

WOMEN'S RIGHTS AND INTERNATIONAL LAW: THE STRUGGLE FOR RECOGNITION AND ENFORCEMENT

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I. INTRODUCTION

In 1945, the signers of the United Nations (U.N.) Charter reaffirmed their faith in "fundamental human rights" and included "the equal rights of men and women" in this category.¹ It was a unique period in history for human rights in general and for women's rights in particular.² The U.N. Commission on the Status of Women, created just two years after the Charter was signed, promised international commitment to women's rights. It convened world conferences to promote strategies for raising women's status and to develop international treaties on women's rights. It drafted three such treaties between 1952 and 1962: the Convention on the Political Rights of Women;³ the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages;⁴ and the Convention on the Nationality of Married Women.⁵

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¹ U.N. Charter preamble. The Charter was signed in San Francisco on June 26, 1945, and entered into force Oct. 24, 1945. It was ratified by the United States on Aug. 8, 1945. 59 Stat. 1301, T.S. No. 993.

² During the 1940s, for example, more nations extended suffrage to women than at any other time. R. Sivard, *Women . . . a World Survey 6* (1985).

³ Convention on the Political Rights of Women, Mar. 31, 1953, 27 U.S.T. 1909, T.I.A.S. No. 8289, 193 U.N.T.S. 135.

⁴ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Dec. 10, 1962, 521 U.N.T.S. 231.

⁵ Convention on the Nationality of Married Women, Feb. 20, 1957, 309 U.N.T.S. 65. For a discussion of further treaties on women's rights, see N. Hevener, *International Law and the Status of Women* (1983).

In 1975, the U.N. General Assembly united the principles of these Conventions in one comprehensive, nonbinding Declaration on the Elimination of Discrimination Against Women.⁶ The Declaration was then expanded and redrafted as the Convention on the Elimination of All Forms of Discrimination Against Women ("Convention").⁷ A comprehensive bill of rights for women, the Convention has the potential to provide an important international legal mechanism for enforcing women's rights in countries that have ratified it.

The lives of many women, however, represent a sharp contrast from the equal status with men that the Convention has granted them. While the Convention is the most comprehensive treaty ever developed on the rights of women, it has several shortcomings. It fails to specifically delineate women's rights in important areas; its enforcement mechanisms are among the weakest in international human rights treaties; and reservations entered by many states make it even less effective. Moreover, the human rights community traditionally has relied on a narrow definition of human rights, which has blinded its members to the particular ways in which women's rights are violated.

This article presents an overview of the advancement of women's rights through the Convention. It contrasts the rights that have been obtained in theory with the current poor status of women, examines probable causes for the disparity, and suggests mechanisms to help women secure the rights they have been granted under international law.

II. IDEALS VS. REALITY: THE CONVENTION AND WOMEN'S GLOBAL STATUS⁸

Despite growing international concern and support for women's rights, domestic laws, local customs, stereotypes, and religious practices reinforce and maintain the inferior status assigned to women around the world. This section describes the Convention and compares statistics reflecting women's status to some of the rights that they have been granted through the Convention.

⁶ Declaration on the Elimination of Discrimination Against Women, G.A. Res. 2263, 22 U.N. GAOR Supp. (No. 16) at 35, U.N. Doc. A/6880 (1967).

⁷ Convention on the Elimination of All Forms of Discrimination Against Women, Mar. 1, 1980, 19 I.L.M. 33 [hereinafter Convention].

⁸ While this section presents a brief overview, entire books explore women's status. See generally J. Seager & A. Olson, *Women in the World: An International Atlas* (M. Kidron ed. 1986); R. Sivard, *supra* note 2; *Empowerment and the Law* (M. Schuler ed. 1986); *The Legal Relevance of Gender: Some Aspects of Sex-Based Discrimination* (N. Burrows & S. McLean eds. 1988).

A. The U.N. Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination Against Women is without question the most comprehensive treaty addressing the rights and status of women. It is broad, incorporating areas covered by past documents, as well as addressing further areas of discrimination against women.⁹ It also establishes a special Committee on the Elimination of Discrimination Against Women (CEDAW or "Committee")¹⁰ to monitor compliance with its provisions.

The Convention consists of a preamble and thirty articles. Sixteen articles enumerate substantive actions that States Parties should take in eliminating discrimination against women;¹¹ twelve articles describe reporting requirements and administrative details.¹² The remaining two articles of the Convention establish dispute resolution procedures¹³ and the acceptable, authentic languages of the Convention.¹⁴ The preamble to the

⁹ An example is the plight of rural women, addressed in article 14 of the Convention.

¹⁰ CEDAW has 23 members who are nominated and elected by countries ratifying the Convention. CEDAW members serve four year terms and may be reelected. The members serve in their individual capacities as independent experts; they do not represent governments. Comprised only of women, CEDAW rejected a proposal at its 1988 session that it nominate men to the Committee. See Byrnes, *The "Other" Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women*, 14 *Yale J. Int'l L.* 1, 9 n.27 (1989). CEDAW reports annually to the U.N. General Assembly through the Economic and Social Council, and submits copies of its annual report to the Commission on the Status of Women. For an excellent review of CEDAW, see generally Byrnes, *supra*.

¹¹ The 16 substantive articles of the Convention address a variety of women's rights issues: policy and legal measures to eliminate discrimination against women (arts. 1-3); temporary measures to accelerate equality between men and women (art. 4); sex roles and stereotyping (art. 5); prostitution, exploitation, and trafficking in women (art. 6); political and public life (art. 7); representation and participation of women in governments and in international organizations (art. 8); nationality (art. 9); education (art. 10); employment (art. 11); health (art. 12); social and economic benefits (art. 13); rural women (art. 14); equality before the law (art. 15); and marriage and family law (art. 16).

¹² Convention arts. 17-28.

¹³ Convention art. 29. See *infra* note 98 and accompanying text for a discussion of the dispute resolution procedure.

¹⁴ Convention art. 30. Article 30 states that the Arabic, Chinese, English, French, Russian, and Spanish texts of the Convention are equally authentic. The texts are deposited with the U.N. Secretary-General.

Convention notes the wide concern and support for equal rights of men and women in international documents such as the U.N. Charter, the Universal Declaration of Human Rights, and the International Covenants on Human Rights.¹⁵ "[D]espite these various instruments," it states, "extensive discrimination against women continues to exist"¹⁶

The Convention is the first international treaty to define discrimination against women, and it does so broadly, as:

[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁷

States ratifying the Convention must pursue a policy of eliminating discrimination against women.¹⁸ This requirement extends even to the private or civil field of conduct.¹⁹ The Convention also allows for affirmative action ("temporary special measures")²⁰ to accelerate *de facto* equality between women and men.

B. Statistics Reflecting Women's Status

1. Employment

Much of women's work goes unpaid.²¹ "The unpaid labor of women in the household, if given economic value, would add an estimated one-third, or \$4,000,000,000,000, to the world's annual economic product."²² Furthermore, much of this labor is done in addition to women's work

¹⁵ Convention preamble.

¹⁶ *Id.*

¹⁷ *Id.* art. 1.

¹⁸ *Id.* art. 2.

¹⁹ Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 *Va. J. Int'l L.* 643, 669 (1990). See Convention arts. 5, 15, and 16.

²⁰ Convention art. 4(1).

²¹ In 1980, the U.N. estimated that women receive only 10% of the world's earned income, although they perform 67% of all work. See G. Ashworth, *Of Violence and Violation: Women and Human Rights* 7 (1988).

²² R. Sivard, *supra* note 2, at 5.

outside the home.²³ Family responsibilities lead many women to accept work which may be repetitive, dull, and demanding.²⁴

The percentage of women in the paid labor force varies tremendously between countries, reflecting the poor economy of a country as much as women's employment status. Generally, women represent a larger part of the paid workforce in developed countries than elsewhere.²⁵ In economically poorer countries, it appears, jobs and wages tend to go to men, while women work at home, receive no pay, and thus make up a poorer segment of the population.²⁶ Worldwide, there are more poor women than men.²⁷ Even in the United States, "two out of three adults living below the poverty level in 1983 were women; one elderly woman in six was poor; and one in every two poor families was headed by a woman."²⁸

Although greater numbers of women than ever before are participating in the paid labor force (since 1950, twice as many women as men have joined the paid labor force²⁹), wage gaps exist between men and women for work of equal value.³⁰ Women working full-time in white-collar employment rarely reach top decision-making positions.³¹

²³ *Id.*

²⁴ *Id.* at 16.

²⁵ *Id.* at 12.

²⁶ Women in rural Africa produce more than 70% of the continent's food, according to the World Bank. Men consider hand cultivation to be demeaning "women's work." Perlez, *Uganda's Women: Children, Drudgery and Pain*, N.Y. Times, Feb. 24, 1991, at 10, col. 1. UNICEF looked at 10 African countries and found that women have the legal right to own property in only 16% of the households in these countries. *Id.*

²⁷ R. Sivard, *supra* note 2, at 16.

²⁸ *Id.*

²⁹ *Id.* at 12.

³⁰ In a 1990 report to CEDAW, the Federal Republic of Germany, Thailand, Peru, the Ukraine, and Mongolia all reported that laws requiring employment equality failed to affect the practice of discrimination against women. Report of CEDAW, 38 U.N. GAOR Supp. (45th Session) at 47, 51, 60, 65. The United Kingdom reported that women earned an average of 76% of men's salary for the same work, while Canada showed women's salaries reaching only 65% of men's. *Id.* at 31, 78.

³¹ In Germany, where women make up 39% of the workforce, fewer than 1% of company directors are female. *Id.* at 12. The United Kingdom reports that too few women hold top decision-making positions. *Id.* at 39. In the Ukraine, women's educational background rarely matches their participation in decision making, and many therefore are forced to take hazardous occupations, on night shifts and in other disadvantageous positions. *Id.* at 60.

For many women entering the paid labor force, however, the question is not equal pay for work of equal value, nor reaching top decision-making positions. Rather, it is the customary expectation that they are to perform all domestic work and bear most of the responsibility for child care.³² This results in women taking on only part-time jobs because they must spend significant hours at home. In addition, the part-time jobs women hold are likely to be unskilled, dead-end, low paying ones.³³ They often are rural jobs not likely to provide unemployment insurance and other benefits, even though work conditions are more difficult than for other types of work.³⁴

2. Education

Although women have increasing access to education around the world, a wide disparity still exists between the number of girls and the number of boys enrolled in primary and secondary schools.³⁵ The school-age population for many less developed countries is growing at such a rate that it is nearly impossible for these countries to educate all of their children.³⁶ In

³² In Malawi, the policy of paid maternity leave is still under review, while in Thailand, the government leaves the option up to the employer. *Id.* at 25, 47. The United Kingdom considers child care the responsibility of the parents, not the employer. *Id.* at 39. In the Ukraine only 45% of rural child care needs are met, while Mongolia has facilities for only 20% of those children needing care. *Id.* at 63, 68. The United Kingdom, the Ukraine, and Mongolia all report that many women turn to part-time work because of the conflict between caring for their children and time spent working. *Id.* at 39, 60, 68.

³³ Germany reports that the part-time jobs held by women tend to pay less, and include fewer hours of work and lower-wage shifts. In addition, women tend to put in fewer years of service. In the United Kingdom as well, part-time work tends to be low level in terms of skills and pay. *Id.* at 13, 39.

³⁴ Tanzania refers to rural women as "the backbone of the economy." *Id.* at 20. In Turkey, women make up 35% of the work force, most of them in agriculture and farming, where no Social Security payments or unemployment benefits are available. *Id.* at 58.

³⁵ In 1985, worldwide figures indicated that for every 55 boys enrolled in the first and second level of school, there were 45 girls in those levels. In the third educational level (post-secondary schooling), there were 43 girls for every 57 boys enrolled. As of 1985, there were 80,000,000 more boys than girls enrolled in primary and secondary schools. R. Sivard, *supra* note 2, at 19.

³⁶ By U.N. estimates, school systems in at least one in three developing countries cannot yet accommodate all the children who should attend school; in Africa, 40% of all eligible children could not be enrolled in 1980. *Id.* at 18.

these countries especially, girls are more likely than boys to be left out of school because their work at home is considered more important than their education.³⁷

3. Political Participation

Although women represent half of the world's population, they hold no more than ten percent of the seats in national legislatures and seven percent of the seats in executive cabinets.³⁸ Relative to the rest of the world, women in Scandinavian countries have exceptionally high rates of political participation: in Denmark, Finland, Norway, and Sweden, twenty-five to thirty percent of the national legislatures and eighteen to twenty-five percent of the cabinets are comprised of women.³⁹ The power women have wielded in these countries has led to government policies focusing on equality.⁴⁰ With women so vastly politically underrepresented in the rest of the world, such policies fail to be a priority.

4. Health

Women's health is not a priority in most countries. Many girls receive less food and less medical treatment than boys.⁴¹ Women in less developed countries have a high rate of anemia.⁴² Malnutrition results in stunted growth, and in the case of girls, a narrow pelvis. When a woman with a narrow pelvis attempts to give birth, labor can become obstructed, and her uterus may rupture. One-eighth of the deaths from childbirth in Bangladesh are due to obstructed labor or to a ruptured uterus. In Zaire, eighteen percent of hospital deliveries involve obstructed labor.⁴³

Cultural beliefs can have a negative effect on women's health. Women in many countries are encouraged, or forced, to marry at an early age

³⁷ *Id.*

³⁸ *Id.* at 34.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ N. Sadik, *The State of the World's Population 1989* at 7 (United Nations Population Fund 1989).

⁴² In 1982, the World Health Organization (WHO) found that the prevalence of anemia in less developed countries was 60% in pregnant women and 47% in non-pregnant women. The prevalence of anemia in all women of reproductive age was estimated at 49%. DeMaeyer & Adiels-Tegman, *The Prevalence of Anaemia in the World*, 38 *World Health Statistics Q.* 302, 303 (1985).

⁴³ N. Sadik, *supra* note 41, at 7.

through arranged marriages.⁴⁴ Marriage at a young age exposes women to early and frequent childbearing, especially in countries where the husband's consent is needed for the woman to obtain contraceptives.⁴⁵ Early and frequent childbearing in turn exposes women in less developed countries to possible fatal health risks. Worldwide, there are over 500,000 deaths due to pregnancy and childbirth every year:⁴⁶ one death every minute of every day.⁴⁷

In addition, cultural practices that expose young girls to early intercourse and childbirth can result in long-term morbidity. Vesico-vaginal fistulae, tears in the flesh between the vaginal wall and the urinary canal due to intercourse before the girl reaches physical maturity, prolonged labor, or cultural practices of cutting the vagina,⁴⁸ can cause a steady flow

⁴⁴ About 50% of African women, 40% of Asian women, and 30% of Latin American women are married by the age of 18. *Id.* at 4. In Bangladesh, the average age of marriage for women is 11.6 years; in Pakistan it is 15.3 years; and in Sierra Leone it is 15.7 years. *Id.* at 9.

While issues of family law directly affect women's status worldwide, few comparative studies of the practices of different countries exist.

⁴⁵ Some family planning and reproductive health clinics in developing countries maintain the practice of seeking spousal authorization for family planning even when the laws or regulations of a country no longer require it. Cook & Maine, *Spousal Veto over Family Planning Services*, 77 *Am. J. Pub. Health* 339, 340 (1987).

⁴⁶ World Bank, WHO & UNFPA, *Preventing the Tragedy of Maternal Deaths: A Report on the International Safe Motherhood Conference, Nairobi, Kenya 6* (1987). See also N. Sadik, *supra* note 41, at 10.

⁴⁷ One out of every 21 African women will die as a result of pregnancy and childbirth; one in 38 South Asian women and one in 90 Latin American women will suffer the same fate. N. Sadik, *supra* note 41, at 9. More women die of pregnancy-related causes in India in one month than in North America, Europe, Japan, and Australia combined in one year. *Id.* at 10.

Several international conferences have addressed the problem of maternal deaths. In 1987, two conferences were held on maternal mortality in Nairobi, Kenya: the International Safe Motherhood Conference and the International Conference on Better Health for Women and Children through Family Planning. In addition, funding to improve women's health is increasing. The World Health Organization established the Safe Motherhood Initiative in 1987 to fund short-term operations research on maternal health measures. In 1989, the World Bank announced that it intended to double its lending for population, health, and nutrition projects by 1990. Safe motherhood projects are now supported by a number of private foundations, as well as the United States government. Lettenmaier, Liskin, Church & Harris, *Mothers' Lives Matter: Maternal Health in the Community*, Population Reports, Sept. 1988, at 1, 13.

⁴⁸ Gishiri cutting, for example, is a traditional practice throughout Northern Nigeria among the Hausa, Fulani, and Kanuri tribes. The anterior and occasionally

of urine to leak through the vagina, rendering young women incontinent for life. Although the fistulae may be repaired surgically, few women are able to undergo the operation,⁴⁹ and their continued incontinence renders them social outcasts.⁵⁰

Female circumcision, an excising of some or all of the external genitalia in order to control female sexuality and assure virginity, is widely practiced in over forty countries.⁵¹ Health effects from the practice vary according to the severity of the circumcision, but include hemorrhage, acute and chronic infection, urine retention due to occlusion,⁵² menstrual difficulties, scarring, vaginal abscesses, and death.⁵³

the posterior area of the vagina is incised by a sharp instrument, for indications such as prevention and treatment of obstructed labor, amenorrhea, dyspareunia, coital difficulties, rashes, and general aches and pains. The result is usually total or partial destruction of the urethra. Tahzib, *Vesicovaginal Fistula in Nigerian Children*, 1985 *The Lancet* 1291, 1292.

⁴⁹ At Murtala Muhammed Hospital, the largest state hospital in northern Nigeria, about 2,000 women are on a waiting list for corrective surgery. Brooke, *A Nigerian Shame: The Agony of a Child Bride*, *N.Y. Times*, Jul. 17, 1987, at 4, col. 3.

⁵⁰ Murphy, *Social Consequences of Vesico-Vaginal Fistula in Northern Nigeria*, 13 *J. Biosocial Sci.* 139 (1981). An estimated 20,000 women in northern Nigeria suffer from vesico-vaginal fistula. Brooke, *supra* note 49, at 4.

⁵¹ Female circumcision is practiced in 26 countries in Africa, as well as countries along the Arab Peninsula and the Persian Gulf. Somalia, Sudan, and Ethiopia are among the countries with the highest incidence of female circumcision. Slack, *Female Circumcision: A Critical Appraisal*, 10 *Hum. Rts. Q.* 437, 443 (1988).

⁵² Severe infection leading to urinary tract complications may result from a form of circumcision called infibulation, or Pharaonic circumcision, that involves cutting away the clitoris and labia minora and much of the labia majora. The rough edges of the labia majora are then sewn together, leaving only a small hole for urine and menstrual blood to escape. *Id.* at 441-42, 452.

In a study carried out in the Sudan, virtually all of the infibulated women questioned reported substantial difficulties in urination . . . "The average period of time required by a Pharaonically circumcised virgin to urinate is 10 to 15 minutes. She must force the urine out drop by drop. Some women reported requiring up to two hours to empty their bladders."

Id. at 452 (quoting Lightfoot-Klein, *Pharaonic Circumcisions of Females in the Sudan*, 2 *Med. & L.* 354 (1983)).

⁵³ For more information on the medical and cultural aspects of the practice, see generally Hosken, *The Epidemiology of Female Genital Mutilations*, 8 *Tropical Doctor* 150 (1978); Taba, *Female Circumcision*, 10 *Tropical Doctor* 21 (1980). CEDAW, in its Ninth Session (Feb. 1990), proposed mounting media, education, and arts campaigns to promote eradication of the traditional practice of female circumcision. CEDAW (169th and 170th mtgs.), U.N. Press Release, WOM/541 (2/2/90).

5. Abortion Rights

Presently, about one billion people, or twenty percent of the world's population, live in countries where abortion is prohibited or allowed only to save the life of the woman. These countries include Pakistan, Venezuela, Nigeria, Ireland, and Belgium.⁵⁴ About two billion people, or thirty-nine percent of the world's population, live in countries where abortion is available on request in the first trimester. These countries include the United States, Tunisia, France, Greece, the Soviet Union, and Scandinavian countries.⁵⁵ Another 1.3 billion people, or about twenty-five percent of the world's population, live in countries where abortion is available on social or economic grounds. Examples are Japan, Poland, and India.⁵⁶ In three countries, with about five percent of the world's population, abortion is legal only in cases of rape or incest, or to save the life of the woman: Mexico, Brazil, and Ecuador.⁵⁷

United States antiabortion policies make a bad situation worse by reaching abroad and attempting to limit freedom of speech and association related to abortion.⁵⁸ In 1973, the Helms Amendment to the Foreign Assistance Act prohibited using United States funds "to pay for the performance of abortions as a method of family planning or to motivate or

⁵⁴ Population Crisis Committee, Fact Sheet: Facts on Illegal Abortion 3 (Sept. 1989) [hereinafter Fact Sheet]. In Belgium, although legally restricted, 10,800 abortions were performed in 1985 under good conditions in outpatient clinics, hospitals, and physicians' offices. Legalization is being discussed in Parliament. See Country Notes, 18 Abortion Res. Notes 2,2 (Dec. 1989).

⁵⁵ Fact Sheet, *supra* note 54, at 4. Although abortion is available on request in the United States, access to abortion is restricted by the ability to pay. For example, as a result of *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), a woman in Missouri cannot have an abortion in a public facility. A poor woman in Missouri may have difficulty finding a private clinic which will perform abortion at a cost she can afford.

⁵⁶ Fact Sheet, *supra* note 54, at 4.

⁵⁷ *Id.*

⁵⁸ Domestically, the U.S. has implemented its antiabortion stance through its refusal to fund any voluntary abortions, even in cases of rape and incest, through Medicaid. In 1970, the Department of Health and Human Services issued new regulations to Title X of the Public Health Services Act § 1008, 42 U.S.C.A. § 300a-6 (1944), as added Pub. L. No. 91-572, § 6(c), 84 Stat. 1508 (1970), that, among other things, forbid Title X recipient family planning centers from discussing abortion with a client or referring a client to another facility for abortion. These regulations were challenged in the Supreme Court, which most recently held them to be a reasonable agency interpretation of Congressional policy under a facial challenge to the constitutionality of Title X. *Rust v. Sullivan*, 111 S. Ct. 1759 (1991).

coerce any person to practice abortions."⁵⁹ The Mexico City Policy, introduced in 1984, announced that the United States would "no longer contribute to separate nongovernmental organizations (NGOs) which perform or actively promote abortion as a method of family planning in other nations."⁶⁰

The Mexico City Policy is exerting a chilling effect on abortion speech and association overseas.⁶¹ Thousands of medical textbooks containing chapters on pregnancy termination have been destroyed.⁶² Associations and potential links between United States NGOs and foreign NGOs in Latin America and Asia have been severed, or have not been made, out of fear of violating the Policy or out of anger that it is being imposed in the first

⁵⁹ 22 U.S.C.A. § 2151b(f)(1) (West supp. 1990).

⁶⁰ U.S. Policy Statement for the International Conference on Population, 10 *Population & Dev. Rev.* 574, 578 (1984) (reproducing the Policy Statement of the United States of America at the United Nations International Conference on Population) [hereinafter U.S. Policy Statement]. Foreign governments were excluded from the policy because the United States recognized that such a prohibition would interfere with national sovereignty. Camp, *The Impact of the Mexico City Policy on Women and Health Care in Developing Countries*, 20 *N.Y.U. J. Int'l L. & Pol.* 35, 36 (1987).

The Mexico City Policy was introduced by the Reagan Administration at a world population conference in Mexico City. U.S. Policy Statement, *supra*, at 574. It was implemented through a clause appearing in new and renewed contracts with U.S. nongovernmental organizations (NGOs). The clause established that, as a condition of receiving U.S. funds, NGOs would not use the funds to perform or actively promote abortion as a means of family planning overseas, nor to subcontract with foreign NGOs that perform or actively promote abortion as a method of family planning, even if the foreign NGOs did so with their own, non-U.S. funds. See Cook, *U.S. Population Policy, Sex Discrimination, and Principles of Equality Under International Law*, 20 *N.Y.U. J. Int'l L. & Pol.* 93, 96 (1987). Thus, American NGOs could do as they wish with their privately raised funds, but foreign NGOs, as a condition of receiving U.S. funds through subcontract, could not perform or actively promote abortion as a method of family planning regardless of the source of the funds.

⁶¹ Refusal to sign the clause has resulted in a major loss of funds to some organizations. For example, International Planned Parenthood Federation (IPPF) lost its funding in 1984. At that time, the U.S. had supported a quarter of IPPF's budget. Camp, *supra* note 60, at 37. The Pathfinder Fund, a U.S.-based international family planning organization, signed the clause in 1985 under threat of losing most of its funding (in 1980, 90% of its budget came from the U.S. Agency for International Development (AID)). Cook, *supra* note 60, at 99.

⁶² Camp, *supra* note 60, at 46-47.

place.⁶³ Through misinterpretations, misunderstandings, and actual implementation of the Policy, women outside the United States are being harmed.

Legal restrictions on abortion, which limit access to medical facilities or make abortion a crime, lead women to seek unsafe abortions performed outside of licensed facilities. Frequently, this results in septic abortions, which cause a tremendous number of deaths and illnesses in less developed countries. Unsafe abortion is a leading cause of death among women of reproductive age in such countries, killing between 100,000 and 200,000 women each year.⁶⁴

Unsafe abortions can also occur in countries that allow abortion by law, but fail to ensure access to abortion or to reproductive health services.⁶⁵

⁶³ Id. In December 1990, AID released its internal evaluation of the Mexico City Policy. The Mexico City Policy Implementation Study was conducted by Ambassador John Blane and Matthew Friedman, through AID's POPTECH Project with the International Science and Technology Institute, Inc., a private consulting firm. The study examined compliance with and understanding of the standard clause used to implement the Policy among five AID Cooperating Agencies and 49 subprojects. The study concluded that, although there was compliance with the Policy, some subprojects took an overcautious approach that excluded activities actually permitted under the Policy. Population Crisis Committee, AID Releases Study of Controversial Mexico City Policy, Washington Population Update: News and Analysis of U.S. Population Assistance Policy 4, 4-5 (Feb. 1991) [hereinafter Washington Population Update].

Some NGOs have focused on the right to free speech and association in lawsuits over the Mexico City Policy. These NGOs have argued that the Mexico City Policy forbids them from freely associating with groups overseas and forces them to become the U.S. government's agent in enforcing antiabortion policies that are inconsistent with their own views. The courts have rejected their claims. See, e.g., Planned Parenthood Fed'n of Am. v. Agency for Int'l Dev., No. 87 Civ. 0248, (S.D.N.Y. Mar. 7, 1990) (LEXIS, Genfed library, Dist file), *aff'd*, 915 F.2d 59 (2d Cir. 1990), application denied, 111 S. Ct. 335 (1990); DKT Memorial Fund v. Agency for Int'l Dev., 691 F. Supp. 394 (D.D.C. 1988), *aff'd in part, rev'd in part*, 887 F.2d 275 (D.C. Cir. 1989).

⁶⁴ Fact Sheet, *supra* note 54, at 1; The Fund for the Feminist Majority, *Abortion for Survival* 3 (1989). In Ethiopia, 54% of obstetric deaths are the result of botched abortions. N. Sadik, *supra* note 41, at 10. At Kenyatta National Hospital, a regional referral center in Nairobi, Kenya, doctors treat 30 to 60 women per day who suffer from botched abortions. Coeytaux, *Induced Abortion in sub-Saharan Africa: What We Do and Do Not Know*, 19 *Stud. in Fam. Plan.* 186, 187 (1988).

⁶⁵ Ironically, in countries that allow abortion, there may be great social pressure to abort female fetuses. In India and China, for example, where there is

As an example, India legalized abortion in 1972, but four to six million abortions per year are still performed there outside of licensed facilities, due to lack of access to services.⁶⁶ Also, Zambia, which has one of the most liberal abortion laws in Africa, requires that abortions be performed in a hospital and only after three physicians have authorized the procedure. These strict requirements make safe and legal abortion virtually inaccessible. As a result, at the University Teaching Hospital in Zambia, for every abortion performed legally in the hospital, doctors treat nine incomplete abortions that were clandestine.⁶⁷

Unsafe abortions are taxing the health care systems of the less developed world. In some hospitals, as much as fifty percent of the maternity budget is spent on treating abortion complications.⁶⁸ In Ghana, sixty to eighty percent of all minor operations performed at Korle Bu Hospital are for complications of abortion.⁶⁹ Abortion cases use nearly half of the blood resources in various hospitals in Africa and Latin America.⁷⁰

*6. Violence Against Women*⁷¹

Women all over the world face violence repeatedly throughout their lives: through lack of medical care;⁷² through genital mutilation;⁷³ through the complications of pregnancy and childbirth, including unsafe abortions;⁷⁴

enormous social pressure to bear sons, amniocentesis is used to screen for female fetuses, which are then aborted. In a study of 8,000 abortions performed at a clinic in Bombay, India, 7,999 of the fetuses were found to be female. Heise, *Crimes of Gender*, *Worldwatch*, Mar.-Apr. 1989, at 12, 17.

⁶⁶ Fact Sheet, *supra* note 54, at 1.

⁶⁷ *Complications of Abortion in Developing Countries*, Population Reports, Series F, at F-142 (1980) [hereinafter *Complications of Abortion*]; Coeytaux, *supra* note 64, at 186.

⁶⁸ *Complications of Abortion*, *supra* note 67, at F-106.

⁶⁹ Ladipo, *Preventing and Managing Complications of Induced Abortion in Third World Countries*, *Int'l J. Gynecology & Obstetrics* 21, 21 (Supp. 3 1989).

⁷⁰ *Complications of Abortion*, *supra* note 67, at F-116.

⁷¹ For comprehensive reviews of violence against women internationally, see G. Ashworth, *supra* note 21; Heise, *supra* note 65.

⁷² See *supra* notes 41, 49 and accompanying text.

⁷³ See *supra* notes 48-53 and accompanying text.

⁷⁴ See *supra* notes 45-47, 54-70 and accompanying text.

through trafficking in women;⁷⁵ and through domestic abuse⁷⁶ and rape.⁷⁷

One particularly well researched area of violence against women is that of "dowry deaths," or "bride burning," in India. Cultural practice requires that a woman's parents pay a dowry to her husband's family at the time of marriage. However, when poorer parents are unable to meet the dowry payment, the bride is seen as worthless and burdensome to her new family. The bride's husband or members of his family then may douse her with kerosene and ignite her. The incident is usually made to look as if it were a kitchen accident. In 1987, police records in India reflected 1,418 bride murders.⁷⁸

⁷⁵ Trafficking in women occurs all over the world. For example, it is estimated that three or four women become prostitutes every day in Lima, Peru. Portugal, Peru: Not Even with a Rose Petal . . ., in *Sisterhood is Global* 555 (R. Morgan ed. 1984). Some 500,000 women in Thailand are employed as bar girls, massage parlor girls, and prostitutes. Vajrathan, Thailand: We Superwomen Must Allow the Men to Grow Up, in *Sisterhood is Global* 676 (R. Morgan ed. 1984). Women become trapped in the profession and are "exploited by their patrons and owners, sometimes being little better off than indentured slaves." Tambiah, *Violence and Exploitation*, in *Empowerment and the Law*, supra note 8, at 145.

⁷⁶ "Study after study has shown that wife beating is prevalent in all societies and crosscuts all racial, cultural and socioeconomic lines." Heise, supra note 65, at 13. In Peru, 70% of all crimes reported to the police involve women being beaten by their partners. In 1988 in Sao Paulo, Brazil, 772 women were killed by their husbands. J. Seager & A. Olson, supra note 8, at 102. According to a law reform committee in Papua, New Guinea, some 67% of rural women and 56% of urban women have been victims of domestic violence. Heise, supra note 65, at 13. Two to six million women in the United States are beaten by their partners every year. Keenan, *Shattered Dreams*, *Chicago Tribune*, Nov. 27, 1988, at C1, col. 2. In many African countries, women treat wife beating as an accepted practice. The Uganda Women's Lawyers Association recently launched a campaign to convince women that wife battering is not a sign of love. Perlez, supra note 26, at 10. The U.N. has published a report on domestic violence. U.N. Centre for Social Development and Humanitarian Affairs, *Violence Against Women in the Family*, U.N. Doc. ST/CSDHA/2, U.N. Sales No. E.89.IV.5 (1989). See also infra note 80 and accompanying text.

⁷⁷ In the United States, a rape is committed every six minutes. Heise, supra note 65, at 14. See also infra notes 81-82, 84-88 and accompanying text.

⁷⁸ 14 I.S.I.S. Int'l Women's Health J. 13 (1989). In 1961, India passed the Dowry Prohibition Act, with amendments in 1984 and 1986. Although dowry deaths and dowry harassments are increasingly reported, there have been very few convictions. Flavia, *Violence and Women*, 2 *Law. Collective* 4-8 (1987).

While women are generally unable to physically stave off violence against them, laws rarely provide them with any protection.⁷⁹ In some cases the laws implicitly contribute to the violence by making it difficult for a woman to establish her case in court. A Moroccan woman seeking a divorce because of physical mistreatment by her husband must show the court that the mistreatment has reached a demonstrably unbearable stage. Judges in Morocco determine whether the beatings have become unbearable, and "judges are not reputed to favour women in Moroccan society, which means that the right to beat his wife is an almost unchecked privilege of the husband."⁸⁰

The Zina Ordinance of Pakistan⁸¹ places a woman who is unable to establish her lack of consent in a rape case open to prosecution for adultery. Furthermore, the woman's own testimony is worthless in seeking the most stringent form of punishment for her assailant. In such an instance, she must present the testimony of four adult Muslim male witnesses, a virtually impossible task.⁸²

Even in the United States, women have limited legal recourse for physical abuse⁸³ and rape.⁸⁴ Police insensitivity and frequent hostility to rape survivors make many women reluctant to report the crime or pursue

⁷⁹ [M]an's law [regarding rape] has sought to measure such relative, qualitative and interrelated concepts as moral character, force, fear, consent, will and resistance to satisfy the overriding male concern that beyond the female's oath, her word, her testimony, there was not mutual intercourse and subsequent vindictiveness and wrath, but an objective, tangible crime.

S. Brownmiller, *Against Our Will: Men, Women and Rape* 369 (1975).

⁸⁰ F. Mernissi, *Beyond the Veil: Male-Female Dynamics in Modern Muslim Society* 111 (rev. ed. 1987).

⁸¹ *Offence of Zina (Enforcement of Hudood) Ordinance, 1979.*

⁸² See generally A. Jahangir & H. Jilani, *The Hudood Ordinances: A Divine Sanction?* (1990).

⁸³ See Ford, *Wife Battery and Criminal Justice: A Study of Victim Decision-Making*, 32 *Family Relations* 463 (1983).

⁸⁴ In 1988, the F.B.I. catalogued 92,486 reported forcible rapes. 1988 F.B.I. Uniform Crime Rep. 16 (1988). These numbers do not reflect statutory rape and other sex offenses and thus account for only 80% of all "attempts or assaults to commit forcible rape." *Id.* at 15. Of the crimes counted as "forcible rape," only 52% of the rapes occurring in cities, 55% occurring in rural areas, and 53% in suburban areas were cleared by arrest "or exceptional means." While the number of reported rapes represents a 2% increase over 1987, the arrest statistics remain unchanged. *Id.* at 16.

their attackers.⁸⁵ Indeed, the police themselves may rape women.⁸⁶ A further problem exists in the United States for women who choose to prosecute. Under traditional common law doctrine, a woman is presumed to have consented to sex unless she resists her attacker to the utmost.⁸⁷ While some states have reduced the standard from "resisting to the utmost" to "reasonable resistance," little difference exists between these standards.⁸⁸

III. WOMEN'S CONTINUED LOW STATUS

Why has international law been ineffective in guaranteeing women basic human rights as set forth in the Convention? This section addresses some of the reasons for women's continued low status: issues the Convention fails to explicitly discuss; problems with reporting and enforcement; reservations entered by States Parties; and the failure of the human rights community to give women's rights the respect they deserve.

A. Invisible Issues: What the Convention Omits

Although the Convention is the most detailed international treaty on the rights of women, it does not explicitly mention important categories of

⁸⁵ One California police manual, *Patrol Procedure*, claims that "[f]orcible rape is one of the most falsely reported crimes. . . . The majority of 'second day reported' rapes are not legitimate." S. Brownmiller, *supra* note 79, at 364. However, New York City's Rape Analysis Squad, commanded by women police, found that only 2% of all rape complaints were false—roughly the same false report rate found for other kinds of felonies. *Id.* at 366.

⁸⁶ *Id.* at 270. In addition to "an abuse of power committed by those whose job is to control such abuses of power," such rapes are difficult to process through police departments "reluctant to face up to evidence of criminality within their own house. . . ." *Id.*

⁸⁷ J. Murphy & J. Coleman, *Philosophy of Law* 53 (1990).

⁸⁸ The use of an "objective" standard in determining reasonable resistance leads to the problem of different interpretations by different judges, many of whom offer the unsympathetic prescription that "any uniqueness in the emotional make-up of the victim is irrelevant in determining whether the threat possessed the requisite force to satisfy this element of the offense." *Pennsylvania v. Mlinarich*, 518 Pa. 247, 255–56, 542 A.2d 1335, 1340 (1988).

In addition, a judge may distinguish between types of "threats" and determine that in some situations "the victim can make a deliberate choice to avoid the encounter even though the alternative may be an undesirable one." *Id.* at 259, 542 A.2d at 1341. In this case, the judge was referring to a 14-year-old girl's "choice" between subjecting herself to the sexual abuse of her foster father or being returned to a detention home.

discrimination and abuse. Violence against women, one of the most important issues facing women today,⁸⁹ is not explicitly addressed in the Convention. Discrimination against lesbians, another issue pertinent to women, is also absent from the Convention.⁹⁰

In the area of family planning, the Convention fails to grant to women the final authority in deciding whether or when to reproduce. By granting women equal rights with men "to decide freely and responsibly on the number and spacing of their children . . .,"⁹¹ the Convention has arguably deprived women of ultimate control over their bodies. Women bear the physical burden of reproduction, and the law should therefore allow them to make the final decision on procreation.⁹²

While the Convention does not adequately address these issues, CEDAW could interpret several articles to include them.⁹³ In fact, the Convention's language is broad enough to implicitly deal with such areas. The language of article 5(a), that

States Parties shall take all appropriate measures: To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women

seems to come closest in addressing the areas of discrimination not explicitly dealt with in the Convention. Moreover, even without a specific provision in the Convention, CEDAW can still include a particular topic in its questioning of States Parties on implementation of the Convention.⁹⁴ In fact, the Committee currently questions States Parties about violence against

⁸⁹ See Section II(B)(6), *supra*.

⁹⁰ Byrnes, *supra* note 10, at 31.

⁹¹ Convention art. 16(e).

⁹² The United States Supreme Court has recognized this argument. See *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 71 (1976). As described earlier in this paper, pregnancy can be life threatening to women in less developed countries. See *supra* notes 43, 46-47 and accompanying text.

⁹³ Articles 3, 5, and 24 may implicitly cover violence against women. Personal communication, Rebecca Cook, J.D., LL.M., Associate Professor & Director of the International Human Rights Program, Faculty of Law, University of Toronto.

⁹⁴ The Committee stresses article 5 in its questioning. Byrnes, *supra* note 10, at 31. This fact indicates that questions about topics not adequately addressed by the Convention can be included without much effort.

women. This can and should be expanded to include further areas of discrimination against women.

B. Problems with Enforcement of the Convention

1. Limited Available Mechanisms

The Convention has one of the weakest enforcement mechanisms of all human rights instruments adopted since 1965.⁹⁵ It has no provision for communications or complaints to be filed by those who feel their rights have been violated, and instead relies solely on self-reporting to encourage and measure adherence to the Convention by States Parties.⁹⁶ Nor is there a mechanism for one States Party to complain about violations by another,⁹⁷ although the Convention does provide dispute resolution procedures.⁹⁸

An optional protocol, establishing mechanisms for individuals and States Parties to complain about Convention violations, would better ensure enforcement of the Convention. There are several models for such mechanisms: for example, the Optional Protocol to the International Covenant on Civil and Political Rights⁹⁹ and the Convention on the Elimination of All Forms of Racial Discrimination.¹⁰⁰ Establishing an optional protocol to the Convention would probably not be technically difficult.¹⁰¹

⁹⁵ See Meron, *Enhancing the Effectiveness of the Prohibition of Discrimination Against Women*, 84 *Am. J. Int'l L.* 213 (1990).

⁹⁶ Sheldon, *Improving the Status of Women Through International Law*, 9 *Whittier L. Rev.* 413, 416 (1987).

⁹⁷ *Id.*

⁹⁸ Pursuant to article 29, when two or more States Parties disagree on the interpretation or application of the Convention, they should negotiate. If the dispute remains unsettled by negotiation, then at one party's request, the matter goes into arbitration. If the parties are unable to agree on the organization for arbitration within six months of the date of request for arbitration, then any one of the parties may appeal to the International Court of Justice. Article 29(2) permits States Parties to make reservations to the dispute resolution mechanism, and at least 25 States Parties have done so. Cook, *supra* note 19, at 709.

⁹⁹ *Optional Protocol to the International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 *U.N.T.S.* 171.

¹⁰⁰ *International Convention on the Elimination of All Forms of Racial Discrimination*, Mar. 7, 1966, 660 *U.N.T.S.* 195.

¹⁰¹ The General Assembly could initiate the optional protocol after consulting with the Commission on the Status of Women, the Commission on Human Rights, and CEDAW. Meron, *supra* note 95, at 216. CEDAW would, of course, need additional resources to accomplish the tasks specified in the protocol. *Id.* But under article 17(8) & (9), the U.N. Secretary-General must provide the necessary resources, staff, and facilities for effective performance of the Committee.

While a separate optional protocol would be ideal in improving enforcement of the Convention, some improvement might be possible even without one. For example, the Human Rights Committee has concluded that it has jurisdiction to adjudicate an individual's claim of gender-based discrimination where the provisions in the Convention coincide with those of the Covenant on Civil and Political Rights.¹⁰² In such overlapping areas, individuals should take advantage of this jurisdiction.

2. *Receiving Reports*

Reporting is a crucial measure for enforcing and monitoring women's rights under the Convention.¹⁰³ It is critical, therefore, that CEDAW receive accurate, timely country reports on the status of women.¹⁰⁴ Yet CEDAW has had a consistent problem receiving accurate reports¹⁰⁵ on time.¹⁰⁶ "As of March 4, 1988 there were twenty-one States Parties whose initial reports to CEDAW were more than two years overdue. . . ."¹⁰⁷

One way to improve reporting derives from CEDAW's power to make suggestions and general recommendations.¹⁰⁸ The Committee has already used this power to issue general guidelines on reporting;¹⁰⁹ it could now develop and issue more detailed guidelines. Such guidelines might prove helpful in improving the accuracy of reports.¹¹⁰ Another way to improve

¹⁰² Communication No. 172/1984, *S.W.M. Broeks v. The Netherlands* (views adopted on Apr. 9, 1987 at the 29th session). See Cook, *supra* note 19, at 710.

¹⁰³ The reporting requirement is contained in article 18 of the Convention.

¹⁰⁴ M.I. Plata & M. Yanuzova, *Los Derechos Humanos y la Convención Sobre la Eliminación de Todas Formas de Discriminación Contra la Mujer* 169 (1988).

¹⁰⁵ For example, Czechoslovakia, in its initial report to CEDAW, proclaimed that sex discrimination had been eliminated in the 15th century in its country. See Sheldon, *supra* note 96, at 416. Romania, in its initial report to CEDAW, made a similar claim: "There is at present a perfect unity of interests between the individual and society, since the obstacles to the promotion of full equality between citizens have been removed. As a result, all discrimination against women, who are equal in rights with men, has disappeared." U.N. Doc. CEDAW/C/5/Add. 40/Amend. 1 (1988). See also Byrnes, *supra* note 10, at 14 n.42.

¹⁰⁶ M.I. Plata & M. Yanuzova, *supra* note 104, at 169.

¹⁰⁷ Byrnes, *supra* note 10, at 14.

¹⁰⁸ Convention art. 21.

¹⁰⁹ General Guidelines Regarding the Form and Contents of Reports Received from States Parties Under Article 18 of the Convention, U.N. Doc. CEDAW/C/7 (1983).

¹¹⁰ Byrnes, *supra* note 10, at 16. In addition, CEDAW could issue a list of questions that are commonly asked of States Parties during reporting sessions, and issue guidelines on reporting under the articles that CEDAW considers from past reports to be inadequately covered. *Id.*

the accuracy and timely submission of reports is for specialized agencies or independent experts to provide training on reporting.¹¹¹ CEDAW has, in fact, endorsed the holding of training seminars and the provision of technical assistance.¹¹²

Nongovernmental organizations also alleviate reporting problems. NGOs play an important role both in helping to develop reporting standards and guidelines and in filing parallel reports¹¹³ (or aiding in official reports) to the Committee. Because they operate outside of governments, they may monitor government action, or inaction, regarding women's rights.¹¹⁴ If NGOs take on a larger role, enforcement of the Convention may become more effective.

3. Annual Meeting Time

The weakness of reporting as an enforcement mechanism is exacerbated by CEDAW's brief annual meeting time for considering reports of States Parties. CEDAW is authorized to meet once a year for two weeks, less time than other human rights bodies.¹¹⁵ This creates a backlog of reports to the Committee, seriously hampering review and enforcement of women's rights under the Convention.¹¹⁶

¹¹¹ *Id.* at 19.

¹¹² *Id.* (citing the Report of the Committee on the Elimination of Discrimination Against Women (7th Sess.), 43 U.N. GAOR Supp. (No. 38), U.N. Doc. A/43/38 (1988)).

¹¹³ Two manuals to assist governmental bodies reporting, and NGOs wishing to file parallel reports, on the status of women in a particular country have been published. The first, S. Isaacs, R. Holt & A. Irvin, *Assessing the Status of Women: A Guide to Reporting Using the Convention on the Elimination of All Forms of Discrimination Against Women* (1988), is published by the International Women's Rights Action Watch (IWRAP). The Commonwealth Secretariat has published a second manual, *The Convention on the Elimination of All Forms of Discrimination Against Women: Explanatory Documentation Prepared for Commonwealth Jurisdictions* (1988).

IWRAP is a nongovernmental organization concerned with raising women's status and enforcing women's rights by promoting the Convention. It achieves its goals by establishing and maintaining a global network of activists and scholars concerned with women's rights; publishing a quarterly newsletter, *The Women's Watch*; and holding annual conferences that correspond with CEDAW's review of states' reports. CEDAW members are invited to the conference and are encouraged to attend all presentations voicing concerns on women's rights.

¹¹⁴ M.I. Plata & M. Yanuzova, *supra* note 104, at 166-69.

¹¹⁵ Convention art. 20. The Human Rights Committee, for example, meets three times a year for up to a month at each session. Sheldon, *supra* note 96, at 416.

¹¹⁶ In 1987, for example, there was a backlog of over 40 state reports to be considered. Sheldon, *supra* note 96, at 416.

The language of article 20, which establishes the meeting time, might be interpreted to allow the Committee a longer period to review reports. This provision states that CEDAW shall "normally" meet for a period of not more than two weeks annually to consider reports. The use of the word "normally" provides some latitude for CEDAW to meet for a longer period of time if its workload so requires.¹¹⁷ Considering the large number of States Parties to the Convention,¹¹⁸ CEDAW should use this provision to extend its annual meeting time whenever necessary.

C. Reservations¹¹⁹

Pursuant to the Convention, States Parties can enter reservations at the time of adoption.¹²⁰ To date, the Convention has received more substantive reservations than perhaps any other major human rights treaty.¹²¹ The Convention has received at least eighty-eight substantive reservations¹²² and ninety-five objections to the reservations.¹²³

Reservations become problematic only when they conflict with the object and purpose of the treaty.¹²⁴ Yet determining whether a given reservation conflicts with the Convention's object and purpose has been a source of confusion and controversy. While article 28(2) of the Convention provides that "[a] reservation incompatible with the object and purpose of the present Convention shall not be permitted . . .," CEDAW lacks the power to determine the compatibility of reservations.¹²⁵ Moreover, the Convention states no method for determining the compatibility of reservations.¹²⁶

¹¹⁷ Meron, *supra* note 95, at 214.

¹¹⁸ As of February 1990, the Convention had 100 States Parties. Cook, *supra* note 19, at 643.

¹¹⁹ Article 2(d) of the Vienna Convention on the Law of Treaties defines a reservation as any "unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

¹²⁰ Convention art. 28.

¹²¹ Byrnes, *supra* note 10, at 52. By far, most reservations to substantive articles of the Convention have been filed with regard to article 16, obligating changes in family life. Cook, *supra* note 19, at 702.

¹²² Cook, *supra* note 19, at 644.

¹²³ *Id.*

¹²⁴ Vienna Convention on the Law of Treaties, *supra* note 119, art. 19(c).

¹²⁵ Cook, *supra* note 19, at 708-09; Byrnes, *supra* note 10, at 52.

¹²⁶ Byrnes, *supra* note 10, at 55. The dispute resolution mechanisms described in article 29 might provide one avenue for determining the validity of reserva-

The most challenging reservations to the Convention have come from Islamic nations, which state that they will accept obligations under the Convention only if they are consistent with the requirements of Islamic Law, or *Shari'a*.¹²⁷ Examples of such nations are Egypt,¹²⁸ Iraq,¹²⁹ Bangladesh,¹³⁰ and Libya.¹³¹ Other countries, such as Malawi, have ratified the Convention with broad reservations stating they will accept the treaty obligations to the extent they are consistent with traditional customs and practices.¹³²

Such reservations seemingly conflict with the object and purpose of the Convention, since they allow discriminatory customs and traditions to take precedence over its provisions. Moreover, international law does not allow a party to invoke the provisions of its internal law as justification for failing to perform its treaty obligations.¹³³

While CEDAW's power is limited, it should encourage reserving States Parties to reevaluate and withdraw reservations. Pressure from the Committee might be effective both in convincing states to withdraw reservations and in influencing new States Parties not to enter any reservations. In fact, there is some evidence that the Committee can be effective in this role—several nations have withdrawn reservations to the Convention.¹³⁴

tions, but this article has been the object of many reservations itself. Cook, *supra* note 19, at 644. Furthermore, despite a 1986 resolution by States Parties expressing concern that some reservations might be incompatible with the Convention, no action has yet been taken. *Id.* at 708.

¹²⁷ An-Na'im, *The Rights of Women and International Law in the Muslim Context*, 9 Whittier L. Rev. 491 (1987); Sheldon, *supra* note 96, at 417. CEDAW has encountered considerable opposition to its attempts to deal with reservations based on Islamic law and practices. In 1987, it requested that the United Nations system as a whole study the status of women under Islamic laws and customs. The request was met with hostility in the General Assembly. Byrnes, *supra* note 10, at 54.

¹²⁸ Egypt reserved to articles 2, 9, 16, and 29. U.N., *Multilateral Treaties Deposited with the Secretary-General*, Status as at 31 December 1989, 172 (1990).

¹²⁹ Iraq reserved to articles 2(f) & (g), 9(1) & (2), 16, and 29(1). *Id.* at 174.

¹³⁰ Bangladesh reserved to articles 2, 13(a), and 16(1)(c) & (f). *Id.* at 171.

¹³¹ Libya entered a reservation with regard to the entire Convention: "[Accession] is subject to the general reservation that such accession cannot conflict with the laws on personal status derived from the Islamic Shariah." *Id.* at 175.

¹³² *Id.* at 175. See also Cook, *supra* note 19, at 688–89.

¹³³ Vienna Convention on the Law of Treaties, *supra* note 119, art. 27.

¹³⁴ As of February, 1990, Malawi, France, Ireland, New Zealand, Nieu, and the Cook Islands had withdrawn reservations. Cook, *supra* note 19, at 714–17.

D. Attitude of the Human Rights Community: Are Women's Rights "Human Rights"?

The human rights community has followed a "gender-blind" approach to human rights violations, failing to examine violations of women's rights.¹³⁵ Even within its traditionally narrow focus on violence or detention due to political beliefs, the human rights community has failed to address rape and other forms of torture that are unique to female political prisoners.¹³⁶

The narrow definition of human rights violations as detention and torture for political beliefs has also blinded the human rights community from acknowledging much of women's suffering as human rights violations. The human rights community has viewed traditional customs and cultural practices that oppress, maim, and kill women "as only an unfortunate aspect of the situation of women in places where 'different' customs prevail."¹³⁷

The Convention, however, calls for a broader examination of human rights violations than the narrow definition traditionally employed by the human rights community. It addresses not only state action, but also the failure of states to act to correct discrimination against women.¹³⁸ It also calls for an end to traditional customs and cultural practices that amount to abuse of women's rights.¹³⁹ The Convention in effect declares that there is no difference, in terms of human rights violations, between the practice of *purdah*¹⁴⁰ and other gender-based detentions, and the practice of political detentions; between the practice of sexual segregation and the practice of

¹³⁵ See Neuwirth, *Towards a Gender-Based Approach to Human Rights Violations*, 9 Whittier L. Rev. 399 (1987); G. Sherry, *Women as Victims: An Examination of Human Rights Violations Specific to Women* (unpublished, concept paper prepared by the Lawyers Committee for International Human Rights (1987)); Byrnes, *supra* note 10, at 3, 51; Hosken, *Toward a Definition of Women's Human Rights*, 3 Hum. Rts. Q. 1 (1981).

¹³⁶ See generally Neuwirth, *supra* note 135. Amnesty International is currently beginning to research these issues.

¹³⁷ Eisler, *Women's Rights: The Leading Edge of Human Rights*, Breakthrough 53 (Summer 1986).

¹³⁸ See Convention arts. 3, 5.

¹³⁹ See *id.* art. 5. See also Cook, *supra* note 19, at 667-70.

¹⁴⁰ *Purdah* is the Islamic practice of secluding women and keeping them segregated from men. See generally B. Rokeya, *Sultana's Dream and Selections from The Secluded Ones* (R. Jahan ed. & trans. 1988); *Separate Worlds: Studies of Purdah in South Asia* (H. Papanek & G. Minault eds. 1982).

racial segregation; between the right not to be beaten because of gender and the right not to be beaten because of political views.

The Convention calls for a reinterpretation of human rights law by recognizing the ways that women's human rights are violated. CEDAW has an important role to play in "the development of substantive human rights law by exploring the limitations of these mainstream interpretations of important civil and political rights and introducing women's different perspectives into that discourse."¹⁴¹

CEDAW can use its power to "make suggestions and general recommendations"¹⁴² to begin developing a "jurisprudence" of the Convention.¹⁴³ It should begin to develop substantive suggestions and general recommendations about the Convention. There is ample precedent among U.N. human rights bodies for developing a jurisprudence through general recommendations. The Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and the Economic, Social and Cultural Rights Committee have each developed a jurisprudence through general comments or recommendations, or have announced an intention to do so.¹⁴⁴ By developing a jurisprudence on women's rights, CEDAW could emphasize and call attention to the Convention as a human rights instrument.

CEDAW should also encourage other members of the human rights community to become involved with the Convention. CEDAW has the power to invite specialized agencies to submit reports on implementing the Convention in areas falling within the scope of their activities.¹⁴⁵ The Committee could, for example, ask nongovernmental human rights groups¹⁴⁶ to compile reports on specific types of women's rights violations. This would both aid CEDAW in its work and encourage the human rights community to consider violations of women's rights as part of its mandate.

CEDAW's chance for interaction with other U.N. human rights bodies—which would encourage the human rights community to view wom-

¹⁴¹ Byrnes, *supra* note 10, at 51.

¹⁴² Convention art. 21. See *supra* notes 108–10 and accompanying text for a discussion of this power.

¹⁴³ See Byrnes, *supra* note 10, at 46. The Committee has made general recommendations in the past. *Id.* at 45–46.

¹⁴⁴ *Id.* at 47–51.

¹⁴⁵ Convention art. 22.

¹⁴⁶ Examples are Amnesty International, Human Rights Watch, the Lawyers' Committee for International Human Rights, and the International Women's Rights Action Watch.

en's rights as mainstream human rights—is severely limited by CEDAW's marginalized location. Unfortunately, while most human rights bodies are located at the Centre for Human Rights in Geneva, CEDAW is located at the Branch for the Advancement of Women in Vienna.¹⁴⁷ At least one author has called for a reexamination of this venue.¹⁴⁸ Short of moving, however, CEDAW could encourage the U.N. Commission on Human Rights and the Commission on the Status of Women to appoint a special "thematic" rapporteur within the U.N. to receive information from governments, intergovernmental organizations and NGOs, and to recommend measures to prevent continuing violations.¹⁴⁹ This would encourage the human rights community to pay greater attention to violations of women's rights.

IV. CONCLUSION

While women's status and women's rights are increasingly gaining the attention they have long deserved, the reality of women's daily lives remains far from the ideals expressed in international law. This conclusion becomes strikingly clear when one contrasts the rights they have been granted under the Convention with statistics reflecting their actual status. This disparity is due to several factors: flaws in the Convention; reservations entered by States Parties; and the failure of the human rights community to adequately address women's rights issues.

However, much can and should be done to improve women's status. CEDAW should expand its questioning under article 5 to include topics not explicitly addressed by the Convention. Several additional changes—an optional protocol, detailed guidelines on reporting, reliance on the Human Rights Committee to adjudicate, the holding of training seminars, and an expanded meeting time—would greatly enhance enforcement of the Convention. CEDAW should also encourage States Parties to withdraw current reservations. Finally, the human rights community should begin to view women's rights as an essential part of its mandate. Through such measures, women may begin to realize their basic human rights.

¹⁴⁷ Byrnes, *supra* note 10, at 60; Meron, *supra* note 95, at 215.

¹⁴⁸ Meron, *supra* note 95, at 215.

¹⁴⁹ *Id.*

