

Inequality Before the Law: Holding States Accountable for Sex Discriminatory Laws Under the Convention on the Elimination of All Forms of Discrimination Against Women and Through the Beijing Platform for Action

Jessica Neuwirth*

INTRODUCTION

Wife obedience is mandated by law in Mali, and wife beating is permitted by law in Northern Nigeria. Women, unlike men, do not have the right to vote in Kuwait, and under the laws of evidence in Pakistan, the attestation of a woman regarding financial obligations is worth half the attestation of a man.¹ Through sex discriminatory laws, many states have legally entrenched explicit inequality between men and women in various domains such as citizenship, family law, labor law, property law, and criminal law. Yet almost all of these states have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW” or “the Convention”), and all of them participated in the United Nations Fourth World Conference on Women in 1995 that adopted the Beijing Declaration and Platform for Action (“Platform for Action”). Although both CEDAW and the Platform for Action explicitly call for the repeal of laws that discriminate against women on the basis of sex,² sex discriminatory laws remain in force, making a mockery both of the legal obligations that governments

* President, Equality Now. The author would like to thank Jane Connors, Elizabeth Evatt, Jacqui Hunt, Catharine MacKinnon, Heather Northcott, and Nithan Sannappa for invaluable advice and assistance in the preparation of this Article.

1. Equality Now, *Words and Deeds: Holding Governments Accountable in the Beijing +10 Review Process*, 1–8, at http://www.equalitynow.org/english/wan/beijing10/beijing10_en.pdf (last modified Sept. 2004).

2. Convention on the Elimination of All Forms of Discrimination Against Women, adopted Dec. 18, 1979, 1249 U.N.T.S. 13, 14 (E), 24 (F) (entered into force Sept. 3, 1981) [hereinafter CEDAW]; *Beijing Declaration and Platform for Action*, in 1 REPORT OF THE FOURTH WORLD CONFERENCE ON WOMEN, BEIJING, 4–15 SEPTEMBER, 1995, U.N. Doc. A/CONF.177/20/REV.1, U.N. Sales No. 96.IV.13 (1996) [hereinafter *Platform for Action*].

have undertaken in acceding to CEDAW and, in many states, of constitutional equality provisions prohibiting discrimination on the basis of sex. Unlike other forms of sex discrimination for which state responsibility has historically been denied through the artifice of a distinction between public and private spheres of action, these facially discriminatory laws blatantly contravene provisions of CEDAW and the undertakings made in the Platform for Action. Governments must be held accountable for this divergence. The public pressure mobilized by the Beijing World Conference on Women and its aftermath has been more effective than the legal obligation of CEDAW in narrowing the gap between the rhetoric and the reality of sex equality before the law, but the gap remains substantial. New approaches that bring the weight of public pressure to bear on the implementation of state-specific legal obligations, such as the creation of a U.N. Special Rapporteur by the Commission on the Status of Women, might be more effective in generating the political will needed to abolish discriminatory laws and promote sex equality through implementation of the measures set forth in CEDAW and the Platform for Action.

This Article begins by reviewing international standards prohibiting sex discrimination and by detailing sex discriminatory laws currently in force around the world. It then examines how the Committee on the Elimination of Discrimination Against Women ("CEDAW Committee" or "the Committee"), established by CEDAW to monitor its implementation, has worked to enforce the obligation of States parties under CEDAW to abolish laws that explicitly discriminate against women, giving particular focus to the reservations that States parties have made to CEDAW and the impact of those reservations on the CEDAW monitoring process. Specifically, the Article outlines how the CEDAW Committee has directly addressed the persistence of sex discriminatory laws in these States parties as a violation of their obligations under CEDAW and, with equal determination and vigor, has engaged governments in dialogue on such laws, whether or not they have made reservations to the treaty. This is illustrated by a comparison of the Committee's review of Algeria, a State party that ratified CEDAW with extensive reservations, and its review of Nepal, a State party that ratified CEDAW without reservation.

The Article then examines the Platform for Action and reviews efforts made by the United Nations and by individual states to hold States parties to the commitment set forth in the Platform for Action to revoke laws that discriminate on the basis of sex. The Article also discusses the linkage of these efforts with CEDAW, noting that follow-up activities to the Beijing Conference on Women have had a substantial impact on the implementation of CEDAW provisions relating to repeal of sex discriminatory laws, including a heightened level of protest and accelerated withdrawal by States parties of reservations. The Article analyzes the factors that have led to comparatively greater visibility and resulted in a more immediate impact from the Beijing Conference and Platform for Action at the national level as compared with

CEDAW, despite the more binding legal nature of state obligations under the latter. Based on this analysis and on the role of public pressure in generating political will for the law reform mandated by CEDAW and the Platform for Action, the Article explores ways in which these and other processes could be made more effective in promoting and attaining the equality of women and men before the law. In particular, the Article asserts that in addition to the recently adopted Optional Protocol to CEDAW and the rarely used communications mechanism of the Commission on the Status of Women as avenues of recourse through which discriminatory laws might be addressed, the creation of a Special Rapporteur on Laws that Discriminate Against Women is a means through which implementation of the obligation to abolish these laws might be more effectively achieved.

I. INTERNATIONAL STANDARDS PROHIBITING SEX DISCRIMINATION

International law has repeatedly affirmed the right to equality before the law without discrimination on the basis of sex. The Charter of the United Nations sets forth as one of its purposes to protect and promote "human rights for all without distinction as to . . . sex . . ."³ The Universal Declaration of Human Rights, adopted by the United Nations in 1948, provides that "all are equal before the law"⁴ and that everyone is entitled to all rights and freedoms "without distinction of any kind," specifically listing sex as an impermissible basis for distinction.⁵ The International Covenant on Civil and Political Rights, adopted in 1966, also provides that "all are equal before the law" and that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground," specifically citing sex in its enumeration of these grounds.⁶ Furthermore, all of the other human rights conventions that the United Nations has adopted either implicitly or explicitly incorporate the fundamental notion of sex equality set forth in the Universal Declaration of Human Rights.⁷

3. U.N. CHARTER art. 1, ¶ 3.

4. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., art. 7, U.N. Doc. A/810 (1948).

5. *Id.* art. 2.

6. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, art. 26, 999 U.N.T.S. 171, 172 (E), 187 (F) (entered into force Mar. 23, 1976); *see also id.* art. 3 (providing for "[t]he equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant").

7. *See, e.g.,* International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, art. 3, 993 U.N.T.S. 3, 4 (E), 13 (F) (entered into force Jan. 3, 1976) (providing that States parties shall "ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant"); *see also* Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 28 I.L.M. 1470 (entered into force Sept. 2, 1990) (providing that States parties shall ensure the rights of children set forth in the Convention "without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's . . . sex").

CEDAW in particular was adopted in 1979, noting with concern that “despite these various instruments extensive discrimination against women continues to exist.”⁸ CEDAW does not merely impose a general obligation on States parties “to accord women equality with men before the law,”⁹ but extensively and particularly addresses this right to equality. It obligates States parties to ensure women the right to vote and stand for election on equal terms with men.¹⁰ It mandates the equal rights of women to acquire, change, or retain their nationality and transmit nationality to their children.¹¹ It obligates States parties to accord women legal capacity identical to that of men in all civil matters, and specifically to accord men and women equal rights with regard to freedom of movement and freedom to choose residence and domicile.¹² It also addresses in detail the obligation of States parties to eliminate discrimination and ensure equality between men and women in rights relating to marriage and family.¹³ CEDAW also provides that States parties shall undertake “by all appropriate means and without delay” not only to incorporate the principle of sex equality and the prohibition of sex discrimination into domestic law but also “to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”¹⁴ and “to repeal all national penal provisions which constitute discrimination against women.”¹⁵

In 2004, on the twenty-fifth anniversary of the adoption of CEDAW, the CEDAW Committee issued a statement noting that “in no country in the world has women’s full *de jure* and *de facto* equality been achieved.”¹⁶ Recalling that CEDAW “creates binding legal obligations” to pursue “by all appropriate means and without delay” the elimination of sex discrimination, the Committee in its statement, while noting progress that had been made over the past twenty-five years, nevertheless detailed the discrimination under law that women continue to face as follows:

Discriminatory laws are still on the statute books of many States parties. The co-existence of multiple legal systems, with customary and religious laws governing personal status and private life and prevailing over positive law and even constitutional provisions of equality, remains a source of great concern. Nationality laws also continue to discriminate against women by curtailing their capacity

8. CEDAW, *supra* note 2, pmb1.

9. *Id.* art. 15(1).

10. *Id.* art. 7(a).

11. *Id.* art. 9.

12. *Id.* art. 15.

13. *Id.* art. 16.

14. *Id.* art. 2(f).

15. *Id.* art. 2(g).

16. U.N. Comm. on the Elimin. of Discrim. Against Women, *Statement to Commemorate the Twenty-Fifth Anniversary of the Adoption of the Convention on the Elimination of All Forms of Discrimination Against Women*, at <http://www.un.org/womenwatch/daw/cedaw/cedaw25anniversary/cedaw25-CEDAW.pdf> (Oct. 13, 2004).

to confer their nationality to their children. Women continue to experience discrimination and disadvantage in the enjoyment of rights to own and inherit property Criminal law, especially in relation to sexual violence and crimes, continues to be discriminatory, inadequate or poorly enforced.¹⁷

II. SEX DISCRIMINATORY LAWS IN FORCE AROUND THE WORLD

The depth and scope of sex discriminatory laws still in force around the world is staggering. While almost all states have laws that are not facially discriminatory, but which effectively deny women the fundamental right to equality, *de jure* discriminatory laws represent the most formal manifestation of state-sponsored sex discrimination and the most explicit rejection of the obligation under international law, and CEDAW in particular, to ensure equality of women and men before the law.

Many of the expressly discriminatory laws in force relate to family life, including limiting a woman's right to marry, divorce, and remarry and allowing for sex discriminatory marital practices such as wife obedience and polygamy. Laws explicitly mandating "wife obedience" still govern marital relations in states including Algeria, Mali, Sudan, and Yemen.¹⁸ Sudan's Muslim Personal Law Act of 1991 provides that a husband's rights in relation to his wife include "to be taken care of and amicably obeyed."¹⁹ Yemen's Personal Status Act of 1992 even enumerates the elements of wife obedience, including the requirements that a wife "must permit him [her husband] to have licit intercourse with her," that she "must obey his orders," and that "she must not leave the conjugal home without his permission."²⁰

De jure discrimination also pervades the law of citizenship, inheritance, property, and employment. A broad range of states around the world, including the United States, explicitly discriminate on the basis of sex in the transmission of citizenship to children and in the transmission of citizenship through marriage.²¹ The Deeds Registry Act of Lesotho provides that "no immovable property shall be registered in the name of a woman married in community of property."²² Article 1749 of the Civil Code of Chile provides that "the marital partnership is to be headed by the husband, who shall administer the spouses' joint property as well as the property owned by his wife"²³ In Cameroon, a husband can object to his wife's employment in the interest of

17. *Id.*

18. Equality Now, *supra* note 1 (citing Algeria's Family Code of 1984, art. 39; Mali's Code of Marriage and Guardianship, 1962, art. 32; Sudan's Muslim Personal Law Act of Sudan, 1991, § 91; and Yemen's Personal Status Act No. 20, 1992, art. 40).

19. *Id.* at 6–7 (citing Sudan's Muslim Personal Law Act, 1991, § 52(a)).

20. *Id.* at 8 (citing Yemen's Personal Status Act of 1992, art. 40(ii)).

21. *Id.* at 11–12 (citing the U.S. Immigration and Nationality Act, § 309(a)).

22. *Id.* at 15 (citing Lesotho's Deeds Registry Act No. 12 of 1967).

23. *Id.* (citing Chile's Civil Code, art. 1749).

their marriage or their children.²⁴ In Bolivia and Madagascar, among other states, women are prohibited from working at night.²⁵

In many states the rules of evidence and the penal codes are also facially discriminatory. Under the law of Pakistan, in matters pertaining to financial obligations, attestation of written instruments must be provided either by two men or by one man and two women.²⁶ In cases of rape, four Muslim adult male witnesses must attest to evidence, while there is no provision for attestation of evidence from female witnesses.²⁷ As for discriminatory penal laws, many states, including India and Malaysia, have in force rape laws that explicitly exclude marital rape.²⁸ Across continents, states such as Ethiopia, Guatemala, Lebanon, and Uruguay exempt men from penalty for rape if they subsequently marry their victims.²⁹ Also, the Penal Code of Northern Nigeria provides that assault is not an offense if inflicted "by a husband for the purpose of correcting his wife," so long as it "does not amount to the infliction of grievous hurt."³⁰ These laws deny wives protection of the law while granting husbands immunity from it.

As of November 2004, 179 states have ratified CEDAW, including every state cited above with the exception of Sudan and the United States.³¹ However, twenty-five years after the adoption of CEDAW, and almost forty years after the adoption of the International Covenant on Civil and Political Rights—both binding legal treaties—states still pervasively retain sex discriminatory laws.

III. THE CEDAW MONITORING PROCESS

The CEDAW Committee, established pursuant to the Convention, is charged with "considering the progress made in the implementation" of CEDAW.³² Comprised of twenty-three members serving in their personal capacity, who are to be "experts of high moral standing and competence in the field covered by the Convention,"³³ the CEDAW Committee has consistently and forcefully expressed concern over sex discriminatory laws. The Committee meets twice a year for three-week sessions to review reports that are submit-

24. *Id.* at 17 (citing Cameroon's Civil Status Registration, Ordinance No. 81-02 (June 29, 1981)).

25. *Id.* at 17, 19 (citing Bolivia's General Labor Law, chapter VI; Madagascar's Labor Code, art. 92).

26. *Id.* at 12 (citing Pakistan's Qanun-e-Shahadat Order, 1984 (Law of Evidence, art. 17)).

27. *Id.* at 12–13 (citing Pakistan's Offenses of Zina Ordinance, 1979, § 8(b)).

28. *Id.* at 22–23 (citing India's Penal Code, § 375; Malaysia's Penal Code, § 375).

29. *Id.* at 20–22 (citing Ethiopia's Penal Code, art. 599; Guatemala's Penal Code Decree No. 17-73, art. 200; Lebanon's Penal Code, art. 522; Uruguay's Penal Code, art. 116). Note that in Ethiopia, the Parliament adopted a new Penal Code in July 2004 that abolishes the marital exemption for abduction and rape. The new Penal Code will become law after it is translated into English, signed by the President, and published in the official gazette. As of November 2004, the new law was not yet in force.

30. *Id.* at 24 (citing Penal Code of Northern Nigeria, § 53(d)).

31. U.N. Div. for the Advancement of Women, *States Parties*, at <http://www.un.org/womenwatch/daw/cedaw/states.htm> (last updated Feb. 10, 2005).

32. CEDAW, *supra* note 2, art. 17.

33. *Id.* art. 17(1).

ted by States parties,³⁴ initially within one year after entry into force of the Convention and thereafter every four years, on the measures that they have taken to effect the provisions of CEDAW and on any obstacles they may have encountered.³⁵ Following discussion of these reports with government representatives, the CEDAW Committee adopts concluding comments setting forth principal areas of concern and recommendations, which are transmitted to the States parties.³⁶ Unfortunately, the reservations that States parties have made to the Convention have hindered the CEDAW Committee's efforts to monitor and promote the implementation of the Convention. However, these reservations have not deterred the Committee from addressing the sex discriminatory laws that fall within the scope of the reservations, as illustrated by the Committee's review of Algeria, which ratified CEDAW with extensive reservations, and its review of Nepal, which ratified CEDAW without reservation. Even so, in the absence of law enforcement capability to address the failure of States parties to comply with CEDAW, the opprobrium of the CEDAW Committee has been generally inadequate to compel implementation of the legal obligations set forth in the Convention.

Many States parties have ratified CEDAW with reservations specifically intended to protect them from the obligation to repeal sex discriminatory laws in force at the domestic level.³⁷ Article 28 of CEDAW provides: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted."³⁸ The CEDAW Committee has said that article 2 is central to the object and purpose of the Convention and that reservations to article 16 are incompatible with the Convention and therefore impermissible.³⁹ In several of its general recommendations and in a statement on reservations, the CEDAW Committee has called on states to review their

34. *Id.* art. 20(1). CEDAW provides in article 20(1) that the Committee shall meet once a year for a two-week session. The Convention was amended on May 22, 1995 to extend Committee meetings to three-week sessions, twice a year. Paragraph 3 of the resolution provides that the amendment shall enter into force following consideration by the General Assembly and acceptance of the amendment by a two-thirds majority of States parties. The amendment has not yet entered into force, but pursuant to General Assembly Resolution 50/202 of December 22, 1995, which noted the amendment with approval, the Committee has extended its meeting schedule. *Amendment to Article 20, Paragraph 1 of the CEDAW*, G.A. Res. 50/202, U.N. GAOR, 50th Sess., Agenda Item 165, ¶ 2, U.N. Doc A/RES/50/202 (1996).

35. CEDAW, *supra* note 2, at 18.

36. *Report of the Committee on the Elimination of Discrimination Against Women, Thirtieth Session (12–30 January 2004) & Thirty-First Session (6–23 July 2004)*, U.N. GAOR, 59th Sess., Supp. No. 38, at 263, U.N. Doc. A/59/38 (2004) [hereinafter *Report of CEDAW, 30th & 31st Sess.*].

37. For a discussion on reservations to CEDAW, see Andrew Byrnes & Jane Connors, *Enforcing the Human Rights of Women: A Complaints Procedure for the Women's Convention?*, 21 BROOK. J. INT'L L. 679 (1996); Rebecca Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, VA. J. INT'L L. 643 (1990); Julie A. Minor, *An Analysis of Structural Weaknesses in the Convention on the Elimination of All Forms of Discrimination Against Women*, GA. J. INT'L & COMP. L. 137 (1994).

38. CEDAW, *supra* note 2, art. 28. This provision was incorporated from the Vienna Convention on the Law of Treaties, which does not allow States parties to make reservations to treaties that are "incompatible with the object and purpose of the treaty." Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, art. 19(c), 1155 U.N.T.S. 331, 337.

39. U.N. Div. for the Advancement of Women, *Reservations to CEDAW*, at <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> (last updated Feb. 10, 2005).

reservations,⁴⁰ even though the Committee is not expressly empowered by the Convention to adjudicate the validity of reservations.⁴¹ In comparison, the Human Rights Committee, the parallel treaty body established under the Covenant on Civil and Political Rights, adopted a general comment in 1994 addressing the question of its legal authority to make determinations as to whether reservations were compatible with the object and purpose of the Covenant.⁴² It noted that the principle of interstate reciprocity underlying the role of states in relation to reservations generally did not suit human rights treaties such as the Covenant, which did not concern the mutual obligations of states but rather the endowment of individual rights.⁴³ Finding for this reason that the operation of general rules on reservations relying on States parties to challenge each other's reservations in their own interest were "inadequate," the Human Rights Committee concluded that it "necessarily falls to the committee to determine whether a specific reservation is compatible with the object and purpose of the Covenant."⁴⁴ The Human Rights Committee further observed that "[r]eservations often reveal a tendency of States not to want to change a particular law" and identified as of particular concern "widely formulated reservations which essentially render ineffective all Covenant rights which would require any change in national law to ensure compliance with Covenant obligations."⁴⁵ The same analysis would equally apply to States parties to CEDAW.

A number of States parties have objected to reservations made by other States parties as being incompatible with the object and purpose of CEDAW. There is no consistency to these objections, however.⁴⁶ Often, States parties have objected to reservations made by one State party but have not objected to the same or similar reservations made by other States parties. Moreover, the objections made to reservations do not lead to further action towards

40. *Id.* ¶ 15.

41. In the context of a communication under the new Optional Protocol to CEDAW, the CEDAW Committee might be called upon to adjudicate the validity of a reservation.

42. *General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, or in Relation to Declarations Under Article 41 of the Covenant*, U.N. CCPR, Hum. Rts. Comm., 52nd Sess., U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994) [hereinafter *General Comment No. 24*].

43. *Id.* ¶ 17.

44. *Id.* ¶¶ 17, 18.

45. *Id.* ¶ 12.

46. U.N. Div. for the Advancement of Women, *Declarations, Reservations, and Objections to CEDAW*, at <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (last updated Feb. 10, 2005) [hereinafter *Declarations, Reservations, and Objections to CEDAW*]. For example, Ireland objected in October 2001 to the reservations made by the Kingdom of Saudi Arabia upon its accession to CEDAW. The reservations stated that (1) in the case of a contradiction between CEDAW and Islamic law norms, Saudi Arabia would not be under an obligation to observe the terms of CEDAW, and (2) Saudi Arabia did not consider itself bound by article 9, paragraph 2 of CEDAW, which grants men and women equal rights with respect to the nationality of their children. The government of Ireland objected to the first reservation on the grounds that it was too general and to the second reservation on the grounds that it "aims to exclude one obligation of non-discrimination which is so important in the context of the [CEDAW] as to render this reservation contrary to the essence of the Convention." *Id.* Nine months later, however, Ireland made no objection when Bahrain made virtually the same reservations.

adjudication. Article 29(1) of CEDAW sets forth a dispute resolution process for differences between States parties on the interpretation or application of the Convention,⁴⁷ but article 29(2) provides that at the time of ratification a State party may opt out of this procedure and by reservation exempt itself from being subject to it.⁴⁸ Many States parties have exercised this option, including article 29 in their reservations and thereby foreclosing the dispute resolution process set forth in the Convention.⁴⁹

Nevertheless, the CEDAW Committee has consistently addressed the issue of reservations with States parties and voiced its concerns regarding sex discriminatory laws that the reservations are intended to protect. This can be seen in the following comparison of the CEDAW Committee's approach in its review of Algeria with the approach in its review of Nepal. The comparison shows that the use of reservations by States parties has not significantly affected the way in which the Committee approaches its review of reports, other than to add discussion on the question of reservations. Both Algeria, which ratified CEDAW with extensive reservations, and Nepal, which ratified CEDAW without reservation, are states with many domestic laws that expressly discriminate against women. In both cases the Committee noted and challenged these laws, only slightly varying the discourse by chastising Algeria for having reservations relating to the laws and Nepal for having the laws despite its unconditional ratification of CEDAW.

A. Algeria: Evasion of CEDAW Obligations Through Reservations

In 1996, Algeria ratified CEDAW with sweeping reservations. With regard to the general equality provision of article 2, Algeria declared that "it [was] prepared to apply the provisions of this article on condition that they do not conflict with the provisions of the Algerian Family Code."⁵⁰ In a similar reservation with respect to article 9, paragraph 2, noting that this provision of CEDAW was "incompatible" with provisions of the Algerian Nationality Code and the Algerian Family Code, the government specifically cited the discriminatory provisions of domestic law restricting transmission of citizenship from mothers to their children.⁵¹ Algeria also made a reservation to article 15, paragraph 4 of CEDAW, noting that "the right of women to choose

47. CEDAW, *supra* note 2, art. 29(1) (providing that in the event the dispute cannot be settled through negotiation, at the request of one of the parties, the dispute shall be submitted to arbitration, and if the parties cannot agree on an arbitration process then the matter may be referred to the International Court of Justice).

48. *Id.* art. 29(2).

49. *Declarations, Reservations, and Objections to CEDAW*, *supra* note 46. Algeria, Argentina, Bahrain, Brazil, China, Cuba, Democratic Republic of Korea, Egypt, El Salvador, Ethiopia, France, India, Indonesia, Iraq, Israel, Jamaica, Kuwait, Lebanon, Mauritius, Micronesia, Morocco, Myanmar, Niger, Pakistan, Saudi Arabia, Singapore, Syria, Thailand, Trinidad and Tobago, Tunisia, Turkey, Venezuela, Vietnam, and Yemen have all made declarations that they will not be subject to the dispute resolution procedure set forth in article 29(1).

50. *Id.*

51. *Id.*

their residence and domicile should not be interpreted in such a manner as to contradict the provisions of chapter 4 (art. 37) of the Algerian Family Code," and a reservation to article 16 in its entirety, stating that "the provisions of article 16 concerning equal rights for men and women in all matters relating to marriage, both during marriage and at its dissolution, should not contradict the provisions of the Algerian Family Code."⁵² Germany, the Netherlands, Norway, Sweden, Portugal, and Denmark objected to these reservations as incompatible with the object and purpose of CEDAW.⁵³ Algeria also made a reservation to article 29(1), stating that it did not consider itself bound by the dispute resolution procedure.⁵⁴

Algeria presented its initial report to the CEDAW Committee in January 1999. Both the report and the representatives of Algeria who made the presentation to the Committee noted that all international treaties ratified by Algeria take primacy over national law, as set forth in article 123 of the Constitution and as confirmed by the Constitutional Council on August 20, 1989.⁵⁵ Algeria outlined the discriminatory provisions of its Family Code, acknowledging that some of them were "hotly contested by human rights associations," such as the provisions permitting polygamy and requiring a daughter to seek permission for marriage.⁵⁶ The government suggested that these "apparent contradictions" should be regarded in light of the role of Islamic law in Algeria.⁵⁷ The CEDAW Committee raised the issue of reservations and several members expressed the view that Algeria's reservations to CEDAW, especially article 2, "undermined the Convention altogether."⁵⁸ One member, welcoming the statement that international law had primacy over domestic law in Algeria, said that she did not understand the nature of this primacy in light of the reservations that had been made to the Convention and asked how the Constitutional Council was handling the Islamic Family Code, which contradicted the Constitution.⁵⁹ The Algerian Ambassador replied by noting on the one hand that CEDAW "had absolute primacy over Algerian laws, including the Family Code, which was based, in part, on Islamic law

52. *Id.*

53. *Id.*

54. *Id.*

55. *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, Initial Reports of States Parties, Algeria*, U.N. CEDAW, at 8, U.N. Doc. CEDAW/C/DZA/1 (1998) [hereinafter *Initial Report of Algeria*]; see also *Report of the Committee on the Elimination of Discrimination Against Women, Twentieth Session (19 January–5 February 1999) & Twenty-First Session (7–25 June 1999)*, U.N. GAOR, 54th Sess., Supp. No. 38, at 12, U.N. Doc. A/54/38/Rev.1 (1999) [hereinafter *Report of CEDAW, 20th & 21st Sess.*].

56. *Initial Report of Algeria*, *supra* note 55, ¶ 5.1.

57. *Id.*

58. Press Release, Women's Anti-Discrim. Comm., Algerian Delegation Asked to Explain to Its Government that Progress for Women is Undeniably Linked to Question of Democracy (Jan. 21, 1999), available at <http://www.un.org/News/Press/docs/1999/19990121.wom1080.html>.

59. Press Release, Women's Anti-Discrim. Comm., Algeria Resolved to Adopt Progressive Approach to Restoration of Rights to Algerian Women, Women's Anti-Discrimination Committee Told (Jan. 21, 1999), available at <http://www.un.org/News/Press/docs/1999/19990121.wom1079.html>.

and governed the personal status of women in Algeria,” but also stating that the reservations made by Algeria “had resulted in a sort of suspension of the treaty’s provisions.”⁶⁰ He suggested that an evolutionary process, of which the ratification of CEDAW was a part, might eventually lead to reform and the lifting of the reservations.⁶¹ Also, an Adviser to the Ministry of Justice addressed the Algerian Family Code more specifically, telling the CEDAW Committee that debate was going on within the state and that in the months following accession to the Convention workshops had been held and women’s associations had expressed their hostility to the Code. As a result of these workshops, twenty-two proposals for law reform had been made. The Committee again urged the Algerian representatives to rescind their discriminatory laws, with one member adding that even with the proposed reforms, the Family Code appeared to contradict the principle of equality enshrined in the Constitution.⁶²

In its concluding comments, the CEDAW Committee characterized Algeria’s reservations to CEDAW as “obstacles to the Convention’s full implementation” and noted that despite the Constitutional guarantee of sex equality and the stated primacy of the Convention over national legislation, “the Family Code still contains many discriminatory provisions which deny Algerian women their basic rights, such as free consent to marriage, equal rights to divorce, sharing of family and child-rearing responsibilities, shared child custody rights with fathers, the right to dignity and self-respect and, above all, the elimination of polygamy.”⁶³ Expressing “serious concern” over these provisions, the Committee urged the government to undertake a process “to harmonize the provisions of the Family Code with the text of the Convention and with the principle of equality that is set out in the Algerian Constitution.”⁶⁴

Five years later, these discriminatory laws remain in force. In contrast to the stated primacy of international treaties over domestic law in Algeria, the reservations made by the government upon ratification of CEDAW clearly indicate that Algeria was prepared to apply the Convention only to the extent that it was compatible with pre-existing Algerian law. In effect, Algeria stated its willingness to implement CEDAW so long as nothing needed to be done to implement CEDAW. The Committee noted and tried to give meaning to the stated primacy of international law, also pointing out that domestic law was in violation of the national Constitution. Its concluding comments effectively dismissed the reservations as a shield from scrutiny, specifically citing the litany of discriminatory provisions in the Family Code

60. Press Release, Women’s Anti-Discrim. Comm., Algerian Women Full Actors in Political, Economic and Social Life of Country, Women’s Anti-Discrimination Committee Told (Jan. 26, 1999), available at <http://www.un.org/News/Press/docs/1999/19990126.wom1085.html>.

61. *Id.*

62. *Id.*

63. *Report of CEDAW, 20th & 21st Sess., supra* note 55, at 14, 15.

64. *Id.* at 15.

without deference to the reservations, and acknowledging them elsewhere only as obstacles to implementation. The reservations made by Algeria are a compelling example of the concern stated by the Human Rights Committee, in its General Comment on reservations, that broad reservations to rights that would require any change in domestic law effectively mean that “[n]o real international rights or obligations have thus been accepted.”⁶⁵

B. Nepal: Evasion of CEDAW Obligations Through Disregard

Unlike Algeria, Nepal ratified CEDAW without reservations in 1991. In June 1999, CEDAW considered the initial report of Nepal, which stated forthrightly that certain statutory laws, especially in the area of property and family law, discriminated against women and that while “women [had] equal rights with men under the law in acquiring, changing or retaining their nationality . . . in practice Nepalese citizenship of an applicant’s father, brother or husband [was] required to provide citizenship to a son, daughter, brother or wife.” The report noted that “various petitions against [these discriminatory provisions had] been filed in the Supreme Court by women lawyers,” as a result of which the Court had “ordered the government to amend discriminatory laws within two years.”⁶⁶ The Secretary of Nepal’s Ministry of Law and Justice presented the country report to the CEDAW Committee, noting that Nepalese women were “still suppressed, exploited, neglected and forced to live insecure lives because of ill health, poverty, orthodox traditions and a discriminatory legal system.”⁶⁷ He said the Nepalese Constitution “enunciated women’s equality before law and included a provision for special treatment for their socio-economic development.”⁶⁸ Amongst the developments that had taken place since submission of the report, the delegate highlighted the establishment of “a task force to review all discriminatory laws against women in the existing legal code.”⁶⁹ He informed the Committee that the Nepal Treaties Act of 1990 provided that if an international treaty to which Nepal is a party is inconsistent with a national law, the treaty should supersede the national law to the extent of such inconsistency.⁷⁰ Several decisions of the Supreme Court had also determined that such inconsistencies should be resolved in accordance with treaties.⁷¹ The representative noted that despite constitutional provisions on equality, “statutes based on traditional practices and customs that were discriminatory and inconsistent with the present Constitution still existed, including the *Muluki Ain*, which re-

65. *General Comment No. 24*, *supra* note 42, ¶ 12.

66. Press Release, Women’s Anti-Discrim. Comm., Nepalese Women Suffer from Ill Health, Poverty, Legal Discrimination Women’s Anti-Discrimination Committee Told (June 15, 1999), *available at* <http://www.un.org/News/Press/docs/1999/19990615.WOM1136.html>.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Report of CEDAW, 20th & 21st Sess.*, *supra* note 55, at 57.

71. *Id.*

stricted women from the independent use of their property and inheritance of parental property.”⁷²

Several Committee members questioned the Nepali delegation. One member asked about the continuing existence of discriminatory laws in Nepal, and inquired as to the timetable for and likelihood of the passage of the draft bill that had been submitted to Parliament on inheritance and tenancy rights.⁷³ She asked what action had been taken by the government to amend other discriminatory laws, such as those on marriage and bigamy.⁷⁴ Another member “noted the urgent necessity of amending legislation to ensure that women had the same inheritance rights as men” and expressed concern that the bill had been allowed to lapse.⁷⁵ She also expressed concern over the differing age of marriage provided by law for men and women, as well as the nationality law that precluded children of Nepalese women from obtaining nationality on the same basis as children of Nepalese men.⁷⁶ One member of the Committee, who said she had read the report with great distress, suggested that of all the tasks facing the government, law reform would be the easiest and as a result must be the first step in starting the process of eliminating discrimination against women.⁷⁷ Another member noted the government’s obligation under article 2 of CEDAW “to take all appropriate measures to abolish discriminatory laws.”⁷⁸ She said it was “quite disappointing” that a large number of discriminatory laws continued in force, such as the laws governing inheritance, succession, and marriage.⁷⁹ Another member, disturbed by what she perceived in the report as the resignation that discrimination would continue “for a long time,” said that the government “must see to it that the long time was as short as possible,” suggesting that the government must exert political will.⁸⁰ Another member expressed concern that the government was not following the decisions of the Supreme Court, which had declared that treaty law prevailed over domestic law.⁸¹

The Secretary of Nepal’s Ministry of Law and Justice responded by noting the history of legal codification and law reform in Nepal, but also recognizing that while progress had been made in some other areas of human rights, laws governing issues such as property rights, inheritance, and succession remained discriminatory on the basis of sex.⁸² Though the Supreme Court

72. *Id.*

73. Press Release, Women’s Anti-Discrim. Comm., *supra* note 66.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. Press Release, Women’s Anti-Discrim. Comm., Women’s Anti-Discrimination Committee Concludes Consideration of Nepal’s Initial Report, U.N. Doc. WOM/1141 (June 18, 1999), available at <http://www.un.org/News/Press/docs/1999/19990618.WOM1141.html>.

had ordered the amendment of all discriminatory laws, Parliament subsequently dissolved and the bill prepared by the government to amend the laws lapsed.⁸³ The process had started again with the formation of a task force in the Ministry of Women and Social Welfare, which had identified discriminatory laws and was in the process of drafting a new law.⁸⁴ One Committee member strongly urged the government to do more “to translate its obligations under the Convention into action, beginning by first amending its discriminatory legislation,” and emphasized that “pretexts for non-action must not be allowed.”⁸⁵ The government representative “agreed that legislation was not in line with the Convention.”⁸⁶ He said that “[c]hanging discriminatory laws should take priority and needed a time frame.”⁸⁷ In its concluding comments, the CEDAW Committee expressed concern that the government “has not taken sufficient action to reflect the provisions of the Convention in domestic laws, or to amend prevailing discriminatory laws.”⁸⁸ The Committee urged the government to amend discriminatory laws on property, inheritance, nationality, birth registration, and criminality “as a matter of priority.”⁸⁹

Five years later, in January 2004, CEDAW considered the combined second and third periodic reports of Nepal. In presenting its report, the Nepali government stated that many discriminatory legal provisions were being “progressively” reviewed and that despite growing sensitivity to the need for their elimination, “a gradual approach was needed.”⁹⁰ The government reported that it had “constituted a high-level commission to present a report on all existing discriminatory laws against women,” and that the commission’s work was in progress.⁹¹ The Committee members “expressed frustration that many of the country’s legal provisions, even those that had been amended, were still discriminatory,” specifically citing laws on citizenship, land ownership rights, and polygamy.⁹² One member suggested that “problematic stakeholders be made aware of the fact that women’s rights were not matters of private opinion,” but part of “Nepal’s legal international treaty obligations.” Another noted that the report “accepted inequality as a fate not fully questioned,” as in the case of citizenship rights.⁹³ Other members emphasized that Nepal had ratified CEDAW without reservations and that the

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Report of CEDAW, 20th & 21st Sess., supra* note 55, at 58.

89. *Id.*

90. Press Release, Women’s Anti-Discrim. Comm., Process of Women’s Empowerment Well Under Way, Anti-Discrimination Committee Told, As It Considers Nepal’s Report, U.N. Doc. WOM/1423 (Jan. 14, 2004), available at <http://www.un.org/News/Press/docs/2004/wom1423.doc.htm>.

91. *Id.*

92. *Id.*

93. *Id.*

Treaty Act gave primacy to the application of international treaties in domestic law.⁹⁴ One member openly stated her confusion as to how seriously the Convention was being taken, and called on the government to take all necessary measures on an urgent basis to bring domestic legislation into conformity with the Convention.⁹⁵ She understood there to be as many as 290 discriminatory legal provisions in force in Nepal and asked what steps the government was taking to remedy this discrimination. Several members asked whether there was a concrete timetable for the repeal of specific laws.⁹⁶

Several members of the Committee were concerned with particular discriminatory laws, including the citizenship law that only gave fathers and husbands the right to confer citizenship on children and spouses, and the property law that required a woman to get permission from her father or husband to acquire property.⁹⁷ Concern was also expressed that the property law had been amended and yet remained discriminatory.⁹⁸ A government representative noted that a draft bill had been prepared, based on the work of the high-level committee on discriminatory laws, and that it was in the Ministry of Women, Children and Social Welfare.⁹⁹ Unfortunately, Parliament was not in place at the time, and elections were to take place in 2005.¹⁰⁰ The representative reiterated the government's commitment to eliminating discriminatory laws and said that any discriminatory provisions that existed even after the reform of the civil code would be dealt with accordingly.¹⁰¹

The Committee members repeated their concern that questions of discrimination not be "held hostage by slow procedures" and asked for further explanation of a comprehensive bill to amend discriminatory legislation.¹⁰² In her closing statement, the Chair, noting that Nepal had ratified CEDAW without reservations and citing the precedence given to CEDAW over domestic legislation in Nepal, suggested that "there was no reason why some very significant steps could not be taken to eliminate 'blatantly discriminatory' legislation against women . . . even in the absence of Parliament."¹⁰³ Citing the citizenship law, which "flew in the face" of the Convention, as well as laws on early marriage, polygamy and land ownership, she stated that urgent action was required.¹⁰⁴

In its concluding comments, the Committee noted that a high-level committee had submitted a report on discriminatory laws to the Prime Minister and that the Ministry of Women, Children and Social Welfare had been directed

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

to take immediate action. At the same time, it reiterated its same concern from 1999 that the government "has not taken sufficient action to amend prevailing discriminatory laws."¹⁰⁵ The Committee urged the government "to expedite action and to establish a specific timetable for amending discriminatory laws without further delay in order to comply with its obligation under article 2 of the Convention."¹⁰⁶ The Committee specifically noted and expressed concern over the Constitutional provision precluding Nepalese women from passing on their nationality to their children or to a spouse of foreign nationality and urged the government to repeal or amend this provision of the Constitution.¹⁰⁷

As with Algeria, Nepal still retains expressly discriminatory laws that, in the words of the CEDAW Chair, "fly in the face" of the Convention. As suggested by the discussion above, the CEDAW process has not been ineffective for want of effort on the part of the CEDAW Committee. With regard to states such as Algeria that have made reservations to fundamental equality rights set forth in CEDAW, the Committee has forcefully challenged and protested these reservations, characterizing them as incompatible with the object and purpose of CEDAW and urging governments in strong language to withdraw them. The reservations have not been defended by states as being compatible with the object and purpose of CEDAW. Rather, they are generally defended in terms of the incompatibility of CEDAW with domestic legislation. This argument has been challenged by other states in their objections to the reservations, as well as by the CEDAW Committee. Yet there is no process for adjudication and so the debate lies fallow. The reservations have not stopped the CEDAW Committee from voicing its heartfelt objection to the discriminatory laws, and states have generally not invoked their reservations to forestall dialogue with the Committee about the laws. In effect, the reservations are therefore of little consequence except in the abstract, where they do not offer much protection for those states that have made them, since they have been widely characterized as impermissible.

States such as Nepal that have not made reservations to CEDAW gain the praise of the Committee for having ratified the Convention without reservations, but that praise is greatly tempered by wrath over their failure to implement the Convention's most basic provisions. The persistence of *de jure* sex discrimination, often widespread, indicates an open disregard for the legally binding nature of the Convention and is understood as such by the CEDAW Committee. The Committee has consistently called on governments to account for their failure to amend or repeal discriminatory laws as required by the Convention. There is a somewhat surreal quality to the public discussion of sex equality by governments, in which these governments champion their commitment to the advancement of women and their recog-

105. Report of CEDAW, 30th & 31st Sess., *supra* note 36, at 37.

106. *Id.*

107. *Id.* at 38.

dition of sex equality rights at the same time that they maintain domestic laws officially classifying women as lesser citizens. Women in Algeria today are still subject to wife-obedience and other sex discriminatory laws while the amended property law that does not even give women in Nepal equal rights, rather than undergoing further reformation, is being challenged in court as discriminatory against men.

IV. THE DOMESTIC IMPACT OF CEDAW ON SEX DISCRIMINATORY LAWS

In 1998, the First CEDAW Impact Study was launched to ascertain the impact of CEDAW and its reporting procedures at the national level, as well as to identify the factors and circumstances that would increase this impact. Ten states were reviewed for the study: Canada, Germany, Japan, Nepal, the Netherlands, Panama, South Africa, South Korea, Turkey, and Ukraine.¹⁰⁸ The study documented the very limited impact of CEDAW at the domestic level. Based on the information provided by the study's country correspondents, the Convention appears to have had somewhat more of an impact in the passage of new legislation to promote the advancement of women than it has had in the repeal of existing laws that discriminate against women. However, even in the context of new legislation, it has been cited—often by the media or NGOs rather than by legislators—simply as a point of reference and not as a binding legal obligation mandating domestic implementation.

In the Federal Republic of Germany, which ratified CEDAW in 1985, the push for new or corrective legislation, such as the Equal Opportunities Legislation from the late 1980s/early 1990s, did not derive from CEDAW, but rather from other sources such as the European Community directives or similar legislation in other European states.¹⁰⁹ Similarly, in South Africa, although the country correspondent for the impact study, Lesley Ann Foster, noted that CEDAW was increasingly referenced in proposing new legislation, the utility of CEDAW in the state has been "marginal."¹¹⁰ Foster cited "a lack of recognition on the part of the South African government that the provisions of CEDAW constitute obligations, which are legally binding in terms of international human rights law."¹¹¹ Japanese country correspondent Masumi Yoneda noted that in Japan the ratification process in 1985 prompted several significant legal reforms prior to ratification, including legislation enacted in the fields of employment, nationality, and education.¹¹² Following ratification,

108. MARILOU MCPHEDRAN ET AL., *THE FIRST CEDAW IMPACT STUDY: FINAL REPORT* (2000).

109. *Id.* at 60.

110. *Id.* at 176, 182.

111. *Id.* at 174. See also *Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, Initial Reports of States Parties, South Africa*, U.N. CEDAW, at 7, 15, 19, 104–05, U.N. Doc. CEDAW/C/ZAF/1 (1998).

112. The Convention was signed in 1980 and ratified in 1985. In the interim, the Equal Opportunity Law amended the Labor Standards Law to relax restrictions applied only to women and amended the Japanese Nationality Law to allow mothers as well as fathers to transmit Japanese nationality to their children. MCPHEDRAN, *supra* note 108, at 66–68.

however, "Japan has maintained the view that the recommendations of human rights treaty bodies are not legally binding" and that therefore it has no obligation to implement them.¹¹³ Similarly, Panamanian country correspondent Silma Pinilla Diaz reported that the concluding comments made by the CEDAW Committee with regard to certain sex discriminatory laws in Panama, such as the law prohibiting women but not men from working at night, and a law prohibiting widows but not widowers from remarrying within 300 days of their spouse's death, did not seem to have any impact.¹¹⁴ CEDAW was cited, however, in new domestic legislation addressing a range of women's rights issues including sexual harassment, violence against women, and equal opportunity for women.¹¹⁵ In Turkey, country correspondent Feride Acar concluded that increasing media attention to CEDAW was attributable to the election of a Turkish member to the CEDAW Committee in 1997.¹¹⁶ Coverage of the passage of a domestic violence law in 1998 included direct references to CEDAW, as well as to the concluding comments made by the CEDAW Committee to Turkey in January 1997, following consideration of Turkey's periodic report.¹¹⁷

Many of the national correspondents for the states surveyed in the First CEDAW Impact Study found that CEDAW had had very little formal impact on domestic court proceedings. In Canada, with the exception of one case on sexual assault, country correspondents Lee Waldroff and Susan Bazilli wrote that CEDAW had "not played a determinative role" in the decisions made by Canadian courts and human rights tribunals, having been cited more "for the purpose of providing further authority for conclusions that [were] already adequately supported by domestic law."¹¹⁸ In the Netherlands, the study identified nineteen court decisions, from July 1992 to April 1998, in which CEDAW was referenced by the parties or commentators on the cases.¹¹⁹ However, the courts referred to CEDAW in only seven of the nineteen cases, and in all seven cases refuted the appeal to CEDAW on formal grounds.¹²⁰ In four of these cases, "the court ruled that CEDAW could not be directly applied by a Dutch court of law."¹²¹ In Nepal, following the ratification of CEDAW, the Convention was cited in a prominent case challenging the property law that denied daughters the right to inherit property unless they were thirty-five years old and unmarried.¹²² As reported to the CEDAW Committee, the Nepali Supreme Court ordered the government to

113. *Id.* at 69.

114. *Id.* at 145.

115. *Id.* at 148-50.

116. *Id.* at 210.

117. *Id.* at 211.

118. *Id.* at 41.

119. *Id.* at 133.

120. *Id.*

121. *Id.* at 134.

122. *Id.* at 84 (citing *Meera Dhungana v. Ministry of Law & Justice et al.*, NEPAL L.J. at 462-68 (1994)).

introduce a bill in the legislature within one year that reviewed the laws relating to property rights, taking "into consideration the patriarchal nature of the society, social structure, and fear of positive discrimination against men."¹²³ In many other cases relating to discrimination filed in the Court, Nepal's obligations under various international human rights instruments, including CEDAW, have been raised. However, in none of these cases has the court tried "to develop the jurisprudence of state obligation under international instruments in the domestic context."¹²⁴ In fact, according to country correspondent Sapana Pradhan Malla, who is a prominent women's rights litigator in Nepal, the Court has asked "lawyers and petitioners to make arguments on the basis of domestic legislation rather than the international conventions to which Nepal is a party."¹²⁵ When the government belatedly submitted a bill to Parliament in 1997 incorporating various reforms related to women's rights, including the right to property as directed by the Court, it did acknowledge in the preamble of the bill that Nepal was a State party to CEDAW.¹²⁶ However, as mentioned above, the bill, which was finally passed five years later in 2002, only partly removed the *de jure* sex discrimination, granting women the right to inherit property from birth rather than from the age of thirty-five, but still requiring them, unlike men, to return it to the family upon marriage.¹²⁷

The First CEDAW Impact Study concluded that ratification of CEDAW had provided non-governmental organizations with an additional resource

123. *Id.* at 90.

124. *Id.* at 91. "In *Chanda Bajracharya for Mishra Khala v. Parliament Secretariat et al. and Sapana Pradhan for FWLD v. Ministry of Law and Justice*, discriminatory legal provisions of the penal law, adoption law, succession . . . divorce and remarriage were challenged," and arguments were made in relation to CEDAW and section 9 of the Treaty Act, as well as the Constitution. *Id.* at 90 (citing Dr. Chanda Bajracharya v. Parliament Secretariat, NEPAL L. BULL., Special Issue, at 1–3 (1996)). The Court noted the influence of Hindu jurisprudence on the legal system, cited in article 4 of the Constitution, which declares Nepal to be a Hindu kingdom, and stated that religious codes play a vital role in family matters and social behavior. *Id.* at 90–91 (citing Sapana Pradhan Malla v. HMG, NEPAL L.J. at 105–11 (1996)).

125. *Id.* at 91.

126. *Id.* at 80, 92 (citing *Country Code* (11th amendment) Bill 2054). The bill addressed a range of concerns including inheritance rights of daughters, discriminatory provisions on marriage and divorce, the absolute prohibition of abortion, and discriminatory provisions on punishment for bestiality. *Id.* at 93–94. Unlike in many other states, in Nepal, the public debate on the bill's provisions relating to equal property rights was much more controversial than the debate on provisions for the legalization of abortion.

127. *Id.* at 101. This new law, which does not even grant women equal rights to property, has been challenged in court as being discriminatory against men. The case is pending. Letter from Forum for Women, Law & Development to Jessica Neuwirth (Sept. 28, 2004) (on file with author). Similarly, although a case in 1995 that successfully challenged differential visa provisions for foreign husbands and foreign wives led to a new immigration rule, citizenship rights remain discriminatory with regard to the status of both spouses and children of Nepali women. MCPHEDRAN, *supra* note 108, at 90–91 (citing Meera Gurung v. Dep't of Immigration, NEPAL L.J. at 68–75 (1995)). In an earlier case challenging the denial to transmit a wife's citizenship to her foreign husband, the court acknowledged the denial was contrary to the equality provision in article 11 of the Constitution, as well as various international treaties, but ruled that because citizenship was directly governed by a specific provision of the Constitution, it could not be challenged by reference to a general provision such as the equality guarantee. *Id.* at 91 (citing Benjamin Peter v. Dep't of Immigration, Decision No. 4413, 11 NEPAL L.J. 2048 at 479).

helpful to their advocacy efforts, but that in many states awareness of the Convention and its use in domestic activism remained very limited, even within the women's rights movement. Nevertheless, the study concluded that "without the advocacy of the women's human rights activists who have been described in this report, little or none of the pressure on national States parties would have resulted in the adoption of CEDAW principles, let alone its ratification."¹²⁸ The study found that while the women's rights framework and the use of CEDAW and CEDAW Committee reports had been "extremely useful" in this respect, it could be argued that "it is at the grassroots level of organizing that these tools have been more effective."¹²⁹

An impact study reviewing all human rights treaties, including CEDAW, was undertaken by Christof Heyns and Frans Viljoen in 1999, in collaboration with the U.N. Office of the High Commissioner for Human Rights. Based on their review of twenty states—four from each of the five U.N. regions—Heyns and Viljoen concluded that "international enforcement mechanisms used by the treaty bodies appear to have had a very limited demonstrable impact thus far."¹³⁰ Factors used in the study to measure impact included levels of awareness, judicial decisions, and legislative reform. Generally, Heyns and Viljoen found coverage of the reporting process by the media to be "negligible."¹³¹ A systematic newspaper search in Brazil, Colombia, the Philippines, and South Africa found fewer than ten articles directly referring to any relevant human rights treaties. Only newspapers in Australia, Canada, and Finland had significant numbers of articles.¹³² Australia and Canada were also the states in which judicial decisions most frequently referred to human rights treaties. However, the study characterized these occasions as "isolated instances" in which the courts had relied on treaties as an independent basis for the substantive outcome of a case, as the courts more frequently used such treaties as interpretive guides.¹³³

With regard to law reform, the study did identify instances of legislative reform prompted by the human rights treaties, including CEDAW. In Australia, the Sex Discrimination Act was passed in 1984 specifically to implement CEDAW following its ratification in 1983. The Equality Act in Finland, an amendment of the Criminal Code in Senegal, and the dramatic changes in law that took place in Japan prior to CEDAW ratification were noted in the study, as was the introduction of the Equality Bill, Domestic Violence Act, and Maintenance Act in South Africa. Nevertheless, in many states, these legal reforms did not comprehensively eliminate sex discriminatory laws as required by CEDAW. The Sex Discrimination Act of Australia,

128. *Id.* at 25.

129. *Id.* at 26.

130. Christof Heyns & Frans Viljoen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level*, 23.3 *HUM. RTS. Q.* 483, 488 (2001).

131. *Id.* at 513.

132. *Id.* at 499.

133. *Id.* at 502.

for example, includes a specific exception permitting the blanket exclusion of women from certain types of military employment.¹³⁴ Japan still has sex discriminatory laws respecting the legal age of marriage and conditions of remarriage, which have not changed despite the concern the Human Rights Committee expressed in 1998 in its concluding observations.¹³⁵ The study noted that concluding observations are generally not disseminated by governments to the public at large, and in some cases are not even distributed within the government to the relevant departments. Rather, they are “simply shelved” in the Ministry of Foreign Affairs.¹³⁶ While the authors of the study suggest that sometimes the failure to implement concluding observations of the treaty body committees might be due to a lack of precision on the part of the committees or a failure of practicality, they also acknowledge that “in many instances it is clear that concluding observations are being ignored.”¹³⁷

The relatively greater impact of CEDAW at the national level in prompting or supporting the introduction of new legislation advancing the status of women, rather than in effecting the repeal of existing discriminatory legislation, coupled with the primary use of CEDAW as an advocacy tool by non-governmental organizations rather than its enforcement by courts as binding law, indicates that governments are not prepared to recognize the legal force of the Convention. CEDAW is cited in legislation and public advocacy as a point of reference rather than as a legal obligation. The fact that Australia and Canada, states in which judicial decisions have most frequently referred to treaties, are also the states in which there has been significant media coverage of the treaty body reporting process suggests a correlation between the public visibility of CEDAW and its domestic impact. Similarly, the fact that law reform often occurred in anticipation of or immediately following ratification of CEDAW, as in Japan and Australia, might be explained by the higher visibility of CEDAW at the time of its ratification, while the fact that subsequent efforts by the CEDAW Committee and other treaty bodies to address sex discriminatory laws were effectively ignored may be related to the lack of public attention devoted to the subsequent CEDAW monitoring process. In explaining the failure of CEDAW to secure even *de jure* equality, the CEDAW Committee during the twenty-fifth anniversary celebration cited a number of factors including “discriminatory social norms, cultural practices, traditions, customs and stereotypical roles of women and men.”¹³⁸ The

134. The Sex Discrimination Act of 1984 exempts the military from its equality provisions with regard to performance of combat duties. Equality Now, *supra* note 1, at 16.

135. Articles 731 and 733 of the Civil Code of Japan allow sixteen year-old girls to be married, while the age of marriage for boys is eighteen, and prohibit women, but not men, from remarrying for six months after the dissolution or annulment of a marriage. See *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Japan*, U.N. CCPR, Hum. Rts. Comm., 64th Sess., ¶ 16, U.N. Doc CCPR/C/79/Add.102 (1998).

136. Heyns & Viljoen, *supra* note 130, at 510.

137. *Id.* at 511.

138. U.N. Comm. on the Elimin. of Discrim. Against Women, *supra* note 16.

Committee included as further impediments "insufficient political will to bring about gender equality" and "the extensive under-representation of women in decision-making positions."¹³⁹ These forces have visibly, and in many cases, thoroughly, preempted the rule of law in the context of CEDAW implementation, while the lack of public visibility of the monitoring process only makes it more difficult to hold states accountable.

V. IMPLEMENTATION OF THE BEIJING PLATFORM FOR ACTION

The 1995 United Nations Fourth World Conference on Women in Beijing was one of the largest global conferences ever held. Six thousand delegates from 189 countries, including many heads of state; 4000 activists from non-governmental organizations; and 4000 media representatives attended.¹⁴⁰ The Platform for Action adopted by the Conference has engendered its own monitoring and implementation review process through the Commission on the Status of Women, which was designated by the Economic and Social Council following the Beijing Conference to have "a central role in the monitoring of the implementation of the Platform for Action."¹⁴¹ This central role includes the authority to "assist the Economic and Social Council in monitoring, reviewing and appraising progress achieved and problems encountered in the implementation of the Beijing Declaration and Platform for Action at all levels," and to advise the Council thereon.¹⁴² The Beijing Platform for Action called on member states of the United Nations to draw up national action plans to improve the promotion and protection of women's rights and to create an institutional framework for implementation of the commitments made in the Platform for Action.¹⁴³ These "national machineries" were to be established "at the highest political level" with appropriate staffing and a broad mandate.¹⁴⁴ The Platform for Action has given new impetus to the reform of sex discriminatory laws and the implementation of CEDAW. Despite the legally binding nature of CEDAW and its potential enforceability through domestic law as a treaty-in-force, the Beijing World Conference on Women in 1995 and its follow-up process may have had more of an impact to date at the national level than CEDAW on the elimination of *de jure* discrimination that fundamentally violates state obligations under CEDAW.

The Platform for Action includes as a strategic objective the necessity of "ensur[ing] equality and non-discrimination under the law and in practice."¹⁴⁵

139. *Id.*

140. REPORT OF THE FOURTH WORLD CONFERENCE ON WOMEN, BEIJING, 4-15 SEPTEMBER 1995, Annex III, U.N. Doc. A/CONF.177/20/Rev.1, U.N. Sales No. 96.IV.13 (1996).

141. G.A. Res. 203, U.N. GAOR, 50th Sess., Supp. No. 49, ¶ 25, U.N. Doc. A/RES/50/203 (1995).

142. *Report of the Economic and Social Council for the Year 1996*, U.N. GAOR, 51st Sess., Supp. No. 3, at 98, U.N. Doc. A/51/3/Rev.1 (1997).

143. *Platform for Action*, *supra* note 2, ¶¶ 230(d), 296.

144. *Id.* ¶ 296.

145. *Id.* ¶ 231.

More specifically, paragraph 232(d) of the Platform for Action includes a commitment to “revoke any remaining laws that discriminate on the basis of sex.”¹⁴⁶ In June 2000, five years after its adoption, a Special Session of the U.N. General Assembly was held to review the implementation of the Beijing Platform for Action. At the Special Session, an Outcome Document outlining the achievements, obstacles, and further actions to be taken by governments and the United Nations to implement the Platform for Action was adopted.¹⁴⁷ Paragraph 27 of the Outcome Document cites gender discrimination as an obstacle to the implementation of the Platform for Action, noting that discriminatory legislation “still persist[s]” and that “in a few cases, new laws discriminating against women have been introduced.”¹⁴⁸ Paragraph 68(b) of the Outcome Document provides that states should review legislation “with a view to striving to remove discriminatory provisions as soon as possible, preferably by 2005,”¹⁴⁹ thus establishing a target date for implementation of this commitment.

The Platform for Action makes frequent reference to CEDAW and includes language intended to strengthen its operation, noting that unless the human rights of women as defined by international human rights instruments are implemented and enforced by national law, “they will exist in name only.”¹⁵⁰ The Platform for Action expressed concern over sex discriminatory laws in the context of CEDAW as follows:

In those countries that have not yet become parties to the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights instruments, or where reservations that are incompatible with the object or purpose of the Convention have been entered, or where national laws have not yet been revised to implement international norms and standards, women’s *de jure* equality is not yet secured. Women’s full enjoyment of equal rights is undermined by the discrepancies between some national legislation and international law and international instruments on human rights¹⁵¹

Among the actions to be taken by governments to address this concern is one specifically related to CEDAW reservations, which calls on governments to:

146. *Id.* ¶ 232(d).

147. *Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action*, G.A. Res. S-23/3, U.N. GAOR, 23rd Special Sess., Agenda Item 10, U.N. Doc. A/RES/S-23/3 (2000).

148. *Id.* ¶ 27.

149. *Id.* ¶ 68(b). The preliminary draft of this document had identified 2005 as a clear and unequivocal target date, simply stating that states should “[r]epeal all discriminatory legislation by 2005.” *Further Actions and Initiatives to Implement the Beijing Declaration and the Platform for Action: Proposed Outcome Document*, U.N. ESCOR, Comm’n on the Status of Women, 3rd Sess., Agenda Item 2, ¶ 56(g), U.N. Doc. E/CN.6/2000/PC/L.1/Rev.1 (2000). The final text of the document established 2005 as a preferred rather than a requisite target date.

150. *Platform for Action*, *supra* note 2, ¶ 218.

151. *Id.* ¶ 219.

Limit the extent of any reservations to the Convention on the Elimination of All Forms of Discrimination against Women; formulate any such reservations as precisely and as narrowly as possible; ensure that no reservations are incompatible with the object and purpose of the Convention or otherwise incompatible with international treaty law and regularly review them with a view to withdrawing them; and withdraw reservations that are contrary to the object and purpose of the Convention on the Elimination of All Forms of Discrimination against Women or which are otherwise incompatible with international treaty law.¹⁵²

Following the Beijing Conference, states started to report to the CEDAW Committee on the national plans that were being established and the activities being undertaken in conjunction with the implementation of the Platform for Action. When Algeria reported in 1999, for example, the government representative told the CEDAW Committee that the implementation of government policy for the advancement of women was following a national plan that addressed the recommendations of the Beijing Platform for Action.¹⁵³ In its report of the meeting, the CEDAW Committee noted that "a number of measures had been taken in Algeria by public authorities as part of the overall policy on women, in particular after the Fourth World Conference on Women."¹⁵⁴ Similarly, when Nepal reported to the CEDAW Committee in 1999, the government representative informed the Committee that as a result of the Fourth World Conference on Women, a Gender Equity and Women's Empowerment National Work Plan had been formulated in 1997, encompassing twelve sectors that needed serious attention, one of which was human rights.¹⁵⁵ In 2002, the government reported to the CEDAW Committee on the national Plan of Action that had been formulated and stated Nepal's full commitment to the implementation of the Beijing Platform for Action. Following the Fourth World Conference on Women, the Platform for Action and the obligations it entailed became an integral part of the CEDAW reporting process.

After the Beijing Conference on Women, the Platform for Action took on a life of its own, generally present and at times even dominant in the CEDAW reporting process. The national structures created pursuant to and for the implementation of the Platform for Action created a domestic institutional

152. *Id.* ¶ 230(c).

153. Press Release, Women's Anti-Discrim. Comm., Algerian Women Full Actors in Political, Economic and Social Life of Country, Women's Anti-Discrimination Committee Told (Jan. 26, 1999), available at <http://www.un.org/News/Press/docs/1999/19990126.wom1085.html>.

154. *Report of CEDAW, 20th & 21st Sess.*, *supra* note 55, at 12. These measures included the establishment of a permanent committee under the auspices of the Ministry of National Solidarity and Family. In order to strengthen the national mechanisms for the advancement of women, a Secretariat of State was upgraded to a Ministry, headed by a woman who served as a focal point for the advancement of women.

155. Press Release, Women's Anti-Discrim. Comm., *supra* note 66. The other sectors were women and poverty, education, health, violence, armed insurgency, economy, policymaking, institutional structure, the environment, and children.

base for CEDAW as well. The establishment by the General Assembly in 2000 of a target date for the repeal of sex discriminatory laws, in response to the persistence of these laws despite the commitments made in the Platform for Action in 1995 to repeal them, was a strategic advance that would not have been possible within the framework of CEDAW. Unlike the CEDAW Committee, however, the General Assembly and the Commission on the Status of Women, as political bodies, cannot readily, if at all, consider the progress or lack of progress in law reform made by particular states. While advantaged in some ways by the political composition and greater public visibility of the world conference forum, the Commission on the Status of Women, and the General Assembly, efforts in these fora to implement the Platform for Action are also hampered by this lack of specificity.

VI. THE IMPACT OF THE BEIJING PLATFORM FOR ACTION ON CEDAW

The positive impact of the Beijing process on the implementation of CEDAW can be seen in part from a review of the pattern of objections made by states to the reservations made to CEDAW by other states, which notably increased in number around and following the time of the Beijing Conference. Prior to the early 1990s, few objections were made to the reservations submitted by States parties upon accession to CEDAW. Only a few states, usually Mexico, Germany, and Sweden, responded to reservations made in the 1980s.¹⁵⁶ These three states had objected to the reservations made in 1981 by Egypt, which subordinated to *Shariah* law the general equality provision in article 2 of CEDAW, as well as the equality provisions on nationality and family in articles 9 and 16.¹⁵⁷ The same three states—Germany, Mexico, and Sweden—also objected to the reservations made by Bangladesh in 1984 that rejected the general equality provision in article 2 of CEDAW as conflicting with *Sharia* law, and to reservations made by Turkey in 1985 to provisions in articles 15 and 16, which Turkey declared incompatible with the Turkish Civil Code. Only Germany and Sweden objected to the reservations made by Brazil in 1984, which rejected, without reason, the provisions in CEDAW relating to equal rights in matters of marriage and family relations, and in the choice of residence and domicile. When Tunisia ratified CEDAW in 1985, only Germany objected to its reservations to the nationality provision of article 9 in deference to the Tunisian Nationality Code, and to the residence, marital and family provisions of articles 15 and 16 in deference to the Tunisian Personal Status Code. Similarly, only Mexico and Sweden objected to reservations made in 1986 by Iraq, which declared itself not bound by

156. See Byrnes & Connors, *supra* note 37; see also Minor, *supra* note 37.

157. The government of Egypt explained in its reservation: "It is clear that the child's acquisition of his father's nationality is the procedure most suitable for the child and that this does not infringe upon the principle of equality between men and women, since it is customary for a woman to agree, upon marrying an alien, that her children shall be of the father's nationality." *Declarations, Reservations, and Objections to CEDAW*, *supra* note 46.

various provisions in article 2 and article 9, or by any provision in article 16, when it ratified CEDAW.

By contrast, reservations of the same nature encountered many more objections when made by states ratifying CEDAW ten years later, in the 1990s decade of the Beijing Conference. In the early to mid-1990s the number of states objecting doubled, and then tripled by the early years of the decade beginning in 2000. The Netherlands retroactively expressed concern over the reservations made by the states cited above, which had ratified CEDAW in the 1980s.¹⁵⁸ When Kuwait ratified CEDAW in 1994, seven states objected to its reservations, which cited the Kuwaiti Electoral Act as the basis for a reservation on the equal political rights set forth in article 7(a), the Kuwaiti Nationality Act as the basis for its right not to implement article 9(2), and a conflict with *Sharia* law as the basis for a declaration that it did not consider itself bound by article 16(f) on equal rights and responsibilities for children.¹⁵⁹ When Pakistan ratified CEDAW in 1996, "subject to the provisions of the Constitution of the Islamic Republic of Pakistan," eight states objected.¹⁶⁰ When Saudi Arabia ratified CEDAW in 2000 with a similar subordination of the Convention's provisions to the norms of Islamic law, eleven states objected,¹⁶¹ and the same *Sharia* law reservation by Mauritania in 2001 drew objections from eleven states.¹⁶² When the Democratic People's Republic of Korea ratified CEDAW in 2001 with a reservation exempting itself from the obligation in article 2(f) to abolish discriminatory laws, ten states objected.¹⁶³ In 2003, when Syria ratified CEDAW subject to an enumerated list of reservations to various provisions of articles 9, 15, and 16, and a blanket reservation on the general equality provisions of article 2, citing incompatibility with Islamic *Sharia* law, fourteen states objected.¹⁶⁴

In another important manifestation of the impact of the Beijing process, following domestic law reforms in the 1990s, a number of States parties withdrew reservations that they had made to CEDAW upon ratification. In September 1995, Jamaica withdrew the reservation it had made to article

158. In 1994, the Netherlands filed a statement objecting to the reservations that had been made by Bangladesh, Egypt, Brazil, Iraq, Mauritius, Jamaica, the Republic of Korea, Thailand, Tunisia, Turkey, Libyan Arab Jamahiriya, and Malawi. *Id.*

159. The Netherlands and Sweden filed objections to these reservations in 1994. Finland, Belgium, Austria, and Portugal filed objections in 1996. Denmark filed its objection in 1997. *Id.*

160. Austria, Finland, Germany, the Netherlands, and Norway filed objections in 1996. Sweden, Portugal, and Denmark filed objections in 1997. *Id.*

161. Austria, Denmark, Finland, France, Germany, Ireland, the Netherlands, Norway, Sweden, Spain, and Portugal objected to the reservations made by Saudi Arabia. *Id.*

162. Austria, Denmark, Finland, France, Germany, Ireland, the Netherlands, Norway, Portugal, Sweden, and the United Kingdom. *Id.*

163. In its reservation, the Democratic People's Republic of Korea also specifically exempted itself from the obligation of article 9(2) to accord equal rights to confer nationality on children. Denmark, Finland, France, Germany, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom objected to the reservations. *Id.*

164. Austria, Denmark, Estonia, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Romania, Spain, Sweden, and the United Kingdom. *Id.*

9(2) when it ratified CEDAW in 1984. During the course of the 1990s, the Republic of Korea successively withdrew reservations it had made to various provisions of articles 9 and 16 of CEDAW upon ratification in 1984.¹⁶⁵ In 1999, Turkey withdrew the reservations it had made upon ratification of CEDAW in 1985.¹⁶⁶ The CEDAW Committee recognized the power of the U.N. world conferences and worked proactively to use the momentum they generated, particularly that from the Beijing Fourth World Conference on Women, to highlight its concern over the reservations being made by States parties in open defiance of the object and purpose of the Convention. In 1992, the CEDAW Committee issued a general recommendation on reservations to the Convention, asking States parties to “raise the question of the validity and legal effect of reservations to the Convention” in connection with preparations for the Vienna World Conference on Human Rights, to be held in 1993.¹⁶⁷ The same request was made directly by the Chairperson of CEDAW to the Secretary-General of the World Conference on Human Rights. The World Conference on Human Rights, in adopting the Vienna Programme of Action in 1993, called for the “eradication of all forms of discrimination against women, both hidden and overt,” and stated that “ways and means of addressing the particularly large number of reservations to the Convention [CEDAW] should be encouraged.” It encouraged the CEDAW Committee to continue its review of reservations and urged states “to withdraw reservations that are contrary to the object and purpose of the Convention.”¹⁶⁸

At the domestic level, the national machinery established following the Beijing World Conference on Women, and the impact of the Platform for Action, have often overshadowed CEDAW. The Japanese national correspondent for the CEDAW Impact Study, Masumi Yoneda, noted that in Japan, NGOs have often used the Beijing Platform for Action rather than CEDAW to develop policy, even though CEDAW has the force of law in Japan and prevalence over domestic statutes.¹⁶⁹ This has been attributed to the greater familiarity among public servants with the Platform for Action, which is reflected in national and local “Plans for Action,” than with CEDAW, which had to be explained to public servants who found it difficult to grasp the significance of the Convention. Six thousand Japanese women attended the Fourth World Conference on Women in Beijing or its companion forum in Huairou

165. *Id.* (noting that “[o]n 15 March 1991 and 24 August 1999, the government of the Republic of Korea notified the Secretary-General of its decision to withdraw . . . the reservations made upon ratification to the extent that they apply to sub-paragraphs (c), (d) and (f) of paragraph 1 of articles 16 and 9, respectively.”).

166. In September 1999, the Republic of Turkey withdrew its reservations to article 15, paragraphs 2 and 4, and article 16, paragraphs 1(c), (d), (f), and (g). *Id.*

167. *Report of the Committee on the Elimination of Discrimination Against Women, Eleventh Session*, U.N. GAOR, 47th Sess., Supp. No. 38, at 7, U.N. Doc. A/47/38 (1993).

168. *Vienna Declaration and Programme of Action*, World Conference on Human Rights, June 14–25, 1993, at 19, U.N. Doc. A/CONF.157/23 (1993).

169. MCPHEDRAN, *supra* note 108, at 66.

for non-governmental organizations, sparking a national network, the Beijing Japan Accountability Caucus, which is based in Tokyo with "sister affiliations" in Hiroshima, Sendai, Shizuoka, and Yamaguchi.¹⁷⁰ Comparing the Beijing Platform and CEDAW, Masumi Yoneda commented, "The Beijing Platform for Action has been an effective lobbying instrument because it dealt with critical issues in a participatory way and is more visible at the grassroots level."¹⁷¹ Silma Pinilla Díaz, the national correspondent for the study from Panama, reached a similar conclusion, noting that the ratification of CEDAW in 1981 did not itself have much impact in Panama, but that the ratification gained more importance after the Fourth World Conference on Women in Beijing. The national mechanism created in Panama in 1995 for the advancement of women, the National Council of Women, had as one of its functions to ensure the fulfillment of the objectives established by CEDAW.¹⁷²

As was the case in the other states analyzed by the CEDAW Impact Study, the correspondent for Nepal, Sapana Pradhan-Malla, found during the course of her review that "the Beijing Platform for Action was more popular with the government and the people rather than CEDAW due to the media focus."¹⁷³ The *National Plan of Action prepared by the Ministry of Women* cited the Platform for Action but did not mention national implementation of CEDAW, and many in Nepal were unaware of their country's ratification of CEDAW, although the main goal of the state's ninth Five Year Plan (1998–2002) was achievement of equality through women's empowerment in various fields, including the law. Under the heading "Gender Equality," the first step listed in the Five Year Plan was "Review and revise all laws discriminating against women's rights so that laws and regulations are in favor of women."¹⁷⁴ Specific commitments were made in the *Country Report on the U.N. Fourth World Conference on Women*, prepared by Nepal's National Planning Commission in August 1995, which stated: "The constitutional rights of equality are being widely exercised. Nonetheless, certain specific laws that infringe upon the constitutional provisions shall be identified and presented to the legislature for necessary amendments within the next two years."¹⁷⁵ The Ministry of Women and Social Welfare, identified as the lead agent to follow up and take the necessary action to meet Nepal's commitments in all U.N. conventions relating to women, was established in September 1995 immediately following the Fourth World Conference on Women in Beijing.¹⁷⁶

The greater impact of the Beijing Platform for Action at the national level is integrally linked to the visibility of the Beijing process, which has in fact helped to illuminate the CEDAW process, significantly increasing the latter's

170. *Id.* at 63–64.

171. *Id.* at 23.

172. *Id.* at 141.

173. *Id.* at 80.

174. *Id.* at 88.

175. *Id.* at 89 (citation omitted).

176. *Id.* at 109–10.

visibility and impact following 1995. While CEDAW is composed of twenty-three individual experts, who meet twice a year without public attention, the momentum of the Beijing World Conference on Women has been felt around the globe. The top echelons of governments were mobilized for the preparation of and participation in the Beijing Conference, and a global gathering of 50,000 activists participated in the NGO forum associated with the Conference. This process created an environment in which the desire of governments to be seen internationally as supporters of women could be transformed into a commitment to the specific provisions set forth in the Platform for Action, as well as—and perhaps even more importantly—into domestic structures, i.e., the national machineries charged with implementation. While CEDAW carries the weight of treaty law, the Beijing process carries the weight of high-level political participation and broad-based international public attention. The effect of this political weight was felt domestically and carried forward in the creation of ministries, the development of national plans of action, and the taking of other institutional steps to implement the Beijing Platform for Action.

In their comprehensive impact study on all human rights treaty bodies, Heyns and Viljoen recommended generally that treaty bodies be more visible.¹⁷⁷ Of the reasons they set forth identifying why governments ratify human rights treaties, the first is that states want to be seen internationally as supporters of human rights, for purposes of standing in international diplomacy.¹⁷⁸ Accordingly, the visibility (or lack thereof) of the treaty body process affects its impact at the national and even international level. In particular, in the absence of law enforcement mechanisms to support the implementation of CEDAW and in light of CEDAW's lesser visibility, it is not surprising that the Beijing Platform for Action has had a greater impact at the national level. The mobilization of public pressure depends on public awareness and concern. The high-level and high profile government involvement in the Beijing Conference in 1995 generated sustained momentum that to some degree even transferred over to the CEDAW monitoring process. While the resulting political will was not sufficient to effect full compliance with the obligations of CEDAW, or complete implementation of the commitments in the Platform for Action to abolish laws that discriminate against women, the significant level of political will generated was nonetheless reflected in the heightened protest by States parties to reservations to CEDAW as seen

177. Heyns & Viljoen, *supra* note 130, at 531. They also suggested that treaty bodies have more meetings outside of Geneva and New York, that these bodies travel more, and that they engage in greater dialogue. Many of Heyns and Viljoen's other recommendations also relate to increased visibility, e.g., improving press releases and increasing the dissemination of concluding comments. *See id.* While citing ample evidence of government resistance to the treaty body process stemming from sovereignty concerns, the authors also stated that the reports made clear that "[i]n many instances, however, conscious resistance is not necessary. The widespread ignorance of the treaty system in government circles, among lawyers and in civil societies around the world, effectively blocks any impact that the treaties may otherwise have had." *Id.* at 518.

178. *Id.* at 491.

incompatible with the object and purpose of the Convention, and withdrawal of these reservations by several States parties, indicating some acceleration of domestic level law reforms.

VII. THE WAY FORWARD

Increasingly, the focus of discussion on the Beijing Platform for Action has been on implementation of the commitments made in 1995, and efforts to translate this discussion into strategic action are ongoing. Extensive discussion of the need to strengthen existing enforcement mechanisms and develop new ones to address human rights violations against women led to the adoption in 1999 of an Optional Protocol to CEDAW.¹⁷⁹ The Optional Protocol, which entered into force in December 2000 and has been ratified by sixty-eight States parties,¹⁸⁰ gives individuals who suffer from violations of CEDAW a direct avenue of recourse. It established a communications procedure for individual complaints and an inquiry procedure to enable the CEDAW Committee to inquire into situations of grave or systematic violations of women's rights.¹⁸¹ In July 2004, the Committee issued its first decision, ruling against the admissibility of a communication submitted by a woman in Germany.¹⁸² Several other communications are pending before the Committee. In July 2003, the CEDAW Committee decided to undertake its first inquiry under article 8 into the abduction, rape, and murder of women in Ciudad Juárez, pursuant to a request made in October 2002 by Equality Now, an international women's rights organization in consultative status with the U.N. Economic and Social Council, and Casa Amiga, a rape crisis centre in Ciudad Juárez.¹⁸³ It is too early to assess the impact of the Optional Protocol on the implementation of CEDAW. Nevertheless, the communications and the inquiry procedures provide new, additional avenues of recourse that can be used to challenge sex discriminatory laws.

179. See, e.g., Andrew Byrnes, *Toward More Effective Enforcement of Women's Human Rights Through the Use of International Human Rights Law and Procedures*, in HUMAN RIGHTS OF WOMEN 189, 212–13 (Rebecca J. Cook ed., 1990).

180. U.N. Div. for the Advancement of Women, *Signatures to and Ratifications of the Optional Protocol*, at <http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm> (last updated Feb. 10, 2005).

181. Other human rights treaties with similar complaint mechanisms include the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, which all have communications procedures. The Convention Against Torture also has an inquiry procedure similar to that under the CEDAW Optional Protocol.

182. *Ms. B.-J. v. Germany*, Communication No. 1/2003, Decision of the Committee on the Elimination of Discrimination Against Women (2004). The Committee found the communication to be inadmissible for failure to exhaust domestic remedies and because the disputed facts occurred prior to the entry into force of the Optional Protocol. Two members of the Committee filed a dissenting opinion. *Report of CEDAW, 30th & 31st Sess.*, *supra* note 36, at 244–56.

183. *Report of CEDAW, 30th & 31st Sess.*, *supra* note 36, at 161–64. The Committee sent a delegation to Mexico in October 2003. After examining the findings of the inquiry, the Committee in January 2004 adopted its report, which was transmitted confidentially to the Mexican government. The Committee has requested that Mexico report on its implementation of the Committee's recommendations in December 2004 so the Committee can follow up with the government.

The U.N. Commission on the Status of Women has a little known and hardly used communications procedure for consideration of communications that reveal "a consistent pattern of reliably attested injustice and discriminatory practices against women."¹⁸⁴ However, the communications procedure of the Commission is confidential, and thus far has not had a history of success. A review undertaken by the U.N. Secretary-General in 1990, at the request of the Economic and Social Council and in consultation with member states, resulted in a report concluding that the procedure had not "provided a significant input into the work of the Commission."¹⁸⁵ The report noted that the procedure was "not an efficient mechanism for ascertaining the accuracy of allegations contained in communications or of government replies, nor for ensuring that governments provide replies that are directly responsive to allegations contained in communications, nor for responding to situations where there is evidence indicating that there are indeed widespread human rights violations involving discrimination against women."¹⁸⁶ In August 2004, Equality Now submitted a communication to the Commission invoking the communication procedure with regard to laws in forty states that discriminate against women. As this communications procedure is confidential,¹⁸⁷ no further information is available, and the extent to which any disposition of the communication will be made public is unknown.¹⁸⁸

The Optional Protocol to CEDAW offers a positive enforcement mechanism. However, any recommendations made by the CEDAW Committee, either through the communications procedure or the inquiry procedure of the Optional Protocol, are likely to be subject to the same challenges with regard to implementation that confront the concluding comments of the Committee. Compliance cannot be compelled.¹⁸⁹ To the extent that the Commission on

184. *Measures to Publicize the Communications Mechanism of the Commission on the Status of Women: Report of the Secretary-General*, U.N. ESCOR, Comm'n on the Status of Women, ¶ 7, U.N. Doc E/CN.6/1994/8 (1994) (discussing the procedure set up by the Economic and Social Council in its resolution 76 (V) of 5 August 1947, as amended by resolution 304 I (XI) of 14 and 17 July 1950). The Economic and Social Council reaffirmed the mandate of the Commission on the Status of Women to receive communications on the status of women in its resolutions 1983/27 of 26 May 1983, 1992/19 of 30 July 1992, 1993/11 of 27 July 1993, and 2002/235 of 24 July 2002.

185. *Monitoring the Implementation of the Nairobi Forward-Looking Strategies for the Advancement of Women: Examining Existing Mechanisms for Communications on the Status of Women: Report of the Secretary-General*, U.N. ESCOR, 35th Sess., ¶ 27, U.N. Doc. E/CN.6/1991/10 (1991) [hereinafter Report of the Secretary-General].

186. *Id.* ¶ 9.

187. *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. GAOR, 54th Sess., Agenda Item 109, art. 8(5), U.N. Doc. A/Res/54/4 (1999).

188. The Commission on Human Rights also has a communications procedure, which has been widely used but rarely to address human rights violations against women. Established pursuant to Economic and Social Council Resolution 1503 to consider "gross violations of human rights and fundamental freedoms," it too is confidential. E.S.C. Res. 1503, U.N. ESCOR, 48th Sess., ¶ 1, U.N. Doc. E/RES/1503(XLVIII) (1970). For further discussion of the 1503 procedure see Maria Francisca Ize-Charrin, *1503: A Serious Procedure*, in INTERNATIONAL HUMAN RIGHTS MONITORING MECHANISMS 293 (Gudmundur Alfredsson et al. eds., 2001).

189. The U.N.-affiliated study on the impact of human rights treaties at the domestic level, previously referred to, examined the outcome of individual communications filed under the complaint mecha-

the Status of Women is a political body of government representatives, rather than a group of independent experts, as in CEDAW, there is a greater potential for public pressure to play a more effective role. However, this potential is stymied by the communications procedure's confidentiality requirement. Additionally, the procedure does not provide for any follow-up sanctions in particular cases.¹⁹⁰ The U.N. Secretary-General's Report referred to above recommended that the Commission consider introducing such follow-up provisions, as well as turning the confidential procedure into a public one to increase publicity.¹⁹¹ The report also recommended consideration of the creation of a Special Rapporteur with either a general or specialized mandate, whose work could enhance the communications procedure and whose reports would be published and considered by the Commission, suggesting that such an appointment might remedy some of the deficiencies in the current communications procedure.¹⁹² These recommendations, made in 1990, are still under consideration and have yet to be implemented.

While the Beijing follow-up process continues, leading to the Beijing + 10 review in March 2005 to be conducted by the Commission on the Status of Women at its 49th session, the Commission has (as yet) no mechanism for state-specific evaluation of the implementation of the Platform for Action, along the lines of the CEDAW Committee monitoring process. The Beijing follow-up process cannot readily evaluate in public terms, on a state-specific basis, the progress toward the target date of 2005 for repeal of sex discriminatory laws, as the process is not designed for this kind of review. In an effort to collect information on the implementation of the Platform for Action and 2000 Outcome Document and in anticipation of the upcoming Beijing + 10 review, a questionnaire was sent out by the secretariat of the Commission on the Status of Women, which will form the basis of a report by the Secretary-General to be presented to the Commission on the Status of Women in Member States. More than one hundred states have responded to the questionnaire, and as might be expected, their responses largely report progress in the implementation of the critical areas of concern set forth in the Platform for Action, including with respect to reform of discriminatory laws.

The states' responses document continuing progress in the reform of sex discriminatory laws. The Dominican Republic reported in its response to the

nisms of other treaties. With respect to cases coming through the Optional Protocol to the Covenant on Civil and Political Rights, the following results were published: Institutional changes effected (legislative amendments, administrative steps): Australia 2/2 cases implemented, Canada 5/8, Finland 4/4, Senegal 1/1, Spain 1/2. With regard to redress afforded individuals: Canada 1/8 cases implemented, Colombia 4/9, Finland 2/4, Senegal 1/1, Spain 2/2, Zambia 3/3. In two Canadian cases, no action was taken and a settlement is still outstanding. Heyns & Viljoen, *supra* note 130, at 516–17.

190. *Report of the Secretary-General*, *supra* note 185, ¶ 85.

191. *Id.* ¶¶ 76, 138(c), 138(i).

192. *Id.* ¶¶ 150–52. The report suggested that in particular, the adoption of such a mechanism would respond to the failure of the current procedure "to ensure any sort of recourse, to make public the failure of governments to respond adequately to communications concerning them, and to generate in-depth analyses of current trends and policy recommendations for the Commission." *Id.* ¶ 151.

questionnaire that its Agrarian Reform Act has been amended in order to grant women the same land distribution rights as men.¹⁹³ Ethiopia reported revisions in its Family Code rendering the minimum age of marriage the same for both sexes and in its Civil Code making divorce effective upon mutual consent of the spouses.¹⁹⁴ Some states have also reported on discriminatory laws that remain in force. Thailand reported that article 267 of its Penal Code continues to permit exoneration of men for acts of marital rape.¹⁹⁵ Kenya noted in its response that inequality persists with respect to the right to own property.¹⁹⁶ Nepal reported on its participation in the CEDAW review process, highlighting its amended Civil Code that treats sons and daughters "as equal inheritors of the ancestral property (until daughters get married)," but noting that "137 different legal provisions still persist that are discriminatory against women."¹⁹⁷ These reports, at times frank in describing gaps and challenges as well as achievements, will not be subjects of discussion in the Commission on the Status of Women, where governments focus primarily in their public statements on their achievements or on general expressions of commitment to sex equality without reference to discrimination in their own states or other particular states.

The creation of a Special Rapporteur on laws that discriminate against women by the Commission on the Status of Women would strengthen the Commission's ability to promote implementation of the commitment made in the Platform for Action to repeal sex discriminatory laws. A Special Rapporteur would have direct access to governments and could bring the specificity of the CEDAW process to the higher political level of the Commission, functioning as an effective bridge between, as well as an amplification of, the ongoing efforts of the CEDAW Committee and the Commission on the Status of Women. By compiling a global index of sex discriminatory laws still in force, a Special Rapporteur could also play a helpful role in addressing issues of common concern to states and undertake thematic reviews in par-

193. GOV'T OF THE DOM. REP. STATE SECRETARIAT FOR WOMEN, REPORT ON IMPLEMENTATION OF THE BEIJING PLATFORM FOR ACTION (1995–2004) AND THE OUTCOME OF THE TWENTY-THIRD SPECIAL SESSION OF THE GENERAL ASSEMBLY (2000) 4 (2004), *available at* <http://www.un.org/womenwatch/daw/Review/responses/DOMINICAN-REPUBLIC-English.pdf> (last visited Feb. 27, 2005).

194. PRIME MINISTER OFFICE OF ETHIOPIA, A NATIONAL REPORT ON PROGRESS MADE IN THE IMPLEMENTATION OF THE BEIJING PLATFORM FOR ACTION (BEIJING +10) 14 (2004), *available at* <http://www.un.org/womenwatch/daw/Review/responses/ETHIOPIA-English.pdf> (last visited Feb. 27, 2005).

195. OFFICE OF WOMEN'S AFFAIRS & FAMILY DEV., THAIL. MINISTRY OF SOC. DEV. & HUMAN SEC., QUESTIONNAIRE TO GOVERNMENTS ON IMPLEMENTATION OF THE BEIJING PLATFORM FOR ACTION (1995) AND THE OUTCOME OF THE TWENTY-THIRD SPECIAL SESSION OF THE GENERAL ASSEMBLY (2000) 4, 12 (2004), *available at* <http://www.un.org/womenwatch/daw/Review/responses/THAILAND-English.pdf> (last visited Feb. 27, 2005).

196. REPUBLIC OF KENYA, REVIEW AND APPRAISAL: FINAL REPORT ON THE IMPLEMENTATION OF BEIJING PLATFORM FOR ACTION (BEIJING +10) 5, 8 (2004), *available at* <http://www.un.org/womenwatch/daw/Review/responses/KENYA-English.pdf> (last visited Feb. 27, 2005).

197. CHANDRA BHADRA, NEPAL MINISTRY OF WOMEN, CHILDREN & SOC. WELFARE, REVIEW OF THE IMPLEMENTATION OF THE BEIJING PLATFORM FOR ACTION AND THE OUTCOME DOCUMENTS OF THE TWENTY-THIRD SPECIAL SESSION OF THE GENERAL ASSEMBLY 2 (2004), *available at* <http://www.un.org/womenwatch/daw/Review/responses/NEPAL-English.pdf> (last visited Feb. 27, 2005).

ticular areas of the law, such as the transmission of nationality. Facilitating the exchange of information and ideas, the Special Rapporteur would highlight progress in the implementation of the Platform for Action with regard to the target date for revocation of sex discriminatory laws. In the context of the upcoming Beijing +10 review in 2005, the inability of many member states to meet the 2005 target date, which indicates the need for an implementation supporting structure, could be the impetus for the creation of a new mechanism such as the Special Rapporteur.¹⁹⁸ Rather than singling out particular states, as some Special Rapporteurs of the Commission on Human Rights have been charged with,¹⁹⁹ a Special Rapporteur on Laws that Discriminate Against Women would give particularity to the implementation of the Platform for Action's commitment to repeal discriminatory laws while maintaining a global focus, thereby avoiding charges of selectivity.

VIII. THE PACE OF CHANGE

Legal reform is taking place, and the number of states that have repealed or amended sex discriminatory laws has increased over the past decade. But the pace of reform is slow. Equality Now highlighted sex discriminatory laws in forty-five states in a report issued in 1999, prior to the Beijing + 5 review process in 2000.²⁰⁰ By 2004, eleven of these states had changed the laws included in the 1999 report.²⁰¹ Costa Rica, Jordan, Papua New Guinea, Peru, and the Republic of Serbia and Montenegro amended their criminal laws to remove sex discriminatory provisions.²⁰² Mexico and Turkey repealed discriminatory marital laws.²⁰³ Venezuela adopted a new Constitution that re-

198. There is precedent for the appointment of a Special Rapporteur by the Commission on the Status of Women. In 1968, a Special Rapporteur on the Status of Women and Family Planning was created by the Economic and Social Council on the recommendation of the Commission. See *Family Planning and the Status of Women*, E.S.C. Res. 1326, U.N. ESCOR, 44th Sess., ¶ 5, U.N. Doc. E/Res/1326(XLIV) (1968). The Rapporteur submitted a Progress Report to the Commission in 1970. *Commission on the Status of Women*, U.N. ESCOR, 23rd Sess., U.N. Doc. E/CN.6/542 (1970). A final report was submitted in 1974, which was distributed to member states as a background document for the 1974 World Population Conference. *Study on the Inter-Relationship of the Status of Women and Family: Planning Report of the Special Rapporteur*, U.N. ESCOR, 25th Sess., U.N. Doc. E/CN.6/575 (1973).

199. The Commission on Human Rights currently has Special Rapporteurs on the human rights situations in Belarus, the Democratic People's Republic of Korea, the Palestinian territories occupied since 1967, and Myanmar (Burma). See Office of the U.N. High Comm'r for Hum. Rts., *Special Procedures of the Commission on Human Rights: Country Mandates*, at <http://www.ohchr.org/english/bodies/chr/special/countries.htm> (last visited Feb. 27, 2005). The Commission has also mandated a number of Independent Experts for the human rights situations in Afghanistan, Burundi, Chad, Democratic Republic of the Congo, Haiti, Somalia, and the Sudan. *Id.* These Special Rapporteurs and Independent Experts, while helpful in focusing public attention on human rights concerns in these states, are the result of a highly politicized process.

200. Equality Now, *Words and Deeds: Holding Governments Accountable in the Beijing +5 Review Process*, at http://www.equalitynow.org/english/actions/action_1601_en.html (July 1999).

201. Equality Now, *supra* note 1.

202. *Id.*

203. Equality Now, *Complete Text of Discriminatory Laws* (report attached to Equality Now, *supra* note 200) (section on Marital Status citing repealed articles 140 and 148 of the Mexican Civil Code of the Federal District and repealed articles 88, 152, and 154 of the Turkish Civil Code).

moved discriminatory citizenship provisions.²⁰⁴ The Bahamas repealed a law that had assigned women secondary inheritance rights.²⁰⁵ France repealed a law that prohibited women from working at night,²⁰⁶ and Switzerland repealed a law prohibiting women from engaging in military combat duties.²⁰⁷ Monaco amended its citizenship laws to give women additional and purportedly equal rights to confer citizenship on their children, but retained the discriminatory form of its law by failing to give mothers the blanket right that fathers have under the law.²⁰⁸ Moreover, Monaco did not amend the law that only gives men the right to confer Monégasque nationality on their spouses.²⁰⁹ Similarly, as noted above, Nepal amended its property law to remove discriminatory provisions, but the amendment fell short of providing full equality.²¹⁰

Despite the Convention's obligation on States parties to take "all necessary measures at the national level" to ensure the full realization of the rights set forth in CEDAW,²¹¹ and to incorporate the principle of sex equality "without delay" in domestic law, including the abolition of laws that discriminate against women,²¹² the implementation of these fundamental obligations has been significantly delayed in many States parties to CEDAW. Furthermore, though the related obligation of states to implement the undertakings made in the Platform for Action, including the commitment to repeal sex discriminatory laws, may have benefited from greater public visibility, sufficient political will has not been generated to meet the 2005 target date established by the Outcome Document adopted in the Beijing + 5 review process. The upcoming Beijing + 10 review process will find many sex discriminatory laws still in force.

Elimination of sex discriminatory laws does not require the allocation of financial resources—it requires political will in the form of a legislative act. The slow pace of reform is a clear indicator that this political will is lacking in many states. Both CEDAW and the Platform for Action are hampered by lack of enforcement mechanisms. New mechanisms, such as the creation of a Special Rapporteur, and more effective use of existing mechanisms could help generate the political will necessary to abolish sex discriminatory laws and thereby reinforce the sense of legal obligation that is patently absent among States parties, yet necessary for the realization of the rights set forth in

204. *Id.* (section on Personal Status citing repealed articles 37 & 38 of Venezuela's Constitution).

205. *Id.* (section on Economic Status citing repealed section 7 of The Bahamas Inheritance Act).

206. *Id.* (section on Economic Status citing repealed article L.213-1 of the French Labor Code).

207. *Id.* (section on Economic Status citing repealed chapter 4, "Women in the Military," of the Switzerland Order on the Organization of the Army).

208. Equality Now, *Update: Women's Action 16.6*, at http://www.equalitynow.org/english/actions/action_1606_en.html (Sept. 2004) (citing amended articles 1 and 3 of Monaco Law No. 115 on Nationality). Additional categories of entitlement were added to the existing law to cover gaps in the law precluding women from conferring citizenship on their children, where men had such rights under the blanket provision of the law applicable to them.

209. *Id.*

210. Equality Now, *supra* note 1, at 1, 16 (citing Muluki Ain Numbers 2, 10, and 16).

211. CEDAW, *supra* note 2, art. 24.

212. CEDAW, *supra* note 2, art. 2.

CEDAW. Public pressure and diplomatic leverage have been more effective than legal obligation in closing the substantial gap between the rhetoric and the reality of sex equality rights. CEDAW and the Beijing Platform for Action complement one another, the former providing a legal framework and the latter generating political momentum for reform. The CEDAW Committee and the Commission on the Status of Women each have a role to play in effecting legal reform at the national level in compliance with international standards. Through institutional cooperation, which would be greatly enhanced by the creation of a Special Rapporteur with a mandate to facilitate such collaboration, the strengths of both CEDAW and the Commission could be strategically mobilized for greater impact. The avenues of recourse available through instruments such as the Optional Protocol to the Covenant on Civil and Political Rights, which established an individual communications procedure, and the mechanisms established by the Commission on Human Rights, such as Economic and Social Council Resolution 1503 and the Special Rapporteurs (both thematic and state-specific), should also be used to address laws that discriminate against women.²¹³

While this Article has focused on the attainment of *de jure* equality for women and men, both CEDAW and the Platform for Action demand far more from governments than the achievement of formal equality. They envision a much broader guarantee of substantive equality. The abolition of *de jure* discrimination is a first step toward and a precondition of this progressive vision—it demonstrates the political will necessary for the realization of the fundamental human right to sex equality.

213. The Optional Protocol to the Covenant on Civil and Political Rights, which was opened for signature on December 16, 1966, recognizes the competence of the Human Rights Committee to consider communications from individuals who claim to be victims of a violation by a State party of any of the rights set forth in article 1 of the Covenant. See *Optional Protocol to the International Covenant on Civil and Political Rights*, G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, at 59, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976). The Human Rights Committee has on occasion considered cases relating to sex discriminatory laws. For example, in a communication brought forward by twenty women against Mauritius, the Committee found that a law requiring alien husbands but not alien wives of Mauritian citizens to apply for a residency permit violated the equality provisions in articles 2(1), 3, and 26 of the Covenant. *Shirin Aumeeruddy-Cziffra & 19 Other Mauritian Women v. Mauritius*, Communication No. 35/1978, U.N. Doc. CCPR/C/12/D/35/1978 (1981). See text accompanying *supra* note 188 on the communications procedure of the Commission on Human Rights. See also text accompanying *supra* note 199 for state-specific Special Rapporteurs.