

# **“Ending Violence Against Women”**

A Report on the Panel Discussion sponsored by the  
U.N. Office of the High Commissioner for Human Rights and  
the Bahá'í International Community  
during the 47<sup>th</sup> Session of the  
United Nations Commission on the Status of Women

Tuesday, 4 March 2003

1:15 — 2:45 P.M.

United Nations Conference Room 8, New York

Moderator: Bani Dugal Gujral, Principal Representative, Bahá'í International  
Community

Welcome: Mara Bustelo, Gender Focal Point, Office of the High Commissioner  
for Human Rights, Geneva

Speakers: Radhika Coomaraswamy, U.N. Special Rapporteur on Violence  
Against Women  
Hon. Jean Augustine, Secretary of State (Multiculturalism) (Status of  
Women), Canada  
Irena Lieberman, Director of Legal Services, Tahirih Justice Center  
Michael Penn, Psychologist and Associate Professor, Franklin &  
Marshall College

**Bani Dugal Gujral of the Bahá'í International Community** welcomed everyone and thanked the Office of the High Commissioner on Human Rights for co-sponsoring this panel discussion on Ending Violence Against Women. She welcomed and introduced Mara Bustelo from Geneva.

**Mara Bustelo is the Gender Coordinator at the Office of the United Nations High Commissioner for Human Rights.** Before taking up this post, she worked for the human rights treaty bodies, particularly the Committee on the Rights of the Child, between 1998 and 2001. She has worked extensively on child rights, on economic, social and cultural rights and on human rights in the European Union. She has a long-standing interest in women's rights and gender issues, having been for years part of the Office of the High Commissioner on Human Rights' gender team, and she has published research on the CEDAW Committee, so without further adieu, I'm going to turn to Mara who's going to make some introductory remarks.

### **Mara Bustelo's remarks:**

#### I. Welcome

On behalf of the Office of the High Commissioner for Human Rights, I would like to welcome all participants to this important discussion, and to thank Ms. Bani Dugal and the Bahá'í International Community for their co-sponsoring and organization of this event. Particular thanks go to all the distinguished panelists, whose knowledge and experience we are keen to learn from.

It is particularly rewarding to be holding this discussion this year, when we will celebrate the tenth anniversary of the 1993 Vienna World Conference on Human Rights, as well as the adoption by the General Assembly of the Declaration on the Elimination of Violence Against Women.

#### II. The Value of a Rights-based Approach

Let me just say, to introduce the subject, that there are some clear implications of combating violence against women squarely from a human rights perspective. The promotion and protection of all human rights is one of the best ways to eliminate violence against women. It introduces the concept of legal obligations and entitlements. Protection from violence is not just something that it would be nice for women to have, it is their right and an obligation for the State.

To combat violence against women, we must thus strengthen the rule of law: encourage universal ratification without reservations of the human rights treaties, and particularly the CEDAW Convention and its Optional Protocol, and ensure that there are appropriate legal, institutional and judicial frameworks in place so violence against women can be prevented, and redress provided for the victims.

We must also guarantee to every woman and every girl their right to education and to access to information. Not only so they can improve their chances of escaping poverty or violence but also because education – including human rights education – it vital to empower women to claim their own rights.

### III. The Work of the Human Rights System

Let me point out that, in addition to the crucial work of the Special Rapporteur of the Commission on Human Rights of Violence Against Women, its Causes and Consequences, whom you will hear from shortly, there are other activities of the U.N. human rights system which, like those conducted by other U.N. bodies – including the Division for the Advancement of Women and UNIFEM – can provide support to the crucial efforts to combat violence against women, which will always have to take place at national and local level. The work of the international system in monitoring, analysing and formulating recommendations on violence against women is there to support the activities of governments, national institutions, and particularly those of the many N.G.O.s that are at the forefront of the battle to improve prevention and protection against this plague.

The Commission on Human Rights, the thematic special procedures of the Commission and the human rights treaty bodies have all taken steps to address gender and women's rights issues in their human rights work.

1. The Commission on Human Rights (CHR) has adopted resolutions on women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing (2002/49), on traffic in women and girls (2002/51), on the elimination of violence against women (2002/52), and on integrating the human rights of women throughout the United Nations system (2002/50). These resolutions request the special procedures and other human rights mechanisms to take a gender perspective into account in the implementation of their mandates, to include in their reports information on, and qualitative analysis of, the human rights of women and girls, and to address within their mandates the problems of trafficking in women and girls and of violence against women.

2. One example of the work of other CHR Special Procedures is that of the Special Rapporteur on freedom of religion or belief, who, in his report to the Commission and the General Assembly devoted one section to women, drawing attention to the persistence of discrimination and acts of intolerance attributed to religion affecting women, fostered by both State and non-State organizations. The Special Rapporteur recommended the elaboration and adoption, by all the relevant mechanisms of the United Nations, of a plan of action against discrimination, and intolerance against women allegedly prescribed by religion or tradition, and recalled the recommendations made in his study on freedom of religion or belief and the status of women in the light of religion and traditions (see E/CN.4/2002/73/Add.2).

3. Another example is the Working Group on arbitrary detention. In its report to the Commission last year (E/CN.4/2002/77), the Working Group reported on the questions of recourse to detention as a means of protecting women and of keeping women in detention after the completion of their sentences. The Working Group recommended that "[r]ecourse to deprivation of liberty in order to protect victims must be reconsidered and, in any event, must be supervised by a judicial authority. This measure must be used only as a last resort and when the victims themselves desire it" (ibid., para. 61).

4. The Special Rapporteur on summary, arbitrary and extra judicial killings called attention to increasing reports of women being deliberately targeted and exposed to extra judicial killings, expressed deep concern about reports of the involvement of women in violence and about gender-based crimes and mentioned the considerable amount of information received regarding

traditional practices, particularly the so-called “honour killings”, targeting women in many countries. She noted that a comprehensive policy has to be drawn up to abolish practices that impinge upon the life of any person purely because of sexual distinction. She also acknowledged the efforts made by some Governments and judges in bringing the perpetrators of such violations to justice. (E/CN.4/2002/74)

5. Among the treaty bodies, CEDAW always addresses violence against women in its review of progress in implementation of the Convention. Increasing ratification of the Optional Protocol offers great hope for a particularly effective international mechanism in the future. I would like however to draw attention to the work of the other treaty bodies which are increasingly incorporating a gender analysis into their work. The Committee against Torture (CAT) increasingly raises issues specific to the human rights of women, most frequently with regard to allegations of rape and other forms of sexual abuse and ill-treatment of women in detention and in prisons, violence against women, particularly internally displaced women, and measures taken by States to combat trafficking.

6. The Committee on the Rights of the Child (CRC) continued in 2002 to raise systematically the issue of discrimination against girls in its concluding observations. The Committee continues to give special attention to the impact of traditional and cultural practices upon girls and women (particularly female genital mutilation and forced marriage).

7. The Committee on Economic, Social and Cultural Rights (CESCR) continues to deal with the human rights of women and girls and to adopt a gender perspective, particularly with regard to the right to protection of the family, including from domestic violence. At its twenty-ninth session, in November 2002, the Committee adopted General Comment No. 15 on the right to water (E/C.12/2002/11), which, inter alia, addresses the need for water facilities and services to be sensitive to gender requirements, for example with regard to ensuring that physical security is not threatened in accessing water services.

8. The Committee on the Elimination of Racial Discrimination (CERD) committed itself, in its General Recommendation XXV (adopted in 2000) to “take into account gender issues or factors which may be interlinked with racial discrimination”. General Recommendation XXIX on descent-based discrimination (adopted at the sixty-first session in August 2002) includes a section on multiple discrimination suffered by women from descent-based communities, with the Committee recommending that States parties “take all measures necessary in order to eliminate multiple discrimination, including descent-based discrimination against women, particularly in the areas of personal security, employment and education”.

9. The Human Rights Committee (HRC) continued to make progress in including gender-related and women’s rights issues in its work. The lists of issues prepared by the Committee’s country report task forces routinely include references to the failure to criminalize domestic violence and to female genital mutilation.

10. Our Office is committed to strengthening the integration of gender perspectives and women’s rights into all its activities. In July 2002, the Senior Policy Committee adopted a “Gender Mainstreaming Strategy” which builds upon initiatives undertaken in recent years. The Strategy emphasizes Office-wide commitment, consultation and accountability; the involvement and responsibility of staff and management; the establishment of institutional mechanisms; and

the importance of monitoring and evaluation. It seeks to address capacity-building for gender analysis from a human rights perspective.

11. Trafficking and related violations constitute a denial of basic human rights. To support a rights-based approach to anti-trafficking efforts OHCHR adopted in 2002, “Recommended Principles and Guidelines on Human Rights and Human Trafficking”, which identify core human rights principles and propose practical steps for their implementation.

12. OHCHR helped to plan activities aimed at supporting the work of the Afghan Independent Human Rights Commission, established in June 2002. A United Nations support project has been established jointly by the Office, the United Nations Assistance Mission in Afghanistan (UNAMA) and UNDP. Activities have been planned in consultation with Afghan women and include proposals to commission a study on women’s rights under Islamic law and in Afghan culture. UNAMA has conducted, in close collaboration with community leaders and Afghan authorities, investigations into cases of domestic violence, forced marriages, kidnapping of young girls by local commanders, attacks against girls’ schools in some parts of the country, and restrictions affecting women’s basic freedoms.

13. In Sierra Leone, OHCHR and the Human Rights Section of the United Nations Mission in Sierra Leone (UNAMSIL) supported a project undertaken by Physicians for Human Rights, which produced a report in January 2002 highlighting the disturbing and underreported pattern of violence and abuse against women during the conflict. The UNAMSIL Human Rights Section conducts training for police and civil society organizations on how to deal with the many violations of women’s rights and with the victims of sexual violence during the war, who continue to suffer from psychological trauma and physical injuries, unwanted babies, sexually transmitted diseases, including HIV/AIDS, and social ostracism. Support is also provided to women’s rights organizations conducting a survey of female genital mutilation and a campaign against domestic violence.

14. In Bosnia and Herzegovina, OHCHR has made gender and women’s rights the main focus of its support for human rights efforts undertaken by the Government, civil society and the international community. In 2002, the provision of expert advice to the Government and civil society emphasized trafficking in persons and domestic violence.

15. Integration of gender and women’s rights issues in the Durban Declaration and Programme of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance provides another example of the many ways in which human rights activities address violence against women.

#### IV. The Special Rapporteur

Above all, the Office of the High Commissioner for Human rights is proud of the work of Radhika Coomaraswamy, the SRVAW – her work has contributed very significantly to our shared objective of approaching violence against women from a human rights perspective. Her reports to the Commission on Human Rights on different thematic issues have added to our understanding and provided recommendations to work towards eliminating gender-based violence. Her fact-finding visits have addressed particular manifestations of the problem in countries where there are reports of serious violations and provided recommendations for action needed to ensure the rights of women.

In the last 9 years the Special Rapporteur has gathered information on violence against women and strategies to tackle the problem. She has reported on the issue and suggested remedies. Violence against women still takes place on a massive scale, and too often goes unreported and unpunished. But we have at least increased during this last decade our understanding and awareness, as well as commitment to its eradication.

Let us now hear all the panelists, so that we can benefit from reflections on their international, national, nongovernmental organization (NGO) and academic experience, shaped during the Special Rapporteur's highly productive and successful term of office.

**Bani Dugal Gujral then introduced Ms. Radhika Coomaraswamy, the United Nations Special Rapporteur on Violence Against Women.** Radhika Coomaraswamy is a graduate of the United Nations International School in New York, and received her B.A. from Yale University, her J.D. from Columbia University, an LL.M. from Harvard University and an honorary Ph.D. from Amherst College.

As United Nations Special Rapporteur on Violence Against Women, Ms. Coomaraswamy's reports to the United Nations Commission on Human Rights have documented her concerns on issues such as violence in the family, violence in the community, violence against women during armed conflict and the problem of international trafficking. She has made field trips on behalf of the United Nations to several countries, including Japan, Korea, Brazil, Poland, South Africa, Rwanda, the U.S., East Timor, Afghanistan, India, Nepal and Bangladesh, amongst many others.

Ms. Coomaraswamy is also the Director of the International Centre for Ethnic Studies in Colombo and a member of the Global Faculty of the New York University School of Law and teaches a summer course at Oxford University. She has published widely and is the author or co-author of several books. She has two forthcoming books, one called, "Born Free and Equal: Women's International Human Rights," and the other entitled, "Dharma and Conscience," a book on Sri Lanka's ethnic conflict.

Radhika Coomaraswamy has won many awards including The International Law Award of the American Bar Association, The Human Rights Award of the International Human Rights Law Group, The Bruno Kreisky Award of 2000 and The Leo Ettinger Human Rights prize of the University of Oslo.

**Radhika Coomaraswamy's remarks:**

I want to thank the Bahá'í International Community for having this session here and for inviting me to speak. Given the theme of the C.S.W., which is on women's human rights and violence against women, I have the honor of being requested by many groups to speak on these themes at different lunchtime panels, so I decided instead of being superficial and speaking about the same thing everywhere, that I would focus on a different theme at each panel, and I told the Bahá'í International Community that I would focus on the theme of trafficking today, which I think is an issue of great importance with regard to women's international human rights.

To begin the story of trafficking, I would just tell you of one of the girls that I interviewed in Nepal. Her name was Chamoli; at least that was the name we gave her to hide her identity. She was quite young and lived in a village outside Kathmandu and when she was about sixteen, a

young man approached her and they, so-called (at least *she* thought) fell in love, and he asked her to come away with him. So she eloped with him. He took her across the border to India. Where? Took her to the city of Puna where she was taken to a large house which had many women in it and then he disappeared. The house turned out to be a brothel. She was subject to an enormous amount of torture, both physical and mental, until she agreed to become a sex worker. After that she was taken to Bombay where she worked in Falkland Road, a place known for such activity, until finally she was rescued by a Nepalese NGO. During the time she was in Falkland Road, she was subject to a great deal of humiliation and indignities. It took her seven months in a government home in India until her papers were agreed to by the immigration authorities and she was sent across the border to Nepal. Finally, when we met her at this NGO, she was in an advanced state of having contracted HIV/AIDS and had only a few more months to live.

Now this kind of case is the classic case of trafficking: that which totally shocks our conscience, any of us in any part of the world; cases of sexual slavery, abuse and torture. These are the kinds of cases that make us all want to push for strong international conventions and now there is an Optional Protocol on Transnational Crime related to Trafficking, strong national laws that deal with organized crime and with special provisions relating to organized crime, that want us to push toward a sensitive police force which is not corruptible, a sensitive judiciary that actually convicts (in many parts of the world traffickers are not convicted), and support services for victims of these kinds of activities, and we want foreign missions and government agencies and NGOs to support them. I think in her case there would be no dissent.

But as I study trafficking in Nepal and in Poland I realize modern trafficking is also more complicated in the sense that it is an aspect to some extent of the globalization process. We find, as Saskia Sassen, the Economist, has pointed out, that globalization has a feminine side, which is that women have traditionally provided certain kinds of services in the home, whether it's domestic service or sexual services or any other services that were usually in the intimacy of the home which in time were provided for money in the community. And now there is an international market for domestic service, for sexual service and an international migration of women across borders. What we find is often in the modern world, people want to migrate. When we actually talk to the women who are victims of this, they want to migrate because of abuse at home, because of discrimination at home, because their husbands have taken other wives, because their fathers beat them. For a whole host of reasons, women want to migrate. What we have is really a situation not only of abduction and deception, but of the abuse of the process of migration. So I think what we have to find in modern trafficking is not only that classical case of sexual slavery that Chamoli represents, but also to understand the dynamics of migration and trafficking so that we have laws that respect women's movement. Now there are countries, in fighting trafficking, we find who actually now require that women, when they want to leave the country, have to get their husband's permissions or their village head's permission, ostensibly to stop them from being trafficked, but actually it is denying them the right to migrate and the right to move.

We need sensitive immigration policies. I must tell you of a case of an NYU law student who came to Sri Lanka to work with me as an intern and she is from Pakistani origin. When she arrived at the airport, the British immigration officer who was helping Sri Lankan officers saw her passport and decided that she was a victim of trafficking, and she was subject to the most horrendous twelve hours. She was put in detention and kept into the middle of the night so she couldn't get through to anybody, and kept in a cell, until finally (she was an American citizen)

the U.S. Embassy went and checked her passport and let her go. So the need for immigration authorities to be sensitive to victims of trafficking – at least she should have been handed over immediately to a women’s group or a shelter or something that could have helped her, because if she’s a victim of trafficking, she herself can’t be a perpetrator; and therefore the need of immigration authorities throughout the world to understand the issues of women’s freedom of movement as well as issues relating to how to deal with victims of trafficking, is, I think, another aspect that is rarely mentioned in the literatures on trafficking.

Then I think we have to realize that trafficking is also very much a part of a general human rights issue. It must be understood within the framework of human rights. My concern is that a lot of the laws now being adopted in this huge fight against trafficking are laws that at least violate in many ways basic human rights that are accepted in other areas of human rights. This is true especially in South Asia where I did this research. There is the death penalty. There is the shift of the burden of proof. And death penalty based on very little evidence, evidentiary standards. There is a whole host of dynamics taking place in laws fighting trafficking which basically, to some extent, challenge issues of general human rights. We have to be sensitive that when we fight for violence against women, as some of the younger scholars are now pointing [out] to us, that the violence against women movement has lost its initial inspiration sometimes within human rights and is moving forward as just a law and order movement. That we must not allow to happen to the violence against women movement. It must be always within the frame of human rights. That also requires something else: that we listen to the human rights of the victims, of those who are constrained; that we don’t always decide for them what they would like to do. Often when you meet these women they say they don’t want to be rescued, or if they’re rescued that they don’t want to go home; but all this is often ignored. They’re rescued and sent home where they often suffer terrible realities. So it is important - they’re also then kept in so-called ‘protective custody’ in conditions that resemble jail conditions. So what we have to do is if we work within a human rights [framework], it also involves listening to their concerns and their voices and not always deciding for them. Not that we shouldn’t have strong laws, but that we also must listen to what they want and what they have to say.

I have been a Special Rapporteur for nine years. I hand my final report in in April. Ten years, which is the maximum one can be a Special Rapporteur. When I took this post, the fight against trafficking was divided into two schools: one, what you would call the abolitionists, and the other, the school that believed in regulating and allowing for sex work. The Optional Protocol and the Convention Against Transnational Crime united the camps in some ways by having a definition that no one was happy with, really, but anyway it is a definition that we can work with, and which, to some extent, combines the need that we must have for strong laws to fight the kind of sexual abuse and sexual slavery that exist in the world; the type of modern day slavery that we cannot tolerate, where women’s vulnerability is abused, and they become stuck and they really end up in situations that are totally unconscionable. But we also must respect the human rights of the victims as well as the perpetrators and understand that the struggle for women’s rights must always be within the framework of a struggle for human rights. Thank you.

**Bani Dugal Gujral introduced the next speaker, the Honourable Jean Augustine, Secretary of State (Multiculturalism) (Status of Women) Canada.** Canada has taken the lead in the international arena by introducing the resolution on violence against women at the Commission on Human Rights and other platforms. Ms. Augustine is the first African-Canadian woman to hold a seat in Parliament. She was elected in 1993. She served as Parliamentary Secretary to the Prime Minister from 1993 to 1996, and she also chaired the Standing Committee on Foreign

Affairs and International Trade, and has served on numerous other parliamentary committees. She also chaired the Ministerial Task Force on Social Security Reforms.

Prior to her election, Ms. Augustine was an elementary school principal. She also served as Chair of the Metropolitan Toronto Housing Authority. She holds a B.A., a M.Ed. and an Honorary Doctor of Laws degree from the University of Toronto.

Ms. Augustine has a deep interest in social justice issues and has received numerous community service awards, including the Canadian Black Achievement Award, the YWCA Woman of Distinction Award, and the Rubena Willis Special Recognition Award. She has served as National President of the Congress of Black Women of Canada, as a member of the York University Board of Governors and has contributed to the work of many other boards and community groups.

**Hon. Jean Augustine's remarks:**

Panel Members, distinguished delegates, representatives of the NGO community, friends and colleagues,

I would like to begin by expressing how pleased I am to be here at the 47<sup>th</sup> Session of the United Nations Commission on the Status of Women. I am also so pleased that women's human rights and the elimination of all forms of violence against women and girls is one of the main themes this year. In this time of increased focus on global security, it is crucial that women's human rights do not fall off the global agenda.

Violence against women is a complex issue with many themes and perspectives – all of which need attention, investigation and action. Violence against women touches every aspect of life – it is a social issue; an economic issue; a health issue; an awareness and education issue; a justice and human rights issue.

I would like to focus on three broad themes this afternoon: the importance of a strong international network to collaborate on efforts to end violence against women, the lessons that Canada has learned in dealing with violence against women, and the areas in which Canada is increasingly focusing its efforts.

The United Nations mechanisms, including the Commission on the Status of Women and the office of the Special Rapporteur on Violence Against Women, have played a critical role in the progress that we have made on women's human rights and the elimination of violence against women and girls. I am very honored to be sitting next to you, Ms. Coomaraswamy, as you approach the end of your term as the Special Rapporteur on Violence Against Women. We thank you for your tireless efforts to advance the issues; you have greatly contributed to the progress that we have made. Our task now is to continue to build upon the legacy that you have left us.

Canada remains committed to supporting the work of the United Nations in protecting and promoting human rights, which is vital to the elimination of violence against women. For example, in 2002 Canada acceded to the *Optional Protocol to the United Nations Convention on the Elimination of All Forms of Discrimination against Women*. This Optional Protocol provides

an additional mechanism for women in Canada to ensure that their human rights are protected in public and private life.

We acceded to the Optional Protocol on Persons Day in Canada, a day which celebrates the 1929 landmark case where most Canadian women were declared “qualified persons” in our Constitution, and as a result, were eligible for appointment to the Senate. We have made such important progress since the Persons case in the protection of women’s human rights. Most importantly perhaps is the *Canadian Charter of Rights and Freedoms*, which is part of Canada’s Constitution and which guarantees the right to equality without discrimination based on sex.

A strong international network to address violence against women is vital. We see this particularly for an issue such as trafficking in women and girls. Trafficking is a problem that affects every Member State, and as such, requires a coordinated, comprehensive, and multidisciplinary approach to combat. Our continued cooperation on an international scale and the sharing of best practices will help us remain on course for ending trafficking in women and girls.

Canada recently ratified the United Nations *Convention against Transnational Organized Crime* and two supplemental protocols, including the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*.

Domestically, Canada adopted a new trafficking in persons offence in June 2002. The offence, which appears in the new *Immigration and Refugee Protection Act*, provides for very serious penalties for this offence: fines of up to \$1 million and imprisonment for up to life. It also lists specific aggravating factors that a court can take into account when determining the appropriate penalty, including subjecting a trafficking victim to humiliating or degrading treatment, for example, with respect to sexual exploitation.

My department, Status of Women Canada, has also been actively involved in the issue of trafficking, and makes a unique contribution to the issue by funding a number of initiatives by voluntary organizations across the country aimed at combating human trafficking, and by publishing cutting-edge research reports.

It is only by working together on the problem of trafficking that we can eradicate this form of abuse, which too often victimizes vulnerable women and girls, in many corners of the world.

In January 2003, Canada appeared to present our fifth report to the Committee on the Elimination of Discrimination against Women. For Canada, this experience was both an acknowledgement of the significant strides that we have made in advancing the rights of women, and a time for reflection on areas where Canada should turn its attention.

In Canada’s presentation to the Committee, we painted a picture of the reality of women’s experiences of violence in Canada. Canada has learned that it is essential to assess violence against women in the context of women’s lived experiences. This can only be done by gathering data and developing indicators. As the Beijing Platform for Action outlines, violence must be assessed against the backdrop of the historical, social, political, cultural and economic inequality of women.

In 2002, I released a publication, along with my provincial and territorial colleagues responsible for the Status of Women, called *Assessing Violence Against Women: A Statistical Profile* that provides a partial but vivid portrait of women's experiences of violence in Canada. The document illustrates that violence against women remains a significant problem in Canada, however, it also illustrates that we have made some progress in addressing the issue. For example, spousal homicide rates have declined over the past 25 years in Canada, and there has also been a significant increase in the availability of shelters for abused women over that same period of time.

Despite these improvements, the report also serves as an important "red flag" to identify emerging problems concerning violence against women in Canada. For example, women remain the majority of victims of sexual assaults against adults, spousal assaults and homicides. In addition, Aboriginal women experience very high rates of spousal assaults and homicides. In fact, the spousal homicide rate for Aboriginal women is more than eight times the rate than for non-Aboriginal women in Canada.

Members of the UN CEDAW Committee expressed concern about these issues, in particular the high rates of violence against Aboriginal women, and questioned why this level of violence exists. Canada shares the concern of the Committee, and is beginning to develop an understanding of the depth of the problem. For example, we know that Aboriginal women in Canada are disproportionately affected by some of the root causes of violence, such as social, economic, and political inequality, and the intergenerational cycle of violence.

Canada is increasingly focusing its attention to these emerging issues, targeting the root causes. For example, Canada has launched healing initiatives in order to address the intergenerational impacts of the residential schools system, a system that separated many Aboriginal children from their families and communities. Canada is also working to improve the condition and quantity of housing on reserves, including an examination of the issue of matrimonial real property on-reserve, an issue that is of great importance to Aboriginal women.

These are just a few of our initiatives. We will continue to work with Aboriginal peoples to address the root causes of violence, and together contribute to the improved quality of life for Aboriginal women. We also recognize, however, that this is only a start, and that much more work is needed to address systematic violence against Aboriginal women.

Given the multiple dimensions of violence against women, Canada is increasingly focusing on collaboration and partnership between all levels of governments and communities. Within the federal government, the Family Violence Initiative is a cross-cutting initiative whereby policy makers, researchers and community groups work together toward the prevention of family violence. Further, my department, Status of Women Canada, supports community initiatives undertaken by voluntary organizations across Canada that address the root causes of violence against women through the Women's Program. This type of holistic approach is key to fostering collaboration, creating partnerships, providing opportunities for joint action, and achieving meaningful, structural change.

In conclusion, we have come a long way in improving women's rights and reducing violence against women. There was a time, only a few short years ago, when gender-based violence was not on the agenda. Over the past 20 years, with increased awareness and attention, we have succeeded in making great strides in dealing with violence against women. The work of the

Commission on the Status of Women, the work of the Special Rapporteur on Violence Against Women, and the work of each Member State and civil society, have been instrumental in achieving our successes.

We know that we must continue to improve women's human rights and end violence against women, and we must remain vigilant in this work. With our joint effort, we will continue to reduce, and ultimately eliminate, violence in the lives of women and girls.

**Bani Dugal Gujral introduced a representative of the NGO Community, Ms. Irena Lieberman, the Director of Legal Services for the Tahirih Justice Center, located in Falls Church, Virginia.** Ms. Lieberman has represented immigrants and refugees before the U.S. Immigration and Naturalization Service, the Immigration Courts, and the Board of Immigration Appeals, in matters involving gender-based international human rights abuses including honor crimes, female genital mutilation, rape, trafficking, domestic violence, and forced marriage. Recently, Ms. Lieberman served as co-counsel for oral arguments before the Board of Immigration Appeals in a precedent-setting case. Ms. Lieberman directs the Center's legal programs, including the Gender-Based Asylum & Immigration Project, the Refugee Women-at-Risk Project, and the Campaign to End Exploitation by the International Matchmaking Industry.

**Irena Lieberman's remarks:**

I would first like to say what an honor it is to be here, side by side with such esteemed activists for women's human rights, and with all of you who have come today. Thank you so much for being here. This morning, I had to rewrite my speech due to something that the United States Attorney General, John Ashcroft publicly announced yesterday, which means that I will be giving you the good news, and the bad news, in that order. It is my hope that our shared outrage will serve as a motivator.

Within the last decade, significant progress has been made toward the protection of women from gender-based violence through legal remedies.

For example, in 1995, the U.S. Immigration & Naturalization Service (I.N.S.) issued guidelines for adjudicators of gender-based asylum claims. The purpose of this guidance was to provide consistency, clarification, and a context for these claims, and the effect was to legitimize them, to a certain degree.

In addition, refugee recipient countries have increasingly recognized abuses such as rape, forced marriage, female genital cutting, honor crimes, sexual orientation persecution, domestic violence, and sex slavery as grounds for asylum.

Recently, the U.S. also implemented laws to protect survivors of human trafficking and slavery. This is very significant because trafficking survivors, as well as survivors of domestic violence, have always feared seeking help and/or escaping, because they feared criminalization by law enforcement and the Immigration & Naturalization Service, as unlawful migrants or sex workers. It is important to note that these laws are intended to serve as both humanitarian remedies, and also as law enforcement tools. As a practitioner, it has been difficult to ensure that the priorities of law enforcement do not take precedence over the humanitarian needs of my clients, but this unfortunately seems to be the trend with these cases.

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These successes have been few and far between, and only achieved with great difficulty and in the face of much opposition, as you are all aware. For example, those who have opposed gender-based asylum have done so for fear of the so-called “floodgates” that never seem to pan out. In 1999, the U.S. I.N.S. received 42,207 asylum applications, and 1085 of those were from women basing their claims on the “social group” ground of asylum, which is used for gender cases. Canada also has not seen the floodgates fear pan out.

Some obstacles for women asylum seekers who have been targeted because of their gender include:

1. “Gender” as a ground for asylum, is not included in the 1951 UN Convention Relating to the Status of Refugees’ definition of a refugee. To qualify as a refugee, one must prove persecution on account of race, religion, political opinion, nationality, or membership in a particular social group, but ‘gender’ is absent from this list.
2. By the same token, there is still no U.S. case that holds that gender alone can be a basis for asylum. Rape cases are extremely difficult as a result, because it is so hard for a woman to prove that she was raped on account of one of the five grounds listed above.
3. Gender persecution is often committed by family members, as in the case of female genital cutting, honor crimes, forced marriage, or domestic violence. In these situations, a woman must show that her own government will not or cannot protect her from her family. This may be particularly difficult where a country has legally banned these forms of persecution, but they are considered private, cultural practices and continue unchecked without government interference. Furthermore, an adjudicator may not consider a practice such as forced marriage an act of persecution worthy of international protection at all, because he/she might dismiss it as a cultural norm, even where a woman herself has not consented to it or experiences it as a fundamental violation of her human rights.
4. Gender claims raise unique credibility issues, because most women who endure abuses such as rape suffer from Post Traumatic Stress Disorder (PTSD). This often results in selective memory, nervousness, and difficulty recounting details or events associated with the rape chronologically or consistently. In addition, a woman who must present her case before a male judge may face further challenges if she has been taught not to look men in the eye in her culture, or if she has developed an intense fear of male authority figures if she was raped by a government official. A judge may interpret these manifestations of PTSD, or culturally appropriate behaviors, as evidence that a woman is lying. I have seen this happen over and over again in the courtroom.
5. Finally, most women do not have a lot of evidence of their claims, because they face such intense social stigmas as survivors of rape or domestic violence, that they do not or cannot tell anyone what has happened to them, or go to a doctor, etc.

Despite these obstacles, in the last few years, practitioners have generally felt confident that the future of gender asylum was more secure. Although there was still more work to be done, great strides had been made toward protecting women and inspiring a more holistic understanding of the types of abuses they face around the world.

This brings me to the “bad news” that I referred to at the beginning of my talk, which is the case of Rodi Alvarado Peña, a Guatemalan woman who suffered extreme abuse at the hands of her husband for ten years.

The abuse was so severe that she was forced to flee her home, first within her country and then ultimately she sought asylum in the U.S.

Her husband had pursued and located her in Guatemala every time she tried to flee, and the police offered her no protection from him. Eventually, the abuse began to increase, the more Ms. Alvarado Peña tried to resist and protect herself. Her husband whipped her with electrical cords, broke mirrors over her head, threw a machete at her and raped her daily and constantly threatened to kill her.

When Ms. Alvarado Peña applied for asylum in the U.S. in 1996, her case was granted by an immigration judge. Other domestic violence cases had been brought and granted, and had gone largely unnoticed. However, the I.N.S. decided to appeal the judge’s decision and in 1999 the Board of Immigration Appeals (B.I.A.) reversed the immigration judge and in doing so reversed the steady trend that had begun toward recognizing women’s asylum claims. Ms. Alvarado Peña faced deportation to Guatemala where her husband was waiting for her.

The B.I.A. did not dispute the severity of the abuse, or that Ms. Alvarado Peña had in fact established persecution.

The B.I.A. did not dispute that the Guatemalan government offered her no meaningful protection from her husband, or that she would not be safe from him anywhere in the country.

Nor did the B.I.A. contest Ms. Alvarado Peña’s credibility.

Instead, the B.I.A. held that Ms. Alvarado Pena had not established that she was persecuted on account of her race, religion, membership in a particular social group, political opinion or nationality as required by law.

By contrast, the immigration judge had found that Ms. Alvarado Peña belonged to a ‘particular social group,’ that of Guatemalan women intimately involved with Guatemalan men who believe women are to live under male domination. The judge also held that she was targeted on account of her political opinion, both actual and imputed, that women have the right to be free from male domination, which is otherwise known as...feminism.

The B.I.A., however, did not recognize Ms. Alvarado Peña’s social group, nor did they consider her to hold a political opinion.

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The holding of the case was NOT that domestic violence could not form the basis of an asylum claim. However, for practitioners, the ruling was a huge setback, because for many judges, the case became a broad statement to that effect. Judges misinterpreted the case's narrow holding, which was, essentially that Ms. Alvarado Peña had not produced enough evidence to show her membership in a particular social group or her holding of a political opinion, and she also did not establish a nexus between the motivation of her husband in abusing her, and her membership in a particular social group or her political opinion. As a practitioner, I focused on distinguishing this case from my own, articulating the social group in different ways, and proving in my cases that there was enough evidence to prove a "nexus" between a protected ground such as political opinion or social group, and the persecutor's motive.

After the ruling, there was such an outcry, thankfully, that former attorney general Janet Reno agreed to certify the decision so that she could review the case herself. Ms. Alvarado Peña had appealed in the meantime to the 9<sup>th</sup> Circuit [Court], and the appeal was stayed pending the Attorney General's decision.

Finally, on her last day with the Clinton Administration, in January 2001, the former Attorney General issued her decision vacating the B.I.A.'s decision denying asylum to Ms. Alvarado Peña. We all breathed a sigh of relief first and foremost for Ms. Alvarado Peña, and also for all of the other women in her situation.

In the meantime, the Department of Justice had issued proposed regulations in December 2000 governing the 'social group' ground for asylum, specifically addressing domestic violence as a basis for asylum. The Attorney General had remanded the case to the B.I.A. for consideration in light of what were to be the final rules.

The proposed regulations were a step in the right direction, and again, progress seemed to have been made. Since January 2001, advocates and Rodi Alvarado Peña have been waiting and waiting in limbo for the regulations that have still yet to be issued.

As recently as yesterday, U.S. Attorney General John Ashcroft indicated his intent to reconsider the decision of the former Attorney General, certify it to himself, and deny the case. Ms. Alvarado Peña will face deportation to Guatemala to face her husband who has promised to kill her upon her return. Ashcroft also intends to influence the final regulations in such a way as to roll back protections for women facing gender-based violence, instead of codifying the progress that had been made to date.

The case was essentially granted, reversed, granted, and reversed, and now we are at a baffling crossroads again, this time, a very frightening one.

What is happening to the protections for women that were fought so tirelessly for is truly astounding. In such a short period of time, gains have been made and lost, even where arguments against expanding protections for women can be easily refuted with statistics. These statistics show that there has not been a significant increase in the number of women asylum seekers since legal protections have expanded.

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Just yesterday, I was in court with a client from Morocco who faces severe ostracization due to her having had a child out of wedlock. The Judge said that the legal basis for my case was no longer sound in light of the Attorney General's statements, which do not yet even have the force of law.

We have a lot of work to do, and we must always be vigilant and not rest on our successes, for Ms. Alvarado Pena's sake, and for all of the other women around the world who need our help. Use your voices. Thank you for being here today.

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**Bani Dugal Gujral introduced Dr. Michael L. Penn, an Associate Professor of Psychology at Franklin & Marshall College in the United States and an Affiliate Professor of Psychology at Landegg International University in Switzerland.** He is also a Clinical Psychologist that specializes in the study and treatment of hopelessness-related disorders. His research interests and publications include works in the pathogenesis of hope and hopelessness, adolescent psychopathology, the relationship between culture and psychopathology, psychology and spirituality, and the epidemiology of gender-based violence. Professor Penn is the author of numerous academic papers and chapters and has recently completed a book, published by Rowman & Littlefield, on the global campaign to eradicate gender-based violence.

**Michael Penn's remarks:**

As we embark upon a new century, few goals appear to be more deserving of the attention of the community of nations and of the peoples of the world than the eradication of gender-based violence. This long awaited transition in human history presents an especially propitious time to render the goal of eradicating gender-based violence a central priority in the lives of human beings everywhere. The goal of eradicating gender-based violence should be proclaimed on billboards, televisions, and radio stations around the world. It should be discussed in classrooms, churches, synagogues and mosques. Those at the forefront of the campaign should enlist the energy, optimism, and enthusiasm of the world's youth. It should invite the men of the world to play a vital role.

Indeed, in my view, the effort to eradicate gender-based violence must be given the status of an international campaign that enlists the support of non-traditional sources so that it may be carried into places where it is now only rarely discussed. I like the phrase "*the global campaign to eradicate violence against women and girls*" because it embodies a sense of a social movement that invites participation from people of all walks of life.

Such a campaign requires resources of time, energy and money. It can be financed not only by governments and nongovernmental organizations around the world but also by private corporations, philanthropists, and common citizens alike. Community-centered institutions, such as the world's colleges and universities, high schools, police departments, commercial industries, artistic communities, and institutions of civil society, have resources at their disposal that could be readily mobilized around such a campaign. While the eradication of interpersonal violence must receive the attention of all the world, we require a special focus on dismantling the root causes of cultural and structural violence by those who are in a position to contribute to the transformation of the corporate, legal, educational, or religious institutions that they have the

privilege to serve. What I am recommending here is that the NGOs that have consultative status at the UN use the prestige and growing recognition of the United Nations to attract into this campaign new players.

It is heartening to note that in recent years violence-prevention initiatives that engage the active participation of men have begun to emerge. The college-based, all male sexual assault peer education group 1 in 4, for example, has developed the Men's Program, which focuses on the prevention of rape and other forms of sexual assault among college students. Similar programs have begun to appear across the United States and it is reasonable to believe that such programs could enjoy wide support in many additional countries around the world. Another male-centered organization with considerable promise is Dads and Daughters (DADs). Its mission is to "create stronger, deeper, more effective relationships between daughters and fathers, and the transformation of cultural messages that value girls more for how they look than for who they are." Since its establishment two years ago, DADs has attracted two thousand members and has convinced several major corporations to change practices that are harmful to women and girls. Most notably DADs recently rewarded Omni Hotels for their courageous and expensive decision to discontinue in-room pornographic movies.

When one reflects upon the early history of the civil rights movement in North America, the importance of greater male involvement in this campaign is seen in sharper relief.

At its inception the civil rights movement in North America was peopled almost entirely by black Americans. However, as an increasing number of whites began to develop an appreciation of the moral rightness of the movement, they began to lend it their moral, legal, and financial support. Gradually, many whites became highly effective co-workers in the struggle to secure the civil and human rights of African-Americans. The National Association for the Advancement of Colored People (NAACP), for example, was founded through partnership between black Americans and white Americans who recognized their responsibility to the moral, social and legal evolution of American society.

As litigants in the struggle to extend civil rights to black Americans, black and white NAACP lawyers working together became the most effective legal team in the nation's history. Civil rights gains accomplished through the work of the early, highly integrated NAACP resulted in benefits to millions of oppressed peoples within and outside of the United States. It is my firm conviction that efforts that include men more fully in the global campaign to promote the advancement and participation of women are likely to facilitate, in a similar way, the further development of the movement's potential.

The second recommendation that I wish to make is that the global campaign to elevate the status of women, to promote gender equality, and to eradicate gender-based violence is most likely to be effective if it is fueled and upheld both by enforceable local and international laws and by processes that address the inner terrain of human consciousness, human values, and human spiritual and moral development. We must promote a consciousness of the challenges associated with moral development and self-mastery if we are to be successful at eradicating gender-based violence because many forms of violence against women and girls are perpetrated under the cover of night or behind veils of secrecy where only the victims and the perpetrators know what is going on. A wholly legalistic approach to this problem that does not address the development of human consciousness is thus doomed to fail.

Moreover, as legal theorist and researcher Amede Obiora has suggested, the impact of the broad legal culture on the persistence of gender-based discrimination and violence cannot be overlooked. The term “legal culture” has been described as “the network of values and attitudes which determine why, when, where and how people employ legal structures and why legal rules work or do not work.” It is, according to Obiora, “the legal culture that provides the impetus for the use, abuse, or avoidance of the law.”<sup>1</sup> The legal culture and social fabric depend upon covenantal arrangements that, in the words of Jonathan Sacks, Great Britain’s Chief Rabbi, “prevent us—from a sense of honor, or fidelity, or decency—from doing certain things.” Such arrangements extend well beyond a mere code of laws and embrace a people’s internalized, fundamental values. If the legal culture of a nation or community is not oriented toward the advancement and protection of women, a proliferation of laws, however much needed, will not remedy gender-related abuses.

There are at least three dimensions to a legal culture—the outer form, or *legal structure* of a community; the inner form, or *philosophical principles* that animate that structure; and the *actors* or citizens within a community who embody in their deeds the degree of commitment they have to the values and principles that animate their legal and/or social system. The outer aspect of a legal culture is utilitarian and has to do with mechanisms designed to facilitate application of a community's constitution and/or body of laws. The inner aspect is abstract and has to do with metaphysical principles that the laws of a community are designed to embody, protect, and advance. In addition to the facilitation of order and social processes, the desire to protect such values as justice, equity, human nobility and a sense of collective trust are the implicit or explicit goals that buttress most non-totalitarian legal systems. Indeed, even in contemporary western cultures where law is presumed to be merely utilitarian or functional, the strength of the law rests, to no insignificant degree, on its ability to evoke a sense of respect, and sometimes even reverence, for the legitimacy of the social order that the law is designed to serve.

A people's awareness of, and appreciation for, the underlying values that serve as the foundation of law give a legal culture its enduring strength and render a legal system more than “a mere code of laws.”<sup>2</sup> In the absence of a concern for underlying values laws lose their power to protect against many forms of exploitation and abuse. Harold Berman, one of the world’s foremost legal historians and philosophers, notes that, in the final analysis, what empowers law is the “deeply or passionately held conviction that law is not only an instrument of secular policy but also part of the ultimate purpose of life.” The legal scholar, Roshan Danesh, further observed that law is best understood, “not only as positive rules but also as a relationship between rules and standards and the architecture of beliefs, traditions, and texts that support and give meaning to those rules. A crisis of internal fidelity exists,” noted Danesh, “when legal rules and the institutions that create and interpret them have become unmoored from any generative aspirative frame.”<sup>3</sup> Traditionally, the aspirative frame for law was provided by religion. Religious systems, which are the primary fount of law, embody the notion that law exist in order to facilitate the realization of human aspiration for that which is, in some sense, transcendently good for both the individual and the community. But more than this, laws rooted in religion were intended to not only prevent crimes by threat of punishment, but to prevent them by inspiring in adherents the acquisition of a sound character. And while the trend toward secularization of law is both

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<sup>1</sup> Amede Obiora, “Kindling the Domain of Social Reform Through Law,” *Third World Legal Studies* (1994–1995): 106.

<sup>2</sup> Bahá’u’lláh, *The Kitáb-i-Aqdas: The Most Holy Book*, (Wilmette, IL: Bahá’í Publishing Trust, 1993), K14.

<sup>3</sup> Danesh, Roshan, *Beyond Integration and Separation: The Dynamic Nature of Bahá’í Law. Bahá’í World 1999-2000* (Haifa, Israel: World Center Publications, 2001) 223-263.

understandable and necessary in a context of cultural and religious pluralism, the larger project of connecting laws designed to protect and advance human rights with a tenable framework of values that citizens are both familiar with and embrace would seem vital to insuring success. Indeed, underlying the failure of nations, communities, and families to protect and advance the rights of women and girls are not only legal and human-rights standards that leave women vulnerable, but also maladaptive values and attitudes that run counter to the spirit of equality and humanity that many legal systems have been explicitly designed to advance. These patterns of thought require as much attention by the international community as do the laws that have been, and will be framed, in defense of women's human rights. It is for this reason that the global campaign to eradicate gender based violence would do well to add to the worldwide concern for articulating human rights law a similar concern for promoting psychological maturation, spiritual growth and an awareness of the challenges that attend efforts to achieve self-mastery.

Out of a legitimate concern for preserving freedom of conscience, a number of contemporary thinkers have argued against efforts to introduce moral or spiritual considerations into development or human rights initiatives. Others object on the grounds that these are private matters and ought not to be imposed by agents acting on behalf of the State. Important as these concerns are, it is possible to develop approaches to moral and spiritual development that are grounded in those universal human values already endorsed, either explicitly or implicitly, by the global community. Among these values is respect for the dignity and worth of all persons, irrespective of race, gender, religion, or culture, as well as the fundamental right of all persons to live free from any unnecessary pain and to realize their inherent potentiality as human beings. These universally recognized values provide the "social glue" and institutional arrangements that render families, communities, and societies viable over long periods of time. Where appreciation of these values is neglected or the instruments necessary for their dissemination do not exist, a crucible for the cultivation of various forms of abuse and exploitation is created.

An approach to moral education that nurtures in children and youth a hunger for moral and spiritual growth, while also developing morally relevant *capacities* is likely to be more effective in eliminating the root cause of abuses of power in the family, the community, and the State than are approaches that focus on the transmittal of moral lessons or rules. What is needed is the development of an inner agent of self-control that encourages right action because of its own inherent beauty. Iraj Ayman, a scholar specializing in moral philosophy, refers to this capacity as the capacity for "spiritual discernment."<sup>4</sup> According to educator Irene Taafaki, developing spiritual discernment requires educators to use a variety of processes to nurture children and youth to go beyond knowing what constitutes moral ideas to developing moral insight and practicing moral behavior, the goal being to develop moral wisdom, rather than a rote following of rules. Moral wisdom then becomes the "inner lens" through which children are both able to discern what is right and are able to do those things that enhance the well-being of their own self and others.<sup>5</sup>

A pedagogy of moral education, notes Taafaki, would include active learning rather than the passive inculcation of moral lessons; a loving and encouraging environment wherein educators demonstrate in their own lives the qualities they wish to teach; using the arts, literature, and folklore from the various cultural and religious communities around the world; and cooperative learning exercises that enable children and young people of diverse backgrounds to work

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<sup>4</sup> Iraj Ayman, ed., *A New Framework for Moral Education* (Germany: Asr-i-Jadid Publisher, 1993), 15.

<sup>5</sup> Irene Taafaki, "A Pedagogy for Moral Education," in Ayman, ed., *New Framework*, 43.

together in exploring and resolving a range of socially and morally relevant problems. The promotion of a spirit of service to humanity is an integral part of the pedagogy of moral education. Such service enables children and youth to enhance their understanding of the relevance of moral behavior for the development and solidarity of family and community, and for the cultivation of a sense of "at-oneness" with others.<sup>6</sup>

I would like to close my remarks by noting that we must nurture the hope and promise that violence against women and girls can and will be eradicated. Of course, many will renounce our ability to eradicate gender-based violence as unrealistic. They will say that human beings are, by nature, incorrigibly selfish and aggressive; and that initiatives that depend upon the goodness of human beings for their success are bound to fail.

Despite its wide acceptance, this perspective on human nature is one that fails to comport with the most recent developments in human psychology. To the contrary, it would appear that far from expressing humanity's true self, the aggression and conflict that characterize our social worlds represent distortions of the human spirit.

From the psychological literature there is much evidence to suggest that human behavior (including either aggression or altruism) is a function of the relationship between malleable attitudes and prevailing social and/or political conditions. Thus, if we want to explain why a person, a group, or a whole society has acted aggressively, we must know something about the interaction between the actors' world view, beliefs and values and the social conditions prevailing at the time. Since all human qualities can be strengthened or weakened by training and are subject to immediate and historical social, political, and moral influences, aggression and selfishness, which are at the root of all forms of violence, are not unalterable features of humanity's behavioral repertoire; rather, they are characteristics that are, in most cases, as remediable as the inability to read and write.

Furthermore, as it is in the life of the individual, so it is in the life of humanity. That is, just as the development of the person takes place in stages, so humanity's development is likely to be marked by different levels and stages of progress. Had we not yet witnessed a newborn baby grow into a mature adult, we would not easily believe that a creature that can neither hold its head up nor control its own sputum could someday be able to play the harpsichord, guide an aircraft past the speed of sound, or transplant a kidney from one living person to another. This is the miracle of life and development. Thus when we understand an organism's capacities from a developmental perspective, we are able to nurture it with confidence. We do not, for instance, discard our children because they are helpless, or bothersome, or sometimes even rude, arrogant, and violent; nor do we say that these characteristics are part of the child's immutable nature. We continue to educate children because we have a sense of vision for their potential. The development of the body politic may be understood in much the same way.

In his important work, *The Topology of Hope*, Calvin Schrag captures a dimension of hope that is made possible by the unique capacities associated with human consciousness:

*We shall first speak of the praxis of hope. Praxis situates hope in the region of social formation and transformation. In this region the phenomenon of hope shows itself as a horizon of social consciousness, bearing implications for the wider cultural life of man. Understood within this modality, hope is the site from which the thought and action of*

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<sup>6</sup> Taafaki, "Pedagogy for Moral Education," 41-51.

*interacting social selves transform the present in response to an envisioned condition of life in the future. The cognition in praxis, which is a form of practical insight and situational decipherment, discloses the present as a time of need, or in its more radical negativity as a time of suffering. Present conditions are seen as threatening personal and social fulfillment. But also the cognition in praxis comports an anticipation of the future as the time for the rectification of the present social ills. The future is envisioned as the coming of the era of emancipation from bondage to an alienated present. Hope is thus postured as a simultaneous awareness of the insufficiency of the present and an anticipation of future fulfillment.*<sup>7</sup>

Schrag goes further to distinguish between hope and calculative social planning. In both cases, he observes, there is dissatisfaction with the present and an orientation toward the future. “However, in the case of social planning, the orientation toward the future is in the mode of a calculation of empirical probabilities that can be manipulated within a simulated plan. In the phenomenon of hoping,” by contrast, “the possibilities of the future remain incalculable from an empirico-experimental standpoint. Hope struggles against odds that appear overwhelming from the perspective of calculative thinking and technological control.” In this sense, “hope discloses an openness and transcendence of the future which imposes limits on calculation and prediction.”<sup>8</sup> It is this transcendent dimension of hope that is a unique characteristic of the human spirit. It is this capacity to see beyond, to transcend, to rise up, and to move forward that is the critical need of the times.

I would like to thank all of you for the opportunity to share in these important discussions.

### **Questions and Answers:**

**Question 1:** I am from Turkey. I am the Project Coordinator of prevention of honor killings in Southeastern and Eastern Turkey. What I would like to do first is to thank Radhika for the wonderful nine years and her wonderful, most valuable reports. My deepest concern as far as what’s going on at this Commission on the Status of Women is the lack of attention in the documents towards the honor killings. I know it’s the time after September 11. I know it’s a very sensitive issue for various different reasons. However, I and our team cannot afford to let it go, not to be discussed. I’d like to hear more about it and we always talk about in the U.N. that the sensitive issues should be addressed by the grassroots-level women who actually either work on the issue or experience the issue. I am here. I am ready to talk and I am from the grassroots. That’s what I would like to say, the first thing.

The second thing is, again, I’d like to refer to Radhika’s last year report on the traditional and cultural practices that are harmful to women in the family or in the community, and also there is another report just came out. It’s in English and it’s only on the website. It discusses the harmful religious and traditional practices, again by the U.N. Special Rapporteur on Freedom of Religion, and what I would like to say is whoever is going to replace Radhika, because she is leaving, should be able to do along these issues, work on these issues from a holistic perspective. I know it’s a sensitive issue. I don’t know who is going to be the next Special Rapporteur but that’s a big challenging thing and I think it has to be addressed. I wish I could have seen more discussion of the honor killings and the forced marriages, also I never heard anyone talking about berdel here. It was also in Radhika’s reports last year and I’ve been talking to people since

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<sup>7</sup> Calvin O. Schrag, “The Topology of Hope,” *Humanitas*, 13 (1977): 271.

<sup>8</sup> Schrag, “Topology of Hope,” 271.

yesterday morning. 99% of the people doesn't even know what berdel is. So I think when we discuss violence against women and the women's human rights violations how we are letting go some of the most important issues. Thank you very much. By the way, I am here with the Women's International League for Peace and Freedom.

**Radhika Coomaraswamy's Answer:**

Of all my reports, the most unpopular (they were all unpopular) but the most unpopular was the one on cultural practices in the family that are violent toward women, and there was very strong critique of that attempt and my approach to culture, which at that time was just to look at the practices and see whether they violated international human rights. In my report this year, I have done a ten-year review of what has taken place in the world over the last ten years, and also we've done a country-by-country review of what has happened in those countries in the last ten years on issues relating to violence against women. I say in that report that I think that the next frontier, the two big issues of the future, are the reproductive rights of women, which is something I think we have to worry about, and help to define it and push it forward, and the other one is how we're going to deal with cultural rights, and what are the strategies we're going to deal with regard to cultural rights. And I think we need to have our best minds in the women's world look at these issues because it is obvious that certain kinds of approaches, though they are completely correct in terms of the international human rights way of doing it, may also create (like my report did, and I didn't realize it would at that time) enormous backlash that may actually have put us further back. So I think what we have to do is to try and think of devising strategies which perhaps could push this agenda forward.

And in a recent article, wearing another hat, which is as an academic for New York University Law School, I suggested that those cultural practices that resemble torture or torture-like or result in severe pain and suffering or cultural practices that are like slavery, those aspects, what are called 'use cogence', those aspects of international law that nobody can derogate from because they are so fundamental, such as torture, slavery, detention, those kinds of things, that we really have strong international campaigns and actions, but maybe in other areas we can work with the women's groups and traditions in those countries to help eradicate these practices. Maybe we need different strategies depending on the type of practice and the type of groups that exist in those societies. So I think to some extent we have to be realistic. We would idealistically like to just go against every cultural practice that violates women's autonomy, that violates women's equality, but I think we will have to devise the correct strategies, and I think we haven't thought it through really, as a women's rights community. Maybe, we are the first generation of rights, we were concentrating so much on those that violate basic..., anyway this whole area is new, violence against women to the human rights field. I think, I accept your call and I think that is one of the great challenges of the future.

**Question 2:** My name is Selma Hajikalovovitch [sp?]. I am coming from Bosnia and Herzegovina where I'm coordinating community mobilization anti-trafficking project. I am very pleased to be here and more pleased to what I've heard a few minutes ago. What I've been hearing all the time is a multidisciplinary approach to prevention and combating trafficking, and I don't know to which of those things to say a stronger "yes". Is it to most sensitized police officers? Is it to most sensitized migration policies? Is it to stronger respect of human rights of the victims? I'm very very pleased to be hearing all those things. I would like just to intervene on two things, and if you allow me, I very often use the examples, experience from the grassroots, direct work with victims of trafficking in order to help people understand certain things. I was very shocked - not shocked - moved by the word "rescued" that Radhika used. For

me, rescuing means offering help, two days of help, you know, something immediate without any long-term impact. And also, on the other hand, you were referring to the very sensitive case of your assistant when she tried to come and was stopped by the migration officers, how they treated her, and you referred, you said that when in the case when they see a victim of trafficking, they should call upon immediately NGOs and NGOs should be taking care of those person and providing, rescuing them. I have a big problem with that. First of all, I said with the word rescue, because I have the feeling it's only something on a very long term, and the other issues is relating NGOs.

Allow me to share with you one very specific example that's related very much to what's happening to Bosnia and Herzegovina over the past ten years. It's a case of a young woman called "Shusha." She lives with her mother, older brother and sister. She's coming from Western Bosnia and Herzegovina where her mother was severely raped on several occasions and as a victim of war sexual violence, was accommodated in a house for women victims of sexual violence where she was treated. Unfortunately, she gave birth to a child later on and at some point she killed that child. When the so-called reconciliation process expired of that person within that NGO, she was released and it was 1995, and today is 2003. She is still living in a shelter, but a very specific shelter (can't remember the name), where many people are living, refugees, kind of a migrant shelter; she is still treated as displaced, cannot go home, and so on and so on. Her older son has been expelled from school and probably be in jail very soon because there is nobody to take care of him. He's still going on a daily basis to that women's shelter to bring them food so that they can eat. Shusha is a 17 and a half year [old] girl today who never got a chance for life and very often she is disappearing. Women activists are seeing her in cars wearing high heels with certain gentlemen who probably are not driving her home and helping her. Sometimes she is disappearing for two or three weeks and she doesn't have no one to talk with. The only NGO that existed in that area who is still existing, who could help them in a certain way, is closing down in a couple months because they are without funds anymore. Woman victims of violence of such case, whose experience has such replications even though eight years further, have no place to go, because it's not anymore interesting for the policy-makers, for the funders, and what should we do now (very open question)? Thank you.

**Radhika Coomaraswamy's Answer:**

Let me say with regard to the trafficking question, you know I think that that's the one other area that I did not mention that I think is utterly crucial for the future, that is social and economic rights of women, and I think that, that is why I said that we must approach trafficking from a human rights framework, because unless we understand the social and economic denials that lead women into situations where they make the choices they possible can, we will not really solve any issue. And I think that's one of the things that we, and I'm one who has also suggested that maybe the Commission on the Status of Women, and this is a suggestion for the delegates here, begin a Special Rapporteur system to some extent. Maybe the first Special Rapporteur, since there's already one on the Human Rights Commission that deals with violence against women, maybe there can be one on social and economic rights of women, because I think that is crucial. You know even in domestic violence, the research shows very clearly - David Levinson did a study of domestic violence in 88 countries, and the one factor that is a factor in determining greater violence and lesser violence is the economic power of the women involved. That there is no doubt that if they have economic independence, that the amount of violence that they will suffer will be less. So I think that that's linked very closely to your issue as well, so how do we make women economically powerful and independent so that they don't have to make life choices that are damaging to them? So I think that's very important, so I think that's where we

should focus: the human rights, social and economic rights of women, and that will then also have its effect on trafficking, domestic violence, all the other issues.

**Question 3:** John Kim, I am representing the International Fellowship of Reconciliation. My question is to Ms. Coomaraswamy. First of all, I'd like to thank you for your excellent preliminary report on the comfort women issue, who were forced into sexual slavery during World War II by the government of Japan. You have made several recommendations on that issue but we haven't seen so far any implementation of those recommendations by the government of Japan. I wonder what can we do, what the U.N. can do to implement your recommendations? Thank you.

**Radhika Coomaraswamy's Answer:**

... with regard to comfort women, well, as you know, I submitted that report and the government of Japan, as you know, objected to the report. It's not that they have accepted the recommendations and therefore are not fulfilling them. They just did not accept the recommendations. They say that there is no legal commitment, they have no legal commitment to make that money, that they have a moral commitment they will accept and that they have done so by setting up the Asian Women's Fund, which I must say was only set up because of agitation of people like you and all the others in that movement, really. And so I think there is a success there but at the same time, they are not willing to accept legal responsibility, so I don't know how that will change. It doesn't look like it's going to change in the near future, so I hate to end on a pessimistic note on that.

**Question 4:** Tamra Raven, International Council of Women, and again I'd like to address Ms. Coomaraswamy on the case of the Tamil women in Sri Lanka where we are led to understand that both rape and sexual abuse by the military and the police, and we are very concerned with how this will be brought to more public attention and what do you suggest as action to do that? And as a caveat to that, I would like to suggest that for women, and being that this has the Internet, communication technology as a cross-cutting issue, that we invoke and use the geographical information system to begin to map some of these human transgressions so that we can see patterns and become more active.

**Radhika Coomaraswamy's Answer:**

Now with regard to Tamil women, as you know, Sri Lanka is in the throes of a peace process, and, now, as wearing another "hat," not the hat of Special Rapporteur, but as the Director of the International Center for Ethnic Studies, one of the issues we are very concerned about is the accountability for past human rights abuses in Sri Lanka of whichever side, including the rapes of Tamil women and rapes in custody, as well as other crimes committed by both sides. And we think that any system of human rights in times of war must include crimes of violence against women and accountability and some kind of mechanism for dealing with those crimes. So we are suggesting, we don't think a tribunal would probably work in Sri Lankan context, we believe that both sides will not agree for their own reasons. But we are pushing for some kind of truth and reconciliation process, or transitional justice process, that we hope will deal with some of these issues, including rapes in custody, as well as abuses against Tamil civilians by the LTT as well. To bring everybody who has been a victim to the table and to be able to say their stories, to maybe get compensation, and for perpetrators to acknowledge what they have done and therefore have some process such as that. So that is what is going on at the moment as a result of the peace process and I think there's a possibility of that taking place in the near future.