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

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Part I – Introduction

Prostitution has many meanings. It’s most obvious meaning is in the context of selling sexual relations for monetary or other gain. However, it is not only in this way that people can be prostituted and, certainly, it is possible to prostitute things other than people. Many nations and societies have outlawed the act of prostitution in its transactional sense. Prostitution of commonly held human values has also been theoretically outlawed within the international community, with torture, genocide, and discrimination against women and girls being only a few areas of international legal focus. In order to stop the prostitution of peoples and the peace by forces of violence and oppression, the United Nations (UN) created peacekeeping operations to assist the local populations affected by such conflicts and to implement political measures which are intended to restore calm. However, in the process of its peacekeeping missions, the UN has itself given rise to the prostitution of the idea of peace it seeks to foster.

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

To date, the focus of law in regards to this problem has been to emphasize that the UN cannot itself try peacekeepers for sexual or other misconduct and to commend the UN for remanding errant peacekeepers to their sending states, which exercise jurisdiction over them. What has gone unexamined are the legal and socio-legal structures of sending states whose peacekeepers commit sexual and other crimes abroad while deployed to a UN peacekeeping mission. This article aims to serve as an in-depth study of the penal and, to the extent available to the public, military laws of sending states which have had allegations of sexual and other misconduct made against their peacekeepers, as well as the socio-legal structures of these states which inform law and society in regards to sexual and other crimes. The goal of this article is to demonstrate that there is indeed a link between the laws and socio-legal structure of these sending states and the illegal and
immoral acts committed by their peacekeepers. The caveat to the study conducted by this article is that it discusses sending states with reported and publicly divulged allegations made against their peacekeepers. It is certainly within the realm of possibility that there are other sending states affected by the phenomenon of errant peacekeepers yet who, due to reluctant victims and the UN’s method of reporting allegations, have not been made public.¹

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

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

¹ It should be noted here that, while has started a process of issuing data on reported and investigated sexual and other allegations made against deployed peacekeepers, the reports it issues do not provide sending state identities. See U.N. G.A. Doc. A/59/777 (2004); U.N. G.A. Doc. A/59/782 (2005); U.N. G.A. Doc. A/80/861 (2006); U.N. G.A. Doc. A/61/957 (2007).
information presented in Part IV and divides the sending states into three categories based on their legal and socio-legal structures. These categories are used to discuss the reasons why some of these states are similar and why some should be allowed to continue on as peacekeeping force contributors in the future while others should not be allowed to participate in UN peacekeeping missions given their present legal and socio-legal structures and the societal tenets they reflect.

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

PART II – ABUSE ALLEGATIONS

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

1. Rape

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

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2 Shukuko Koyama and Henri Myrttinen, _A Gender Perspective_ in _UNINTENDED CONSEQUENCES OF PEACEKEEPING OPERATIONS_ 27-31 (Chiyuki Aoi, Cedric de Coning and Ramesh Thakur eds. 2007).


United Nations Mission in the Sudan (UNMIS),\textsuperscript{7} United Nations Peacekeeping Force in Cyprus (FICYP),\textsuperscript{8} United Nations Operation in Cote D’Ivoire (UNOCI),\textsuperscript{9} United Nations Organization Mission in the Democratic Republic of the Congo (MONUC),\textsuperscript{10} United Nations Mission in Ethiopia and Eritrea (UNMEE),\textsuperscript{11} United Nations Mission in Georgia (UNMIG),\textsuperscript{12} and United Nations Mission for the Referendum in Western Sahara (MINURSO).\textsuperscript{13} Unsubstantiated claims of rape were made against a Canadian peacekeeper in Bosnia.\textsuperscript{14} Allegations have been made against many peacekeeping contingents, including those from Jordan,\textsuperscript{15} Indonesia,\textsuperscript{16} Guinea,\textsuperscript{17} Ukraine,\textsuperscript{18} Nigeria,\textsuperscript{19} Bangladesh,\textsuperscript{20} Russia,\textsuperscript{21} South Africa,\textsuperscript{22} Brazil,\textsuperscript{23} Nepal,\textsuperscript{24} Senegal.\textsuperscript{25}
Ethiopia,  
Benin,  
Togo,  
France,  
Ghana,  
India,  
Niger,  
Sri Lanka,  
Morocco,  
Pakistan,  
and the United States. 

2. **Prostitution**

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

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26 Id.

27 Id.

28 Id.


35 C.S.R. Murthy, *Unintended consequences of peace operations for troop-contributing countries from South Asia*, in *Unintended Consequences of Peacekeeping Operations* 165 (Chiyuki Aoi, Cedric de Coning and Ramesh Thakur eds. 2007)

serious sexual crimes, such as rape. It is the author’s firm belief that such a view is an
entirely artificial construct and that prostitution in conflict and post-conflict situations,
such as those to which peacekeepers are deployed, is a serious sexual offense more akin
to rape than to prostitution in most legal and social systems. This belief is based on the
exploitative nature of prostitution in the areas to which peacekeepers are deployed and
evidence which suggests that the women, girls, and young boys who are prostitutes
patronized by UN peacekeepers become prostitutes out of the need for self-preservation
and to preserve their families. There are several known motivating factors for prostitution
during and after conflict, which are discussed below. Also discussed below is the very
real threat posed to the local population – and peacekeepers themselves – by the
interaction between HIV/AIDS and prostitution.

A. Sex for Necessities

One of the first UN peacekeeping missions to face somewhat public allegations of
widespread sexual misconduct was the United Nations Transitional Authority in
Cambodia (UNTAC) during the period from 1992-3. The misconduct alleged primarily
related to acts involving patronizing prostitutes from Cambodia as well as from other
areas who had been trafficked to Cambodia to service UN personnel, including
peacekeepers. Similar vague allegations have been made against UN peacekeepers
stationed in Eritrea, Haiti and Mozambique, to name a few missions.

37 See, e.g., Kent, supra note 3 at 53 – 54.
38 MUST BOYS BE BOYS?: ENDING SEXUAL EXPLOITATION & ABUSE IN UN PEACEKEEPING MISSIONS,
“Must boys be boys”); Koyama and Myrttinen, supra note 2 at 32-3
39 MUST BOYS BE BOYS?, supra note 38.
40 Id.
41 Id.
Many women and young girls become prostitutes for UN peacekeepers in order to obtain food, money, and other supplies necessary for themselves and their families to survive. Indeed, it has been well documented that families in refugee camps with young girls frequently are denied proper rations of food and other items unless they are willing to trade sex with their daughters, sisters, spouses or other female relatives for these rations with a variety of UN mission personnel. In the Congo, peacekeepers from unspecified sending states were accused of having created and patronized a child prostitution ring. Sending states implicated in patronizing prostitutes include South Africa, India, Morocco, Ethiopia, the Netherlands, Canada, Italy, Ireland, Pakistan and Bulgaria.

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42 Stanley Meisler, Prostitution Report Accuses UN Troops in Mozambique, LOS ANGELES TIMES 11 (Feb. 26, 1994); UN Focuses on Peacekeepers Involved in Child Prostitution, NEW YORK TIMES 9, Dec. 9, 1996.
44 SAVE THE CHILDREN UK, supra note 6.
47 Id.
48 See Emmanuel Duparcq, Mixed-race babies support I Coast sex abuse claims, AGENCE FRANCE PRESSE ENGLISH WIRE (Aug. 8, 2007).
49 Burundi: Two UN peacekeepers to be expelled following sex scandal, BBC INTERNATIONAL REPORTS (AFRICA), Jul. 21, 2005.
50 Ramesh Thakur, Comment: When the peacekeepers become the problem, GLOBE & MAIL A15, May 21, 2007.
51 As the result of an internal investigation which ultimately led to a reform in the Canadian peacekeeping policy in general, Canadian peacekeepers returning from Bosnia were punished for alcohol-related infractions and having purportedly consensual sex with local women. See LuAnn LaSalle, 22 soldiers punished for actions in Bosnia; 38 others cleared of wrongdoing, GLOBE AND MAIL, Jun. 9, 1998.
52 Claims were also advanced against Italian peacekeepers in terms of patronizing child prostitutes while on assignment in Mozambique in 1994. See Sam Kiley, UN soldiers ‘using child prostitutes,’ TIMES (UK), Jan. 28, 1994.
53 The primary allegation made against Irish peacekeepers is that roughly seven of them patronized prostitutes while stationed in Eritrea. Peacekeepers ‘paid for sex with girl,’ IRISH INDEPENDENT, Jun. 13, 2003.
54 Murthy, supra note 35 at 165.
B. Sex for Status and Protection

Women in conflict and post-conflict situations are frequently vulnerable, especially if they have lost members of their family or have suffered trauma during the conflict. Particularly in conservative cultures where sexual relations outside marriage are taboo and a victim of sexual violence is regarded as a taint on her/his family, victims of sexual violence during conflicts are far more vulnerable and isolated from their standard support systems. At UN peacekeeping missions around the world, this vulnerability is routinely exploited so that these women, young girls, and even boys will become prostitutes for peacekeepers in exchange for economic support and the perceived physical and economic protection of particular peacekeepers. In many missions, it is not uncommon for peacekeepers – even those who are already married – to provide these women with places to live, cell phones, and other things while they are deployed to the mission. When the peacekeeper’s deployment is over, however, the relationship typically ends and the women involved are again left to fend for themselves – many times with the additional burden of a child from the relationship and the social stigma attached to themselves and their child.

C. HIV Patterns

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55 Bulgarian peacekeepers earned a negative reputation for their patronizing of prostitutes during deployment in Cambodia. See James Bone, Condom a day for UN troops to combat Aids, TIMES (UK), Mar. 10, 2000.
58 See id.
59 See id.
60 Id.
Interestingly, in Nepal and Ethiopia – two UN sending states having a habitual problem with their peacekeeping contingents committing acts of sexual misconduct while deployed – medical studies have found a dramatic correlation between the deployment of their troops to quell domestic issues and HIV/AIDS rate increases in the local populations near these troops.61 Worldwide, there is a strong correlation between the presence of UN peacekeepers and HIV spread in host populations regardless of the mission’s identity or location.62

Many areas which contribute peacekeeping forces are struggling with the issue of a decent percentage of their military being infected with HIV/AIDS, but it has been documented that the greatest area of military concern with HIV/AIDS infection rates is sub-Saharan Africa.63 The UN does not require that sending states test their peacekeepers prior to deployment and refuses to track such information or require testing of troops prior to deployment on a peacekeeping mission.64 The stated reason for the UN’s recalcitrance regarding HIV/AIDS testing of peacekeepers is that such testing would be in violation of the UN’s policies against discrimination against individuals based on their HIV/AIDS status.65 Some sending states do require that their troops be tested for HIV/AIDS infection prior to deployment as peacekeepers but this is entirely

62 See WOMEN, WAR AND PEACE, supra note 15.
64 See UNITED NATIONS FACES CHALLENGES IN RESPONDING TO THE IMPACT OF HIV/AIDS ON PEACEKEEPING OPERATIONS, UNITED STATES GENERAL ACCOUNTING OFFICE, REPORT TO THE CHAIRMAN, COMMITTEE ON INTERNATIONAL RELATIONS, HOUSE OF REPRESENTATIVES (2001).
65 Id.
discretionary.\textsuperscript{66} Even then, many of these states do not require that a deployed peacekeeper be re-tested for HIV/AIDS during or after deployment.\textsuperscript{67}

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

\begin{thebibliography}{99}
\bibitem{66} Id.
\bibitem{67} Id.
\end{thebibliography}
population as of 2003.\textsuperscript{77} Guinea: 3.2% of the adult population as of 2003.\textsuperscript{78} India: 0.9% of the adult population as of 2001.\textsuperscript{79} Indonesia: 0.1% of the adult population as of 2003.\textsuperscript{80} Ireland: 0.1% of the adult population as of 2001.\textsuperscript{81} Italy: 0.5% of the adult population as of 2001.\textsuperscript{82} Jordan: 0.1% of the adult population as of 2001.\textsuperscript{83} Morocco: 0.1% of the adult population as of 2001.\textsuperscript{84} Nepal: 0.5% of the adult population as of 2001.\textsuperscript{85} The Netherlands: 0.2% of the adult population as of 2001.\textsuperscript{86} Niger: 1.2% of the adult population as of 2003.\textsuperscript{87} Nigeria: 5.4% of the adult population as of 2003.\textsuperscript{88} Pakistan: 0.1% of the adult population as of 2001.\textsuperscript{89} Russia: 1.1% of the adult population as of 2001.\textsuperscript{90} Senegal: 0.8% of the adult population as of 2003.\textsuperscript{91} Slovakia: 0.1% of the adult

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population as of 2001.\textsuperscript{92} South Africa: 21.5\% of the adult population as of 2003.\textsuperscript{93} Sri Lanka: under 0.1\% of the adult population as of 2001.\textsuperscript{94} Togo: 4.1\% of the adult population as of 2003.\textsuperscript{95} Tunisia: under 0.1\% of the adult population as of 2005.\textsuperscript{96} Uganda: 4.1\% of the adult population as of 2003.\textsuperscript{97} Ukraine: 1.4\% of the adult population as of 2003.\textsuperscript{98} United Kingdom: 0.2\% of the adult population as of 2001.\textsuperscript{99} United States: 0.6\% of the adult population as of 2003.\textsuperscript{100} Uruguay: 0.3\% of the adult population as of 2001.\textsuperscript{101}

3. \textit{Sexual abuse not amounting to rape}

Among the conduct falling into this section is the molestation of young boys, and the serious allegation that some members of MONUC’s peacekeeping contingent were involved in attempts to further sex tourism and pedophilia activities.\textsuperscript{102} Also within this category are allegations of inappropriate and nonconsensual contact between

\textsuperscript{102} Kent, supra note 3 at 47.
peacekeepers and the local populations, including threats of further sexual abuse.\textsuperscript{103} An Irish peacekeeper was also found to have produced a pornographic film involving an adult Eritrean woman whom he paid for her performance.\textsuperscript{104} A number of peacekeepers from Uruguay were repatriated for unspecified acts of sexual misconduct while deployed.\textsuperscript{105}

4. **Sexual and human trafficking**

Direct connections between UN peacekeepers and human trafficking for sexual purposes into and out of Bosnia have also made routinely since the deployment of peacekeepers to the area.\textsuperscript{106} The United Nations Mission in Kosovo (UNMIK) has also been identified as a key source of human trafficking involvement with peacekeepers.\textsuperscript{107} Overall, UN peacekeeping per se has been identified as a major supporter of human trafficking for sexual purposes.\textsuperscript{108}

5. **Theft and embezzlement**

Between 2005 and 2006, Pakistani peacekeepers were allegedly involved in a scheme to sell guns and gold to rebel groups in the Congo.\textsuperscript{109} The UN later dismissed the

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\textsuperscript{103} See British journal stands behind study finding human rights abuses in Haiti, KITCHENER RECORD A6, Feb. 10, 2007; Six Nepalese UN peacekeepers jailed for sex abuse in DR Congo, AGENCE FRANCE PRESS ENGLISH WIRE, Jul. 23, 2005.


\textsuperscript{106} MUST BOYS BE BOYS?, supra note 38; WOMEN, WAR AND PEACE, supra note 16.


gun smuggling portions of these allegations but did substantiate the gold smuggling allegations.\textsuperscript{110} Also in 2005, twelve French peacekeepers received minimal sentences in France for having robbed a bank in the Cote D’Ivoire while stationed there.\textsuperscript{111} These sentences were protested by the French Justice Ministry for their leniency.\textsuperscript{112}

Allegations of financial improprieties have also been levied against the Ukrainian peacekeeping delegation to the United Nations Force in Lebanon (UNFIL), with a less clear outcome.\textsuperscript{113} According to the UN’s own investigation, Nigerian peacekeepers deployed to Sierra Leone were “heavily involved in diamonds, false passports, drug-smuggling and other illegal activities.”\textsuperscript{114} However, the UN ultimately determined that the Nigerian contingent to Sierra Leone could remain as part of the mission because it was successful in some of its military roles.\textsuperscript{115} Allegations of a food for gold barter arrangement between Indian peacekeepers and certain rebel groups in Rwanda have also been made.\textsuperscript{116}

6. Other crimes and issues

In a disturbing confirmation of the depth and breadth of peacekeeper transgressions with the populations they were deployed to protect and assist, children of mixed races – the host country and whatever the sending state was – are increasingly

\textsuperscript{110} Id.; Mike Pflanz, UN officer smuggled gold out of Congo, DAILY TELEGRAPH 20, Jul 14, 2007.
\textsuperscript{112} Id.
\textsuperscript{113} See Ukrainian former peacekeeper chief in Lebanon denies corruption charges, BBC INTERNATIONAL NEWS, Sept. 9, 2005.
\textsuperscript{114} Kwesi Aning, Unintended Consequences of peacekeeping operations for troop-contributing countries from West Africa: The case of Ghana in UNINTENDED CONSEQUENCES OF PEACEKEEPING OPERATIONS 144 (Chiyuki Aoi, Cedric de Coning and Ramesh Thakur eds. 2007).
\textsuperscript{115} Id.
\textsuperscript{116} Human Rights Watch flays UN report acquitting Pak peacekeepers, INDIAN NEWS (Jul. 24, 2007).
being born in host countries.\textsuperscript{117} There is currently no UN requirement that peacekeepers care for or acknowledge the children they father. Since the host state’s laws do not apply to peacekeepers and since, as noted in several sending state sections below, the burden of establishing paternity and attempting to collect child support in the sending states of peacekeepers alleged to have committed crimes is essentially impossible for any woman to meet, a class of children and single mothers has been created amid already dismal social and economic conditions in most host states. Although the reaction to these children and their mothers varies throughout the host states and societies in question, these children and their mothers tend to suffer from economic, social, and often legal stigmatization as a result.\textsuperscript{118} Many women who bear peacekeeper children are also in extremely precarious financial and societal positions already and their struggle to exist and reestablish themselves during the conflict in the host state is made more difficult because of these children.\textsuperscript{119}

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

\textsuperscript{117} See Koyama and Myrttinent, supra note 2 at 37.
\textsuperscript{118} See, e.g., id. at 37-8 (discussing the negative and positive community reactions to peacekeeper-fathered children and their mothers).
\textsuperscript{119} See id.
by combatants in the Congo, yet has existed for much longer. Similar issues occurred in Sierra Leone during its conflict.

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

7. Victim Reporting Issues

In many of the above situations, the victim is often reluctant to report the sexual abuse to the UN or even their own families. The societal beliefs of host countries are often very conservative and view women and their sexual purity as property to be maintained by the family. Regardless of the circumstances and heinous nature of acts committed against them – including rape – it is well documented that victims of peacekeepers are reluctant to tell their families of their abuse for fear of physical

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122 With friends like these . . ., SCOTLAND ON SUNDAY, Dec. 22, 2002.
123 Id.
124 Id.
125 See Francoise J. Hampson and Ai Kihara-Hunt, The accountability of personnel associated with peacekeeping operations in UNINTENDED CONSEQUENCES OF PEACEKEEPING OPERATIONS 205 (Chiyuki Aoi, Cedric de Coning and Ramesh Thakur eds. 2007).
punishment and/or ostracization from their families and communities.\textsuperscript{126} Where familial and societal pressures do not militate against reporting sexual abuse, victims often remain reluctant to come forward because of the power disparity between the UN peacekeepers and the victims.\textsuperscript{127} In a situation where a woman and/or her family is surviving because of UN rations and assistance, it is logical that she will not report the crime out of fear that she and her family will lose the aid upon which they depend for survival. This is especially important in situations where the conflict from which the victim has fled is ongoing and there is a threat – however real – that the victim and her family will be forced to return to the conflict and suffer its consequences if they are not under the protection of the UN in some way.

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

\begin{itemize}
\item \textsuperscript{127} \textit{SAVE THE CHILDREN UN}, supra note 6.
\item \textsuperscript{128} \textit{See infra} Part III.
\item \textsuperscript{129} \textit{See infra} Part III.
\end{itemize}
crimes by peacekeepers and the resultant increase in reporting of such crimes, the UN’s record of findings against peacekeepers continues to be extremely poor.  

PART III – UN POLICIES AND RULES FOR PEACEKEEPERS AND PEACEKEEPING

I. __ Legal Constraints

One of the most striking features of the UN Charter is its muteness on the concept of UN peacekeeping.  

The UN Charter does contemplate a standing UN military, comprised of commanders from the permanent members of the UN Security Council, to be used as a reaction force in the event of circumstances deemed to threaten international peace and security.  

However, in the Cold War environment which arose in the wake of World War II, this force was never created.  

The idea of peacekeeping came into being in the 1960s and was justified on a legal basis as an extension of the UN Charter’s mandate that the UN function to promote international peace and security.  

The same justification has been used from the 1960s to the present; this justification has always come under attack from UN Charter textualists and international law scholars in general and the issue has yet to be fully decided.

UN peacekeeping missions exist only after they are authorized by the UN Security Council.

See infra Part III.
See generally U.N. CHARTER.
See U.N. CHARTER CH. VII.
See id.
See id.
allowed numbers of peacekeepers – which can be subsequently changed by the UN Security Council – and specific action allowances for the mission.\textsuperscript{137} Once created, the new mission is under the jurisdiction of the UN Department of Peacekeeping Operations (DPKO) and the office of the Secretary General for staffing and other organizational needs.\textsuperscript{138} Peacekeepers are volunteered by their sending state to the particular mission; the UN cannot force a state to contribute troops and it currently cannot bar any member states from contributing troops to a peacekeeping mission.\textsuperscript{139} Although these internal UN actions can take place rather quickly, the host state must still acquiesce to the presence of UN peacekeepers before they can be deployed to any area or conflict.\textsuperscript{140}

Sending states and host states have their own contracts with the UN for peacekeeping operations. Host states are required to sign these documents in order to preserve a semblance of sovereignty, although once the peacekeeping mission is present it is possible for the UN Security Council to change the mission in ways not contemplated by the contract.\textsuperscript{141} After the 2005 allegations of massive sexual abuse by peacekeepers in the Congo, UN contracts with sending states have attempted to impose additional restrictions on the conduct of UN peacekeepers and their likelihood of being tried at home, however these clauses have had little to no effect.\textsuperscript{142}

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\textsuperscript{138} See \textit{Head of Department, United Nations Department of Peacekeeping Operations}, \textit{available at} http://www.un.org/Depts/dpko/dpko/info/page1.htm (last visited Jan. 2, 2008); Kent, supra note 3 at 50.


\textsuperscript{140} See Kent, supra note 3 at 49.

\textsuperscript{141} See id.

\textsuperscript{142} Id. at 49 – 50.
Outside of the contracts between the UN and the sending state, jurisdiction over all troops sent on a peacekeeping mission rests solely with the sending state. The UN has the capacity to investigate allegations of sexual and other abuses and can, at the most extreme level, repatriate the errant peacekeeper but that is the extent of the UN’s jurisdiction. The decision as to whether a peacekeeper will be tried is made by the sending state and the sending state alone and it is often difficult to determine the course of trial for peacekeepers charged once they return home. The host state cannot charge peacekeepers with any crimes – regardless of how heinous – because it lacks individual jurisdiction over the peacekeeper. However, the host state is required to protect UN peacekeepers and other associated personnel from harm during their deployment; this requirement includes an obligation to prosecute those who are alleged to have attacked or otherwise targeted UN personnel. Although it is possible for the mission to deny or waive immunity for an errant peacekeeper when the acts alleged are deemed to be without the scope of general immunity this is very rare. Even where this is possible, there are many reasons that a host state will not ask for jurisdiction over an errant peacekeeper and will instead rely on his sending state to evaluate the allegations and make further judicial decisions.

2. Rule-based Constraints

145 ENGDALH, supra note 143 at 54; Hampson and Kihara-Hun, supra note 125 t at 198 – 99, 203.
146 See id.
149 Id. at 207 – 8.
As with any military mission, peacekeeping operations are governed by rules of engagement which are specific to the mission. These rules involve tactical and operational guidelines and requirements, as well as certain conduct policies for peacekeepers and the mission generally. Key to the discussion of peacekeepers and sexual abuse is the UN’s oft-touted policy of “zero tolerance” for any such conduct and for sexual contact between peacekeepers and those they are charged with protecting overall. This policy has been criticized on many levels, including its interaction with the UN’s weekly distribution of condoms to deployed peacekeepers.

There has been a recent move toward incorporating gender awareness units within peacekeeping missions since the allegations of sexual misconduct have become more pervasive. Some of these units are geared toward providing a same-gender environment to increase the comfort of women who are victims of sexual abuse by peacekeepers. Other units are used as part of an overall plan to increase the participation and role of women in the shattered societies to which UN missions are deployed. In the latter role, these gender-based units have received praise from peacekeeping mission leaders and local members of the host state for their attempts to include women in post-conflict reconstruction of society and to bring attention to certain pressing issues affecting women in the host state.

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150 HAUSSLER, supra note 136 § 6; ENGDAHL, supra note 143 at 168 – 174.
151 See HAUSSLER, supra note 136 § 6.
152 See Countries to mull steps to prevent UN troop misconduct, AGENCE FRANCE PRESSE ENGLISH WIRE, Jul. 25, 2007.
153 See id.; Harrington, Victims of Peace, supra note 133.
154 Koyama and Myrtninen, supra note 2 at 39 – 40.
155 Id. at 27 – 29.
156 Id., supra note 2 at 39.
157 Id. at 27.
been unable to trump the evidentiary and other issues associated with the investigation of such allegations.\textsuperscript{158} There is nothing to suggest that these gender-based units have made it easier for victims of sexual violence and misconduct by peacekeepers to come forward with their experiences.

3. Proposed Changes in the Wake of Recent Scandals

The first UN study to find fault with the structure of UN peacekeeping overall was the “Brahimi report,” issued by the UN in 2000.\textsuperscript{159} This report was commissioned to evaluate the structure of UN peacekeeping as a functional entity and derives its informal name from the report’s chief author. The Brahimi report did not specifically address issues related to sexual abuse or other criminal conduct by peacekeepers and, nearly eight years after its issuance,\textsuperscript{160} many of its proposals and targeted areas for reform have yet to be addressed in a meaningful manner.

In several missions, the UN has created an ombudsman for the purpose of collecting complaints regarding members of the mission.\textsuperscript{161} The use of this office is not widespread throughout the mission system and has limited authority to investigate but not prosecute or otherwise punish an errant peacekeeper.\textsuperscript{162} There is a longstanding Office of Internal Oversight Services within the UN peacekeeping structure which has recently been tasked with monitoring allegations of peacekeeper and other UN personnel misconduct.\textsuperscript{163} This office, like the recently created UN Conduct and Discipline Unit, has no implementation, enforcement, or prosecutorial role and is intended to function only as

\begin{itemize}
  \item \textsuperscript{158} See generally id.
  \item \textsuperscript{160} See id.
  \item \textsuperscript{161} Hampson and Kihara-Hunt, supra note 2 at 212 – 3.
  \item \textsuperscript{162} Id.
  \item \textsuperscript{163} Id.
\end{itemize}
an investigatory body.\textsuperscript{164} These offices, especially the Conduct and Discipline Units, have done nothing to stem the flow of allegations of sexual and other misconduct and abuse by UN peacekeepers.\textsuperscript{165}

After allegations of sexual abuse in UN missions flourished, the UN asked that Jordan’s Permanent Representative to the UN, Prince Zeid Ra’ad al-Hussein, investigate the allegations and make suggestions in response to them.\textsuperscript{166} The Zeid report confirmed that sexual abuse among peacekeepers was a real and rampant problem and that the UN’s program of “zero tolerance” for sexual abuse by peacekeepers was not working in practice.\textsuperscript{167} It made many suggestions, such as adding additional language to agreements between the UN and the sending state requiring follow-up on allegations of peacekeeper misconduct.\textsuperscript{168} Unfortunately, the majority of the Zeid report suggestions have not been implemented and, if they were to be implemented, would still be weakened by the overall dependence on the will of the sending state to recognize sexual abuse as a serious offense and prosecute errant peacekeepers accordingly.\textsuperscript{169} Key to addressing the issue of assisting women who are victims of sexual abuse by peacekeepers – and, in the view of the author, identifying additional victims and perpetrators – was the Zeid report’s suggestion of a

\begin{footnotes}
\footnote{\textsuperscript{164}Id.; CONDUCT AND DISCIPLINE UNIT, UNITED NATIONS DEPARTMENT OF PEACEKEEPING OPERATIONS, available at \url{http://www.un.org/Depts/dpko/CDT/about.html} (last visited Dec. 19, 2007).}
\footnote{\textsuperscript{165}See supra Part II.}
\footnote{\textsuperscript{167}Id. See also STOPPING HUMAN TRAFFICKING, SEXUAL EXPLOITATION, AND ABUSE BY INTERNATIONAL PEACEKEEPERS, U.S. DEPARTMENT OF STATE, available at \url{http://www.state.gov/g/tip/rls/tiprpt/2007/86207.htm} (last visited Dec. 19, 2007).}
\footnote{\textsuperscript{168}U.N. G.A. Doc. A/59/710 (2005).}
\footnote{\textsuperscript{169}Id.}
\end{footnotes}
victim assistance strategy.\textsuperscript{170} This strategy is among the major components of the Zeid report which has not been acted upon by the UN.\textsuperscript{171}

As allegations of sexual abuse and the patronizing of prostitutes continued to surface, the UN issued new regulations which banned sexual relations between peacekeepers and anyone eighteen years old or younger in the affected area.\textsuperscript{172} Interestingly, these bans involve only sexual intercourse with women while on a peacekeeping mission, not other sexual acts or acts with men or children.\textsuperscript{173} Additional measures attempted by the UN include promoting gender equality as part of the mission\textsuperscript{174} and attempting to draw more female peacekeepers from sending states.\textsuperscript{175} At the same time, the UN began a policy of providing its deployed peacekeepers with a pouch of condoms every week.\textsuperscript{176} The UN Security Council has, at various times, stressed the need for HIV/AIDS education for peacekeepers in order to protect them and the people they protect from exposure and harm.\textsuperscript{177} Some missions have also started to use gender-friendly units as part of their mission structure as a result of the Convention to

\begin{itemize}
\item \textsuperscript{170} Id. See also STOPPING HUMAN TRAFFICKING, SEXUAL EXPLOITATION, AND ABUSE BY INTERNATIONAL PEACEKEEPERS, U.S. DEPARTMENT OF STATE, \textit{available at} \url{http://www.state.gov/g/tip/rls/tiprpt/2007/86207.htm} (last visited Dec. 19, 2007).
\item \textsuperscript{171} STOPPING HUMAN TRAFFICKING, SEXUAL EXPLOITATION, AND ABUSE BY INTERNATIONAL PEACEKEEPERS, U.S. DEPARTMENT OF STATE, \textit{available at} \url{http://www.state.gov/g/tip/rls/tiprpt/2007/86207.htm} (last visited Dec. 19, 2007).
\item \textsuperscript{172} See Harrington, \textit{Victims of Peace}, supra note 133.
\item \textsuperscript{173} PEACEKEEPING IN AFRICA, AMNESTY INTERNATIONAL.
\item \textsuperscript{174} Koyama and Myrttinen, \textit{supra} note 2 at 27-3; Kent, \textit{supra} note 3 at 55.
\item \textsuperscript{175} Id.
\item \textsuperscript{176} Harrington, \textit{Victims of Peace}, supra note 133. The idea of distributing condoms to peacekeepers started in 2001, when peacekeepers were provided with a condom pouch and a multi-lingual card with information on the transmission of HIV/AIDS as well as “a code of conduct calling for pride, respect, and consideration for law, customs, and tradition.” See UNITED NATIONS FACES CHALLENGES IN RESPONDING TO THE IMPACT OF HIV/AIDS ON PEACEKEEPING OPERATIONS, UNITED STATES GENERAL ACCOUNTING OFFICE, REPORT TO THE CHAIRMAN, COMMITTEE ON INTERNATIONAL RELATIONS, HOUSE OF REPRESENTATIVES 11 (2001).
\item \textsuperscript{177} UN anti-AIDS training for peacekeepers, BBC NEWS, Jul. 17, 2000, \textit{available at} \url{http://news.bbc.co.uk/2/hi/americas/838421.stm} (last visited Dec. 19, 2007).
\end{itemize}
Eliminate all Forms of Discrimination Against Women (CEDAW) and the sexual abuse allegations.¹⁷⁸

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

PART IV– LEGAL AND SOCIO-LEGAL STRUCTURES OF AFFECTED SENDING STATES

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

To date, allegations of largely sexual misconduct have been made against thirty-four sending states. Since the primary focus of this article is on sexual crimes and misconduct alleged and proven to have been committed by peacekeepers and since the majority of allegations made against peacekeepers have involved sex and sex-related offenses, the laws examined below are primarily those dealing with sex crimes and the legal status of women in the sending states at issue. Because law does not exist in a

¹⁷⁸ See, e.g., Koyama and Myrttinenat, supra note 2 at 27 – 29; Kent, supra note 3 at 55.
vacuum in any society or legal system, the studies below also examine the socio-legal trends extant in the sending states at issue. Although the sending states discussed below have been the subject of misconduct allegations, they have not been the subject of the same quantity of allegations. Some, for example the United States, United Kingdom, Austria, and Canada, have been the subject of few allegations. Others, for example Morocco, Pakistan and Nigeria, have been the subject of wide-ranging allegations across various missions. It is important to note that, generally, sending states tend to be developing and economically poor states. It should also be noted that many of the sending states which are regarded as the greatest and most consistent donors of peacekeepers – not peacekeeping funding, which is addressed in Part VI below – are among the sending states which have sustained the most repetitive and serious allegations of sexual abuse against the population of the host state. The sending states discussed below are arranged alphabetically for ease of the reader and do not in any way reflect a scale of implication in alleged or established crimes.

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

_Austria_

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180 See D.C.F. Daniel and Leigh C. Caraher, _Characteristics of Troop Contributors to Peace Operations and Implications for Global Capacity_, 13 (3) _INTERNATIONAL PEACEKEEPING_ 301 (Sept. 2006) (stating that these nations were “Bangladesh, Canada, France, Germany, Ghana, India, Italy, the Netherlands, Nigeria, Pakistan, Russia, Spain, Turkey, the United States and the UK”).
Those wishing to volunteer for the Austrian military may do so at age sixteen.\textsuperscript{181} There is a seven month conscription requirement at age eighteen with an eight year reserve requirement to follow.\textsuperscript{182} There is no specific code of military justice governing the Austrian military and, as a result, a member of the Austrian military is subject to the civil laws of Austria.\textsuperscript{183}

The crime of rape in Austria is defined as: “whoever coerces a person by serious force directed against this person or by the threat of immediate danger for life and limb to perform or to endure sexual intercourse or a sexual act equated to sexual intercourse shall be punished by imprisonment from one to ten years.”\textsuperscript{184} There is a lesser crime of sexual coercion under the Austrian Penal Code which applies in cases which do not rise to the level of rape.\textsuperscript{185} In regards to sexual abuse of children, there are several relevant statutes of the Austrian Penal Code, such as grievous sexual abuse of minors,\textsuperscript{186} sexual abuse of minors,\textsuperscript{187} and endangering the moral development of persons under 16 years of age.\textsuperscript{188} Child prostitution and the promotion thereof is criminal in Austria.\textsuperscript{189}

Austria is in the first tier\textsuperscript{190} of the US human trafficking assessments in 2007.\textsuperscript{191} Austria does not have refugee camps within its borders and, although it does grant
refugee status to people in certain situations, it does not have a large refugee community presence.\textsuperscript{192}

**Bangladesh**

Bangladesh has an all-volunteer military which is open to eligible men at age eighteen.\textsuperscript{193} Under the terms of the Bangladesh Army Act, there is no crime of rape.\textsuperscript{194} A soldier who is civilly convicted of a crime may face additional sanctions under Bangladeshi military law.\textsuperscript{195} Crimes which could potentially be applicable to errant peacekeepers under Bangladeshi military law include “un-becoming behaviour”\textsuperscript{196} or “violation of good order and discipline.”\textsuperscript{197} However, neither of these crimes are well defined at law and both contain subjective criteria.\textsuperscript{198} The evidentiary provisions of the Army Act would, in the reality of UN peacekeeping mission settings, serve as a bar to the successful prosecution of a peacekeeper for acts done oversees.\textsuperscript{199}

Human rights advocates have demonstrated that parts of the Bangladeshi military, combined with the police force, have been involved in massive human rights violations –

\textsuperscript{194}See generally BANGLADESH ARMY ACT.
\textsuperscript{195}Id. § 59
\textsuperscript{196}Id. § 52 (“Any officer, junior commissioned officer or warrant officer, who behaves in a manner un-becoming his position and the character expected of him shall, on conviction by court-martial, be liable to be dismissed from the service or to suffer such less punishment as is in this Act mentioned.”).
\textsuperscript{197}Id. § 55 (“Any person subject to this Act who is guilty of any act, conduct, disorder or neglect to the prejudice of good order and of military discipline shall, [upon] conviction by court-martial, be punished with rigorous imprisonment for a term which may extend to five years, or with such less punishment as is in this Act mentioned.”).
\textsuperscript{198}See id. §§ 52, 55.
\textsuperscript{199}Id. §§ 109, 110
including rape and other sexual crimes – against the Bangladeshi public. The same groups have requested that the UN bar certain portions of the military from participation in peacekeeping operations due to their conduct. Bangladesh is in the second tier of the US human trafficking assessments in 2007. Despite this classification, Bangladesh has been identified as a major sending and receiving state for the traffic in human beings. The Bangladeshi military has occupied a solid place in the nation’s political hierarchy almost since its founding.

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

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201 Id.
204 Hannah Pearce, An Examination of the International Understanding of Political Rape and the Significance of Labeling It Torture, 14 INT’L J. REFUGEE L. 534 (2002).
206 Id. § 354.
207 Id. § 366B.
208 Id. § 370.
crime of rape is defined as: “a man is said to commit ‘rape’ who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following description. Firstly: Against her will. Secondly. Without her consent. Thirdly: With her consent obtained by putting in fear of death or hurt. Fourthly: With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly: with or without her consent, when she is under fourteen years of age. Exception: sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.”\textsuperscript{209} The punishment for rape ranges from ten years to life imprisonment and also can involve a fine.\textsuperscript{210} The evidentiary standards for proving a rape case are such that it would be difficult to establish a rape case in the event of an errant peacekeeper.”\textsuperscript{211} Adultery is a crime in Bangladesh which can only be prosecuted against a man.\textsuperscript{212} In 2005, the Law Commission of Bangladesh recognized that domestic violence is a prevalent and damaging issue in Bangladeshi society and proposed a domestic violence law.\textsuperscript{213} The UN itself has recognized that the Bangladeshi criminal justice system – particularly its handling of crimes against women – is inadequate.\textsuperscript{214}

\begin{footnotesize}
\textsuperscript{209} Id. § 375.
\textsuperscript{210} Id. § 376.
\textsuperscript{211} MD. ZAHURIUL ISLAM, THE PENAL CODE [ACT NO XLV OF 1860] § 376 notes 10 – 16.
\textsuperscript{212} Id. § 497.
\end{footnotesize}
Bangladesh has refugee camps within its borders for those displaced by conflict in neighboring states. As of 2005, female refugees in Bangladesh outnumbered male refugees.

Belgium

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

Rape in Belgium is a crime which can be committed against a woman or man when the element of consent to intercourse is missing. Lack of consent occurs with the use of violence, deception, restraint, or incapacitation of the victim. Punishments for rape under the Belgian Penal Code vary depending on the age of the victim. Punishments also increase where there are certain exigent circumstances, such as the misuse of authority over the victim. Lesser sexual offenses are also provided for in the

216 Id.
221 Id.
222 Id.
223 Id. at art. 376.
Belgian Penal Code.\textsuperscript{224} Child prostitution is illegal under the Belgian Penal Code.\textsuperscript{225} Belgium has enacted extra-territorial jurisdiction legislation, which makes all Belgians subject to prosecution for sexual offenses committed abroad.\textsuperscript{226} Belgium is in the first tier of the US human trafficking assessments in 2007.\textsuperscript{227} Belgium does not have refugee camps within its borders and, although it does grant refugee status to people in certain situations, it does not have a large refugee community presence.\textsuperscript{228}

\textit{Benin}

Volunteers to the Beninese military may volunteer at age eighteen.\textsuperscript{229} Conscription of men and women for a period of eighteen months occurs at age twenty-one.\textsuperscript{230} The Beninese military is at once a frequent participant in the coups and political machinations which have characterized Benin and is also viewed as an important actor in the economic and social structure.\textsuperscript{231} The constitutions of Benin have given the Beninese military primacy in many areas of state-craft, especially in regards to allowing the state to function domestically and internationally.\textsuperscript{232} It is also charged with protecting the internal

\begin{thebibliography}{99}
\bibitem{BelgiumPenalCode} Id. at art. 373.
\bibitem{BelgiumPenalCode1} Id. at art. 380.
\bibitem{BelgiumPenalCode2} Id. § VII.
\bibitem{Benin20051} Id.
\bibitem{Akpo} \textsc{Philippe Akpo}, \textsc{Le rôle et les implications des forces armées beninoises dans la vie politique nationale}, 9 (trans. by author); \textsc{Mathurin C. Hougnikpo}, \textsc{Determinants of democratization in Africa: a comparative study of Benin and Togo} 119 – 31 (2001).
\bibitem{NATION} \textsc{La Nation Beninoise et ses forces armées, République du Benin, Présidence de la République, Ministère de la Défense Nationale, Forces armées Beninoises} 12 – 3, 31 (1996) (trans. by author).
\end{thebibliography}
and external safety of Benin as a state.\textsuperscript{233} Benin formally recognizes diplomatic issues with many of its neighbors in regard to land and natural resource control and cites these as reasons that the military is required to be a strong component of the state.\textsuperscript{234}

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

Births abroad may be registered with the appropriate diplomatic officers in the Beninese embassy, provided that the names of each parent are known and specified.\textsuperscript{239} The use of a Beninese father’s last name in situations where a child was born outside of Benin is allowed only in cases where the father has registered the child with the Beninese government.\textsuperscript{240} Proving filiation requires the active agreement of and involvement by the putative father.\textsuperscript{241} Dowries are still allowed in Benin.\textsuperscript{242} The terms of the Beninese family code are made applicable to soldiers stationed overseas.\textsuperscript{243} Although there are specific sections of the Personal and Family Code which address marriage, Benin still allows and recognizes traditional or customary marriages, including polygamous marriages.\textsuperscript{244} Benin

\begin{itemize}
\item \textsuperscript{233} Id. at 19.
\item \textsuperscript{234} Id. at 21.
\item \textsuperscript{235} FRENCH PENAL CODE OF 1820, BOOK III, CH. I § IV.
\item \textsuperscript{236} Id.
\item \textsuperscript{237} Id.
\item \textsuperscript{239} LOI NO 2002 – 07 ARTS. 60 – 1 (trans. by author).
\item \textsuperscript{240} LOI NO 2002 – 07 PORTANT CODE DES PERSONNES ET DE LA FAMILLE CH. II, art. 10 (trans. by author).
\item \textsuperscript{241} Id. at art. 287.
\item \textsuperscript{242} Id. at art. 949.
\item \textsuperscript{243} Id. at art. 83.
\item \textsuperscript{244} GUIDE JURIDIQUE DE LA FEMME BENINOISE 24 (1991) (trans. by author).
\end{itemize}
is in the second tier of the US human trafficking assessments in 2007. Currently, there are active refugee camps located within Benin, many filled with Togolese nationals.

_Brazil_

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

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250 _HUNTER, supra_ note 249.

251 _Id._

252 _CONSTITUIÇÃO FEDERAL CH. III ART. 12 § II (trans. by author).
Until recently, there was a decided trend in Brazilian jurisprudence to allow what were essentially honor killings in certain circumstances, such as infidelity.\textsuperscript{253} There is domestic violence legislation in Brazil involving marital rape crimes.\textsuperscript{254} Rape, sexual abuse, and the corruption of minors are all crimes in Brazil.\textsuperscript{255}

Brazil is in the second tier of the US human trafficking assessments in 2007.\textsuperscript{256} Despite this ranking, Brazil is the largest exporter and importer of human beings in the Americas.\textsuperscript{257} Brazil is also home to the largest child prostitution problem in the world.\textsuperscript{258} Brazil is home to refugees from other states but does not currently have organized refugee camps within its borders.\textsuperscript{259}

\textit{Bulgaria}

Conscription in Bulgaria will end on January 1, 2008.\textsuperscript{260} Previously, one was eligible to volunteer or be conscripted into the military at age eighteen.\textsuperscript{261} In the wake of years of communist control, the Bulgarian military generally has been the subject of wide-ranging reform attempts.\textsuperscript{262}

\begin{thebibliography}{99}
\bibitem{253} Catherine Warrick, \textit{The Vanishing Victim: Criminal Law and Gender in Jordan}, 39 L. & SOC’Y REV. 315 (2005).
\bibitem{255} Id.
\bibitem{257} See Lethi and Aromaa, \textit{supra} note 204.
\bibitem{258} Id.
\bibitem{259} See generally BULGARIAN MILITARY IN TRANSITION -- THE LEGAL FRAMEWORK OF DEMOCRATIC CIVIL-MILITARY RELATIONS, NAVAL POSTGRADUATE SCHOOL, MONTEREY, CA (Dec. 1998).
\end{thebibliography}
Bulgarian law defines rape as “sexual intercourse with a woman (1) incapable of defending herself, where she did not consent; (2) who was compelled.” The European Court of Justice has found that the application of this statute in a particular case was in violation of European conventions; this opinion also cast doubt on the validity of the method by which Bulgarian courts apply the rape statute. Under Bulgarian law, cases involving domestic violence either require the victim to prosecute the offense without the assistance of the state or are subject to limits which essentially make the prosecution by the state worthless. Marital rape may only be prosecuted in Bulgaria if “the wife has been killed or permanently injured.” An additional crime exists where a person uses the material dependency of a woman upon him to procure sexual relations. Prostitution is illegal in Bulgaria. Homosexual intercourse – forced or consensual – is also a crime under Bulgarian law. Bulgaria is in the second tier of the US human trafficking assessments in 2007. Bulgarian citizens who commit crimes abroad can be tried in a Bulgarian court for their actions.

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

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264 Id.
266 BULGARIAN PENAL CODE § 52.
267 Id. § 153.
268 Id. § 155.
269 Id. § 157.
271 BULGARIAN PENAL CODE CH. II § II ART. 4.
Canada

Canada has an all-volunteer military which is open to men and women aged sixteen to thirty-four. The military Code of Discipline makes it clear that it applies to all persons in the service of the armed forces of Canada, regardless of whether the crimes were committed in Canada. Under the Code of Discipline, it is an offense for a member of the Canadian military to “commit[] any offence against the property or person of any inhabitant or resident of a country in which he is serving.” This is problematic because many victims and potential victims on UN peacekeeping missions neither inhabit the area to which the soldier is deployed in the strict legal sense nor are they legally classified as residents. It is a crime for a member of the military to engage in either “scandalous conduct by officers” or “cruel and disgraceful conduct.” Canadian troops may be tried for civil offenses under the Criminal Code and will suffer military punishments if convicted.

Although Canada uses a provincial system in which citizens are governed by both federal and provincial laws, there are uniform national laws prohibiting sexual abuse of minors, homosexuality when involving at least one minor, and luring a child.

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275 National Defence Act, Pt. III Div. 1 §67 (Can.).
276 Id. at Div. II § 77.
277 Id. § 92 (“every officer who behaves in a scandalous manner unbecoming an officer is guilty of an offence and on conviction shall suffer dismissal with disgrace from Her Majesty’s service or dismissal from Her Majesty’s service.”).
278 Id. § 93 (“every person who behaves in a cruel and disgraceful manner is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.”).
279 Id. § 130.
280 Criminal Act of Canada, §§ 151 – 2 (Can.).
281 Id. § 159.
Canada is in the second tier of the US human trafficking assessments in 2007.\textsuperscript{282}

Currently, Canada does admit refugees, however it does not have refugee camps within its borders.\textsuperscript{283}

\textit{Ethiopia}

Ethiopia uses compulsory military service at age eighteen.\textsuperscript{284} Those wishing to volunteer to serve in the Ethiopian military may also begin to serve at age eighteen.\textsuperscript{285} Interestingly, throughout its recent history, there has been a dramatic fluctuation in the amount of reported government funds appropriated to the Ethiopian military.\textsuperscript{286} During the conflict between Eritrea and Ethiopia, the Ethiopia-Eritrea Claims Commission determined that Ethiopia “failed to impose effective measures on its troops, as required by international humanitarian law, to prevent rape.”\textsuperscript{287} There are no provisions under the Military Code of Ethiopia which would directly punish an errant peacekeeper for sexual misconduct while deployed.\textsuperscript{288}

When a rape occurs in Ethiopia, the rapist may avoid prosecution by agreeing to marry the victim.\textsuperscript{289} Generally, the Ethiopian Penal Code would apply to allow an Ethiopian enjoying immunity from international prosecution for crimes committed abroad to be charged with these crimes in Ethiopia as long as the act at issue is a crime

\textsuperscript{282} \textit{Canada, Tier Placements, Trafficking in Persons Report 2007, United States Department of State, available at} \url{http://www.state.gov/g/tip/rls/tiprpt/2007/82802.htm} \textit{(last visited Jan. 2, 2008).}
\textsuperscript{285} \textit{Id.}
\textsuperscript{286} \textit{Wuyi Omitoogun, Military Expenditure Data in Africa: A Survey of Cameroon, Ethiopia, Ghana, Kenya, Nigeria and Uganda} 46 -7 \textit{(2003).}
\textsuperscript{287} \textit{Lee M. Caplan et. al, International Courts and Tribunals, 41 Int’l Law 291, 305 (2007).}
\textsuperscript{288} \textit{See Ethiopian Penal Code of 2005.}
both in Ethiopia and the state where it was committed.\textsuperscript{290} The crime of rape in Ethiopia is defined as follows: “whoever compels a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance, is punishable with rigorous imprisonment from five years to fifteen years.”\textsuperscript{291} Penalties vary depending on the age of the victim, her mental capacity and health, the violence of the crime and whether the crime was a gang rape.\textsuperscript{292} A slightly lesser crime is that of “sexual outrages accompanied by violence.”\textsuperscript{293} Other relevant offenses include “taking advantage of the distress or dependence of a woman,”\textsuperscript{294} sexual relations with underage members of the opposite sex,\textsuperscript{295} “homosexual and other indecent acts,”\textsuperscript{296} use of position or underage participants in homosexual acts,\textsuperscript{297} and human trafficking.\textsuperscript{298} Adultery is a gender neutral crime in which each party is equally culpable.\textsuperscript{299} Ethiopia is in the second tier of the US human trafficking assessments in 2007.\textsuperscript{300} According to the United Nations High Commissioner of

\textsuperscript{290} E\textsc{thiopian} P\textsc{enal} C\textsc{ode} of 2005, arts. 14, 15.
\textsuperscript{291} Id. at art. 620.
\textsuperscript{292} Id.
\textsuperscript{293} Id. at art. 622 (‘‘whoever, by the use of violence or grave intimidation, or after having in any other way rendered his victim incapable of offering resistance, compels a person of the opposite sex, to perform or submit to an act corresponding to the sexual act, or any other indecent act, is punishable by imprisonment for not less than one year, or rigorous imprisonment not exceeding ten years.’’).
\textsuperscript{294} Id. at art. 625 (‘‘whoever . . . procures from a woman sexual intercourse or any other indecent act by taking advantage of her material or mental distress or the authority he exercises over her by virtue of his position, function or capacity as protector, teacher, master or employer, or by virtue of any other like relationship, is punishable, upon complaint, with simple imprisonment.’’).
\textsuperscript{295} Id. at arts. 626, 627
\textsuperscript{296} E\textsc{thiopian} P\textsc{enal} C\textsc{ode} of 2005, art. 629 (‘‘whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment.’’).
\textsuperscript{297} Id. at arts. 629-32
\textsuperscript{298} Id. at art. 635-7
\textsuperscript{299} Id. at art. 652.
\textsuperscript{300} E\textsc{thiopia}, T\textsc{ier} P\textsc{lacements}, T\textsc{rafficking} in P\textsc{ersons} R\textsc{eport} 2007, U\textsc{nited} S\textsc{tates} D\textsc{epartment} of S\textsc{tate}, available at http://www.state.gov/g/tip/rls/tiprpt/2007/82802.htm (last visited Jan. 2, 2008).
Refugees’ latest information, more than one hundred thousand refugees live in refugee camps within Ethiopia’s borders.301

France

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

Rape in France is defined as sexual intercourse to which the consent of the victim is vitiated by violence, constraint, threats, or surprise.306 Marital rape is a crime in France.307 Rape is primarily defined as a crime committed by a man against a woman.308 The punishment for rape will increase in the event that there are aggravating circumstances, such as age, number of perpetrators, and injuries suffered by the victim.309 Lesser sexual offenses, although not precisely defined in the French Penal Code, are punishable in France.310 A separate system of crimes exists for sexual abuse of minors.311

303 Id.
304 Id.
305 Jorg Gerkrath, Military Law in France in EUROPEAN MILITARY LAW SYSTEMS (Georg Nolte ed. 2003)
319.
307 Id.
308 Id.
309 Id.
310 Id.
311 Id. at III.
Child prostitution is a crime in France.\textsuperscript{312} France is in the first tier of the US human trafficking assessments in 2007.\textsuperscript{313} Although France does admit refugees, there are no refugee camps within its borders.\textsuperscript{314}

\textit{Ghana}

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

Throughout its modern history as an independent state, Ghana has been plagued by political turmoil which is either exacerbated or quelled by its Armed Forces.\textsuperscript{319} At the same time that the military was gaining prominence in the social and political culture of Ghana, it had to compete for resources during the nation’s long economic downturn.\textsuperscript{320}

\textsuperscript{312} Id. at IV.
\textsuperscript{315} Aning, supra note 114 at 134; Stephen Addae, General History of Ghana Armed Forces: A Reference Volume, Ministry of Defence of Ghana Armed Forces 371.
\textsuperscript{316} Aning, supra note 114 at 133.
\textsuperscript{317} See id. 133-151.
\textsuperscript{318} Id. at 146 – 7.
\textsuperscript{319} Addae, supra note 316 at 207; Baaffour Agyeman-Duah, Civil Military Relations in Ghana’s Fourth Republic, Critical Perspectives No. 9, Ghana Center for Democratic Development, CDD-Ghana, June 2002 1-2.
\textsuperscript{320} Id. 210
With conditions in armed forces housing and other essential services described by the Ministry of Defence itself as unpleasant, it is perhaps not surprising that members of the Armed Forces were interested in participating in peacekeeping operations. Recent developments, however, have resulted in superior barracks and living facilities for Ghanaian soldiers and their families. Service in the Ghanaian armed forces has now become a socially acceptable occupation regardless of class, with more entrance seekers than positions available. Interestingly, one of the recruitment slogans used by the Ghanaian armed forces is to “serve with the UN.” Statistical data gathered in 2002 suggests that Ghanaians hold their military in high esteem generally and have a particularly good view of the participation of the Ghanaian armed forces in peacekeeping operations. Despite these views, when the armed forces are required to interact with the civilian population in a professional capacity, there is a tension between the actions and opinions of the civilian and military populations. The Ghanaian armed forces have, in some instances, become responsible for committing illegal activities to further the interests of their families and friends. Throughout its history, the Ghanaian military has become intertwined with its political structure and has gained political, societal, and thus legal power as a result.

321 Id. 210, 275-81; Eboe Hutchful, Military Policy and Reform in Ghana 35(2) JOURNAL OF MODERN AFRICAN STUDIES 258 (1997).
322 AGYEMAN-DUAH, supra note 320 at 30.
323 Id. at 345.
324 Id.
325 Id. at 12 (stating that, of those surveyed, 65% “trust the military” and “nearly 90% approved of the military’s role in international peacekeeping”).
326 Id. at 15
327 Id. at 14
The Criminal Code of Ghana defines the crime of rape as “the carnal knowledge of a female of sixteen years or above without her consent.” The punishment prescribed for those convicted of rape is between five and twenty-five years. Other relevant provisions of the Criminal Code include “defilement of a child under 16 years of age,” and “unnatural carnal knowledge.” Prostitution is illegal only when committed by the prostitute herself and “slave-dealing,” including bringing human beings to Ghana for the purposes of slavery, is illegal. Ghana is in the second tier of the US human trafficking assessments in 2007. Ghana maintains refugee camps for many of the refugees which have sought safety within its borders.

**Guinea**

All Guineans are required to perform two years of compulsory military service after age eighteen. Once this service is completed, a service member may volunteer to continue their service. The Guinean Army, along with the security forces, was

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330 **Id. at 91 (citing § 97 of the Criminal Code of Ghana).**

331 **Id. at 92 (citing § 99 of the Criminal Code of Ghana, which provides: “whoever naturally or unnaturally carnally knows any child under sixteen years of age, whether with or without his or her consent commits an offence and shall be liable on summary conviction to imprisonment for a term of not less than seven years and not more than twenty-five years.”).**

332 **Id. at 94 (citing § 104 of the Criminal Code of Ghana, which provides: “whoever has unnatural carnal knowledge a) of any person of the age of sixteen years or over without his consent shall be guilty of a first degree felony and shall be liable on conviction to imprisonment for a term of not less than five years and not more than twenty-five years; or b) of any person of sixteen years or over with his consent is guilty of a misdemeanor.”).**

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

334 **Id. at 200 – 1 (citing § 314 of the Criminal Code of Ghana).**


338 **Id.**
involved in a major crackdown on strikers in early 2007. During this time, the military was implicated in general human rights violations – including rape and sexual assault against the civilian population – and has not been called to account for these actions.

Also, residents of refugee camps inside Guinea have experienced harassment and ill-treatment at the hands of the Guinean military.

Rape is a crime in Guinea and the punishment for the crime depends on the circumstances of the crime and the number of accused perpetrators. Guinea is in the second tier of the US human trafficking assessments in 2007. Guinea has criminalized human trafficking, as well as rape and other forms of “indecent assault.” Many of the refugees located within Guinea’s borders are housed in refugee camps. Human rights agencies have condemned the treatment which refugees in these camps receive from Guinean military units and members of the Guinean public generally.

India

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

Currently, the Indian Army Act has not been amended to reflect the introduction of women into certain parts of the military system.\textsuperscript{354} Many military wives are unaware of the rights owed to them by their husbands and by the military apparatus while their husbands are deployed.\textsuperscript{355} The “Commandments” for military deployment state that the first commandment is “no rape.”\textsuperscript{356} The Mandate of the COAS About Personal Behaviour & Conduct in Operations” provides “rape and molestation are the most hideous of crimes. God will not forgive you and the Army will punish you very severely,” and “rape,

\textsuperscript{348} AMIYA KUMAR GHOSH, DEFENCE BUDGETING AND PLANNING IN INDIA: THE WAY FORWARD (2006) 35.
\textsuperscript{349} GK SHARMA, MS, JASWAL, STUDY AND PRACTICE OF MILITARY LAW 101 (6th ed 2006) (citing § 45 of the Army Act, which provides “any officer, junior commissioned officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him, shall on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is mentioned n the Army Act and if he is a JCO or WO, be liable to be dismissed or to suffer such less punishment as is mentioned in the Army Act.”).
\textsuperscript{350} Id. at 102 (discussing § 46 of the Army Act, which makes “conduct of cruel, indecent or unnatural kind” a crime).
\textsuperscript{351} Id. at 106 (citing §§ 69, 70 of the Army Act).
\textsuperscript{352} Id. at 401 appx. I.
\textsuperscript{353} See generally id.
\textsuperscript{354} NILENDRA KUMAR, COURT MARTIAL AND MILITARY MATTERS 84 – 5 (2000).
\textsuperscript{355} See id. 108 – 9.
\textsuperscript{356} Id. at 191, table 6.
molestation, murder, taking of hostage and arbitrary executions are violations of humanitarian law.”

It is widely accepted that the Indian Army – which is a frequent participant in peacekeeping missions – uses rape as a standard interrogation method. In response to concerns of the spread of HIV/AIDS to troops deployed on peacekeeping missions, the Indian military promulgated a code of conduct for its peacekeepers before many of the complaints against Indian peacekeepers were made.

At present, there is no crime of marital rape in India and marriage to the victim is an absolute defense. A lower standard of proof is required for gang rapes under the Indian penal code apparently with the legislative intent to curtail the incidences of an increasingly prevalent crime in Indian society. The Penal code provides for the crime of “assault or criminal force to a woman with intent to outrage her modesty,” defined as “whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.” It provides for the crime of procuring a minor girl, “buying or disposing of any person as a slave,” “unnatural offenses.” Rape is defined as “a man is said to commit ‘rape’ who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following

357 Id. at 192 table 7.
358 Pearce, supra note 205 at fn. 6.
359 Murthy, supra note 35 at 164 – 5.
360 13 TXJWL 251
362 Id. at v. 3 (citing § 354)
363 Id at 633 (citing § 366-A)
364 Id. at 639 (citing § 369)
365 Id. at 833 (citing § 377, which provides that “whoever voluntarily has carnal knowledge against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”."

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

The sentences for rape vary under the circumstances, and police officers and other public servants, rapists of girls under twelve, and participants in gang rapes are subject to sentences of at least ten years. Although marital rape is not a crime in India, there is a separate provision of the Penal code making it a crime for a man to rape his wife while they are legally or customarily separated. Even when a rape case is brought to trial, the evidence rules in India shift the focus of the trial to the victim, her conduct and her past, an experience which is traumatic to the victim and can, in the author’s view, create a culture of impunity for the accused because of the cultural conservatism and stigma attached to such revelations and proceedings. When a complaint involving rape or sexual violence is

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366 Id. at 642 (citing § 375)
368 Id. at 830 (citing § 376-A)
369 Goonesekere 69 - 70
filed, it is accepted practice that there will be shoddy follow-up investigation which can prejudice the outcome of the trial if there is one.\footnote{Kirti Singh, Violence against Women and the Indian Law in Violence, Law and Women’s Rights in South Asia 96 – 101 (Savitri Goonesekere ed. 2004).}


Dowry deaths are a form of domestic violence which has plagued India in direct contradiction to the terms of its laws.\footnote{See SARKAR, supra note 371 at 119 – 20 (citing evidence that, despite the Dowry Death ban, incidents of dowry deaths are on the rise in India).} These deaths still occur on a routine basis and tend to receive light sentencing from judges, who often find sympathy with the husband and his family.\footnote{See Singh, supra note 371 at 119 – 20 (citing evidence that, despite the Dowry Death ban, incidents of dowry deaths are on the rise in India).} The societal and legal protections are not afforded solely to husbands and their immediate family, however.\footnote{See Spaatz, supra note 375.}

\textit{Indonesia}

Indonesians may volunteer for military service at age eighteen; if they do not volunteer then they will be conscripted for two years after age eighteen.\footnote{INDONESIA, CIA WORLD FACTBOOK, available at https://www.cia.gov/library/publications/the-world-factbook/geos/id.html (last visited Jan. 2, 2008).} Regardless whether they remain in the military after the mandatory period of conscription, all Indonesians are considered to remain on reserve until age forty-five and have an
obligation to serve their country if activated.\textsuperscript{378} From the 1980s onward, the Indonesian army, which was at one point a well-respected and sought after career choice for the upper echelons of Indonesian society, lost some of its status.\textsuperscript{379} As a result, it has begun recruiting from what is regarded as a lower class of society.\textsuperscript{380} Due to historical and political events, the Indonesian Army prides itself on enjoying a unique and powerful position in society, law and the political realm.\textsuperscript{381} In addition to standard military functions, it is expected that the Indonesian military will be involved in civilian tasks such as infrastructure building and support.\textsuperscript{382} Additionally, the Indonesian military is frequently involved in national policing issues due to the perceived weakness of the national police organization.\textsuperscript{383} Despite its stature, members of the Indonesian military, especially in low ranks, are poorly compensated.\textsuperscript{384}

Although there were many sides which contributed to the massive human rights violations and conflict which occurred in East Timor, it is established that the Indonesian military both participated in and encouraged many egregious acts during the conflict.\textsuperscript{385} While many of these acts can arguably be justified as part of war, there is an established pattern of using rape as a tool to either silence or exact retribution from the local population.\textsuperscript{386} The Indonesian government itself admits that members of the military and those associated with it have committed human rights violations – including sexual

\begin{footnotes}
\item[378] Id.
\item[380] Id. at 9 – 10 (Rand 2002); RINAKIT SUKARDI, THE INDONESIA MILITARY AFTER THE NEW ORDER 6 – 7 (2005)
\item[381] RABASA AND HASEMAN, supra note 380 at 22 – 3.
\item[382] Id. at 26 – 7; SUKARDI, supra note 382 at 142.
\item[383] SUKARDI, supra note 382 at 139 – 40.
\item[384] See generally MASTERS OF TERROR: INDONESIA’S MILITARY AND VIOLENCE IN EAST TIMOR (Richard Tanter, Gerry van Klinken, Desmond Ball, eds. 2006); RABASA AND HASEMAN, supra note 380 at 38 – 41.
\item[386] TANTER, VAN KLINKEN AND BALL, supra note 386 at xxxv, xxxvi, 37, 52-3, 58.
\end{footnotes}
crimes – across the nation.\footnote{Suzannah Linton, Accounting for Atrocities in Indonesia, 10 S.Y.B.I. L. 199 (2006).} The government has established several courts to hear allegations of human rights violations against Indonesian military and civilians, yet the application of laws by these courts has been uneven.\footnote{Id.}

Prostitution is not illegal in Indonesia.\footnote{Koyama and Myrttinen, supra note 2 at 33.} There is no crime of marital rape in Indonesia.\footnote{See Leah Riggins, Book Review: Criminalizing Marital Rape in Indonesia, 24 B.C. THIRD WORLD L.J. 421 (2004).} The crime of rape is defined by the Indonesian Penal Code as: “anybody who is having intercourse by force or threat or enforcing a woman to commit adultery with out marriage will be punished with imprisonment up to 12 years.”\footnote{NATIONAL LAWS, LEGISLATION OF INTERPOL MEMBER STATES ON SEXUAL OFFENSES AGAINST CHILDREN, INDONESIA, § II – RAPE, ART. 285, available at http://www.interpol.int/Public/Child/SexualAbuse/NationalLaws/csaIndonesia.pdf (last visited Dec. 19, 2007).} Child prostitution is not a recognized crime in Indonesia.\footnote{See id.} Indonesia is in the second tier of the US human trafficking assessments in 2007.\footnote{INDONESIA, TIER PLACEMENTS, TRAFFICKING IN PERSONS REPORT 2007, UNITED STATES DEPARTMENT OF STATE, available at http://www.state.gov/g/tip/rls/tiprpt/2007/82802.htm (last visited Jan. 2, 2008).} There are no refugee camps located within Indonesia’s borders.\footnote{See INDONESIA, 2005 UNHCR STATISTICAL YEARBOOK, UNITED NATIONS HIGH COMMISSIONER OF REFUGEES, available at http://www.unhcr.org/statistics/STATISTICS/4641be5a0.pdf (last visited Dec. 19, 2007).}

\textit{Ireland}

Ireland has an all volunteer military service starting at age seventeen.\footnote{IRELAND, CIA WORLD FACTBOOK, available at https://www.cia.gov/library/publications/the-world-factbook/geos/ei.html#Military (last visited Jan. 2, 2008).} Ireland has retained the crime of buggery on the national level.\footnote{CRIMINAL LAW (SEXUAL OFFENCES) ACT, 1993, § 3.} Prostitution is illegal in Ireland.\footnote{Id. §§ 9 – 11.} Rape is a crime in Ireland,\footnote{See id. §§ 9 – 11.} as is marital rape as of 1990.\footnote{Criminal Law (Sexual Offences) Act, 1993, § 3.} Sexual
assault and aggravated sexual assault also exist as crimes under the Irish Criminal Act. The definition of rape under Irish civilian law, and the trial procedure for a rape complaint, are essentially the same under the Defence Act as well. No information on Ireland’s placement in the tier system used by the US State Department is available. Ireland does not have refugee camps located within its borders.

**Italy**

Compulsory military service in Italy ceased in 2005. Now, the Italian military is entirely voluntary, with men and women ages eighteen to twenty-seven eligible to enter service.

Rape in Italy is forced sexual intercourse compelled through violence, threats, misrepresentation, or abuse of the perpetrator’s authority. Age of the victim, the relationship of the perpetrator to the victim, and whether the perpetrator is a public servant are aggravating factors for punishment. Gang rape is a separate crime involving more stringent punishment. Sexual relations with a minor are also illegal in

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399 CRIMINAL LAW (RAPE) ACT, 1981 § 2. (“A man commits rape if – (a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it and (b) at the time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it.”).

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

400 Id. §§ 2, 3.

401 Id. § 9.


405 Id.


407 Id. at art. 609-3.

408 Id. at art. 609-8.
Italy.\textsuperscript{409} Child prostitution and sex-tourism involving minors are both illegal under the Italian Penal Code.\textsuperscript{410} The Penal Code specifies that sex crimes committed by Italian citizens abroad are subject to trial in Italy through an expansive extra-territorial jurisdiction statute.\textsuperscript{411} Italian military personnel can be subject to military or criminal jurisdiction for crimes which would fall under one or both.\textsuperscript{412} Italy is in the first tier of the US human trafficking assessments in 2007.\textsuperscript{413} There are no refugee camps located within Italy.\textsuperscript{414}

\textit{Jordan}

Conscription in Jordan ended in 1999 and the force is now all-volunteer after age seventeen, although all men are required to register their eligibility until age thirty-seven.\textsuperscript{415} Women are allowed to volunteer to serve in non-combat positions.\textsuperscript{416}

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

\begin{itemize}
\item \textsuperscript{409} Id. at art. 609.
\item \textsuperscript{410} Id. at art. 600 bis.
\item \textsuperscript{411} Id. at art. 604.
\item \textsuperscript{412} Jorg Luther, \textit{Military Law in Italy} in \textit{EUROPEAN MILITARY LAW SYSTEMS} 494 – 5 (Georg Nolte ed. 2003).
\item \textsuperscript{413} \textit{ITALY}, \textit{TIER PLACEMENTS, TRAFFICKING IN PERSONS REPORT 2007}, \textit{UNITED STATES DEPARTMENT OF STATE, available at} \url{http://www.state.gov/j/tip/rls/tiprpt/2007/82802.htm} (last visited Jan. 2, 2008).
\item \textsuperscript{414} \textit{See ITALY, 2005 UNHCR STATISTICAL YEARBOOK, UNITED NATIONS HIGH COMMISSIONER OF REFUGEES, available at} \url{http://www.unhcr.org/statistics/STATISTICS/4641be5d11.pdf} (last visited Dec. 19, 2007).
\item \textsuperscript{416} Id.
\item \textsuperscript{417} Koyama and Myrttinen, \textit{supra} note 2 at 36-7.
\item \textsuperscript{418} \textit{See id.}
\end{itemize}
The Jordanian penal code uses an element of intent for rape which, as some have posited, can be an exculpatory element for the rapist if a court determines that the victim “enticed” the rapist in some capacity.\(^{419}\) The crime of rape itself is defined under Jordanian law as: “whoever has sexual intercourse with a woman (other than his wife) without her consent whether by force, intimidation, trickery or deception shall be sentenced to imprisonment of not less than 10 years. Whoever rapes a woman under 15 shall be sentenced to death.”\(^{420}\) Other relevant provisions of Jordanian law include indecent assault.\(^{421}\) Child prostitution is illegal under Jordanian law.\(^{422}\) Rape, or the allegation thereof, is one of the many grounds which have been used to justify honor killings of the victim in Jordan.\(^{423}\) The guilt of a rapist may be absolved if he marries the victim.\(^{424}\) Some of these and other legal restrictions on the rights and freedoms of women in Jordan are tracked to the traditions of the various tribal groups existing in Jordan.\(^{425}\)

There is no crime of marital rape in Jordan.\(^{426}\) Under the terms of Jordanian law, it would be very difficult – if not impossible – for the mother of a child born to her as the result of a relationship with a deployed Jordanian peacekeeper to establish Jordanian citizenship for the child without the father’s acknowledgement.\(^{427}\)


\(^{421}\) Id. at art. 296 (“whoever by use of violence or intimidation commits an indecent act on an individual shall be sentenced to a term of imprisonment of not less than 4 years.”); art. 298 (“whoever without violence or intimidation commits an indecent act on a child under 15 years old or persuades him/her to commit an indecent act shall be sentenced to a term of imprisonment with hard labour.”).

\(^{422}\) Id. at art. 310.

\(^{423}\) Sonbol, supra note 420 at 28.

\(^{424}\) Id. at 187

\(^{425}\) Id. at 37-8, 41, 43.

\(^{426}\) Id. at 203

Under the terms of the Jordanian penal code, children may only bring allegations of criminality of any kind – sexual or otherwise – when supported by their parents or legal guardians.\textsuperscript{428} Honor crimes, especially killings, have plagued Jordanian law and society.\textsuperscript{429} Despite recent attempts to reform the legal system, which garnered the support of the royal family and particularly Queen Noor, the Jordanian parliament has not enacted the thorough legislation which has been advocated to completely eradicate these practices.\textsuperscript{430} In this context, it is especially important to note that the blame for rape in many sectors of Jordanian society will – legally and socially – fall on the victim, while the rapist will often suffer no consequences as the result of his actions.\textsuperscript{431} Additionally, it is important to note that, while women can be accused of and punished for adultery under the Jordanian penal code on the accusation of their male relatives or husband, a female relative or wife cannot successfully accuse their male relative or husband of the crime of adultery, unless, perhaps, he appears with his mistress in public.\textsuperscript{432} Divorce is easily available to Jordanian males but extremely difficult for Jordanian females.\textsuperscript{433} Jordan is in

\textsuperscript{429} 16 AMUILR 1343
\textsuperscript{430} \textit{SONBOL}, \textit{supra} note 420 at 190-1.
\textsuperscript{432} \textit{SONBOL}, \textit{supra} note 420 at 198
\textsuperscript{433} \textit{Id.} at 137, 152.
the second tier of the US human trafficking assessments in 2007. There are no active refugee camps in Jordan.

**Morocco**

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

Once the subject of a formal charge under the military code, a Moroccan soldier is provided protections, key among them evidentiary requirements for any charge. Interestingly, there are several articles of the Moroccan military code of justice devoted to penalties in the event of pillaging by Moroccan soldiers. Rape and other sexual crimes are not addressed specifically in the Moroccan code of military justice. Rather, the military code provides that acts which are not enumerated under the military code but which would still be classified as criminal under the Moroccan penal code are likely

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437 Id.
440 Id. at art. 169.
441 See generally CODE DE JUSTICE MILITAIRE DU MAROC (trans. by author).
punishable under the military code.\textsuperscript{442} Similarly, the penal code explicitly states that a prosecution under the penal code does not bar a prosecution under the military code.\textsuperscript{443}

The penal code creates several lesser classes of sexual offense, such as the kidnapping of a child under age fifteen for a criminal offense.\textsuperscript{444} The crime of rape is defined as the act of a man having sexual relations with a woman against her will and is punishable by between five and ten years in prison.\textsuperscript{445} The same act involving a girl under fifteen is punishable by ten to twenty years in prison.\textsuperscript{446} Any unlawful sex act which would otherwise be punishable under the penal code and involves a virgin girl is intended to result in an increased punishment.\textsuperscript{447} Lesser sexual offenses are punishable by several months to several years in prison.\textsuperscript{448} Sexual relations outside of marriage and adultery are each punishable offenses as well.\textsuperscript{449} Prostitution, facilitation of prostitution, and patronizing prostitutes are all punishable offenses under the Moroccan penal code.\textsuperscript{450}

There is no crime of spousal rape in Morocco\textsuperscript{451} and spousal abuse tends to be treated leniently at law.\textsuperscript{452} Paternity runs solely through the father under Moroccan law and the failure of a father to register a child makes it exceedingly difficult for the child to ever obtain citizenship or enjoy rights of registered children.\textsuperscript{453} Morocco does not have specific anti-trafficking laws, instead prosecuting those involved in trafficking with

\textsuperscript{442} Id. § XII.
\textsuperscript{443} Id. § XII art. 200.
\textsuperscript{444} Id. § VI arts. 484, 485.
\textsuperscript{445} Id. § VI art. 486.
\textsuperscript{446} Id.
\textsuperscript{447} CODE DE JUSTICE MILITAIRE DU MAROC. ART. 488 (trans. by author).
\textsuperscript{448} Id. at art. 489.
\textsuperscript{449} Id. at arts. 490-2.
\textsuperscript{450} Id. § VII arts. 497-504.
\textsuperscript{452} Id.
\textsuperscript{453} Id.
prostitution and related offenses.\textsuperscript{454} Rape may be a capital offense under Moroccan law where the victim is a child and ultimately dies as a result of the attack.\textsuperscript{455} Despite these penalties, it appears that the incidents of reporting cases of rape and other sexual offenses in Morocco is extremely low compared to the estimated incidences of these crimes.\textsuperscript{456} The social stigma attached to a rape victim and her family is very high and, to counter some of the stigma, the victim’s family has the right to offer the victim to the rapist in marriage to erase the stain.\textsuperscript{457} Child sexual abuse has been identified as increasing in Morocco.\textsuperscript{458} Under King Mohammed IV, there has been a push to recast the rights and role of women in Moroccan society; however, these attempts have been largely fruitless over time.\textsuperscript{459} Morocco is in the first tier of the US human trafficking assessments in 2007.\textsuperscript{460} There are no refugee camps on Morocco.\textsuperscript{461}

\textit{Nepal}

The Nepalese military is comprised solely of volunteers, who are eligible for service at eighteen years old.\textsuperscript{462} The Nepalese Army has and continues to be linked to

\textsuperscript{454}Id.
\textsuperscript{455} See Warrick, supra note 254.
human rights abuses in conjunction with its long fight against Maoist insurgents. In 2006, legislative attempts to reform the extant Army Act were made in Nepal, however many were concerned that these proposed reforms would allow the military to act with greater impunity when dealing with civilians in Nepal.

The standard punishment for rape in Nepal is a prison sentence of three to five years, although prosecution of rape as a crime is very slim. A 2004 court decision in Nepal recognized marital rape as a crime, however there has not to date been legislation to codify this finding. In general, Nepali women are legally, societally, economically and politically discriminated against even under the most recent legal reforms. Child prostitution is a crime in Nepal. Rape of a prostitute is not considered a crime in Nepal. Bigamy is legal in Nepal.

Nepal is in the second tier of the US human trafficking assessments in 2007. Despite this classification, Nepal is widely regarded as a major sending and receiving state in the traffic of human beings. Other sources indicate that Nepal is rife with

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463 MAHENDRA LAWOTI, TOWARDS A DEMOCRATIC NEPAL: INCLUSIVE POLITICAL INSTITUTIONS FOR A MULTICULTURAL SOCIETY 60 (2005)
466 See Ogletree and de-Alwis, supra note 290.
470 See id.
472 Lethi and Aromaa, supra note 204.
trafficking – as a point of origin especially – and that much of this trafficking involves women and young girls who will ultimately become prostitutes and be exposed to other forms of sexual slavery. In cases where trafficked women and girls have been returned to their Nepali homes, they have faced massive social stigmas because of their experiences. Additionally, it is established that girls in what are viewed as lower classes in Nepal are more frequently made into prostitutes as a result of their status. Overall, the Nepalese domestic legal system and the societal constructs it reflects places little to no value on women as part of a family unit or society generally. In the author’s view, this creates a society of men and women which has a one-sided perception of the human trafficking and its associated issues – rape, prostitution, etc. – in that the trafficker, rapist, and other perpetrators are not called to account in Nepal and the only understanding of culpability in society is placed with the returned victims. Thus, troops who have and would commit sexual abuses against the populations of the host states do not see the stigma of being the perpetrator because, although the law might create such a stigma, it is not frequently enforced and is not understood as a reflection of societal beliefs.

474 Frederick, supra note 474.
476 SANGROULA, supra note 476 at 176.
Additionally, it should be noted that Nepal currently houses approximately one hundred thousand refugees in refugee camps located within its borders. These camps have not been well-guarded by the Nepali government and, as a result, have been the site of violence. These camps have been particularly threatening and damaging to Bhutanese women who have sought refuge in them.

**Netherlands**

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

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The Netherlands is in the first tier of the US human trafficking assessments in 2007. Prostitution was legalized in the Netherlands in 2000. Rape in the Netherlands is defined as: “a person who by an act of violence or another act or by threat of violence or threat of another act compels a person to submit to acts comprising or including sexual penetration of the body is guilty of rape and liable to a term of imprisonment of not more than twelve years or a fine.” Sexual acts with those under age sixteen are criminal in the Netherlands, as is indecent assault, committing a sexual offense which results in serious bodily harm or death to the victim, and abusing a position of authority to procure sexual favors from a minor. Child prostitution and trafficking is illegal in the Netherlands. There are no refugee camps located within the Netherlands.

Niger

Citizens of Niger are subject to a compulsory military service requirement of two years when they reach eighteen years of age. Throughout the nation’s history, the military of Niger has played an important part in shaping the government and political

485 Janet Halley et al., From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism, 29 HARV. J.L. & GENDER 335 (2006).
487 Id. at arts. 244 -5.
488 Id. at art. 246 (“a person who by an act of violence or another act or by threat of violence or threat of another act compels another person to perform or submit to indecent acts is guilty of indecent assault and is liable to a term of imprisonment of not more than eight years or a fine.”).
489 Id. at art. 248.
490 Id. at art. 248ter.
491 Id. at art. 250ter.

\textbf{Nigeria}

Nigeria’s military is a volunteer force which one may enter at age eighteen after having had an HIV/AIDS test.\footnote{NIGERIA, CIA WORLD FACTBOOK, available at https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html (last visited Jan. 2, 2008).} However, Nigeria does not require repeat AIDS tests and it has been established that an increasing number of Nigerian peacekeepers are returning home with HIV/AIDS.\footnote{Radhika Sarin, A New security threat: HIV/AIDS in the military, 16 WORLD WATCH (Mar. 2003), available at 2003 WLNR 12287368.} The Nigerian military has been implicated in long-term actions against its own people depending on the political will of the current regime.\footnote{See ’EMEKA O.C. NWAGWU, TAMING THE TIGER: CIVIL-MILITARY RELATIONS REFORM AND THE SEARCH FOR POLITICAL STABILITY IN NIGERIA 76 – 8 (2002).}

There is no specific crime of rape or other sexual misconduct in the Nigerian Army Act.\footnote{See NIGERIAN ARMY ACT 1990.} The Act does, however, provide that a civil violation will also be classified
as a violation of the Act when a conviction issues.\textsuperscript{503} Potential violations of the Act for conduct such as that proven and alleged against Nigerian peacekeepers would be limited to “scandalous conduct of an officer” (“every officer subject to military law under this Act who behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall, on conviction by court-martial, be cashiered.”)\textsuperscript{504} or “disgraceful conduct” (“any person subject to military law under this Act who is guilty of disgraceful conduct of cruel, indecent or unnatural kind shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or less punishment provided by this Act.”).\textsuperscript{505} The evidentiary laws to be applied by courts martial are the same as those applied in civil courts within the Nigerian capital city of Abuja.\textsuperscript{506} Generally, the intent of the Nigerian Military Code is for offenses involving people and property outside of the confines of the military to be tried by a civilian court.\textsuperscript{507} An exception is typically made for, among other things, rape.\textsuperscript{508}

Internal UN documents have suggested that, while stationed at the UN Mission in Sierra Leone, officers from the Nigerian contingent were involved in diamond and drug smuggling activities.\textsuperscript{509} The UN dismissed these activities because of the Nigerian contingent’s ability to work effectively in Sierra Leone.\textsuperscript{510}

\textsuperscript{503} Id. § 72. Some jurists believe that the vagueness of language used in this provision makes it a difficult provision to enforce at law. See DAVID M. JEMIBEWON, AN INTRODUCTION TO THE THEORY AND PRACTICE OF MILITARY LAW IN NIGERIA 34 – 5(1989).
\textsuperscript{504} NIGERIAN ARMY ACT 1990 § 66.
\textsuperscript{505} Id. § 68.
\textsuperscript{506} Id. § 96
\textsuperscript{507} JEMIBEWON, supra note 504 at 39.
\textsuperscript{508} Id.
\textsuperscript{509} Aning, supra note 114 at 144.
\textsuperscript{510} Id.
Nigeria is in the second tier of the US human trafficking assessments in 2007.\textsuperscript{511} Nigeria and its armed forces have been implicated in extensive forms of human and other trafficking, calling into question the propriety of stationing these forces in areas where they have access to vulnerable – and often lonely – populations.\textsuperscript{512} Indeed, Nigeria joins Morocco as being the two largest export states of girls from Africa to Europe.\textsuperscript{513} There are refugee camps located within Nigeria’s borders.\textsuperscript{514}

The Nigerian Criminal Code defines the crime of rape as: “Any person who has unlawful carnal knowledge of a woman or girl without her consent or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm or by means of false and fraudulent representations as to the nature of the act, or, in the case of a married woman by personating her husband, is guilty of a crime which is called rape.”\textsuperscript{515} Other relevant crimes include “unnatural offenses,\textsuperscript{516} “indecent treatment of boys under fourteen,”\textsuperscript{517} “indecent practices between males,”\textsuperscript{518} defilement

\textsuperscript{513} Lethi and Aromaa, supra note 204.
\textsuperscript{516} Id. at 182 (citing § 214, which provides that “any person who 1) has carnal knowledge of any person against the order of nature; or 2) has carnal knowledge of an animal; or 3) permits a male person to have carnal knowledge of him or her against the order of nature: is guilty of a felony, and is liable to imprisonment of 14 years.”).
\textsuperscript{517} Id. at 184 (citing § 216, which provides that “any person who unlawfully and indecently deals with a boy under the age of 14 years old is guilty of a felony and liable to imprisonment for 7 years.”).
\textsuperscript{518} Id. at 184 – 5 (citing § 217, which provides that “any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him or attempts to procure the commission of any such act by any male person with himself or with another male person whether in public or private, is guilty of a felony, and is liable to imprisonment for three years.”).
of girls under sixteen and above thirteen and of idiots,“\textsuperscript{519} and “persons trading in prostitution.”\textsuperscript{520} There is no crime of marital rape under the Nigerian Criminal Code.\textsuperscript{521}

The use of Shari’a courts in portions of Nigeria, and the codes and mores which these courts apply, creates a situation of unequal justice for victims of sexual violence because these crimes are treated differently under Shari’a law.\textsuperscript{522} Additionally, the use of customary law in the area or among the peoples involved can be considered in addition to the statutory requirements and factors for the establishment of a crime.\textsuperscript{523} Commentators have noted that much of the rule of law process in Nigeria has been undermined by an overall culture of political and economic corruption.\textsuperscript{524}

\textit{Pakistan}

Pakistan’s military is entirely volunteer.\textsuperscript{525} Citizens are eligible to volunteer beginning at age sixteen but are not allowed into combat until age eighteen.\textsuperscript{526} Limited participation of women is also allowed.\textsuperscript{527}

The technical application of the terms of the Pakistan Army Act to Pakistani soldiers deployed on peacekeeping missions is questionable in that they are not actively

\textsuperscript{519} Id. at 186 (citing § 221, which provides that: “any person who 1) has or attempts to have unlawful canal knowledge of a girl being of or above eleven years and under thirteen years of age; or 2) knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful knowledge of her; is guilty of a misdemeanor, and is liable to imprisonment for two years, with or without whipping.”).
\textsuperscript{520} Id. at 187 (citing § 225(A)).
\textsuperscript{521} Id. at 173.
\textsuperscript{523} Charles Mwalimu, \textit{The Nigerian Legal System Volume 1, Public Law} 139, 144 – 5 (2005)
\textsuperscript{526} Id.
\textsuperscript{527} Id.
used to fight an enemy, which is the key definitional element to the term “active service.”

There is no specific crime of rape or sexual misconduct under the Pakistan Army Act. Theoretically, there are several other infractions under the Act which could be made applicable to errant Pakistani peacekeepers. One such infraction could be “offences against property or persons of inhabitant of country where serving,” which states: “any person subject to this Act who, on active service, commits an offense against the property or person of any inhabitant of, or resident in, the country in which he is serving shall, on conviction by court martial, be punished with rigorous imprisonment for a term . . . [of] fourteen years, or with less punishment.”

There are two issues with this infraction as applied to peacekeepers. First, it requires that the soldier in question be classed as serving on “active service.” Second, since many peacekeepers are deployed to refugee camps located in countries in which potential victims do not inhabit and can advance no claim to residency, jurisdiction would be doubtful. Another option would be a prosecution for “certain forms of disgraceful conduct,” which entails, in relevant part, being “guilty of any disgraceful conduct of a cruel, indecent or unnatural kind.” The essential elements of this crime are, however, undefined. An additional option would be “unbecoming behaviour,” defined as “any officer, junior commissioned officer or warrant officer, who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by court-martial be . . . dismissed from the service or suffer such

\[528\] \text{PAKISTAN ARMY ACT} § 8 (1) (“the time during which such person is attached to or, forms part of a force which is engaged in operations against an enemy, or is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or is attached to or forms part of a force which is in military occupation of a foreign country.”)

\[529\] \textit{See PAKISTAN ARMY ACT.}

\[530\] \textit{Id.} § 27.

\[531\] \textit{Id.} § 41
less punishment as is in this Act mentioned.” Even if such charges were advanced, the essentials of the evidence rules applicable in Pakistani military trials would likely be unable to be met given the standard paucity of UN-generated evidence.

Throughout the history of the Pakistani state, the military has been heavily involved in the political, societal, and legal affairs of the nation. Indeed, it was during a military regime that the current Islam-centric laws which are seen by many as discriminatory to women – especially in the area of sex crimes – were instituted.

Pakistan is in the second tier of the US human trafficking assessments in 2007. Despite this classification, Pakistan is widely regarded as a major sending and receiving state in the traffic of human beings. As of 2005, Pakistan housed an estimated one million refugees in refugee camps within its borders.

Domestic abuse of all types is rampant in Pakistan and yet the authorities are reluctant to do anything to stop it. Although there are laws geared toward protecting victims of domestic violence and rape, the rape victim – be she married to the rapist or not – faces the knowledge that she can be convicted of adultery if the accused is not convicted. Additionally, there are well established patterns of police abusing women so

532 Id. § 52
533 PAKISTAN ARMY ACT RULES 1954 §§ 19-133.
534 See generally HASAN ASKARI RIZVI, MILITARY, STATE, AND SOCIETY IN PAKISTAN (2000).
535 Id. at 170 – 1; VEENA KUKREJA, CIVIL-MILITARY RELATIONS IN SOUTH ASIA: PAKISTAN, BANGLADESH AND INDIA 88 – 9 (1991); HUSAIN HAQQANI, PAKISTAN: BETWEEN MOSQUE AND MILITARY 144 – 7(2005).
537 Lethi and Aromaa, supra note 204.
540 Id.
that they will not file complaints about rape and domestic violence, further creating a
culture of intimidation which defies the terms of Pakistan’s penal code.\footnote{Id.} Pakistan has
only recently begun to prosecute rape cases in civil courts rather than Shari’a courts.\footnote{Edward Babayan, Legislative Watch, 14 no 2 HUMAN RIGHTS BRIEF 64 (2006).} Regardless of the court, there are severe evidentiary requirements for crimes such as rape– including that there be four male witnesses – which drastically undercut the likelihood of success on any claim of rape or sexual misconduct.\footnote{Jessica Neuwirth, Sex Discriminatory Laws: A Challenge to the Integrity of International Law, 29 SUM HUMAN RIGHTS 3 (2002).} Because Pakistan is a religious state, there have been increased problems in reconciling its criminal codes, which are secular in theory, with the application of Shari’a as is done by many courts when criminal cases are tried.\footnote{Goonesekere, supra note 476 at 56.} The use of rape as a tribal method to settle disputes between different tribes continues today despite the above sexual violence laws.\footnote{See Barbara Plett, Trauma of Pakistan’s rape victims, BBC NEWS, Mar. 9, 2007, available at http://news.bbc.co.uk/2/hi/south_asia/6433357.stm (last visited Dec. 19, 2007); Aamer Ahmed Khan, Pakistan’s justice system in spotlight, BBC NEWS, Mar. 3, 2005, available at http://news.bbc.co.uk/2/hi/south_asia/4315491.stm (last visited Dec. 19, 2007).} In one of the most famous cases of the use of gang rape to settle a dispute between families, the rapists were convicted of participating in the planned attack – on the order of a tribal council – and were later freed because of evidentiary issues and investigatory flaws.\footnote{See Pakistan rape case accused freed, BBC NEWS, Mar. 15, 2005, available at http://news.bbc.co.uk/2/hi/south_asia/4351507.stm (last visited Dec. 19, 2007).} Attempts at reforming the Pakistani legal system to be less discriminatory to women have met with much opposition from political leaders and society.\footnote{See Pakistan law change ‘un-Islamic,’ BBC NEWS, Aug. 22, 2006, available at http://news.bbc.co.uk/2/hi/south_asia/5275998.stm (last visited Dec. 19, 2007).}
Attacks on women for honor crimes or other perceived reasons using acid, for example, have gained societal acceptance and are not heavily prosecuted.\textsuperscript{548} Honor killings are a prevalent and persistent problem in Pakistan despite their current illegality.\textsuperscript{549} These crimes are exacerbated by a lack of enforcement by law enforcement personnel and a sense of societal acceptance.\textsuperscript{550} Domestic violence and associated crimes are rarely reported in Pakistan due largely to social factors; when they are reported, the police are typically inattentive to these types of complaints.\textsuperscript{551}

**Russian Federation**

Russia has a mandatory conscription period of one year after age seventeen, although the concept of mandatory conscription is currently up for debate.\textsuperscript{552} Russians have a reserve obligation to their military until they reach age fifty.\textsuperscript{553} In Croatia, a Russian peacekeeper left his post after it was discovered that he was involved in a brothel there.\textsuperscript{554} During its long term presence in Chechnya, the Russian military has routinely been accused of individual and systematic atrocities against the local population without active prosecution.\textsuperscript{555}


\textsuperscript{550} Jilani and Ahmed, supra note 550 at 155.

\textsuperscript{551} Id. at 180 – 1, 187 (detailing incidents of sexual and other abuse of women by police officers when they report crimes).


\textsuperscript{553} Id.

\textsuperscript{554} James Bone, Condom a day for UN troops to combat Aids, TIMES (UK) (Mar. 10, 2000).

\textsuperscript{555} Stacie Powderly, Note: Case Study Illustrating the Short Comings of International Law: Chechnya, 82 WASH. U. L. QUART. 1553 (2004).
The Russian Federation has enacted a code which governs the conduct of its military personnel when deployed on any type of international peacekeeping mission. However, this code does not discuss any criminal sanctions or standards of conduct for Russian soldiers deployed on international peacekeeping missions. Russian soldiers generally can be subject to civilian jurisdiction and Army rules in the event of criminal conduct.

The pre-trial and trial procedures required for any criminal action commenced in the Russian Federation are onerous and would likely be difficult to meet in the event of peacekeeper abuse allegations. Russian definitions of crimes do not focus on definitional or elemental requirements and instead look to the gravity of the crime on society generally. Domestic violence is a persistent and growing problem in Russia, as is sexual abuse of young children, yet the law is not structured to offer wide-ranging support or protections to victims. Rape under Russian law is defined as: “sexual relations with application of force or with threat of its application to the victim or to other persons, or by making use of the hapless state of the victim,” and is punishable by between three and six years in prison.

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557 Id.
560 Id. at 550-551.
561 Mutus, supra note 266.
563 Id.
law.\textsuperscript{564} Prostitution is not a crime in Russia.\textsuperscript{565} Forced acts of homosexuality,\textsuperscript{566} sexual relations with children,\textsuperscript{567} and “lewd conduct”\textsuperscript{568} are crimes under Russian law. Child prostitution is illegal under Russian law.\textsuperscript{569} Russia is in the second tier watch list of the US human trafficking assessments in 2007.\textsuperscript{570} There are no active refugee camps located in Russia’s borders.\textsuperscript{571}

\textit{Senegal}

The age for both conscription and voluntary entry into the Senegalese military is age eighteen.\textsuperscript{572} The conscription period is two years.\textsuperscript{573}

The Senegalese Penal Code defines rape as sexual intercourse of any nature committed against a person by violence, constraint, threats, or surprise, and makes the crime punishable by five to ten years in prison.\textsuperscript{574} In the event that the victim suffers permanent injury or is part of a gang rape, the punishment of the rapist can be doubled.\textsuperscript{575} The Penal Code provides additional penalties for sexual crimes committed against children.\textsuperscript{576} Child pornography\textsuperscript{577} and corruption of a minor through sexual acts are also

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\textsuperscript{564} Mutus, \textit{supra} note 266.
\textsuperscript{565} Scott Burris and Daniel Villena, \textit{Adapting to the Reality of HIV: Difficult Policy Choices in Russia, China, and India}, 31-FALL HUMAN RIGHTS 10 (2004).
\textsuperscript{566} \textit{RUSSIAN PENAL CODE}, CH. 18 ART. 132.
\textsuperscript{567} Id. at art. 134.
\textsuperscript{568} Id. at art. 135.
\textsuperscript{569} Id. at art. 133.
\textsuperscript{570} \textit{RUSSIA, TIER PLACEMENTS, TRAFFICKING IN PERSONS REPORT 2007, UNITED STATES DEPARTMENT OF STATE}, available at \url{http://www.state.gov/g/tip/rls/tiprpt/2007/82802.htm} (last visited Jan. 2, 2008).
\textsuperscript{573} Id.
\textsuperscript{574} \textit{CODE PENAL DU SENEGAL} ART. 320.
\textsuperscript{575} Id.
\textsuperscript{576} Id. at art. 319, 320.
\textsuperscript{577} Id. at art. 320 bis.
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crimes. Prostitution and enticement into prostitution are illegal. Interestingly, prostitution and enticement to prostitution committed by persons with authority or power over the victim – including those who have control over state support – is an additional crime. Except in the instance of membership in a tribe which allows polygamy, adultery is a crime in Senegal and both parties are deemed culpable. Senegal is in the second tier of the US human trafficking assessments in 2007. There are no refugee camps located within Senegal’s borders.

Slovakia

Slovakia abolished its conscription practices in 2006. Currently, the minimum age for voluntary entry into the military is seventeen. Women were first allowed into the military in 2006.

The Slovakian Penal Code defines the crime of rape as: “any person, who by using violence or threat of imminent violence, forces a woman to have intercourse with him, shall be liable to a term of imprisonment of five to ten years.” The term of imprisonment for rape is subject to increase under certain circumstances, including if a

578 Id. at art. 320 ter.
579 Id. at art. 323.
580 CODE PENAL DU SENEGAL ART. 324.
581 Id. at arts. 330-1.
585 Id.
586 Id.
victim is a “person under protection according to international law.” Other relevant crimes include sexual abuse generally, sexual abuse of a minor, and procuring a child for prostitution. Slovakia is in the second tier of the US human trafficking assessments in 2007. There are no refugee camps located within Slovakia’s borders.

South Africa

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

South Africa is in the second tier watch list of the US human trafficking assessments in 2007. There are no refugee camps located within the borders of South Africa.

Marital rape as an absolute defense to a rape charge was only recently abolished in South Africa. Rape is defined as “the unlawful, intentional sexual intercourse with a

588 Id. §§ 199, 133.
589 Id. § 200.
590 Id. § 201.
591 Id. § 367.
woman without her consent.\textsuperscript{599} The South African Penal Code also makes provisions for the lesser offense of “indecent assault.”\textsuperscript{600} Although domestic violence is estimated to be prevalent in South Africa, the legislature has enacted domestic violence legislation which aims to protect both the victim and children of the family.\textsuperscript{601}

South Africa is ranked among the highest in the world for rape.\textsuperscript{602} The prevalence of rape in South Africa – despite laws which criminalize it and a desegregated legal system which provides more equal access to justice – cuts across all strata of society and every other form of denominator.\textsuperscript{603} It is estimated that up to 500,000 rapes occur in South Africa each year.\textsuperscript{604} At the same time, the rate of HIV/AIDS in South Africa has skyrocketed, making rape an even more dangerous and deadly crime for the victim.\textsuperscript{605} Rape – among other violent crimes – is also regarded as prevalent in police communities.\textsuperscript{606} South Africa has experienced issues in the uniform application of rape laws and sentencing over the past ten years.\textsuperscript{607}

\textit{Sri Lanka}

\textsuperscript{599} Jonathan Burchell, Criminal Law in INTRODUCTION TO THE LAW OF SOUTH AFRICA 474 (CG der Merwe and Jacques E. du Plessis eds. 2004).
\textsuperscript{600} Id. at 477
\textsuperscript{601} CG VAN DER MERWE AND JACQUES E. DU PLESSIS, INTRODUCTION TO THE LAW OF SOUTH AFRICA 164 – 6 (2004)
\textsuperscript{602} Id.
\textsuperscript{603} Katz, supra note 599; DIANA R. GORDON, TRANSFORMATION AND TROUBLE: CRIME, JUSTICE, AND PARTICIPATION IN DEMOCRATIC SOUTH AFRICA 97 – 99 (2006) (discussing the extraordinarily high incidents of rape committed against women and children in South Africa since the end of apartheid).
\textsuperscript{606} GORDON, supra note 604 at 100 – 1.
\textsuperscript{607} GORDON, supra note 604 at 157 – 8.
The Sri Lankan military is entirely volunteer starting at age eighteen. Due to the decades of domestic conflict in Sri Lanka between the Tamil insurgency and government forces, the Sri Lankan military – and its less than savory elements – are viewed by the population to be on a higher plane than in other times. The rules of evidence used by the Sri Lankan Army Act would make it difficult to prosecute errant peacekeepers in most cases. There is no crime of rape under the Army Act. However, it is possible that sexual abuse of the local population by a peacekeeper could result in a charge under the “disgraceful conduct” law, although this law is limited in its scope of application to military forces. Sri Lanka in general, and its military in particular, have been fighting an often brutal internal war with Tamil Tiger rebels for decades. In late 2007, over one hundred Sri Lankan peacekeepers were repatriated to Sri Lanka by the UN after allegations that they engaged in prostitution – including child prostitution – while stationed in Haiti.

Sri Lanka is in the second tier watch list of the US human trafficking assessments in 2007. Sri Lanka has active refugee camps located within its borders. Despite its

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611 See generally id.
612 See id. § 107 (“every officer who, being subject to military law, behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall be guilty of a military offense and shall, on conviction by court martial, be cashiered.”).
613 Id.
enactment of legislation which furthered the principles of CEDAW, Sri Lanka is still a society in which sexual abuse of children is prevalent. Societally, prostitution – even among parents of young male prostitutes – is accepted and often encouraged as a way for a young member of the household to produce income. Rape and sexual abuse is also used as a key tool by members of the Sri Lankan military and police forces without prosecution or apparent repercussions. Male rape is also an accepted form of interrogation in Sri Lanka, especially during times of conflict. Interestingly, the terms of the Sri Lankan constitution specifically prohibit torture by public servants – and, by association, rape. Marital rape is only a crime in Sri Lanka in the event that it occurs during a time of marital separation. Recent revisions to the Sri Lankan penal code have abolished the requirement that a rape be committed against the victim’s will and leave only the lack of consent requirement. Rape is still a crime committed by a man against a woman, however, although now rape in a detention setting is the equivalent of a strict liability offense. Even when a rape case is brought to trial, the evidence rules in Sri Lanka shift the focus of the trial to the victim, her conduct and her past, an experience

623 Goonesekere, *supra* note 476 at 60.
624 Goonesekere, *supra* note 476 at 64 –5
625 Goonesekere, *supra* note 476 at 65; SHYAMALA GOMEZ AND MARIO GOMEZ, *SI R LANKA: THE LAW’S RESPONSE TO WOMEN VICTIMS OF VIOLENCE 211 – 13; PENAL CODE OF SI R LANKA § 363* (“a man is said to commit ‘rape’ who, except in the case hereinafter excepted, has sexual intercourse with a woman under any of the five following descriptions: Firstly – against her will. Secondly – without her consent. Thirdly – with her consent when her consent has been obtained by putting her in fear of death or hurt. Fourthly – with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believed herself to be lawfully married. Fifthly – with or without her consent when she is under twenty-one years of age. Exception – sexual intercourse by a man with his own wife, the wife not being under twelve years of age, is not rape.”).
which is traumatic to the victim\textsuperscript{626} and can, in the author’s view, create a culture of impunity for the accused because of the cultural conservatism and stigma attached to such revelations and proceedings. There is no such thing as a domestic violence law per se in Sri Lanka; rather, the victim would be required to report the specific act associated with the domestic violence (assault, burning, rape, etc) in order to file a complaint.\textsuperscript{627} Other crimes of relevance include defilement of young girls\textsuperscript{628} and unnatural offenses.\textsuperscript{629}

\textit{Togo}

Togolese citizens may volunteer or be conscripted for military service at age eighteen.\textsuperscript{630} The term of conscription is two years, and all new entrants to the military must take an HIV/AIDS test.\textsuperscript{631}

Since Togo’s independence, the military has played a constant role in the political life of the nation and has been a consistent factor in the repression of dissent and attempts to bring transparency to the Togolese government.\textsuperscript{632} International aide to Togo was suspended following particularly repressive and bloody campaigns by the military against the Togolese people.\textsuperscript{633}

\begin{footnotesize}
\begin{enumerate}
\item Goonesekere, \textit{supra} note 476 at 69 – 70.
\item \textit{GOMEZ AND GOMEZ, supra} note 626 at 216 – 7.
\item \textit{Penal Code of Sri Lanka} § 364.
\item Id. § 365.
\item \textit{Togo, CIA World Factbook, available at} \url{https://www.cia.gov/library/publications/the-world-factbook/geos/to.html} (last visited Dec. 19, 2007);
\item Id.
\item \textit{Id.}; \textit{HOUNGNIKPO, supra} note 232 at 74 – 77.
\end{enumerate}
\end{footnotesize}
Togo is in the second tier of the US human trafficking assessments in 2007. Togo is both a starting and destination point for human trafficking, especially in children. There are refugee camps located within Togo’s borders.

_Tunisia_

Volunteer eligibility for the Tunisian military starts at age eighteen. Conscription for a period of twelve months is required of Tunisians aged twenty. Provided that the crime is committed against a woman with established violence, or where the victim is under ten years of age, Tunisian law provides that rape may be a capital offense. Under the terms of the Tunisian rape law, rape is a crime which can only be committed against a woman. There are other forms of lesser sexual offense crimes in Tunisia, which primarily center on the age of the victim and the pre-existing relationship between the victim and the perpetrator. Included in this lesser sexual offenses category are homosexual acts. Child prostitution is illegal in Tunisia.

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638 Id.
640 Id.
641 Id. at III.
642 Id.
643 Id.
No information on Tunisia’s placement in the tier system used by the US State Department is available.644 However, practically there is strong evidence to support the proposition that illegal slavery of many forms (sexual, domestic, etc.) is currently thriving in Tunisia.645 Outside evaluations of the Tunisian judiciary and its independence have been extremely critical.646 There are no refugee camps in Tunisia.647

Uganda

Ugandans have a nine year military service obligation.648 Those wishing to enter the military voluntarily may do so between the ages of eighteen and twenty-six years.649 Those wishing to enter the military as professionals may do so between the ages of eighteen and thirty.650

Historically and currently, the Ugandan Army has been associated with the Ugandan police force, which was and is known for depriving citizens of their basic human rights and engaging in torture and other associated practices on a frequent basis.651 The role of the military in the judicial and juridical process in Uganda was vividly demonstrated in 2005, when a Ugandan judge became publicly enraged that members of

645 Nichols, supra note 474 at fn. 305.
649 Id.
650 Id.
a military commando unit attended a court hearing for a man who was accused by them
and the regime of treason.\textsuperscript{652}

Under the terms of the Ugandan Penal Code, an errant peacekeeper would not be
under Ugandan criminal jurisdiction.\textsuperscript{653} The Ugandan penal code defines the crime of
rape as “any person who has unlawful carnal knowledge of a woman or girl, without her
consent, or with her consent, if that consent is obtained under force or by means of threats
or intimidation of any kind, or by fear of bodily harm, or by means of false representation
as to the nature of the act, or in the case of a married woman, by personating her husband,
is guilty of the felony termed rape.”\textsuperscript{654} Technically, a man convicted of rape is eligible for
capital punishment.\textsuperscript{655} Marital rape is not illegal in Uganda.\textsuperscript{656} Associated sexual offenses
under the Ugandan Penal Code include indecent assault (“when an assault is
accompanied by messages with sexual connotations” when the victim is female),\textsuperscript{657}
indecent assault of a boy under age 18\textsuperscript{658}; defilement of girls under 18 (“any person who
unlawfully has sexual intercourse with a girl under the age of 18 years is guilty of an
offense and is liable to suffer death.”)\textsuperscript{659}; and unnatural offenses (“any person who: a)
has carnal knowledge of any person against the order of nature; b) has carnal knowledge
of an animal; c) permits a male person to have carnal knowledge of him or her against the
order of nature, commits an offense and is liable to imprisonment for life.”)\textsuperscript{660}. The

\textsuperscript{652} See Ugandan judge’s fury at military, BBC NEWS AFRICA, Nov. 18, 2005, available at
\textsuperscript{653} KALR’S CRIMINAL PRACTICE LEGISLATION OF UGANDA 4-16 (citing § 5 of the Ugandan Penal Code).
\textsuperscript{654} LILLIAN TIBATEMWA-EKIRIKUBINZA, CRIMINAL LAW IN UGANDA: SEXUAL ASSAULTS AND OFFENCES
AGAINST MORALITY 3 (citing section 123 of the Ugandan Penal Code).
\textsuperscript{655} Id. (citing section 124)
\textsuperscript{656} Id. at 11
\textsuperscript{657} Id. at 15 (citing section 128)
\textsuperscript{658} Id. at 16 (citing section 147)
\textsuperscript{659} Id. at 43 (citing section 129)
\textsuperscript{660} Id. at 97 (citing section 145
evidentiary requirements for establishing rape under the Ugandan penal code are such that it would be difficult to establish a case involving peacekeepers. The problem is that, as provided in the footnote, this definition of adultery makes rape victims subject to persecution for rape. Prostitution was made illegal in Uganda in 1990. Procuring or enticing women, inside or outside of Uganda, into prostitution is a punishable offense. Prostitution within Uganda is illegal. HIV/AIDS, particularly in women, is a huge and yet unaddressed problem in Ugandan society overall. Uganda is in the second tier of the US human trafficking assessments in 2007. There are over an estimated quarter of a million refugees who are being housed in refugee camps located within Uganda.

Uganda is still emerging from a multi-year civil war, which has torn apart the country, its society, and its legal systems. Part of the multivariate atrocities committed

661 Id. at 17
662 Id. at 68 (citing section 158, which provides that “1. any man who has sexual intercourse with any married woman not being his wife commits adultery and is liable to imprisonment for a term not exceeding twelve months or a fine . . . ; and, in addition, the court shall order any such man on first conviction to pay the aggrieved party compensation . . . , and, on subsequent conviction compensation . . .; 2. any married woman who has sexual intercourse with any man not being her husband commits adultery and is liable on first conviction to a caution by the courts and on a subsequent conviction to imprisonment for a term not exceeding six months.”)
663 Id.
664 Id. at 92
665 KALR, supra note 654 at 4-48 (citing § 125 of the Ugandan Penal Code).
666 Id. at 4-50 (citing § 134B).
670 Members of the Ugandan government have threatened to recommence the war between the government and the Lord’s Resistance Army (LRA) in the event that a peace agreement is not signed by the LRA by
by and against the warring factions in the Ugandan conflicts were sex crimes on a massive and well-organized scale. As of the time this article was written, there has yet to be a legal vehicle allowing for the prosecution of government or rebel actors known to have committed sexual crimes. Many of the remaining rebel forces are associated with forces in the Sudan, making it politically and practically dangerous to deploy Ugandan state troops in any situation in the Sudan. Further, the impunity with which sex crimes during the conflict have been treated – despite the terms of its criminal law – suggests that sex crimes are not taken as seriously as the law intended them to be. This knowledge in turn informs society in general – and members of the military in particular – that such crimes are not likely to be punished. This can be seen in the civilian population in the form of the massive problem with rape and sexual harassment experienced by Ugandan students at the hands of their teachers. Additionally, male rape is and had been used as a means of interrogation in Uganda.

_Ukraine_

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


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


Sivakumaran, supra note 622.

The Criminal Code of the Ukraine does recognize the crime of “smuggling, fictitious business activity, frauds with financial resources.” There is no crime of marital rape in the Ukraine. The crime of rape is defined as “sexual intercourse combined with violence, threats of violence, or by taking advantage of the victim’s helpless condition.” Punishment for rape depends on the age of the victim, number of assailants, and other statutory factors. Many rape victims in the Ukraine do not report their rapes because of fear of law enforcement. A Ukrainian citizen who commits acts which are violations of the Penal Code of the Ukraine is subject to trial in the Ukraine under applicable law. There are acts which punish same-sex rape as a crime and which punish sexual relations with children. Child prostitution is a crime in the Ukraine. The Ukraine is in the second tier watch list of the US human trafficking assessments in 2007. There are no refugee camps located within the Ukrainian borders.

United Kingdom

676 Id.
678 Mutus, supra note 266.
679 PENAL CODE OF THE UKRAINE CH. IV § 152.
680 Id.
681 See generally BIRYKOV AND SHYOKOVA, supra note 678.
683 Id. § 153, Violent Unnatural gratification of sexual desire.
684 Id.
686 Id. §§ 155 (sexual intercourse with a sexually immature person), 156 (debauchery of minors).
The United Kingdom maintains an all-volunteer military structure, with entrance eligibility for those aged sixteen to thirty-three. In the event that a soldier is charged with rape overseas, he is subject to court-martial jurisdiction. Under the provisions of the Armed Forces Act, it is illegal for a member of the British Armed Forces to act with “conduct prejudicial to good order and discipline.” It is also illegal for a member of the Armed Forces to engage in “disgraceful conduct of a cruel or indecent kind.” All members of the British Armed Forces are liable to punishment under the civilian criminal law and the Armed Forces Act for crimes which are illegal under the criminal laws of England and Wales. Members of the military who commit sexual offenses that are or would be crimes under the laws of England and Wales are subject to mandatory military sentences as well and civilian penalties.

The crime of rape under English law is defined as the intentional and non-consensual penetration of the orifice of a man or woman by a man where the perpetrator does not believe that the victim has consented. A rapist may be sentenced to a term of

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690 ARMED FORCES ACT OF 2006 § 19 (“a person subject to the service law commits an offense if he does an act that is prejudicial to good order and service discipline. . . .A person guilty of an offence under this section is liable to any punishment . . . not to exceed two years.”).
691 Id. § 23 (“A person subject to the service law commits an offence if – a) he does an act which is cruel or indecent; and b) his doing do is disgraceful.”).
692 Id. § 42.
693 Id. §§ 220, 222, 223.
694 SEXUAL OFFENCES ACT OF 2003 § 1 (“A person (A) commits an offence if— (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis, (b) B does not consent to the penetration, and (c) A does not reasonably believe that B consents. (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents. (3) Sections 75 and 76 apply to an offence under this section. (4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.”). Prior to 2003, the English rape law was defined as “A man commits rape if – a) he has sexual intercourse with a person who at the time of the intercourse does not consent to it; and b) at the time he knows that the person does not consent to the
up to life in prison if convicted of rape under this law. Other relevant crimes include sexual assault, “causing a person to engage in sexual activity without consent,” sexual crimes against children – for which there is a separate chapter of the Sexual Offences Act defining crimes and penalties - offenses related to child prostitution, and trafficking into, out of, and within the United Kingdom “for sexual exploitation.” The Sexual Offences Act makes its provisions applicable to British citizens abroad provided that the activities which are alleged to be criminal were crimes both in the jurisdiction in which they were committed and in the United Kingdom.

The United Kingdom is in the first tier of the US human trafficking assessments in 2007. There are no refugee camps located within the borders of the United Kingdom.

intercourse or is reckless as to the whether the person consents to it.” See Criminal Justice Order 2003/1247 Pt. IV art. 18.

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

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

698 Id. §§ 5 – 24.
699 Id. §§ 47 – 56.
700 Id. §§ 57 – 60.
701 Id. § 72.
**United States**

The US military is entirely volunteer except that all males must register eligibility at age eighteen. The primary issue involving a US soldier committing abuses while on peacekeeping missions was a Staff Sergeant who was sentenced to life in prison by a military court for raping and murdering a young girl in Kosovo. Under the provisions of the United States Uniform Code of Military Justice, which would be applicable to US peacekeepers when deployed, there are specific crimes of “child abuse,” rape, “carnal knowledge,” and “conduct unbecoming an officer and a gentleman.”

The US is in the second tier of the US human trafficking assessments in 2007. There are refugee camps located within the borders of the United States.

**Uruguay**

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705 See Carol Rosenberg, Soldier Probed on Sex Abuse in Haiti, New York Times (Nov. 6, 2000).


707 Id. § 843.

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

709 Id. § 920(b) (“Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a person - (1) who is not that person’s spouse; and (2) who has not attained the age of sixteen years; is guilty of carnal knowledge and shall be punished as a court-martial may direct.”).

710 Id. § 933 (“any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial shall direct.”).


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

A rapist in Uruguay may avoid punishment by agreeing to marry his victim. Rape in Uruguay can be committed against persons of either sex or the same sex as the rapist. The crime is defined as causing the victim to engage in a sexual act which the victim would not otherwise have consented to through the use of violence or threats. Child prostitution is a crime in Uruguay. Uruguay is in the second tier of the US

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714 See ARCENEAUX, supra note 250 at 184 – 221.
716 Id. at 177.
718 Ogletree and de-Alwis, supra note 290.
719 CODIGO PENAL DEL URUGUAY ART. 272.
720 Id.
human trafficking assessments in 2007.\textsuperscript{722} There are no refugee camps located within Uruguay’s borders.\textsuperscript{723}

\section*{PART V – GENERAL TRENDS IN LEGAL AND SOCIO-LEGAL STRUCTURES OF AFFECTED SENDING STATES}

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

\textsuperscript{722} \textsc{Uruguay, Tier Placements, Trafficking in Persons Report 2007, United States Department of State, available at} \url{http://www.state.gov/g/tip/rls/tiprpt/2007/82802.htm} (last visited Jan. 2, 2008).

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

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

As a final note, these categories have been constructed based on information
regarding the sending states themselves and not the host states to which peacekeepers
have been deployed. There is some scholarship which imputes a great deal of
peacekeeper misconduct to the conditions of the host state because the sense of
lawlessness and compromised laws and mores during and after conflict are viewed as
empowering of bad behavior.\footnote{\textsuperscript{724} In the author’s view, the atmosphere of the host state is
important in that it creates a sense of desperation in which women and young girls are
more willing to offer themselves as prostitutes in order to survive. However, it is the
author’s belief that the atmosphere of the host state is irrelevant to the propensity of
peacekeepers from a particular sending state to commit bad acts because these
peacekeepers’ understandings of their ability to do these acts are informed by the legal
and socio-legal structures of their home state. This is supported by the broad swathe of
UN missions through which sexual and other misconduct by peacekeepers from the same
sending states have committed sexual and other abuses.}

\textit{1. Infrequent Offenders}

\footnote{\textsuperscript{724} Kent, \textit{supra} note 3 at 51 – 55; \textit{MUST BOYS BE BOYS?}, supra note 38.}
This category features predominantly developed states which are members of NATO and which have a long history of providing support to UN peacekeeping missions. In all of these systems, military law places a premium on obedience and order and, in some cases, defines crimes relating to sexual violence as specific crimes punishable under military law. Other states have military laws which would allow members of the military to be tried in civilian courts for such crimes. The provisions of the military laws in these states are actively enforced and those who have been accused of sexual misconduct while on peacekeeping missions have principally been disciplined with a variety of punishments, depending on the severity of the allegations. Situations where there are allegations made and no convictions are typically substantiated by a lack of evidence, which is certainly possible given the dismal state of UN investigatory procedures and the reluctance of victims to come forward in time to preserve evidence necessary to sustain sexual convictions. In these states, the military serves an important function but is not involved in politics or enforcing the rule of law. The military is largely viewed as a separate function, subject to governmental oversight, and does not act against its own people in all but very rare instances. These states also share a sense of internal military security in that, although many of them are actively involved in fighting terrorist threats, they are not involved in fighting an active insurgency or other intranational conflict.

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725 The states in this category are: Austria, Belgium, Canada, France, Ireland, Italy, the Netherlands, the United Kingdom and the United States.
726 See supra Part IV.
727 See supra Part IV.
728 See supra Part IV.
729 See supra Part IV.
730 See supra Part IV.
731 See supra Part IV.
732 See supra Part IV.
The penal laws of the states in this category are strictly written to reflect the criminal nature of sexual violence and exploitation. These laws reflect more accurately the societal norms of the state and, in turn, frame the concepts of society viz a viz crimes of sexual violence and the need to protect the victims. The legal systems of these states are marked by transparency in the law drafting and legislative process. Indeed, the human rights groups and media outlets within the UK and the US were among the first to bring revelations of peacekeeper sexual abuse to the forefront of public attention; when these stories were made public, society generally reacted with horror. This is in keeping with a legal structure which makes these acts punishable generally and which reflects a true socio-legal understanding that sexual violence – especially against the young and the vulnerable – is inexcusable.

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

In general, these states tend to be more secular in legal and socio-legal interaction between individuals and the legal system. Law is applied evenly across religions and identities. Overall, these states are at least estimated to be less involved in human trafficking than the states in other categories and have taken action to enact laws that penalize human trafficking, especially in regards to children. These states also tend to be heavily invested in the financial backing of UN peacekeeping, while at the same time

733 See supra Part IV.
734 See supra Part IV.
735 See supra Part IV.
736 See supra Part IV.
737 See supra Part IV.
738 See supra Part IV.
their militaries do not realize a financial benefit from participation in peacekeeping missions.\textsuperscript{739}

2. \textit{Frequent/Chronic Offenders with a Legal/Socio-Legal Gap.}

These states – often some of the largest contributors to a particular peacekeeping mission or to the UN peacekeeping system overall – have been the subject of a greater number of sexual misconduct and other allegations throughout the recent history of UN peacekeeping missions.\textsuperscript{740} The term “recent history” is used here because this issue was not raised as a substantive and discussed problem until the early 1990s. Generally, these states share several political and historical realities, which, in the view of the author, tend to inform the way in which law works when applied to the military. These states tend to be newer states in the international system, and many of them were created as the result of internal conflict of some type.\textsuperscript{741} In almost all of these states, internal security is viewed as a critical concern to the continuation of the nation because of threats from rebel groups, insurgents, and those groups which would challenge the government and its structure in a variety of ways.\textsuperscript{742} With the exception of the recent protesters in Pakistan, the groups which pose a threat to the governments of these states – and, often, these states themselves – are also armed and the states have been involved in prolonged states of war (official or unofficial) with these groups for years.\textsuperscript{743} In the course of fighting these intrastate conflicts, the governments of the states in these categories have relied heavily on the use of their militaries against the people of the state, with the frequent result of

\begin{footnotesize}
\begin{itemize}
\item[739] See supra Part IV.
\item[740] The states in this category are: Bangladesh, Brazil, Bulgaria, Ethiopia, India, Jordan, Morocco, Nigeria, Pakistan, Senegal, Slovakia, South Africa, Sri Lanka, Tunisia, Uganda, the Ukraine, and Uruguay.
\item[741] See supra Part IV.
\item[742] See supra Part IV.
\item[743] See supra Part IV.
\end{itemize}
\end{footnotesize}
human rights violations against civilians that often tend to involve sexual violence and that certainly dehumanize those who are not regarded as “loyal.” 744 Sadly, the governments of states in this category have used rape as a tool against those suspected of conspiring against the state within and without the military context. 745 Many of these states have also sponsored or been the victims of child soldiers. 746 It should also be noted that some of these states have been or are home to UN peacekeeping missions themselves. 747

The military laws of these states are either strict sounding, vague, or difficult to obtain. 748 Where military laws regarding troop – and therefore peacekeeper – conduct are available, they are silent on crimes of sexual violence overall and the most serious charge applicable to an errant peacekeeper under them would be a version of conduct unbecoming an officer or a similar crime. 749 Many would allow a member of the military to be tried civilly for crimes of sexual violence, particularly rape, although, as will be discussed below, this is not necessarily an improvement or method of assisting the victim. Generally, through either their military or penal laws, these states do make troops subject to domestic law for crimes committed abroad. 750 However, at both the military and civilian jurisdiction level, the burden of proof and witness requirements used in these states would make it extremely difficult to successfully prosecute an errant peacekeeper if the state wanted to do so. 751

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744 See supra Part IV.
745 See supra Part IV.
746 See supra Part IV.
747 See supra Part IV.
748 See supra Part IV.
749 See supra Part IV.
750 See supra Part IV.
751 See supra Part IV.
The penal laws of these states tend to be deceptive, which is why they are placed in this category. On the face of these laws, it would be easy to discount the role of penal law in creating a legal/socio-legal structure which makes troops from these states more likely to commit sexual and other misconduct as peacekeepers. Although some of the rape laws might not be as progressive in terms of who can be a rape victim and the elements required to prove the crime, on their face the rape statutes enacted by these states seem to be at least protective of women.\textsuperscript{752} One glaring exception to this rule would, of course, be that many of these states do not criminalize martial rape and recognize it as an absolute defense.\textsuperscript{753} The plethora of laws criminalizing various forms of sexual interaction between adults and minors of the same and different sexes would again appear to offer protection to the children of these states and to reflect an overall societal belief structure which finds such contact abhorrent.\textsuperscript{754} The frequency with which these states have enacted anti-child prostitution legislation again seems to indicate that the protection of children, especially girls, in society is a top priority of law and society.\textsuperscript{755} However, as demonstrated above, to fully understand the impact of these laws on society, and vice versa, it is necessary to look beyond their face.

In practice, these laws are more often than not meaningless to the victims of sexual violence. Many of these states are religiously based or conservative states and societies, in which the victim of a sexual crime is regarded as damaged or otherwise outcast from society.\textsuperscript{756} Indeed, several of these states have an endemic problem with honor killings of rape victims as well as women who are merely suspected of having a

\textsuperscript{752} See supra Part IV.
\textsuperscript{753} See supra Part IV.
\textsuperscript{754} See supra Part IV.
\textsuperscript{755} See supra Part IV.
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conversation with a man.\textsuperscript{757} Although such killings are theoretically illegal, efforts to stop them have been sharply rebuffed.\textsuperscript{758} These states have a nearly uniform quality of devaluing women as members of society and, in many, a rapist is rarely viewed as a criminal for his crimes.\textsuperscript{759} In the event that a protest is made, the rapist may escape criminal punishment by paying a fine to the victim’s family or, in some states, agreeing to marry the victim.\textsuperscript{760} Despite the legal structures extant in these states, it is still accepted in parts of them to allow the rape of a female member of a family for a perceived slight done to another family.\textsuperscript{761} These states also use rape as a form of punishment and retribution against suspected anti-government groups and forces although their laws make such acts a crime.\textsuperscript{762} In practice, trafficking rates for women and girls in these states are high, and many of them are involved in more than one stage of the trafficking cycle.\textsuperscript{763}

Several of these states also have parallel court systems in that certain matters are heard by a governmental court and others are heard by a Shari’ a court.\textsuperscript{764} This creates an unequal sense of justice in that the secular and religious courts are often allowed to apply different standards, some of which might reflect the custom of a particular area but do not reflect the tenets of the national law.\textsuperscript{765}

Six of these states – Bangladesh, Ethiopia, Nigeria, Pakistan, Sri Lanka and Uganda – the equivalent of one third of the states in the category, have organized refugee

\textsuperscript{757} See supra Part IV.
\textsuperscript{758} See supra Part IV.
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\textsuperscript{763} See supra Part IV.
\textsuperscript{764} See supra Part IV.
\textsuperscript{765} See supra Part IV.
camps located within their borders.\textsuperscript{766} This does not suggest anything significant for the legal or socio-legal structures of states in this category per se although, as will be seen in category three, refugees do pose an additional way to evaluate a sending state’s propensities.

3. \textit{Frequent/Chronic Offenders with Little Law.}

The states in this category are states which share the majority of the political, historical, and societal traits as the states in category two but differ from these states in that their legal regimes are either non-transparent and were not available for thus study or evince a fundamental lack of primacy for issues regarding sexual violence.\textsuperscript{767}

The states for which little legal information was available share traits in that they are dependent on their militaries to fight rebel groups.\textsuperscript{768} As such, the international community and human rights groups have assessed the actions of these militaries in relation to the civilian populations of these states and have found that human rights violations are the norm.\textsuperscript{769}

Five of the eight states in this category – Benin, Ghana, Guinea, Nepal and Togo – have organized refugee camps within their borders.\textsuperscript{770} Interestingly, many of the refugees currently housed in Benin are from Togo.\textsuperscript{771} Unlike in the other two categories, where there was little to no use of refugee camps, it is the author’s belief that the presence of refugee camps in sixty-three percent of the states in category three is a significant predictor for the behavior of peacekeepers deployed by these countries. This

\textsuperscript{766} See supra Part IV.
\textsuperscript{767} The states in this category are: Benin, Ghana, Guinea, Indonesia, Nepal, Niger, Togo and the Russian Federation.
\textsuperscript{768} See supra Part IV.
\textsuperscript{769} See supra Part IV.
\textsuperscript{770} See supra Part IV.
\textsuperscript{771} See supra Part IV. Benin.
belief stems from the fact that refugees tend to be among the most marginalized members of society, particularly when they are kept in camps, which creates a separate understanding as to their role in the host state and, frequently, the humanity of the refugees themselves. These camps are also under separate governance and are often viewed as sources of trouble, especially in resource starved states such as those in category three which host refugee populations in camps. As such, the author would argue that the presence of refugee camps within a state can dehumanize the population of the camp and, in so doing, create in the minds of society the idea that residents of refugee camps per se are not human. This is an important consideration in conjunction with the other legal and socio-legal issues attributed to states in category three.

States which are described as having little law are states in which the definition of rape and other sexual crimes, even facially, is outdated or reflects a legal understanding that these crimes are not of primary importance to society. Available information on the societal beliefs and priorities in these states supports the idea that, rather than having a gap between law and application as in category two, the laws of these states do reflect the socio-legal systems which are most prevalent.

PART VI – SUGGESTIONS

Throughout the years, and especially since the Zeid report, there have been many suggestions for ways to reform UN peacekeeping. The steps implemented by the UN to address sexual and other misconduct by peacekeepers sound lofty but, in reality, have not been effective. The more concrete and legally important suggestions in the Zeid report have not been adopted into any type of legally meaningful resolution by the UN. At the

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772 See supra Part IV.
773 See supra Part IV.
same time, the UN Security Council has become repolarized over a variety of issues from Iraq to Kosovo and shows no sign of becoming any less political in the future. Therefore, the below suggestions for taking the information presented in this article and using it to the benefit of host states, sending states, and the UN peacekeeping operation in general, removes the UN Security Council from the immediate equation and recenters it on the states with the most financial investment in the UN peacekeeping apparatus.

Perhaps the easiest criticism of the below suggestions is that they would, facially, reduce the number of states eligible to contribute peacekeepers to UN missions at a time when the UN is continually expanding the number of authorized peacekeeping missions. If the emphasis of peacekeeping is solely on sending a mass of people to conflict-prone areas, then this criticism is valid, although undermined by the UN’s inability to fulfill its own mandate to create the African Union/United Nations Hybrid Operation in Darfur (UNAMID). Considering that peacekeepers are universally denied the right to use force except in the most dire situation of self-protection, the argument of quantity over quality is rather ineffective, however, in that more peacekeeping troops cannot, under the current rules of engagement, guarantee a safer population. If, however, the goal of UN peacekeeping is to send a force to alleviate the suffering of civilians and to enforce ceasefire or other terms as an honest broker, then quality of troops being sent should be far more important that sheer quantity.

1. **Create a Screening Body for Sending States.**

   Although the substantive power of the UN lies in the UN Security Council and its five permanent members, the UN would not exist as such without the funding of its member states. This is particularly true in the area of peacekeeping operations, which
have only risen in costs each year.\textsuperscript{774} Within donor states, there is a clearly pronounced group of states which have and currently do provide the bulk of the funding necessary for peacekeeping operations to continue, namely the United States (26.7%), Japan (19.5%), Germany (8.7%), the United Kingdom (7.4%) and France (7.3%).\textsuperscript{775} Together, these five states contribute just under 70% of the annual budget for UN peacekeeping operations.\textsuperscript{776} As such, they are given the most responsibility for maintaining the peacekeeping structure and for the accountability of UN peacekeeping.

The author’s suggestion is that the UN create a screening body for sending states prior to the deployment of their troops on peacekeeping missions. This body would be comprised of a designated military and legal representative from each of the top five financing states. It would be tasked with evaluating the military and legal structures of each potential sending state to ensure that 1) adequate military law provisions exist to punish errant peacekeepers; 2) that the military in question has not been involved in gross violations of human rights, particularly in regard to sexual violence; 3) that the sending state’s internal system is such that it can spare troops to serve as peacekeepers; 4) that the military is instructed on the legal consequences of sexual violence while deployed on a peacekeeping mission; and 5) that the domestic legal and socio-legal system recognizes sexual violence as a legitimate crime and does not create a situation where a peacekeeper could commit an act of sexual violence with impunity in the eyes of the civil state. Learning from the issues associated with the veto powers granted to the UN Security Council, it would only be necessary for a potential sending state to receive three of five

\textsuperscript{774} See ANNUAL REVIEW OF GLOBAL PEACE OPERATIONS 2007, CENTER ON INTERNATIONAL COOPERATION 172 (2007).
\textsuperscript{775} Id. at 171.
\textsuperscript{776} See id.
votes to be authorized to send peacekeepers. However, states which send peacekeepers who behaved badly would have their ability to send further peacekeepers suspended for at least three years and would have to undergo a stringent review before being authorized to send peacekeepers in the future. Subsequent violations by peacekeepers would render a state permanently unable to send troops on peacekeeping missions. All states, including those currently contributing peacekeepers, would be required to undergo a review by this body. Further, states would be reevaluated every five years and in the event that domestic situations warranted. Should the top five sources of funding change, seats on the screening body would change accordingly but the rules and function of the body would stay the same.

Further, this body would be authorized to have an office at each UN mission established or subsequently authorized in order to monitor the conduct of the peacekeeping operation itself and allegations of abuse. This body would also have a component that would be charged with implementing the victim’s assistance service recommended by the Zeid report at each mission. The body would have the right to seek compensation from the sending state in the event that it spirited away the peacekeeper before he could be called to account or refuses to cooperate with the investigation.

2. **Require AIDS testing.**

The UN has consistently refused to require sending states to test their troops for HIV/AIDS prior to their deployment on peacekeeping missions, citing its opposition to

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For example, it is recommended that such a panel investigate and take appropriate action regarding plans for a Rwandan general who has been implicated by several groups in genocidal acts during the Rwandan conflict to be a deputy commander of the UNAMID military mission.
any type of discrimination based on a person’s HIV/AIDS status.\footnote{See supra Part III.} Opposition to such discrimination is laudable but, in the context of a peacekeeping mission is irresponsible for operational and humanitarian reasons. When it is accepted, as it is by the UN, that troops patronizing prostitutes is a given in any quasi-military environment, it is irresponsible to subject the local population to sexual contact with troops who are unaware of their HIV/AIDS status. This is especially true given the high HIV/AIDS infection rates among particularly recidivist sexual offender states such as South Africa and Nigeria.\footnote{See supra Part II.} As history has proven, the higher incidents of HIV/AIDS rates in areas where peacekeepers have been stationed demonstrate that the UN’s stance is deadly to the local population and must be revised.

In addition to creating the body discussed in Part V. 1, the author strongly suggests that the UN institute a policy of mandatory HIV/AIDS testing before deployment and every six months thereafter. This is necessary because, in the event of isolated incidences of sexual contact between UN peacekeepers and the local population, it is incumbent on the UN to protect the local population and this protection starts with testing peacekeepers in the hopes that the results will inspire responsibility in them.

\textbf{PART VI – CONCLUSION}

There is no easy way to discuss rape, prostitution, or any of the other sexual crimes discussed in this article, just as there is no way to comprehend the idea that these and other acts have been and are perpetrated by UN peacekeepers against vulnerable victims of conflict and tragedy. Discomfort and taboos will not, however, make the issues
raised in this article disappear and, indeed, can be seen as having perpetuated them in the first place. Just as the discomfort over the idea of discussing sexual violence must be subsumed to the larger good, so must the idea that the UN cannot criticize its member states or deny the requests of any member state to participate in a peacekeeping operation.

This article has suggested that with peacekeeping reform, as with charity, it is necessary to begin at home. By demonstrating categories of sending states with errant peacekeepers and the reasons for these categories, this article has proven that the UN must do more than simply repatriate errant peacekeepers or request that member states agree to prosecute errant peacekeepers. It must look deeper into the laws and societies of its members to determine which members are in the position to offer victims of conflict peace and not further suffering. It must accept the idea that refusing a state’s request to send peacekeeping troops can actually benefit the state – which would then have an impetus to correct the behavior which earned it the declination – as well as the local population and the UN peacekeeping apparatus itself. It must also accept the need to move past the Security Council on this issue and to allow those states who provide the bulk of peacekeeping funds to decide which states can represent them and the institution. And it must accept that, on balance, the rights of those whom peacekeepers are sent to protect trump the rights of those who may or may not be carriers of HIV/AIDS.

As the incidents of devastating conflicts around the world rise, the UN must also rise to self-police itself and its members in a meaningful manner which allows its peacekeepers to be as welcomed and revered when they leave a mission as they were when they arrived at a mission. Without this status, the UN peacekeeping apparatus will
lose its legitimacy and, with it, the opportunity to preserve the peace which the UN itself was created to maintain. It is only when the issues addressed in this article are addressed and settled in reality that the UN peacekeeping forces can rightfully assume the role of preserving peace rather than prostituting it.