



International Law, National Sovereignty, and Local Norms: What's to become of CEDAW in the U.S.?

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Abstract

This essay identifies the hermeneutic tradition of CEDAW, the international treaty on women's rights, as a potential resource for transforming the political culture of the United States. Grassroots organizers and community educators have often pointed to the inability of legislative initiatives, by themselves, to bring about the social changes they were drafted to foster. This is perhaps most evident in states where the legislative, judicial, and executive branches of government are too closely aligned and insufficiently independent of each other. Even within the U.S. there is healthy disagreement about where change efforts and resources should be directed. What is lacking in U.S. political culture, however, is any substantive debate about the means by which the nation should begin to move toward recognizing and fulfilling the human rights of its residents. This essay argues that before domestic human rights activists can begin to address questions of leverage and sustainability, they must find ways to deepen and expand the public conversation about human rights altogether. The author recommends that activists link human rights to questions of national security, and, in keeping with the participatory traditions established by community educators in the field, that they do so in ways that stress the interpretive dimensions of the human rights traditions and the relationship between human rights guarantees and democratic practice. Because discussions of national security tend to rely on quite baldly gendered language and stereotypes, the concepts elaborated in CEDAW offer a particularly clear (and attractive) alternative discourse.

On July 30, 2002, The United Nation's Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was voted out of the U.S. Senate Committee on Foreign Relations by a 12 to 7 vote in favor of ratification.¹ This was the second time that the treaty was released from committee for a vote by the full Senate since it was signed in 1979 by President Jimmy Carter. As in the earlier instance, when CEDAW was released from committee in 1994, the Senate ended its legislative session without finally voting on the treaty. Many people have wondered why the U.S. Senate has found it so difficult to endorse values of sexual equality which have become so deeply entrenched in American popular and legal culture. Because, constitutionally, treaty law overrides state law unconditionally, it is possible that individual Senators are indeed hesitant to move for the adoption of additional human rights treaties until the country devises a more adequate means of allowing state governments a role in interpreting their implementation.² It is also possible that the Senate as a whole sees its reluctance to affirm equal rights for women in a global context where such rights are quickly becoming normative as just another opportunity to assert American exceptionalism. Without a full debate within the Senate itself, however, one can only speculate as to what the real obstacles to CEDAW's ratification in the U.S. might be.

The treaty's committee hearing, however, did occasion a fresh crop of newspaper columns, letters to the editor, and position statements published on organizational and advocacy websites regarding the treaty's appropriateness for the United States, both as a resource for domestic legislation and litigation and as a foreign policy tool. A great deal of the commentary opposing ratification that was generated over the summer of 2002 invoked the trope of "sovereignty" to link CEDAW ratification to national security concerns. This focus on CEDAW as potentially undermining national sovereignty overtook earlier emphases finding fault with the treaty's approach to substantive equality in employment.

I am going to read this shift in emphasis as signaling something more profound than an opportunistic ploy to capture and displace anxieties awakened by the September 11th, 2001 attacks or escalated by the threat of war on Iraq. I am going to read it as symptomatic of the need for a broad public conversation about the possibilities of and strategies for creating true security. For years, I believed that the biggest obstacle to CEDAW's adoption in the United States lay in the guarantees it makes concerning women's economic rights, which include mandating paid maternity leave (article 11-2-b),

¹ Working Group on Ratification of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. <http://www.womenstreaty.org/senateupdate.htm>.

² Although not required by the U.S. constitution, under which states' rights are ceded to federal jurisdiction in treaty-making powers, Koren Bell persuasively argues that the U.S. would benefit from the establishment of some sort of convening mechanism to foster state government participation (dialectical federalism) in the drafting and implementation of treaties. See "From Laggard to Leader: Canadian Lessons on a Role for U.S. States in Making and Implementing Human Rights Treaties." *Yale Human Rights and Development Law Journal*, v. 5 (2002): 255-291. For a discussion of the pros and cons of Canada's Continuing Federal-Provincial-Territorial Committee of Officials Responsible for Human Rights as they pertain to CEDAW implementation see Waldorf, Lee and Susan Bazilli, Canada Country Paper, The First CEDAW Impact Study. The Center for Feminist Research and the International Women's Rights Project, York University, 2000. <http://www.yorku.ca/jwrp/CEDAW%20Impact%20Study.htm>

legislating equality in the private sector (articles 2, 3, 5), and ensuring comparable worth (equal pay for work of equal value). However, positive action to realize these guarantees has been effectively postponed by reservations attached to CEDAW in committee.³

Although these reservations neutralize many of the economic rights outlined in CEDAW, opposition to the treaty has escalated, and increasingly relies on arguments that focus on the treaty as a threat to national sovereignty, and, by inference, security. Of course, for many individuals, secure employment on favorable terms remains an important—if increasingly elusive—component of their personal security equation. Thus the “sovereignty” concerns raised by treaty opponents in the United States present treaty proponents with an uncommon opportunity to engage in a broad conversation about human and national security, and the roles played by international law in fostering both. Taking the treaty’s critics seriously, we might well ask, exactly what sort of national sovereignty does CEDAW (or, for that matter, any of the international human rights treaties) threaten? What are the personal and political stakes of maintaining that particular notion of sovereignty? And, finally, will that sort of sovereignty serve us well in a world of increasing international trade and global communication? Is it, in the last instance, even feasible?

Unfortunately, many of the treaty’s critics rely more heavily on exhortation and inference than on explication. A typical essay critical of CEDAW will sandwich its concerns about a sovereign U.S. under siege from international gender experts and human rights advocates between the assertion that women in the U.S. enjoy greater privileges than women located elsewhere and a dismissal of the right to equal pay for work of comparable value as “un-American.”⁴ In short, the sovereignty argument itself takes two forms. The first extends the shop-worn critique of CEDAW as undermining “traditional” family cultural practices, invariably alluded to as patriarchal and authoritarian, to argue that the “constructive dialogue” which is part of the CEDAW reporting process undermines the authority of a nation’s ruling elite, in part because members of the CEDAW committee offer advice to state delegations on the applicable treaty clauses and best practices for obtaining substantive gender equality in a society. Drawing on the reality that under the terms of CEDAW treaty compliance both public and private realms

³ These reservations state that under the terms of ratification—should ratification actually occur—the United States does *not* obligate itself to any of the following requirements found in the treaty itself: “Assigning” women to all units of military service (although women are free to participate in any); mandating paid maternity leave (article 11-2-b); legislating equality in the private sector (articles 2, 3, 5); and ensuring comparable worth (equal pay for work of equal value). The understandings attached in the Senate Foreign Relations Committee say that state and federal implementations will be made according to the appropriate jurisdiction; that no restrictions will be made to the freedom of speech, expression, or association under the Convention (articles 5, 7, 8, 13); and that any free health services to benefit women will be determined by states and not automatically mandated by U.S. ratification (article 12). Declarations made are that the Convention is “non self-executing” and that disputes about interpretation of the Convention will be handled case by case (articles 29-2, 29-1).

⁴ “Article 11d requires women receive the ‘right ... to equal treatment in respect to work of equal value.’ ... This concept wars against our free-market system, where the supply and demand of workers determines the value of a job in a given profession.” Laurel Macleod and Catherina Hurlbert, “Exposing CEDAW,” Concerned Women for America, 9/1/2000,

<http://www.cwfa.org/articledisplay.asp?id=1971&department=CWA&categoryid=nation>.

become subject to international scrutiny for practices of discrimination, these arguments posit a relationship of analogy between the private household and the public forum in which states present their treaty mandated reports. Holding to an “ideal” of the family as structured hierarchically around the father, treaty critics infer that there is something “unnatural” or disorderly about international “experts” publicly criticizing another government’s policies and about government representatives engaging in earnest discussion about best practices in governance.

The second form of the sovereignty appeal borrows from the “strict constructionist” arguments of some constitutional lawyers to assert that the United Nations suffers from “mission drift” when it concerns itself with matters other than interstate violence.⁵ This argument claims that the original idea informing the creation of the United Nations was the institutionalization of a status hierarchy ordering relations among nations with the permanent members of the Security Council at the top of the pack. This “original” order has been corrupted by the burgeoning apparatus of the General Assembly’s humanitarian organs and human rights law treaty bodies. Thus, both forms of the sovereignty argument appeal to an ideal order—imagined to have existed in the past—which is juxtaposed to a contemporary reality characterized as excessively participatory and in flux.

These arguments are worth grappling with because many who support the United Nations system and the further development of international human rights law are also looking for a means of enforcing order upon a chaotic planet. However, the search for a “higher authority” in the United Nations is bound to frustration because what the evolution of the system of international law teaches us is that the authority being sought isn’t “out there” but rather must be created through bringing ever more actors into a global consensus.⁶

Human rights law has developed as a hermeneutically rich canon of authoritative texts about how to structure a fair and just society, not as the scaffolding for an emerging authoritarian regime of global proportions. Human rights law “unleashes” and indeed produces linguistic resources—a lexicon, a unique grammar, and characteristic rhetoric—for articulating claims and enabling reciprocal inquiry among diverse peoples. Those who see CEDAW or the other human rights instruments as providing overnight social transformation are bound, as Jeanne Kirkpatrick noted in her testimony before the Senate committee last June, to have their hope turned to cynicism.⁷ Instead, human rights law

⁵ Fagan, Patrick. “How U.N. Conventions on Women’s and Children’s Rights Undermine Family, Religion, and Sovereignty.” (Backgrounder #1407) The Heritage Foundation, 2001. Available as a download from <http://www.heritage.org/library/backgrounder/bg1407.html>.

⁶ The potential for and emerging instances of enforcement violence resulting from protective or repressive legislation are explored by Ratna Kapur in “The Tragedy of Victimization Rhetoric: Resurrecting the ‘Native Subject’ in International/Post-Colonial Feminist Legal Politics.” *Harvard Human Rights Journal*, v. 15 (Spring 2002), 1:38. Pathbreaking work synthesizing the research on enforcement violence in the U.S. has been done by INCITE! See, for example, Davis, Angela Y. and Cassandra Shaylor. “Race, Gender, and the Prison Industrial Complex.” *Meridians: feminism, race, transnationalism*. v. 2, no. 1 (2001), 1-25, and *Policing the National Body: Race, Gender, and Criminalization*, ed. Jael Silliman and Anannya Bhattacharjee, Cambridge, MA: South End Press, 2002.

⁷ Kirkpatrick, Jeanne J. Testimony before the Senate Foreign Relations Committee, June 13, 2002. Available through the American Enterprise Institute for Public Policy Research, http://www.aei.org/include/news_print.asp?newsID=17092.

needs to be understood as a resource in the repertoire of an ongoing and intergenerational struggle for social justice, and valued for what it is. Specifically, it needs to be valued as both mundane and radical, of relevance to those situated outside the professionalized circles of jurisprudence and diplomacy as well as those within. Opponents of CEDAW's ratification in the U.S. have spoken out in a populist register with a misleading message, one that resonates only because there exists "an almost schizophrenic rights reality in the United States where even the most seasoned domestic rights activists think civil rights applies to 'us' and human rights to 'them'."⁸

Grassroots human rights educators often begin by emphasizing the interpretive principles of indivisibility and universality: human rights are deeply interdependent and hence indivisible, and they apply to all people universally. The "language" of human rights has been explicitly worked out to discourage polarization, and is built on the originary agreement to respect the "inherent dignity" of all people.⁹ In the discourse communities convened around human rights, better and worse policy options are weighed against this core value. Thus United Nations Development Program's report of 1994 made the case that human security involves the recognition and fulfillment of human rights by arguing:

For too long, security has been equated with threats to a country's borders. For too long nations have sought arms to protect their security. For most people today, a feeling of insecurity arises more from worries about daily life than from the dread of a cataclysmic world event.¹⁰

Some have subsequently defined human security as nearly synonymous with human rights, as "a condition of existence in which basic material needs are met, and in which human dignity, including meaningful participation in the life of the community, can be realised. Such human security is indivisible; it cannot be pursued by or for one group at the expense of another."¹¹ Increasingly, human security is being understood as a rational foreign policy choice in line with principles of sound governance because "human security reinforces the state by strengthening its legitimacy and stability. States, however, do not always guarantee human security. Where states are externally aggressive, internally repressive or too weak to govern effectively, people's security is undermined."¹² As an innovative instrument of international human rights law, CEDAW articulates important considerations of human security to which successful governments would attend.

Before tackling the question of national sovereignty as raised by CEDAW's critics head-

⁸ Thomas, Dorothy Q. and Krishanti Dharmaraj. *Making the Connections: Human Rights in the United States*. San Francisco: WILD for Human Rights, 2000.

⁹ Preamble to the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations, December 10, 1948.

¹⁰ Ul Haq, Mahbub. *Human Development Report*. United Nations Development Program, 1994.

¹¹ Thomas, Caroline. "Global governance, development and human security: exploring the links." *Third World Quarterly*, v. 22, n.2 (2001): 161.

¹² Canadian Department of Foreign Affairs and International Trade. "Freedom from Fear: Canada's foreign policy for human security," p. 4. http://www.humansecurity.gc.ca/freedom_from_fear-en.asp.

on, it may be useful to briefly review the development of the treaty's application in theory and practice. The review I offer tracks the ontological and creative dimensions of human rights law while attempting to stay as close to the detailed nuance of lived reality as possible. Critics of U.S. participation in international human rights treaty bodies often claim that our nationally idiosyncratic version of human rights is somehow superior to the international variety.¹³ This claim is best refuted by an examination of the empirical record contained in case law, testimonies, and national statistics. In this essay, I will focus instead on participatory processes of interpretation and re-interpretation, of data collection and presentation, and of constituency building, "offering glimpses into each. Through my presentation of selected slices of this empirical record, I will simultaneously develop an interpretation of that record which I hope will lay the ground for the assertion of a mode of national sovereignty more appropriate for a twenty-first century democracy, and more resonant of widely held public values of local control, civic participation, inclusion, and transparency.

CEDAW as a Hermeneutic Resource for Articulating Aspirations

In her 1997 book *Three Masquerades*, former New Zealand parliamentarian and feminist economist Marilyn Waring developed the case for a legal challenge to the General Accounting System, used by all U.N. member nations to "standardize" their economic reporting, on the grounds that this system discriminates against women and, as such, is in violation of CEDAW, the U.N.'s own treaty on women's rights.¹⁴ It is through compliance with General Accounting Rules that nations ascertain their gross national product; however, these rules are able to capture the total of cash transactions only. Waring's thesis is that because much, if not most, of women's individual and aggregate contributions to the economy lie outside the realm of cash exchange, primarily as unremunerated labor in the household and in the community, their labor counts for nothing on the national ledger, thus contributing to the devaluation of women's status as citizens, indeed as human beings. In the years since her writing, women's rights advocates around the world have become increasingly concerned with the ravaging effects of neo-liberal economic growth on human populations and the environment. Waring's critique, offered in the book and illustrated in the film *Counting for Nothing*, remains centrally relevant to these debates. I've chosen to track her argument in some detail here because I think it offers a fine illustration of how, pragmatically, human rights law is made.

Although the Universal Declaration of Human Rights was crafted by an international committee chaired by Eleanor Roosevelt in the immediate post-World War II era, the first legally binding conventions or treaties based on that declaration did not become operational until 1976. As Mary Ann Glendon reports, there had been pressure within the U.N Human Rights Commission from the very beginning—coming particularly from the

¹³ For example, George Will argues that the fact that the U.S. is the only industrialized country not to have ratified CEDAW "testifies to how uniquely well developed America's political culture is." Will, George. "Another Pose of Rectitude," *Newsweek*, Sept. 2, 2002, p. 70.

¹⁴ Waring, Marilyn. *Three Masquerades: Essays on Equality, Work and Hu(man) Rights*. University of Toronto Press, 1997.

smaller, developing nations but also from Great Britain—to create legally binding instruments on human rights. But this strategy was staunchly opposed by certain parties, most notably Soviet Russia and the U.S. Senate, who were each more interested in consolidating their inviolability as superpowers than in strengthening a broadly international rule of law.¹⁵ The institutional and textual apparatus that has evolved has involved decades of continual negotiation, the exercise of much diplomatic patience, and an enduring commitment to the goal of holding as many nations as possible within its consensual frame.

Marilyn Waring assembles her case against the General Accounting System according to the rules established for the practice of international jurisprudence by using the legal source materials listed in Article 38 of the Statute of the International Court of Justice, in their proper sequence (144). She begins by referring to Article 2 of the International Covenant on Civil and Political Rights (ICCPR), the earliest human rights treaty established. The article to which she refers includes language ensuring that the rights enumerated in that treaty apply to all individuals “without distinction on bases such as sex or other status.”¹⁶ She then moves to Article 26 of the same Covenant, which elaborates on Article 2 in the following way: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as . . . sex . . . *or other status*” [italics added]. Waring speculates on what these “other statuses” might be and identifies some of the possibilities relevant to the argument she wishes to make as “being pregnant,” “being a mother,” “lactating,” or “being an unpaid worker” (147).

Her next move is to call attention to the prohibition, in the ICCPR’s Article 8, of slavery and servitude, and to the *Oxford English Dictionary*’s second major definition of servitude as “the condition of being a servant, especially in domestic service” (145). Waring is laying the foundation for her claim that women’s work in the informal sector *must* be subject to all the protections afforded workers under the International Covenant on Economic, Social, and Cultural Rights, since the only other classification available for this unpaid labor would be servitude—a practice which is clearly prohibited under the Covenant on Civil and Political Rights (ICCPR). Once this unpaid labor is acknowledged as work, then Articles 6 and 7 of the Covenant on Economic, Social, and Cultural Rights (ICESCR), the second major human rights treaty to be developed, apply. These articles read:

Article 6: 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take

¹⁵ Glendon, Mary Ann. *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*. New York: Random House, 2001: xv -xvi.

¹⁶ Full texts of the complete body of human rights treaties and related documents are available on line through a number of sources including the United Nations Office of the High Commissioner of Human Rights (<http://www.unhchr.ch/html/intlist.htm>) and the University of Minnesota Human Rights Library (<http://www1.umn.edu/humanrts>).

appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

And from Article 7: States Parties recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: a. remuneration which provides all workers, as a minimum, with: (i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. (ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant; b. safe and healthy working conditions; c. equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; d. rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Human rights covenants are to be read cumulatively, so that the ideas embedded in earlier treaties can be understood to evolve in successive documents. Therefore, Waring turns to CEDAW last. She claims that, in Article 2, CEDAW obliges states parties to eliminate discrimination in private life as well as in public institutions. Citing sections (e) and (f) of that article, she sees that states parties are obliged to “take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise” and to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” So far, Waring’s argument provides the legal skeleton for a number of possible claims, including that which has been made by the Homemakers Union of Canada, which claims that social security credits and benefits should be accrued for unpaid work performed in the household. But Waring herself perseveres toward her more global point, drawing next on General Recommendation #16 issued by the CEDAW Committee, which “requires unpaid work to be valued and recognized and requires states parties to report on the situation of unpaid women workers as well as to take steps to guarantee payment, including benefits to unpaid workers in rural and urban family enterprises.” Having established this, Waring proceeds to blur the distinction between the kind of enterprises ostensibly referred to by the committee, such as the family farm or grocery, and the kind of enterprise that is engaged in when, for example, a mother homeschools a child or provides care for an ailing relative which otherwise would need to be provided in an institutional setting (153-4).

Having exhausted the resources available as “hard law,” Waring turns next to “soft law”

sources, which include the Beijing Platform for Action and judicial decisions reached within the Commonwealth system. Stepping back to refocus her original claim of systemic discrimination, she turns to statements issued by the Canadian Human Rights Commission defining systemic discrimination as the effect of “long-standing social and cultural mores [that] carry within them value assumptions that contribute to discrimination in ways that are substantially or entirely hidden and unconscious” and noting specifically that “the historical experience which has tended to undervalue the work of women may be perpetuated through assumptions that certain types of work historically performed by women are inherently less valuable than certain types of work historically performed by men”(156).¹⁷ But the climax of Waring’s argument appears in the form of a quote taken from the 1995 Human Development Report which states:

Many household tasks are unrelenting, meals must be prepared 3 times a day, childcare cannot be delayed until there is free time, this becomes clear on weekends. During weekdays men and women may have relatively equal total workloads but data from 18 industrial countries show that on Saturday women work almost 2 more hours than men and on Sunday one hour and three quarters more, a difference that widens if the family has young children. . . the monetisation of the non-market work of women is more than a question of justice. It concerns the economic status of women in society. If more human activities were seen as market transactions the prevailing wages would yield gigantically large monetary values” (160).¹⁸

their presentation and discussion at the United Nations. Under human rights Waring identifies the crux of the economic contradictions that erode women’s free enjoyment of their human rights in many industrialized countries as the erasure of women’s unpaid labor from the national ledger. And her conclusion drives home the challenge before CEDAW advocates: as we begin to understand the local issues harming specific groups of women as human rights violations, we find remedies *required* by international law to be systemic, structural and enormous in their implications (160). Yet the human rights treaty bodies have not provided a single recipe for realizing these changes, collecting instead documentation on a rich array of local experiments from which, over time, examples of better and worse practices can be differentiated, studied, and built upon. While human rights presents itself as a body of law, it doesn’t operate through the familiar channels of law enforcement. The emphasis in human rights law runs contrary to our litigious legal system that seeks first to establish blame and then to pathologize or criminalize individuals. Accountability is structured and monitored through the periodic preparation and submission of country reports, and through the publicity surrounding treaty law, states are held to be responsible for realizing the human rights of individuals residing within their borders. The corresponding treaty bodies nudge states toward this goal by asking, sometimes in quite specific and pointed language, both governmental and nongovernmental actors to extend their capacity to provide a context in which human

¹⁷ Public Service Alliance of Canada and Canadian Human Rights Commission v. Canada (Treasury Board) 1991, 13(5).

¹⁸ *Canadian Human Rights Reporter*, D/341, D/349.

beings can flourish. Despite the structural dimensions and enormity of the remedies required under international human rights law, some national governments *are* stepping up to the plate.

Local Constituencies, CEDAW, and National Dialogue

CEDAW's thirty articles cover a broad range of considerations, leading critics like Mary Jo Anderson, writing for WorldNetDaily, to ridicule it as the "ultimate feminist wish-list written as an international treaty." While critics in the U.S. worry about the treaty's encroachment on national sovereignty, for emerging and decolonizing states, human rights endorsement and protection have been a means of legitimating claims to sovereign nationhood in the international arena. In many areas undergoing political transition, CEDAW operates as a broad umbrella enabling negotiations among women prior to or concurrent with their bringing claims for power and representation to the national forum. CEDAW combines features of the Universal Declaration of Human Rights, the ICCPR and the ICESCR, and conventions of the International Labor Organization.¹⁹ As such it provides the context, or pretext, for frank, mutually respectful dialogue between rural women and urban elites, between women working in factories and elites hoping for public office, between those seeking health care and those wanting educational opportunity, by legitimating the equal urgency of all these hopes and needs. As anthropologist Sally Merry has recognized, CEDAW instigates cultural work and, because the United Nations is global in its reach and international treaty law an infinitely portable and translatable text, this cultural work takes place in a multitude of dispersed venues. It is through this dispersion, or diaspora, of terminology and concepts that new cultural practices germinate to become "common sense." For example, through community education forums and countless convenings of women's grassroots organizations, it gradually became possible to say that the empowerment of women—that is, increasing their political, economic, and social standing vis-à-vis men—offered a promising means of slowing the spread of sexually transmitted disease, as the assumptions buried in the notion of abstinence were repeatedly unpacked and weighed against the limitations of experience.²⁰

Women and their attorneys in countries who are parties to the women's treaty frequently draw upon CEDAW's definition of substantive equality as a guide in interpreting vague or inadequate non-discrimination clauses in their nation's laws or constitutions. Women in Japan have used CEDAW to fight sex discrimination in the corporate workplace, and in India women have used it to evolve a legal definition of sexual harassment; CEDAW has been used to uphold claims of nationality based on a mother's citizenship rather than on the father's and to reform inheritance laws. In every case, however, legislative gains were the result of organized advocacy by citizen and activist groups. The extent to which CEDAW-inspired legislation succeeds in changing everyday practice and life is similarly dependent upon the continued monitoring and creativity of women's organizations at the

¹⁹ Merry, Sally Engle. "Constructing a Global Law? Violence Against Women and the Human Rights System." *Law and Social Inquiry* (forthcoming, December 2003).

²⁰ Pitanguy, Jacqueline, et al. "Human Security: A Conversation." *Social Research*, v. 69, n. 3 (Fall 2002): 668-9.

local level.

The most substantial gains have come about when CEDAW is drawn upon as a guide during periods of political transition and its principles incorporated into the processes of drafting new constitutions or renewing established ones.²¹ For example, when the Ugandan constitution was rewritten in 1995, women's groups employed a variety of strategies to ensure that CEDAW principles concerning gender balance and fair representation would be at the center of the new document. When women realized that the government-sponsored consultations occurring around the country were not adequately incorporating women's concerns, they mobilized to get women elected to the Constituent Assembly, the national body convened to move the drafting process forward. Once the Assembly had been constituted, they formed a women's caucus to keep gender issues on the agenda. This combination of insider/outsider advocacy resulted in some startling gains. For example, the first provision of the new constitution—which lays out the document's guiding principles—states that the need for gender balance and fair representation is to inform the implementation of the constitution and all government policies and programs. This is followed in the Bill of Rights by the assurance that the rights set out in the constitution are to be enjoyed without discrimination on the basis of sex. Relying on CEDAW's conceptualization of substantive equality—that is, equality in outcomes rather than access—Ugandan women's NGOs argued that the only way to guarantee equality in political representation would be to reserve a certain portion of elected seats for women candidates. They were successful to the extent that the Ugandan constitution now reserves a minimum number of parliamentary seats for women, requires that each administrative district have at least one woman representative and provides that at least one-third of the seats in local Government (i.e., city, municipal, and rural district councils) must be filled by women.²²

The success experienced by Ugandan women active in the constitutional process there grew out of previous efforts by women elsewhere to conceptualize remedies for the pervasive under-representation of women in political leadership and decision-making bodies. For example, Costa Rican women, who had worked for the election of Oscar Arias, used their influence to launch an extensive popular education campaign in support of a broad agenda of social and civic reforms—including provisions for temporary affirmative action measures legitimated by Article 4 of CEDAW—to move a critical mass of women into electoral politics. They succeeded in achieving a whopping seventy-three percent approval rating among the voting population for their proposed bill, which, as originally drafted, would have instructed political parties to “nominate male and female candidates in proportion to the percentage of male and female voters in the electorate” and to spend twenty-five percent of the public funds received on efforts to

²¹ Hill, Leslie. “Redefining the Terms: Putting South African Women on Democracy's Agenda.”

Meridians: feminism, race, transnationalism. (forthcoming, Winter 2004).

²² United Nations Development Fund for Women. *Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women*. 1999. Available as a download from <http://www.unifem.undp.org/cedaw/cedawen2.htm> All international examples used here have been drawn from this document, unless otherwise noted.

improve women's participation, organization, and political affiliations. However, each of these specific requirements was watered down before the proposal's adoption as law in 1990 so that parties were only *encouraged* to increase women's nominations and required to spend an *unspecified* percentage of public funds on increasing women's participation. From the mixed legacy of these experiments, women are building a store of practical knowledge not only about how to best wage campaigns for electoral reform but also about what kinds of reforms might yield the desired outcome; for example, many now believe that proportional representation by fairly large administrative districts is a key characteristic for moving more women into elected office.²³

In Colombia, women's groups became energized by the potential of a human rights approach to sex discrimination during the constitutional renewal process of 1991. Building on the new constitution, which in addition to ensuring equal access to health care, guaranteed state provision of "appropriate services in relation to pregnancy (based on CEDAW, article 12.2), educational information to women about family health and family planning (based on CEDAW, article 10), and protecting women's equal rights with men in determining the number and spacing of children, as well as ensuring access to information and the means to make these decisions (based on CEDAW, article 16)," they lobbied the government for new programs and policies that would extend these constitutional guarantees. The result was a new Colombian Health Policy. Some of the key provisions are:

- The right to a joyful maternity, which includes a freely decided, wished, and safe pregnancy.
- The right to be treated as an integrated person and not as a biological reproducer by the health services.
- The right to receive information and counseling that promotes the exercise of a free, gratifying, and responsible sexuality, not necessarily conditioned by pregnancy.
- The right to have working and living conditions and environments that do not affect women's fertility or health.
- The right not to be discriminated against in the workplace or in educational institutions on the basis of pregnancy, number of children, or marital status.
- The right to have an active and protagonist participation in the community and governmental decision-making levels of the health system.

²³ Shames, Shauna L., Ed. *Why Women Matter: Lessons about Women's Political Participation from Home and Abroad*. Washington, D.C.: White House Project, 2003, accessible at http://www.thewhitehouseproject.org/programs/Briefing_book.pdf; see Part IV, pp. 41-54. For quantitative data supporting the conclusions drawn by the White House Project, see Kenworthy, Lane and Melissa Malami (1999), "Gender Inequality in Political Representation: A Worldwide Comparative Analysis," in *Social Forces*, v. 78, n. 1: 235-268.

This last example is particularly suggestive of the creative visioning and rising aspirations that are released when “human rights” moves to the center of public policy discussions. In particular, the “right to a freely-decided, wished, safe, and joyful” pregnancy might seem particularly utopian to a constituency of women—such as those in the U.S.—rent by years of political struggle focused on forced sterilization and abortion. But, of course, laws and policies don’t in and of themselves change practice. The discrimination Japanese women, especially those returning to the workforce mid-career, face hasn’t stopped simply because Japan has decided to participate more actively in the CEDAW accountability process. Rather, the Japanese government’s commitment to filing the periodic reports required for treaty compliance helps to sustain a national dialogue on social change and gender justice, as the federal employees scramble to assemble the increasingly detailed statistics requested by the CEDAW committee and draw upon the resources of local bureaus and women’s non-governmental organizations for assistance.²⁴ While CEDAW’s accountability apparatus is focused on the “constructive dialogue” initiated by the filing of state parties’ periodic reports, its potential is best realized when it spawns the emergence of multiple local dialogic communities within the various states party to the treaty.

The Tension between Enforcement and Effectiveness

The acronym CEDAW is used to refer both to the United Nations Convention on Women’s Rights and the Committee established to monitor implementation of the standards outlined in that document. The Convention is comprised of 30 articles and a preamble that rearticulate the principles found in the Universal Declaration of Human Rights, reintegrating the human rights bundles contained in both the Convention on Civil and Political Rights and the Convention on Economic, Social and Cultural Rights, thus emphasizing the indivisibility of human rights. The momentum behind the drafting of this treaty came from the First World Conference on Women held in Mexico City in 1975. The treaty has been adopted by 174 countries so far, and its standards are becoming well established as international law.

It is sometimes hard to reconcile the vagaries of social change with the practice of law as we experience it, so in op-ed pieces and debates on CEDAW, the question of

²⁴ “Consultations regarding items to be incorporated into the Fifth Periodic Report and activities of related NGOs and other organizations were conducted in writing in August 2001. . . . As a result, a total of 276 answers and opinions were submitted from NGOs, out of which 215 came from groups, 51 from individuals, and 10 were anonymous. In March 2002, a meeting for information and opinion exchange was held with the attendance of approximately 60 individuals from NGOs, local governments, and others to follow up these opinions and introduce major related measures taken by the Government.” Fifth Periodic Report submitted by Japan, September 13, 2002 and heard by the CEDAW committee on July 8, 2003. Representatives of the following organizations were in attendance at the meeting in New York, where they met formally and informally with CEDAW committee members and distributed literature: Japan Federation of Women’s Organizations, Indonesian Women’s Coalition for Justice and Democracy, Working Women’s International Network, Japan Civil Liberties Union, International Movement Against All Forms of Discrimination and Racism—Japan Committee, Equality Action 2003, Women Against Sexist Remarks by Governor Ishihara, Asia-Japan Resource Center (flyers and notes on file with author). For additional information on NGO involvement in the CEDAW reporting and implementation process, see Yoneda, Masumi, Japan Country Paper, *First CEDAW Impact Study*, op. cit.

enforcement has often been the focus of controversy. As an international institution, CEDAW was initially conceived of as fostering social change by encouraging self-study and publicity. States party to the convention are required to file periodic reports on the status of women within their jurisdictions and to inventory steps taken by their governments toward meeting the standards laid out in the convention. The 23 members of the CEDAW committee then respond to these reports at their annual convening, acknowledging successes, commenting on lapses, and suggesting strategies or areas for improvement. As anyone who has ever been part of a self-study process knows, simply gathering the relevant data—in this case, on women’s representation, income, and health—can expose alarming realities. Sometimes, merely raising awareness of inequities will spark a commitment to changing them. In this sense, periodic gender analyses are a protocol mandating discussions among government employees about the condition of women in their country and an educative tool for social change. While reporting nations face no economic or military sanctions for failing to act on the recommendations of the CEDAW committee, the committee’s reports are public documents which women’s groups and change agents can use to build “cases” for reform measures.

Over the years, two additional mechanisms for accountability with regard to treaty compliance have emerged. An optional protocol to extend and hasten CEDAW’s implementation was accepted by the General Assembly in October 1999 and became operational in December 2000. This optional protocol both allows individuals and groups to petition the CEDAW committee directly for relief and the CEDAW committee to initiate investigations into rights abuses occurring in participating countries. It has also become common for women’s NGOs to prepare “shadow reports” on the status of a reporting country’s women to accompany the “official” government prepared report. These shadow reports allow women outside the state apparatus to voice their concerns and views directly to the committee and often to assist the CEDAW committee members in framing questions about the officially submitted reports.

Both the optional protocol and the ability to submit shadow reports can be understood as institutional attempts to build space for more participants into the accountability structure on which CEDAW’s effectiveness rests. The growth in the size and number of informed stakeholders has accelerated the process of cultural—and material—change. These various and varied constituencies, who increasingly identify as “citizens of the U.N.,”²⁵ have elicited a number of backlash forces, including those who argue that the U.N. should be the nexus for dialogue solely among state actors, not for conversation among NGOs, activist groups, and individuals. One of the fissures in this vision is quite obvious during the presentation of state reports: a state is likely to send a delegation rather than an individual to present the report, because of the scope of data contained in such reports. During a day of dialogue, differences in interpretation and opinion and emphasis are likely to emerge among the members of any such delegation. These differences can be massaged by incisive and repetitious questioning until a particular state’s official position becomes quite porous—simply because the conversation effects different cognitive and

²⁵ Boulding, Elise. “New Understandings of Citizenship: Path to a Peaceful Future.” In *Hope in a Dark Time*, Ed. David Krieger, Santa Barbara, CA: Capra Press, 2003.

emotional responses on the part of each individual involved. People change their perceptions and their positions, potentially triggering a process which will in turn and over time change the state's official position.

CEDAW opponents within the United States have been focusing more and more centrally on the issue of compromised national sovereignty. In part, these fears and arguments reflect the fact that CEDAW has flourished as a framework for constructive dialogue among women, governments, and international organizations over the past several years. But is it reasonable to believe that by recognizing and honoring this dialogue, elevating it to the status of international law, and recording it as part of the "official record," the CEDAW committee is compromising "national sovereignty" in a way that negatively affects the security of individuals?

In a white paper published by The Federalist Society for Law and Public Policy Studies, Thomas Jipping and Wendy Wright outline in some CEDAW poses to the United States.²⁶ Their description inaccurately mixes vocabulary, calling members of the CEDAW committee "judges," referring to the committee's concluding comments as "rulings," and inferring that the committee can issue directives to states parties. But beneath the hyperbole, their argument seems to be that by becoming a party to CEDAW, the United States will forfeit its freedom from international scrutiny, and that CEDAW will be a legal resource on which attorneys practicing in the U.S. might draw in pursuing advocacy cases. The latter claim is certainly true: as the authors point out, the American Bar Association has developed a CEDAW assessment tool designed to familiarize attorneys and legal advocates with the details of the convention and its implementation,²⁷ and may evolve with or without treaty ratification, as references to international treaty standards have appeared in two recent Supreme Court rulings.²⁸

But what about the former? Jipping and Wright assert that "freedom from scrutiny" is essential to preserving U.S. citizens' rights to "govern themselves" and "define their culture." The CEDAW committee, they complain, is continually raising the bar for what constitutes gender equality and the absence of discrimination. Yet it has never been the case that local legislation or cultural practices remain static. Like the CEDAW committee's corpus of general recommendations, the ways in which we live our daily lives and the ways in which we express our cultural values are continually evolving. As a matter of foreign policy, the United States itself has never refrained from criticizing other countries for their failure to uphold human rights standards, nor has it been shy about exporting its educational and entertainment products. As a result, the international community has a pretty clear picture of the U.S. penal system, U.S. race relations, and perhaps even gender roles as they are played out in both dramatic and mundane settings.

²⁶ Jipping, Thomas L. and Wendy Wright. "CEDAW Treaty Would Undermine American Sovereignty." White Paper published by The Federalist Society for Law and Public Policy Studies, <http://www.fedsoc.org/Publications/hottopics/CEDAW.pdf>.

²⁷ The American Bar Association's Central and East European Law Initiative. CEDAW Assessment Tool, March 2002. Available at <http://www.rightsconsortium.org/resources/assessment/CEDAWtool.pdf>.

²⁸ Ginsberg/Beyer Concurrence to Supreme Court Ruling on the Michigan Affirmative Action Case, June 23, 2003 cites both CEDAW and Convention on the Elimination of All Forms of Racial Discrimination; <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=02-241#concurrence1>.

Furthermore, the United States is already party to several other international treaties requiring the submission of regular status reports for review and “constructive dialogue” by various treaty bodies.

The United States has thus far filed reports under the International Covenant on Civil and Political Rights (1994), the Convention Against Torture (2000), and the Convention on the Elimination of Racism (CERD).²⁹ The U.S.’s first, second, and third periodic reports to the Committee on the Elimination of Racism (due in 1995, 1997, and 1999) were submitted in 2000 and on August 3 and 6, 2001, the Committee held a “constructive dialogue” on the reports with the U.S. delegation, issuing written “concluding observations” on August 13.

Treaty bodies make a concerted effort to balance criticism with compliment; nevertheless, the CERD committee did find some areas of concern in reviewing the U.S.’s record on eliminating racial discrimination. For example, they called attention to the “persistent discriminatory effects of the legacy of slavery, segregation, and destructive policies” on Native Peoples, the federal government’s inability to develop effective legal measures to discourage the dissemination of “ideas based on racial superiority or hatred,” its inability to develop effective legal mechanisms to prohibit discriminatory behavior in private conduct, the excessive use of police violence and brutality against members of racial minorities, the high incarceration rate of African Americans and Hispanics, the “disturbing correlation” between race (of both victim and defendant) and the imposition of the death penalty, the disenfranchisement of individuals convicted of crimes, the unequal enjoyment of adequate housing and health care by persons of color, and the government’s appropriation and sale of lands possessed by Indian tribes under treaties. None of the committee’s concerns raise issues that have not been raised in the mainstream U.S. press and in studies authored by scholars based in the United States; nor, sadly, are there any concerns here that could not have been inferred from a steady diet of American pop music, film, and syndicated television series. Many of the concerns include advice as to which clauses of international law are relevant to the specific issue at hand or suggestions on how an issue might be dealt with in a productive manner. The observations conclude by requesting some specific and disaggregated data to be included in the next submission. While the criticisms are sharp, they are also on target.

Like Jipping and Wright, Patrick Fagan has also argued that it is CEDAW’s vitality as a living document which is causing skeptics to take a second look.³⁰ This is not simply a matter of evolving interpretation but of enlarging constituencies. The content of CEDAW is, in fact, evolving because the number and diversity of individuals participating in its interpretation and elaboration is rapidly expanding. This process may be more visible as it has occurred around CEDAW because the individuals involved are women, but this process is underway in all the treaty bodies and in the United Nations as a whole, where

²⁹ The state reports, summaries of the discussion, and the treaty committee’s concluding observations are available on line at <http://www.unhchr/tbs/doc.nsf>

³⁰ Fagan, 2001.

the number of recognized nation-states and the number of accredited nongovernmental organizations continues to increase. The CEDAW committee, and often reporting states, will invite commentary from women's organizations. But this also transpires with the other treaty bodies. The CEDAW committee is comprised of individuals of "high moral standing" appointed by their governments for a fixed term of service. Again, this procedure mirrors that of the other treaty committees, although the CEDAW committee is the only one to be dominated by women members.³¹

Fagan charges that the advice the CEDAW committee gives representatives of the individual states party to the Convention "often violates the language of the U.N.'s own founding documents." The specific language Fagan has in mind is, "The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children."³² However, the population and power relations within this "family" are not delineated in the cited covenant, nor in the International Covenant on Civil and Political Rights. Fagan, nevertheless, blithely *interprets* family to be a patriarchal, nuclear family to argue that the CEDAW, and other treaty bodies, have been stealthily redefining family to mean some social formation never anticipated by the drafters of these covenants. In Fagan's view, the original framers of the earliest human rights instruments are somehow more authentic than the current members of the treaty bodies, or the later human rights treaties. In an effort to push back against what he sees as "mission drift" moving the U.N. into uncharted and potentially unfriendly waters, Fagan recommends that the Bush administration adopt the position that

The United States firmly supports parents' rights and national sovereignty and will oppose the efforts of U.N. agents to impose their radical agenda on any country, especially small and poor ones

and that the administration should

urge other nations, especially poor and lesser developed nations, on a selective basis to refuse to cooperate with the U.N committee reporting systems in these areas because the directions they receive violate traditional family and religious norms. (Executive Summary)

The operative assumption that power must be exercised from the top down is illustrated by Fagan's dual reference to families and nations; the problem with the U.N. process is that organs like the CEDAW committee, which has always been dominated by women "experts" who are nominated by the states party to the convention in part on the basis of

³¹ Unlike the CEDAW committee, which is currently comprised of 21 women and 2 men, and has always featured a female majority, the CERD committee seats only one woman, and women are present only as tokens on the CAT and CCPR committees as well.

³² International Covenant on Economic, Social and Cultural Rights, Article 10, cited by Fagan, p. 5. Ironically, the United States is *not* a party to this covenant, having failed to adopt it through ratification.

their “high moral standing” and who are now prepared by the shadow reports filed by women’s non-governmental organizations, are asking hard questions of the nations reporting under the treaty and advising reporting governments to take pro-active measures grounded in documented best practices to eliminate systemic discrimination against women. These conversations have developed into a court of public conscience over which heads of state, and heads of corporations, have very little direct control. That this could work as a means of changing behavior must seem bizarre to those addicted to the idea that change can only be motivated by force or threat of force.

Yet I think these conservative pundits *are* on to something, something CEDAW advocates can use to fuel our own imaginations and activism. Because, as the historical record of implementation demonstrates, CEDAW does compromise the illusion of national unanimity in as much as it strives to reconnect individual women transnationally, across national borders, as part of a global citizenry, sharing in the same bill of rights and responsibilities. In doing so, it necessarily encroaches on the ability of a nation’s elites to pursue their own interests with impunity through the mechanisms of national government. In the words of Shanthi Dairiam, Director of International Women’s Rights Action Watch based in Kuala Lumpur, CEDAW initiates a process whereby

women gain conviction of the legitimacy of their rights, demands arise for international and national mechanisms through which they can claim these rights. . . . Under the Convention, neutrality has no legitimacy. Positive actions are required of the state to promote and protect the rights of women in order to maintain its legitimacy.³³

There is a sense in which concerns about national sovereignty evoke a spatial metaphor and an implicit threat of invasion to mask an assertion of hierarchy, which values the preservation and integrity of the nation over the security of individuals, that many would find unpalatable on closer examination. It seems particularly disingenuous that the same groups who are feeding fears of CEDAW encroachment into private affairs and local customs are themselves promoting U.S. intervention into other countries’ relationships with the U.N. treaty bodies. The line between influence and coercion seems particularly vulnerable in the case of nation states which are dependent upon U.S. foreign aid or favorable contracts with U.S.-based corporations for the provision of basic goods.³⁴

Building Human Rights Literacy and Capacity in the U.S.

While CEDAW’s potential as a lever for real change is beginning to be more widely

³³ Introduction to *Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women*. United Nations Development Fund for Women, 1999. Available as a download from <http://www.unifem.undp.org/cedaw/cedawen2.htm>

³⁴ The recommendations made by Fagan in this regard are registered as concerns by Ecumenical Women 2000+, “Myths and Realities about the U.N.’s Work with Women and Children.” <http://www.ew2000plus.org>. For background on the evolution of this aspect of U.S. foreign policy, see Butler, Jennifer. “For Faith and Family: Christian Right Advocacy at the United Nations.” *The Public Eye*, v. 9, no. 2/3 (Summer/Fall 2000). <http://www.publiceye.org>.

understood both among its advocates and its adversaries in the international arena, within the United States CEDAW is currently being used, even without ratification, to create small—but important—changes in policy and perspective. In May 2002, the Wellesley, MA-based Battered Mothers' Testimony Project held a Human Rights Tribunal on Domestic Violence and Child Custody at the Massachusetts State House spotlighting first-person testimonials from among the forty collected by the project over the past three years. Here is an excerpt from one such testimony as reported by project co-director Carrie Cuthbert in the July 2002 issue of *Sojourner*:

When I went to court to ask for a sexual abuse evaluation [after my daughter disclosed graphic sexual abuse by her father during visits], the judge denied my request. . . . Despite the fact that I had sole physical custody, the judge forbade me to take my daughter for a sexual abuse evaluation and forbade me to take my daughter to see her therapist because my ex-husband accused her therapist of brainwashing my daughter. . . . My daughter's symptoms became severe as the court required me to keep sending her to her father's or I would be in contempt.³⁵

This woman's story illustrates at least two of the four key findings of the project, that agents of the state in the family court system are engaging in patterns of behavior that: 1) ignore, minimize, or fail to believe that partner abuse and child abuse have occurred; 2) fail or refuse to consider actual documentation of partner abuse and child abuse; 3) conduct investigations and evaluations that are biased against battered mothers; 4) insist on court mediation between women and their ex-partners, despite knowledge of the domestic violence history and, in many cases, of the existence of an active restraining order as well. The human rights concerns raised by a situation such as this are clear. As a result of court orders and recommendations, battered mothers and their children are required to remain in ongoing, unprotected contact with men who have abused them or are continuing to do so. And if they do not comply they risk being held in contempt of court or, worse, of having custody switched to the batterers. Sheila Dauer, the director of Amnesty International USA's Women's Human Rights Program and an invited respondent at the tribunal commented, "Our government—like all governments—is obligated at all levels to acknowledge where and how discrimination and lack of due diligence is facilitating torture of women in the family and community and take steps to stop it."³⁶ As a human rights project, Cuthbert explains, the Battered Mothers' Testimony Project emphasizes state responsibility through the actions or inactions of its courts and agents and looks beyond adjudicating the culpability of individual perpetrators. The final report on this project, with recommendations for addressing the issues uncovered, was released in October 2002³⁷, and it is expected to be followed by a statewide organizing

³⁵ Cuthbert, Carrie and the Battered Mothers' Testimony Project. "Out of the Frying Pan: Battered Mothers and Their Children Take a Beating in Massachusetts Family Courts." *Sojourner*, v. 27, n. 11 (July 2002): 8.

³⁶ *Ibid.*

³⁷ Battered Mothers' Testimony Project. *Battered Mothers Speak Out: A Human Rights Report on Domestic Violence and Child Custody in the Massachusetts Family Courts*. Wellesley Centers for Women, Nov. 2002.

campaign aimed at changing the family court system. This project uses the human rights framework to re-position the family within the community, as embodied in its civic institutions.

For several years, the Kensington Welfare Rights Union (KWURU) has been employing similar tactics as part of a campaign to eliminate poverty in the U.S. They hope to achieve their goal by building a base of popular understanding of economic human rights that will shift the priorities and hence the structure of society. By encouraging social workers to collaborate with clients in filing testimonies of human rights violations, KWURU attempts to forge working partnerships across class lines. Through the periodic staging of human rights tribunals in public places, KWURU hopes to raise the awareness of the human rights framework among a broader audience. Currently, KWURU is working with the Pennsylvania legislature to hold a series of public hearings throughout the state in order to evaluate how well current state legislation is meeting the obligations delineated in human rights law.³⁸ In these ways, KWURU's Economic Human Rights Campaign simultaneously builds awareness of the indivisibility of human rights while reinforcing those aspects of human rights law that have already become normative in our culture.

CEDAW has been endorsed by literally hundreds of mainstream organizations from the American Association of Retired Persons to the League of Women Voters to Zonta International. Its ratification has been prioritized in the action plans of several national groups including the National Organization for Women, The American Association of University Women, Amnesty International, the World Federalists, Baha'í Faith, and the Women's International League for Peace and Freedom. These organizations form the backbone of a robust, long-term campaign aimed at ratifying CEDAW from the bottom up that has succeeded so far in passing CEDAW-related resolutions and legislation in 42 cities, 16 counties, and 16 states.³⁹

Massachusetts has one of the earliest CEDAW resolutions on the books, passed in 1991 in a campaign spearheaded by Susan Tracy, who was a state representative at the time. But being one of the earliest, the Massachusetts resolution is also one of the most meekly worded, merely urging President George H.W. Bush and his Secretary of State, James Baker, to place the CEDAW treaty in "the highest category of priority" and authorizing copies of the resolution to be distributed to a few strategically placed congressmen, including the Massachusetts delegation. Subsequent local measures have gone further, adopting the CEDAW standard for the jurisdiction or even establishing and funding local enforcement measures. These local experiments are not just interim measures; should the U.S. ever actually ratify CEDAW, these experiments, along with the examples culled from the experiences of women in other countries such as Japan and Mexico, will provide

³⁸ Bricker-Jenkins, Mary. Plenary address. New England Women's Studies Association Conference, Suffolk U., Boston, MA, March 29, 2003.

³⁹ Milani, Leila Rassekh, Ed. *Human Rights for All—CEDAW: Working for Women Around the World and At Home*. Washington, DC: Working Group on Ratification of the U.N. Convention on the Elimination of All Forms of Discrimination Against Women, 2001. Available as a download from <http://www.us.bahai.org/extaffairs/cedaw/index.html> .

powerful models for public education, for re-framing social issues in human rights language, and for building the kinds of activist coalitions that can begin to put the new federal standard into practice. In fact, the implementation process undertaken by the City of San Francisco has been chosen for inclusion in the United Nations Development Fund for Women's collection of best practices in CEDAW implementation. Using San Francisco's experience as a template, coalitions in New York City and in Los Angeles are currently working to devise municipal ordinances which would simultaneously implement both CEDAW and CERD.

In brief outline, what happened in San Francisco was this: following an intense eighteen-month organizing campaign mounted by a coalition of community groups led by the Women's Institute for Leadership Development (or WILD for Human Rights, as they are better known) and culminating in a media friendly public hearing, San Francisco passed a CEDAW ordinance in 1998. The ordinance, backed by the San Francisco Commission on the Status of Women, built upon previously adopted CEDAW-endorsing resolutions at both the municipal and state level. The new law expressed a willingness at the municipal level to be held to the CEDAW standard of human rights protection and established a CEDAW task force, within the office of the Commission on the Status of Women, to implement a process of education and strategy for distributing accountability.⁴⁰ This process triangulated the reporting function, creating accountability by fostering transparency. In this process, the task force works with a specific municipal department to complete a gender analysis; the results of these analyses are then presented to the Commission, which is required to comment on the report and empowered to make recommendations for improvement to the City Council. Over the first two years of operations, the Task Force completed gender analyses of six units of city government, using the information-gathering process as an opportunity to educate staff members on human rights and gender equity, and reporting out on recommendations for change. The first two departments chosen for analysis were the department of public works (selected for its large size, nontraditional employment opportunities for women, and provision of indirect services such as street construction and building design) and the department of juvenile probation. The gender analysis looks for patterns, practices, or effects of gender inequity in three dimensions of departmental operations: service delivery, employment practices, and budget allocation. The task force reports that although the processes of gender analysis tended to be time- and labor-intensive, the process does "create an awareness and sensitivity to gender-related issues" and that this educative function is key. Further, staff appreciated the proactive approach over an approach activated by the filing of discriminatory complaints. The task force maintains an extensive website documenting their activities and results, and ensuring that the entire "gender machinery" is transparent and accessible to broad publics.⁴¹

Perhaps the most comprehensive international agreement codifying the steps necessary to ensure women's human right to live free from the fear of violence can be found outside

⁴⁰ "The primary goal of the CEDAW taskforce . . . has been to raise awareness about how every decision can affect women. Its operative words have been cajole, educate, prod, not punish." Sappenfield, Mark. "In One U.S. City: life under a U.N. treaty on women." *Christian Science Monitor*, 1/30/03.

⁴¹ San Francisco Commission on the Status of Women, <http://www.ci.sf.ca.us/cosw/cedaw>.

the body of human rights law, per se, in U.N. Security Council Resolution 1325. Passed in October 2000, this resolution:

- Urges member states to ensure increased representation of women at all decision-making levels.
- Encourages the Secretary General to implement his strategic plan of action (A/49/587) calling for an increase in the participation of women at decision-making levels in conflict resolution and peace processes.
- Urges the Secretary General to expand the role and contributions of women in UN field-based operations, including among military observers, civilian police, and human rights and humanitarian personnel.
- Requests that the Secretary General provide training guidelines and materials on the protection, rights, and particular needs of women.
- Urges member states to increase their voluntary financial, technical, and logistical support for gender-sensitive training efforts.
- Calls upon all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls, especially as civilians.
- Calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse.
- Invites the Secretary General to carry out a study to be presented to the Security Council on the impact of armed conflict on women and girls, the role of women in peace-building, the gender dimensions of peace processes and conflict resolution, and progress on gender mainstreaming throughout peacekeeping missions.

Although the resolution contains provisions highlighting the specific injuries, hardships, and crimes that may victimize women during armed conflict, the resolution takes a rights based approach to remedy the situation by insisting that women be fully integrated into conflict resolution, peace processes, and peacekeeping missions. This remedy recognizes the right of women to participate in shaping the civic institutions by which they are expected to consent to be governed. While the U.N. has been noticeably unable to implement all of these recommendations within its own peacekeeping operations, women in conflict zones around the world are using this resolution to gain representation in post-conflict negotiations, in new governments being established in the aftermath of civil wars, and for the allocation of relief monies to projects they consider essential in the reconstruction process. In this way 1325 will affect the way in which international policies such as pre-emptive strikes and regime change are carried out as it legitimizes the efforts of women in target countries to disrupt the expected transfer of power from

one set of rulers to another. While it is not entirely clear to anyone what exactly is meant by a gender analysis or by gender sensitivity as used in this resolution, there has been a speedy development of mechanisms, such as international trainings and web-facilitated discussion and information exchange, in an effort to fill this void. The archival, advocacy, and communication work of Peacewomen, a project of the Women's International League for Peace and Freedom, has succeeded in building a transnational grassroots constituency for this Security Council resolution and in directly linking this constituency to the most elite foreign policy decision-making body in the world by, for example, staging annual "birthday parties" for the resolution that bring members of the two groups together in celebration and serious dialogue.⁴²

Because the enforcement of human rights law tends to focus on remedies that affirm the rights and participatory responsibilities of individuals and the role of government in providing for its residents, the human rights framework in community decision-making offers a means for building both the legitimacy and the capacity of those governments which agree to be bound by it.⁴³ In this way, human rights treaties may provide leverage against the encroachment of corporate interests. Some groups, such as the Association for Women's Rights in Development (AWID), have begun focusing on articulating the rationale and ramifications of adopting a rights-based approach to economic development. "From a human rights perspective," they argue, "poverty is not merely a state of low income but a human condition characterized by the sustained deprivation of the capabilities, choices and power necessary for the enjoyment of fundamental rights."⁴⁴ A human rights approach to development moves the impoverished person or the affected group, such as women or indigenous people, from the position of program recipient to the position of constituent to which public policies and their agents must answer. For example, an interested public that included women borrowers might require that a microcredit program be evaluated on results such as increasing borrowers' mobility, freedom from violence, and political participation rates rather than justified by reference to the increases in the size of loans, the income of borrowers, or the repayment rates (6). In addition, they argue,

A rights approach requires governments to prioritize their resources in accordance with stated human rights principles and obligations. Therefore, women can demand actual resource commitments based on these requirements such as reducing expenditures on the military and increasing

⁴² Again, as part of a commitment to transparency and open access, Peacewomen maintains an extensive archive of documents, commentary, and announcements on its website <http://www.peacewomen.org> and distributes the free, bi-weekly 1325 Newsletter.

⁴³ This may be a compelling motivator for state and municipal governments tempted to privatize basic services and functions in times of growing fiscal crisis. For a discussion on the effects of privatization on women's human rights, see Fried, Susana T., Ed. *The Indivisibility of Women's Human Rights: A Continuing Dialogue*. New Brunswick, NJ: Center for Women's Global Leadership, 1994. Annette Bernhardt and Laura Dresser examine this issue from the perspective of women as workers, rather than as consumers of public services, in "Why Privatizing Government Services Would Hurt Women Workers." Institute for Women's Policy Research, publication #B237, 2002.

⁴⁴ Association for Women's Rights in Development. "A Rights-Based Approach to Development." *Women's Rights and Economic Change*, n. 1 (August, 2002), pp. 4-5.

expenditures on maternal health care. (6)

Taking the notion of accountability even a step further, they go on to note that

Because states increasingly find themselves constrained by multilateral agreements, the need for a competitive economy and their debt, states have a legal obligation under their human rights treaties to ensure through their membership and participation in international institutions that global actors such as the WTO and multinational corporations, respect human rights. (5)

For AWID, the bottom line is that “rights-based approaches prohibit development policies that violate social or economic rights or increase inequalities in the pursuit of growth” (4).

By affirming the capacity of human beings and human societies to change for the better, human rights law offers a powerful intellectual framework for reorienting our approach to social maladies. It asks us to continually raise the bar of our aspirations and expectations of ourselves and our social institutions as our understanding of the interconnectedness and interdependencies of all the earth’s resources, including its human resources, grows. Women around the world have made it clear to those of us who live in the U.S. that the single most important thing we can do for them is to increase our country’s investment in and compliance with international legal agreements, especially CEDAW.⁴⁵ Over the past 23 years, CEDAW advocates in the U.S. have built a broad national coalition in favor of treaty ratification and an extensive grassroots constituency for women’s human rights. Yet CEDAW ratification isn’t anywhere near the top of the agenda of the anti-globalization movements or of the growing anti-war movement. Nor is it on the agenda of those groups within the U.S. seeking electoral reform or more sweeping approaches to democratic renewal. Indeed, it seems exceedingly likely that the next few years will find the resources of those committed to feminist issues stretched even more tightly into increasingly narrow, single issue campaigns mounted in reaction to the most egregious rollbacks and assaults, as legislation and judicial action continue to chip away at health care access, tort reform, and civil liberties. But CEDAW insists on the universality and indivisibility of women’s human rights; it *requires* sweeping structural remedies. Drawing out the logic implicit in CEDAW’s accountability apparatus, it seems to me that these structural remedies need to filter up from local experiments, such as those initiated by the City of San Francisco, the Kensington Welfare Rights Union, and the Women’s Rights Network. A “bottom-up” process has more potential to create real change, by creating arenas in which people can grapple with and voice their changing attitudes/beliefs and behaviors.⁴⁶

⁴⁵ Bunch, Charlotte. “Whose Security?” *The Nation*, Sept. 23, 2002.

⁴⁶ Lee Ann Friend has argued that CA Bill 2125 (“California State Prohibition of Female Genital Mutilation”), although advocated for by women’s groups in California and modeled as a measure to recognize and uphold women’s human rights, has been undercut by the legislature’s failure to allocate sufficient resources to community education. Therefore enforcement has depended solely upon the

CEDAW's critics worry about the erosion of local and state control under an international human rights regime. However, such critics may have an imperfect understanding of where local constituencies actually stand vis-à-vis international human rights standards and norms. Increasingly, city councils, town meetings, and state legislatures are forging a role for themselves in establishing international ties and articulating foreign policy, through "fair trade" policies regulating purchasing agreements, sister-city and other formal exchange programs, and, over the past winter, passing literally hundreds of resolutions opposing military intervention in Iraq.⁴⁷

Eleanor Roosevelt argued that human rights originate "close to home" in places "so small that they can't be seen on any map" and are intimately structured into the "world of the individual person." By placing human dignity at the core of a concentric web of policies and prohibitions, the human rights framework helps individuals to articulate the interconnectedness among the many registers of security they seek. In fact, respect for and elaboration of human rights is quite widely understood as a viable, nonviolent approach to achieving national as well as international security. CEDAW proponents have much to gain from bringing an international human rights frame to bear in civic forums of all kinds and by engaging others in the project of envisioning how the human rights of all might be concretely realized. For by doing so, they will unleash energies and more grassroots support than they ever anticipated.

identification and punishment of criminals—whose behaviors have "gone underground"—and thus has been rendered totally ineffective. This same pattern of "criminalizing" behaviors associated with immigrant and communities of color while withholding the means of facilitating dialogue within affected communities was repeated in the federal statute addressing such practices as well. Friend, Lee Ann. "The human rights framework as a norm for local accountability: An analysis of community, assets, and organizational infrastructure in developing a Massachusetts CEDAW campaign." M.A. thesis, Simmons College, May 2003. See also Lewis, Hope and Isabelle R. Gunning. "Cleaning Our Own House: 'Exotic' and Familiar Human Rights Violations." *Buffalo Human Rights Law Review*, 4 (1998), 123-40.

⁴⁷ The Washington-based Institute for Policy Studies attempted to keep track of these resolutions and promote the adoption of more through the Cities for Peace project (<http://www.ipsdc.org/citiesforpeace/resolutions.htm>) Writing for *The Nation's* March 31, 2003 issue, John Nichols ("Building Cities for Peace") put the tally at 140 municipal resolutions passed and 100 in the works.