect its own health. The state, instead of barking moral strictures while exploiting their insecurities on various fronts, needs to assist the sex workers to safeguard the health of the country that is at stake. If, in this process, it accords them some amount of dignity in their profession while they are in it, and allows them to eke their livelihoods from it without the threat of daily violence, more good will emanate from the exercise than one may possibly hope for.

[7] 'Preventing HIV/AIDS in India'. Report available on www.worldbank.org.in/wbsite/external/countries/southasiaext/indiaextn, updated June 2005.

## REFERENCES

D'Cunha, J (1995) 'The Anti-Prostitution Bias in Indian Laws'. Unpublished Paper from the archives of the Centre for Feminist Legal Research (CFLR), New Delhi.

Doezema, J (1998) 'Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy' in K Kempadoo and J Doezema (eds), *Global Sex Workers: Rights, Resistance, and Redefinition* (New York and London, Routledge) 34–51.

Kempadoo, K (1998) 'Introduction: Globalising Sex Workers' Rights' in K Kempadoo and J Doezema (eds), *Global Sex Workers: Rights, Resistance and Redefinition* (New York and London, Routledge) 1–29.

Kesler, K (2002) 'Is a Feminist Stance in Support of Prostitution Possible? An Exploration of Current Trends' 5(2) *Sexualities* 219–35.

Minu Pal, Sadhana Mukherji, Madhabi Jaiswal, Bachhu Dutta (The Mahila Samanwaya Committee, Calcutta, India) (1998) 'The Wind of Change is Whispering at Your Door' in K Kempadoo and J Doezema (eds), *Global Sex Workers: Rights Resistance and Redefinition* (New York and London, Routledge) 200–04.

Overall, C (1992) 'What's Wrong with Prostitution? Evaluating Sex Work' 17(4) *Signs* 705–24.

Rajan, RS (1996) 'The Prostitution Question(s): (Female) Agency, Sexuality and Work' in R Kapur (ed), *Feminist Terrains in Legal Domains: Interdisciplinary Essays on Women and Law in India* (New Delhi, Kali for Women).

Sanghera, J (1997) 'In the Belly of the Beast: Sex Trade, Prostitution and Globalisation' Discussion paper for the Asia and Pacific Regional Consultation on Prostitution, Bangkok, Thailand, February (reproduced in *Moving the Whore Stigma* compiled by GAATW and the Foundation for Women, Bangkok).

'Sex Workers' Manifesto' (1997) Theme Paper of the First National Conference of Sex Workers organised by Durbar Mahila Samanwaya Committee, at Yuba Bharati Krirangan (Salt Lake Stadium), Calcutta, 14–16 November.

Suppression of Immoral Traffic (Prevention) Act, 1956 can be found at: http://www.commonlii.org/in/legis/num_act/soitiaga1956492/.

Venkatesh, S and Bhadauria, S (2000) (eds), *Diary of the Dispossessed* (Bangalore, Books for Change).

World Bank (2005) 'Preventing HIV/AIDS in India'. Report available on www.worldbank.org.in/wbsite/external/countries/southasiaext/indiaextn, updated June 2005.

# Part III

# Human Rights – Limits and Possibilities

# 7

# *Global Rights, Local Harms: The Case of the Human Rights of Women in Sub-Saharan Africa*

ESTHER KISAAKYE

## INTRODUCTION

The theme of the workshop at which this chapter was first presented was 'Women, Crime and Globalisation'. As such, it was very relevant to the situation of women in developing countries. For decades, women have been victims of crime committed by strangers and/or state officials as well as by members of their families. As a result, national governments have made some efforts to legislate against various crimes against women and to bring the culprits to justice. These efforts have been complemented by the international community, which has also sought to hold individuals accountable for gross human rights violations committed during war or situations of armed conflict. These efforts to bring perpetrators of war crimes and crimes against humanity to justice have been further intensified through the establishment of various international war crimes tribunals and more recently the International Criminal Court. However, this response to crimes committed against women is based on the notion of individual responsibility. Indeed, this notion constitutes crime as defined and understood in legal jurisprudence and is central to the criminal justice system. By contrast, I shall argue that the dynamics of the women-and-crime relation are quite complex, requiring an analysis that looks beyond the traditional definition of crime to embrace conduct which results in gross violation of human rights of *groups* of persons, be they civil and political rights or economic, social and cultural rights.

The concept of social harm, as developed within criminology and in the Introduction to this volume, becomes very relevant here. It brings a broad range of harms which apparently have little in common except that they impact on women within the scope of critical criminological

understanding and theorising, thereby making possible new insights into the origins of the problem and also indicating in a different way where solutions to these problems might be found. I shall attempt to explore these dynamics from the perspective of crimes committed against women and the link between these crimes, globalisation and the failure to protect their human rights.

My focus is on women living in developing countries, with specific reference to sub-Saharan Africa. The gross violation of women's human rights in sub-Saharan Africa is commonplace. Yet to date, this has not been matched with any corresponding effort to enhance the protection or enforcement of these rights on the part of state governments and the international community. This is so, in spite of the existing international human rights framework, which imposes obligations on state parties to ensure the elimination of gender inequality and to take all measures necessary to address gender discrimination from all spheres of life. To explore the plight of African women in the context of globalisation and accountability for the harms inflicted by human rights violations, I look at three issues that separately and jointly impact on their human rights, namely, armed conflicts and violence against women, HIV/AIDS and poverty. It is intrinsic to my argument that, in the developing world at least, crimes and harms in general or those against women in particular cannot be considered without taking into account the widespread violation of social as well as political rights.

## ARMED CONFLICTS AND VIOLENCE AGAINST WOMEN

Internal and cross-border armed conflicts abound across the continent of Africa, with women and their children comprising a large number of victims. According to statistics from the United Nations High Commission for Refugees (UNHCR) the number of civilian casualties has increased in the decade 1995–2004 from five per cent to over 90 per cent. Women and children constitute 80 per cent of the civilian casualties by small arms, far outnumbering military casualties.[1] This trend of violence continues to the present day. For instance, in 2003 alone, there were widespread human rights abuses in at least seven African countries, ranging from civilian deaths by government forces and armed groups to mutilation, internal displacement, rape and other forms of sexual violence (Amnesty International, 2003). Amnesty International reports such conflict in at least 19 nations of sub-Saharan Africa. As has been noted in an Amnesty International Report in 2003, these 'forgotten' conflicts in many countries in Africa continue to

[1] See: UNHCR, *REFUGEES magazine*, available at http://www.ivillage.co.uk, last visited on 24 May 2004.

take a heavy toll on human rights and human lives, particularly for women and children.[2]

Armed conflicts result in massive displacement of women and children. As noted above, it is estimated that women and children constitute between 75–80 per cent of the world's 50 million refugees and persons displaced from their own countries.[3] In refugee and internally displaced peoples' camps, women continue to be raped by either their fellow refugees or by those put in charge of protecting them. Where they survive the bullets, the rocket propelled grenades or helicopter guns, young girls and married women may be abducted by armed rebels who either sell them into sexual slavery or coerce them into becoming wives by raping them and forcing them to bear and raise unwanted children—'the children of hate'. The plight of women in armed conflict is graphically demonstrated in the following account:

> We were completely unprepared for the searing magnitude of what we saw and heard in the conflict and post-conflict areas we visited ... We knew that 17 percent of displaced households surveyed in Sierra Leone had experienced sexual assaults, including rape, torture and sexual slavery … at least 250,000—perhaps as many as 500,000—women were raped during the 1994 genocide in Rwanda. We read reports of sexual violence in the on-going hostilities in Algeria, Myanmar, Southern Sudan and Uganda. We learned of the dramatic violence in war zones, and of the growing numbers of women trafficked out of war zones to become forced labourers and forced sex workers … But knowing all this did not prepare us for the horrors women described. Wombs punctured with guns. Women raped and tortured in front of their husbands and children. Rifles forced into vaginas. Pregnant women beaten to induce miscarriages. Fetuses ripped from wombs. Women kidnapped, blindfolded and beaten on their way to work or school. We saw the scars, the pain and the humiliation. We heard accounts of gang rapes, rape camps and mutilation. (Rehn and Sirleaf, 2002)

Despite the toll that armed conflict exerts on the population in general and the women and children and victims, the response of the international community has been far from satisfactory. The internal conflict in northern Uganda between the government and an armed group, the Lord's Resistance Army led by one Kony, has raged on for almost twenty years, leading to massive loss of lives, rape, abduction and displacement. Ten years after the Rwandan genocide, the internal conflict in the Darfur has been characterised as the 'unnoticed genocide' where once again the international community

[2] See also: BBC News, *Amnesty Deplores African Rights Record*, available at: http://news.bbc.co.uk/2/hi/africa/3749633.stm last visited on 26 May 2004 (giving highlights of the wide range of human rights violations reported in the Amnesty Report in Burundi, Central African Republic, Ivory Cost, Democratic Republic of Congo, Liberia, Sudan, Uganda, Cameroon, Chad, Eriteria, Ethiopia, Rwanda, Togo, Zimbabwe, Kenya, Zambia, South Africa and Swaziland).

[3] Amnesty International (2003).

was slow to react and still lacks the required urgency and commitment.[4] According to the UN estimates, at the time of writing this conflict had led to the killings of thousands of civilians, the forced internal displacement of 700,000 people as well as some 130,000 refugees fleeing to neighbouring Chad.[5]

Human rights violations committed against women in situations of armed conflict raise an important question: is there not a need to look at other perpetrators beyond the warring parties, at those who directly or indirectly facilitate these armed conflicts so that they too can be brought under the ambit of accountability for human rights violations? When we have war crimes without known perpetrators, the criminological perspective on social harm encourages us to identify a responsibility that may be remote from the crime scene; responsibility, that is, for creating a situation in which the occurrence of such crimes is known to become more likely.

## The Link between Armed Conflict, Poverty and Women's Vulnerability to HIV/AIDS

Poverty poses the biggest challenge to the realisation of women's human rights in Africa. Women constitute an estimated 70 per cent of the 1.2 billion people worldwide living in absolute poverty and surviving on less than one dollar a day (UNAIDS, 2002: 19). At the national level, corruption of political leaders and public officials often leads to the diversion of scarce economic public resources into private hands. Often, these looted resources are safely stacked away in banks or invested in properties in developed countries. At the international level, unfair rules of global trade continue to favour developed nations at the expense of the wellbeing of the millions of people living in the developing countries and the women who in the less developed countries are the producers of wealth from agricultural exports. Economic deprivation of women forces them to turn to prostitution in their home countries or to become vulnerable to human trafficking and promises of a better life in the developed economies. Women in sub-Saharan Africa will not enjoy their human rights unless there is a change in the political order within their countries' governance as well as a commitment on the part of the international community to address the inequalities in the rules of global trade (Monshipouri, 2001).

[4] See Eric Reeves, 'Unnoticed Genocide' *The Washington Post* (25 February 2004) A25.

[5] For background on the Darfur crisis, see International Crisis Group, *Darfur Rising: Sudan's New Crisis*, ICG Africa Report No 76 (Nairobi/Brussels, 25 March 2004,). http://www.crisisgroup.org/home/index.cfm?l=1&id=2550\.

The HIV/AIDS pandemic has been acknowledged as a threat to development and security.[6] According to the 2001 global estimates of HIV/AIDS cases around the world, 40 million adults and children were living with HIV/AIDS out of whom 18.5 million were women. Of these, 28,500,000 were living in sub-Saharan Africa. The link between armed conflict, the resultant displacement of communities and HIV/AIDS has also been well documented (UNAIDS, 2002: 8). As Rehn and Sirleaf point out, not only do conflict conditions exacerbate the epidemic, but women, already vulnerable to HIV infection due to their low status and poverty, 'become even more vulnerable during conflict' (2002: 35). Furthermore, sexual violence and exploitation which women suffer during and after conflict directly and indirectly contribute to the transmission of the HIV virus, through rape and other psychosocial consequences such as depression and stigma, which can lead women into further cycles of exploitation. Armed conflicts fuel the spread of HIV/AIDS because not only do they disrupt health systems that would ensure minimum health care for women, but also food production and markets, which results in an inability to meet the basic food requirements and hence poor nutrition. Even when conflicts subside, 'extremely difficult economic and social conditions often leave many people unemployed and unable to resume their normal community or family lives' (Rehn and Sirleaf, 2002: 51–53).

HIV/AIDS contributes to poverty while poverty increases vulnerability to HIV infection. It is not uncommon for women and young girls in Africa to engage in prostitution for the sake of economic survival. Even in situations where they may be aware of the risks of infection with HIV and possible ways to prevent transmission, women prostitutes may opt for unprotected sex to earn some extra money. As a UNAIDS report noted in 2002, the failure to control AIDS is 'an index of inequitable development and poor governance. Income inequality, gender inequality, labour migration, conflict and refugee movement all promote the spread of HIV' (2002: 19). Again it is argued here that enhancing the poverty that in its turn generates or exacerbates an HIV epidemic may not be a 'crime' but is certainly a social harm. Once again identification of perpetrators is located at the level of global economic arrangements, as well as the level of nation states (Cain, 2006).

## Globalisation–Uneven Impact

What is the relevance of globalisation to the violation of women's human rights in sub-Saharan Africa? Is there a direct or indirect connection between globalisation and armed conflict, the prevalence of HIV/AIDS and

[6] See, eg UN Security Council Res 1308 (2000) (the resolution recognised the spread of HIV/AIDS and STIs as potenti al threats to international peace and security).

poverty in Africa? Today, whatever definition one adopts, it is clear that globalisation is a complex and multidimensional phenomenon that has had far-reaching effects on all sectors of society. The term 'globalisation' has acquired many emotive connotations and become a hotly contested issue in current political discourse. In its broadest sense, globalisation represents the 'sum total of political, social economic, legal and symbolic processes rendering the division of the globe into national boundaries increasingly less important for the purpose of individual meaning and social decision' (Garcia, 1999: 53). At one extreme, it is seen as an irresistible and benign force for delivering economic prosperity to people throughout the world. At the other, it is blamed as a source of all contemporary ills, including deepening inequality both within and among nation states (World Commission on the Social Dimension of Globalisation, 2004; Monshipouri, 2001).

With trade, traffic and economic barriers lifted, globalisation has made the world a 'global village', with multinational and transnational companies accessing foreign markets and making breakthroughs to new markets with every other passing day. For example, in the area of communication and cable television networks, no area is too remote to tap. Thus for example, it is not unusual to find the CNN Cable TV Network or the cellular phone networks firmly entrenched in the remotest villages in Uganda where I live, when within less than a kilometre, the population lacks the basic amenities of life ranging from clean water, to toilet facilities or health services. Yet while multinational and transnational companies are reaping the benefits of globalisation, the fruits of these efforts are still as elusive as ever for many people, especially women, living in the developing world. Globalisation opens up the remotest corners of the least developed countries to multinational companies seeking to market their goods, but in the face of crisis, many of these areas are too remote for the international community to reach in order to avert human catastrophes.

Moreover, globalisation has also impacted on the trade in 'violence commodities', enabling criminal activities to become increasingly transnational. In addition to the erosion of state sovereignty such that states lack the power to intervene in these trades, developments in technology, transportation, communication and information processes have all facilitated this process (Cao, 2004: 59–61). Examples of transnational crimes include trafficking in women, estimated to affect millions of women annually.

Globalisation has also facilitated the illegal dealing in the arms which help fuel armed conflict. Many of the internal armed conflicts are centred in areas endowed with natural resources or precious stones such as gold and diamonds, which are exported to the developed countries. For example in June 2000, the Security Council established a panel of experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of Congo to investigate the extent to which

investment in the extractive industries fueled the war. In its October 2002 Report, the expert panel alleged that 85 companies were involved in business activities that breached the operational guidelines for multinational enterprises agreed by the Organization for the Economic Cooperation and Development (OECD, 12 Febuary 2004). Worth noting is the fact that American, European and South African corporations featured highly on the list. Some of the proceeds are then used to finance arms and ammunition to continue with the war.

Most fundamentally, globalisation has contributed to widespread poverty in sub-Saharan Africa. As the world continues to develop with technological breakthroughs, we have witnessed in the last several decades, a widening gap between the 'haves and the 'have-nots'. Some two billion people—particularly in sub-Saharan Africa, the Middle East, and parts of the former Soviet Union—are living in countries that are unable to increase their integration with the world economy, or whose ratio of trade to GDP has either remained flat or declined. As a result, these economies have contracted, poverty has risen and education levels have risen less rapidly than in the more 'globalised' countries (Chossudovsky, 1997; Collier and Dollar, 2002). So while globalisation has helped to further the economic interests of the transnational companies and their governments, it has done little to address the protection of the rights of women in the developing countries. Indeed, as I shall now indicate, there is a case for saying that globalisation has even exacerbated the situation of African women by directly contributing to the violation of their human rights.

## GLOBALISATION AND HUMAN RIGHTS

Since the mid twentieth century, the international community has striven to set human rights standards providing equality for all. These efforts started with the Universal Declaration of Human Rights, followed by the International Covenant of Civil and Political Rights, International Covenant of Economic, Social and Cultural Rights through to CEDAW and the Convention on the Rights of the Child. These instruments were followed by regional efforts in Europe, the Americas, Asia and Africa. Many of the renowned and celebrated international human rights conventions guarantee rights to all persons without discrimination and usually create two channels of enforcement and monitoring of human rights enshrined therein. The first is the periodic reporting system that requires state parties to report on actions they have taken to comply with the provisions of the human rights conventions. For example, under the International Covenant on Civil and Political Rights, state parties are required to submit a report to the UN Secretary General within one year from the date of entry into force of the Convention for the state party concerned and thereafter whenever

requested to do so by the Human Rights Committee.[7] The second channel for enforcement is through the ratification of an Optional Protocol to the treaty. Under the protocols, an aggrieved national can file a petition against his/her country where the country has violated any of the rights guaranteed under the main human rights convention, and where domestic remedies have either been exhausted or are non-existent. Both the International Covenant on Civil and Political Rights and CEDAW have optional protocols to them, as has the African Charter on Human and People's Rights.

In the last decade, we have witnessed a move by the international community to collectively recommit themselves to the realisation of human rights for all, through a series of world conferences and the resultant declarations of commitment focusing on, among others, the environment, children, population and development, human rights, social development and women's rights. Yet the relationship between human rights and globalisation is a complex one. On the one hand, human rights can be seen as a manifestation of globalisation inasmuch as they use language that creates communities and affiliations that transcend borders. On the other, globalisation focuses on economic growth and progress, while the primary focus of human rights is to protect human dignity (Anghie, 2000: 250). More specifically, while the international human rights framework is intended to encompass the protection of both the civil and political rights as well as the economic, social and cultural rights, it is inadequate to deal with the human rights challenges facing women in developing countries, arising from or with globalisation.

Within the fantasy of a globalised world order where human rights are proclaimed to be universal, inherent and inalienable, the lived experiences of the people in the developed world, and especially the women who continue to bear the brunt of human rights violations, show that the globalised human rights for all, proclaimed in numerous international human rights instruments and declarations to date, remain a distant goal. The priorities of governments of both the developed and the developing countries lie more in strengthening national security than human rights, hence rendering their expressed commitment to human rights to be more of political rhetoric than social reality. As an Amnesty International report noted in 2003, 'Governments have spent billions to strengthen national security and the "war on terror". Yet, for millions of people, the real sources of insecurity are corruption, repression, discrimination, extreme poverty and preventable diseases'.

[7] See Art 40, International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly Res 2200 A (XXI) on 16 December 1966, entered into force on 23 March 1976. See also Art(s) 16 and 17, International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly Res 2200 A (XXI) on 16 December 1966, entered into force on 3 January 1976.

First, in Africa, as is the case in many developing countries, more emphasis has been on civil and political rights. This emphasis was, among other reasons, greatly influenced by the vested political and economic interests of the dominant states, which partly led to civil and political rights being given dominance and priority over economic, social and cultural rights (Oloka-Onyango, 1995). Yet, for the majority of women in Africa, not only are their civil and political rights violated, but so also are their economic, social and cultural rights. While many African governments have ratified international human rights instruments and incorporated bills of rights into their constitutions, they have not been keen to translate these commitments into national legislation that would give effective remedies not only to women, but to their citizens as a whole. This is perhaps not surprising given the fact that quite often, the very governments that are supposed to protect their citizens' rights are the very ones engaged in the violation of these rights through acts ranging from failure to apprehend and punish those who violate women's rights, to corruption and looting the countries' economic resources and depositing the moneys with financial institutions or properties in developed countries, or through buying arms to suppress any actual or perceived political dissidents who may challenge their authority.

The international community too continues to place more emphasis on civil and political rights in the narrow sense while ignoring the enjoyment of social and economic rights in the developing countries. Hence, the international community has played an accomplice role in the violation of women's human rights in Africa. As some scholars have argued, ratification of human rights treaties seems to be less influenced by the ratifying countries' commitment to the values and norms embraced in the treaty and more by an assessment of the cost of the commitment to the treaty in terms of making their laws compliant and the likelihood of the costs being realised (Hathaway, 2003). Hence, countries which do not necessarily intend to change their laws or practices in order to give effect to human rights may nevertheless ratify a convention in anticipation of the benefit of boosting their reputation in the international community.

Perhaps the biggest threat that economic globalisation poses to human rights enforcement is the weakening of the state at the expense of other non-state actors (Monshipouri, 2001: 60). By calling for the free market and the privatisation of most services in countries seeking foreign direct investment (see Cain, chapter one, this volume) globalisation has the effect of making the state in developing countries weak, with very limited control over the emerging non-state actors, particularly the multinational corporations. This is especially so since most of the privatisation and deregulation advocated by the international financial institutions as part of the opening up of the economy and the creation of a friendly foreign investment environment in developing countries, is not usually accompanied by any built-in safeguards

to combat exploitation and violation of the rights of the citizens of those countries. As has been argued by several scholars, globalisation has not only resulted in the erosion of state sovereignty, but in a corresponding inability or unwillingness to regulate the activities of non-state actors (Cao, 2004: 61).

Other shortcomings of the existing human rights framework derive from the fact that the conventions were developed to hold states accountable to their citizens for their actions or to punish those who commit human rights violations and provide remedies to the victims. Although this standard would on the face of it appear to encompass all actors, states are not held accountable where their actions directly or indirectly violate or promote the violations of the rights of the citizens of other countries. Furthermore, while globalisation enables states and non-state actors such as multinational corporations to have their 'globalised' trade or business interests protected, the legal responsibility of international financial institutions and transnational corporations is a matter that remains unresolved.

While human rights law targets the state and relies on it to promote and protect the human rights of its citizens against its servants or private actors within their jurisdiction, globalisation has greatly enhanced the power and role of non-state actors in the form of international financial institutions and transnational corporations in particular. Unfortunately, these actors have not been held to any democratic accountability. Monshipouri (2001) notes, for example, that the votes of IMF members are weighted in proportion to their contributions. Quite often, it is the citizens of developing countries who suffer from resultant violations. Yet, these countries' ability to address these violations has greatly been weakened in the era of globalisation.

The issue of accountability becomes quite visible when reviewed in the context of the three issues of armed conflict, poverty and HIV/AIDS and women's human rights. With regard to armed conflicts in Africa for example, the focus has always remained on the warring parties, who are usually the government of the day and the insurgents. The Geneva Conventions are frequently cited and invoked to implore the warring parties to ensure the human rights of non-combatants and prisoners of war. While the focus on the warring parties is justified, should accountability not extend to the companies that manufacture and sell arms to rebel groups waging internal armed conflicts such as the 18-year-old Ugandan civil war, or the recently ended war in Angola, leading to death, to mutilations, rape and displacement of communities and women as well? What about the governments where these companies are incorporated that benefit from the taxes that these arms companies pay? Can these multinational companies and the developed states continue to feign ignorance as to final destination of the arms that they continue to manufacture from year to year when there has not been any war fought in the Western world since Bosnia and the current Iraq war? Accountability should not be difficult to establish since the destination of the arms should be clearly foreseeable to the manufacturers and traders

in arms and their governments, which give them the licence to operate. In addition, with all the advancement in technology, tracing the final destination of these arms to developing countries and areas of armed conflict is certainly not out of reach for developed countries.

Similarly with regard to widespread poverty and disease in sub-Saharan Africa, the main focus has often been on poor leadership and corruption in the African countries. Why does the accountability 'net' not extend to the World Bank and the IMF when they prescribe structural adjustment programmes (SAPs) or put conditionalities on loans to poor countries which lead to the removal of government subsidies in critical sectors such as education and health and which result in increased maternal mortality of women who cannot access hospitals during pregnancy and childbirth? Or when they approve unjustified loans to undemocratic regimes that in turn result in a huge debt burden and servicing, which in turn absorbs the nation's scarce economic resources?

It is therefore clear that in its present state, human rights law is too limited in its scope and enforcement to be able to confront the human rights challenges posed by globalisation (Shelton, 2002). As Monshipouri (2001) says, the global north tends to assert the universality of human rights standards without practising what it preaches. These weaknesses open the way for the criminal victimisation of women throughout the developing world.

## The Way Forward for Human Rights in the Era of Globalisation?

Despite these noted shortcomings of the existing human rights framework and the failure to address the negative effects of globalisation, human rights do offer some positive notions in terms of which we can confront globalisation and build a better world for all human beings, particularly women. Human rights values and concepts have attracted some degree of consensus to make them a widely acceptable model embracing the powerful notions of universality, respect for human dignity and above all equality of all persons.

However, there is a need to re-conceptualise and broaden the concept and definition of human rights by supplementing it with the concept of social harm where there is apparent culpability for failure to enforce. These responsibilities encompass actors that currently fall out of the net as a result of globalisation. Only then will human rights effectively play the role of enhancing the quality of life for all people. This will go a long way to strengthening the existing human rights enforcement machinery at international level that has been critiqued for being weak and slow. There is also need to act to ensure that the human rights framework brings on board the reciprocal values of transparency and accountability. These values need to be incorporated in standards that apply to the developed countries in the same way as is frequently demanded of developing countries. Developed

countries too need to be held accountable where they continue to bless undemocratic or corrupt regimes, engage in the selling of arms to warring parties or simply fence-sit where they do not perceive their interests to be at stake. As observed earlier, it is these conditions that fuel armed conflict and provide fertile ground for poverty and devastating diseases such as HIV/AIDS to thrive, all leading to gross violation of women's human rights in sub-Saharan Africa.

With globalisation, it should no longer be enough to rate a country's human rights record by simply looking at its 'internal house'—the state *vis à vis* its citizens. Countries should also be rated on their foreign policies and practices *vis à vis* the impact of these policies on the other countries they do business with. In addition, it is high time developed countries took responsibility for the human rights violations of non-state actors such as transnational companies based in their jurisdiction, even, or perhaps particularly, if those violations affect citizens of other countries.

## CONCLUSION

The realisation of women's human rights and the elimination of the crimes and harms that result from their breach require a holistic approach that takes into account not only their civil and political rights, but their economic, social and cultural rights. Beyond the holistic approach, the realisation of human rights also requires that the wider economic processes not only at international level, but at national and community level are taken into account and reformed. These wider economic processes pose new challenges as a result of globalisation, challenges that render the existing human rights framework inadequate to respond to the issues confronting African women and the protection of their rights. Hence what is required is a re-examination and re-conceptualisation of the current human rights framework and enforcement machinery set up there to ensure that in this 'globalised' world, the accountability of states is enhanced to cover not only their citizens, but citizens of developing countries. Furthermore, the new powerful non-state actors need to be brought into the full ambit of the human rights enforcement machinery by imposing additional duties of enforcement on the states where they are incorporated in order to ensure accountability to the whole world citizenry. Only in these ways will contemporary forms of crimes of the powerful be brought under control.

As one writer has rightly observed, 'the future of human rights law and its compelling claims to protect the inalienable dignity of all human beings will be significantly shaped and challenged by this encounter between human rights and globalisation' (Anghie, 2000: 248). It is only when the women in the developing world enjoy their lives and are freed from war, internal conflict, public and private violence, preventable poverty and disease

that the whole world will be able truly to celebrate the globalisation of our world and all the benefits that should come along with it. Until then, human rights will remain more of a concept than a reality and globalisation will only benefit the privileged few, and the women of sub-Saharan Africa and their children will remain victims of the crimes of both war and peace on an unprecedented scale.

## REFERENCES

Amnesty International (2003) *2002 in Focus, Conflict and Impunity in Africa*, available at http://web.amnesty.org/web/web.nsf/print/2003-focus2002_2-eng, last visited on May 25 2004.

Anghie, A (2000) 'Time Present and Time Past: Globalisation, International Financial Institutions, and the Third World' 32(2) *New York University Journal of International Law and Politics* 243–90.

Cain, M (2006) 'Is the Spoon Long Enough: On Global Rights, Local Harms and Crime'. Plenary paper presented to the World Congress of Sociology (Research Committee on Deviance and Social Control) Durban, South Africa, July 2006.

Cao, L (2004) 'The Transnational and Sub-national in Global Crimes' 22(1) *Berkeley Journal of International Law* 59–97.

Chossudovsky, M (1997) *The Globalisation of Poverty* (London, Zed Books).

Collier, P and Dollar, O (2002) *Globalisation, Growth, and Poverty: A World Bank Policy Report* (Oxford, Oxford University Press).

Garcia, F (1999) 'The Global Market and Human Rights: Trading Away the Human Rights Principle' 25(1) *Brook Journal of International Law* 51–97.

Hathaway, O (2003) 'The Cost of Commitment'. Centre for Law, Economics and Public Policy Research Paper 273, http://www.papers.ssrn.com/abstract=394282.

Monshipouri, M (2001) 'Promoting Universal Human Rights: Dilemmas of Integrating Developing Countries' 4(25) *Yale Human Rights and Development Law Journal* 25–60.

Organisation for Economic Co-operation and Development (OECD) 'Illegal Exploitation of Natural Resources in the Democratic Republic of Congo: Public Statement of CIME' 12 Febuary 2004. http://www.oecd.org/document/6/0,2340,en_2649_34889_27217798_1_1_1_1,00.html

Oloka-Onyango, J (1995) 'Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa' 26(1) *California Western International Law Journal* 1–73.

Rehn, E and Sirleaf, E (2002) *Progress of the World's Women 2002: Women, War, and Peace—an Independent Expert's Assessment* (New York, UNIFEM).

Shelton, D (2002) 'Protecting Human Rights in A Globalised World', 25 *BC International and Comparative Law Review* 273.

UNAIDS Report on the Global AIDS epidemic 2002, http://www.unaids.org/en/.

World Commission on the Social Dimension of Globalisation (2004) *A Fair Globalisation: Creating Opportunities for All* (Geneva, ILO) http://www.ilo.org/public/english/wcsdg/docs/report.pdf.

# 8

# *The Globalisation of International Human Rights Law, Aboriginal Women and the Practice of Aboriginal Customary Law*

MEGAN DAVIS

INDIGENOUS HUMAN RIGHTS advocacy in Australia has as its foreground a lengthy history of dispossession of traditional lands, assimilation, control policies and racial discrimination since the commencement of the British colonisation process. The United Nations' discourse on universal human rights has been integral to indigenous Australia's advocacy of the recognition of Aboriginal and Torres Strait Islander peoples' rights within the Australian state. As such, it is a global discourse with a local and particular reach. Yet there is a constant tension between the individual nature of human rights as fashioned in international law and the collective nature of aboriginal rights. Moreover, Aboriginal women are rarely guaranteed human rights protection and, as I shall argue, they suffer from the lack of resolution between the continued practice of aboriginal customary law and the Australian legal system. Because of this, Aboriginal women have had increasingly to deal with what we call 'bullshit law'—the distortion by Aboriginal men of traditional customary law to construct arguments which justify or mitigate their crimes against Aboriginal women.

This chapter examines how the globalisation of human rights has influenced the Australian legal and political system specifically in relation to indigenous Australia. It also surveys common law jurisprudence regarding the intersection of aboriginal customary law and the Australian legal system, focusing on sentencing decisions that highlight an obdurate judicial trend explicitly disqualifying Aboriginal women from human rights protections that other Australians enjoy. Finally, I will consider the crisis of violence against women in aboriginal communities.

## THE GLOBALISATION OF HUMAN RIGHTS LAW: INDIGENOUS PEOPLES AND THE UNITED NATIONS

Human rights discourse and its legal framework of universal rights emerged with renewed vigour and relative global solidarity out of the tragedies of the Second World War. In Australia it contributed to the development of human rights legislation and consequently judicial awareness and increased community cognisance of human rights. This is particularly significant for Australia because its legal system has no Bill of Rights enumerating the fundamental rights of all Australian citizens and it has been argued that the Australian Constitution could potentially facilitate legislation that discriminates to the detriment of groups on the basis of race (Williams, 2004: 22).

The influence of international human rights law led to the Racial Discrimination Act 1975 (Cth) and was integral to the recognition of aboriginal land rights in the landmark decision in *Mabo*. In *Mabo* the High Court of Australia found native title to exist in the Australian legal system and that the British and settler notion of Australia being *terra nullius* or land belonging to no-one at the time of colonisation was a legal fiction. Furthermore, with the globalisation of the United Nations system imbuing municipal legal systems with greater emphasis on rights, indigenous peoples have successfully engaged in the process of articulating, lobbying for and promoting unique indigenous rights within the state including collective rights such as language, rights to land and resources and recognition of the importance of maintaining traditions and customs. According to United Nations' estimates, there are more than 300 million indigenous people worldwide in 70 different countries and since the 1970s indigenous peoples had been working collectively at an international level to lobby the United Nations to establish an indigenous peoples' working group in which specific indigenous issues could be raised. This led the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities to commission a comprehensive study of discrimination against indigenous peoples in 1971. Ten years later, the United Nations created the Working Group on Indigenous Populations (hereafter 'WGIP') and there are now four mechanisms within the system: the WGIP, a Commission on Human Rights Working Group elaborating a Draft Declaration on the Rights of Indigenous Peoples, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Permanent Forum on Indigenous Issues based in New York.

Through these mechanisms indigenous peoples have been able to highlight the injustices that have been suffered by them within their states as well as the inequity that has been entrenched as a result of successive waves of imperialism, colonisation and now, trade liberalisation. These issues include the dispossession of lands, territories and resources; the prohibition on the use of language; the removal of children from their families and the

continuing importance of the practice of culture and customary practices. Recently, advocacy has moved outside the more traditional forums of the human rights system to the trade system where indigenous peoples have been utilising the dispute resolution processes of the World Trade Organisation (WTO) that are available to non-governmental organisations. For example, Canadian Aboriginal peoples have made the argument, based on the WTO General Agreement on Subsidies and Countervailing Measures, that the failure to adequately recognise and protect aboriginal land title equates to an unfair advantage for Canadian lumber producers over international competitors because they do not have to pay fees to the traditional owners of the land as their international competitors do (Davis, 2003: 14).

The incorporation of human rights into domestic legal systems has also been integral to the improvement of indigenous peoples' rights in Australia where the Racial Discrimination Act 1975 (Cth) (hereafter, RDA), the Northern Territory Land Rights Act and the High Court's recognition of native title were all 'firmly grounded in, if not derived from, international law' (Dodson, 1998: 21). In addition, the Aboriginal and Torres Strait Islander Commission (ATSIC) was one of the most prominent indigenous NGOs participating at United Nations meetings. The Foundation for Aboriginal Islander Research Action (FAIRA) also forged a strong reputation in lobbying at the United Nations. FAIRA has been instrumental in the campaign for repatriation of human remains from overseas institutions such as the British Museum and, together with ATSIC, was responsible for a damaging communication to the Committee on the Elimination of Racial Discrimination (CERD) concerning the discriminatory impact of the Native Title Act Amendment Act 1998 (Cth) on Aboriginal people. As a result, CERD placed Australia under its early warning/urgent action procedure—a procedure used to monitor developing serious human rights violations. CERD's condemnation of Australia for its breach of its obligations—a first such condemnation for a Western liberal democracy—prompted the federal government to threaten to withdraw from the human rights system (Marks, 2002: 19). Yet this experience confirmed for Indigenous peoples the importance of international law in making the Australian government accountable.

From ATSIC's point of view, its international advocacy was essential for keeping all Australians informed of global human rights issues and providing an indigenous Australian voice. But in 2003, ATSIC was abolished by the federal conservative government which had always objected to a separate electoral structure for indigenous peoples. It was replaced with a committee of government appointees, drastically reducing aboriginal advocacy internationally. As ATSIC had funded numerous indigenous NGOs across Australia to participate at the international level, the sudden elimination of representation and participation of indigenous NGOs at the United Nations significantly impacted on the way in which indigenous Australians could

raise indigenous issues in the United Nations system. Significantly though, other NGOs, notably Oxfam, the National Association of Community Legal Centres (NACLC) and Australian churches have funded individuals to attend UN meetings and, in an important development, NACLC has funded Aboriginal women from Aboriginal women's legal services to raise Aboriginal women's issues at the United Nations Permanent Forum on Indigenous Issues in New York.

## THE AUSTRALIAN LEGAL SYSTEM, HUMAN RIGHTS AND ABORIGINAL CUSTOMARY LAW

In the one hundred years since federation, Australia—the only Commonwealth nation without a Bill of Rights—has been described as living a century of reluctance about rights (Charlesworth, 2002: 35).[1] Significantly, the historical debates on the Australian Constitution clearly show that human rights were omitted from the text of the Constitution so that the states could continue to discriminate on the basis of race. As the Premier of Western Australia stated at the 1898 Constitutional Convention, it was 'of no use for us to shut our eyes to the fact that there is a great feeling all over Australia against the introduction of coloured persons' and he, for one, did not want any clauses passed that 'would undo what is about to be done in most of the colonies and what has already been done in Western Australia in regard to that class of persons' (quoted in Williams, 2004: 21).

Federalism then, provided the most significant—and the most manifestly racist—challenge to the incorporation of international law with respect to human rights. It was not until the decision in *Koowarta* in 1982 that the High Court confirmed the Commonwealth's capacity to pass laws with respect to external affairs thus binding Australia to international human rights obligations. In this decision the history of the United Nations and the importance of human rights and the obligations of states like Australia were discussed extensively.

Other notable developments include Australia's incorporation of the International Convention on the Elimination of Racial Discrimination 1965 (ICERD) into the Australian legal system and the RDA. Of all groups in Australia society, indigenous peoples have probably benefited the most from international human rights law. Even so there has always been tension between individual human rights and collective rights which is most apparent in the context of the practice of aboriginal customary law. But while there have been numerous inquiries and reports into the relationship

[1] All attempts to pass a Bill of Rights for the Commonwealth of Australia have failed. The Australian Capital Territory was the first jurisdiction to enact a Bill of Rights (Human Rights Act 2004 (ACT)). The state of Victoria followed in 2006.

between aboriginal customary law and the municipal legal system, few have focused specifically on the impact of custom on Aboriginal women.

Law reformers have long been preoccupied with the question of how aboriginal law intersects with the Australian legal system, yet procedural recognition of aboriginal law has been piecemeal and haphazard. None of the recommendations made in the Australian Law Reform Commission's 1986 report on the recognition of aboriginal customary laws have been implemented, Australian legislatures having proved to be reluctant to formally recognise aboriginal law.

One major stumbling block is the popular misconception of aboriginal law as allowing aboriginal communities to relive imagined halcyon days of aboriginal culture, practising brutal, traditional punishment such as wounding or tribal payback or child marriage (Davis and McGlade, 2004: 9). Such misconceptions not only obfuscate the dynamic nature of customary law which encompasses in a changing and organic way a broad and complex set of rules governing social relationships, economic rights, land ownership, wildlife conservation, land management and intellectual property rights; they are also deleterious to law reform initiatives. Aboriginal law, however understood, has been taken into account in varying contexts in the white Australian legal system, including dispute resolution, intestacy, child adoption and marriage. For example, the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) gives Aboriginal people the right to use land based on:

> the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes those traditions, observances, customs and beliefs as applied to particular persons, sites, areas of land, things or relationships.

In Western Australia, the Aboriginal Affairs Planning Authority Act 1972 (WA) takes aboriginal custom into account in the context of intestacy. Indeed, legislation exists in different states across a diverse number of areas such as adoption, marriage and intestacy laws.

Importantly, such developments have been supported by the United Nations. In 2005, a UN-sponsored meeting of 'experts' on indigenous peoples and the administration of justice held that states should help to restore indigenous legal practices in cooperation with indigenous legal experts inasmuch as this collaboration is more likely to result in the development of an impartial system of justice that is in full compliance with international human rights law and, crucially, particularly in relation to women's rights.[2]

[2] Report on the Expert Seminar on Indigenous Peoples and the Administration of Justice (Madrid, 12–14 November 2005) E/CN.4/Sub.2/AC.4/2004/6 (10 June 2004) United Nations Seminar, 13.

## THE STATE OF PLAY: ABORIGINAL WOMEN AND THE AUSTRALIAN LEGAL SYSTEM

An oft-quoted statistic from the Australian Bureau of Statistics about aboriginal incarceration in Australia is that we constitute three per cent of the population yet make up 20 per cent of the prison population. What is less noticed is that Aboriginal women have a higher incarceration rate and higher rate of recidivism than any other social group in the Australian community. Their treatment in prison is also appalling. A report published by the Human Rights and Equal Opportunity Commission in 2002 noted that the Royal Commission into Aboriginal Deaths in Custody (1991) had focused almost exclusively on the circumstances of Aboriginal men. Of the 99 deaths investigated, only 11 were the deaths of women and none of the recommendations made by the Royal Commission in 1991 had specifically addressed the circumstances of indigenous women (Jonas, 2002: 136). It noted too, 'a consistent pattern indicating that incarcerated indigenous women have been victims of assault and sexual assault at some time in their lives' (Jonas, 2002: 149). The appalling incarceration rate in Australia has not escaped the attention of international human rights watchdogs. For example, in 2000, the increase in rates of incarceration of racialised women in industrialised and developing societies was noted with concern by the Expert Committee of the United Nations Division for the Advancement of Women:

> Incarceration policies have been addressed by racial justice advocates but this advocacy has focused predominantly on men. In many countries, racialised women including indigenous women, represent the fastest growing segment of the prison population (United Nations, 2000).

> Unsurprisingly, incarceration rates for indigenous women have increased more rapidly than those for men since the Royal Commission, resulting in family disruption, inability to fulfil customary and community responsibilities and dislocation from services such as education, health and housing.[3] A lack of indigenous-specific services such as post-release programmes also contributes to this situation of gross disadvantage. Several factors contribute to this bleak situation, ranging from over-policing, racism and poverty to an entrenched societal indifference to the impact of colonisation upon indigenous women. The situation is also entrenched by the culture of disrespect that is embedded in Australian public institutions (Davis, 2006: 137). This culture manifests itself in institutional indifference toward Indigenous peoples issues and this particularly evident when it comes to Aboriginal women.

[3] Eg in New South Wales in October 2002, indigenous women constituted 2% of the Australian population yet accounted for *30% of the total female population in custody*. In the Northern Territory women are 26% of the female population yet account for *57% of the total female prison population*. Aboriginal women are also over represented as victims of violent crime in most state jurisdictions (Jonas, 2002).

Indifference to the continuing impact of colonisation on the lives of Aboriginal women today is still very apparent, as Jennifer Neilsen observes:

> That an Aboriginal woman may experience discrimination precisely because she is an Aboriginal woman is beyond the grasp of discrimination laws which do not recognise that race and gender may have a combined effect on the experience of an Aboriginal woman (2004: 28).

Moreover, not only are the issues of indigenous women veiled behind the broad and amorphous definition of 'indigenous peoples', but serious issues such as domestic violence are relegated to the private sphere. In the context of highly masculinist indigenous politics, indigenous women often do not want to discuss these issues because of the shame it brings on the family. As a result, issues such as land, sovereignty, self-determination and the right to development become the neutral policy objectives that the male dominated indigenous political leadership pursues, based on an assumption that the experiences and needs of Aboriginal women and men are identical.

Solicitors at Australia's only indigenous women's specific legal service—the Aboriginal and Torres Strait Islander Women's Legal Information Service—have attributed the marginalisation of indigenous women in the Australian legal system to barriers in accessing legal aid, lack of appropriate support mechanisms for indigenous women in key agencies, lack of cultural sensitivity and awareness by professionals working in family law and poor outcomes for indigenous women in the Family Court (Ruska and Turner, 2001). The flaws of the legal system are exacerbated by the fact that the aboriginal legal services themselves discriminate against Aboriginal women in giving preference to male Indigenous offenders over Indigenous female victims. In its report, *Equality Before the Law: Justice for Women*, the Australian Law Reform Commission inquiry found that:

> Aboriginal and Torres Strait Islander Legal Services do not currently benefit women and men equally. First, most services implement a policy of not acting for either party in a matter between two indigenous clients. Second, most legal services give priority to defending criminal cases over other matters. On the face these practices appear gender neutral but their effect is to indirectly discriminate against indigenous women (ALRC, 1994: 5.31).

As the Sex Discrimination Commissioner observed in her submission to the Northern Territory Inquiry into Aboriginal Customary Law in 2003, this prioritisation of defendants in criminal cases meant that women victims of violence were 'perceived during consultations as often having difficulty in obtaining legal advice where the offender is an Aboriginal man' (Goward, 2003).

Thus while in domestic violence cases involving Aboriginal people, aboriginal legal services will prioritise representing the male offender, there are other areas of law where injustice for Aboriginal women is also entrenched, for example land rights. Bell writes about a land claim investigated under the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) made by the Kaititja and Alyawarra people in which it was alleged that the officers met primarily with men and only asked women for information regarding genealogies and traditional foods (Bell, 1984: 29). Also the diminishing of the spiritual and cultural beliefs of Ngarrindjeri women in *Kartinyeri v the Commonwealth*—the Hindmarsh Island Bridge case—further highlights Aboriginal women's marginalisation,

> The same colonial processes which have left women such as the Ngarrindjeri most vulnerable to 'spiritual dispossession' have been reinvented in order to deny the legitimacy of their claims. The uncertainties and contradictions surrounding the 'women's business' in this case have been used as 'proof' that the women are lying, rather than as proof of the dislocating effect of colonisation on such knowledges (Bourke, 1997: 349).

This is illustrative of that fundamental disrespect of public institutions that Dodson and Strelein have alluded to in 'the ongoing tolerance of disrespect that maintains racism as a core value of Australian society' which manifests itself in the ongoing oppression of Aboriginal women (Dodson and Strelein, 2001: 3).

## A Critique of International Law

The failure to acknowledge the different needs and issues of indigenous women and men is repeated throughout international law. Most alarmingly, this flaw appears in the text of the United Nations Draft Declaration on the Rights of Indigenous Peoples, which will be the first UN instrument enumerating the rights of indigenous peoples (outside International Labour Organisation instruments). The paucity of feminist critique of the draft declaration is surprising given its fundamentally flawed assumptions about the socio-economic status of Aboriginal men and women, assumptions that mask gendered differentials in legal and political systems affecting both opportunity and access.

First, the draft Declaration provides for the recognition of aboriginal customary law and 'the right of aboriginal people to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies'. This particular article is worrying because while these customary systems are intended to be 'in accordance with internationally recognized human rights norms', without an itemisation of such norms, there is no specific recourse against such discrimination (Bigge and von Briesen, 2000: 299).

The protection of aboriginal customary law in Australia is vital for those Aboriginal people who continue to practice and teach custom in rural and remote areas on traditional land. It is equally important for those Aboriginal people whose custom and tradition is essentially a modern evolving construct—a hybrid of experiences of mythologies that are the result of displacement, dysfunction, and dispossession, as well as 'tradition'.

Because many Aboriginal people were subjected to state policies of assimilation and removal as well as relocation from their families and traditional lands, this has contributed to a state of cultural confusion for many Aboriginal people in Australia and so the right to manifest, practice, develop and teach is important. However, the reality is that indigenous women globally have been the victims of corrupted customary practices and customary culture that has resulted in the marginalisation of women and manifested itself in egregious violence toward them.

The draft Declaration specifically mentions women in only one article, Article 22, ascribing special measures for economic and social conditions: 'Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and disabled persons'. The sole specific consideration of women in the text of the draft Declaration raises important questions about the assumptions made by the drafters of text and international law about indigenous women within the state. Article 22 reinforces dominant stereotypes in international law about women and women's experiences. Women are considered only in the context of indigenous elders, youth, children and disabled persons. As Iorns (1993) points out, the focus on 'special needs' perpetuates 'the stereotype of woman as victim, unable to defend herself or cater to those needs herself, and thus unable to take control over her own life'. It would be far preferable to focus on 'the positive rights of women to participation in decision-making and government and thereby to focus on the structures that perpetuate their oppression' (Iorns, 1993).

The underlying rationale of the official drafting reinforces indigenous women's existence and specific rights as calibrated according to patriarchal notions of vulnerability within a society. The text can be seen as formalising at international law the types of inequalities and marginalisation Aboriginal women experience in liberal democracies. It is all very well for the draft Declaration to recognise that:

> Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall take into consideration the customs, traditions, rules and legal systems of the Indigenous peoples concerned.

But as we have seen, Aboriginal women do not have equal access to legal remedies systems in Australia. Legal aid, for example, is generally siphoned

to criminal matters. This often results in the situation where an Aboriginal male defendant is represented over the Aboriginal woman applicant. Finally, the right to self-determination is prescribed in the text of the draft Declaration, but no consideration is given to the question of the capacity of indigenous women for economic and political empowerment, given their limited opportunities to participate in decision-making.

## Exclusions–Lessons from ATSIC Governance

The former peak political body for indigenous peoples in Australia, the Aboriginal and Torres Strait Islander Commission (ATSIC) provides an excellent example of the way in which Aboriginal women are excluded from political decision-making. ATSIC, an independent statutory authority established by the Commonwealth government in 1990, embodied a classic minimalist liberal democratic structure in that aboriginal participation extended only to voting at the ballot box. Elections were said to have been 'full, free and fair' (Sanders, 2003: 4). But were they? Women have been under-represented from the start.[4] The general trend has been a steady reduction in the participation of women in indigenous politics since 1990, particularly after the minister's power to appoint a commissioner ceased. According to a report made in 2000 noting the discrepancy in gender participation and representation in ATSIC elections, 'women do not seem to be successful in being elected nor in attaining higher elected ATSIC office' (Sanders, Taylor and Ross, 2000: 16). The last chairman of ATSIC, hampered by sexual assault allegations himself, declared his final election to be 'a victory for the Aboriginal community' and he thanked 'all those Aboriginal females' who had voted, saying: 'You've given us a mandate, you've returned the traditional role to Aboriginal men' (Clark cited in Jopson, 2002).

During its final years, ATSIC prioritised the 'rights agenda' that ranged from targeting United Nations committees in international human rights law to advocacy within Australia for a treaty between the state and indigenous peoples. Yet the neutrality of ATSIC's rights objectives masked the gendered reality of Aboriginal women's already disadvantaged position and the way in which rights have a different impact on women compared with men. One Aboriginal woman despaired, asking how black Australians could 'scream for equality when we can't even give equality to our own women?' (Marks, 2001).

[4] In 1990, there were only two women on the ATSIC Board of Commissioners (both appointed by the minister); in 1991–93 there were four women (two appointed by the minister); in 1994–96 there were six women (two appointed by the minister) and in 1996–99 two women were elected to the board. In the penultimate term, five of 18 commissioners were women (all elected). And in the final term, only one of the 18 commissioners was a woman.

While there had always been a healthy scepticism within the indigenous community toward ATSIC, which had been seen as a colonising tool, what needs to be emphasised is that even colonising tools have a differing impact on men and women:

> Colonising practices embedded within decolonising institutions must not be understood simply as negligible side effects of essentially benign endeavours but rather the embeddedness may conceal, naturalise, or marginalise continuing colonising practices. (Bird Rose, 1996: 28)

Male domination of indigenous politics is a case in point.

## Aboriginal Women, Distorted Customary Law and the Australian Judiciary

Despite the promise of *Mabo*, indigenous peoples have had little success in forging a place within Australian public institutions or advocating for law reform in areas such as protection of cultural activities. This status quo will not alter as long as the Conservative prime minister continues to hold to 'the principle' that no group in the Australian community should have rights that are not enjoyed by another group. This view encapsulates the prism through which indigenous policy is contemporarily viewed by the state under Conservative governance. It reflects the principle of formal equality that asserts the same treatment for all Australians regardless of the exigencies of socio-economic status, despite such exigencies actually being the trigger for differential treatment. It would be of greater advantage if indigenous Australians could move beyond being mere beneficiaries of 'special measures' to being recognised as a distinct cultural minority in their own right.

The clearest example of the inertia in relation to indigenous Australian legal issues that has led to injustice and the prolonging of disadvantage is that of the conflict of customary law and Aboriginal women's human rights—a conflict that arises frequently in the Northern Territory and Western Australia, areas where traditional law is still widely practised. The fundamental issue is that while Australia is signatory to many international human rights instruments, the failure to formally institute processes to filter the acceptance of traditional law in evidence has led to the use of distorted customary law to mitigate offences and justify the sexual assault of Aboriginal women.

The sharpest controversies arise in relation to the sentencing of Aboriginal men where courts take into account evidence of aboriginal customary law. Frequently the evidence of Aboriginal men will be supported by anthropologists. In some cases the crime may be mitigated because it was committed under traditional law. In a few cases, the judiciary has given lighter sentences because of the more harsh indigenous punishment such

as spearing for a crime such as murder, or in other cases the judiciary may hand down a harsher sentence to prevent the Aboriginal man from being punished by his tribe. The fact that there will be further punishment under indigenous law can lead to a variety of considerations such as mitigation in sentencing or refusal to grant bail.

To take some examples: in the 1976 case of *Sydney Williams*, the Aboriginal defendant had murdered a woman after allegedly being taunted by the woman who had been disclosing customary secrets. Williams was later speared through the thigh. The sentencing judge took into account the fact that the community wanted to deliver traditional punishment and so Williams' sentence of two years was suspended conditional on his receiving 12 months of tribal instruction from elders. The Australian Law Reform Commission, noting this decision, found that Williams then went on to commit assaults on a number of other Aboriginal women (ALRC, 1986: 492).

In the 1997 case of *Barnes*, the judge refused bail on the grounds that customary punishment would be meted out on returning to the community. In that case however the sentencing judge, Mildren J, suspended the balance of the four-year prison sentence in the knowledge that Barnes would be punished on returning to his community. Decisions such as these highlight 'the problems of predicting the course of traditional dispute resolution procedures which are flexible and dependent upon changing circumstances as well as being open to misunderstanding by lawyers' (McRae, Nettheim, Beacroft, and McNamara, 2003: 549).[5]

## 'Bullshit Law'

Aboriginal lawyer, Sharon Payne, has described 'bullshit law' as 'a distortion of traditional law used as a justification for assault and rape of women' (1993). Bullshit law is also known as distorted customary law and relates to 'the sort of assault on women which takes place today for illegitimate reasons, often by drunken men which they then attempt to justify as a traditional right' (Bolger, 1991). Bolger argues that there are now three types of violence in aboriginal communities: drunken violence, traditional violence and bullshit traditional violence.

This view is supported by Mick Dodson who argues that some of 'our perpetrators of abuse and their apologists corrupt these ties and our culture in a blatant and desperate attempt to excuse their abusive behavior' (Dodson, 2003). The adversarial nature of the Australian common law has been

[5] The Beijing Platform for Action defines violence against women to include traditional practices that are harmful to women: Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women, A/CONF.177/20/Add.1 (15 September 1995) [113(a)].

highlighted as the main facilitator of distorted customary law: 'In particular the adversarial nature of our legal system has provided opportunities for white legal counsel representing Aboriginal men to employ distorted custom in defence' (Davis and McGlade, 2004: 13).

The most recent public controversy about this practice occurred in 2003–04 in the *Hales v Jamilmira* case (Bryant, 2002). In this decision the defendant Jackie Pascoe, a 50-year-old Aboriginal male, used aboriginal law in defence of statutory rape. In a recorded interview at Maningrida Police station Mr Pascoe stated that: 'She is my promised wife. I rights to touch her body' and that 'it's Aboriginal custom, my culture. She is my promised wife'. In this particular case, the court held that Mr Pascoe held a reasonably sophisticated knowledge of the criminal law and reduced the original magistrate's sentence of four months to one-day imprisonment. The judge stated: 'She didn't need protection from white law. She knew what was expected of her … It's very surprising to me [Pascoe] was charged at all' (cited in Toohey, 2002: 2).

There are many examples of judges making such derogatory comments about Aboriginal women. In the 1980 case, *R v Burt Lane, Ronald Hunt & Reggie Smith*, the Aboriginal defendants were accused of the rape of an Aboriginal woman who had offered them a cigarette and who later died. According to Audrey Bolger, the defence adduced evidence, all obtained from non-Aboriginal males, to show that rape was not a very serious crime in aboriginal society and by approaching the men and asking for a cigarette 'the woman may have been seen as inviting the men to join her' (Bolger, 2002). According to Bolger, the opposing evidence of a female anthropologist stated that 'an assault on a woman's sexual character was treated seriously and that, traditionally, women punished men severely for it' (Bolger, 2002). The judge stated that, rape was 'not considered as seriously in aboriginal communities as it is in the white community', since 'the chastity of women is not as importantly regarded as in white communities' and the 'violation of an Aboriginal woman's integrity is not nearly as significant as it is in a white community'.

There are other cases where the defence has argued that it is the customary law for husbands to assault their wives. In the 1991 case of *Mungkilli, Martin and Mintuma*, the court stated that rape was not acceptable in aboriginal communities but not 'regarded with the seriousness that it is by the white people' (per Millhouse J). These judicial statements based on bullshit law have been widely condemned by indigenous women (Davis, 2006).

## Reconciling Aboriginal Law and the Australian Legal System

Over two hundred specific and unique tribal groups constitute aboriginal Australia, across the continent. Aboriginal law is not written law—it is an

oral legal system. If the way forward is underpinned by the international legal principle of consultation then reconciling the problems of bullshit traditional law will require systematic consultation with the community. Indeed consultations for the Western Australia law reform inquiry into aboriginal customary laws found that the community thought elders could play a key role in verifying the use of customary law (WALRC, 2004). It should be noted that there are divisions of opinion within aboriginal groups—some want aboriginal law to be formally recognised by the Australian legal system (WALRC, 2004). Others say this will prevent them from evolving. One issue is that in cases where anthropological evidence is given to support the sexual assault of women, it would assist in the testing of that evidence that the laws are written down.

Another key concern is the determination of punishment in sentencing where a number of issues may arise that conceivably conflict with international law. For example, it needs to be determined whether aspects of traditional punishment may constitute torture. While domestic law permits aboriginal law to be taken into account, the extent and degree may be limited by Australia's international human rights obligations. Again, this is informed by how international law is incorporated into the municipal legal system. It is conceivable that there will be circumstances where customary law will be recognised yet other circumstances where recognition may be prohibited on the basis of international human rights law. Ultimately recognition will be accorded in a contextual framework, based on a particular factual situation and because of this, it is difficult to predict in the abstract what courts may decide on a case by case basis and whether the particular aspect of aboriginal law breaches Australia's obligations under international law. This is also because of the discretionary power of magistrates and informs already the inconsistency in how individual magistrates apply the law. In sharp contrast to the sentencing remarks of the judges cited above, there are judges who have found the breach of Aboriginal women's rights to be deplorable. For example, when the *Barnes* decision was appealed, the appeal court recognised the need to protect Aboriginal women from distorted customary law. Similarly, in the 1997 case of *Daniel*, the judge observed that:

> It would be grossly offensive for the legal system to devalue the humanity and dignity of members of aboriginal communities or to exacerbate any lack of self esteem felt within those communities by reason of our history and their living conditions … Aboriginal women and children who live in deprived communities or circumstances should not also be deprived of the law's protection … they are entitled to equality of treatment in the law's responses to offences against them, not to some lesser response because of their race and living conditions.

Again, in the 1981 case of *Edwards,* the judge commented that he was 'just not prepared to regard assaults on Aboriginal women as a lesser evil

to assaults committed on other Australian women'. In the 1998 case of *Amagula v White*, the judge expressed the view that:

> The courts must do what they can to see that the pervasive violence against women in aboriginal communities is reduced. There is a fairly widespread belief that it is acceptable for men to bash their wives in some circumstances; this belief must be erased (per Kearney J).

This highlights the inconsistency that arises when judges respond differently to aboriginal bullshit law or even traditional law and it also highlights the inconsistency in the application of human rights law. The reality is that in Australia these decisions will be left to the courts. However, the way in which traditional law is recognised or referred to and the way in which Aboriginal women can have their say will be through the parliamentary process. It will be through consultations with Aboriginal women that legislation guiding sentencing, for example, can be altered. What elements of aboriginal customary law breach what elements of international human rights law that are recognised by the Australian legal system will require full and free consultation of parliaments with aboriginal communities. This would mean that the judiciary would not be as inconsistent as it has been in its application of human rights law to Aboriginal women. It would certainly mean that elders would play a greater role in determining whether or not evidence proffered is traditional or distorted.

## WHO SPEAKS FOR WHOM? ABORIGINAL WOMEN AND FEMINISM

Many indigenous women consider the collective needs of their community above all and instinctively censor accusations of abuse and endemic violence perpetrated by Aboriginal men in order to avoid the double edged sword of national debate on indigenous issues: racism. As Dodson says:

> People are also silent because they fear the interrogation of the police more than the fear of repeated violent acts against them by their relatives. And there is silence because 'it is not our business to talk up'. (2003)

This is also a conundrum for white feminists who have been reluctant to engage this issue for fear of accusations of prioritising sexism over racism or of creating divisions within aboriginal communities and for fear of accusations of perpetuating the stereotype of the predatory and violent Aboriginal male (Andrews, 1997: 918–19).

There is genuine fear in indigenous communities that public engagement of indigenous issues always results in the exploitation of the race debate by those wishing to support long-held popular prejudices or crude theories of racial superiority. For indigenous women the reality of racism

in contemporary society strengthens the presumption that matters of race and 'indigenousness' trump notions of sex and gender. Indigenous women in Australia reflect this presumption in their critique of feminism and white women. Indeed the critique is often imbued as being an 'extension of communal responsibilities'. As Aileen Moreton-Robinson puts it:

> White Australian feminists have been and continue to be complicit in the exercising of power in their relations with indigenous women … The exercising of white race privilege is not interrogated as being problematic, nor is it understood as part of the power that whiteness confers, instead it is normalised within feminist texts and practice. (2000: 123)

Behrendt has said that white women have gained economically from this dispossession arguing that:

> Aboriginal women have been oppressed by white women. White women were missionaries that attempted to destroy aboriginal culture. They used the slave labour of Aboriginal women in their homes. White women were the wives, mothers and sisters of those who violently raped Aboriginal women and children and brutally murdered Aboriginal people. White women can be as racist as white men. White women have benefited economically from the dispossession of Aboriginal people. (1993: 31)

The invisibility of race or of white power in public debate on indigenous issues provides an opportunity for white Australia to engage with indigenous peoples yet avoid dealing with the underlying power subtext of the relationship between white Australians and indigenous peoples (Davies, 2002). Since concerns about white feminism were raised by Moreton-Robinson, Marcia Langton and Jackie Huggins, there has been a developing corpus of statements by indigenous women and men about the importance of breaking the silence on violence in aboriginal communities. Of course this development is imbued with caution for Aboriginal people. One particularly controversial incident arose in 1989 when anthropologist Dianne Bell argued that:

> No matter how unpleasant, feminist social scientists do have a responsibility to identify and analyse those factors which render women vulnerable to violence. The fact that this is happening to women of another ethnic or racial group can not be a reason for ignoring the abuse. (1989: 404)

This position was condemned by Huggins and a number of Aboriginal women (Huggins, 1991: 506) on a number of grounds. Huggins was angered that Bell had co-authored a paper with an Aboriginal woman who was positioned by Bell as 'traditional' thus providing Bell with cultural

sanction to comment on this issue (Huggins, 1991; Bell and Nelson, 1989). Bell observed that 'unlike African-American women indigenous women have not engaged in theoretical debates about rape because they had not yet recognised some of the feminisms that are relevant to them' (quoted in Moreton-Robinson, 2000: 112).

According to Moreton-Robinson, Bell was deploying herself as the 'subject position middle-class white women to speak for us as the authoritative voice of the all-knowing subject' (Huggins, 1991: 506). Huggins responded stating that rape in indigenous communities was not everybody's issue but rather it was the business of indigenous people (1991). Interestingly, Aboriginal women, such as the Pitjantjatjara women of Central Australia supported Bell and her comments (Lloyd and Rogers, 1993). It is these traditional women in rural and remote areas who bear the brunt of alcohol abuse and domestic violence who are beginning to break the silence.

Notwithstanding these continuing debates, it would seem that there is a crystallising of views among Aboriginal women that a human rights framework can be effective in providing better protection for Aboriginal women suffering domestic violence, sexual abuse and marginalisation, particularly in the criminal justice system.

## CONCLUSION

In 2001 when the boat MV Tampa entered Australian waters and the SAS boarded the ship to demand captain Rinnan turn the boat around, it set off a vigorous national debate played out on talk back radio, in opinion/editorial pieces and on national television. The vocabulary employed was more often than not the language of international law. Of course international law is often manipulated to support one's ideological agenda as the war in Iraq has illustrated. However, the many issues that were mined during the asylum seeker debates included full and proper explanation to Australian citizens about what laws are actually incorporated into Australian law or what international standards Australia has an actual obligation to fulfil. Once that is established there can be a debate about whether Australia is breaching those obligations in relation to Aboriginal people.

When it comes to issues of indigenous peoples and international human rights, in particular the practice of aboriginal customary law, it is, in Australia, acceptable to just wave a hand at an amorphous body of human rights instruments and declare that all aboriginal customary law unquestionably infringes 'international law' without a robust discussion. The reality is that there are few rights protected in Australian law. Few of our international human rights instruments are incorporated domestically.

Despite the paucity of the formal recognition of aboriginal customary law particularly in the context of criminal law in the jurisdictions of Northern Territory and Western Australia, courts continue to permit the invocation of 'customary law' for the mitigation of crimes. This is inevitable given that customary law is still practised in these areas. The issue, as this chapter has discussed, is how that evidence is received by the legal system particularly a legal system that is patriarchal:

> Reading many court transcripts relating to cases of rape, murder and assaults on women is like reading the minutes of a male club. Judges, lawyers and witnesses act to confirm each other's prejudices that men may be provoked into violence by women's actions, that women are inferior and that rape is not a serious offence in Aboriginal society. (Bolger, 1991: 85)

International human rights law has been integral to the advancement of indigenous people's rights and the improvement of aboriginal lives in Australia. The conflict between the individual nature of human rights law and collective rights does not mean that indigenous peoples eschew human rights law as it relates to aboriginal culture. That is too simplistic. It is often overlooked in arguing that indigenous practices conflict with human rights law that the United Nations has provided guidance as to how the two can be reconciled. *At the crux of this is consultation with both men and women in aboriginal communities*. The other important point to make is that the use of aboriginal law in some circumstances has been distorted, has become what Aboriginal women call 'bullshit law'. The reform that Aboriginal women are asking for is that those practices harmful to Aboriginal women should be prohibited in aboriginal culture so that the culture evolves. But as it relates to bullshit law, there needs to be law reform to institute procedures by which the courts can filter bullshit law. It is an example of how the adversarial nature of the common law cannot accommodate unwritten customary laws. Discussion and reform in this area of law must be conducted with the same nuance as is afforded to all complex areas of law that involve competing legal systems. It is readily done in relation to international trade law and international commercial transactions. There is no reason—apart from race—that such nuance can not be achieved as it relates to Aboriginal women and customary law.

The most significant difference to Aboriginal women's human rights would be to acknowledge the imbalance in power between Aboriginal men and women in governance structures, including lack of access to educational opportunities, participation in decision making or specifically designated support for Aboriginal women. Until these patterns are recognised and rectified, Aboriginal women will continue to suffer from the convenient employment of the term 'indigenous' in a way that reinforces patriarchal

structures—distorted or traditional—within aboriginal communities and the mainstream Australian community.

## REFERENCES

Aboriginal and Torres Strait Islander Social Justice Commissioner, Tenth Report, (Sydney, Human Rights and Equal Opportunity Commission, 2002) at 136.

Andrews, P (1997) 'Violence Against Aboriginal Women in Australia: Possibilities for Redress within the International Human Rights Framework' 60 *Albany Law Review* 917–41.

Australian Law Reform Commission (1986), *Report into the Recognition of Aboriginal Customary Laws*, Report No 31, Australian Government Publishing Service.

—— (1994) Report 69, *Equality before the law: Justice for Women* (Australian Government Publishing Service).

Behrendt, L (1993) 'Aboriginal Women and the White lies of the Feminist Movement: Implications for Aboriginal Women in Rights Discourse' 1 *Australian Feminist Law Journal* 27–44.

Bell, D (1984) 'A Case for the Courts? Aboriginal Women and Land' 14 *Australian Social Welfare Impact* 28–30.

—— and Nelson, TN (1989) 'Speaking about Rape is Everyone's Business' 12(4) *Women's Studies International Forum* 403–16.

Bigge, DM and von Briesen, A (2000) 'Conflict in the Zimbabwean Courts: Women's Rights and Indigenous Self-Determination in *Magaya v. Magaya*' 13 (Spring) *Harvard Human Rights Journal* 289–313.

Bird Rose, D (1996) 'Land Rights and Deep Colonising: The Erasure of Women' 3 *Indigenous Law Bulletin* 6–13.

Bolger, A (1991) *Aboriginal Women and Violence* (Darwin, Australian National University, North Australia Research Unit).

—— (1992) cited in Chris Cunneen, Judicial Racism, Australian Institute of Criminology http://www.aic.gov.au/publications/proceedings/21/Cunneen.pdf.

Bourke, J (1997) 'Women's Business: Sex, Secrets and the Hindmarsh Island Affair' 20(2) *University of New South Wales Law Journal* 349.

Bryant, G (2002) 'Promised Marriages—The Jackie Pascoe Case' 5(23) *Indigenous Law Bulletin* 20–21.

Charlesworth, H (2002) *Writing in Rights* (Sydney, UNSW).

Davies, M (2002) *Asking the Law Question—The Dissolution of Legal Theory* (Sydney, Lawbook Co).

Davis, M (2003) 'New Developments in International Advocacy: Amicus Curiae and the World Trade Organisation' 5(24) *Indigenous Law Bulletin* 14–17.

—— and McGlade, H (2004) *International Human Rights Law and the Recognition of Aboriginal Customary Law* (Western Australia Law Reform Commission).

—— (2006) 'A Culture of Disrespect: Indigenous Peoples and Australian Public Institutions' 8 *University of Technology Sydney Law Review* 137–154.

Dodson, M (2003) 'Violence Dysfunction Aboriginality'. Paper presented at the Telstra Address, National Press Club, Canberra.

—— (1998) 'Linking international standards with contemporary concerns' in Sarah Pritchard (ed) *Indigenous Peoples, United Nations and Human Rights* 21.

—— and Strelein, S (2001) 'Australia's Nation-Building: Renegotiating the Relationship between Indigenous Peoples and the State' 68 *University of New South Wales Law Journal*, 3.

Goward, P (2003) 'Submission to the Northern Territory Law Reform Committee Inquiry into Aboriginal Customary Law in the Northern Territory by the Sex Discrimination Commissioner of the Human Rights and Equal Opportunity Commission'.

Huggins, J *et al* (1991) 'Letter to the Editor' 14(5) *Women's Studies International Forum* 506–07.

Iorns, C (1993) 'The Draft Declaration on the Rights of Indigenous Peoples' 1(1) *Murdoch University Electronic Journal of Law* http://www.murdoch.edu.au/elaw/indices/issue/v1n1.html.

Jonas, B (2002) Aboriginal and Torres Strait Islander Social Justice Commissioner, Tenth Report (Sydney: Human Rights and Equal Opportunity Commission, 2002) at 136.

Jopson, D (2002) 'No Change at Top as Clark Lays on the Charm' *Sydney Morning Herald* (20 December).

Lloyd, J and Rogers, N (1993) 'Crossing the Last Frontier: Problems facing aboriginal women victims of rape in Central Australia' in P Easteal (ed), *Without Consent: Confronting Adult Sexual Violence: Proceedings of a conference held 27–29 October 1992* (Canberra, Australian Institute of Criminology) http://web.aic.gov.au/search/search.cgi?collection=aic&form=simple&query=Without+Consent%3A+Confronting+Adult+Sexual+Violence+.

Marks, G (2002) 'Avoiding the International Spotlight: Australia, Indigenous Rights and the United Nations Treaty Bodies' 2(1) *Human Rights Law Review* 19–57.

Marks, K (2001) 'Secret Abuse Shame of Aboriginal Women' *The Independent* (Sydney, 22 April).

McRae, H Nettheim, G, Beacroft, L and McNamara, L (2003) *Indigenous Legal Issues* (Sydney, Lawbook Co).

Moreton-Robinson, A (2000) *Talkin up to the White Women* (Brisbane, University of Queensland Press).

Nielsen, J (2004) 'How Mainstream Law Makes Aboriginal Women Disappear' 6 *Indigenous Law Bulletin* 23–25.

Northern Territory Law Reform Committee (2003) 'Towards Mutual Benefit' Report of the Northern Territory Law Reform Committee Inquiry into Aboriginal Customary Law.

Payne, S (1993) 'Aboriginal Women and the Law' in P Easteal and S McKillop (eds), *Women and the Law: Proceedings of a Conference held 24–26 September 1991* (Canberra, Australian Institute of Criminology), http://www.aic.gov.au/publications/proceedings/16/.

Report of the Review of the Aboriginal and Torres Strait Islander Commission (2003) *In the Hands of the Regions—A New ATSIC* http://www.atsia.gov.au/Media/Reports/PDF/atsic_review_report.pdf.

Royal Commission into Aboriginal Deaths in Custody (1991) National Report (Australian Government Publishing Service).

Ruska, K and Turner, D (2001) 'Justice in Family Law through the eyes of Aboriginal and Torres Strait Islander Women' The National Association of Community Legal Centres annual conference paper.
Sanders, W, Taylor, J and Ross, K (2000) Participation and representation in ATSIC elections: a ten-year perspective, No 198/2000 (Canberra, Centre for Aboriginal Economic Policy Research, Australian National University).
—— (2003) 'ATSIC Elections and Democracy: Administration, Self-Identification, Participation and Representation' *Centre for Aboriginal Economic Policy Research, Australian National University* http://democratic.audit.anu.edu.au/papers/20030724_sanders_atsic_elect%20.pdf.
Toohey, P (2002) 'Victim Trapped Between Two Worlds: Tribal and White Law Clash Over Sex' *The Australian* (9 October).
United Nations Division for the Advancement of Women (2000) Report of the Expert Group Meeting, Gender and Racial Discrimination 21–24 November 2000, Zagreb, Croatia.
Williams, G (2004) *An Australian Bill of Rights and the War on Terror* (Sydney, University of New South Wales Press).

## Cases

*Nicholas Amagula v John Raymond White* [1998] NTSC 61 (7 January 1998).
*Edwards* (Unreported, Northern Territory Supreme Court, 1981, SCC No 155, 156).
*Hales v Jamilmira* [2003] NTCA 9.
*Koowarta v Bjelke-Peterson* [1982] 153 CLR 168.
*Mabo v Queensland* (No 2) [1992] 175 CLR 1.
*Mungkilli, Martin and Mintuma* (Unreported, South Australian Supreme Court, Millhouse J, 20 March 1991).
*R v Barnes* (1997) 96 A Crim R 593.
*R v Burt Lane, Ronald Hunt & Reggie Smith* (Unreported, Northern Territory Supreme Court, 29 May 1980).
*R v Daniel* (1997) 94 A Crim R 96.
*R v Sydney Williams* (Unreported, South Australian Supreme Court, Wells J, 14 May 1976).
*Kartinyeri v The Commonwealth* (1998) 195 CLR 337.

## Legislation

Aboriginal Affairs Planning Authority Act 1972 (WA).
Aboriginal Land Rights (Northern Territory) Act 1976 (Cth).
Human Rights Act 2004 (ACT).
Native Title Act Amendment Act 1998 (Cth).
Racial Discrimination Act 1975 (Cth).

# Part IV

# Rethinking Social Harm in a Global Context

# 9

# *Women and Natural Disasters: State Crime and Discourses in Vulnerability*[*]

PENNY GREEN

THIS CHAPTER EXPLORES the more general ways in which globalisation has impacted on population vulnerability to natural disaster, and more specifically the way in which gendered processes mediate the nature and extent of vulnerability. Vulnerability to natural disaster is theorised in terms of a state crime paradigm. There is, however, a real dearth of reliable data on gender and natural disasters making conclusions more difficult to draw. Moreover, there is virtually no research on masculinity and vulnerability or men's particular experience of natural disaster (Fordham, 2000). Much of what is written about natural disasters and women's vulnerability is anecdotal and there is very little gender-disaggregated data emerging from natural disasters (gendered statistics on disaster mortality and morbidity are, for example, generally unavailable). One of my key concerns here is to examine vulnerability to a natural disaster as a function of state crime. The emphasis on women's specific vulnerabilities in feminist work in this area has, it is argued, detracted attention from the culpability of states for the catastrophes so often linked to natural hazards. State crime is defined here as state organisational deviance which results in human rights violations (Green and Ward, 2000).

This chapter therefore seeks to establish a framework for understanding the relationship between gender, globalisation and natural disasters through a state crime lens. In doing so, it explores the significance of gender in terms of vulnerability to the disaster itself, rather than in the relief and reconstruction processes, because it is at this stage that the state as criminal is most pronounced.

[*] This chapter was prepared for an Oñati conference in 2003 and, although it has been revised in minor ways since then, has not been significantly rewritten to take account of developments since that time.

I have argued elsewhere, with Tony Ward, of the need for a definition of state crime which transcends the limited parameters of the legal definition (Green and Ward, 2000; 2004). If states define crime, it follows that a state will only be criminal on those exceptionally rare occasions when it denounces itself for breaking its own laws. With a natural disaster where the culpability of states may appear remote or obscure, reliance on a legal definition of crime is even more problematic.

The opportunity to apply this paradigm to natural disasters arose dramatically in August 1999 with the devastating Marmara earthquake and later with the 2003 Bingöl earthquake. I was, at the time, researching the intersection between penal policy and human rights violations in Istanbul, torture and repression being endemic in the Turkish political landscape. It was only a short step to extend our existing analysis of state crime, criminal justice and human rights violations in Turkey to state crime and apparently 'natural' earthquake disasters.

## THE 1999 MARMARA EARTHQUAKE

At two minutes past three in the early morning of 17 August 1999, the heavily industrialised Marmara region of Turkey, southeast of Istanbul, experienced an earthquake of the momentous magnitude of 7.4. The earthquake resulted from a rupture—approximately 125 km long—along the North Anatolian Fault Zone (NAFZ) killing an estimated 40,000 people.[1] Most of the victims were killed when their concrete apartment buildings collapsed while they slept. Over 285,211 residences and 42,902 businesses were destroyed and an estimated 200,000 people were made homeless. Losses to Turkish industry were estimated to be around $US3.5 billion (Ministry for Public Works and Housing, 2000).

Turkey lies over one of the most seismically active regions in the world. Ninety-five per cent of Turkey's surface area is at first or second-degree risk of earthquakes, an area which is home to 98 per cent of its industry and 92 per cent of its population. According to one commentator, 'a damaging earthquake occurs somewhere in Turkey once every nine months' (Coburn, 1995: 66) and the probability of a large earthquake occurring in or near Istanbul in the next thirty years is now estimated to be 62 per cent (Parsons *et al*, 2000).

The devastated region was heavily industrialised and had attracted thousands of migrants fleeing repression and poverty in southeastern Turkey. The influx of internal migrants had led to significant housing shortages in the region and much of the demand for housing new immigrant workers was met by the construction of *illegal* 3-to-6 storey reinforced concrete

[1] The death toll has been highly contested because the government has refused to issue a list of the missing. The official death toll is 17,840 with 43,953 injured and 505 permanently disabled.

buildings with hollow clay tile infill walls. Thousands of these buildings were to collapse. The buildings most likely to collapse or to be damaged were buildings of four storeys or higher, and proportionally, the newest of the buildings suffered greatest damage indicating deterioration in construction quality across time.

The findings of international engineering research teams established that the scale of destruction was directly attributed to a lack of adequate engineering, a lack of industry inspection and quality assurance and a lack of discipline on the part of the state authorities. The very heavy damage suffered in some regions, particularly Adapazarı, Izmit and Yalova was attributed to soil profiles—loose silt and sand layers and soft organic clay layers which turn to liquid in earthquake conditions; the weakening effects of the removal of walls in many buildings; the poor quality cement used; inadequate reinforcing members and the proximity of building structures to the Izmit Bay shore (EEFIT, 1999; MCEER, 2000; EERI, 1999).

## NATURAL DISASTERS AS STATE CRIMES

Given the definition of state crime outlined above, natural disasters constitute state crime when, in addition to violating human rights, those violations result from a form of state organisational deviance. Earthquakes, famines, cyclones, floods, fires or volcanoes result in death and injury on a mass scale. In addition, they deprive people of other basic needs such as shelter, food and sanitation. Clearly, the geophysical hazard or climatic extreme has not violated those rights because such violation requires human agency. The form of agency that concerns us here is that of state organisational deviance.

The types of state organisational deviance which emerge from the literature on natural disasters may be summarised as follows: systemic corruption; state-corporate crime involving the collusion of governments in illegal and dangerous acts by private corporations; the collusion of governments in illegal acts by members of the governing elite itself, including illegal deforestation leading to floods and landslides; war crimes as a cause of famine and negligence, such as the gross failure of state agencies to pursue effectively their publicly-proclaimed goals or to follow generally accepted professional standards, for example in civil engineering. Examples of such negligence include wilfully ignoring scientific warnings; failing to develop national systems of quality assurance or regulation in industries like construction; failing to install early warning systems in areas prone to cyclones or hurricanes and encouraging or forcing land settlements in hazardous zones. Also to be considered are post-disaster cover-ups and concealment of evidence, indicating governments' fear of censure if the true consequences of their acts and omissions became known, and the failure to protect women from domestic and sexual violence.

## GLOBALISATION AND VULNERABILITY

In a useful definition of natural disasters, Hewitt and Burton (1971) highlight the continuity between disaster events and everyday life and define disaster as an *extension* of everyday life, an interaction between 'the physical event itself and the state of human society'. A natural hazard need not be a disaster, as earthquakes in California and New Zealand reveal. Susman *et al* introduced an important political component to the definition when they focused on the notion of vulnerable groups, defining disaster in relation to its victims:

> without people there can be no disaster. And poor people are generally more vulnerable than rich ones. Disaster is therefore defined as the interface between an extreme physical event and a vulnerable human population.
> (1983: 264)

As Watts demonstrates in his work on famine and natural hazards, differential vulnerability 'usually grows out of historically situated inequalities that limit access of some to secure housing, adequate incomes, food supplies and legal rights' (1991). This notion of vulnerability is crucial to understanding disaster as a form of state crime and plays a central analytical role in the examination of state responsibility and culpability.

There is a strong body of evidence which now suggests that globalisation has increased vulnerability to disaster in the developing world. Despite evidence of widespread global wealth, many millions of people continue to die from intermittent famines and from endemic under-nourishment and deprivation. The Hunger Report (2004) reveals that while world hunger has been reduced over the past 30 years from 37 per cent to 17 per cent, 842 million people are hungry and 798 million suffer chronic under-nutrition in the developing world, while 200 million people were vulnerable to the risk of famine throughout the 1990s (Bread for the World, 2004; 2001). Between 1994 and 2004 over 90 per cent of those killed by natural disasters lost their lives in hydro-meteorological events such as droughts, windstorms and floods (IFRC, 2001). Despite an increased number of disasters, early warning systems and satellite forecasting have resulted in a decline in average annual deaths from over 75,000 per year (1994–98) to 59,000 per year (1999–2003). However, over the same period, the numbers affected by disaster rose dramatically. Between 1994 and 1998 the International Federation of Red Cross and Red Crescent Societies reported that an average of 213 million people were affected. The following five years to 2003 saw this figure rise by over 40 per cent to an average of 303 million per year (IFRC, 2004).

The increase in those affected is a direct consequence of the general rise in population vulnerability. For every disaster related death in the developed world, there are fifteen in less developed countries (Aptekar, 1994). According to the World Bank, between 1990 and 1998 around 97 per cent of natural disaster related deaths took place in the developing world (World

Bank, 2000b: 170). Similarly, in terms of economic loss as a proportion of GNP, developing countries suffer damage far in excess of developed countries (UNDP, 2003). Moreover, natural disasters and extreme weather events now displace more people from their homes than conflict and war (IFRC, 2001).

While the UN interprets the increased vulnerability of people who live in the developing world as 'induced by current and human determined paths of development', the reality is that it is states, international organisations such as the World Bank and IMF and multi-national corporations which play the primary role in determining these paths. Consider, for example, the three fundamental conditions which enhance a population's vulnerability to natural disasters: poverty, corruption and political authoritarianism. These three conditions—often, although not always, mediated by race, gender, age, culture and ethnicity—emerge throughout the literature on disasters as causally integral to large-scale catastrophe. Without question, these conditions locate natural disasters within the subject frame of criminology. Relatedly, while the literature on gender and natural disasters has addressed poverty, it has singularly failed to link vulnerability to either corruption or repressive political systems. This chapter explores all three vulnerability factors in the context of globalisation.

## POVERTY

Poverty dramatically increases vulnerability to disaster and without arguing that poverty creation is itself a state crime, it is important to underscore its centrality in the victimisation of those at risk of natural disaster.[2] The literature suggests that globalisation has contributed to the vulnerability of those in the poorest and most marginalised countries in the world. Certainly, globalisation has impacted unevenly on economic growth. While there has been a dramatic rise in global finance capital flows, these new trade networks have operated to exclude and marginalise the world's poorest countries. Globalisation has resulted in clear benefits for the economic regions of North America, Western Europe and South-East Asia while the majority of countries in Africa and much of south and central Asia and Latin America have remained on the economic periphery (Ellwood, 2001: 33; Held *et al*, 2000: 177–82; Hirst and Thompson, 1996).

A similar pattern emerges in relation to foreign direct investment, which in the developing world, has tended to be in those countries with a relatively skilled and well-paid workforce, such as newly industrialising countries like Malaysia and parts of India. According to World

[2] I would argue that poverty creation falls more usefully into the category of 'social harm'. For a discussion, see Ward (2004).

Bank figures, between 1990 and 1998 foreign direct investment in 'low income' countries increased from $2201 million to $10,674 million; in 'middle income' countries from $21,929 million to $160,267 million and in 'high income' countries from $169,252 million to $448,316 million (World Bank, 2000a: 315). This 'privileging', through globalisation, of wealthy countries has served to increase social inequality and is made significantly worse by recession and the debt crisis. By 1999, Third World debt had reached nearly $3000 billion, representing approximately $400 per person in the developing world, where average income is less than $1 per day (Ellwood, 2001: 48). According to the United Nations Development programme, there were 54 countries in the world poorer in 2003 than they were in 1990. In 21 of those countries a larger proportion of the population is poorer; in 14 infant mortality under the age of 5 is higher than it was and in 34 life expectancy has fallen. As The Human Development Report comments, such 'reversals in survival were previously rare' (UNDP, 2003: 14).

Women have been particularly vulnerable to market strategies which characterised the restructuring of the global economy during the 1990s (Steans, 2000). In the Third world women are heavily concentrated in Export Production Zones. These are specific areas specially created for the development of industries to produce goods for the global market—a requirement of the export-led growth demanded by the IMF and World Bank. Women also remain concentrated in the lowest paid forms of employment. More broadly, Mike Davis argues convincingly that linkage to the world economy has made the peasantry of the developing world much more vulnerable to the ravages of flood and drought (2001: 15). This argument can be extended to other natural disasters such as earthquakes, cyclones and landslides. For example, the impact of American banana companies in collusion with regional governments has significantly increased the vulnerability of the poor in Central America. Extensive deforestation of fertile valleys and the development of roads and railways to facilitate banana production and export forced local peasants to cheaper land, often on hill and mountainsides. In order to grow their staple maize these peasants were forced to clear forests leading to severe soil erosion and, ultimately, to flooding and landslides in the event of hurricanes and cyclones to which the region is prone. Many of the world's most impoverished people live in the most hazardous of environments. In Bogota over 60 per cent of the population live on steep slopes subject to landslide induced by heavy rains and earthquake. Many of Asia's most destitute live in slums on hazardous flood plains and a quarter of Kenya's population live in drought-prone 'marginal' lands.

There is little doubt that wealth is a major protection against natural disaster. If wealthy households choose to live in hazardous environments they normally have the resources and access to information to reduce their vulnerability. Indeed, it has been suggested that it is precisely access to

knowledge, resources, legal rights and entitlements that places people in a position to manage disaster successfully (Dreze and Sen, 1991). According to the disaster reinsurance giant Munich Re (which importantly does *not* include famine in its own definition of disaster) almost 561,000 people were killed in natural disasters between 1985 and 1999. Only four per cent of those killed were from fully industrialised countries. The remaining 96 per cent of victims lived primarily in Asia (77 per cent) and in South and Central America (14 per cent). UNDP figures show that 24 of the 49 least developed countries face a high level of disaster risk (UNDP, 2001).

Early warning and detection systems and the implementation of disaster prevention strategies mean that single great catastrophes which may claim the lives of hundreds of thousands of people are infrequent occurrences (Abramovitz, 2001). At the same time, however, there has been no equivalent decline in economic loss arising out of disaster; rather 'economic losses' during the 1990s were more than three times the figure in the 1980s, almost nine times that in the 1960s and more than 15 times that in the 1950s (Abramovitz, 2001: 12). Munich Re presents evidence to show that economic losses have increased more than ten times each decade during the last 4 decades Economic losses have a far more devastating impact on poorer countries where often uninsured losses comprise a proportionately much larger share of the national economy. While the most economically advanced countries sustained 57.3 per cent of recorded economic losses, this represents only 2.5 per cent of their GDP. For the poorest countries which endured 24.4 per cent of the total economic loss for disasters this meant a huge 13.4 per cent of their GDP. There is a very clear correlation then between poverty, class and population vulnerability.

## CORRUPTION

According to the *World Disasters Report*, Corruption and vested interests in and around government play 'a large role in many of the long-term precursors to disaster' (IFRC, 1999). Recent figures from Transparency International suggest that political corruption has fared well under globalisation. Peter Eigen, chair of Transparency International, launching the *Global Corruption Report 2004*, linked corruption directly to human rights violations:

> Political corruption undermines the hopes for prosperity and stability of developing countries and damages the world economy … [it] deprives the most needy of vital public services, creating a level of despair that breeds conflict and violence. (Transparency International, 2004)

Systemic political and administrative corruption usually results in violations of human rights (Transparency International, 2004; Green and Ward, 2004). One way in which it does so is by aggravating and precipitating natural

disasters. Systemic corruption tends to occur in societies characterised by clientelism, patrimonialism and informal exchange relationships. Moreover, systematic corruption is particularly relevant in the study of earthquake vulnerability as the Turkish experience reveals.

In the 1980s, the Turkish economy underwent widescale liberalisation and globalisation. As part of this process, public lands were made increasingly available for privatisation. Rules and regulations which had been seen to hamper industry were repealed and Turkish entrepreneurs were encouraged to ignore those that remained. Many capital-poor entrepreneurs established construction companies in this period and in the process relied on the help of friends in local politics to secure contracts. Enterprising firms and individuals were effectively encouraged to build on undeveloped public land. These illegal housing developments would then acquire legitimacy on the eve of elections when the passing of construction amnesties could be virtually guaranteed. Vast unlicensed housing developments were then legitimately sold to individuals or companies.

In Istanbul, home to over twelve million people, some 65 per cent of housing, is *kaçak* (unlicensed). Illegal building and illegal housing have flourished as a direct result of state policy and practice and, given that at least 60 per cent of land in Turkey is state-owned and the majority of illegal housing has been built on state land, responsibility for the consequences arising from natural disasters in these settlements must lie with the state. In Turkey building code violations are part of a well-entrenched corrupt political process between professional groups, government and industry. Thus state ownership of land coupled with the customary practice of the unregulated informal appropriation of it has suited Turkish politicians operating within a context of populist clientelism (Keyder, 1999) For their own electoral advantage these politicians, through the arbitrary allocation of services, licences, permissions, the regular turning of a blind eye and the granting of other privileges to those building illegally, have been able to secure popular support. In these myriad ways they have ensured an increased risk to the safety of those forced to live in the dangerous housing which emanates from those decisions. The role of central government has been crucial in sanctioning the excessive trade-offs witnessed against the value of life-safety, in pursuit of state organisational goals. Corruption nurtures, institutionalises and legitimises those trade-offs. The advantage for the state is two-fold: clientelism creates the climate which allows local corruption to flourish; corruption, in its turn, ensures the provision of cheap mass housing. Corruption is thus a cheap and devolved means by which the Turkish state 'addresses' social housing provision. In this sense it can be said to foster state organisational goals and may explain why it is so widely tolerated.

Clientelistic practices systematically undermined the possibility of compliance with and enforcement of existing (and wholly satisfactory) building standards and regulations. The magnitude of the disaster was a function

of systematic corrupt practices by state actors in both urban planning and development, local and national government, and the construction industry.

## AUTHORITARIANISM AND REPRESSION

Elsewhere I have, with Tony Ward, located the authoritarian nature of a state as central in predicting and assessing vulnerability to catastrophe which may follow an extreme geophysical event (2004). Catastrophe is not simply the result of underdevelopment, but the weakness of civil society under repressive political arrangements. As Robert Putnam (1993) has shown, the absence of civil society correlates with an absence of or weak democratic processes. An assessment of major disasters reveals a strong correlation between the absence of a highly developed civil society—one with strong domestic grass roots and other non-governmental organisations—and the scale of death and destruction. Government commitment to civil and political rights has proven itself a protection against needless devastation from so-called 'natural' disasters and as de Waal demonstrates in his study of famine, the number, variety and resilience of liberal institutions 'make it more difficult for famine to recur' (1997: 11).

In 1999 repression, forced migration and dangerous housing converged to create disaster in Turkey. The state's devastating war with Kurdish separatists in the southeast has played a crucial role in increasing population vulnerability to earthquake disaster. Turkey's campaign of terror in the southeastern provinces forced hundreds of thousands to seek a better quality of life elsewhere in the country. The people of Bingöl, Elazil, Mardın, Siirt, Van, Adiyaman, Batman, Bitlis, Mulla, Dıyarbakır, Hakkarı, Sirnak and Tünceli had lived under a state of emergency rule from at least as far back as 1987 (Amnesty International, 2002).[3] Repression, intimidation and violence, economic deprivation and limitations on a range of freedoms, defined daily life under emergency rule.

The 2003 Bingöl earthquake tragedy in which 85 children died while sleeping in a state school dormitory graphically illustrates this point. This catastrophe was a stark consequence of the impact of the war and political dispossession of the largely Kurdish population in the southeast of Turkey. Bingöl is an impoverished region which had existed for some 15 years under emergency rule. The diversion of national funds into prosecuting the war against Kurdish insurgents and maintaining institutions of state repression has ensured the impoverishment of the region's infrastructure. Most of the children sleeping in the school lived in villages without local schools and were forced to board because of the failure of the Turkish government

[3] Emergency rule was finally ended in Turkey's southeast in November 2002 when it was lifted from the two remaining provinces of Diyarbakir and Sirnak.

to invest in regional infrastructure and services in the region. As an uncle of one of the victims told a *Guardian* journalist, 'I am angry at the dishonest builders who built this trap for our children and their political allies who let them get away with it' (*Guardian*, 3 May 2003).

The absence of a strong civil society means that authoritarian states are also more likely to attempt to conceal evidence of state deviance. This was clearly apparent in the Turkish earthquake. The striking discrepancy between the official and unofficial earthquake figures and the government's determined refusal to issue a missing list strongly suggest that the Turkish state reduced the number of dead in order to reduce the impact of its incompetence and the scale of its own corrupt practices.

In states where violations of human rights are institutionalised and high levels of corruption are commonplace large-scale devastation as a result of 'natural catastrophe' is an unsurprising phenomenon. The immigrants from Turkey's southeast who came to live in the shabbily built and dangerous housing of Izmit Bay illustrate the direct link between repression and natural disaster. The Turkish state's 15-year war against the Kurdish minority in the country's southeast had a dramatic impact on internal migration: millions left the devastation and repression of the conflict zone to seek jobs in the more secure industrialised parts of the country. It was from this pattern of forced migration that much of the demand for mass cheap housing emerged and it was this population—already victims of state repression—who became victims of a wilfully negligent state and the dangerous housing it positively encouraged which collapsed in the earthquake.

One recent case from the European Court of Human Rights (ECHR) illustrates this well. There are many cases like that of the Yöyler family who lodged a case against Turkey in the ECHR. On 16 September 1994, three young women disappeared from the village of Dirimpinar in southeastern Turkey to join the Kurdistan Worker's Party (PKK). When the fathers of these women reported their daughters missing to the gendarmerie, the gendarme commander of Malazgirt region came to the village and threatened to burn the village to the ground unless the girls were brought to him within three days. The Yöyler family and the families of the girls, frightened by the threat, loaded up their possessions and fled. They were intercepted by the gendarmarie and forced back to a house in Dirimpinar where they were assaulted. The gendarmarie departed urging the villagers to take good photographs of their homes as that would be all they would have to remember them by. On 18 September at 8.00pm, masked special gendarme teams accompanied by village guards entered the village and ordered villagers into their homes. The security forces then took diesel from the villagers' tractors and set fire to the homes of the extended Yöyler family—six houses in all. The family fled this carnage and settled in Adapazarı in northwestern Turkey in the hope of peace and security. In 1999, Adapazarı was one of the towns most devastated by the Marmara earthquake (ECHR, 2003).

## THE TURKISH STATE AND WOMEN'S RIGHTS

As the work of Amnesty International (2003), Human Rights Watch and others make clear, there are specific structural patterns of discrimination which place certain women inside Turkey at greater risk of state and domestic violence, thereby, it might be argued, increasing their vulnerability to natural disaster. Gender discrimination is widespread socially, economically and politically. Girls are educationally disadvantaged, women in many circumstances are unable to choose their own marriage partner, men earn proportionately higher wages, own over 90 per cent of all property and 90 per cent of GDP; and only 4.3 per cent of politicians are women—despite having a woman as a former Prime Minister. Kurdish women living in southeastern Turkey are the most vulnerable, particularly if they hold political views contrary to those of the government and the military. Here systematic torture (particularly in the anti-terror branches of police headquarters), disappearances, unlawful detention, the razing of villages and the persecution of political activists and journalists continues. Amnesty has shown how patterns of discrimination perpetrated by the state contribute to continued violence against women and compound the consequences of that violence for those women (Amnesty International, 2004).

## Women, Vulnerability and Natural Disaster

In the International Decade for Natural Disaster Reduction 1990–2000, 1995 was designated the year of gender focus. A review of much of the literature which came out of that focus suggests that mainstreaming gender has resulted in a range of relatively small-scale local strategies to improve women's awareness of risk and practical measures which might improve life-safety. Nora Sequeira complains that most of the case study material available on gender and disaster risk focuses 'on how disasters impact men and women in different ways' and how disaster response 'fails to take into account gender' (2001: 6). By contrast, there is little to suggest that gender assists in explaining the fundamental causes of the disasters which follow natural hazards. Fothergill's nine-stage typology to explore gender and exposure to disaster risk illustrates the general failure in the feminist literature to address fundamental issues of political economy which would reveal widespread state crime as causal. Rather, the typology emphasises individual responsibility and individual solutions by focusing on exposure to risk, risk perception, preparedness behaviour, warning communications and response, physical impacts, psychological impacts, emerging response recovery and reconstruction (1998: 34). It seems that the focus on women (because in most of this work 'gender analysis' is singularly concentrated on women) encourages individual and local responses rather than an examination of the root causes of disaster.

In terms of the impact of economic globalisation, women have suffered disproportionately. According to the United Nations Development Programme (1995) 70 per cent of the 1.3 billion people living in poverty were women. Much has been written about the 'feminisation of poverty'. Women now make up some 34 per cent of paid workers in the world, yet they earn on average 30–40 per cent less than their male counterparts (Steans, 2000: 371). According to Elaine Enarson, one of the leading feminist scholars on disasters,

> the gendered division of labour, maternal health, women's longevity, household and economic structures and the gendered inequalities embodied in everyday life put girls and women at special risk. Women's inability to enjoy their full human rights; their poverty, economic insecurity and lack of land rights; limitations on personal autonomy and political expression; barriers to literacy, education and training; constraints on health, time and leisure … all these combine to undermine women's ability to anticipate, prepare for, survive, respond to, and recover from disasters. This is what gendered vulnerability means for women'. (2000: 2)

She argues too that economic globalisation has increased women's economic insecurity through higher rates of informal work and job losses in restructuring industries. Structural Adjustment austerity measures imposed by the IMF and World Bank which result in major social service spending cuts result in an expansion of unpaid work for women. Furthermore:

> *Urban migration and hyperurbanisation* bring women to unsafe living conditions and informal sector work in huge urban centres, where they are increasingly exposed to environmental pollution and disasters such as mudslides and earthquakes. (2000: 3; her emphasis)

Steans has extended this analysis in terms applicable to disaster vulnerability, arguing that:

> states set the parameters for women's structurally unequal position in families and markets by condoning gender-differential terms in inheritance rights and legal adulthood, by tacitly condoning domestic and sexual violence, or by sanctioning differential wages for equal pay or comparable work. (2000: 371)

The same conditions which place certain women at risk in their everyday lives—lower pay, less political power, fewer positions of authority, reduced access to information about environmental hazards and other specific forms of cultural oppression—serve to fashion a gendered vulnerability to natural disasters. And certainly in relation to famine, Dreze and Sen (1991) have argued that in contexts where women have full equality, social freedom, property rights and access to employment and resources equal to men's rights, then gender-based vulnerabilities are reduced. Clearly, more empirical work needs to be done to determine the degree to which gender increases vulnerability to natural disasters.

## GENDER SPECIFIC VULNERABILITIES

According to the only review of research on women and exposure to natural disaster risk—gender does influence vulnerability in disasters (Fothergill, 1998: 13). Essentially, the research suggests that increased risk exposure for women is predicated on their social class, care-giving roles, privatised role in the domestic sphere and relative lack of power and status. While the data are very thin on the ground, the extant research suggests a number of features which assist in understanding the relevance of gender to disaster vulnerability. First, women are less represented in disaster management and preparedness. They are noticeably absent in the decision making and leadership roles and in higher levels of the emergency management field such as large formal disaster planning organisations. Moreover, this is true of both the developed and developing worlds (Enarson and Morrow, 1998; Fordham, 2000; Sequeira, 2001).

Secondly, it has been argued that women-maintained households are economically and politically disadvantaged, with evidence suggesting that women with responsibility for children may experience higher mortality rates in earthquake disasters (Parasuraman, 1995; Rivers, 1982). While there is no direct evidence that women experience higher mortality rates than men, there is some limited research that suggests that they might, inasmuch as domestic space, more frequently occupied by women, children and the elderly, is particularly at risk in earthquakes. Residential housing in a country like Turkey is frequently self-built or built by unskilled and corrupt contractors using poor quality materials, breaching building codes and without the necessary soil checks and permissions (Hewitt, 1997). It is still unclear, however, whether women are disproportionately disadvantaged by this dangerous housing. Fordham cites earthquake examples where female fatality was reportedly higher. One was in Friuli, Italy in 1976 where, because of the timing of the earthquake, more women were in the home preparing the evening meal (Hewitt, 1997); in Maharashtra, India in 1993 where a tradition of sleeping outdoors protected men while women and children were crushed while sleeping indoors (Maybin, 1994) and in Afghanistan in 1998 where men at the mosque or in the fields were safer than women and children in homes or schools (IFRC, 1999).

Thirdly, poor people are more vulnerable because of poor housing materials, type of housing, location of housing and a lack of access to information, and women are disproportionately living in poverty. Women suffer disproportionately from growing 'flexibilisation' in the economic sector and growing instability of employment; from the reduction of social welfare spending and by the privatisation of public utilities, especially health (Guzman, 1998). There is no direct evidence, however, that this leads to increased mortality rates in disaster conditions. Fourthly, there is contradictory evidence in relation to early warning systems which are particularly relevant in the context of

cyclones, hurricanes, volcanic eruption and flooding. According to Anderson (2001) and Drabek (2000) women are less informed of early warnings but more likely to act if they are warned. Research in Bangladesh reveals that because cyclone warnings were transmitted through loudspeakers in public places, women were less likely, because of their confinement to domestic spheres, to receive them in good time (D'Cunha, 1997). This is one of the key gendered arguments emerging in the vulnerability literature. However, Alice Fothergill's extensive review of gender and disasters research suggests that women are in fact more likely to receive warnings than men and in turn more likely to act (Fothergill, 1998).

The available data do not provide a particularly compelling argument that gender is significant in defining disaster vulnerability. This is partly because of the lack of comparative research on men's experience of vulnerability. In some specific disasters, confinement in the home may have contributed to higher mortality rates for women and children, but equally, domestic confinement might serve to protect those in the home in other disasters. It may be that working in exposed places increases vulnerability to disaster impact. Further research is required into these issues.

## CONCLUSION

A review of the limited evidence which does exist suggests that gender alone cannot be demonstrated to be a key contributor to population vulnerability. However, like age, disability, race, sexuality and ethnicity, it forms part of a complex mediating tapestry through which the chief determinants of vulnerability—poverty, corruption and political authoritarianism—are realised (Green and Ward, 2004). To explore gender vulnerability to natural disasters without the concepts of state crime and the specific examples of organisational deviance—authoritarianism and corruption—makes little intellectual or pragmatic sense. Wisner has argued that women 'may not be particularly vulnerable qua women', but more commonly poor women, and in particular, old, poor, minority women in disasters (1993: 22 cited in Hewitt, 1997: 148). Wisner's analysis is necessary if we are to properly understand gender in the context of disaster vulnerability. But what is needed is a conceptual focus that incorporates gender, class and state power. For gender is not a homogenous category which impacts on all women or all men in a uniform way. Its impact is differential and context specific and determined by potent vulnerability-inducing factors discussed in this chapter.

Gender fundamentally fashions the way in which men and women experience national development and environmental events but it cannot be disaggregated from political economy. While considerable academic work has been done on gender and globalisation, and gender and class, there is very little

to elucidate the way in which the two other determinants of vulnerability in the face of natural disaster—corruption and authoritarianism—are mediated by gender. The state crime perspective may thus provide new directions for exploring these intersections.

## REFERENCES

Abramivitz, J N (2001) *Unnatural Disasters* Worldwatch Paper 158.

Amnesty International (2002) *Annual Report* (London, Amnesty International).

Anderson, C (2001) 'Warning Systems and Slow-onset' Disasters'. Posted 11 October 2001 to United Nations Division for the Advancement of Women online forum,*Gender Equality and Environmental Management and Natural Disaster Mitigation.*

Aptekar, L (1994) *Environmental Disaster in Global Perspective* (Toronto, GK Hall & Co).

Blaikie, P, Canon T, Davis, I and Wisner, B (1994) *At Risk: Natural Hazards, People's Vulnerability and Disasters* (London, Routledge).

Bolin, R, Jackson, M and Crist, A (1998) 'Gender Inequality, Vulnerability and Disaster: Issues in Theory and Research' in E Enarson and B Hearn Morrow (eds) *The Gendered Terrain of Disaster: Through Women's Eyes* (Westport, Connecticut, Praeger Publishers) 27–45.

Bread for the World Institute (2004) *Hunger Basics, World Hunger and Poverty: How they Fit Together* http://www.bread.org/hungerbasics/international.html#cite4.

Callinicos, A (2001) *Against the Third Way* (Oxford, Polity).

Coburn, AW (1995) 'Disaster Prevention and Mitigation in Metropolitan Areas: Reducing Urban Vulnerability in Turkey' in R Parker, A Reimer and M Munasinghe (eds), *Informal Settlements, Environmental Degradation and Disaster Vulnerability: The Turkey Case Study* (Washington DC, The World Bank and The International Decade for Natural Disaster Reduction (IDNDR)) 65–95.

Cohen, S (1993) 'Human Rights and Crimes of the State: the Culture of Denial' 26 *Australian and New Zealand Journal of Criminology* 97–115.

Davis, M (2001) *Late Victorian Holocausts: El Niño Famines and the Making of the Third World* (London and New York, Verso).

Davis and Spence, RJS (1992) *Earthquake Prevention* (London, John Wiley and Sons).

D'Cunha, J (1997) 'Engendering Disaster Preparedness and Management' 3 (November) *Asian Disaster Management News*.

De Waal, A (1997) *Famine Crimes: Politics and the Disaster Relief Industry in Africa* (Oxford, James Currey).

Department for International Development (2000) *Eliminating World Poverty: Making Globalisation Work for the Poor* (UK Government White Paper, TSO, Norwich).

Drabek, T (2000) 'The Social Factors that Constrain Human Responses to Flood Warnings' in DJ Parker (ed), *Floods* (London, Routledge).

Dreze, J and Sen, A (1991) 'Famine Prevention in India' in J Dreze and A Sen (eds), *The Political Economy of Hunger* Volume II Famine Prevention (Oxford, Clarendon).

Earthquake Engineering Fieldwork Investigation Team (EEFIT) (1999) *Report on Kocaeli Earthquake of August 1999* (London, EEFIT).

Earthquake Engineering Institute (EERI) (1999) *The Izmit (Kocaeli) Turkey Earthquake* www.eeri.org/earthquakes/Reconn/Turkey0899.

EQE International (1999) 'Izmit, Turkey Earthquake of 17 August 1999 (M 7.4): An EQE Briefing' www.eqe.com/revamp/izmitreport/.

Ellwood, W (2001) *The No-Nonsense Guide to Globalisation* (London, Verso).

Enarson, E (2000) 'Gender Issues in Natural Disasters: Talking Points and Research Needs' ILO InFocus Programme on Crisis Response and Reconstruction Workshop (Geneva, 3–5 May).

—— and Hearn Morrow, B (1998) *The Gendered Terrain of Disaster: Through Women's Eyes* (Westport, Connecticut, Praeger Publishers).

European Court of Human Rights (ECHR) (2003) *Yoyler v Turkey* (26973/95) [2003] ECHR 398 (24 July 2003).

Food and Agriculture Organisation of the United Nations (FAO) (1999) 'Gender and Food Security Environment' http://www.fao.org/gender/en/env-e.htm.

Fordham, M (2000) 'The Place of Gender in Earthquake Vulnerability and Mitigation'. Paper Presented at the Second Euro Conference on Global Change and Catastrophic Risk Management—Earthquake Risks in Europe, International Institute of Advanced Systems Analysis Laxenburg, Austria, 6–9 July 2000.

Fothergill, A (1998) 'The Neglect of Gender in Disaster Work: an Overview of the Literature' in E Enarson and B Hearn Morrow (eds), *The Gendered Terrain of Disaster: Through Women's Eyes* (Westport, Connecticut, Praeger Publishers) 11–27.

George, S (2001) 'Corporate Globalisation' in E Bircham and J Charlton (eds), *Anti-Capitalism: A Guide to the Movement* (London, Bookmarks).

Goetz, AM (1995) *The Politics of Integrating Gender to State Development Processes: Trends, Opportunities and Constraints in Bangladesh, Chile, Jamaica, Mali, Morocco and Uganda* (Geneva, United Nations Research Institute for Social Development).

Green, P and Ward, T (2000) 'State Crime, Human Rights, and the Limits of Criminology' 27(1) *Social Justice* 101–15.

—— (2004) *State Crime: Governments, Violence and Corruption* (London, Pluto Press).

Guzman, M (1998) *Women-IberoAmerica: Globalisation Widens Gender Gap* 1998 meeting of women ministers and women's policy makers (Maria Guzman is president of Venezuela's National Women's Council). World News Inter PressService (http://www.oneworld.org/ips2/sept98/21_30_094.html)

Held, D, McGrew, A, Goldblatt, D and Perraton, J (1999) *Global Transformations* (Oxford, Polity).

Hewitt, K (1997) *Regions of risk: hazards, vulnerability and disasters* (London, Addison Wesley Longman).

—— and Burton, I (1971) *The Hazardousness of a Place; a Regional Ecology of Damaging Events* (Toronto, University of Toronto Press).

Hirst, P and Thompson, G (1996) *Globalisation In Question: The International Economy and the Possibilities of Governance* (Oxford, Polity).

International Federation of Red Cross and Red Crescent Societies (IFRC) (1999) 'Two Quakes Hit the Hindu Kush' *World Disasters Report* (Geneva, International Red Cross and Red Crescent Societies) 69–83.

—— (2001) *World Disasters Report 2001* (Geneva, International Federation of Red Cross and Red Crescent Societies).

—— (2004) *World Disasters Report 2004* (Geneva, International Federation of Red Cross and Red Crescent Societies).
Keyder, Ç (1999) (ed), *Istanbul: Between the Global and the Local* (London, Rowan & Littlefield).
Maybin, E (1994) 'Rebuilding Shattered Lives' in IFRC *World Disasters Report* (Geneva, International Federation of Red Cross and Red Crescent Societies).
Ministry for Public Works and Housing (2000) TC Bayindirik ve Iskan Bakanligi.
Multidisciplinary Centre for Earthquake Engineering Research (MCEER) (1999) Response: Kocaeli (Izmit), Turkey Earthquake.
Parasuraman, S (1995) 'The Impact of the 1993 Latur-Osmanabad (Maharashtra) Earthquake on Lives, Livelihoods and Property' 19(2) *Disasters* 156–69.
Parsons, T, Shinji, T, Stein, R, Barka, A and Dieterich, J (2000) 'Heightened Odds of Large Earthquakes Near Istanbul: an Interaction-based Probability Calculation' 288 *Science* 661–5.
Putnam, R (1993) *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton NJ, Princeton University Press).
Rivers, JPW (1982) 'Women and Children Last: An Essay on Sex Discrimination in Disasters' *Disasters* 6(4): 256–67.
Sequeira, N (2001) 'Risk Management: an Alternative Perspective in Gender Analysis' UN Division for the Advancement of Women, International Strategy for Disaster Reduction Expert Group Meeting on 'Environmental management and the mitigation of natural disasters: a gender perspective' Ankara, Turkey, 6–9 November 2001.
Serrat Viñas, C (1998) 'Women's Disaster Vulnerability and Response to the Colima Earthquake, in E Enarson and B Hearn Morrow (eds), *The Gendered Terrain of Disaster: Through Women's Eyes* (Westport, Connecticut, Praeger Publishers) 161–73.
Steans, J (2000) 'Globalisation and Gender Inequality' in D Held, and A McGrew (eds), *The Global Transformations Reader*: *An Introduction to the Globalisation Debate* (Cambridge, Polity) 455–63.
Susman, P, O'Keefe, P and Wisner, B (1983) 'Global Disasters, a Radical Interpretation' in K Hewitt (ed), *Interpretations of Calamity from the Viewpoint of Human Ecology* (London, Allen and Unwin) 263–84.
Transparency International (2004) *Global Corruption Report 2004* www.global corruptionreport.org.
United Nations Development Programme (UNDP) (1995), (2003) *Human Development Report* (New York, Oxford, Oxford University Press) http://www.undp.org/hdr2003/.
Ward, T (2004) 'State Harms' in P Hillyard, C Pantazis, S Tombs and D Gordon (eds), *Beyond Criminology: Taking Harm Seriously* (London, Pluto Press) 84–101.
Watts, M (1991) 'Entitlements or Empowerment? Famine and Starvation in Africa' 51 *Review of African Political Economy* 9–26.
World Bank (2000a) *Selected World Development Indicators* (New York, World Bank).
—— (2000b) *Attacking Poverty* (World Development Report) (New York, World Bank).

# 10

# *Global Feminist Networks on Domestic Violence*

RHODA REDDOCK

## INTRODUCTION

One of the most important achievements of feminism and the women's movement during the last three decades of the twentieth century has been the de-legitimisation of violence against women. It is not yet clear whether in all instances this has also led to a reduction in the prevalence of violence against women, but certainly one would be hard-pressed to find a society which still unquestionably accepts the right to batter women without having to provide some form of justification. This has certainly been the case in the English-speaking Caribbean where, as I have argued elsewhere, violence against women was the one unifying theme around which women of all classes, political persuasions and ethnic groups have been able to organise collectively and collaboratively (Reddock, 2003). This is so, in spite of the fact that in the current climate of early twenty-first century conservatism and competing religious fundamentalisms, some suggest that there are signs of an increase in violence against women, perhaps as a backlash against the gains of the women's movement and as an attempt to re-establish patriarchal and community control over women.

This chapter draws on my experience over some decades as an active participant in the Caribbean and global women's movement as an early member of a community-based women's group (Working Women for Social Progress in Trinidad and Tobago), as a founder member and first chair of CAFRA (the Caribbean Association for Feminist Research and Action) and as a feminist scholar involved in establishing academic Women's and Gender Studies at the University of the West Indies. I have also been involved in international feminist practice.[1] This involvement at national,

[1] The author has served in a number of international capacities, most notably as President of Research Committee 32 (Women and Society) of the International Sociological Association (WISISA) from 1994–98.

regional and international levels has made me aware of the contradictions, challenges, critical concerns and achievements which characterise the global movements against domestic violence in particular and violence against women in general.

The de-legitimisation of domestic violence has been a significant change in many countries, including the nations of the Caribbean. However, the sanctity of marriage and family, the control of women's fertility and sexuality, customary law and practices and religious admonitions which allow for women to be corrected, chastised and punished through the use of physical violence, stoning, beating, raping, whipping and murder all combine to make violence against women accepted, normalised, invisible and even silenced. While campaigns have often focused on the broader issue of what is termed 'gender-based violence', this chapter will focus on domestic violence which in a global context may include wife/spouse battering, spousal rape, child abuse, honour killings and spousal murder.[2]

The success of the campaign to de-legitimise, criminalise and eliminate domestic violence has been the result of collective action by feminist women activists, pro-feminist men activists, and officials of international, regional and national state and quasi-state agencies. In this continuing movement, the work of global networks has been pivotal. Accordingly, I begin with a general discussion of global feminist networks and some of the ongoing debates relating to them. I consider what global feminist networks have achieved, and their relationships with the face to face feminist groups at a local level within which feminist theory and, importantly, feminist modes of organising as well as feminist political practice were developed. I argue that these interlocking networks which connect local, national, regional and international agencies constitute a new and effective political form, appropriate for maintaining diversity and for reciprocal learning in the global age. Secondly, I describe the structure and work of two multiple agenda feminist networks with which I personally have been involved. In the third section I consider single issue or specialised feminist networks that focus specifically on domestic violence against women, and that perhaps best illustrate a strategy harnessing the global and the local. Finally, I return to the international movement, and offer an evaluation of our achievements.

## GLOBAL FEMINIST NETWORKS: A DISCUSSION

Peggy Antrobus distinguishes between the international women's movement and the global women's movement. The former she sees as characteristic

[2] It should be noted however, that it is sometimes difficult to extricate domestic violence from other forms of violence as the feminist movement increasingly sees them as interrelated.

of the mid-1970s at the launching of the 'Decade for Women' where national and cultural differences between women were paramount with separate axes of north–south and east–west. The 'global' women's movement on the other hand she postulates is characterised by greater coherence, common practices and common positions in policy debates around issues such as the environment, poverty, violence and human rights (Antrobus, 2004: 17). For her part, Val Moghadam defines transnational feminism as 'the discourse and movement of women aimed at advancing the status of women through greater access to resources, legal measures to effect gender equality, and the self-empowerment of women within national boundaries through transnational forms of organising and mobilising', the term 'transnational' suggesting 'a conscious crossing of national boundaries and a superseding of nationalist orientations' (Moghadam, 2000: 61). While international activism has been characteristic of both first and second wave feminism (Alvarez, 2000) it is also true to say that it is a definitive characteristic of the current phase. The international organisations which characterised the earlier women's movement, such as the International League for Peace and Freedom (ILPF) and the Women's International Democratic Federation (WIDF) can be differentiated from the transnational feminist networks of the late twentieth and early twenty-first centuries inasmuch as the globalising processes of the modern world economy provide the basis for the development of transnational identities (Moghadam, 2000).

While some analysts see transnational feminist networks as both a response to *and* a criticism of globalisation, others see feminism and the international women's movements as outgrowths of globalisation. This assumption draws our attention to the difficulties in defining globalisation and its starting point and the varied meanings which it may have in differing contexts. For example, in Eastern Europe globalisation is perceived as a democratising force, introducing not only 'free markets', but political freedom and 'democracy' (Moghadam, 1992). For Caribbean feminists on the other hand, globalisation is perceived as an intensification and expansion of an exploitative capitalist process established several centuries ago in the forms of slavery and colonialism, within which their region was central (Robertson, 1992). This view is in part supported by the International Monetary Fund (IMF) which has argued that globalisation is a process dating back to the nineteenth century that was interrupted in the first half of the twentieth century by decades of protectionism and aggressive nationalism (IMF, 2001: 1). However, a major difference, as Robertson (1992: 183) points out, is that the current situation has stimulated a global consciousness, where people have a significantly heightened awareness of the experiences of others. This is largely due to the expansion of the communications media, in particular global television, internet technology, and other technologies for fast travel and instant communication.

Analysts have also noted the role of the United Nations in facilitating interaction and collaboration through its bodies, expert meetings, preparatory

meetings and conferences (Moghadam, 2000, Alvarez, 2000). According to Moghadam:

> The UN has played a key role in facilitating interaction and cooperation among feminist organizations. Key UN events have been various world conferences including the world conferences on women, as well as numerous regional preparatory meetings in advance of the conferences. Many TFNs [Transnational Feminist Networks] were formed and numerous women's organizations came into contact with each other between the 1985 Nairobi conference and the Fourth World Conference on Women in Beijing in 1995. Almost as important as the networking at Nairobi and Beijing were the women's caucuses that formed in connection with other UN conferences of the 1990s. (2000: 61)

She lists as examples of such caucuses those at the UN Conference on Environment and Development held in Rio de Janeiro in 1992, at the World Conference on Human Rights held in Vienna in 1993, at the World Conference on Population and Development held in Cairo in 1994 and at the World Summit on Social Development held in Copenhagen in 1995.

What is often ignored however, is the role of feminist women *within* international institutions including UN agencies, as well as the impact of the feminist movement on the UN itself in the years since its inception. Indeed, as Alvarez notes, the idea of a top-down process growing out of the UN 'Decade for Women' and the world summits of the 1990s is problematic (2000: 30). I would argue that the role of women's movements and individual feminists in propelling these processes from *differing locations* also needs to be acknowledged. While feminists in the north were instrumental in pressuring state aid and local foundations to create special funds for women's programmes, feminists from the south through their critiques of 'development' challenged so-called 'development' agencies to evaluate the impact of development projects on women and the poor. Antrobus (2004) has reported how feminists from the South[3] have continuously re-shaped the agendas of the three World Congresses on Women held between 1975 and 1995, while Brautigam (2002) has discussed the empowering effects of the Convention on the Elimination of All Forms of Violence Against Women (CEDAW) at local as well as international levels.[4] As well, feminist

[3] 'North-South' came into usage in the development literature around 1980, after the publication of the report of the Independent Commission on International Development Issues, popularly known as the Brandt Commission because it was led by the late Willy Brandt, former Chancellor of the then West Germany. It was selected to emphasise the economic divide between the North (what they defined as rich countries or Economic North) and the South (what they defined as poorer countries or Economic South) and to highlight the desirability of a North-South Dialogue grounded in a common concern for global problems not complicated by the Cold War concerns of East-West.

[4] CEDAW, created in 1999, enables local women's groups which have UN recognition to meet with the committee to discuss national reports in advance of the official discussion of the national report between the committee and the representatives of national governments.

funding agencies emerged with their own mission of encouraging feminist philanthropy in support of the work of the movement. Examples of these include the Global Fund for Women and Womankind.

What also needs to be acknowledged is the emergence of regional and international networks which preceded and operated independently of the UN processes. One example is the 1976 International Tribunal on Crimes Against Women, held in Brussels, an event which was actually organised as a feminist alternative to the UN International Women's Year Conference held in Mexico in 1975. But additionally, the activism of the period served to radicalise some of the mainstream organisations of the earlier part of the century, hence the International Association of Business and Professional Women's Clubs facilitated the emergence of women's shelters for victims of domestic violence through its member organisations at the local level.[5] It is therefore true to say that the Declaration of the UN 'Decade for Women' which commenced with the 1975 Mexico conference created a space and a climate within which organisations and activists could work with increasing intensity and which forced national governments to become accountable for their actions related to women and gender including violence against women.

However, in the discourse on global women's networks, a number of tensions have become apparent. First, there is the tension between the global and the local. It has been argued that the transfer of energies and human and financial resources to regional and international networks has reduced the efficacy of local movements. Additionally, a focus on policy change and international negotiation has required different skills from those of organising and activism. These two points are highlighted by Amrita Basu. Drawing on Alvarez's observation that women's movements are becoming increasingly bureaucratised as they have come to work more closely with NGOs, political parties, state institutions and multilateral agencies, Basu argues further that as women's movements have become more transnational, 'their commitment to grass roots mobilisation and cultural change has diminished' (2000: 69).

What is true is that the connections made at international and regional meetings, workshops and other forums have been invaluable in building supportive transnational relationships and friendships. An oral history of these participants would weave a web of connections and influences which would have been inconceivable outside of a global women's movement. The other issue which has emerged, however, is the way in which global networks have been used to speed up the process of change, by bypassing local governments and working to establish international conventions and agreements which then demand or facilitate local compliance. An excellent example relates to CEDAW, which many governments have ratified, as a consequence of which

[5] This was the case in Trinidad and Tobago where the first shelter for battered women was established by the Business and Professional Women's Club of South Trinidad.

they are obliged to report to an international committee on their progress in implementing its provisions. Women's organisations are also allowed to submit a shadow report providing their own assessments of progress in these areas. Global networks have also been important in providing solidarity among women on similar issues in different contexts, both on single issues, such as in the case of Amina Lawal of Nigeria, as well as on broad issues such as women's human rights.

The tension between the global and the local may also be related to the political life cycle of the activists themselves as evidenced by 'femocrats' of the international networks, UN agencies and 'gender' units of international organisations which are staffed by activists from the North and South. After years of activism in insecurely funded groups and organisations at the local level, feminist women are recruited into these international feminist bureaucracies and so are no longer available to the local movements in the same way. On the one hand, it is argued that this should be seen as an institutionalisation of the movement and a mainstreaming of the ideas and policy issues of the movement; but it has also meant a reduction of important and experienced person power on the ground in contexts which still require activism and consciousness-raising. Some perceive the result as an absence of an automatic group of younger feminist activists to replace these pioneers of the international movement, which has contributed to the decline in local feminist politics as we know it. However, the new visibility of a cadre of younger activists as well as the emergence of training institutes for young feminist activists such as the DAWN Training Institute suggests that this new generation may be slowly asserting itself, possibly in different ways (Wilson, Sengupta and Evans, 2005). While from some perspectives these developments and initiatives seem patchy, from others their very independence guarantees that a diversity of local perspectives continues to be fed into regional and international debates. In addition, skills and awareness may also be developed on university campuses across the world, the example best known to the author being the Centres for Gender and Development Studies of the University of the West Indies in Barbados, Jamaica and Trinidad and Tobago.

## MULTIPLE AGENDA FEMINIST NETWORKS

The issue of violence against women was central to virtually all feminist activism of the 1970s and 1980s. The radical feminist influence on body politics and against sexual violence made it one of the central components of early activism in the economic North as well as the South; although the manner in which issues emerged and were taken up may vary among countries. In the following section, I will examine two different networks—ISIS International and the Caribbean Association for Feminist Research and Action (CAFRA), a regional network.

**ISIS International**

ISIS International, founded in the 1970s and based in Rome, was initially conceived as a documentation and communication centre aimed at countering negative information on feminism. Although the founders were all from the North, very early on links and connections were developed with activists of the South. Indeed, women from the south were integral to, and active in ISIS right from the start. While many were in exile from countries in Africa and Latin America, some were studying in Europe and others were working with development organisations, and all had 'links with women in their home countries, women in liberation struggles, women organising at the grassroots'. Some of their names have become well-known in the women's movement (Villariba, 1999: 48).[6]

The first ISIS publication, *ISIS Bulletin*, was published in English, Spanish and Italian in 1976. It chronicled the testimonies presented at the first International Tribunal on Crimes against Women held in Brussels that year. Approximately 2000 women from 40 countries had attended, starting a tradition which was to become important in the movement against violence against women. Jane Cottingham describes how women gave testimony about crimes perpetrated against them—'political, economic, medical, and societal crimes' (cited in George, 1999). The women denounced, 'often in brutal terms, the discrimination they had experienced, the jobs lost because of pregnancy, the forced sterilisation, the rape, the torture, the humiliation for no other reason than that they were women. It was dynamite' (George, 1999).

In 1979, several Chilean women who had been in exile in Rome returned to Chile and began to coordinate the Latin American and Caribbean activities of ISIS and to produce the Spanish language *ISIS Boletin.* Around 1984, the decision was made to separate the Rome and Geneva offices, with the former retaining responsibility for documentation and communication with the name ISIS International and the latter with responsibility for the exchange programme with the name ISIS-WICCE (Women's International Cross-Cultural Exchange). Also in 1984, responsibility for networking within Latin America and the Caribbean was transferred to the ISIS-Santiago office in Chile as the rapid growth and expansion of the global women's movement placed numerous demands on the organisation.

At this time too, work began on shifting the base of ISIS International from Rome to the Economic South. In 1991, this was achieved when the office moved to the Philippines. At the same time ISIS-International Santiago became autonomous from what now is ISIS International Manilla. In 1994, ISIS-WICCE moved to Kampala, Uganda. The original single organisation had morphed into three autonomous organisations, all now located in the

[6] Brigalia Bam, Nita Barrow, Kamla Bhasin, Roxanna Carrillo, Anita Anand, Rhoda Reddock, Magaly Pineda, Virginia Vargas, Kumari Jayawardena, Dando Prado.

economic south, but all still in many ways interconnected. This development reflected the movement of the location of the epicentre of the global women's movement from the North to the South. From 1988, ISIS International coordinated a programme on Violence against Women supported by UNIFEM. In 1992, through ISIS-International Santiago, the Latin American and Caribbean Network against Sexual and Domestic Violence was formed, with participation from 21 Latin American and Caribbean countries. The two primary tasks of the network were first, to serve as a communications channel and secondly, to provide comparative qualitative and quantitative information on violence against women (ISIS, 1999 (3): 20). In 1993, with a new professional coordinating team in place, a structure of five sub-regional branches of the network—Andean, Brazilian, Caribbean, Southern Cone and Central America was established. Each sub-region was responsible for coordinating communication and group activities among groups and institutions in the sub-region as well as with the central coordinator. They were also responsible for establishing national networks, organising sub-regional meetings and developing awareness of the issue (ISIS, 1999 (3): 20). The developments over this decade (1988–99) epitomise the quasi-autonomous connections between the global (UNIFEM), regional and sub-regional groupings of the movement allowing for policies to be initiated at all levels, supported by local as well as international and regional resources. However, while keeping local creativity alive and ensuring support for tailor-made local initiatives, this structure was not without its problems.

By 1999, the network was reporting 'considerable obstacles' in achieving its goals. The first obstacle was the bypassing of the regional structure by the national structures, in that the national coordinators and their networks were functioning autonomously. There were national coordinating networks in Argentina, Brazil (with offices in the north and the south), Chile, Guatemala, Mexico, Nicaragua, Panama, Puerto Rico and Uruguay. In addition, national coordinators existed in Paraguay, Colombia and Venezuela. One of the main areas of weakness was the English-speaking Caribbean. Because the bulletin was prepared in Spanish, the anglophone Caribbean was never fully part of this network although efforts were made.[7] As would be expected, the other problem was the difference in the quality and effectiveness of various coordinators and networks. One of the many proposals intended to stimulate the work of the network was made at the 1999 Latin American and Caribbean Feminist Encounter in the Dominican Republic. This was for a campaign to make 25 November the 'International Day Against Violence to Women' (ISIS, 1999: 22). In the late 1990s also, through the work of feminist activists in the Inter-American Legal Services Association (ILSA) and the Latin-American Institute for Alternative Legal Services, ISIS

[7] This claim is based on my personal experience as a research associate of ISIS at this time.

Santiago became involved in the work of Women, Law and Development International and the Global Campaign on Women's Human Rights.

Of the three organisations, ISIS International Santiago has had the most consistent and concentrated programme on violence against women. *Violencia Contra La Mujer* continues to be an important programme area for this organisation. As part of this programme, it maintains the ISIS International Bibliographic Database on Violence Against Women and Human Rights which is included on its website, and it responds to requests. In 2000, they were involved in aspects of the UNIFEM/UNDP coordinated UN Inter-Agency Campaign Against Gender-based Violence. In 2003, the Call to Action for 25 November was 'POR LA VIDA DE LAS MUJERES, NI UNA MUERTE' ('*For the life of women, not one more death*'). In the publications of all three ISIS organisations however, articles and campaigns related to domestic violence were featured prominently. In 2006, there was also a focus on some of the negative impacts on women of the new information technologies (http://www.isis.cl).

### CAFRA—The Caribbean Association for Feminist Research and Action

CAFRA is a regional network of individual feminists, activists and organisations which was formed in the Caribbean region in April 1985.[8] Membership is open to women resident in or born in the Caribbean or with Caribbean roots and its secretariat is located in Trinidad and Tobago. Membership includes women of all countries and linguistic groups of the region including Cuba and the other Spanish speaking nations, the French as well as the Dutch-speaking and multi-lingual Netherlands Antilles and Suriname. Members may take action at national level through national CAFRA committees led by a national representative, or in regional programmes co-ordinated through the secretariat. All national representatives and five additional elected members comprise the regional committee which meets annually to consider the progress of the organisation. A general membership meeting is held every three years in a different Caribbean territory.

As indicated above, in the Caribbean region the issue of violence against women, in particular domestic violence, has been one of the most important issues on the feminist and women's movement agenda. It was around this issue that collaborative relationships with grassroots and more mainstream women's organisations were developed, which were able to influence national and regional legal and judicial systems within the Caribbean. In 1987, preliminary links were being made between CAFRA and ILSA

[8] Founding members included Peggy Antrobus, Rawidda Baksh Soodeen, Sonia Cuales, Joan French, Honor Ford Smith and Rhoda Reddock.

on the possibilities of a project on women's human rights and the law. In preparation for this, a survey of legal services associations throughout the Caribbean was carried out, coordinated by Gaietry Pargass (Pargass, 1988). The responses to the ILSA/CAFRA survey prioritised violence against women as the key issue for action. In 1989, CAFRA embarked on a sub-regional Women and the Law project in ten countries of the anglophone Caribbean. The project aimed to create an awareness of laws which impact on women's daily lives and to generate knowledge and information which would enhance the effectiveness of women's legal services and women's rights campaigns. The main components of the project were: a review of legislation from a feminist perspective in all ten countries; the hosting of a legal education lecture series in a selection of these countries; a training workshop on the preparation of popular education materials on legal issues affecting women; a regional workshop on paralegal training for women involved in organisations such as rape crisis centres, trade unions, and the production of popular education materials on national priority areas. Domestic violence was a priority in most instances. The project culminated in a regional conference on Women, Violence and the Law which was held in Port of Spain, Trinidad and Tobago in January 1991 (Clarke, 1991: 4; 1993: 5). In her concluding reflections on the project, coordinator, Roberta Clarke had this to say:

> The project aimed at being participatory and to the extent that women at the community level were able to attend the workshops and the legal education training sessions and to determine the priorities for legal reform, the project met its objective ... the implementation of the Women and the Law project also had its limitations, the major one being resolving the difficulties involved in decentralising the execution of the project. The experiences in the five project territories bears out that where national level NGOs (as in Dominica and Grenada) have a strong history of collaboration, the implementation was most effective. Similarly, this factor was the most important in ensuring a wide participation of women at community level. (1993: 5–6)

This project was followed by a regional project on Gender and Human Rights which began with a regional conference Critical Perspectives on Human Rights in the Caribbean held in Port of Spain in January 1995. In March 1996, a regional training seminar on the Use of National and International Human Rights Instruments took place, in large part fuelled by the involvement of Roberta Clarke in the regional and international networks on women's human rights which are discussed below.

Following these initiatives, CAFRA began a UNIFEM funded regional project on Violence Against Women in the Caribbean in 1996, again coordinated by Roberta Clarke. This included a pilot study on state and non-state responses to violence against women; a pilot survey of incidents and responses to violence against women in Trinidad and Tobago, a survey of judicial and legal frameworks in the hispanophone, francophone and Dutch-speaking

Caribbean, and a regional workshop on domestic violence held in Paramaribo, Suriname. In 1997, CAFRA was identified as the focal point for the UNIFEM/UNDP UN inter-agency campaign on gender-based violence against women and girls with the theme 'A Life Free from Violence: It's our Right'.[9]

While most of the programmes were developed by CAFRA at the regional level, national CAFRA memberships also developed their own programmes. For example in 1992, the membership in Guyana started a counselling service for victims of domestic violence as part of a women's rights campaign, while in 1998, the Suriname membership hosted a national workshop for police officers and social workers that had,

> a decidedly practical focus, with sessions on recognising the signs of domestic violence, helping victims of abuse to talk about their problem, and collecting physical samples for possible DNA evidence. Other sessions focussed on the role of social workers in assisting families damaged by domestic violence. Altogether 460 of the 1100 police officers who comprise the police force in Suriname, plus 160 social workers, attended the workshops. (Constance, 2003: 1)

The success of this programme led to demands from other parts of the region and resulted in by far the most ambitious initiative of CAFRA—the Regional Domestic Violence Intervention Training Programme for Police Officers and Social Workers held in 2000. The project involved the development and testing of training materials, training of regional trainers and the development of national training programmes offered by the trainers in their home countries for social workers, police officers and other people working in areas related to domestic violence.[10] This project broke new ground, reflecting as it did new approaches being used by women's organisations and networks which included collaboration with bilateral financial organisations, many of which now had women's or gender programmes, as well as quasi-state organisations at the national and regional level. This often

[9] This was a programme coordinated by Cathy Shepherd. It is possible to see some of the connections between individuals and organisations at national, regional and international level. During this period the regional programme director of UNIFEM Joycelyn Massiah, had previously served as regional coordinator of the Women and Development Studies Groups (WDSG) of the University of the West Indies (UWI) which laid the groundwork for the establishment of the Centre for Gender and Development Studies at the UWI in 1983. Cathy Shepherd had been employed as a documentalist in the Project of Cooperation in Women and Development Studies, a collaboration between the Institute of Social Studies in The Hague (ISS) and the University of the West Indies between 1986 and 1995. This had been facilitated by my own location as a graduate student at the start of the Women and Development Programme at that Institute in 1979–80. Peggy Antrobus, first director of the Jamaican Women's Bureau was a key figure in the launch of CAFRA and in the establishment of the WDSGs in 1982, from her position as tutor-coordinator of the UWI's Women and Development Unit (WAND). Joycelyn Massiah was replaced by Roberta Clarke as Regional Programme Director of UNIFEM in the Caribbean.

[10] The countries involved were Anguilla, Antigua and Barbuda, the Bahamas, Belize, the British Virgin Islands, Barbados, Cayman Islands, Dominica, Guyana, Jamaica, Montserrat, St Kitts and Nevis, St Lucia, S. Vincent and the Grenadines, Trinidad and Tobago and Turks and Caicos.

called for different languages, methodologies and protocols from those with which the movements began their work in the 1970s and 1980s.[11]

## SINGLE ISSUE FEMINIST NETWORKS AND DOMESTIC VIOLENCE

In this section, I examine networks which have focused on one main issue relating to domestic violence. These networks were difficult to locate as domestic violence has normally been linked to other issues. The three networks I examine are the Centre for Women's Global Leadership, the Network on Women, Law and Development and the White Ribbon Campaign, a campaign of pro-feminist men.

### The Centre for Women's Global Leadership

The Centre for Women's Global leadership, a collaborative programme of six women's programmes at Rutgers University, started in 1989. Its aim is 'to study and promote how and why women lead, and to develop programmes that prepare women of all ages to lead effectively' (www.cwgl.rutgers.edu/globalcenter/about.html). The focus on women's human rights has been a major contribution of this programme which, although located within a United States university, has through its programmes of training and advocacy contributed to the emergence of an international network among women, many of them legal practitioners, involved in activism and research in the area of women's rights as human rights. This network worked actively towards to the UN Conference on Human Rights in Vienna in 1993 (CWGL website). Through a programme of Women's Global Leadership Institutes, two-week intensive residential courses are held annually attended by approximately 25 women from different parts of the world. Regional institutes have also been established, two organised in collaboration with the network Women Living Under Muslim Laws in Istanbul in 1998 and in Nigeria in 1999.

What is important to note is that this process did not originate in the north but in relationships formed and ideas planted though international connections. Many of the international initiatives had their origins in the formation of a loose network which began to take form at the Nairobi conference and which took as its theme, 'Women, Law and Development'. The network eventually led to the development of regional networks including the Latin American and Caribbean Committee for Defence of Women's Rights (CLADEM), the Asia and Pacific Forum on Women, Law and Development (APLWD) and Women in Law and Development

[11] Among the outcomes of this collaboration was the greater incorporation of gender analysis into the work of the regional Association of Commissioners of Police as demonstrated by the completion of a Certificate in Gender and Development Studies by Commissioner Keith Renaud at the University of West Indies, Barbados.

in Africa (WIDLAF). This network was strengthened with the hosting of the first Women's Global Leadership Institute held at Rutgers University in 1989 on the theme of women's human rights. Present at that institute were a number of women who would go on to become leaders in the international movement against violence against women.[12] The slogan which emerged out of this institute was 'Violence Against Women is a Violation of Human Rights'. The institute had facilitated the combining of the issues of women, law and development with women's human rights. Because human rights were seen as a framework for advancing gender equality, the issue of discrimination was already part of the human rights framework, hence the campaign for legal reform and legal rights. This theme was carried into the International Conference on Women's Human Rights held in Vienna in 1993.[13]

The institute also initiated the annual global action known as '16 Days of Activism Against Gender Violence'. The idea emerged among participants of the 1991 institute, of using the 16 days between 25 November—International Day Against Violence to Women—and 10 December—International Human Rights Day—to campaign against violence to women. The point was to link violence against women with human rights. Two other significant days were also marked—1 December, World AIDS Day and 6 December, the anniversary of the Montreal massacre of women university students. This action is carried out in over 900 countries of the world. What is interesting is that this action which began in the North took on a life of its own in the activism and advocacy of women from various parts of the world, contributing to a network which has moved far beyond the original conceptualisation of its originators.

The Centre for Women's Global Leadership has also been the focus of a number of international campaigns to coincide with the UN international conferences. By far its most important initiative has been the mobilisation and organisation towards the 1993 Vienna Conference on Human Rights which hosted a tribunal of crimes against women and facilitated the changing of international human rights law to include private (domestic) violence as a human rights violation.

### Women, Law and Development International (WLDI)

Also central to the women's rights as human rights actions has been the Network on Women, Law and Development which originated at the 1985

[12] Eg, Radhika Coomaraswamy, former UN Special Rapporteur on Violence Against Women, Noyleen Heyzer, former Director, UNIFEM and Florence Butegwa, later of WILDAF and now of UNIFEM.

[13] This section is based on an interview conducted with Roberta Clarke, a participant in the first leadership institute and a former Coordinator CAFRA and Social Affairs Officer, UN/ECLAC, 11 September 2003. She is Regional Programme Director, UNIFEM Caribbean Office.

Third World Conference on Women in Nairobi. The Network[14], which led to the development of regional women's rights organisations mentioned earlier—AWPLD, CLADEM and WILDAF—has focused on legal literacy, research on women's rights issues, and the use of legal systems to protect women. In 1994, WLDI coordinated a two-year project, 'From Basic Needs to Basic Rights', an international conference organised as part of this project in Kuala Lumpur, in October 1994. The conference was attended by approximately 100 women who, according to Alda Facio, were convinced that a human-rights based approach to achieving sustainable development would 'highlight the need for eliminating the exploitation, violence, subordination, oppression and discrimination experienced by women in all spheres, as well as emphasising the need to eliminate other forms of violations of human rights, including racism, homophobia, and ageism' (1995: 21).

WILDAF's board of directors also brings together many of the women legal activists of the Global Leadership Institute as well as women who have been involved in developing the regional organisations and initiatives, emphasising once again the range of skills that a networked structure, as opposed to a hierarchic organisation, can bring to bear on a single issue in space and time. WLDI and the Centre for Women's Global Leadership privileged a 'rights' approach to dealing with violence against women and issues of women and gender generally. In so doing, they were able to develop a strong network of women lawyers and legal practitioners from throughout the world. But this 'rights' approach has been criticised in some areas as a liberal approach very much based on hegemonic Western democratic notions. In another piece, it might be useful to examine the ways in which this approach was mediated by women activists in diverse historical, social and legal contexts. That such mediations took place is apparent from the unique characteristics of the Domestic Violence Acts of Trinidad and Tobago, from the expanded definition of the relationships protected under the Acts to the invention of the Undertaking as an intermediate (and popular) remedy (see also Robinson, 1999; Lazarus-Black, 2006; Cain, 2000).

## The White Ribbon Campaign

The White Ribbon Campaign (WRC) is, in their own words, 'the largest effort in the world of men working to end men's violence against women'. It was founded in Canada in 1991 by a group of men seeking to identify with the movement against violence to women, who wore a white ribbon as a symbol of their opposition to that violence. According to the campaign, wearing a white ribbon is a personal pledge never to commit, condone nor

[14] In 2006, the Network was led by Margaret Schuster who was a resource person at the first International Women's Leadership Institute.

remain silent about violence against women. It is testimony to their views that men and boys must be part of the solution. White ribbons are worn particularly on 25 November and the days following, up to 6 December, the National Day of Remembrance and Action on Violence in Canada, which marks the date of the Montreal massacre. The role of men in feminist struggles has been an issue of debate since the start of the second feminist wave in the 1960s. One of the important achievements of this wave nevertheless has been the emergence of small but vocal men's movements of differing political persuasions. Eight groupings have been identified within the United States men's movement, including pro-feminist men, the men's rights movement, the 'mythopoetic' movement, socialist men, gay men, African-American men and evangelical Christian men. Most are anti-women, some seeking to re-establish the anti-woman and anti-feminist status quo. The pro-feminist men's groups, which have radical and liberal wings of pro-feminism, have argued against moral and biologically-based conservatism, insisting that the traditional family is not the civilising institution that moral conservatives claim it to be, but rather is an institution that is oppressive to women and destructive of men's ability to be caring, loving partners to women (Clatterbaugh, 1997: 66).

The founders of the White Ribbon campaign fall within this framework. They are aware of the suspicion and mistrust which they might experience from feminists. They are also aware that men's movements tend to take public attention away from women's issues. Their attempts to respond to these concerns are reported on their website:

> … when we first started, women's groups had questions about the role and intentions of the WRC. There were concerns (which we shared) about the disproportionate media attention in our first year (http://www.whiteribbon.ca).

The website further indicates that the philosophy of this organisation acknowledges the central position of women in relation to the politics of opposition to male VAW, and also indicates the group's attention to collaborative work with women's organizations. WRC now has branches in Scandinavia, Latin America, Asia, Australia and the United States. While this laterally-connected group is not linked with the increasingly lively and complexly networked policy-making processes of feminism, WRC works in alliance on specific campaigns and generates useful publicity and support, particularly among men.

## ACTIONS AND INITIATIVES

Over the past three decades of international collaboration, a number of global initiatives and actions have emerged. Some of these have their origins in the North while others were started in the South. Today they are all part

of the global actions against domestic violence and gender-based violence more generally. These actions reflect the diversity and creativity of the movement which has been able to capture the imagination of the various publics that they serve.

## 25 November—International Day Against Violence to Women

It was at a regional gathering, the first Feminist Encounter of Latin America and the Caribbean, held in Bogota, Colombia in 1981, that the idea that 25 November should be adopted as the Day Against Violence to Women for Latin America and the Caribbean. From very early therefore the day was marked in the Caribbean, among member countries of CAFRA in particular.[15] Similarly, activities in 1998 as reported on the CAFRA website included Domestic Violence Week in Antigua and a candlelight vigil; a solidarity rally and candlelight procession in Trinidad and Tobago; a regional schools poster show in Barbados; the presentation of the findings of a research project on violence against women in Belize and the UNIFEM organised Regional Tribunal on Violence Against Women in the Caribbean. This day (25 November) was adopted to mark the murder in the Dominican Republic of Patria, Minerva and Maria-Theresa Mirabel Reyes, later to become popularly known as the 'three Mirabel sisters', killed by government agents.[16]

The observance of 25 November spread first throughout the Latin American and Caribbean region and then throughout the world and became accepted by campaigns, groups and even governments. After effective lobbying of the UN, on 8 March 1999, 'International Women's Day', the United Nations General Assembly adopted a resolution declaring 25 November as International Day for the Elimination of Violence Against Women. According to the Tibetan Women's Association, the General Assembly, alarmed that 'endemic violence against women was impeding women's opportunities to achieve legal, social, political and economic equality', made a point of insisting that the term 'violence against women' refers to 'acts capable of causing physical, sexual or psychological harm, whether in public or private life' (Tibetan Women's Association, 2003).

Although most visible in the form of local demonstrations, the lobby for recognition gathered strength through the activation of regional networks

[15] A review of 25 November activities held in 1992, listed activities in Guyana, St Vincent and the Grenadines, Trinidad and Tobago and the regional network CARIPEDA (*CAFRA NEWS*, 1992: 16).

[16] On 25 November 1960 the three sisters, together with the driver of the jeep in which they were travelling, went to visit the imprisoned husbands of the two older sisters. According to *CAFRA NEWS*, they were intercepted en route along a lonely stretch of road. They were then 'taken to a nearby field where they were savagely tortured and murdered. Later their bloody, mangled, battered and lifeless bodies were placed in the jeep which was pushed over the edge of a cliff in a feeble attempt to make it look like an accident' (1989: 21).

connected locally, intra-regionally and internationally. The campaign for recognition of the International Day Against Violence to Women is thus archetypal of feminist practice which gains its vitality from, and grounds its core practice in the small and the local, with information and activists moving 'up' and 'down' the complex, irregular, and frequently informal networks from regions to the international sphere, with the result that an ever widening range of new locales has been generated.

## Tribunals

Tribunals organised by the women's movement are another very important type of action carried out around the world in recognition of women's human rights. These 'para-legal spaces of denunciation and protest' have been an important mechanism for 'documenting and publicising violations of women's human rights, raising public consciousness about the factors that reproduce and legitimise violence against women, and establishing the responsibilities of the states, international agencies and civil society' (Obando-Mendoza and Suarez-Toro, 2000: 1).

One of the earliest international actions of the autonomous women's movement was the Tribunal on Crimes Against Women, held in Brussels in 1976. This was the start of a trend which was to continue through this stage of the movement. At the UN Human Rights Conference in Vienna in 1993, one of the highlights was the Global Tribunal on Women's Human Rights Violations. Women from all over the world testified about their experiences of various kinds of violence ranging from rape, child sexual abuse, battering, to war crimes before a distinguished international panel of legal experts. A similar tribunal was organised in 1993 at the sixth Latin American and Caribbean Feminist Encounter held in El Salvador. A number of tribunals were organised as part of the International Conference on Population and Development in Cairo in 1994 and the Social Summit in 1995. Another Global Tribunal held during the NGO Forum at the Fourth World Conference on Women, in Beijing, China focused on violence against women in the family and in situations of armed conflict. This practice has spread and tribunals have taken place in Asia dealing with the use of Korean Comfort Women in Japanese Military Camps during the Second World War while in Uttar Pradesh, India, tribunals were being used to protest crimes of violence committed by the state (India Together, 2001). Interestingly, the recently established International Criminal Court is also mandated to address violence against women inasmuch as it is statute-bound to recognise rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and sexual violence as war crimes and crimes against humanity. Furthermore, there is a Victim and Witness Unit within the Court's registry which provides gender-sensitive protective measures

and other services for witnesses, victims and others at risk on account of their testimony (Women's Human Rights Net, 2003: 1).

In 1997, a part of the UN Inter-Agency Campaign on Violence Against Women and Girls, a Regional Tribunal on Violence against Women in the Caribbean was held in Barbados, organised by UNIFEM. Fourteen women from throughout the region or their advocates testified before a panel of distinguished legal practitioners. The tribunal noted that some basic human rights of all 14 testifiers had been violated—by the perpetrator and by law enforcement and judicial personnel who failed to act positively or at all; and by the state, in its failure to provide support services. The tribunal recommended, *inter alia*, that Caribbean governments comply with their reporting obligations under international conventions, to provide information on measures taken to combat gender violence; amend or enact legislation to make 'battered woman syndrome' available as a defence at trials involving crimes of violence committed by women; enact, without undue delay, legislation concerning sexual harassment; establish family courts with support services for the hearing of matters pertaining to the family and enact legislation to compel medical personnel to report all injuries which they suspect may be due to violence committed within a family situation.[17] Once again the pattern is grass roots demand in conjunction with international resources and organisational capacity. The economic progress of women to positions of professional authority at national level intersects with the political need at regional level. Pressure is levelled on national governments to take seriously their obligations under international law. Outcomes can be used for regional and local pressure and politics and to inform the grass roots.

## Gains of the International Movement?

There is no doubt that the movement against domestic violence and other forms of violations against women has become a truly global movement. It could even claim to be the first and best example of a postmodern global politics. It is therefore important to assess to what extent this has influenced the levels of violence directed at women today. The global movement including its local and regional components has been successful in advocating for significant change on an international level where important steps have been taken towards eliminating violence against women since the Beijing conference in 1995. An Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women has given women the right to seek redress for violations of their human rights, including gender-based violence; and the General Assembly has adopted Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime

[17] Adapted from Panos Briefing, no 27, March 1998.

Prevention and Criminal Justice. Furthermore, the Statute of the International Criminal Court, adopted in June 1998, specifically addresses gender-based crimes, as do the Criminal Tribunals for the Former Yugoslavia and Rwanda. Finally, a draft protocol to the United Nations Convention against Transnational Organised Crime, focuses on trafficking in human beings, especially women and children (Women's Human Rights Net, 2003: 2).

Additionally, many states have been forced to amend or enact new laws, establish or support special courts, shelters, hotlines and crisis centres. In many countries, rape or sexual assault in marriage is now a crime. Special domestic violence units have been established, and work with male perpetrators of violence has assumed greater importance. Yet Women's Human Rights Net has expressed concern that advance on the issue of violence against women is being threatened by the wider backlash against the women's rights as human rights movement orchestrated by conservative forces in the North and South. For example, at the March 2003 meeting of the UN Commission on the Status of Women, the delegate from Iran, with support from Egypt, objected to the inclusion of a paragraph that called on governments to 'condemn violence against women and refrain from invoking any custom, tradition, or religious consideration to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women' (Women's Human Rights Net, April 2003: 2).[18]

This is not to suggest that this is the only source of conservative opposition. Similar trends can be observed from the fundamentalist 'Christian Right' in the United States with a global reach through the electronic media and the world wide web. The international climate has become more antagonistic towards women, feminism and progressive movements generally through the rise and alliances of political conservatism, religious fundamentalism and economic neo-liberalism. Moreover, male victimhood discourses have served to turn the tide against the movement and to rationalise male violence against women in many parts of the world. The combined impact of economic neo-liberalism and the gains of the women's movement combine to create a very unstable situation for many men who increasingly perceive themselves as victims. In such situations, women's personal security becomes once again at risk. In a context of increasing conservatism, it is left to be seen how women's global networks will respond to these developments.

## CONCLUSION

To what extent has violence against women declined? This of course is difficult to evaluate as figures for domestic violence have always been problematic

[18] Antrobus, ch 3, this volume, explores the political and economic forces that have encouraged such retrogressive manoeuvres.

for reasons with which we are all familiar—under-reporting, failure to record, poor data collection and normalisation of intra-familial violence. In some parts of the world it is being suggested that the backlash and resistance to the further advancement of women has occasioned an increase in some forms of violence against women and the return of some ancient ones. In evaluating the success of the movement, this would also need to be explored.

This chapter has traced the emergence of global/transnational feminist networks which are firmly rooted in the local as a distinctive characteristic of this second wave of feminism internationally. These networks have operated on single issues or multiple issues, they have connected sub-regional, regional and global networks and have influenced the agendas of national, bilateral, the United Nations and other international institutions in an unprecedented manner. The relationship of these networks to the process of globalisation is debatable and depends on the definition of globalisation being used. Certainly, the increasing global awareness especially among people from the Economic South has been noticeable since the beginning of the new wave. Similarly the use of the world wide web has potentially increased communication about and among women's organisations and networks.

Through the establishment of international protocols, norms and conventions networked women have managed to force the hands of the state in many local contexts. Indeed the international meetings which preceded and intensified after the declaration of the UN Decade for Women are testimony to that. However, there are also some negative implications of these developments. In many instances outstanding local level activists from the top leadership of local and regional movements have been siphoned off to serve in official capacities in the global networks or the international institutions which they have helped facilitate. But state officials at the local level who are required to report to global agencies such as CEDAW need to be assisted with arguments, information and policy proposals. Where feminist NGOs are strong they can assist, as occurred in the preparations in the Caribbean for the Fourth World Conference in Beijing in 1995. Unfortunately, at this time, many of these NGOs have been weakened for a number of reasons mentioned above. Nevertheless, there are signs—as in the programmes of the DAWN Training Institute[19]—that activists have become aware of this danger and that younger women are beginning to create activism at the grass roots.

The institutionalisation of feminist work at the local and regional level, based in universities, regional organisations and UN agencies, has been an important development and outgrowth of the movement. However, the future of the women's project of emancipation and social justice must

[19] Development Alternatives with Women for a New Era.

rely on the continuous inventiveness of feminist women and pro-feminist men and the institutions they have created and continue to create, as well as their demonstrated capacity to use mainstream and non-mainstream regional and international bureaucracies without being incorporated into them and de-politicised and weakened in the process.

## REFERENCES

Alvarez, S (2000) 'Translating the Global: Effects of Transnational Organising on Local Feminist Discourses and Practices in Latin America' 1 *Meridians: Feminism, Race, Transnationalism* 29–67.

Antrobus, P (2004) *The Global Women's Movement: Origins, Issues, and Strategies* (London, Zed Books).

Barton, C (2003) 'Re: Hilkka and DAWN's Perspectives on UN Negotiations' email correspondence, 9 April.

Basu, A (2000) 'Globalisation of the Local/Localisation of the Global: Mapping Transnational Women's Movements' 1 *Meridians: Feminism, Race, Transnationalism* 68–84.

Brautigam, D (2002) 'International Human Rights Law: The Relevance of Gender' in W Benedek, E Kisaakye, and G Oberleiter (eds), *Human Rights of Women: International Instruments and African Experiences* (London, Zed Books).

Caribbean Association for Feminist Research and Action (CAFRA) (1989) 'The Mirabel Sisters—Fighters Against Tyranny' 3 *Cafra News* 20–21.

—— (1992) 'International Day Against Violence to Women' 6 *Cafra News* 16–18.

—— (1998) 'Gender Violence, Causes, Effects, and Solutions' (website, 25 November 1998) (http://www.cafra.org)

—— (2000) 'An Unprecedented Caribbean Project' 14(2) *Cafra News Special Issue: The Absence of Rage* 4.

Cain, M (2000) 'Orientalism, Occidentalism, and the Sociology of Crime' 40(2) *British Journal of Criminology* 239–60.

Centre for Women's Global Leadership Website 'About the Global Center' (http// www.cwgl.rutgers.edu/globalcentre.leadership).

Clarke, R (1990) 'The Law and Sexual Offences' 4(3) (September–November) *Cafra News* 3.

—— (1991) 'Women, Violence and the Law' 2 *Cafra News* 4–6.

—— (1993) 'Women and the Law' 7 *Cafra News* 10–11.

Clatterbaugh, K (1997) *Contemporary Perspectives on Masculinity* (Boulder, Westview Press).

Constance, P (2003) 'Women are Not Made to be Hit' (1 July) *IDBAMERICA: Magazine of the Inter-American Development Bank* (http://www.iadb.org.idbamerica)

Facio, A (1995) 'From Basic Needs to Basic Rights' 3 *Gender and Development* 16–22.

George, S (1999) 'Jane Cottingham: An Original' Interview with Susanna George 2 *ISIS* 49–53.

India Together (2001) (http://www.indiatogether.org).

International Monetary Fund (2001) 'Globalisation: A Framework for IMF Involvement' IMF Issues paper, 02/01 (http://www.imf.org/np/exr/ib/2002/031502.htm).

ISIS International (1999) *Annual Report of the Latin American and Caribbean Programme*.

Lazarus-Black, M (2006) *Everyday Harm: Domestic Violence, Court Rites, and Cultures of Reconciliation* (Urbana, University of Illinois Press).

Obando-Mendoza, AE and Suarez-Toro, S (2000) 'Violence Against Women: A Human Rights Violation' in *Women's Human Rights in the 20th Century* (Fire) (http://www.fire.or.cr/eneroeng.htm).

Moghadam, V (1992) *Privatisation and Democratisation in Central and Eastern Europe and the Soviet Union: The Gender Dimension* (Helsinki, WIDER).

—— (2000) 'Transnational Feminist Networks: Collective Action in an Era of Globalisation' 15 *International Sociology* 57–85.

Panos Briefing (1998) 'The Intimate Enemy: Gender Violence and Reproductive Health' (27 March) no 27 (http://www.panos.org.uk/Docs/reports/IntimateEnemy.DOC).

Pargass, G (1988) 'Inter-American Legal Services Association (ILSA)' 2(I) (March) *Cafra News* 9.

Reddock, R (2003) 'Challenging the Tradition of Violence in the Caribbean: A Cultural Perspective on Violence Against Women' presentation to the Caribbean Development Bank, Barbados, November.

——, Barclay, R and Clarke, R (2000) *National Report on Gender Violence Against Women and Girls in Trinidad and Tobago* (UN Inter-Agency Campaign on Violence Against Women and Girls, UNDP).

Robertson, R (1992) *Globalisation: Social Theory and Global Culture* (London, Sage Publications).

Robinson, T (1999) 'Changing Conceptions of Violence: The Impact of Domestic Violence Legislation in the Caribbean' 9(1) *Caribbean Law Review* 113–35.

Russel, DEH and Van de Ven, N (1976) *The Proceedings of the International Tribunal on Crimes Against Women* (Millbrae, California, Les Femmes).

SID Website (n.d.) 'Violence Against Women and the Culture of Masculinity' (http://www.sidint.org:5).

Tibetan Women's Association (TWA) (2003) Statement for 'The International Day for the Elimination of Violence Against Women 25 November' (http://www.tibet-anwomen.org/violence).

Villariba, M 'Girlie' (1999) 'ISIS A Mosaic of Stories' 2 *Women in Action* 56–57.

White Ribbon Campaign Website (2003) 'The White Ribbon Campaign: Men Working to end Men's Violence Against Women' (http://www.whiteribbon.ca).

Wilson, S, Sengupta, A and Evans, K (2005) (eds), *Defending our Dreams: Global Feminist Voices for a New Generation* (London, AWID and Zed Books).

Women's Human Rights Net (WHRNet) (2003) 'Violence Against Women' (April) (http://www.whrnet.org/docs/issue-VAW.html).

Women, Law and Development website (2003) 'Organization—Who We Are, What We Do' (http://www.wld.org).

# 11

# *Local Contexts and Globalised Knowledges: What Can International Criminal Victimisation Surveys Tell Us About Women's Diverse Lives?*

SANDRA WALKLATE

## PREAMBLE

In July 2003 I attended the British Criminology Conference held at the University of Bangor in North Wales, UK. As a part of my attendance, I had agreed to chair one of the sessions dedicated to studies in victimology. The session, though not well attended, was nevertheless thought provoking. The papers were diverse. One was concerned with the viability of 'victim impact statements' in Queensland, Australia; a second reported on the findings of a criminal victimisation survey in Nigeria and a third reported on findings relating to victims' experiences of the criminal justice system in Barbados. In some ways, then, quite a diverse range of presentations in which to act as chair. Or was it? These papers raised many questions. How do criminal justice policies travel, if they do? How do research methodologies travel, if they do? When we introduce a policy or a research method from one socio-economic setting into another, is it actually doing the same thing or something different? What is criminology's role (or in this particular, victimology's role) in all of this? To what extent are intellectuals and policy makers complicit in this, what are to all intents and purposes, global, if not globalising, processes? Questions such as these, and the experience of chairing that session, inform the chapter that follows.

## INTRODUCTION

The impact of globalisation can no longer be treated as just one more phenomenon to be studied. It is the context in which not only economic and political decisions are made, but the context in which intellectual and policy traditions are being constructed. Thus agendas are set, including academic

research agendas, subject to influences above and beyond the particular setting in which they are intended to unfold. There is some evidence to suggest that criminology as a discipline is beginning to take note of the significance of the global context in relation to the study of particular crimes, in relation to the demands of international policing, and in relation to particular policy agendas ('Zero Tolerance' campaigns and restorative justice initiatives are two good examples). Indeed, there has been a particular growing interest in the question of how crime policies travel (see Sparks and Newburn, 2002).[1] However, my concern here is to explore, not the extent to which criminology (or its sub-discipline, victimology) has taken account of this global context and its developments some of which have been outlined above, but to explore the extent to which both of these areas of analysis have been implicated in, and as consequence are part of, embedding that global context and what the impact of that embedding might look like. Do research methodologies travel? What is the role of criminology/victimology in encouraging that travel, and by implication, are there any alternatives currently taking place? In asking these questions, I will take as an exemplar the International Criminal Victimisation Survey (ICVS). In so doing I shall not be concerned with the findings of the ICVS per se, though these may be referred to in the context of the argument as it unfolds, but I shall be concerned with the question of how those findings are produced and their relative value to us. The connections that questions such as these have with issues of local context and diversity of women's lives will, I hope, become clear as the argument unfolds. However, it is important to make clear that I am not necessarily taking as my substantive example women's lives per se. Nor am I concerned to document the issues relating to sexual/gender violence. Rather, I want to ask questions, arguably of a deeper nature, that have been and are brought to the surface by the kinds of questions that an appreciation of the diversity of women's lives raises for how social scientists make claims to knowledge.

This chapter falls into four parts. The first will briefly summarise the history and development of the ICVS. The second will explore some of the questions of method, that is, how it is done. The third will explore questions of methodology—that is, how do we know what we know in relation to criminal victimisation and whether or not there are other ways to know such things. The fourth will explore what issues have been made visible and left invisible by the ICVS industry. In conclusion we shall return to the initial question of whether or not research methodologies travel and whether there are alternative ways of exploring the questions in which the ICVS proclaims interest. In summary we shall revisit the question of diversity and women's lives.

[1] However, it has to be said that even Sparks and Newburn's collection of papers has as its central focus the local conditions that facilitate or inhibit travelling policies rather than the question of whether or not they should travel at all.

## INTERNATIONAL CRIMINAL VICTIMISATION SURVEYS

The ICVS was, and still is, organised by an international working group of criminologists with interest and expertise in survey methodology. The group began its life in 1987 and while its membership has changed in the intervening years its work is still sponsored by the Dutch Ministry of Justice. The development of the work of this group has to be seen as an offshoot of the (then) increasing popular use and deployment of the Criminal Victimisation Survey. A technique that had its origins in the late 1960s in the United States and whose main purpose then, and still is, is to try and paint a more complete picture of crime and the impact of criminal victimisation as a way of supplementing bureaucratic data sources, like police statistics for example. Following this tradition, the first ICVS was conducted in 1989 and there have been another three since then in 1992, 1996 and 2000.[*] During that time there have also been 'supplementary surveys' conducted in non-industrialised societies using the ICVS methodology conducted under the auspices of the United Nations Interregional Criminal Justice Research Institute based in Rome. These have been city level surveys largely with the purpose of trying to inform regional governments of problems in their urban areas. There have been two survey sweeps of this kind. Not every survey has involved the same country on every occasion but as the authors of the 2002 report state:

> All told there have been about 140 singular surveys of the ICVS around the world. These have involved interviews with over 200,000 respondents, of which 110,000 were interviewed in industrialised countries. (van Kersteren *et al*, 2002: 114)

The next ICVS is planned for 2004, with a view to looking for better ways of including more 'developing' countries.

In this brief pen portrait it is simply not possible to do justice to the wealth of data that all this activity has produced. Moreover, since it is not my primary purpose to discuss ICVS findings per se, I shall not endeavour to discuss them in detail. Suffice it to say that for some one so minded there is a lot of information from the ICVS publicly available. Indeed in many respects one of the features of the work conducted by the ICVS and the UNICJRI is the apparent transparency that is associated with the work done under the umbrella of these organisations. Reports on findings are carefully worded and every effort is made both to make clear how data have been collected and analysed and what can and cannot be read into them. Its historical legacy, however, gives us some clues as to some of the

[*] The survey dates here are those used when the paper was presented to the Oñati conference. In our view the passage of time has not changed the arguments, and no alteration has therefore been made. [Eds]

(potential) problems inherent in the occidentalism (Cain, 2000) it implies. I shall endeavour to separate out the questions that such occidentalism raises into two main types: questions of method and questions of methodology.

## THE QUESTION OF METHOD

By the question of method I am here referring to what might be called the technical problems that are associated with trying to engage in comparative research work of this kind. Such 'technical' problems range from how to take account of the different legal frameworks in which the survey might be being conducted, the data collection process, to the problems of language translation each of which may differently have an impact on the findings produced. All such problems are problems of data reliability: can you use your research instrument repeatedly? For example, in a comparative study of burglary victims, Mawby *et al* opted for a definition of burglary as being 'a situation in which someone entered the home without legal permission and either stole or tried to steal something' (1999). This did not match the legal definition of burglary for either Poland or Hungary (two partners in the research) but was the definition that was the most easily translatable for the purposes of interviewing burglary victims. Given the purpose of the research, it was more important for us to get people to talk about their experiences than it was to be able to accurately match with official statistics. The ICVS, however, has different concerns. During the time since the first ICVS much work has gone into refining and 'standardising' the survey questions. In so doing the researchers report efforts to take account of different legal frameworks, different language translation issues and changing crime agendas. Indeed, the kinds of things that people are asked questions about have changed relatively little. So, for example, the 2000 ICVS asked respondents questions about eleven forms of victimisation from household crime, to personal crime, consumer fraud and street level corruption. In addition, respondents are asked questions about reporting behaviour, and their experience of the criminal justice system.[2]

The main method of data collection for the 2000 sweep of the ICVS was a random sample of 'computer assisted telephone interviewing' (CATI), though face to face interviewing was used in some countries. Face to face interviewing has certainly been the main method of data collection for the non-industrialised societies surveys conducted by the UNICJRI. The use of the telephone obviously raises questions of telephone availability that the ICVS seem well aware of, with face to face interviewing raising a range

[2] The English versions of all four sweeps of the ICVS questionnaires can be found on the internet at http://www.icvs.nscr.nl.

of quite different questions some of which will have a greater or a lesser impact on what the respondent will tell you dependent on the topic under discussion. Much has been made of the importance of these dynamics in relation to crimes of a sexual nature and it is well known that may be as relevant for males as well as females. It should not, however, be assumed that these are the only circumstances in which such dynamics might impact on the data gathering process. Any crime in which the 'offender' is known to the 'victim'—the use of the apostrophes is deliberately intended to convey the problematic nature of these terms—either as a relative or as a member of the local community may result in the presence of interviewing 'dynamics' that cannot necessarily be controlled for. Issues such as these may all differently impact upon the response rate of the survey.

The 2000 ICVS reports an overall response rate of 64 per cent which, given the chosen method of data collection is quite impressive, though as the ICVS itself comments, not much can be said about non-respondents and as a result different data weighting techniques are employed to ensure the representative nature of the sample subsequently obtained. It is at this point that technical questions of method (the issue of standardisation that the ICVS is so focused on) begin to merge with more philosophical questions of methodology. To clarify, Stanley and Wise made the following observation some time ago:

> If we wanted to 'prove' how terribly violent women's lives were, we'd go to women who live in violent places—run-down inner-city areas of large conurbations—who have actually experienced male violence, and ask them about it … However, if we called this research a 'survey', then with exemplary motives and using 'scientific' means the 'problem for those women there' could be generalised into 'the problem for all women everywhere'. The consequence would be that we would have over-estimated the amount of overt violence and actual powerlessness in the average woman's life. (1987: 10–111)

We could, of course, insert any structural variable into this quote and the issue would remain the same: what are we actually finding out about, and why are we doing it in the way that we are? It is at this juncture that it is important to consider the relevance and impact of positivism and gender on the sub-discipline of victimology and the development of the ICVS. These are questions of methodology.

## THE QUESTION OF METHODOLOGY

According to Eagle-Russett:

> Women and savages, together with idiots, criminals and pathological monstrosities, were a constant source of anxiety to male intellectuals in the late nineteenth century. (1989: 63)

This anxiety was deeply embedded in what Eagle-Russett calls 'sexual science', a term she uses to describe the powerful influence of the ideas of evolutionary biology on the knowledge traditions being formulated during the nineteenth century. I have mapped the impact of these traditions on both criminology and victimology elsewhere and this is not the place to re-present them in great detail.[3] However, briefly, what these traditions built upon were already established conceptions of science, not only of what counted as knowledge, but who could know things. Bacon, for example, believed that the 'man of science' could make 'nature a "slave" to man's needs and desires' (Sydie, 1989: 205). Nature is, of course, female. As Smith (1987: 74) remarks, 'the knower turns out after all not to be an "abstract knower" perching on an Archimedean point, but a member of a definite social category occupying definite positions in society'. Thus positivism, in victimology, identified as a 'search for factors that contribute to a non-random pattern of victimisation' (Miers, 1989: 3) reflects a search for male knowledge. But more than this in the context of this discussion, this knowledge also became equated with what kinds of questions can be asked and how it might be possible to ask them. These factors taken together have contributed to the powerful influence of the criminal victimisation survey and its extension to the ICVS. These deep-rooted assumptions become the domain assumptions bounding what can be asked, how it can be asked, and what sense might be made of the data.

As I have already indicated, assumptions such as these do not necessarily make the findings of the ICVS and associated surveys worthless. They do provide quite detailed information on reported trends in victimisation, and people's levels of satisfaction with the various criminal justice agencies with whom they have contact. They can and do offer an understanding of the patterning of criminal victimisation: albeit a patterning that is subject to 'standardisation' to use an ICVS term. So what does this standardisation make visible and render invisible and how does it connect to the deep-rooted assumptions of what can be asked, referred to above? At this juncture, and as an example, it will be useful to re-visit one of the key concepts that underpins the generation of the criminal victimisation survey and the questions it asks: that concept is lifestyle.

The concept of lifestyle in its original formulation is largely associated with the work of Hindelang *et al* (1978). Their understanding of this concept is largely derived from a highly functionalist view of the world in which individuals adapt to their structural location. Individuals do this according to the characteristics they possess, such as age, race, sex and social class and their adaptations then become reflected in the individual's routine life. In this way lifestyle can be articulated and can be measured, that is,

[3] See Walklate (2000; 2003).

standardised. Thus questions can be asked about individual experiences of criminal victimisation and patterns can be generated over time. But take a different imagery of lifestyle. The following one is worth quoting at length:

> Becoming interested in what appeared to be examples of 'victim-proneness' in one geographical area, I visited one particular block on a council estate over a number of months, tape-recorded interviews with several families, their neighbours and friends, and eventually moved in for a short period with the woman who had suffered the greatest number of victimisations in our survey. The views which I formed after this period of intensive observation have a substantial bearing not simply on the experiences of multiple victims but on the limitations of victim surveys as they are currently designed… What also became apparent was the fact that events reported to us in the survey were not regarded as particularly remarkable. They were just part of life. (Genn, 1988: 92–93)

What might this imagery of lifestyle lead us to think about in relation to criminal victimisation that might offer a different (better?) picture and understanding of the nature and extent of criminal victimisation and people's experiences of the criminal justice system? Genn's comment relates to one woman's experience of criminal victimisation, some of which she probably identified as criminal victimisation and others she did not. However, for the purposes of the argument to be developed here the key phrase is: 'They were just part of life'. This encourages us to think about lifestyle not as a series of discreet, measurable incidents, but as a process. Lifestyle as process cannot be captured by survey methodology, as the quote from Genn clearly implies. It demands a different way of thinking about and exploring what 'just part of life' means for people. It is the case, of course, that much feminist inspired work has always been committed to different ways of thinking about the routine nature of women's lives and has always been committed to challenging accepted knowledge. However, the impact of the feminist challenge is not only pertinent to the exploration of women's lives, it encourages ways of thinking critically about how things get done, including criminal victimisation research, in arenas that are valuable for understanding the knowledge production process in general. These are the questions that the phrase 'just part of life' connects us to. These are questions that thinking about methodology raises. However, before developing this comment further it is useful to unpick some other issues associated with the ICVS use of the concept of lifestyle and its associated concern with the process of data standardisation.

The implicit use of the lifestyle concept as deployed by the ICVS reflects an understanding of lifestyle as a feature of an individual's adaptation to their structural location. This is not only a static interpretation of the concept, it is also a highly functionalist one. Functionalism is rooted in a highly consensual and democratic view of society reflecting a particular understanding of power relations. Put simply, Hindelang *et al* (1978)

talk of age, race, sex, not ageism, racism, sexism. Ageism, racism, sexism etc are ideological constructs reflecting power relationships in particular socio-economic settings that functionalism cannot capture. Thus the question is again raised whether or not the ICVS, in its desire for standardisation, for working with a concept that can be measured repeatedly using tried and tested questions, can capture the differences in power relationships that the answers to the questions it poses may be eliciting. In other words, there is little sense in the implied image of society adopted by the ICVS and how that imagery is operationalised, of the way in which the law contributes to the social construction of the victim, the processes of criminal victimisation or the unforeseen processes of social change. The assumptions outlined here then cannot facilitate an understanding of the data, above and beyond the surface production of statistical differences, of what underpins those differences. What are the causal mechanisms at play underpinning criminal victimisation in the different countries under investigation, and for the different social categories of people participating in the investigation?

To summarise: a consideration of the question of methodology, informed by feminist thinking, encourages a much more detailed examination of the relationship between theory, concepts and method and how these are linked to produce knowledge that is to be taken account of. The discussion here has argued that the implicit acceptance of a particular way of doing things and a particular way of thinking about things, largely informed by the conventional victimological work by the ICVS, reflects an acceptance of a view of knowledge deeply attached to positivism, masculinity and functionalism. Moreover, given the history and development of the ICVS there is also a deep-rooted occidentalism to be found here. All of these taken together produce the surface manifestation of standardisation and its associated statistics but in so doing deny an understanding of difference and local knowledge. So questions of local culture, the role of the state, the relative relationships of different social groups are all lost as a consequence. Sameness is made visible. Difference is rendered invisible. The question remains, how might we think differently about the nature of criminal victimisation: what might a different methodology look like?

## LOCAL KNOWLEDGE, LOCAL UNDERSTANDING

I want to explore an answer to the question raised above by reference to two empirical studies. These are *Zero Tolerance or Community Tolerance: Managing Crime in High Crime Areas* by Walklate and Evans (1999) and Caldeira's *City of Walls: Crime Segregation and Citizenship in Sao Paolo* (2000). I shall discuss each of them briefly in turn before offering what I think are the key lessons to be taken collectively from them.

The study by Walklate and Evans (1999) began life as a fairly conventional study of the fear of crime in two high crime areas in the north of England. Moreover, one of its main investigative tools was the crime victimisation survey. This criminal victimisation survey had within it many of the same questions that can be found in the ICVS. Indeed, the ICVS 2000 tells about how safe people feel when they are walking in their areas after dark—Catalonia, Australia and Poland had the most anxious people in this respect—and how safe people felt at home (6 per cent overall feeling unsafe with the Poles at 15 per cent feeling the most insecure). Of course, this way of approaching and understanding levels of personal safety has been subjected to much criticism from the feminist movement.[4] It is nevertheless still used by both national and international criminal victimisation surveys to provide some sense of the relationship between 'fear of' and 'risk from' crime.[5] In our own use of the criminal victimisation survey, we were made sensitive very early on by our respondents (not only women) to the fact that our questions did not fit their answers. Indeed it was listening to these responses that radically changed the nature of our analysis of our findings.

Put simply, it became clear that questions relating to the fear of crime had little resonance in one of our research areas, but questions relating to trust did. Moreover, as the investigation went on we became increasingly committed to the view that questions of trust, mediated as they were by the relative organisation of crime in a locality, the relative organisation of the community, the mechanisms of sociability available and the role of the state, all played their part in whom people trusted and when and fed into the feelings of 'ontological (in)security', (Giddens, 1991) that people possessed.[6] As Evans *et al* have argued about one of our research areas from which the state has largely withdrawn:

> your place in relation to crime places you in a community of belonging and exclusion … It is consequently important to recognise who is seen to be protecting you and how: for many people it is not the police or the council but local families and/or the Salford Firm. Moreover it is the absence of confidence in the formal agencies which creates the space for those other forces to come into play. (1996: 379)

The different ways in which questions of whom you trust, how much you trust, when you trust, permeated our empirical findings in the two areas under investigation and manifested themselves in the different relationships people had with each other dependent on where they as individuals were located within their own community structures. We eventually characterised one of our communities as a 'defended' community in the psychoanalytical

[4] Eg Stanko (1990).
[5] For a critique of this debate see Walklate (2000: ch 3).
[6] Giddens (1991). See also Nelken (1994).

sense. The other was identified as a 'frightened' community in the much more conventional criminological understanding of the fear of crime.

The implications of this study for the focus of this paper are arguably threefold. First, there is the importance of locale. This study took a detailed look at two communities less than two miles apart and while the question of trust was important in each, how trust and trust relationships were mediated looked quite different in each community. Secondly, there is the importance of local networks and where an individual might be placed in those networks. How people were connected to each other (mechanisms for sociability), how well criminality was organised in their locality and how well organised the community response to this was. Thirdly, there is the importance of thinking about the relationship between theory, method and data. Without listening to our respondents we would have missed, and misunderstood, some important features of their routine daily lives. And without this listening, we might also have assumed that gender, as a variable, played itself in and out of these communities in ways that would not have been fair or accurate in relation to our data.

The second study I want to refer to here comes from Brazil. The investigation of Sao Paolo by Caldeira (2000) makes impactive reading. She calls it an anthropological study with 'an accent' as she moved between North and South America over a ten-year period, concerning herself with crime, the fear of crime and the urban response to it. Whatever methodological label is applied to this study it is certainly a thought provoking analysis of violent crime, its place in democracy and the policing and public response to it. In this work she presents a convincing argument for understanding the extent to which violence is 'constitutive of the social order' in Sao Paolo where 'routine abuse [including torture] is the *modus operandi* of the police' (2000: 142–45). In this social order, the rich can buy torture from the police for their suspected offenders in much the same way that they can buy private security. Indeed, it is this social acceptance of torture that Caldeira connects to the cultural belief that with pain comes knowledge and thereby truth—a belief she connects with other social beliefs to do with carnival and the unbounded body she associates with Brazilian culture. She argues that the propensity of Brazilians to engage in invasive surgery from Caesarean sections to cosmetic surgery is linked to the social acceptance of torture and both are a manifestation of different attitudes to the body. It is these cultural values she argues that need to be understood before one might begin to intervene on questions of human rights, or indeed civil rights. Compare this analysis with the UNICJRI findings on corruption reported by del Frate. She comments:

> In the third sweep of the ICVS, the highest levels of bribery are exhibited in Latin America, Asia, Africa, and countries in transition, all of which are far beyond the 10% threshold… While possible explanations cover a range of factors, including specific cultural ones, these findings do indicate that it is most likely that street level

> corruption by public officials has to do with standards of public administration, on the one hand, and with the overall position of citizens on the other. (1998: 46)

I leave readers to draw their own conclusions.

Once again, this study of crime and, by implication, criminal victimisation, puts to the fore for us the importance of locale—in this case, not only the importance of developments in Sao Paolo itself, but the wider cultural context of attitudes and values in Brazil. Secondly, once again we see the importance of local networks. In this study the importance of being rich in securing a convictable defendant for your crime. Moreover, we have a study in which the analysis offered takes us beyond the boundaries of criminology and victimology in order to make sense of its findings, in this case reaching out to the sociology of the body.

Both of these studies were endeavouring to address the problem of crime and criminal victimisation and both in their different ways challenge conventionally informed criminological and victimological work. It is necessary now to pose that challenge in a little more detail.

## THE CHALLENGE TO CRIMINOLOGY AND VICTIMOLOGY

From the discussion so far, it is self evident that what I have called the drive for standardisation that has been associated here with the ICVS carries with it a number of significant inherent difficulties. Those difficulties inhibit an understanding of what the statistics produced by the ICVS actually mean in particular socio-economic settings. How do we understand the ICVS statistics, what are the causal mechanisms that produce them and what can or should we do (if anything) on the basis of them? The studies referred to above offer us quite different answers to these questions. The question is why do they? The answer to this is also threefold.

Maureen Cain has called for a transgressive criminology which would be especially attentive to the question of gender and which would be comprised of three strategies: reflexivity, deconstruction and reconstruction (Cain, 1990). The extent to which criminology (or victimology) has listened to this call is a moot point, but arguably, what is significant about the two studies presented here is their reflexive methodology. In other words, there is a real effort on the part of the researchers to interact with, listen to and have an open relationship with their data. What they have produced on the basis of that relationship is obviously subject to public scrutiny and critique but arguably as a result of that reflexive approach they are studies that offer us a deeper analysis of the causal mechanisms that might underpin their findings. As a consequence, they are also studies that transgress criminological and victimological disciplinary boundaries. These studies offer us very different pictures of the problem of crime and criminal victimisation from those proffered by criminal victimisation survey work alone.

This is because of their methodological reflexivity and also their theoretical reflexivity which is informed by notions of trust or theories about the sociology of the body. The analyses presented by these studies enable us to ask different questions as a result. The third reason that these studies offer us different answers to the questions posed above is their commitment to a critical analysis, one that is not only self reflective, but alert to the role of the state, either at the local or the national level, in contributing to both the criminal victimisation we see and that that we do not see.

In summary, studies such as these, and others like them, demonstrate the empirical and theoretical paucity of much conventional criminal victimisation work and clearly show that there are alternative ways to make sense of what routine everyday life might look like for people. This is important since it carries with it political possibilities. It is within the gap between what people know about their lives and how the structural condition in which they live impacts on them that political possibility of social change lies. Two questions remain: what of globalisation and what of women's diverse lives referred to in the title of this paper?

## CONCLUSION

The answers to the two questions posed above are interconnected. At a fundamental level, it is my contention that none of the questions I raise here would have been possible without the input of feminist-inspired ideas and concepts. In other words, without the claims made by feminism for an appreciation of standpoint and all that that has to say to us about knowledge and knowledge construction, the arguments presented here might have remained at the level of the technical. However, those claims made by standpoint feminism have and still do offer a way of challenging much of what stands as accepted ways of doing things. It is a challenge that is not solely the preserve of the feminist movement, but those debates notwithstanding, it is only by and through such challenges that it is possible to think differently about all sorts of problems including social ones. Accepting this view does not mean that gender has to matter all of the time. There will be circumstances in which gender is the salient variable and others when it is not.[7] However, what we need are methods and methodologies that allow us to make the distinction about how and under what circumstances gender matters. By implication, this means embracing power as an important concept. Power is a feature of everyday life permeating all of our relationships, and at all levels—at the personal, the interpersonal, the familial, the community, national and global level. The argument here is for a

[7] This point is well made by Hagan and McCarthy (1997; 2000), Messerschmidt (1997) and Walklate (2000).

victimology that brings power back in, in all of its manifestations, including gender but not solely. It is only in this way that we shall be able to appreciate the impact of crime and criminal victimisation in all its diversity.

So while I have not really put to the fore the diversity of women's lives per se here, the questions I raise would not have been possible without having taken the view that such diversity exists, and that we have something to learn from it. In this particular setting, that learning takes the form of appreciating the importance of local relationships of power and how those relationships are mediated, whether that be via local community dynamics or more widespread cultural processes. Such nuanced understandings are only made possible by thinking outside conventional disciplinary boundaries both conceptually and methodologically. Arguably, it is the fundamental methodological occidentalism implicit in the use of ICVS that denies the possibility of understanding the dynamics of such diversity. It is only by speaking more loudly about criminology's poor—and victimology's even poorer—understanding of themselves as gendered disciplines that this occidental balance might be reset. Methods may travel. Methodologies do not. This is the real lesson of the diversity of women's lives.

## REFERENCES

Cain, M (1990) 'Towards Transgression: New Directions in Feminist Criminology' 18 *International Journal of the Sociology of Law* 1–18.

—— (2000) 'Orientalism, Occidentalism and the Sociology of Crime' 40 *British Journal of Criminology* 239–60.

Caldeira, T (2000) *City of Walls: Segregation and Citizenship in Sao Paolo* (Berkeley, CA, University of California Press).

Eagle-Russett, C (1989) *Sexual Science: the Victorian Construction of Motherhood* (Cambridge, Massachusetts, Harvard University Press).

Evans, K, Fraser, P and Walklate, S (1996) 'Whom do you Trust? The Politics of Grassing on an Inner City Housing Estate' (August) *Sociological Review* 361–80.

del Frate, A (1998) *Victims of Crime in the Developing World* (Rome, UNICRI Publication no 57).

Genn, H (1988) 'Multiple Victimisation' in M Maguire and J Pointing (eds), *Victims of Crime: A New Deal*? (Milton Keynes, Open University Press) 101.

Giddens, A (1991) *Modernity and Self Identity* (Oxford, Polity).

Hagan, J and McCarthy, J (1997) *Mean Streets: Youth Crime and Homelessness* (Cambridge, Cambridge University Press).

—— (2000) 'The Meaning of Criminology' 4 *Theoretical Criminology* 232–42.

Hindelang, MJ, Gottfredson, MR and Garofalo, J (1978) *Victims of personal crime: an empirical foundation for a theory of personal victimisation* (Cambridge, Massachusetts, Ballinger).

Mawby, R, Gorgenyi, I, Ostrihanska, Z, Walklate, S and Wojcik, D (1999), 'Victims' Needs and the Availability of Services' 9 *International Criminal Justice Review* 18–38.

Messerschmidt, J (1997) *Crime as Structured Action* (London, Sage Publications).
Miers, D (1989) 'Positive Victimology: a Critique' 1 *International Review of Victimology* 3–22.
Nelken, D (1994) 'Whom Can You Trust? The Future of Comparative Criminology' in D Nelken (ed), *The Futures of Criminology* (London, Sage Publications) 20–44.
Smith, D (1987) *The Everyday World as Problematic* (Milton Keynes, Open University Press).
Sparks, R and Newburn, T (2002) 'How Does Crime Policy Travel?' 2 *Criminal* Justice 107–09.
Stanko, B (1990) *Everyday Violence* (London, Virago).
Stanley, L and Wise, S (1987) *Georgie, Porgie: Sexual Harassment in Everyday Life* (London, Macmillan).
Sydie, R (1989) *Natural Women; Cultured Men* (Milton Keynes, Open University Press).
van Kesteren, J, Mayhew, P and Nieubeerta, P (2002) *International Criminal Victimisation Survey 2000* (Ministry of Justice, Holland).
Walklate, S (2000) *Gender, Crime and Criminal Justice* (Devon, Willan Publishing).
—— (2003) 'Can There be a Feminist Victimology?' in P Davies, P Frances and V Jupp (eds), *Victimisation: Theory, Research and Policy* (Basingstoke, Palgrave Macmillan).
—— and Evans, K (1999) *Zero Tolerance or Community Tolerance? Managing Crime in High Crime Areas* (Aldershot, Ashgate).

# *Index*