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THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: A FEMINIST LANDMARK

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The United Nations Convention on the Rights of the Child,¹ adopted by the General Assembly on November 20, 1989, is a ground-breaking human rights treaty for many reasons. It had the largest number of signatories on the day that it was opened for signature.² It went into force more quickly than any other human rights treaty;³ it reached near-universal ratification by mid-1996;⁴ and it protects the entire range of human rights: civil-political, economic-social-cultural, and humanitarian.⁵ In addition, the Convention's monitoring mechanism gives unique powers to its monitoring body, the Committee on the Rights of the Child.⁶ Unfortunately, these achievements have tended to overshadow one of the Convention's most remarkable characteristics: its protection of the girl child.

The purpose of this article is to describe, examine, analyze, and evaluate the Convention on the Rights of the Child from the standpoint of its relationship to other international human rights treaties and its impact on the global situation and status of girls and young women. The discussion will include a survey of the international human rights principle of non-discrimination, and an examination of the Convention on the Elimination of All Forms of Discrimination Against Women and its relevance to the

1. Convention on the Rights of the Child, Nov. 20, 1989, 28 I.L.M. 1448 (1989), corrected at 29 I.L.M. 1340 (1990) (entered into force Sept. 2, 1990) [hereinafter *Children's Convention*].

2. See Cynthia Price Cohen & Per Miljeteig-Olssen, *Status Report: United Nations Convention on the Rights of the Child*, 8 N.Y.L. SCH. J. HUM. RTS. 367 (1991).

3. See *id.* The Convention on the Rights of the Child went into force on September 2, 1990, slightly more than nine months after it was opened for signature.

4. At that time, there were 187 States Parties to the Convention. The only countries that had not ratified were: Oman, the United Arab Emirates, Somalia, Switzerland and the United States.

5. See Cohen & Miljeteig-Olssen, *supra* note 2. The Convention on the Rights of the Child is the only human rights treaty that is so comprehensive. In this respect, it mirrors the intent of the Universal Declaration of Human Rights.

6. See *Children's Convention*, *supra* note 1, at art. 45.

girl child. The article will further provide an overview of the current world situation of girls; an analysis of the Convention on the Rights of the Child and its implementation, including non-treaty based efforts to eliminate prejudice against girls; and an exploration of existing tensions between women's rights and children's rights. It is the author's position that the Convention on the Rights of the Child should be recognized as an important feminist landmark.

I. HUMAN RIGHTS AND THE PRINCIPLE OF NON-DISCRIMINATION

The human rights prohibition against gender discrimination is part of a much wider international principle of non-discrimination, a principle that incorporates a number of specifically proscribed bases of discrimination. Of all human rights principles, non-discrimination is the principle most consistently reiterated in human rights treaties. After an introductory general article asserting that "all human beings are born free and equal,"⁷ the 1948 Universal Declaration of Human Rights⁸ lists non-discrimination as its first principle. The Universal Declaration states that everyone is entitled to all the rights and freedoms of the Declaration,

without distinction of any kind, such as *race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*.⁹

These words were an initial attempt by the international community to define and prohibit discrimination. The ten specifically proscribed bases of discrimination enunciated in the Universal Declaration have since been restated in almost every human rights treaty.

Beginning with the adoption of the two human rights covenants that were drafted to put the Universal Declaration's principles

7. Universal Declaration of Human Rights, G.A. Res. 217, U.N. Doc. A/810, at art. 1 (1948) [hereinafter Universal Declaration].

8. *Id.* The Universal Declaration was drafted to clarify the meaning of the words "human rights" in the United Nations Charter.

9. *Id.* at art. 2 (emphasis added).

into legally binding form,¹⁰ inclusion of some type of prohibition against discrimination has become an almost mandatory component of human rights treaties. In the case of the two human rights covenants, the Universal Declaration's prohibition against discrimination is repeated in each treaty, even though they protect distinctly different sets of rights. The International Covenant on Civil and Political Rights¹¹ uses the Universal Declaration's non-discrimination language in Article 2(1), which obliges States Parties to the Covenant to undertake to:

respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as *race colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*.¹²

The International Covenant on Economic, Social and Cultural Rights¹³ applies a slightly different formulation of the Universal Declaration's non-discrimination norm, but maintains the same list of proscribed categories:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to *race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*.¹⁴

Regional and other international human rights treaties have reiterated the Universal Declaration's formulation of the principle of non-discrimination. All three of the regional human rights treaties have made non-discrimination a central norm. Although the first regional treaty, the 1950 European Convention for the

10. See International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

11. International Covenant on Civil and Political Rights, *supra* note 10.

12. *Id.* at art. 2, § 1 (emphasis added).

13. International Covenant on Economic, Social and Cultural Rights, *supra* note 10.

14. *Id.* at art. 2, § 2 (emphasis added).

Protection of Human Rights and Fundamental Freedoms¹⁵ of the Council of Europe, does not place the principle of non-discrimination in a prominent place at the beginning of the treaty, it does restate the Universal Declaration's prohibition in Article 14, with a slightly reordered and augmented version of its list of proscribed categories:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as *sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*.¹⁶

It is important to note the fact that "sex" is given the primary position and that "association with a national minority" has been added.

Conversely, the second regional human rights treaty, the 1969 American Convention on Human Rights¹⁷ of the Organization of American States, gives the norm of non-discrimination the first position in its protection of human rights. With only a slight variation in wording, it repeats virtually the same language of the Universal Declaration. Interestingly, however, this treaty replaces the word "property" with the words "economic status":

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of *race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition*.¹⁸

15. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 (entered into force Nov. 3, 1953).

16. *Id.* at art. 14 (emphasis added).

17. American Convention on Human Rights, November 22, 1969, 9 I.L.M. 673 (entered into force, July 18, 1978). *See* art. 1.

18. *Id.* at art. 1, § 1 (emphasis added).

The newest regional human rights treaty, the Organization of African Unity's 1981 African Charter on Human and Peoples' Rights,¹⁹ also restates the Universal Declaration's formulation of non-discrimination, but with two interesting changes. The treaty adds "ethnic group" and replaces the "property" or "economic status" language with the word "fortune".²⁰

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as *race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status*.²¹

In addition to the human rights covenants, other United Nations [U.N.] human rights treaties make at least some reference to the norm of non-discrimination. The non-discrimination principle even appears in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [Convention Against Torture].²² Although the Convention Against Torture does not include the Universal Declaration's long list of proscribed bases, it does incorporate the principle of non-discrimination within its definition of torture. The Convention definition provides a list of "purposes" under which "intentionally inflicted . . . severe pain or suffering"²³ would amount to torture. Among these prohibited purposes is severe pain or suffering inflicted "for any reason based on *discrimination of any kind*."²⁴

19. African Charter on Human and Peoples' Rights, June 26, 1981, O.A.U. Doc. CAB/LEG/67/3 Rev.5, 21 I. L. M. 59 (entered into force, Oct. 21, 1986). See art. 2.

20. While a look at the recent history of Africa makes the addition of the reference to ethnicity seem appropriate, the Organization of African Unity's choice of the word "fortune" is not as clear.

21. *Id.* at art. 2 (emphasis added).

22. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, G.A. Res. 46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1985), 23 I.L.M. 1027, as modified, 24 I.L.M. 535 [hereinafter Convention Against Torture].

23. *Id.* at art. 1.

24. *Id.* (emphasis added).

The Convention on the Rights of the Child, one of the most recent United Nations human rights treaties, has an unusually comprehensive version of the principle of non-discrimination. Not only does it apply the Universal Declaration's prohibited bases to discrimination against the child, it extends this prohibition to discrimination aimed at the child's parents or legal guardians:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of *the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status*.²⁵

In addition to prohibiting discrimination that interferes with the exercise of rights because of the identity of the child, the Convention on the Rights of the Child insulates the child from discrimination based on the acts or behavior of those persons with whom the child lives:

States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the *status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members*.²⁶

Interestingly, despite these numerous and consistent restatements of the human rights principle of non-discrimination, the U.N. has found it necessary to elaborate this norm further by drafting two treaties, the sole purpose of which was to eradicate particularly insidious forms of discrimination: discrimination based on race and discrimination based on gender. The General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination²⁷ in 1969. Like

25. Children's Convention, *supra* note 1, at art. 2, § 1 (emphasis added).

26. *Id.* at art. 2, § 2 (emphasis added).

27. International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter Convention on Racial Discrimination].

the Convention Against Torture, its non-discrimination proscription is contained in a definitional article.²⁸ Its Article 1 definition of "racial discrimination,"²⁹ although not restating the Universal Declaration's standard in its entirety, does contain some of its proscribed bases for discrimination: "race, colour, descent, or national or ethnic origin."³⁰

Unlike the other human rights treaties discussed above, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women does not contain a broad non-discrimination clause.³¹ Article 1 defines "discrimination against women" as

any 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, . . . of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.³²

Note that discrimination according to the Women's Convention is solely based on sex. There is no reference to any type of sub-category -- such as age, religion, race, education or political persuasion. Its emphasis is strictly on equal exercise of human rights.

II. WOMEN'S RIGHTS AND PROTECTION OF THE GIRL CHILD

At the time that the Convention on the Rights of the Child was proposed to the General Assembly, some argued that children did not need a special treaty to protect their rights because existing international human rights treaties already protected those rights.³³ A comparison of other human rights treaties with the

28. *See id.* at art. 1.

29. *Id.*

30. *Id.* at art. 2.

31. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, 19 I.L.M. 33 (entered into force Sept. 3, 1981) [hereinafter Women's Convention].

32. *Id.* at art. 1.

33. For a discussion of the early background of the Convention *see* Cynthia Price Cohen, *The Human Rights of Children*, 12 CAP. U. L. REV. 369 (1983).

Convention on the Rights of the Child makes it clear that the Convention's advocates were correct in arguing that existing instruments were insufficient.³⁴ Although the Convention on the Rights of the Child repeats many of the rights contained in other human rights treaties, it restates those rights so as to make them appropriate for children.³⁵ The final text of the Convention goes beyond mere consolidation of existing international law applicable to children. It protects a number of rights of the child that no international treaty previously covered.³⁶

Similar "existing treaty" claims have been made in regard to the girl child and the Convention on the Elimination of All Forms of Discrimination Against Women [Women's Convention]. Some argue that the Women's Convention applies to all females, and therefore, it also protects the interests of the girl child.³⁷ This argument once again fails to withstand the test of comparison. When one scrutinizes the provisions of the Women's Convention, one can see that few of them address the girl child's needs.³⁸

The primary obligation of States Parties to the Women's Convention is to pursue a "policy of eliminating discrimination against women."³⁹ To comply with the Women's Convention, States Parties are required to report on the measures they have taken to implement the Convention, which may include altering national constitutions,⁴⁰ as well as making changes in legislation,⁴¹ and to legal⁴² or penal⁴³ procedures. The States Parties are to eliminate discrimination at both governmental and private levels.⁴⁴ This mandate requires that governments not only ensure that women have the right to vote and to hold office,⁴⁵ and that

34. See *infra* notes 38-76 and accompanying text.

35. See *infra* notes 99-101 and accompanying text.

36. In particular, see Children's Convention, *supra* note 1, at arts. 8 (right to identity), 20-21 (foster care and adoption), 39 (recovery and reintegration).

37. See *infra* notes 227-30 and accompanying text.

38. See *infra* notes 55-73 and accompanying text.

39. Women's Convention, *supra* note 31, at art 2.

40. See *id.* at art. 2, § a.

41. See *id.* at art. 2, § b.

42. See *id.* at art. 2, § c.

43. See *id.* at art. 2, § g.

44. See *id.* at art. 25.

45. See *id.* at arts. 7-8.

they have freedom of choice in marriage,⁴⁶ but also that governments, where necessary, must act to modify existing intra familial power relationships.⁴⁷

The Women's Convention alternates between being protective of women on the one hand, and affirming women's independence on the other. For example, it requires States Parties to "suppress all forms of traffic in women and exploitation of prostitution of women."⁴⁸ At the same time, it gives a woman the right to control her nationality,⁴⁹ to have financial equality,⁵⁰ and to have equality before the law.⁵¹ Similarly, the Women's Convention provides for "safeguarding the function of reproduction" and maternity leave, while simultaneously setting standards for equal employment opportunities, equal remuneration, and benefits.⁵²

This same protection/independence dichotomy is also found in the separate article dealing with the rights of rural women.⁵³ The Women's Convention gives special recognition to the role of rural women in ensuring the survival of their families, while protecting their right to participate in rural development planning and to benefits such as health care, social security, adequate living conditions, and rights such as access to agricultural loans and equal treatment in land reform.⁵⁴

Although the definition of "discrimination against women" possibly could be interpreted as including girls, the purpose of the Women's Convention is to equalize relationships between adult men and women. Article 5 states this purpose clearly by requiring States Parties to "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

46. See *id.* at art. 16, §§ a-b.

47. See *id.* at art. 16, §§ c-h.

48. This is arguably a form of "protection." *Id.* at art. 6.

49. See *id.* at art. 9.

50. See *id.* at art. 13.

51. The rights listed in this group support women's independence and autonomy. See *id.* at art. 15.

52. See *id.* at art. 11.

53. See *id.* at art. 14.

54. See *id.* at art. 14.

based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for *men and women*.⁵⁵

The second paragraph of Article 5 also illustrates the status of children within the Women's Convention. This Article speaks of the need to "ensure that family education includes a proper understanding of maternity as a social function" and further asserts the "common responsibility of men and women in the upbringing and development of *their children*."⁵⁶ Article 5 concludes with the requirement that "the interest of *the children* is the primordial consideration in all cases,"⁵⁷ but this statement does nothing to establish the rights of the girl child or to define her status. In fact, only one reference to "girls" exists in the entire Women's Convention, and that appears in the Article on education.⁵⁸

This Education Article provides an especially interesting example of how the Women's Convention overlooks the concerns of the girl child. One would think that at least this Article would voice a concern for the necessity of preparing girls for their future rôles as equals to men. This, however, is not the case. The introductory paragraph of Article 10, known as a "chapeau," merely calls upon States Parties to "take all appropriate measures to eliminate discrimination against *women* in order to ensure to them equal rights with *men* in the field of education"⁵⁹ The Article then enumerates some of the "appropriate measures." It sets standards for "career and vocational guidance,"⁶⁰ "access to curricula,"⁶¹ "elimination of any stereotyped concept of the rôles of *men and women*,"⁶² "opportunities to benefit from

55. *Id.* at art. 5, § a (emphasis added).

56. *Id.* at art. 5, § b (emphasis added). Note that this Article does not refer to rights of the girl child or to the *rights* of children in general. Instead, it places children in the "family property" status so typical of the period before the Convention on the Rights of the Child.

57. Women's Convention, *supra* note 31, at art. 5, § b (emphasis added).

58. *See id.* at art. 10.

59. *Id.* at art. 10 (emphasis added).

60. *Id.* at art. 10, § a.

61. *Id.* at art. 10, § b.

62. *Id.* at art. 10, § c (emphasis added).

scholarships,"⁶³ "access to programmes of continuing education,"⁶⁴ "opportunities to participate actively in sports,"⁶⁵ and "specific educational information to help to ensure the health and well-being of families."⁶⁶ The paragraph that deals with school drop-outs is the sole paragraph that mentions the word "girls"; it calls for "the reduction of *female* student drop-out rates and the organization of programmes for *girls* and *women* who have left school prematurely."⁶⁷ This wording further supports the observation that the Women's Convention is aimed at correcting inequality between adult men and women and that the importance of preparing girls to become women is *de facto* ignored.

In addition to Article 5, quoted above, the word "children" can be found in two other articles of the Women's Convention. Each time, it appears within the context of the child as "family property," not the child as a rights-bearing individual. Article 9, protecting a woman's right to nationality states:

States Parties shall grant women equal rights with men with respect to the nationality of *their children*.⁶⁸

Article 16, which deals with eliminating discrimination in marriages and family matters, requires States Parties to ensure certain specific rights "on a basis of equality of men and women."⁶⁹ The relevant sub-paragraphs from Article 16, Paragraph 1, Sections (d), (e), and (f), which concern children, appear below:

The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to *their children*; in all cases the interests of the *children* shall be paramount;⁷⁰

63. *Id.* at art. 10, § d.

64. *Id.* at art. 10, § e.

65. *Id.* at art. 10, § g.

66. *Id.* at art. 10, § h.

67. *Id.* at art. 10, § f (emphasis added).

68. *Id.* at art. 9, § 2 (emphasis added).

69. *Id.* at art. 16, § 1.

70. *Id.* at art. 16, § 1(d) (emphasis added).

The same rights to decide freely and responsibly on the number and spacing of *their children* and to have access to the information, education and means to enable them to exercise these rights;⁷¹

The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of *children*, or similar institutions where these concepts exist in national legislation; in all cases the interests of the *children* shall be paramount.⁷²

Surprisingly, although Paragraph 1 of Article 16 relies on the construct of "children as property," the standards of Paragraph 2, with respect to child marriages, are aimed at the *child* viewed as a "person":

The betrothal and the marriage of a *child* shall have no legal effect, and necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.⁷³

Paragraph 2 is a very odd paragraph within the language of the Women's Convention. Although the section proposes to end child marriages, a dreadful fact of life for girls in many countries, it is simply tacked on at the end of an article which is concerned with spousal rights and which does not even note that the child in question is a *girl*.

As will be discussed below, the world situation of the girl child is desperate. The Women's Convention does not even begin to address the many rights violations that young women daily experience. For example, though the Convention requires governments to set a minimum age for marriage, it fails to indicate whether this age should be ten or sixteen. The Women's Convention alone is inadequate to ensure that girls receive the

71. *Id.* at art. 16, § 1(e) (emphasis added).

72. *Id.* at art. 16, § 1(f) (emphasis added).

73. *Id.* at art. 16, § 2 (emphasis added).

start they need in life in order to exercise their equality rights when they become adults.

III. WORLD SITUATION AND STATUS OF THE GIRL CHILD

In the world social order, girl children are the lowest of the low, whether they are in rich and developed nations or poor and underdeveloped nations. Although girls in almost every country face major obstacles just by virtue of the fact that they are females, generally speaking, the situation is worst for girls in the poorest countries.⁷⁴

Discrimination against the girl child begins before birth. Although the reasons for son-preference may be different, countries such as the Republic of Korea, India and China share in the practice of using ultrasound techniques to determine the sex of the foetus in order to allow for selective abortions.⁷⁵ Ultrasound-inspired abortions are not the only method used to diminish the number of female children; infanticide is also widespread. According to a UNICEF/UNIFEM fact sheet, in one area of India, fifty-eight percent of the deaths among female infants were due to infanticide.⁷⁶

Survival of the girl child is threatened from the moment of birth. According to the World Health Organization [WHO], girls in many poorer countries are breast-fed for shorter periods of time, receive fewer calories, and are more likely to suffer from malnutrition than are boys.⁷⁷ Furthermore, girls are usually the last to eat. The better food goes to the boys and girls eat the food that is leftover. Studies also show that girls have less access to health care than boys. Girls are taken to treatment centers less often and are sicker when they finally receive treatment. This delay in the receipt of health care results in a higher rate of illness and stunted growth.⁷⁸

74. See, e.g., *infra* notes 77-78 and accompanying text.

75. See MAGGIE BLACK, *GIRLS AND WOMEN: A UNICEF DEVELOPMENT PRIORITY*, 8 (1993).

76. See UNICEF/UNIFEM, *GIRLS' RIGHTS: FACT SHEET FROM THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN*. See also *infra* notes 195-96 and accompanying text.

77. See UNICEF/UNIFEM, *supra* note 76.

78. See BLACK, *supra* note 75, at 8.

A study by UNICEF points out that by the time that they are six years old, girls are expected to take on adult household duties: caring for siblings, cooking, cleaning, and other heavy domestic chores.⁷⁹ These tasks make it difficult for girls to become educated. Girls are frequently seen as a burden on their families and are "married off" at an early age. Such marriages are often arranged by the families and are frequently for money.⁸⁰ This abbreviated childhood is then followed by teenage pregnancy, which further diminishes the girl-child's health and can lead to premature death.⁸¹ The UNICEF survey points out that "[g]irls who marry so young spend up to 80% of their lives pregnant, nursing and caring for children, and serving husbands and in-laws."⁸²

Substantiating UNICEF studies, WHO describes widespread "nurture discrimination"⁸³ against girls, including less food and less access to health care, resulting in malnutrition and death. WHO has also examined early marriage and early childbirth. Cited as a major element in this constellation of events is the minimum age for marriage, which in many countries ranges from low to even lower. For example, while some countries have the comparatively low minimum age for marriage of fifteen, other countries, such as Chile, Ecuador, Panama, Paraguay, Sri Lanka, and Venezuela, have established an even lower minimum age of twelve.⁸⁴ The outcome of these early marriages is early

79. *See id.*

80. In some cases, the reasons for abortions and infanticide are based upon a tradition of "son-preference," while in others, they are purely economic. In some cultures girl children are considered to be expensive, especially if costs exist for the arrangement of her marriage.

81. *See* BLACK, *supra* note 75, at 8. Children of teenage mothers are usually born prematurely. Because the teenage girl's body is still growing, it cannot adequately support both the health requirements of a growing mother and those of her child. According to UNICEF, one quarter of the 500,000 women who die annually from childbirth are teenage girls. *See id.* at 8.

82. *Id.* at 9.

83. *See* UNICEF/UNIFEM, *supra* note 76.

84. All of these countries have been States Parties to the Convention on the Elimination of All Forms of Discrimination Against Women for more than 10 years. *See id.* The fact that the Women's Convention failed to cite a definite standard for a minimum age at which a girl can be married might be a factor in the continuing inadequacy of the marriage legislation of these countries.

childbirth, which WHO reports results in high maternal mortality.⁸⁵

Additionally, the UNICEF/UNIFEM Fact Sheet reiterates the child domestic labor observations of other studies and adds that in countries, such as Bangladesh, girls as young as six or seven are sent away to be domestic servants, living in the most difficult circumstances.⁸⁶ UNICEF estimates that in New Delhi alone approximately 400,000 girls work as domestic servants.⁸⁷

An additional factor that compromises the quality of life for the girl child is her lack of education. A 1990 survey concluded that of the 130 million children in the world that do not have access to primary education, 81 million were girls.⁸⁸ This statistic is especially tragic when one considers that educated young women were found to have fewer, as well as, healthier children.⁸⁹ In 147 of the 150 countries listed in UNICEF's *Statistics On Education* found in its 1995 State of the World's Children, more boys than girls attended primary school.⁹⁰ During the years 1983-90, only sixty-seven countries had primary school attendance ratios in which the gap between boys and girls was less than ten points; others were much greater.⁹¹ Interestingly, statistics for secondary school were somewhat better. Forty-nine countries had higher

85. See *id.* According to WHO, the maternal mortality rate for girls 10-14 years of age is five times higher than that for young women 20-24 years of age. It should be noted that the infant mortality rate is also higher for child mothers. See *id.*

86. See UNICEF/UNIFEM, *supra* note 76.

87. See *id.*

88. See BLACK, *supra* note 75, at 23.

89. See the 1991 World Bank statistics cited in BLACK, *supra* note 75, at 25.

90. See UNICEF, STATE OF THE WORLD'S CHILDREN, app., tbl. IV: Education (1995).

91. See *id.* On the positive side, however, is the fact that primary school ratios were higher for girls than boys in 26 countries and that many of these were countries that are underdeveloped. Countries where primary education statistics for girls exceeded those for boys were: Singapore, Germany, Switzerland, the United Kingdom, the Netherlands, Italy, the Republic of Korea, Greece, Belgium, Jamaica, Kuwait, Malaysia, Colombia, Mauritius, Venezuela, Argentina, Paraguay, Lebanon, Albania, Dominican Republic, Botswana, Mongolia, and Lesotho. Primary education statistics were equal for boys and girls in Sweden, Japan, Denmark, Ireland, Austria, Norway, Australia, Israel, Spain, Hungary, Trinidad and Tobago, Estonia, Jordan, Latvia, and South Africa. See *id.*

ratios for girl students and ten of these countries were at least ten points higher.⁹² Sixteen countries possessed ratios on education for girls that surpassed those for boys at both the primary and secondary school levels, leaving 134 other countries in which girl students are still disproportionately outnumbered by boys.⁹³

The general quality of life for girls is even more distressing when one takes into account the various ways in which a girl's sexuality makes her a target. Youth gives no protection from sexual abuse and assault. As the AIDS virus has spread, the demand for younger and younger sex partners has grown. The 1994 Human Development Report estimated that there were over half a million child prostitutes in the Philippines, Sri Lanka, and Thailand, alone.⁹⁴ As proof of the extent to which very young girl children are sex targets, the UNICEF/UNIFEM Fact Sheet cites a 1988 study conducted in Nigeria in which sixteen percent of the patients treated for sexually transmitted diseases were found to be under the age of five.⁹⁵

Perhaps the most horrible outcome of the fixation on a girl's sexuality is the practice of infibulation, otherwise known as "female circumcision" or "female genital mutilation" (FGM).⁹⁶ In cultures in which FGM is practiced, society perceives an uncircumcised girl as being promiscuous and threatening.⁹⁷ The purpose of FGM is allegedly to ensure female fidelity. In reality, the practice is terrifying, life threatening, and demeaning. It completely destroys the young woman's ability to enjoy

92. The countries having secondary education ratios of ten points or more for girls were: Finland, Cuba, Portugal, Colombia, United Arab Emirates, Mauritius, Estonia, Dominican Republic, South Africa and Lesotho. *See id.*

93. Countries where both primary and secondary education statistics for girls exceeded those for boys were: Singapore, Germany, Switzerland, the United Kingdom, the Republic of Korea, Belgium, Jamaica, Malaysia, Colombia, Mauritius, Paraguay, Lebanon, Dominican Republic, Botswana, Mongolia, and Lesotho. *See id.*

94. *See* UNICEF/UNIFEM, *supra* note 76.

95. *See id.*

96. *See infra* notes 97-98 and accompanying text.

97. *See* Celia W. Dugger, *Genital Ritual Is Unyielding in Africa*, N.Y. TIMES, Oct. 5, 1991, at A1; James C. McKinley, Jr., *At a Ceremony in Kenya, A Harsh Rite of Passage for a Brother and Sister*, N.Y. TIMES, Oct. 5, 1991, at A6.

intercourse and can cause dangerous complications during childbirth.⁹⁸

IV. CONVENTION ON THE RIGHTS OF THE CHILD AND THE PROTECTION OF GIRLS AND YOUNG WOMEN

While the U.N. Convention on the Rights of the Child, alone, cannot be expected to eradicate years of discrimination against girls, it is, however, providing the framework for the possibility of worldwide change. This revolution is taking place for three reasons. First, because the U.N. Convention on the Rights of the Child clearly states the rights of girls in terms that are equal to those of boys, it has altered the way in which human rights are stated.⁹⁹ Second, as the Convention is implemented, it is having a major effect on the way the world views the girl child.¹⁰⁰ Finally, the speedy and nearly universal ratification of the Convention on the Rights of the Child is causing these standards to be implemented in all parts of the world, simultaneously.¹⁰¹

A. *Linguistic Factors*

Perhaps the most revealing indicator of the worldwide status of females is the use of possessive pronouns in human rights treaties.¹⁰² Beginning with the Universal Declaration of Human Rights,¹⁰³ whenever a singular possessive pronoun was used in describing rights, it was always in the masculine form.¹⁰⁴ In order to demonstrate how this language is used, it is helpful to

98. For a graphic description of the results of FGM see Celia W. Dugger, *Woman Betrayed by Loved Ones Mourns a Double Loss*, N.Y. TIMES, Sept. 11, 1996, at B7.

99. See *infra* notes 113-22 and accompanying text.

100. See *infra* notes 146-63 and accompanying text.

101. See *infra* notes 164-78 and accompanying text. As this essay is being published, non-ratifications of only two countries (the United States and Somalia) stand between the Convention on the Rights of the Child and universal ratification. All other countries in the world, including those that are not members of the U.N., are States Parties to the Convention.

102. See *infra* notes 105-11 and accompanying text.

103. See Universal Declaration *supra* note 7.

104. All of the comparisons made here will be among English versions of the treaties. This factor is especially important because the original version of all treaties is usually in English, and English is also the language of international treaty-drafting.

compare the same right as it is protected by different treaties. This comparison is difficult because there are variations in the treaties, and rights that are protected in some treaties are not protected in others. For purposes of illustration, I have chosen the right to privacy to show the formulation of the text as it appears in the Universal Declaration of Human Rights and in several human rights treaties:

Universal Declaration of Human Rights

No one shall be subjected to arbitrary interference with *his* privacy, family, home or correspondence, nor to attacks on *his* honour and reputation.¹⁰⁵

International Covenant on Civil and Political Rights

No one shall be subjected to arbitrary or unlawful interference with *his* privacy, family, home or correspondence, nor to unlawful attacks on *his* honour and reputation.¹⁰⁶

European Convention for the Protection of Human Rights and Fundamental Freedoms

Everyone has the right to respect for *his* private and family life, *his* home and *his* correspondence.¹⁰⁷

American Convention on Human Rights

No one may be the object of arbitrary or abusive interference with *his* private life, *his* family, *his* home or *his* correspondence, or of unlawful attacks on *his* honor or reputation.¹⁰⁸

Although the African Charter On Human and Peoples' Rights¹⁰⁹ does not protect the right to privacy, all of its articles use the

105. Universal Declaration of Human Rights, *supra* note 7, at art. 12 (emphasis added).

106. International Covenant on Civil and Political Rights, *supra* note 10, at art. 17, § 1 (emphasis added).

107. European Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 15, at art. 8, § 1 (emphasis added).

108. American Convention on Human Rights, *supra* note 17, at art. 11, § 2 (emphasis added).

109. African Charter on Human and Peoples' Rights, *supra* note 19.

masculine singular possessive, as does the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹¹⁰ Interestingly, the International Convention On the Elimination of All Forms of Racial Discrimination was written without the use of singular possessive pronouns. The Convention on the Elimination of all Forms of Discrimination Against Women also employed this style, with the exception of the article on the right to nationality, in which singular possessive pronoun "her" appears.¹¹¹

This entrenched international pattern of masculine singular possessive pronouns renders the text of the Convention on the Rights of the Child quite remarkable. The Convention completely breaks with this linguistic tradition. To the extent that it was possible, the drafters of the Convention attempted to avoid the mention of gender entirely, including the singular possessive pronoun. The preferred usage was simply to say "the child." For example, the Convention requires States Parties to "respect the right of *the child* to freedom of thought, conscience and religion."¹¹² However, whenever it became absolutely necessary to insert a singular possessive pronoun, both masculine and feminine versions were used. The right to privacy appears in the Convention on the Rights of the Child as follows:

No child shall be subjected to arbitrary or unlawful interference with *his or her* privacy, family, home or correspondence, nor to unlawful attacks on *his or her* honour and reputation.¹¹³

In other words, despite the fact that all human rights treaties contain the principle of non-discrimination, it is only in the Convention on the Rights of the Child in which both genders are given true equality in the exercise of their rights. The "his or

110. Convention Against Torture, *supra* note 22.

111. See Women's Convention, *supra* note 31, at art. 9, § 1.

112. See Children's Convention, *supra* note 1, at art. 14, § 1 (emphasis added).

113. *Id.* at art. 16, § 1 (emphasis added). Note that the International Covenant on Civil and Political Rights contains exactly the same wording, but with the addition of "or her" when "his" is required. See International Covenant on Civil and Political Rights, *supra* note 10.

her" formulation even appears in the text of the Convention's non-discrimination article:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or *his or her* parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.¹¹⁴

Of the forty-two substantive articles in the Convention on the Rights of the Child, the double singular pronoun can be found in nineteen.¹¹⁵ The formulation is usually "his or her," but in Article 3 it is "him or her" and in Article 26 it is "he or she."¹¹⁶ Overall, the double singular pronoun appears in forty different places in the Convention. Most frequently, it is before the word "parents." In other formulations, it often precedes the word "family" or the phrase "well-being."¹¹⁷

Interestingly, the Convention on the Rights of the Child was not a "gender neutral" treaty at the outset. Its drafting was undertaken as the result of an initiative by the Polish government to celebrate the 1979 International Year of the Child, which commemorated the twentieth anniversary of the adoption by the U.N. of the 1959 Declaration of the Rights of the Child. The first draft of the Convention was based upon the text of the Declaration and, consequently, repeated the singular masculine pronoun formulation and language such as "[t]he child shall be entitled from *his* birth to a name and a nationality."¹¹⁸ When the Commission on Human Rights rejected this draft as inadequate, because it was not in language that was legally enforceable, the

114. Children's Convention, *supra* note 1, at art. 2, § 1 (emphasis added).

115. For a survey of these articles see Children's Convention, *supra* note 1, at arts. 2 (1); 3 (2); 7 (1); 8 (1)-(2); 9 (1); 10 (1)-(2); 12 (1); 14 (2); 16 (1); 17 (e); 20 (1); 22 (1); 23 (2)-(3); 24 (1); 25; 29 (c); 30; 37 (b), (c), (d); and 40 (2) (ii), (iii), (iv), (vii).

116. Children's Convention, *supra* note 1, at arts. 3, 26.

117. See *supra* note 115.

118. Draft Convention on the Rights of the Child, art. 3, reprinted in THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: A GUIDE TO THE "TRAVAUX PREPARATOIRES" 33, 34 (Sharon Detrick ed., 1992).

Polish government submitted a second draft. It too was written in the singular masculine pronoun formulation.¹¹⁹

Although the Convention on the Rights of the Child was drafted over a period of ten years,¹²⁰ it was not until a female delegate from Canada objected to the exclusive usage of the masculine singular pronoun that the word "her" was added to the text.¹²¹ Though this objection took place approximately halfway through the drafting process, it did not become an automatic practice to add the word "her" to subsequently drafted articles. In fact, at one point during the deliberations, the effort to avoid preferential gender language resulted in the child being referred to as "it." This gender confusion in the text was not clarified until after the completion of the first draft of the text in 1988. During the "second reading," in which the first reading text was submitted to careful scrutiny by governmental delegations, the drafters carefully undertook to make the Convention, as they termed it, "gender neutral." In fact, they accomplished rendering the Convention on the Rights of the Child truly "gender-equal."¹²²

B. Substantive Factors

The Convention on the Rights of the Child is a comprehensive human rights treaty in the style of the Universal Declaration of Human Rights. It protects the child's civil-political, economic-social-cultural and humanitarian rights. In this respect, it is a total departure from previous international children's rights legal instruments. Neither the 1959 Declaration of the Rights of the Child nor its predecessor, the League of Nations 1924 Declaration of the Rights of the Child, recognized the child's right to freedom of speech, association and assembly, or the right to freedom of

119. For the text of this draft, as well as the Declaration of the Rights of the Child and the U.N. documents relating to the drafting of the Convention on the Rights of the Child, see *id.*

120. Drafting began during the International Year of the Child in 1979 and ended in 1989.

121. The Canadian delegate was Coleen Swords from the Canadian Department of External Affairs.

122. Judith Ramirez of the Canadian Immigration and Refugee Board prefers the phrase "gender-inclusive."

religion. Although many of the Convention's rights are child-adjusted restatements of the rights in the two human rights covenants, the Convention also incorporates rights that international human rights treaties did not protect.¹²³

The Convention on the Rights of the Child has four overarching principles: non-discrimination,¹²⁴ survival,¹²⁵ the best interests of the child¹²⁶ and the child's right to be heard.¹²⁷ It supports the child's right to a nurturing family and recognizes the responsibility of parents to provide "in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise" of the Convention's rights.¹²⁸ The Convention protects children from neglect and abuse,¹²⁹ from economic¹³⁰ and sexual exploitation,¹³¹ from trafficking¹³² and drug abuse,¹³³ and provides for foster care¹³⁴ and adoption¹³⁵ when a nurturing home is not a possibility. The Convention has provisions for the child's education,¹³⁶ standard of living,¹³⁷ and health care,¹³⁸ as well as regulations for participation in armed conflicts¹³⁹ and the treatment of refugee children.¹⁴⁰

The Convention on the Rights of the Child is so comprehensive in its protection of the girl child that it cannot be fairly compared with the Women's Convention. Not only does it protect the rights

123. Among these are the right to identity, to foster care and adoption, as well as the rights discussed in *infra* notes 142-45 and accompanying text.

124. See Children's Convention, *supra* note 1, at art. 2.

125. See *id.* at art. 6.

126. See *id.* at art. 3.

127. See *id.* at art. 12. In adopting its Guidelines on Reporting for initial reports of States Parties, the Committee on the Rights of the Child chose these four articles as overriding principles of the Convention.

128. See *id.* at art. 5.

129. See *id.* at art. 19.

130. See *id.* at art. 32.

131. See *id.* at arts. 34, 36.

132. See *id.* at art. 35.

133. See *id.* at art. 33.

134. See *id.* at art. 20.

135. See *id.* at art. 21.

136. See *id.* at art. 28.

137. See *id.* at art. 27.

138. See *id.* at art. 24.

139. See *id.* at art. 38.

140. See *id.* at art. 22.

of the girl child more effectively than the Women's Convention, but it includes rights not protected by that treaty. For example, one article protects the girl child against intra familial violence, a proscription which, considering the worldwide problem of domestic violence, is strangely lacking in the Women's Convention.¹⁴¹ Article 19 of the Convention on the Rights of the Child calls on State Parties to take measures to:

protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.¹⁴²

A second innovative article not only obligates States Parties to protect the child from the trauma of intra familial, war and prostitution, but further requires governments to:

take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts.¹⁴³

Such rehabilitation from trauma provides a step toward amelioration of previously described problems that girls regularly face. Although it may not immediately eliminate these harmful practices, at least the girl child may be given a second chance to lead a safe, normal life.

Finally, of special importance to the girl child is Paragraph 3 of the article on health:

141. See Women's Convention, *supra* note 31.

142. These protective measures are described in detail in Children's Convention, *supra* note 1, at art. 19 (1), (2).

143. Children's Convention, *supra* note 1, at art. 39.

States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.¹⁴⁴

By use of the words "traditional practices," drafters of the Convention on the Rights of the Child intended for this paragraph to end the practice of female genital mutilation.¹⁴⁵ The Convention on the Rights of the Child is the only human rights treaty that explicitly discourages this practice.

C. *Implementation Factors*

Implementation of U.N. human rights treaties follows a single model with variations. In each human rights treaty, States Parties to the treaty must submit periodic reports to a committee of experts describing the measures that have been taken to implement the treaty. The frequency and content of these reports may vary from treaty to treaty, as may the number of experts and the frequency of their meetings, but the monitoring body format remains constant. The monitoring body for the Convention on the Rights of the Child is known as the Committee on the Rights of the Child.¹⁴⁶ The Committee is comprised of ten experts who meet three times a year for four-week sessions.¹⁴⁷ Each session consists of three weeks of open oral examinations regarding States Parties' reports, plus a one-week closed session to prepare for the next session.

Each State Party is required to submit its initial report to the Committee on the Rights of the Child two years after it has ratified the Convention and it has gone into force.¹⁴⁸ Once the

144. *Id.* at art. 24, § 3.

145. *See supra* notes 97-98 and accompanying text.

146. *See* Children's Convention, *supra* note 1, at art. 43, § 1.

147. *See id.* at art. 43, § 2. The General Assembly increased the original meeting schedule of two weeks once a year, to three weeks two times a year. Subsequently, because of the overwhelming workload of the Committee as a result of the Convention's enormous worldwide popularity, the General Assembly added a third session each year. The Committee typically holds its sessions in January, May, and September.

148. *See id.* at art. 44. In accordance with the requirements of Article 49 of the Convention on the Rights of the Child, the Convention went into force on September 4, 1990, one month after the deposit of the twentieth instrument of ratification with the

submitted report has been translated and processed as a U.N. document, it is assigned a place on the Committee's future agenda. The Committee reviews the report at its preparatory meeting, prior to the session in which public formal oral examination of the report will take place. The Committee transmits a list of question to the State Party which are to be answered in writing, and the subsequent oral examination is based, in part, on the replies to these questions. At the end of each session, the Committee drafts Concluding Observations for each State Party's report. This document includes: a review of the report's Positive Aspects; Factors and Difficulties Impeding Implementation of the Convention; Principle Areas of Concern; and Suggestions and Recommendations.¹⁴⁹

The first elections for Committee membership took place at a January 1991 meeting of the States Parties. Of the ten Committee members elected at that time, seven were women.¹⁵⁰ Subsequent elections have altered the gender makeup of the Committee and at the time of this article the Committee is comprised of seven women and three men.¹⁵¹ Due to the

Secretary-General of the United Nations. All subsequent ratifications enter into force one month after they are deposited.

149. For examples of Concluding Observations see *infra* notes 153-63 and accompanying text.

150. The first members elected to the Committee included: *Mrs. Hoda Badran, Egypt; Mgr. Luis A. Bambaren Gastelumendi, Peru; Ms. Akila Belembaogo, Burkina Faso; *Ms. Maria de Fatima Borges de Omena, Brazil; *Ms. Flora Eufemio, Philippines, Mr. Thomas Hammarberg, Sweden, Mr. Yuri Kolosov, Russian Federation (former U.S.S.R.); Mrs. Sandra Prunella Mason, Barbados; *Mr. Swithun Mombeshora, Zimbabwe; and *Mrs. Marta Santos Pais, Portugal. An asterisk denotes a two year term. Although these two year delegates were reelected in 1993 to new four year terms that expire in 1997, those members who originally drew four year terms will be up for reelection in 1995. See *Report of the Committee on the Rights of the Child*, U.N. GAOR, 47th Sess., Supp. No. 41, Annex II, at 13, U.N. Doc A/47/41 (1993) (indicating that term expires on February 28, 1993, others' terms expire on February 28, 1995).

151. As the States Parties prepare to elect or re-elect the five Committee members whose terms expire in 1997, the Committee membership remains unchanged from the initial 1991 election except for the fact that Ms. Marilia Sardenberg (Brazil) replaced Ms. Marie de Fatima Borges de Omena (Brazil) and Ms. Judith Karp (Israel) replaced Mgr. Luis A. Bambaren Gastelumendi (Peru).

At the February 1997 meeting of States Parties to the Convention on the Rights of the Child, only one of the five members who had completed their four year terms was re-elected (Marilia Sardenberg, Brazil). The new members of the Committee are from South Africa, Lebanon, Italy, and Malaysia. In addition, the continuing members from Sweden

preponderance of female members of the Committee, the rights of the girl child are always given careful scrutiny in the Committee's analysis of States Parties' reports.

During its Twelfth Session,¹⁵² the Committee examined the reports from five States Parties. A survey of the Principle Areas of Concern of the Concluding Observations for this session shows that none of these countries was without fault with regard to the girl child. In its observations on the Chinese report, the Committee remarked:

[I]nadequate measures taken in the field of social security may have led to an over-reliance on children providing future care and support to their parents. This may have contributed to the perpetuation of harmful traditional practices and attitudes such as a preference for boys, to the detriment of the protection and promotion of the rights of girls¹⁵³

The Committee also pointed out that deficiencies in the Chinese child registration system led to the government's inability to protect children against "trafficking, abduction, sale and mistreatment, abuse or neglect."¹⁵⁴ It further stated that "the situation of 'unregistered girls' as regards their entitlement to health care and education is a matter of concern to the Committee."¹⁵⁵

The Committee consistently inquires about the minimum age for marriage, because it is known to have negative effects on the development of the girl child. Often a low age for marriage is

and Burkina Faso withdrew prior to the end of their terms and were replaced by new members from their countries.

It should be noted that a Costa Rican sponsored resolution amending the Convention to increase Committee membership from ten to eighteen members has been adopted by the States Parties. However, it will not go into force until it has been formally approved by two-thirds of the States Parties.

152. The Twelfth Session was held from May 20 to June 7, 1996.

153. See *Concluding Observations of the Committee on the Rights of the Child: China*, Committee on the Rights of the Child, 12th Sess., ¶ 12, U. N. Doc. CRC/C/15/ADD.56 (1996).

154. See *id.* ¶ 16.

155. *Id.*

linked to a range of local customs. The Committee noted that in Nepal there were

persistent discriminatory attitudes towards girls, as reflected in the prevailing son preference, the persistence of early marriages, the notably lower school attendance of girls and their higher drop-out rate.¹⁵⁶

The Committee also noted a discrepancy in the minimum age of marriage for girls and boys.¹⁵⁷ In commenting on the report from Guatemala, the Committee observed:

[t]he low age of marriage for girls, which is different than the one for boys, is, in the Committee's view, also incompatible with the principles and provisions of the Convention.¹⁵⁸

Similarly, the Committee's response to Lebanon's report urged:

The Committee is worried by the widespread practice of early marriage and the related consequence of high child mortality rates and the negative impact on the health of girls bearing children at an early age.¹⁵⁹

The Committee's conclusions on the Zimbabwe report cited concern over "the persistence of behavioural attitudes" and of cultural and religious practices that interfere with the implementation of children's rights.¹⁶⁰ In particular, the Committee was concerned with

156. *Concluding Observations of the Committee on the Rights of the Child: Nepal*, Committee on the Rights of the Child, 12th Sess., ¶ 12, U. N. Doc. CRC/C/15/ADD.57 (1996).

157. *See id.*

158. *Concluding Observations of the Committee on the Rights of the Child: Guatemala*, Committee on the Rights of the Child, 12th Sess., ¶ 15, U. N. Doc. CRC/C/15/ADD.58 (1996).

159. *Concluding Observations of the Committee on the Rights of the Child: Lebanon*, Committee on the Rights of the Child, 12th Sess., ¶ 16, U. N. Doc. CRC/C/15/ADD.54 (1996).

160. *See Concluding Observations of the Committee on the Rights of the Child: Zimbabwe*, Committee on the Rights of the Child, 12th Sess., ¶ 13, U.N. Doc. CRC/C/15/ADD.55 (1996).

the situation of female victim of practices such as *ngozi* (girl child pledging), *lobola* (bride price), and early marriage¹⁶¹

The Committee observed that local law prevented girls from having inheritance rights. Furthermore, "discrimination on the basis of race in relation to the minimum age for marriage, inheritance and children born out of wedlock" occurred. In addition, different minimum marriage ages for girls and boys existed.¹⁶² The Committee also pointed out that in Zimbabwe the "cost to families of secondary education are leading to an increasing drop-out rate for girls"¹⁶³

D. Additional Factors

A treaty is only as effective as its implementation mechanism. All of the fine standards of the Convention on the Rights of the Child will be meaningless if countries do not adhere to them. Consequently, drafters of the Convention saw fit to include two articles that are aimed at improving the level of human rights treaty implementation. First, as a part of their implementation obligations, States Parties to the Convention on the Rights of the Child must "make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike."¹⁶⁴ In other words, knowledge is power.¹⁶⁵

Second, Article 45 of the Convention adds a component that is lacking in other human rights treaties. It gives the Committee on the Rights of the Child the power to obtain information from sources other than States Parties,¹⁶⁶ to aid countries that need technical assistance to implement the Convention¹⁶⁷ and to

161. *See id.*

162. *See id.* ¶ 12.

163. *See id.* ¶ 19.

164. Children's Convention, *supra* note 1, at art. 42.

165. In addition to the Article 42 requirement to "make . . . the Convention widely known," States Parties are required under Article 44, § 6 to make their reports to the Committee "widely available to the public in their own countries." *Id.* at art. 44, § 6.

166. *See id.* at art. 45, § a.

167. *See id.* at art. 45, § b.

request that studies be undertaken on specific issues relating to the rights of the child.¹⁶⁸ Central participants in this process are UNICEF, the U.N. specialized agencies, other U.N. organs, and NGOs, referred to in the Convention as "other competent bodies."¹⁶⁹

1. *General Discussion Day*

The Committee on the Rights of the Child, interpreting its powers broadly, has instituted a practice in its Fall session of holding a General Discussion Day on a topic of general interest to States Parties. Thus far, topics of discussion have included: children and war, economic exploitation, children and families, juvenile justice, the child and the media, and a special additional day of discussion on the girl child during the Committee's 1995 January session, prior to the Beijing Conference.¹⁷⁰

The purpose of the General Discussion Day is to bring together experts on particular topics who can augment the knowledge of Committee members. In advance of the day of general discussion on the rights of the child, the chair of the Committee prepared an outline for distribution to all possible participants: U.N. bodies, specialized agencies, NGOs and "other competent bodies."¹⁷¹ It emphasized "the principle of non-discrimination and the need for the girl child to enjoy all her fundamental rights, including the right to make free and informed choices concerning her life."¹⁷² The report of this General Discussion Day noted "the place in society of girls" as raising "serious and unresolved questions of

168. See *id.* at art. 45, § c.

169. The Convention's drafters used the words "other competent bodies" to create a role for non-governmental organizations (NGOs). *Id.* at art. 45, § a. For a history of how NGOs participated in the drafting of the Convention, see Cynthia Price Cohen, *Role of Non-governmental Organizations in the Drafting of the Convention on the Rights of the Child*, 12 HUM. RTS. Q. 137 (1990).

170. The Committee's general discussion on the girl child, which was held on January 23, 1995, can be found in *Report Adopted by the Committee at Its 209th Meeting on 27 January 1995*, Convention on the Rights of the Child, 8th Sess., U. N. Doc. CRC/C/38 (1995).

171. The Committee of Rights of the Child has given the broadest interpretation to the words "other competent bodies," extending the phrase to include scholars and other individual experts. See *infra* IV.D.2.

172. *Id.* ¶ 276.

inequality and indifference, manifested by discrimination, neglect, exploitation and violence."¹⁷³ The report, citing information from States Parties' reports, listed the full range of deprivations faced by girls, deprivations that are usually based on custom: household responsibilities at an early age, responsibilities for younger siblings, refused access to education, son preference, neglect, less food, little health care, inferiority leading to violence and sexual abuse, early marriage and pregnancy, female circumcision (FGM), and forced marriage.¹⁷⁴ The report mentions a variety of steps to be taken to correct this situation. In one of the report's most significant statements, however, the Committee urged that girls need not be seen as a "special group entitled to special rights."¹⁷⁵ Rather, the Committee stated:

[G]irls are simply human beings who should be seen as individuals and not just as daughters, sisters, wives or mothers, and who should fully enjoy the fundamental rights inherent to their human dignity.¹⁷⁶

2. *Other Competent Bodies*

The Committee's interpretation of the Convention's Article 45 language regarding the role of "other competent bodies" in the Convention's implementation process also has been given generous interpretation. NGOs, both national and international, regularly communicate with the Committee regarding the reports of States Parties. The reason for this unique, innovative cooperation between the Committee on the Rights of the Child and NGOs can be traced to the drafting of the Convention. During the drafting process, a group of NGOs, known as the NGO Ad Hoc Group on the Drafting of the Convention on the Rights of the Child, met regularly to collaborate with one another regarding the text of the Convention. Due to the success and respect earned by the NGO Ad Hoc Group, the U.N. Working Group in charge of drafting the Convention recognized the

173. *Id.* ¶ 282.

174. *See id.* ¶ 286.

175. *Id.* ¶ 283.

176. *Id.*

members' efforts by formally giving NGOs input in the implementation process.

After the General Assembly adopted the Convention in 1989, the NGOs reorganized as the NGO Group for the Convention on the Rights of the Child [NGO Group]. In their new configuration, the NGO Group has undertaken many projects aimed at facilitating the Convention's implementation. To this end, they have been encouraging the establishment of national coalitions of NGOs to monitor State Party compliance with the Convention at the local level. As part of this project, the NGO Group tries to ensure that national NGOs are present when the Committee on the Rights of the Child holds its preparatory meeting to review the State Party report from their respective countries.

Another project of the NGO Group resulted in the World Congress Against the Sexual Exploitation of Children, held in Stockholm in late August, 1996. The Swedish Government, ECPAT -- an NGO that works to end sex tourism,¹⁷⁷ the International Catholic Child Bureau, Defence for Children International; and the NGO Group jointly sponsored the World Congress.¹⁷⁸ Typically, the World Congress concluded with the adoption of the World Congress Declaration and Agenda for Action. Interestingly, this document makes only two references to "girls" or to "girls and boys." The remainder of the document refers only to "the child" or to "children."¹⁷⁹ Following the example set by the Convention on the Rights of the Child, which the Declaration cites repeatedly, the World Congress Declaration seeks to be gender-equal.

V. INTERNATIONAL ACTION ON BEHALF OF THE GIRL CHILD

The rights of the girl child have, at last, begun to receive the international attention they deserve. This attention can be seen in the platforms of a number of international events, as well as in the work of the Commission on Human Rights and various

177. The letters ECPAT stand for End Child Prostitution in Asian Tourism.

178. Both Radda Barnen and the International Catholic Child Bureau are members of the NGO group.

179. World Congress Against Commercial Sexual Exploitation of Children (visited Oct. 10, 1996) <<http://www.childhub.ch/webpub/csechome/222d.htm>>

U.N. bodies.¹⁸⁰ This new interest in the rights of girls is an important development, because young women will be better able to effectively actualize their rights as adults if they have had an adequate rights foundation during childhood. There is no question that the current international interest in the girl child is directly linked to the Convention on the Rights of the Child.

Although the world movement for women's rights brought female issues onto the international agenda, the Convention on the Rights of the Child is changing this agenda from exclusive concern for the rights of women to one that also embraces the rights of the girl child. The Convention on the Rights of the Child has been the primary catalyst in creating the international dialogue on the rights of the girl child. This dialogue has brought about the non-treaty actions that the international community in undertaking to recognize and remedy the problems faced by girls. The discussion below illustrates the way in which the girl child has been taken into consideration in deliberations at the international meetings and in the work of the Special Rapporteur on the Sale of Children.

A. World Summit for Children: Declaration and Plan of Action

Shortly after the U.N. General Assembly adopted the Convention on the Rights of the Child on November 20, 1989, UNICEF put forward a plan to hold a world summit that would focus on children's issues.¹⁸¹ A number of governments supported the plan and worked with UNICEF to bring the idea to fruition.¹⁸² On September 29-30, 1990, more than eighty heads of state met

180. See *infra* notes 180-224 and accompanying text.

181. The purpose of the World Summit for Children was to ensure that children's concerns did not disappear from the international agenda after the General Assembly adopted the Convention on the Rights of the Child. At that time no one could foresee the fact that the international community would so welcome the Convention that it would already be in force by the time that the Summit was held. Nor could it have been predicted that, five years after the Convention was opened for signature, there would be 187 States Parties to the Convention. Although the idea for the World Summit came from UNICEF and was fully supported by UNICEF, it became a reality as the result of a General Assembly resolution sponsored by a coalition of U.N. Member States.

182. See Price Cohen & Miljeteig-Olsen, *supra* note 2, at 369.

at the U.N. office in New York to participate in the World Summit for Children. One of the World Summit's outcomes was the drafting of the World Declaration on the Survival, Protection and Development of Children (World Declaration).¹⁸³

The World Declaration gives special attention to the girl child, stating: "*Girls* must be given equal treatment and opportunities from the very beginning."¹⁸⁴ It further notes that of the "over 100 million children who are without basic schooling . . . two-thirds of them are *girls*."¹⁸⁵ As part of their commitment to children, participating governments pledged to "provide educational opportunities for all children, irrespective of their background and gender" ¹⁸⁶ To actualize these goals, the World Declaration called for the creation of the Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s (World Summit Plan of Action).

Section II of the World Summit Plan of Action, "Specific Actions for Child Survival, Protection and Development," lists two actions particularly aimed at improving the condition of the *girl child*.¹⁸⁷ The first action deals with ensuring the availability of clean water and safe sanitation, which are "not only essential for human health and well-being, but also contribute greatly to the emancipation of women from the drudgery that has a pernicious impact on children, *especially girls*."¹⁸⁸ The second action emphasizes education, urging that "primary education or

183. See *World Declaration on the Survival, Protection and Development of Children*, in UNICEF, *FIRST CALL FOR CHILDREN 1* (1990) [hereinafter *World Declaration*].

184. *Id.* at 3 (emphasis added).

185. *Id.* (emphasis added).

186. *Id.* at 5. The *World Declaration* is divided into five sections: *The Challenge*; *The Opportunity*; *The Task*; *The Commitment*; and *The Next Steps*. Although the *World Declaration* focuses on children in general, the section on *The Commitment* gives special attention to the girl child. See *id.* at 4-7.

The *World Declaration* is accompanied by a *Plan of Action for Implementing the World Declaration on Survival, Protection and Development of Children in the 1990s* and an Appendix entitled *Goals for Children and Development in the 1990s*. *Id.* at 9-39.

187. See *Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990* in UNICEF, *FIRST CALL FOR CHILDREN 9* (1990). It is divided into three sections: I. Introduction; II. Specific Actions for Child Survival, Protection and Development; and III. Follow-up Actions and Monitoring, plus an Appendix which outlines "Goals for Children and Development in the 1990s."

188. *Id.* at 14 (emphasis added).

equivalent learning achievement by at least eighty percent of the relevant school age children with emphasis on reducing the current disparities between boys and *girls*¹⁸⁹ is necessary. The goals of the Appendix support the above actions by calling for "[s]pecial attention to the health and nutrition of the *female child*" and "[u]niversal access to primary education with *special emphasis for girls*" ¹⁹⁰

B. *World Conference on Human Rights*

The World Conference on Human Rights, sponsored by the U.N. and held in Vienna on June 14-25, 1993, concluded with the adoption of the Vienna Declaration and Programme of Action (Vienna Declaration).¹⁹¹ The Vienna Declaration presents a comprehensive view of aspirations based on the current status of human rights. The girl child is specifically mentioned in two paragraphs of the Vienna Declaration's General Principles. The first asserts that "[t]he human rights of women and of the *girl-child* are an inalienable, integral and indivisible part of universal human rights."¹⁹² The second paragraph, though speaking of the need for early ratification of the Convention on the Rights of the Child and children's rights in general, states that "[n]ational and international mechanisms and programmes should be strengthened for the defence and protection of children, in particular, the *girl-child*" ¹⁹³

The Vienna Declaration also contains a special section on equality, dignity and tolerance.¹⁹⁴ Within this section are subsections that discuss torture, racism, minorities, the disabled, women, and, most importantly, the rights of the child.¹⁹⁵ The nine-paragraph subsection on children's rights has two paragraphs that refer to matters relative to the girl child. The first paragraph asserts that "[e]ffective measures are required

189. *Id.* at 14, 18 (emphasis added).

190. *Id.* at 32 (emphasis added).

191. See Vienna Declaration and Programme of Action, June 25, 1993, U.N. Doc. A/CONF.157/24 (1993), 32 I.L.M. 1661.

192. *Id.* pt. I, ¶ 18 (emphasis added).

193. *Id.* pt., I ¶ 21 (emphasis added).

194. See *id.* pt., II ¶¶ 19-65.

195. See *id.*

against female infanticide"¹⁹⁶ The second paragraph further states that:

The World Conference on Human Rights supports all measures by the United Nations and its specialized agencies to ensure the effective protection and promotion of human rights of the *girl child*. The World Conference on Human Rights urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the *girl child*.¹⁹⁷

C. *Special Rapporteur on the Sale of Children*

The Vienna Declaration of the World Conference on Human Rights covers most human rights subjects that are on the regular agenda of the U.N. Commission on Human Rights, with one exception: the work of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. The first Special Rapporteur, Professor Vitit Muntarbhorn, was appointed in the fall of 1990.¹⁹⁸ His office was established as the result of resolution 1989/42 of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities entitled "Sale of Children," which requested the appointment of the Special Rapporteur by the Commission. Both the Commission and the Economic and Social Council subsequently adopted the request. Upon appointment, the Special Rapporteur's first act was to ask for assistance from governments and nongovernmental organizations in carrying out his mandate. Professor Muntarbhorn devoted his initial report in 1991 to laying out a framework for further investigation.

Beginning in 1992, the Special Rapporteur's investigations were itemized in annual reports to the Commission on Human Rights.

196. *Id.* ¶ 48.

197. *Id.* ¶ 49 (emphasis added). While this language does not incorporate any of the usual terms for female genital mutilation, such as "traditional practices" or FGM, it is sufficiently broad to indicate that FGM is encompassed, along with other practices such as gender preference and child marriage. See *supra* notes 97-98, 145 and accompanying text.

198. Professor Vitit Muntarbhorn was the Special Rapporteur from 1991 to 1994, until he withdrew from his post. He has since been replaced by Ms. Ofelia Calcetas-Santos.

Although the mandate of the Special Rapporteur covers the sale of all children, within each of his reports there were sections that singled out the special problems of the girl child. For example, in the 1992 report, the Special Rapporteur considered the incidence of forced marriage and, citing specific cases, concluded that it was not limited to developing countries.¹⁹⁹ In addition, Professor Muntarbhorn determined that cultural influences can be a factor in child prostitution.²⁰⁰

In some settings, there is a class system that perpetuates the use of young girls in prostitution. There also exists the practice of handing over young girls as "sex goddesses" in certain regions of the world.²⁰¹

The Special Rapporteur noted that once young girls have become enmeshed in a life of prostitution, societal taboos make it very difficult for them to change occupations.²⁰²

Professor Muntarbhorn's 1993 report was much larger in scope than the 1992 report. With regard to the girl child, the Special Rapporteur explained that "[f]emale foeticide has been banned by law, but socio-cultural prejudices remain."²⁰³ He noted that in developing countries girls have "fewer educational and occupational opportunities than boys" and that many end up as prostitutes and domestics.²⁰⁴ Child prostitution is both national and international. In Sri Lanka there have been allegations of "a large number of girl prostitutes in the free trade zone in the

199. See *Sale of Children*, Commission on Human Rights, 48th Sess., Agenda Item 22, ¶ 87, U.N. Doc. E/CN.4/1992/55 (1992). One cited case was that of a Saudi national who was arrested for "buying a young Indian girl for marriage." *Id.* In another case, an immigrant to Britain tricked his daughter into marrying a Yemeni citizen when they were on holiday in Yemen. *Id.*

200. The topic of child prostitution appeared in all three of Professor Muntarbhorn's reports. See, e.g., *id.* ¶¶ 220-238. Professor Vitit Muntarbhorn was the Special Rapporteur from 1991-94, until he withdrew from his post. He has since been replaced by Ms. Ofelia Calcetas-Santos.

201. *Id.* ¶ 144.

202. See *id.*

203. *Sale of Children*, U.N. Commission on Human Rights, 49th Sess., Agenda Item 24, ¶ 83, U. N. Doc. E/CN.4/1993/67 (1993).

204. *Id.* The Special Rapporteur is referring to Bangladesh, Nepal, India, and Pakistan in particular.

country, who are coerced into rendering sexual services."²⁰⁵ The report further described prostitution that amounts to international trafficking:

A number of girls are trafficked from Nepal and Bangladesh into India. . . . "The girls being trafficked into India are mostly fair skinned girls from the Mongol community, mostly of the Tamag ethnic group who are scattered into the country."²⁰⁶

The 1993 report on Sale of Children was also expanded to look at other forms of "sale," such as sale for adoption and kidnaping for various purposes, including adoption, sale of organs, bonded labor and, in the case of girls, rape.²⁰⁷ Building on his 1992 report, the Special Rapporteur observed that the problem of arranged child marriages could be found in numerous countries, especially India, Pakistan, Nepal, and Bangladesh.²⁰⁸ He also concluded that child labor involving girls is a problem everywhere: from the United States, where children can be found in sweat shops, to the Philippines, where girl laborers are exploited in the garment industry.²⁰⁹

The final report by Professor Muntarhorn in 1994 once again addressed the problems of child labor, child marriage, prostitution and trafficking. Noting that in Bangladesh and Pakistan girls between the ages of six and fourteen are preferred for domestic labor, he states, "The girls are discharged at puberty and may end up in a brothel."²¹⁰ As for child marriages, the Special Rapporteur paints a bleak picture:

Poor girls without a trade or dowry are often taken as second wives by older men and kept in near slavery. If the first wife does not recognize the second marriage, it

205. *Id.* ¶ 175.

206. *Id.* ¶ 176 (quoting G. Pradham, *op. cit.*, 25).

207. *See id.* ¶¶ 128-135.

208. *See id.* ¶ 85.

209. *See id.* ¶¶ 86-91.

210. *Sale of Children, Child Prostitution and Child Pornography*, U.N. Commission on Human Rights, 50th Sess., Agenda Item 22, ¶ 82, U. N. Doc. E/CN.4/1994/84 (1994) (quoting M. Harrison, *Child Labor in Bangladesh in ANTI-SLAVERY REPORT 199 69* (1992)).

is not registered, and when the girl becomes pregnant, she can be abandoned without a legal remedy.²¹¹

Trafficking also has unexpected hazards. Girls trafficked from Bangladesh into Pakistan often end up being detained in jail as illegal immigrants.²¹² Moreover, although Pakistan has laws against bonded labor, they are not enforced.²¹³ Additionally, reports exist that children employed as domestic servants in Sri Lanka are often sexually abused.²¹⁴ Interestingly, it appears that the demand for South Asian women is multinational, with customers coming from "a variety of Gulf States and Middle Eastern countries."²¹⁵

The Special Rapporteur found that sexual exploitation of girls was widespread, especially in Eastern Europe. The 1994 report discussed the sale of children for purposes of prostitution in Russia and the presence of Romanian girl prostitutes in Czechoslovakia.²¹⁶ The report further noted that numerous Western countries gave information to the Special Rapporteur about their efforts to eliminate sexual exploitation and sex tourism, in particular.²¹⁷ The well known problems of child prostitution in Eastern countries was cited once again.²¹⁸

211. *Id.* ¶ 83 (quoting M. Harrison, *Child Labor in Bangladesh* in ANTI-SLAVERY REPORT 199 70 (1992)).

212. *See id.* ¶ 84.

213. *See id.* ¶ 85.

214. *See id.* ¶ 86.

215. *See id.* ¶ 87.

216. *See id.* ¶ 144.

217. *See id.* ¶ 145. The Western countries mentioned in the report are Belgium, France, the United Kingdom, Sweden, Norway, Germany, Australia and Japan. *See id.* at 33-38.

218. The countries known to be the largest sources of child prostitution are: Cambodia, Malaysia, Sri Lanka, Philippines, Burma, Thailand, Laos, China, Vietnam, India, Nepal and Pakistan. *See* Nick Daniel, *International: Children Sold into Sex Slavery on Street of Flowers*, DAILY TELEGRAPH (London), Dec. 1, 1996, available in 1996 WL 4001031; *Sex, Tourism, and the Travel Industry: How Serious a Problem is Child Sex Tourism in Asia?*, TRAVEL TRADE GAZETTE, Oct. 25, 1996, available in 1996 WL 13587684; *Sri Lanka To Participate in Child Abuse Conference*, XINHUA, June 26, 1996, available in 1996 WL 10825079.

D. Fourth World Conference on Women, Beijing (1995)

The Beijing Declaration and Plan of Action of the Fourth World Conference²¹⁹ devoted approximately nine pages to the situation of the girl child. It echoed the findings in the UNICEF/UNIFEM Fact Sheet, discussed above.²²⁰ It restated the fact that the girl child faces discrimination "from the earliest stages of life, through her childhood and into adulthood."²²¹ In addition, it supports other research, stating that "in some parts of the world, men outnumber women by 5 in every 100."²²² The reason given for this discrepancy was:

[A]mong other things, harmful attitudes and practices, such as female genital mutilation, son preference -- which results in female infanticide and prenatal sex selection -- early marriage, including child marriage, violence against women, sexual exploitation, sexual abuse, discrimination against girls in food allocation and other practices related to health and well-being.²²³

The Declaration and Plan of Action also reported that "[m]ore than 15 million girls aged 15 to 19 give birth each year"²²⁴ and that "[s]exual violence and sexually transmitted diseases, including HIV/AIDS . . ." are among the sex-related dangers to girls.²²⁵

The Declaration and Plan of Action included a list of "strategic objectives" to improve the situation of the girl child. For each of these objectives, the declaration and plan of action included outlines of specific actions that should be taken by governments in cooperation with international and nongovernmental organizations in order to implement these objectives. The

219. *Report of the Fourth World Conference on Women, Beijing, China Sept. 4-15, 1995*, [hereinafter *Beijing Report*](visited Jan. 17, 1997) <gopher://gopher.un.org:70/00/conf/fwcw/of/a--20en>.

220. *Platform for Action, Annex 2, Ch. 4 in Beijing Report*, *supra* note 217, ¶¶ 259-285.

221. *Id.* ¶ 259.

222. *Id.*

223. *Id.*

224. *Id.* ¶ 268.

225. *Id.* ¶ 269.

following nine strategic objectives were designated as areas in which the need for action was most urgent:

1. Eliminate all forms of discrimination against the girl child;
2. Eliminate negative cultural attitudes and practices against girls;
3. Promote and protect the rights of the girl child and increase awareness of her needs and potential;
4. Eliminate discrimination against girls in education, skills development and training;
5. Eliminate discrimination against girls in health and nutrition;
6. Eliminate the economic exploitation of child labor and protect young girls at work;
7. Eradicate violence against the girl child;
8. Promote the girl child's awareness of and participation in social, economic and political life;
9. Strengthen the role of the family in improving the status of the girl child.²²⁶

VI. WOMEN'S RIGHTS VS. THE RIGHTS OF THE CHILD

In March 1996, the International League for Human Rights and UNICEF jointly hosted two meetings in New York that were aimed at creating a dialogue between proponents of the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.²²⁷ Representatives of NGOs, individual scholars, and U.N. staff constituted the primary participants in these meetings.

One might think that proponents of human rights would be a united group, but, in fact, individual human rights treaties

226. *Id.* ¶¶ 274-285 (strategic objectives L.1 to L.9).

227. The first meeting was held at the United Nations on March 13, 1996. Speakers included Judge Desiree Bernard, Expert from the Committee on the Elimination of All Forms of Discrimination Against Women; Marilia Sardenberg, Expert from the Committee on the Rights of the Child; Purificacion Quisumbing, Chief of the New York Office of the Centre for Human Rights; and Shanti Dairiam, International Women's Rights Action Watch. The second, follow-up meeting, chaired by Marjorie Lightman of the International League for Human Rights, took place at UNICEF House on March 14, 1996. Links Between CEDAW and the Convention on the Rights of the Child (unpublished program, on file with the *William and Mary Journal of Women and the Law*).

usually have completely different groups of supporters. The focus of what might be called "human rights treaty support groups" is to ensure that treaty implementation is effective. Generally speaking, specialized human rights NGOs tend to track the work of only one treaty monitoring body. For example, most children's advocacy groups limit their treaty related efforts to cooperation with the Committee on the Rights of the Child. However, some specialized human rights NGOs, such as Amnesty International, may follow more than one treaty, because the organization's mandate of eradicating torture and arbitrary detention is addressed by several treaties.²²⁸ There are a number of other, more generalized human rights NGOs, including the International League for Human Rights and Human Rights Watch, that tend to cover the deliberations of all human rights treaty bodies.

Oddly, despite the fact that the treaties would appear to be interrelated, it seems that only general human rights NGOs follow both the Women's Convention and the Convention on the Rights of the Child. NGOs that specialize in either children's rights or women's rights tend not to know one another and to be unfamiliar with the other support group's treaty. The two UNICEF/ International League for Human Rights meetings were initial steps toward eliminating this communication gap. Unfortunately, the resulting dialogue indicated that the gap may not be easy to overcome.

The first and more formal of the two meetings was held at the U.N. and more than one hundred NGOs (most of whom were from women's groups) and other interested persons were in attendance. The speeches were constructive and aimed at initiating partnership between supporters of the two treaties. The second meeting, held at UNICEF House, can be described as a large round-table discussion among forty people, including the speakers and some participants from the first meeting. The goal of this second meeting was to build on the previous day's discussion. It

228. Amnesty International regularly tracks the work of the monitoring bodies for the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, as well as the Convention on the Rights of the Child. See *Amnesty Online*, (visited Jan. 15, 1997) <<http://www.amnesty.org>> (explaining Amnesty International's various human rights activities).

began with some members of the women's group voicing their concerns about the Convention on the Rights of the Child. These members criticized the Convention because it does not differentiate between mothers and fathers. Rather, it refers only to the child's "parents" or "guardians."²²⁹ They pointed out that Article 24, Section 1, Paragraph (d) speaks of "pre and post-natal care for mothers,"²³⁰ and, because the Article was drafted to benefit children, some participants interpreted it as being an attempt to limit the freedom of adult women and to relegate them to a child-bearing role. They regretted that the Women's Convention did not have the support of a U.N. agency, such as UNICEF, which was seen as being a great asset for the Convention on the Rights of the Child. Additionally, they observed that the Women's Convention NGOs were not nearly as organized and supportive as those of the Convention on the Rights of the Child.

The discussion highlighted the fact that, for better or worse, women's issues are often linked to children's issues. On the positive side, women have sometimes pointed to their roles as nurturers and caretakers as a basis for demanding that they be given adequate education and other opportunities.²³¹ And the other hand, this strategy can turn into an obstacle when women try to break away from a nurturing image to become equal partners with men. Some participants suggested that when

229. See Children's Convention, *supra* note 1, at art. 2, §§ 1, 2; *id.* at art. 3, § 2; *id.* at art. 5; *id.* at art. 7, § 1; *id.* at art. 9, §§ 1, 3, 4; *id.* at art. 10, §§ 1, 2; *id.* at art. 14, § 2; *id.* at art. 18, §§ 1-3; *id.* at art. 19, § 1; *id.* at art. 21, § a; *id.* at art. 22, §§ 1, 2; *id.* at art. 23, §§ 2, 3; *id.* at art. 24, §§ 2 (e), (f); *id.* at art. 27, §§ 2-4; *id.* at art. 29, § 1 (c); *id.* at art. 40, §§ 2 (b) (ii) (iii). Although the allegation regarding the reference to "parents" is accurate, it is unrealistic to expect that the drafters of a treaty aimed at children's rights, which is ground-breaking in its use of both masculine and feminine singular possessive pronouns, would also be concerned with parental genders, especially when there was no necessity to use a singular possessive pronoun when referring to the child's parents. In fact, whenever possible, the drafters even sought to avoid the use of the singular possessive pronoun in reference to the child.

230. Children's Convention, *supra* note 1, at art. 24 (d). This is the only time that the word "mother(s)" appears in the Convention. The word "father" is not used in the Convention.

231. See BARBARA SINCLAIR DECKARD, *THE WOMEN'S MOVEMENT* 284 (1979) (stating that women argued for inclusion in politics because their motherly natures would have a positive impact).

women and children are linked together, it usually places both groups in a subservient position that is based on their alleged similar need for care and protection. Many participants worried that this linkage with children might diminish the status of women by characterizing them as incompetent and incapable of being independent human beings who are worthy of respect. Participants further argued that the women/children paradigm was unreasonable based on the fact that childbearing and childrearing actually occupy a rather short segment of a woman's entire lifetime.²³² As a consequence, many of the Women's Convention supporters were uneasy about becoming associated with a children's treaty.

As can be concluded from the comments above, the CEDAW/CRC discussion was undertaken from the standpoint of the adult woman and not from the perspective of the girl child.²³³ One of the problems of the CEDAW/CRC dialogue, and of feminist analyses of the Convention on the Rights of the Child as well, is that the focus is on the relationship between *women* and *children*, and does not take note of the Convention's protection of the girl child. In her essay, *Children's Rights: Some Feminist Approaches to the United Nations Convention on the Rights of the Child*,²³⁴ Frances Olsen analyzes the Convention on the Rights of the Child from four feminist perspectives: Legal Reformist; Law as Patriarchy; Feminist Critical Legal Theory; and Post-Modern Feminism. First, Olsen describes the Legal Reformist interpretation as focusing on "a doctrinal examination of the Convention to determine how it might be interpreted to benefit women . . ." ²³⁵ or stated differently, a study of how the Convention might be harmful to women.²³⁶ Second, she characterizes Law as Patriarchy, also known as "cultural feminism," as being concerned with "the ways in which the Convention deals with interests frequently associated with

232. Information is based on the author's personal notes.

233. See *supra* notes 225-30 and accompanying text.

234. See Frances Olsen, *Children's Rights: Some Feminist Approaches to the United Nations Convention on the Rights of the Child*, in *CHILDREN, RIGHTS AND THE LAW* 192 (Philip Alston, ed., 1991).

235. *Id.* at 193.

236. See *id.* at 194.

women," such as "an appreciation of the importance and pervasiveness of human relationships" and an "ethic of care."²³⁷ Thus, in this analysis the Convention might be considered as a crucial element in moving toward a "fuller, more feminist (or feminine) view of rights."²³⁸ Third, she suggests that a feminist critical legal theorist would see the Convention as reinforcing and presupposing "a very conventional notion of the family as the centre of affective life"²³⁹ Hence, this perspective views the Convention as a threat to the autonomy of adult women.²⁴⁰ Only Olsen's final theoretical analysis, Post-Modern Feminism, refuses to examine the Convention in terms of its relative goodness and badness for women. Rather, it criticizes the Convention as being "unsituated" and as being composed of "false universalisms," which in her view amount to the Convention being an instrument that in reality deals with the rights of "white, male, relatively privileged children."²⁴¹ Oddly, none of Olsen's analyses, nor the responses of the Women's Convention supporters discussed above, viewed the Convention on the Rights of the Child as the protector of the rights of *girls*.²⁴²

The two meetings between supporters of the Women's Convention and the Convention on the Rights of the Child focused on the ascertainment of the "complementarity" between the two treaties. Marilia Sardenberg, a member of the Committee on the Rights of the Child, introduced the term "complementarity" in a paper she presented at the first CEDAW/CRC meeting.²⁴³ The Sardenberg paper placed both the

237. *Id.*

238. *Id.*

239. *Id.* at 195.

240. *Cf. id.* (stating that "choice may be meaningless for competent adults").

241. *Id.*

242. Interestingly, they do not look upon the Convention on the Rights of the Child as protecting the rights of the "pre-woman." This is just as well, because such a characterization would be contrary to the Convention's philosophy that childhood is not a "pre-human" condition and that children are persons possessed of human dignity that must be respected. See EUGEN VERHELLEN, CONVENTION ON THE RIGHTS OF THE CHILD: BACKGROUND, MOTIVATION, STRATEGIES, MAIN THEMES 17-18 (1994).

243. Marilia Sardenberg, The UN Convention on the Rights of the Child and the Elimination of All Forms of Discrimination against Women: the Links 1, 3 (Mar. 13, 1996) (unpublished manuscript, on file with the *William and Mary Journal of Women and the Law*).

Convention on the Rights of the Child and the Women's Convention within a global context that embraces all human rights treaties. She noted that:

[T]he international community is joining efforts towards the implementation of the [Beijing] Platform of Action, the moment seems ripe to break new ground and launch a concrete and coordinated initiative towards the integration of children's and women's rights.²⁴⁴

Sardenberg called for a multi-disciplinary approach to this integrative process, for greater linkage between the monitoring bodies of the two treaties and their support groups, and for UNICEF to assist in the development of a global strategy.²⁴⁵ Sardenberg also referred to areas of mutual interest to both treaty bodies on which there might be a cooperative effort. Among these were health, education, participation in society, protection from exploitation and violence, international cooperation (including U.N. bodies and NGOs),²⁴⁶ and the problems associated with questionable treaty reservations.²⁴⁷

Although the Sardenberg proposal attempted to be constructive, it did not touch on the real relationship between the two treaties; a relationship that would be more properly characterized as "sequential" instead of "complementary." The relationship is "sequential" because, even if it is accepted that there are some

244. *Id.* at 1. Note that Sardenberg also relies on the women/children paradigm.

245. *See id.* at 2.

246. *See id.* at 4. Sardenberg urges that: "these areas should be dealt with in light of the fundamental principles of the Convention on the Rights of the Child, namely, nondiscrimination (CRC Article 2), best interests of the child (CRC Article 3), right to life, survival and development (CRC Article 6) and right to participate (CRC Article 12)." *Id.*

247. Notably, some Islamic countries ratified both the Women's Convention and the Convention on the Rights of the Child with reservations attached. *See* Cynthia Price Cohen, *The Developing Jurisprudence of the Rights of the Child*, 6 ST. THOMAS L. REV. 1, 93 (1993); Bharathi Anandhi Venkatraman, Comment, *Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women: Are the Shari'a and the Convention Compatible?*, 44 AM. U. L. REV. 1949, 1952 nn. 10, 12 (1995). Dictum in the Vienna Convention on the Law of Treaties calls the practice of ratification with reservations into question. *Cf.* Belinda Clark, *The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women*, 85 AM. J. INT'L L. 281, 299 (1991) (discussing the problem of reservations in the ratification of the Women's Convention).

rights in the Women's Convention which apply to girls, the rights given to girls by the Convention on the Rights of the Child are more comprehensive and are exercised by girls prior to the time that they can exercise their rights as women. It can be argued that, if a girl learns how to assert her rights while she is still a child, she is more likely to be able to successfully exercise her rights as a woman. Consequently, the Convention on the Rights of the Child should be looked upon as a precursor to the Women's Convention because it provides the foundation and some of the building blocks with which to ensure eventual universal implementation of the Women's Convention.

There are several advantages to taking a "sequential" approach to the CEDAW/CRC relationship. By adopting the premise that the Convention on the Rights of the Child is the starting point for establishing the recognition of women's rights, the rights of the girl child can become part of a broader definition of women's rights. In addition, this premise makes it possible for world acceptance of the rights of the girl child to benefit women. Among the positive effects of the "sequential" approach to the CEDAW/CRC linkage are not only the establishment of extensive substantive rights for girls that they can exercise until they become young women at the age of eighteen,²⁴⁸ but also certain procedural benefits which, collectively, ensure that the rights of the girl child will be given worldwide recognition. Factors affecting dissemination of information about the rights of the girl child can be separated into three types: treaty mandated responsibilities of governments; activities of NGOs; and the near universal ratification of the Convention on the Rights of the Child.

As discussed above, one of the unique characteristics of the Convention on the Rights of the Child is its mandate that governments inform the public about children's rights. Article 42 of the Convention on the Rights of the Child requires States Parties to

248. See *supra* notes 141-45 and accompanying text.

make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.²⁴⁹

In other words, the submission of periodic reports alone is not sufficient for treaty compliance. Governments must also take steps to popularize the notion of children's rights.

This Article is not the only information component of the Convention on the Rights of the Child. It also requires that when submitting their Article 44 reports to the Committee on the Rights of the Child, States Parties must "make their reports widely available to the public in their own countries."²⁵⁰ In other words, the drafters of the Convention on the Rights of the Child intended for the public to be adequately informed about the treaty and its implementation process. This enables the public to participate in monitoring governmental compliance with the treaty and makes it virtually impossible for a government to hide any of its failures to meet treaty standards.

The information process is further enhanced by the Article 45 role of NGOs in the monitoring process. At the national level, children's rights advocacy groups, scholars and other NGOs are organizing and creating watchdog groups in order to compile information about State Party compliance with the standards of the Convention on the Rights of the Child.²⁵¹ This information is transmitted to the Committee on the Rights of the Child for inclusion in its survey of States Parties' reports. Often information from NGOs forms the basis for questions that the Committee asks the States Parties during its oral examination of their reports. Naturally, any information provided on the status of the girl child will be given careful consideration by the Committee.

249. Children's Convention, *supra* note 1, at art. 42

250. *Id.* at art. 44 (6).

251. See U.N. Doc. CRC/C/15/ADD.58 at 5, *supra* note 158. The Geneva based NGO Group for the Convention on the Rights of the Child has been working to assist in the establishment and coordination of NGOs at the national level and to facilitate their submission of information to the Committee on the Rights of the Child.

Also important to the information process is the fact that the Convention on the Rights of the Child has reached near-universal ratification. This has two ramifications. First, it means that almost every country in the world is legally required to recognize the equal rights between girls and boys. Second, because the Convention on the Rights of the Child has a greater number of States Parties than the Women's Convention, it means that countries that have not ratified the Women's Convention will nevertheless be required to treat girls and boys equally. Currently, the Women's Convention has 158 States Parties, compared to 191 for the Convention on the Rights of the Child. In other words, thirty-two countries that have not committed themselves to upholding the rights of women, have made this commitment to the girl child.²⁵²

One additional advantage to taking the "girls' rights as precursor to women's rights" approach to the CEDAW/CRC relationship is that women's rights can benefit from the international attention being given to the rights of the girl child. In addition to the international conferences discussed above, both the Commission on Human Rights and the Third Committee of the General Assembly regularly adopt resolutions pertaining to children's rights. The 1996 Rights of the Child resolution of the Commission on Human Rights contained seven topics that were singled out for particular attention. The areas of concern were: implementation of the Convention on the Rights of the Child; children in armed conflict; sale of children and sexual exploitation; child labor; street children; refugee children and the *girl child*.²⁵³

Though the Commission gave the girl child a separate heading in the Commission's resolution, the Third Committee chose not to make the girl child a part of its 1995 omnibus Rights of the Child

252. These countries are: Andorra, Bahrain, Brunei Darussalam, Democratic People's Republic of Korea, Djibouti, Holy See, Iran, Kazakhstan, Kiribati, Kyrgyzstan, Lebanon, Marshall Islands, Mauritania, Micronesia, Monaco, Mozambique, Myanmar, Nauru, Niger, Niue, Palau, Qatar, San Marino, Saudi Arabia, Solomon Islands, Sudan, Swaziland, Syrian Arab Republic, Tonga, Turkmenistan, Turalu. Compare Convention on the Rights of the Child, UN Doc. A/RES/44/25 available in <http://www.un.org/Depts/Treaty/bible/Part_I_E/IV_8.html> (visited Jan. 15, 1997).

253. See U. N. Doc. E/CN.4/1996/L.11/Add.4 (1996) at 13-23 (emphasis added). Note that the girl child was given equal status with children in especially difficult circumstances.

resolution.²⁵⁴ Instead, it drafted and adopted a separate resolution dealing with the girl child.²⁵⁵ It is interesting to observe that the uneasy relationship between women's rights and girl's rights is noticeable in the text of this resolution. Paragraph 8 requests the Secretary-General to urge,

all the organizations and bodies of the United Nations system focusing on the advancement of women to make commitments to goals and actions relating to the girl child in the revision and implementation of the system-wide medium-term plan for the advancement of women for the period 1996-2001, as well as in the medium-term plan for the period 1998-2002.²⁵⁶

In other words, from this Paragraph it is obvious that the girl child had not previously been included in the ideas behind the advancement of women, even though the experiences of a girl child play a major role in her development into womanhood.

VII. CONVENTION ON THE RIGHTS OF THE CHILD: A FEMINIST LANDMARK

It is an interesting experiment to go through the Convention on the Rights of the Child and delete all of the masculine singular possessive pronouns. The result of this experiment is the creation of a startlingly strong statement of the rights of the girl child. One wonders what effect it would have had if this simple change has been made in the documents distributed at the two CEDAW/CRC meetings had been made. Would proponents of the Women's Convention have felt so anxious about the effects on women's rights, if they had understood the Convention on the Rights of the Child as being an instrument to protect the rights of their little sisters? Would there have been a better bonding between the two groups? Or was this just another example of the adult/child syndrome in which children are considered to be "pre-

254. See G.A. Res. 50/153, U.N. GAOR 3d Comm. at 348-53, U.N. Doc. A/50/633 (1995).

255. See G.A. Res. 50/154, U.N. GAOR 3d Comm. at 353-54, U. N. Doc. A/50/633 (1995). Resolution 50/54.

256. *Id.* ¶ 8 (footnote omitted).

human?"²⁵⁷ Professor Eugene Verhellen of the Children's Rights Institute in Gent, Belgium, describes this condition of the child as one of "not yet being."²⁵⁸ Do supporters of the Women's Convention feel that girls are unimportant because they are "not yet" women? On the other hand, perhaps it is merely that, when the Women's Convention was drafted, no thought was given to the girl child, and now that girls' rights are protected by a different treaty, it is difficult to know how to integrate the two.

One thing is clear. The removal of these barriers is important to the future of womankind. As girls grow into women their mothers and big sisters should help them to prepare for womanhood by teaching them to make the most of their rights while they are children. Recognition of women's rights is a two part process. Although governments must support rights for women, these rights must be exercised by women, themselves. The Convention on the Rights of the Child should be looked upon as a training ground for women, because it ensures that the sense of equality between men and women will be instilled during childhood.

One of the most important characteristics of the Convention on the Rights of the Child is not that it becomes a "girl's rights" treaty after the removal of the masculine singular possessive pronouns. Those rights are there for the girl child, even when boys' rights are also recognized. What is significant is that in this human rights treaty, girls and boys are treated as equals and both are given recognition for their human dignity. No little girl will look at this text and wonder if it really applies to her. If one agrees that a basic tenet of feminism is equality, then the Convention on the Rights of the Child provides a perfect example of feminist principles. It is a landmark, because in its text, boys and girls are truly treated as equals.²⁵⁹

257. The Polish pedagogue Janusz Korczak argued that childhood was not a "pre-human" condition. For background on Janusz Korczak and his work see, BETTY JEAN LIFTON, *KING OF CHILDREN* (1988) (describing Korczak's life of dedication to children).

258. This "not yet" concept is basic to much of Professor Verhellen's work. For an example of how he uses this idea, see VERHELLEN, *supra* note 240, at 14.

259. The author is well aware that "textual" equality does not ensure "actual" equality. However, by establishing an international norm, the Convention on the Rights of the Child has provided the basic tool with which its text can be made into a reality.