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No turning back – full implementation of women’s human rights now!

10 year review and appraisal of the Beijing Declaration and Platform for Action

I. INTRODUCTION

At the Fourth United Nations (UN) World Conference on Women in September 1995 in Beijing, China, delegates from 189 countries committed themselves to upholding the equal rights and inherent dignity of women through the adoption of the Beijing Declaration. The declaration called on governments to implement measures to eliminate discrimination and violence against women and girls, recognized women’s rights as human rights; and within that context, women’s right to control all aspects of their health, and demanded that governments fulfil their responsibilities to respect women’s human rights under international human rights and humanitarian law.

The delegates also adopted the more detailed Beijing Platform for Action, which reaffirmed the fundamental principle set forth in the Vienna Declaration and Programme of Action¹ that the human rights of women are an inalienable, integral and indivisible part of universal human rights and aimed to promote and protect the full enjoyment of all human rights and fundamental freedoms of all women throughout their life cycle.² Built on the Convention on the Elimination of All Forms of Discrimination against Women (1979) and the Nairobi Forward-looking Strategies for the Advancement of Women (1985),³ and organized around 12 Critical Areas of Concern,⁴ the Beijing Platform for Action set strategic objectives and called for action by governments, intergovernmental organizations and other institutions to promote and protect women’s human rights and to achieve “the empowerment of all women”.

¹ The World Conference on Human Rights took place in Vienna in 1993.

² Beijing Platform for Action, Mission Statement.

³ The Nairobi Forward-looking Strategies for the Advancement of Women were the result of a World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, held in Kenya in 1985.

⁴ The 12 Critical Areas of Concern of the Beijing Platform For Action are: Women and poverty; education and training of women; women and health; violence against women; women and armed conflict; women and the economy; women in power and decision-making; institutional mechanisms for the advancement of women; women’s human rights; women and the media; women and the environment; and the girl child.

Beijing +5

In June 2000, the UN General Assembly convened in Special Session to review the progress achieved and remaining obstacles to implementation of the Beijing Declaration and Beijing Platform for Action. The Special Session of the General Assembly, *Women 2000: Gender Equality, Development and Peace for the Twenty-First Century* (referred to as “Beijing +5”), adopted an Outcome Document, reaffirming governments’ commitment to both the Beijing Declaration and Beijing Platform for Action and calling for further action and initiatives for implementation.⁵ However, Amnesty International (AI) and other NGOs were dismayed at the rollback of progress made on women’s human rights, including in other international forums, such as the World Conference on Human Rights, by the Special Session. Some states challenged the basic premise that women’s rights are human rights, questioned the responsibility of states to protect the human rights of women, and succeeded in removing references to human rights treaties from the outcome document for the session.⁶

The unfavourable political climate for women’s rights which has continued to prevail was further illustrated by the fact that, at its 47th session in March 2003, the UN Commission on the Status of Women (CSW)⁷ failed for the first time in its 47-year history to reach consensus on all the recommendations before it.⁸ After lengthy negotiations, a group of states, including the US, blocked the adoption of recommendations on the issue of violence against women.⁹

Beijing +10

The 49th session of the CSW, 28 February - 11 March 2005, will undertake a review and appraisal of the Beijing Declaration and Beijing Platform for Action and the 2000 Outcome Document, focusing on implementation at the national level. The Division for the Advancement of Women will prepare a report on states’ implementation based on responses by governments to a questionnaire, national action plans to implement the Beijing Declaration and Beijing Platform for Action, and reports by states parties to the Convention on the Elimination of All Forms of Discrimination against Women.

The decade since the Fourth UN World Conference on Women has seen significant progress in the area of women’s human rights. Acts of violence against women, including rape, have been recognized as gross violations or abuses of international human rights and humanitarian law and as international crimes. Landmark judgements of the international tribunals set up to prosecute crimes committed in the conflicts in the former Yugoslavia and Rwanda, as well as the historic adoption of the Rome Statute of the International Criminal Court in 1998, have underscored the gravity of rape and other crimes of sexual violence.

International understanding is also growing regarding the importance of including women and their experiences in peacekeeping processes and post-conflict reconstruction efforts. In 2000, the Security Council adopted a ground-breaking resolution on women, peace and security linking the maintenance of international peace and security to the need for full and equal participation of women in all levels of decision-making before, during and after conflict.¹⁰

⁵ Resolution S-23/2 on Further actions and initiatives to implement the Beijing Declaration and Platform for Action, 10 June 2000.

⁶ *Beijing +5: No going back on women’s human rights* (AI Index: ACT 77/008/2000), 5 June 2000, and *Beijing Plus Five -- Not Minus Five!* (AI Index: ACT 77/010/2000), 9 June 2000.

⁷ The CSW is responsible for monitoring the implementation of the Beijing Platform for Action. Each year its annual session is preceded by expert group meetings on one or more critical areas chosen for scrutiny that year, and the panel’s findings are reported at the annual meeting. The CSW then tries to reach consensus and adopt agreed conclusions on these issues.

⁸ “Commission on Status of Women Fails to Adopt Draft Agreed conclusions on Violence Against Women, as it Closes Forty-Seventh Session”, UN press release WOM/1400.

⁹ Countries such as Iran, Egypt or Sudan disagreed with the inclusion of a recommendation calling for states to “condemn violence against women and refrain from invoking any custom, tradition or religious consideration to avoid their obligations” under the Declaration on the Elimination of Violence against Women.

¹⁰ Security Council resolution 1325 (2000) on women, peace and security.

However, despite these significant advances in the protection of women's human rights, assisted by the efforts of women's groups, human rights groups, and other NGOs to campaign for respect for women's human rights and to expose violations of these, the ten years since the adoption of the Beijing Declaration and Beijing Platform for Action has seen violence against women continue unabated, both in the context of armed conflict and in their own homes. Violence against women continues not least because the perpetrators are rarely brought to justice. AI is taking the opportunity of the review and appraisal to highlight some of the areas where governments have yet to fulfil their promises as outlined in the Beijing Platform for Action. Much remains to be done to give effect in law, policy and practice to these commitments, and AI hopes that the review by the CSW will concentrate on meeting this challenge. AI is also calling on the CSW to establish a mandate for a Special Rapporteur on discriminatory law.

Amnesty International's Campaign to Stop Violence Against Women

Launched in 2004, AI's campaign highlights the continuum of violence against women,¹¹ from birth to death, in times of peace and times of war, at the hands of the state and the family. It emphasizes the need for preventative measures, as well as the need to bring the perpetrators to justice, and provide remedy and reparation to survivors and, in conflict or post-conflict situations, to promote women's role in peace and other reconciliation processes. AI places the fight against gender-based violence within the human rights framework, and considers that such violence is caused by discrimination and the inequality of women in society. AI emphasizes the obligation of governments to exercise due diligence to prevent, investigate and punish all acts of violence against women, including through ensuring adequate access to justice, timely and effective protection, fair compensation, and measures to help overcome their experience of abuse.

Scope and purpose of this report

While the Beijing Platform for Action highlights 12 areas of 'particular urgency as priorities for action' by governments, the international community and civil society, AI focuses in this report on just four of these: Violence against women, Women and armed conflict, Women and health, and Women's human rights. Drawing on research and action undertaken as part of AI's campaign, which has included a particular focus on violence against women in conflict and the health dimensions of gender-based violence, this report highlights the yawning gap between the commitments made ten years ago in Beijing and the continuing practice of states across the globe. At the end of the report, AI makes a number of recommendations to governments and others, as relevant, to promote and protect women's human rights, within the four areas which are the focus of this report.

II. CRITICAL AREA OF CONCERN: VIOLENCE AGAINST WOMEN

Women face discrimination and violence at the hands of the state, the community and the family. Rape and sexual abuse by relatives, other men, security officials or armed combatants are inflicted on millions of women and girls every year. Violence against women is not confined to any particular political or economic system, but is prevalent in every society in the world and cuts across boundaries of wealth, race and culture. The underlying cause of violence against women lies in the discrimination that denies women equality of rights with men. Violence both derives from discrimination and serves to reinforce it. In some countries, the state enforces gender-based violence against women and discrimination is written into the law; in others the laws are inadequate; and even where the laws are not discriminatory, the practices of government authorities, agencies, police and prosecutors often foster discrimination and violence against women.

¹¹ AI uses the term "women" to include women of all ages, including girls.

The Beijing Platform for Action calls on governments to take integrated measures to prevent and eliminate violence against women, to study the causes and consequences of violence against women, and to eliminate trafficking in women and assist victims of violence due to prostitution and trafficking. Governments are called upon to exercise due diligence to prevent, investigate and punish acts of violence,¹² and to enact and periodically review domestic legislation to punish violence against women wherever it occurs.¹³ Governments must provide women with access to justice in a safe and confidential environment,¹⁴ and to provide shelters and support to women and girls subjected to violence.¹⁵

Some women are at particular risk of violence by virtue of a multiplicity of factors such as discrimination on the basis not only of their gender, but also their race, ethnicity, nationality, religion, sexual orientation, class, caste, health status (particularly HIV status), status as indigenous peoples, language, age, poverty, gender identity or expression and physical or mental ability. These discriminations intersect, forcing many women into situations of multiple marginalization.¹⁶ AI has documented cases in *Canada* which show that indigenous women remain at risk of violence because they are indigenous women, and that Canadian police often fail to provide indigenous women with an adequate protection. The social and economic marginalisation of this group of women has left them even more vulnerable to attacks by men.¹⁷

A recent case in the *United States* also drew attention to the consequences of double discrimination for women who are also members of certain ethnic groups.¹⁸ A woman in California whose estranged husband beat and sexually assaulted her and their three children had appealed to the police more than 20 times in the 18 months before her death. Appeals to the police for assistance were ignored, rarely even documented, and no follow-up action was taken. Her family initiated a federal civil rights lawsuit, contending that she had been denied her constitutional rights by being denied equal protection under the law because she was a woman, a victim of violence in the family and also because she was the member of an ethnic minority.¹⁹ In Colombia, army-backed paramilitaries and guerrillas have violently attacked women they perceive to be lesbians, as well as gay men and anyone suspected of being HIV positive. There is complete impunity for homophobic “hate crimes”. AI has received reports of lesbians - or women believed to be lesbians - being raped, mutilated and murdered by armed groups.²⁰

Impunity for perpetrators of acts of violence against women

In spite of the lobbying efforts of women’s groups, human rights organizations, NGOs and other concerned parties, and in spite of positive developments in international law both to protect women and to provide them with remedy and reparation, violence against women continues unabated throughout the world, and the overwhelming majority of perpetrators enjoy complete impunity. Perhaps even more than in times of peace, survivors of violence during conflict face even greater barriers to justice. Women are often reluctant to bring complaints or testify for fear of further attacks or of being stigmatized, the perpetrators are often given licence to commit crimes of violence without

¹² Beijing Platform for Action, para. 124 (b).

¹³ *Ibid.*, paras. 124 (c), (d) (i), (o) and 126 (d).

¹⁴ *Ibid.*, paras. 124 (h) and (l).

¹⁵ *Ibid.*, para. 125 (a).

¹⁶ See *Report by the Special Rapporteur on violence against women to the Preparatory Committee on the subject of race, gender and violence against women (A/CONF.189/PC.3/5)*, 27 July 2001.

¹⁷ *Canada: Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada* (AI Index: AMR 20/001/2004), 4 October 2004.

¹⁸ *USA: “If I die, I want you to tell the world what happened to me”* (AI Index: AMR 51/001/2004), 5 March 2004.

¹⁹ In July 2000, the US Court of Appeals found that her constitutional rights to benefit from police protection in a non-discriminatory manner had been denied.

²⁰ *Colombia: “Scarred bodies, hidden crimes”: Sexual Violence Against Women in the Armed Conflict* (AI Index: AMR 23/040/2004), 13 October 2004.

fear of sanction and the administration of justice may itself have been destroyed or disabled by armed conflict.

The Beijing Platform for Action calls on governments to exercise due diligence to prevent, investigate and punish acts of violence against women;²¹ to enact and periodically review domestic legislation to punish and redress violence against women in the home, workplace, community and society.²² Governments are further called upon to develop and fund training programmes for judicial, medical, social, educational, police and immigration personnel to ensure fair treatment of women victims of violence.²³

In the course of its work, AI has documented countless cases of failure on the part of governments to prevent crimes of violence against women, and a distinct lack of will to adequately investigate such cases and bring the alleged perpetrators to justice.

Despite the prevalence of rape and other forms of sexual violence during the conflict in **Liberia**, not only has no one been prosecuted for these crimes but it also remains unclear if, how and when those responsible will be held criminally responsible and when reparations will be made to the thousands of women and girls who have been affected.²⁴ The National Transitional Government of Liberia (NTGL) currently has no policy to bring to justice the perpetrators of crimes against humanity, war crimes and other serious violations of international law and to provide full reparations to victims and their families. Neither has there been any expression of resolute commitment by the international community to end impunity for such crimes in Liberia.

International law prohibits amnesty for crimes such as genocide, crimes against humanity, war crimes and other serious violations of international law. AI has consistently opposed amnesties and similar measures of impunity which prevent the emergence of truth, a final judicial determination of guilt or innocence and full reparations to victims and their families. It is therefore a matter of deep concern to see a reference to a general amnesty in the Comprehensive Peace Agreement signed by the parties to the conflict and Liberian political parties in August 2003: *“The NTGL shall give consideration to a recommendation for general amnesty to all persons and parties engaged or involved in military activities during the Liberian civil conflict that is the subject of this Agreement”*. Such a recommendation for amnesty, if seriously considered and granted, is contrary to international law and runs directly counter to the will of the international community.

In **Mexico**, despite the success of local women and NGOs in drawing attention to violence against women in the state of Chihuahua, and subsequent federal government initiatives to combat such violence, new cases continue to be reported. Almost 400 women have been murdered in the state of Chihuahua since 1993; a third had been sexually assaulted prior to death. AI found that many of the women were abducted, held captive and subjected to humiliation, torture, and sexual violence, before being murdered. Local authorities have failed to put in place emergency response systems to reports of missing women or to carry out effective investigations into murders, but deny all charges of negligence.²⁵ AI documented unjustifiable delays in the initial investigations and a failure to follow up evidence and witness statements, as well as inadequate forensic examinations, and falsification of evidence. There have been only two convictions amongst the so-called serial murders, and until 2003 federal authorities declined to get involved in the investigations. While federal intervention in the

²¹ Beijing Platform for Action, para. 124 (b).

²² *Ibid.*, paras. 124 (c), (d), (i), (o) and 126(d).

²³ *Ibid.*, para. 124 (n).

²⁴ *Liberia: No impunity for rape - a crime against humanity and a war crime* (AI Index: AFR 34/017/2004), 14 December 2004.

²⁵ *Mexico: Intolerable killings - Ten years of abductions and murders of women in Ciudad Juárez and Chihuahua* (AI Index: AMR 41/026/2003), 11 August 2003.

state appears to have improved investigations into new cases, 18 women were reportedly murdered in Ciudad Juárez in 2004.

At the same time, in the states of Chiapas and Guerrero, despite the government's stated commitment to ensure those responsible for violence against women are held to account, members of the Mexican military responsible for the rape of at least nine indigenous women during the last 10 years continue to enjoy impunity.²⁶

Bosniak, Croat and Serb women who endured sexual violence during the armed conflict in *Bosnia-Herzegovina* in 1992-95 have still not attained justice.²⁷ During the conflict, crimes of sexual violence, including rape, were committed by armies and paramilitaries on all sides. Only a handful of those responsible have been brought to justice, despite vigorous campaigning by women's organizations. Prosecutions for rape and sexual enslavement as crimes against humanity did take place at the International Criminal Tribunal for the former Yugoslavia, but there have been almost no prosecutions for rape and other crimes of sexual violence before domestic courts in Bosnia-Herzegovina, denying most women access to justice, remedy and reparation.

During the armed conflict in *Solomon Islands* between 1998 and 2003, women and girls were subjected to gender-based violence, but have yet to see their cases prosecuted in court.²⁸ Even though complaints or reports of violence against women were filed, very few cases have led to a criminal prosecution. Some senior police and militant leaders are facing trial for serious human rights violations, including murder, rape and other forms of torture, but the justice system is not equipped to cope with the increase in its caseload. AI found evidence of cases where charges have not yet been filed, where police have yet to complete investigation files, or where legal procedures have not reached the trial stage. Transport and communication difficulties hamper police investigations and increase the reluctance of victims or witnesses to cooperate with the criminal justice system. Courts and police posts are often far from victims' villages, where the revival of customary violent reprisals and "compensation" payments to address grievances has further marginalized approaches to the formal justice system. In practice, in the few cases where prosecution has been successful, the perceived lack of seriousness of the crime has been reinforced by the lightness of the sentence. Prison sentences for rape are reportedly rarely longer than two to five years.

At every level of the criminal justice system in *Turkey*, the authorities fail to respond promptly or rigorously to women's complaints of rape, sexual assault or other violence within the family.²⁹ The police are reluctant to prevent and investigate family violence, including the violent deaths of women. The police force's own record of human rights violations makes victims of domestic violence reluctant to seek their help. Prosecutors refuse to open investigations into cases involving domestic violence or to order protective measures for women at risk from their family or community. The police and the courts do not ensure that men, who are served with court orders, including protection orders, comply with them. In most cases the authorities fail to ensure that the perpetrators of violence in the home are brought to justice in accordance with international standards for fair trial.

²⁶ *Mexico: Indigenous women and military injustice* (AI Index: AMR 41/033/2004), 23 November 2004. An investigation into the abductions, rape and murder of women and girls in Ciudad Juarez has recently been concluded by the Committee on the Elimination of Discrimination against Women and is the first to have taken place under Art 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. A summary of the findings and recommendations of the Committee on the Elimination of Discrimination against Women is to be published in the future (See A/59/38, part II).

²⁷ *Justice shelved – impunity for rape in Bosnia-Herzegovina* (AI Index: EUR 63/005/2004), 12 October 2004.

²⁸ *Solomon Islands: Women confronting violence* (AI Index: ASA 43/001/2004), 8 November 2004.

²⁹ *Turkey: Women confronting family violence* (AI Index: EUR 44/013/2004), 2 June 2004.

Access to justice for women impeded

Central to integrated strategies to prevent and eliminate violence against women is ensuring their access to justice. Yet an overwhelming number of women worldwide still do not have access to justice for the crimes committed against them. While women in many communities remain uninformed about their rights, many others are actively discouraged from reporting what has happened to them and face dire consequences if they do. Often where violence against women is most rampant, there are no meaningful, effective structures in place to ensure that the victims are able to assert their rights. In many cases women have nowhere to turn to for support or shelter, a vital platform from which to proceed on what will often be a long and ultimately ineffectual road to justice.

The Beijing Platform for Action calls on government to provide women who are subjected to violence with access to the mechanisms of justice and to just and effective remedies for the harm they have suffered.³⁰ It further urges governments to create or strengthen mechanisms for women to report acts of violence against them in a safe and confidential environment,³¹ and to provide shelters and relief programmes for women and girls subjected to violence.³²

The criminal justice system in *Afghanistan* is at present unable to protect women's right to life and physical integrity and itself exposes them to discrimination and the risk of abuse. AI found that many women are unaware of their rights under international law as well as under Afghan and *Shari'a* law, and that there is often a lack of support and legal information. In some areas of Afghanistan women are completely invisible, and where women do feature in the Afghan justice system it is most often because they are accused of "*zina*" crimes³³ through which women may be prosecuted for rape or other sexual violations committed against them. Those women who do overcome these powerful barriers and seek to access justice are unlikely to have their complaints considered or their rights defended.³⁴

In *Colombia*, during the 40-year armed conflict which has pitted the security forces and army-backed paramilitaries on the one hand against armed opposition groups on the other, AI found that women face tremendous obstacles to justice.³⁵ While some positive changes have been made as to how sexual crimes are treated under law, in practice these have little effect on women under threat from such violence. The authorities continue to discourage women from pursuing complaints, and women who find the courage to make claims are isolated and interviewed without legal or emotional support.

AI has found that in *Solomon Islands* and other parts of the Southwest Pacific many women do not file complaints, either because they have no opportunity to do so, or because they are worried about the consequences.³⁶ Male relatives actively discouraged many women from reporting rape to the police, or from cooperating with prosecutors to ensure perpetrators face trial. During much of the conflict, basic conditions for a functioning criminal justice system were rarely met, including the safety of victims and witnesses to report crimes to the police - who themselves lacked basic resources like transport and communication - and magistrates and courts that operate free from intimidation. The Solomon Islands government announced plans in 2003 for the establishment of three counselling centres for torture and trauma victims, including rape survivors, but as of November 2004, these plans had yet to be implemented.

³⁰ Beijing Platform for Action, para. 124 (h).

³¹ *Ibid*, para. 124 (l).

³² *Ibid*, para. 125 (a).

³³ Unlawful sexual intercourse including adultery and rape.

³⁴ *Afghanistan: "No one listens to us and no one treats us as human beings": Justice denied to women* (AI Index: ASA 11/023/2003), 6 October 2003.

³⁵ *Colombia: "Scarred bodies, hidden crimes": Sexual Violence Against Women in the Armed Conflict* (AI Index: AMR 23/040/2004), 13 October 2004.

³⁶ *Solomon Islands: Women confronting violence* (AI Index: ASA 43/001/2004), 8 November 2004.

There are many barriers facing women in *Turkey* who seek access to justice and protection from violence. Police officers often believe that their duty is to encourage women to return home and "make peace" and fail to investigate the women's complaints. Many women, particularly in rural areas, are unable to make formal complaints, because leaving their neighbourhoods subjects them to intense scrutiny, criticism and, in some cases, violence. Women in Kurdish and Arabic speaking areas of the country may not be able to communicate well in Turkish, and may fear further violence at the hands of the police or security forces. NGOs in Turkey cited a severe shortage of government-run shelters and support services currently available: approximately 14 "guesthouses" and 19 community-based services to support women living with violence at home.³⁷ AI is further concerned that the authorities are failing to ensure that women who have experienced violence have access to the full range of rights for reparation, including compensation for the criminal injuries they receive, rehabilitation, remedy and reparation.

Trafficking of women

Trafficking of women and girls for sexual exploitation and forced labour has been a common characteristic of conflict and post-conflict situations. In recent years, UN and other peacekeeping forces, as well as humanitarian aid workers, have been implicated in trafficking.

The Beijing Platform for Action calls on governments to address the root factors that encourage trafficking in women and girls for prostitution, forced marriage and forced labour;³⁸ to dismantle national, regional and international networks in international trafficking,³⁹ and to allocate resources to rehabilitate victims of trafficking.⁴⁰

Kosovo became a major destination country for women and girls trafficked into forced prostitution following the deployment in July 1999 of an international peacekeeping force (KFOR) and the establishment of the United Nations Interim Administration Mission in Kosovo (UNMIK) civilian administration.⁴¹ Women are trafficked into Kosovo predominantly from Albania, Moldova, Bulgaria and Ukraine. At the same time, increasing numbers of local women and girls are being internally trafficked, and trafficked out of Kosovo.

AI found that women and girls trafficked for the purposes of forced prostitution had been subjected to systematic abuses of their human rights, violating their rights to liberty and security, and in some cases, their right to life. Many of them had been vulnerable to trafficking because they had been denied access to education and employment and other social and economic rights. Women and girls have been imprisoned in locked rooms, their documents taken from them; threatened, coerced, beaten and raped to keep them in fear and dependant on their trafficker. AI considers that such conditions amount to torture, inhuman and degrading treatment. These women and girls had not only been exposed to human rights abuses at the hands of their traffickers, and the men who buy them for sex, but even when they managed to escape, they are often vulnerable to further violations by governments, police and judiciaries which fail to protect their rights to safety, justice and compensation.

Anti-trafficking legislation was introduced in January 2001 and incorporated in 2004 into the Criminal Code, which criminalizes those engaging in trafficking, and applies penalties of between two and 12 years' imprisonment.⁴² The legislation also addresses the issue of demand, criminalizing those who knowingly use or procure the services of a trafficked person, and includes measures to protect the

³⁷ *Turkey: Women confronting family violence* (AI Index: EUR 44/013/2004), 2 June 2004.

³⁸ Beijing Platform for Action, para. 130 (b).

³⁹ *Ibid.*, para. 130 (c).

⁴⁰ *Ibid.*, para. 130 (d).

⁴¹ *Kosovo (Serbia and Montenegro): "So does it mean that we have the rights?" Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo* (AI Index: EUR 70/010/2004), 6 May 2004.

⁴² UNMIK Regulation 2001/4, *On The Prohibition Of Trafficking In Persons In Kosovo*.

rights of trafficked women, including by providing that trafficked women and girls are not criminally responsible for charges of prostitution or illegal entry into Kosovo. Despite this provision, trafficked women are initially frequently arrested and prosecuted for border or status violations, or charged with prostitution offences.

Although women have been enabled to leave their situation as a result of UNMIK's anti-trafficking strategies, and the work of both international and domestic NGOs, AI remains concerned that three years after the introduction of the legislation, the number of bars and other premises where trafficked women and girls are believed to work in forced prostitution has remained remarkably consistent, with some 200 premises still listed at the end of 2004. The number of perpetrators brought to justice remains relatively low, and the few trafficked women prepared to testify in criminal proceedings are not provided with adequate witness protection.

Female Genital Mutilation

The Beijing Platform for Action calls on governments, in collaboration with non-governmental organizations, other organizations and international institutions to take measures to eliminate harmful, medically unnecessary or coercive medical interventions.⁴³

Female genital mutilation (FGM) is the term used to refer to the removal of all or part of the female genitalia in the absence of any medical necessity. At the Fourth World Conference on Women, governments acknowledged that FGM falls under the term "violence against women" as an "act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life".⁴⁴ In particular, it is characterized as "violence occurring in the family" that has physical, sexual and psychological aspects.⁴⁵

The effects of female genital mutilation are numerous and range from severe pain to death. Some of the immediate consequences of FGM include excessive bleeding which can result in death, shock due to bleeding and severe pain as well as infection when the procedure is performed in unhygienic conditions and using unsterilized instruments. There are also longer-term conditions that impair the normal functioning of biological organs. As such, FGM prevents women from attaining the highest standard of health.⁴⁶

According to information available to AI, FGM is practiced primarily in the following countries: Benin, Burkina Faso, Cameroon, Central Africa Republic, Chad, Côte d'Ivoire, Djibouti, DRC, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Tanzania, Togo, and Uganda. It is also practiced in India by members of the Muslim sect of the Daudi Bohra and is reported in some parts of Indonesia, Malaysia, Oman and Yemen. Aboriginal populations in Australia and Peru are also reported to practice a form of FGM. It is also increasingly practiced in Europe and Northern America. Fourteen of the countries where FGM is prevalent have laws against the practice, as do Australia, Belgium, Canada, Denmark, New Zealand, Norway, Spain, Sweden, UK and USA. However, the protection afforded by legislation can be limited for a number of reasons. Women and young girls are discouraged from denouncing relatives as they are afraid of the punishment their relatives would face. The number of cases brought forward before the actual operation is also limited as very few people are aware of the possibility of using the law for protective purposes. The FGM laws vary greatly: some

⁴³ Beijing Platform for Action, para. 124 (i).

⁴⁴ *Ibid.*, para. 113.

⁴⁵ *Ibid.*, para. 113 (a).

⁴⁶ For more information, see Amnesty International's report: *Female Genital Mutilation: beyond breaking the silence* (due for publication in March 2005).

do not define FGM, others explicitly prohibit health workers from performing the procedure and some criminalize the facilitation of FGM or failure/omission to report impending procedures.⁴⁷

III. CRITICAL AREA OF CONCERN: WOMEN AND ARMED CONFLICT

Under this critical area of concern of the Beijing Platform for Action, governments are called upon to protect women living in situations of armed and other conflicts or under foreign occupation;⁴⁸ to reduce the incidence of human rights abuse in conflict situations;⁴⁹ provide protection, assistance and training to refugee women and other displaced women;⁵⁰ and increase the participation of women in conflict resolution at decision-making levels.⁵¹ The six strategic objectives under this critical area of concern are firmly grounded in existing legally binding international human rights and humanitarian instruments.

AI has gathered evidence in recent years that shows that armed conflict reinforces and exacerbates existing patterns of discrimination and violence against women. In peacetime, discriminatory attitudes result in widespread acceptance of domestic violence, rape and other forms of sexual abuse against women, and in times of conflict all forms of violence increase, including rape and other forms of sexual violence against women.⁵² Gender-based discrimination and violence are not just incidental to armed conflict. They are often embedded in the language and rhetoric of conflict, integral to the conduct of war and endemic in the institutions waging it. Increased levels of domestic violence can also be one of the legacies of conflict. In the US, for example, soldiers and former soldiers figure disproportionately as perpetrators of violence against female family members. Within a six-week period in 2002, four women were killed by their husbands who were members of the Special Forces at the Fort Bragg military base in North Carolina. Three of the men had just returned from serving as special operations troops in Afghanistan.⁵³

Despite the efforts of women’s human rights defenders and women’s groups worldwide, which have resulted in significant achievements such as the establishment of international criminal tribunals empowered to prosecute crimes of violence against women, in practice impunity for acts of violence against women in conflict is still the norm. Many factors contribute to this: in some countries the laws are either not strong enough; in others they are ignored or wilfully misinterpreted to facilitate impunity. In some countries the authorities choose not to bring the alleged perpetrators to justice because they are too powerful.

Rape and sexual violence as tools of war

The use of rape as a weapon of war is perhaps the most notorious and brutal way in which conflict impacts on women. Rape is used to conquer, expel or control women and their communities in times of war or internal conflict. A form of gender-based torture, it is used to extract information, punish, intimidate and humiliate women and to strip them of their dignity. Rape is also sometimes used as a form of collective violence to drive people from their land.

The Beijing Platform for Action calls on governments and international and regional organizations to condemn the systematic practice of rape and other forms of inhuman or degrading treatment of women as an instrument of war and to ensure that full assistance is provided to the

⁴⁷ *Ibid.*

⁴⁸ Beijing Platform for Action, para. 142.

⁴⁹ *Ibid.*, paras. 144 (b) and 145 (e).

⁵⁰ *Ibid.*, paras. 147 (b), (c), (j), (l) and (n).

⁵¹ *Ibid.*, paras. 142 (a), (b) and 144 (c).

⁵² *Lives blown apart: Crimes against women in times of conflict* (AI Index: ACT 77/075/2004), 8 December 2004.

⁵³ *Ibid.*

victims of such abuse.⁵⁴ It further confirms that rape in the conduct of armed conflict constitutes a war crime, and in certain circumstances a crime against humanity and an act of genocide,⁵⁵ and calls on governments to investigate all such acts and bring the perpetrators to justice.⁵⁶

In *Liberia*, a Comprehensive Peace Agreement was concluded in August 2003 in Accra, Ghana, to end the internal armed conflict. Signed by all parties to the conflict – the former government of Liberia and the two armed opposition groups, the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) – it held out strong hopes not only for peace and rebuilding a devastated country, but also for an end to the crimes against humanity, war crimes and other serious violations of international law perpetrated against the Liberian people during the conflict. Among the most serious crimes were widespread and systematic rape and other forms of sexual violence against women and girls, which increased dramatically in early 2003 as fighting worsened and spread to parts of the country previously unaffected by conflict. Women and girls were seized, raped, abducted, forcibly recruited to fight and subjected to sexual slavery.⁵⁷ Information gathered by AI as well as by other international and national non-governmental organizations demonstrates clearly that rape and other forms of sexual violence were perpetrated against thousands of women and girls by forces of the former government, the LURD and the MODEL.

In the *Solomon Islands*, a large number of mostly Malaitan women and girls were raped on Guadalcanal Island in militant attacks during the initial conflict years 1998-2000, apparently in part because this was seen as a particularly hard-hitting humiliation of the enemy. Malaitan men were well known to respond with particular outrage to any sexual assault against their sisters, daughters or wives. While many women were assaulted because of their membership of a particular community, others were singled out for allegedly harbouring relatives who were militants. Data collected by AI in Guadalcanal reveals that women and girls suffered a high rate of sexual violence, often repeatedly, at the hands of opposing armed groups and police officers.

In *Sudan*, perpetrators of rape and other forms of sexual violence continue to enjoy impunity. Many of the human rights violations which took place in Darfur, including killing of civilians, widespread rape and mass forced displacement by the Sudanese army and members of government-supported militias, had happened over many years of past conflict in the south and the Nuba mountains. The evidence of large-scale rape and sexual violence in Darfur was at first vehemently denied by the Sudanese government and later admitted only as a few individual cases which had taken place in armed conflict.

Impunity for gross human rights violations is deeply entrenched in the country. According to Article 149 of the Sudanese Penal Code, rape (defined as sexual intercourse with any person without his/her consent) is a crime punishable by a hundred lashes and up to ten years imprisonment; or, if on a married person, by death. However, it is often very difficult to prove that rape has taken place. Proper medical examinations are hardly ever carried out and even when the perpetrator is known cases are rarely registered by the police or followed up. In the majority of cases reported to the police or the judiciary, complainants are told that no action can be taken because "the perpetrators are unknown". The penal code also contains provisions prohibiting abduction, kidnapping and forced labour. But hardly any members of the *Janjawid* or the armed forces are known to have been convicted on a charge of abduction or rape.⁵⁸

⁵⁴ Beijing Platform for Action, para. 145 (c).

⁵⁵ *Ibid*, para. 145 (d).

⁵⁶ *Ibid*, paras. 145 (d) and (e).

⁵⁷ *Liberia: No impunity for rape - a crime against humanity and a war crime* (AI Index: AFR 34/017/2004), 14 December 2004.

⁵⁸ *Sudan: Darfur: Rape as a weapon of war: sexual violence and its consequences* (AI Index: AFR 54/076/2004), 19 July 2004.

Attacks on civilians by all armed groups in *Colombia* have included rape, sexual abuse and sexual mutilation. The testimonies of survivors indicate that most such atrocities are committed by paramilitary groups. Over the past ten years, there has been an increase in the number of reported attacks on civilians involving sexual violence in order to punish them for their perceived collaboration with armed opposition groups, to generate terror, or to force whole communities to flee a particular area of military or economic interest. Women and girls are also killed because they are related to or have emotional ties with people who are considered by the armed groups to be military targets. Surveillance is regularly carried out on women and teenage girls to ensure compliance, and rape is sometimes used to punish them and to warn the female population. Women are at particular risk of rape in detention or during house searches and kidnappings. The authorities responsible for investigating such crimes do not usually carry out the necessary procedures to establish whether the victims were sexually abused. Even when there is evidence of sexual mutilation, it is generally not recorded.

Failure to protect internally displaced and refugee women

Women and children form the majority of the millions of refugees and displaced people fleeing situation of conflict, exposing themselves to heightened risk of sexual violence, including rape. Forced to abandon their homes and coping with the absence of male relatives, they are often the main providers of food and shelter for their children. Even when they reach camps for internally displaced people or refugees, material assistance may be minimal and distributed in ways that discriminate against women. In such circumstances, women and girls are extremely vulnerable to sexual exploitation. Camps for refugees and internally displaced people are often planned and administered in such a way that women living there face discrimination and continued risk of sexual abuse.

The Beijing Platform for Action calls on governments and intergovernmental and non-governmental organizations to ensure the protection of the safety of refugee and internally displaced women,⁵⁹ including protection of their individual human rights;⁶⁰ to ensure the right of refugee and internally displaced women to safe and voluntary return or resettlement, while observing the principle of *non-refoulement*;⁶¹ and to ensure that women are fully involved in the planning, design, implementation, monitoring and evaluation of programmes providing assistance to refugee and internally displaced women, including in the management of camps.⁶²

In *Sudan*, AI found that there are not enough trained medical workers to identify and treat survivors of rape in Darfur, and medical facilities are not adequately equipped to treat sexually transmitted diseases. In addition, until recently there was a legal requirement that all cases of rape be reported to the police before medical workers were allowed to give survivors treatment. However, because of distrust in the police and fear of stigmatization, many women are reluctant to file complaints of rape with the police. A decree issued by the Minister of Justice on 21 August 2004 removed the requirement thus enabling victims of rape to obtain immediate medical attention. However, in October 2004, when AI delegates visited Darfur, many among the police, judiciary and hospital staff did not seem to know about this decree, which means that it has had only limited effect.⁶³

⁵⁹ Beijing Platform for Action, para. 147 (c).

⁶⁰ *Ibid.*, para. 147 (k).

⁶¹ *Ibid.*, para. 147 (d).

⁶² *Ibid.*, para. 147 (a).

⁶³ *Sudan: Darfur: Rape as a weapon of war: sexual violence and its consequences* (AI Index: AFR 54/076/2004), 19 July 2004.

IV. CRITICAL AREA OF CONCERN: WOMEN AND HEALTH

Both the Beijing Platform for Action and the Cairo Program of Action, adopted at the International Conference on Population and Development in 1994,⁶⁴ affirm that health, including sexual and reproductive health, is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.⁶⁵ Under this Critical Area of Concern, governments are required to develop programmes and train health workers to care for women and girls who have experienced any form of violence, including sexual abuse resulting from armed conflict; to increase women's access to appropriate, affordable and quality health care, information and related services; and to undertake gender-sensitive initiatives that address sexually transmitted diseases, HIV/AIDS, and other sexual and reproductive health issues.⁶⁶

Women's sexual and reproductive rights

Sexual and reproductive rights embrace human rights that are already recognized in national laws and international human rights standards, and rest on the recognition of the right of all women to have control over and decide freely and responsibly on matters related to their sexuality.⁶⁷ They include the basic right of all couples and individuals to make decisions concerning reproduction free of discrimination, coercion and violence, including deciding freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.⁶⁸

The epidemic of violence against women is also a major barrier preventing them from enjoying their sexual and reproductive rights. As well as causing physical suffering to women, such violence has a profound impact on women's psychological well-being, on their sexual and reproductive health and on the well-being and security of their families and communities. The impact and trauma of rape and other sexual violence extends far beyond the attack itself. Being publicly identified as a rape victim can severely damage a woman's status within her community and she may be reluctant to talk about what has happened to her for fear of ridicule and rejection. Lack of access to adequate sexual and reproductive health care services further compounds the impact of rape, especially when a woman becomes pregnant as a result of having been raped.

Specifically, the Beijing Platform for Action calls on governments, in collaboration with non-governmental organizations and other international or national partners, to ensure and support better access to sexual and reproductive healthcare, information and services,⁶⁹ including access to adequate and reliable information and services for women with unwanted pregnancies – including safe abortion where it is legal and quality post-abortion services – while giving priority to the prevention of unwanted pregnancies;⁷⁰ to recognize and deal with unsafe abortion as a major health concern;⁷¹ to support research on safe, acceptable and quality methods and technologies for the reproductive and sexual health of women and men;⁷² to provide and support education and information on sexual and reproductive health issues, including programs specifically designed for young people and male;⁷³ to

⁶⁴ A/CONF.171/13/Rev.1, Cairo, 5-13 September 1994.

⁶⁵ Beijing Platform for Action, paras. 89 and 94.

⁶⁶ Beijing Platform for Action, paras. 106 and 108.

⁶⁷ Beijing Platform for Action para. 96.

⁶⁸ Beijing Platform for Action para. 95.

⁶⁹ Beijing Platform for Action, paras. 106(e), (i), 108(m) and 110(a),

⁷⁰ *Ibid.*, para. 106(k).

⁷¹ *Ibid.*, paras. 106(j) and 109(i).

⁷² *Ibid.*, para. 109(h).

⁷³ *Ibid.*, paras. 107(e), (g), 108(k), (l) and 111(b).

promote educational programs to foster mutual respect in matters concerning sexuality and fertility.⁷⁴

In the **DRC**, women who become pregnant after being raped sometimes lose their lives as a result of complications at birth, due to the absence of adequate and accessible health services. Young female rape survivors, whose bodies are not sufficiently developed to bear children, are particularly vulnerable. Abortion is illegal in the DRC except in cases of certified medical emergencies; however, this exception does not include cases of pregnancy as a result of rape. Many women and young girls therefore seek abortions outside the formal health system with the help of traditional "doctors" or "midwives", often in dangerously unhygienic conditions and using unsafe practices and equipment.⁷⁵

Many forms of violence against women arise from coercive policies and practices aimed at controlling women's reproductive autonomy. In **China**, some women are forced to terminate their pregnancy. In one case reported to AI, a woman who was facing the death penalty on drugs charges was reportedly forced to undergo an abortion in police custody in February 2004, apparently so that she could be "legally" put to death, as the imposition of the death penalty against pregnant women is illegal in China. She had not realized she was pregnant until she had undergone a routine medical examination, and reportedly wanted to continue with the pregnancy. Her trial, which began in July, was suspended when her lawyer presented an "operation consent form" to the court, signed by a police officer from the Chengguan police station in Lanzhou where she was being held, which stated that the abortion was performed under general anaesthetic, and that "[b]ecause the patient was uncooperative, Chengguan substation director requested forced implementation." She was sentenced to life imprisonment when her trial was reconvened in November.⁷⁶

AI has also raised concerns with the authorities in **Slovakia** regarding reports that Romani women were sterilized without their informed consent. Two official investigations into these allegations found no evidence of wrongdoing, but AI is concerned that the investigations were not conducted independently, thoroughly and impartially, as required by international law.⁷⁷

The Special Rapporteur on violence against women has stated: "Forced abortions, forced contraception, coerced pregnancy and unsafe abortions each constitute violations of a woman's physical integrity and security of person. In cases, where, for instance, government officials utilize physical force and/or detain women in order to force them to undergo these procedures, these practices may amount to torture and cruel, inhuman and degrading treatment."⁷⁸ In its General Recommendation 19 on Violence against Women, the Committee on the Elimination of Discrimination against Women recommends that states "ensure that measures are taken to prevent coercion in regard to fertility and reproduction", and that women "are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control".⁷⁹

Access to health services impeded

Many countries' health policies fail to protect and support women's sexual and reproductive health and rights. For example, in **Colombia**, most reproductive health services are provided by private institutions whose services are not free, leaving women in poor communities and internally displaced women at a particular disadvantage. Public institutions that do exist do not provide survivors of

⁷⁴ *Ibid.*, para. 107(a).

⁷⁵ *Democratic Republic of Congo: Mass rape - time for remedies* (AI Index: AFR 62/018/2004), 26 October 2004.

⁷⁶ *People's Republic of China: Fear of imminent execution* (AI Index: ASA 17/043/2004), 26 August 2004.

⁷⁷ *Medical Action: Allegations of illegal sterilization of Romani women, Slovak Republic* (AI Index: EUR 72/004/2003), 22 September 2003.

⁷⁸ *Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum, Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women* (E/CN.4/1999/68/Add.4), 21 January 1999, paragraph 45.

⁷⁹ *General Recommendation 19 on violence against women* (A/47/38), 29 January 1992, paragraph 24(m).

sexual violence with free services, including emergency contraception. Health workers are often specifically targeted by armed groups because they are seen as “helping the enemy”.⁸⁰

Impact on women of HIV and AIDS

Women face a number of gender-specific circumstances which increase their risk of HIV infection. They are exposed to sexual violence and coerced sex inside and outside marriage, as well as to traditional practices such as female genital mutilation, early marriage, and wife inheritance. Many women lack information about and access to HIV prevention measures and to healthcare, as well as to support and medication after infection.

The Beijing Platform for Action calls on governments to ensure that women affected by HIV/AIDS are involved in all decisions related to the development, implementation, monitoring and evaluation of policies and programmes on HIV/AIDS; to review and amend laws and practices that contribute to women's susceptibility to HIV infection; and to ensure universal access to appropriate and affordable preventive services with respect to HIV/AIDS.⁸¹

Women in *Swaziland* face longstanding legal discrimination, for instance in the area of property rights, as well as public acceptance of gender-based violence, making them vulnerable to both sexual violence and HIV infections resulting from coercive sexual relations. Their access to police services and health care is also hampered by lack of reliable and affordable transport to distant treatment facilities, and lack of financial resources to pay for treatment. Rates of HIV infection are soaring in Swaziland and the majority of the infected are young women.⁸²

V. CRITICAL AREA OF CONCERN: WOMEN'S HUMAN RIGHTS

In the Beijing Platform for Action, member states committed themselves to working towards the ratification and implementation of international and regional human rights treaties to promote and protect women's human rights.⁸³ The principle of non-discrimination on the grounds of sex is embodied in international instruments, from the Charter of the UN through to the Bill of Rights.⁸⁴ With the adoption of the Convention on the Elimination of All Forms of Discrimination against Women in 1979, states finally codified their obligation to end discrimination against women in public life, family life, and in customs and social life in one treaty.

Convention on the Elimination of All Forms of Discrimination against Women

In the last ten years, many states have ratified the Convention on the Elimination of All Forms of Discrimination against Women bringing the total number of states parties to 179 and making this treaty second only to the Convention on the Rights of the Child in terms of universal acceptance.⁸⁵ The twelve states which have yet to ratify the Convention on the Elimination of All Forms of Discrimination against Women are: Brunei Darussalam, Cook Islands, Marshall Islands, Nauru, Niue, Oman, Palau, Qatar, Somalia, Sudan, Tonga and the US (which has signed but not ratified).

⁸⁰ *Colombia: “Scarred bodies, hidden crimes”*: Sexual Violence Against Women in the Armed Conflict (AI Index: AMR 23/040/2004), 13 October 2004.

⁸¹ Beijing Platform for Action, para. 108 (a).

⁸² *Swaziland: Human rights at risk in a climate of political and legal uncertainty* (AI Index: AFR 55/004/2004), 29 July 2004.

⁸³ Beijing Platform for Action, para. 203 (a).

⁸⁴ The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights collectively are referred to as the Bill of Rights.

⁸⁵ Only Somalia and the US have yet to ratify the Convention on the Rights of the Child.

Contrary to Article 28 of the Convention on the Elimination of All Forms of Discrimination against Women, several states parties have ratified the treaty with declarations or reservations which run contrary to the spirit and purpose of the treaty, thereby limiting the extent to which the fundamental human rights of women are enjoyed. The Beijing Declaration and Platform for Action emphasized that it is necessary to avoid resorting to reservations, as far as possible, stressing that "unless the human rights of women, as defined by international human rights instruments, are fully recognized and effectively protected, applied, implemented and enforced in national law as well as in national practice in family, civil, penal, labour and commercial codes and administrative rules and regulations, they will exist in name only". The Committee on the Elimination of Discrimination against Women has incorporated into its reporting guidelines a request for information concerning reservations, including the reasons why the state party has entered them, the impact of reservations on the lives of women, and the exact interpretation of the reservations. States have committed themselves to limiting the extent of any reservation, ensuring that none are incompatible with the treaty and regularly reviewing reservations with a view to withdrawing them.

States which have ratified the Convention on the Elimination of All Forms of Discrimination against Women undertake to take legislative, administrative and practical measures to eliminate discrimination against women, in order to enable women to enjoy civil and political, as well as economic, social and cultural rights, as embodied in the treaty. They undertake to submit reports to the Committee on the Elimination of Discrimination against Women, at least every four years. The review of a state party report provides an opportunity for national-level review of implementation and the identification of obstacles which impede the enjoyment of the rights protected by the Convention on the Elimination of All Forms of Discrimination against Women. The outcome of these reviews, as contained in the concluding comments of the Committee on the Elimination of Discrimination against Women, provide an important benchmark for measuring present compliance and future progress for the state party, civil society and different UN actors seeking to integrate them into country-based initiatives. However, many states are evading scrutiny by the Committee on the Elimination of Discrimination against Women because of their failure to submit their periodic reports. Currently, 113 states parties have at least one report which is overdue, of which 53 states have reports which are more than five years overdue.⁸⁶

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

The entry into force of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2000 has offered a direct means for women and those advocating for their rights to seek remedy and reparations at the international level for violations of their rights under the Convention on the Elimination of All Forms of Discrimination against Women. Significantly, the Optional Protocol provides for an individual complaints procedure that individuals, other than the victims themselves, and organizations including NGOs can access. In addition, the Optional Protocol encompasses an inquiry procedure which allows the Committee on the Elimination of Discrimination against Women to undertake investigations of grave or systematic violations of women's human rights. The Committee on the Elimination of Discrimination against Women has already undertaken one on-site mission in response to such allegations.⁸⁷ Sixty-two states have ratified the Optional Protocol so far.

National legislation that discriminates against women

The Outcome Document of the Special Session of the UN General Assembly in June 2000 acknowledged achievements in a number of countries through legal reforms prohibiting all forms of

⁸⁶ See *Report of the Secretary-General on the status of submission of reports by states parties under Article 18 of the Convention* (CEDAW/C/2004/II/2), 27 May 2004.

⁸⁷ *Report of the Committee on the Elimination of Discrimination against Women (A/59/38)*, 18 March 2004. Note that the report contains information about the Committee's decision in respect of one communication submitted under the Optional Protocol.

discrimination against women. These included the removal of discriminatory provisions in civil, penal and personal status laws governing marriage and family relations, women’s property and ownership rights and women’s political, work and employment rights. Steps had also been taken to create an enabling environment for women’s enjoyment of their human rights, including through the adoption of policy measures, the improvement of enforcement and monitoring mechanisms and the implementation of legal literacy and awareness campaigns.⁸⁸

However, the five year review also highlighted that discriminatory legislation, along with harmful traditional and customary practices and negative stereotyping of women, still persisted in many countries. Some laws remain “silent” on the need to uphold equality in rights between men and women. Gaps between laws and its enforcement and implementation perpetuate *de jure* as well as *de facto* discrimination against women. For example, in *Lebanon*, according to the Penal Code, a man who kills his wife or other female relative may receive a reduced sentence if he can demonstrate that he committed the crime in response to a socially unacceptable sexual relationship conducted by the victim.⁸⁹ Laws prohibiting discrimination against women are rendered ineffective by women’s illiteracy, and their lack of information and legal literacy. In violation of their duty to protect, respect and fulfil women’s human rights, states fail to allocate adequate resources to facilitate women’s access to laws and to provide adequate training in women’s human rights to law enforcement agents and the judiciary.

Together with other NGOs, AI calls on the CSW to create a mandate for a Special Rapporteur on laws that discriminate against women to facilitate further implementation of States’ commitments to eliminate discrimination. This mechanism would engage in direct dialogue with member states, promote the exchange between states of information and best practice, and undertake independent assessments of national legislations and periodic reports to the Committee on the Elimination of Discrimination against Women.⁹⁰

VI. RECOMMENDATIONS

On the occasion of the review and appraisal in March 2005 of the Beijing Declaration and Platform for Action and the 2000 Outcome Document, Amnesty International calls on governments and other relevant actors to:

- Fully reaffirm the commitments to respect women’s human rights as expressed in the Beijing Declaration, Platform for Action, and 2000 Outcome Document;
- Ensure full and prompt implementation at the national level of these commitments, in particular in the areas of Women’s human rights, Violence against women, Women and armed conflict, and Women and health;
- Establish a clear link between the Beijing Declaration, Platform for Action, and 2000 Outcome Document, and the Millennium Declaration and Millennium Development Goals, by ensuring implementation of these commitments within a human rights framework;
- Establish a mandate for a Special Rapporteur of the Commission on the Status of Women on laws that discriminate against women.

⁸⁸ Resolution S-23/2 on Further actions and initiatives to implement the Beijing Declaration and Platform for Action, 10 June 2000, para. 26.

⁸⁹ *Stop Violence Against Women: “It’s in our hands”*, Chapter 7 (ACT 77/001/2004), 5 March 2004.

⁹⁰ Preliminary Proposal for a Special Rapporteur on Laws that Discriminate Against Women – November 2004, EQUALITY NOW.

In addition to these general recommendations, AI makes below a number of specific recommendations in relation to four of the Critical Areas of Concern of the Beijing Platform for Action. In particular, the organization makes the following recommendations to governments, all parties to armed conflict, intergovernmental organizations, non-governmental organizations and civil society, as relevant:

CRITICAL AREA OF CONCERN: VIOLENCE AGAINST WOMEN

Amnesty International calls on all governments, intergovernmental organizations, non-governmental organizations and civil society, as relevant, to fully reaffirm the commitments made under this Critical Area of Concern, and to ensure full and prompt implementation at the national level; in particular the organization calls on governments and others, as relevant, to:

Protection of women from acts of violence

- Exercise due diligence to prevent, investigate and punish all acts of violence against women, including by enacting, reinforcing or amending national legislation to end discrimination against women and protect their human rights in accordance with relevant international standards;
- Make violence against women, including rape and other forms of sexual violence, a crime in national law and enforce its full and prompt implementation in all cases;

Ending impunity for violence against women

- Carry out prompt and gender-sensitive investigations into all allegations of violence against women, including rape and other forms of sexual violence, and bring to justice those responsible in accordance with international standards for fair trial and without recourse to the death penalty;
- Ensure access to justice for women who have been subjected to violence, including rape and other forms of sexual abuse, in a manner that addresses the special needs of women and guarantees their safety, dignity and privacy;
- Suspend from duty anyone implicated in violence against women, including rape and other forms of sexual violence, pending investigation;
- Provide full reparation to victims of violence against women, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition;

Ending trafficking of women

- Acknowledge that states have a duty to respect and protect the rights of trafficked persons and must take all necessary measures to:
 - Prevent trafficking of women by ensuring the full enjoyment by women of their economic, social and cultural rights without discrimination and respecting the rights to freedom of movement and to seek and enjoy asylum;
 - Assist and protect trafficked women, in a manner that respects their dignity and privacy, and addresses their security, health and material needs. Such assistance shall be offered on a fully informed and consensual basis and shall not be conditioned on the agreement of the trafficked person to cooperate with law enforcement efforts against their traffickers. The principle of non-punishment of trafficked persons must be respected;
 - Undertake full and impartial investigations into all incidents of trafficking and bring to justice those responsible in accordance with international standards for fair trial and without recourse to the death penalty.

CRITICAL AREA OF CONCERN: WOMEN AND ARMED CONFLICT

Amnesty International calls on all governments, all parties to armed conflict, intergovernmental organizations, non-governmental organizations and civil society, as relevant, to fully reaffirm the

commitments made under this Critical Area of Concern, and to ensure full and prompt implementation at the national level; in particular the organization calls on governments and others, as relevant, to:

Protection of women from acts of violence

- Issue clear instructions to all combatants to end violence against women, including rape and other forms of sexual violence, and to ensure respect for women's human rights, as called for in Security Council resolution 1325 on women, peace and security, and as guaranteed in international human rights and humanitarian standards;
- Train all armed forces on the right to protection of civilians and combatants no longer participating in hostilities, including the prohibition of violence against women;
- Ensure that human rights components of peacekeeping operations be given explicit mandates and sufficient resources to investigate and report on human rights violations against women;
- Include women at all levels of decision-making in national, regional and international institutions and mechanisms for the prevention of conflict;

Protection of internally displaced and refugee women

- Ensure effective protection of refugee and displaced women from sexual and other exploitation, including by international humanitarian workers, and take into account the health and other needs of women;
- Involve women in the design, planning and running of all camps for refugees or internally displaced people and in repatriation and resettlement programmes;
- Ensure that asylum policies take into account persecution on the basis of gender, including the risk of sexual violence in armed conflict zones.

CRITICAL AREA OF CONCERN: WOMEN AND HEALTH

Amnesty International calls on all governments, intergovernmental organizations, non-governmental organizations and civil society, as relevant, to fully reaffirm the commitments made under this Critical Area of Concern, and to ensure full and prompt implementation at the national level; in particular the organization calls on governments and others, as relevant, to:

Protection of women's sexual and reproductive rights

- Promote and protect the sexual rights and reproductive rights of all women, including their right to have control over and decide freely and responsibly on matters related to their sexuality;
- Ensure access for all women to comprehensive and confidential sexual and reproductive health services;

Assistance to women affected by HIV and AIDS

- Ensure access to affordable anti-retroviral drugs and other appropriate health care for women and girls living with HIV/AIDS;
- Strengthen the prevention of HIV/AIDS by providing education to women and girls on health and sexuality, and by making available the means to prevent HIV/AIDS (e.g. condoms);
- Combat discrimination against women affected by HIV/AIDS and ensure respect for their privacy;
- Support the economic independence and empowerment of women affected by HIV/AIDS.

CRITICAL AREA OF CONCERN: WOMEN'S HUMAN RIGHTS

Amnesty International calls on all governments, intergovernmental organizations, non-governmental organizations and civil society, as relevant, to fully reaffirm the commitments made under this Critical Area of Concern, and to ensure full and prompt implementation at the national level; in particular the organization calls on governments and others, as relevant, to:

Ratification and implementation of international standards

- Ratify, without reservations, and implement through national legislation all standards relevant to the protection of women’s human rights, in particular the Convention on the Elimination of All Forms of Discrimination against Women, International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Rome Statute for the International Criminal Court, and the four Geneva Conventions and their additional Protocols;
- Ratify the Optional to the Protocol to the Convention on the Elimination of All Forms of Discrimination against Women without opting out of the inquiry procedure;
- Review any reservation to Convention on the Elimination of All Forms of Discrimination against Women to ensure that none are incompatible with the treaty, and set a timeframe for the withdrawal of such reservations;
- Submit all periodic reports on time and in accordance with reporting guidelines, including the requirement for information on measures taken to implement the Beijing Declaration and Platform for Action, and ensure inclusion of gender disaggregated information;
- Cooperate fully with the treaty monitoring bodies, including by implementing their concluding recommendations fully and without delay;

Abolishing discriminatory legislation

- Review national laws, policies, practices and procedures to ensure that they prohibit discrimination against women and ensure equality between men and women, in accordance with obligations under international law;
- Provide education for women and men to increase their legal literacy in order to eliminate gender-based discrimination;
- Establish a mandate for a Special Rapporteur of the Commission on the Status of Women on laws that discriminate against women.