

## United Nations Policy and the Family: Redefining the Ties that Bind A Study of History, Forces and Trends

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The themes and language of overpopulation and women's rights have been a part of mainstream conversation and international and national political discussion for nearly four decades now. Rights lobbyists, environmental action groups, advocates of children's autonomy and other interest groups have brought the institution of the family to the center of political debate within international legal and policy-making circles, particularly at the United Nations (UN). Especially within the last decade, these groups have made persistent efforts to re-define not only the relationships within the family unit, but the very definition of 'family' itself. In the UN conferences of the last twenty years, population, gender, women's rights, children's rights, healthcare and education were the main issues that framed the debate on the family and ultimately influenced many policy initiatives regarding it.

In one of its defining documents, the Universal Declaration of Human Rights, the UN member states called for protection of the family as the "natural and fundamental group unit of society"<sup>1</sup> and stated that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence."<sup>2</sup> However, a subtle shift began in the 1960s with the increasing emphasis on population control and again in the 1970s with the ascendancy of a more radical women's rights lobby. This fundamental shift in attitude began to frame the family in the language and context of human rights and population control. The understanding and treatment of the family as a group unit and a covenant was seen as something detrimental to women, a source of exploitation and abuse that hampered their full development of human rights. Policymakers and theorists began to break down a once organic entity, united by blood and kinship, into a collection of autonomous individuals, bound together by contract and goodwill.

Today, the UN has introduced a new definition of the family—"family in its various forms." This definition goes beyond any understanding of nuclear, extended or even female-headed families and leaves the public and its policymakers with an ambiguous term that potentially includes any group wishing to call itself "family." This opens the door to myriad social, political, and legal problems, from marriage, tax, and health law to family, education, and property law, etc. It seems as if certain factions within the UN see the Universal Declaration of Human Rights of 1948, regarded by majority of countries and by international law as the most authoritative international instruments of human rights, in practice as obsolete and in need of major modifications, if not

substitution. In doing so, they reflect a school of thought that views human rights as evolving, thereby regarding later, less-binding and less-relevant documents are more important because they are more attuned to progress. In the UN's eyes, the family and its members are one such entity subject to an evolving, progressive notion of rights. For them, the ties that bound the family are no longer permanent or sacred, but are transitory, breakable, and increasingly, subject to intervention and redefinition.

The issue of the family will continue to be a topic of concern for every level of civil society. The legal scholars Abbot and Snidal note that 'soft law'—non-binding international documents—often carry much weight and are in fact treated by interested actors as if they were hard law. Such has been the case with the documents produced by the UN conferences in the last two decades.<sup>3</sup> In addition, Haaland-Matlary points out that "in fact, aiming for soft law bases for new norms is a preferred strategy [of civil societies at the UN] because its status in the international political system is so ambiguous. . . . Thus, soft law is the preferred tool for those who want to change norms."<sup>4</sup> Since ICPD in 1994, UN policy as it affects the family has come under intense scrutiny by national governments and civil societies from around the globe as they realize the broad implications of binding legislation in this area. Such scrutiny is critical, for these policies, once ratified and enacted by Member States, have the potential to affect—for better or worse—the daily lives of people in every locale, as well as to influence policies at every level of government, ranging from healthcare and education to childcare and parenting. This study will examine how the policy has dealt with the family in the past, assess how its policies have changed throughout the years in various conferences, and analyze the actual and potential effects these changes have on societies around the globe.

### Players and Perspectives in the Debate

A critical key to understanding the development of the international discussion surrounding the family is an introduction to the perspectives and players that have shaped the debate in the past and are continuing to shape it today. In the past decade, the number of transnational advocacy networks which operate through nongovernmental organizations (NGOs) has grown significantly. Haaland-Matlary acknowledges the importance of this activity by observing that "the growth of national NGOs is to be found in single-issue areas, and these groups easily network in horizontal ways. Modern communication helps this organizational

form. NGOs typically seek out causes where it is easy to present the issue as a singularly good thing; as an improvement or progress, and use human rights language as mode of argumentation and as justification. First, something is defined as a human right. . . . Then it is justified because it is a human right."<sup>5</sup> In the case of the family, five major groupings have had a significant impact.

#### *The Population Control Perspectives*

This particular group has many sub-categories, many of which approach the issue of population as a problem and think it necessary to control it. Some see high population growth in Malthusian terms—that is, they see population growth as the main cause of poverty in that it is an obstacle to development: the more people there are in a given area, the fewer resources there are to support or develop them.<sup>6</sup> A further corollary of this perspective sees people as destroyers of resources and violators environmental limits.<sup>7</sup> Others see high population growth as a source of instability between governments, especially between the richer developed nations and poorer less developed countries, since less developed nations have younger, growing populations, while most developed nations struggle with fast-ageing, shrinking populations. Human rights advocates, especially radical women's rights lobbyists, perceive population growth to be symptomatic of the larger problem of women's oppression—the more children a woman has, the less opportunity she has for her own self-actualization and development. The ICPD conference in Cairo supported this overt linkage between women's rights and population issues in 1994.

There are some groups who do not see population growth as a problematic development,<sup>8</sup> believing that more humans means more innovation and a greater ability to address problems (i.e., environment, technologies, poverty.) Investment in human capital increases development and can boost economic growth and technological developments, which, in turn, benefit the population and the environment. Finally, there are those who oppose population control for religious reasons, believing the procreative act to be a highly personal act within the private sphere and therefore outside of the public realm and government intervention.<sup>9</sup>

#### *The Women's Rights Perspectives*

The radical women's rights lobby believes that a mother of several children has her ability to work outside the home, as well as the enhancement of her personal growth, curtailed by her responsibilities to her family. Thus, family can be seen as a factor that furthers women's oppression and societal subordination.<sup>10</sup> Access to 'reproductive information and services' will free women from this situation, since ignorance of these things means women have more children than they desire.<sup>11</sup> A second group, however, believes that the women's rights movement should promote the right of women to be

women, whether they work in the home or outside of it. This group argues that motherhood and the family do not oppress women, but rather offer women fuller expression. They argue that radical women's rights groups risk making women a policy tool and fail to recognize the fullest dimensions of women by reducing them to their reproductive and sexual traits or capacities.<sup>12</sup>

#### *The Children's Rights Perspectives*

The customary perspective holds children as the recipients of parental protection and guidance, while recent perspectives, gaining prevalence in the last thirty years, wish to endow children with greater autonomy, regardless of age, and argues that these autonomous children hold certain rights over and against their parents. This is justified by the presumption that the family fosters discrimination and abuse.<sup>13</sup> Children's rights were previously thought to be held by their parents in their stead until they grew out of minority status precisely because it was considered the natural, most protective, and therefore, best condition for a child to develop.<sup>14</sup> The former won out in 1989 with the signing of the Convention on the Rights of the Child. Opponents argue that this perspective seriously challenges the parental rights that were recognized by the Universal Declaration of Human Rights and that, in fact, the rights of parents is clearly stated in the 1989 conventions as well. They also argue that it effectively serves to drive a wedge in the parent-child relationship by setting parent and child on equal footing with regard to autonomy and rights, and neglects any understanding of an organic relationship between parents and children.

#### *Sexual and Reproductive Rights Perspective*

Tied to the population control perspective and the women's rights perspective, and increasingly, to children's rights, this perspective argues that by recognizing women's (and adolescent children's) sexual and reproductive rights, more reproductive information and services can be made available. Women will use these services and will have fewer children. This, in turn, will free them from the home and will enable their personal development, while at the same time curbing population growth and the spread of diseases like AIDS. This view has been supported in UN conferences of the past twenty-five years, most recently in Cairo and Beijing and their follow-up conferences. Opponents charge that this argument is based on the false premises that all women want fewer children, motherhood is an oppressive institution, and population growth is a social evil.<sup>15</sup>

#### *The Gender Perspective*

Supporters of an alternative and inclusive understanding of gender argue that the traditional binary understanding of gender as male and female restricts personal sexual expres-

sion. The gay-lesbian lobby, radical women's rights groups, and population control groups such as the International Planned Parenthood Federation (IPPF) are the main supporters of an understanding of gender that allows for bisexual, transsexual, homosexual, etc. The population control perspective is supportive of alternative gender language insofar as non-heterosexual couples have fewer children, while the gay-lesbian lobby and radical women's groups want greater sexual 'freedom of expression.'

### Historical Background and Development

The Universal Declaration of Human Rights (1948) was significant for the family. It began by protecting the institution of marriage itself by stating that those "men and women of full age," who are free and consenting, have "the right to marry and found a family."<sup>17</sup> Within the family, the Declaration also stated that men and women are "entitled to equal rights as to marriage, during marriage and at its dissolution." No mention of children is made in the context of dissolution.

Article 16 recognized the family as the "fundamental" and the "natural" group unit of society. As such, the Member States declared, the family is entitled to protection by both the society and state. The language clearly does not support a view of society and/or the state as a substitute for the family, or for parents. Rather, it sees the family as an institution that should be supported, promoted by society and the state, with the latter institutions playing a subsidiary role with regard to the family and the role of the parents. The document reaffirms this by outlining the specific rights that are guaranteed to the family: Article 12 states that a person's family and home shall be protected from "arbitrary interference," while Article 25 notes that "everyone has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing, housing and medical care and necessary social services. . . ." Thus, the Universal Declaration, while underlining the primary position of the natural family as the fundamental group unit of society, also upholds the fundamental rights of individual members should the family fail to protect them.

Different members of the family and different roles within it are also protected by the declaration. Mothers and children are "entitled to special care and assistance."<sup>18</sup> The document also acknowledges the natural rights of parents in the family, particularly in the area of education. The right of parents to "choose the kind of education that shall be given their children"<sup>19</sup> is not only protected, but is defined as a right that is prior to that of the state or other body outside the family unit.

Until the late 1960s, these rights as defined by the Universal Declaration were essentially reaffirmed without much further elaboration. In the early 60s, several documents dealt with the institution of marriage, clearly reaffirming it as the founding relationship upon which the family was built. The Convention on the Consent to Marriage (1962) aimed at

"eliminating completely child marriages and the betrothal of young girls before the age of puberty"<sup>20</sup> and recalled that marriage should be founded on "full and free consent,"<sup>21</sup> given by men and women of "full age." In its preamble, the Recommendation on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1965) also recognized that "the family group should be *strengthened* because it is the basic unit of every society, and that men and women of full age have the right to marry and found a family, that they are entitled to equal rights as to marriage and that marriage shall be entered into only with the free and full consent of intending spouses"<sup>22</sup> (emphasis added). These conceptions of marriage and family set a precedent and have been essentially reiterated in documents since.

In 1966, the International Covenant on Economic, Social and Cultural Rights significantly developed prevalent ideas regarding the family that earlier UN documents had expressed. It reaffirmed the basis of freedom in the consent to marry, as well as the natural and fundamental characteristic of the family as the primary social unit of society.<sup>23</sup> However, it went beyond the original guarantee of protection, declaring that "the widest possible protection and assistance should be accorded the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children."<sup>24</sup>

The covenant also referred to individuals within the family. Article 10.2, for instance, clearly linked motherhood with pregnancy, recognizing that "special protection should be accorded to mothers during a reasonable period before and after childbirth. During such a period working mothers should be accorded paid leave or leave with adequate social security benefits." In this way, the document upheld that the role of motherhood—that is, the act of conceiving, birthing, and caring for children—was socially significant and merited protection. It also recognized that mothers who worked should receive certain economic benefits in the event of childbirth. In a similar way, childhood was also recognized as having specific rights to protection from "economic and social exploitation" and from discrimination "for reasons of parentage or other conditions."<sup>25</sup>

The covenant also addressed other social issues related to the family, particularly in the areas of health and education. With regard to health, Member States simply acknowledged "the right of everyone to the enjoyment of the highest attainable standards of physical and mental health"<sup>26</sup> and promised to make "provision for the reduction of the still-birth rate and infant mortality and for the healthy development of the child."<sup>27</sup> The articles dealing with health made no reference to sexual or reproductive health—a topic that has dominated the UN's approach to health in the conferences of the last twenty years and has siphoned monies away from other,

more pressing health issues, particularly in less developed nations. Rather, the architects of the International Covenant made broad calls for “the improvement of all aspects of environmental and industrial hygiene”<sup>28</sup> and “the prevention, treatment and control of epidemic, endemic, occupational and other diseases,”<sup>29</sup> as well as “the creation of conditions which would assure to all medical service and medical attention in the event of sickness.”<sup>30</sup>

The section on education also made significant provisions, further developing the earlier affirmation of the prior right of parents to select the type of education given their children. It made a further stipulation that parents, in choosing education for their children, were not limited to state-run facilities. They also included religion and morality within the purview of education, stating that parents had the right to educate their children according to their own religious convictions:

States Parties . . . undertake to have respect for the liberty of parents, and when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.<sup>31</sup>

UN documents protected the freedom of parents to govern their children’s education and religious formation until 1989, when the Declaration on the Rights of the Child greatly diminished this freedom.

In a similar manner, the International Covenant on Civil and Political Rights (1966) restated the principle that the family is the natural and fundamental group unit of society and reaffirmed the right to marry and found a family and that spouses have equal rights in marriage.<sup>32</sup> It made a further addition to the subject of the dissolution of marriage, stipulating that “in the case of dissolution, provision should be made for the necessary protection of children.”

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society, and the State.<sup>33</sup>

While the protection of children in the event of dissolution of marriage was not defined any further, the States Parties clearly emphasized the role of parents as primary protectors of their children.

The International Conference on Human Rights that followed two years later in 1968 in Tehran marked a significant milestone. In the Proclamation of Tehran, Article 16 clearly identified the basic right of couples to freely determine the number and spacing of their children. Recognition of this basic right was important in that it protected the right of the

couple to determine family size and spacing, free from state coercion, intervention or draconian family planning policies such as those later instituted in China. Thus, the UN recognized that individual families, not the state, ultimately should determine their own fertility. This right and the classically liberal thinking which upheld it were not seriously challenged in the UN until the 1974 Population and Development Conference in Bucharest. With the Bucharest ICPD, one can see for the first time within the UN policy the forceful ascendancy of a view that addressed the family predominantly in terms of the reproductive capacity.

### **The Fertility Factor: the Family, the UN, and Population Control**

Subsequent international conferences on population and development (ICPDs) continued strongly link the family to population and development. These conferences, particularly the last two conferences in 1984 and 1994, also made a progressively explicit link between family planning, women’s rights, population and development, thereby placing the family firmly at the center of the debate on women’s rights and population control. Since then, most UN documents have referred to the family in the context and language of those two debates. They also have shifted their analysis away from a ‘group unit’ understanding of family to ‘individuals within a institution,’ who are seen as holding a contractual relationship in need of protection from the other parties group. This is especially evident in the treatment of women and the girl child.

The first Population and Development Conference (1954) convened in Rome, with the second following in Belgrade (1965). According to Johnson (1994), these meetings were not so much concerned with crafting population policy, but with scientifically examining population trends in different regions of the world. This changed with the 1974 conference in Bucharest. As Johnson notes, this particular conference was especially divisive because “the key issue at Bucharest . . . was whether population policy or development policy should have primacy where population problems were concerned.”<sup>34</sup> Many developed nations, notably the U.S., saw population growth as a threat to food security and national stability. Other nations, mostly developing countries, saw population growth as a key to further development. The result of this deadlock was a plan of action that avoided the language of target-setting and instead asked countries to “consider adopting population policies, within the framework of socioeconomic development.”<sup>35</sup> With regard to family planning, the text adopted sought to “encourage appropriate education concerning responsible parenthood and make available to persons who so desire advice on the means of achieving it.”<sup>36</sup> While the conference did not call for implementation of certain population policies or targets, it effectively brought into the international forum the idea that population control and

funding for “population assistance” was necessary for development, security and stability.

Between 1974 and 1984, many changes occurred in international attitudes toward population control. While family planning programmes and population control initiatives proliferated in developed and developing nations alike under the auspices of the UN and other non-governmental agencies like IPPF, China was introducing a draconian one-child per couple policy in an attempt to assert more control over population growth. This particular policy had the effect of turning the public mind against any sort of population control policy that seemed coercive or threatened a couple’s right to “freely determine the number and spacing of children,” as recognized in earlier UN documents and especially by the 1968 Tehran document. The result was a change in the language used by population control advocates to describe the policies they supported: rather than population control, they turned to references about “family planning assistance” and spoke of “reproductive education and services” in the context of providing better healthcare. Thus, while the packaging changed significantly, the substance of the population control argument remained the same. They also began to clearly link women’s rights to population control, arguing that provision of reproductive education and services would free women from the home and allow them greater personal development, which would in turn improve family life. These changes would also have the secondary effect of reducing population growth. Population control advocates capped this argument with the charge that failure to provide “reproductive services and education” restricted a couple’s ability to freely plan and space their children.

Several factors point to the retention of the core population control arguments, even in light of the shift in public opinion. Nafis Sadik, director of the UNFPA and secretary-general of the Population and Development Conference in Cairo (1994), praised China’s approach to population control in an interview given to a Chinese reporter in 1991. “China has every reason to feel proud of and pleased with its remarkable achievements made in its family planning policy and control of its population growth over the past ten years,” Dr. Sadik said, adding that UNFPA would “popularize China’s experiences in population growth control and family planning in other countries.” Eight years earlier, in 1983, IPPF had come to the same conclusion by calling the Chinese population control goals and targets “consistent” with its own goals and objectives and welcoming the Chinese Family Planning Association as a member of IPPF.<sup>37</sup>

The final outcome document from the Mexico City ICPD (1984) clearly reflected the shift in rhetoric from “coercion” to “assistance.” By 1984, the General Assembly had adopted the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which stressed the necessity of

full equality and integration of women in society. However, it also clearly linked women’s equality and social and economic freedom with her reproductive capacity, thus placing the issues of reproduction and family size firmly within the human rights context. The Mexico City document reflected these changes, stating in Recommendation 25:

Improving the status of women and enhancing their role is an important goal in itself and will also influence family life and size in a positive way. Community support is essential to bring about the full integration and participation of women into all phases and functions of the development process. Institutional, economic, and cultural barriers must be removed and broad and swift action taken to assist women in attaining full equality with men in the social, political and economic life of their communities. To achieve this goal, it is necessary for men and women to share jointly responsibilities in areas such as family life, child-caring, and family planning. Governments should formulate and implement concrete policies which would enhance the status and role of women.

The Mexico City document also made other recommendations on family planning, which were careful to avoid any negative connotations of draconian coercion. They recommended, on the assumption that most couples wanted fewer children, that “governments should, as a matter of urgency, make universally available information, education and the means to assist couples and individuals to achieve their desired number of children.”<sup>38</sup>

Mr. Rafael Salas, director of UNFPA at the time, repeated this urgency in his opening address to the conference. Mr. Salas, using the Malthusian rhetoric of limits, made clear that population control—or more euphemistically, global family planning—was the only way in which development, peace and security could be assured. He told the delegates that “population stabilization will make it less difficult for developing countries to improve their levels of living. Voluntary family planning is a vital means of reaching this global goal. . . . It is essential that population programmes be maintained until the promise of stabilization is within sight.”<sup>39</sup> He also exhorted conference attendees to believe:

Only the determined, rational and humane national population policies of countries can bring about a more satisfying future for the forthcoming generations. Governments must plan and work to bring about a global society that is secure and viable, one in which individuals can develop their full potential free from the capricious inequalities of development and the threats of environmental degradation. This should be done without violating the dignity and freedom of the human person *and by giving all people the knowledge and the means to bring forth only the children for whom they can provide the*

*fullest opportunities for growth. . .* (emphasis added).<sup>40</sup>

Unfortunately, Mr. Salas did not elucidate in his address as to who would determine what should be considered an adequate standard of living for a family or what constitutes the “fullest opportunity for growth,” but rather held up population control as the key to combating poverty and underdevelopment. This simplistic linkage between fertility and poverty continues to persist in conference documents today.

By the time of the 1994 Cairo ICPD, population control advocates had successfully embedded much of their message into several conference documents—most particularly at the 1992 Earth Summit in Rio, where a Malthusian language of limits came to dominate thinking about population and development. Couched in more friendly terms of “sustainable development,” the substance of the argument that population growth equals poverty had changed little, except in style and presentation. This language and thinking strongly influenced the Cairo conference.

The Cairo conference was the largest intergovernmental conference on population and development to be held. More than 11,000 people participated from all levels of civil society, and more than 180 nations took part in the negotiations. The kinder and gentler approach to population control was very much present at the conference. As a UNFPA backgrounder noted, the Cairo Programme of Action (POA) ostensibly endorsed:

A new strategy that emphasizes the integral linkages between population and development and focuses on meeting needs of individual men and women, rather than on achieving demographic targets. The key to this new approach is empowering women and providing them with more choices through expanded access to education and health services, skill development and employment, and through their full involvement in policy- and decision-making processes at all levels.<sup>41</sup>

The backgrounder assured that the empowerment of women is the “key to improving the quality of life for everyone.”<sup>42</sup> Another backgrounder noted that “advancing gender equality, eliminating violence against women and ensuring women’s ability to control their own fertility were acknowledged as cornerstones of population and development policies.”<sup>43</sup> Indeed, the table of contents of the Cairo POA had the appearance of a document of the World Conference on Women: Chapter IV dealt with Gender Equality, Equity and Empowerment of Women; Chapter V was entitled “The Family, Its Roles, Composition and Structure”; Chapter VII, “Reproductive Rights, [Sexual and Reproductive Health] and Family Planning; and every chapter that did not have women’s issues as their main subject treated them in detail in a subsection. Thus, the conference made an explicit connection between women’s rights—particularly their “reproduc-

tive rights”—and population and development.

In the meetings preceding and during the Cairo conference, leaders of prominent NGOs seriously challenged the institution of the family. The Asian Pacific Forum on Women, Law and Development (APWLD) circulated a paper at the Cairo PrepCom, which argued:

The institution of the family constitutes both the ideological and material ground for structures of dependence and gender differences that strengthen inequality and women’s oppression. (. . .) Religion and cultural practices are key factors in shaping and maintaining values which inform social roles for women which are oppressive. (. . .) Religion. . . is certainly one of the means by which oppression is achieved.<sup>44</sup>

Many radical women’s rights groups and the major population control NGOs supported this sentiment. This interpretation of family and home as a source of oppression surfaced many times and in many guises during the conference. Of the twelve concerns that were highlighted by expert group meetings for discussion during the conference, nine of them bore aspects of this negative view of the family and home.

“The feminization of poverty” was one concern that echoed throughout the document. In an effort to advance women and lift them out of poverty, the UN created a solution primarily tied to a woman’s reproductive capacity. The argument was that when women exercised their right to “freely determine the number and spacing of children,” they chose to have too many children, who became an economic burden and led to greater poverty. The UN’s antidote to such a dire situation was to ensure reproductive health and services to these women. Critics of this approach note that relatively little attention was given to other factors which could play a greater part in the “feminization” of poverty, such as a lack of education and training or absentee fathers.<sup>45</sup> Still others note that the tie between population and poverty was a tenuous correlation at best.<sup>46</sup>

The Cairo document did promote equal access for men and women to educational and training opportunities. However, the prevailing presumption seemed to be that educated women would have smaller families. To many in UN circles, including activist Gertrude Mongella of WEDO (Women’s Environment and Development Organization), a large family is a sign of ignorance or lack of education. Mongella voiced this presumption in the 1994 UNICEF Report “The Progress of Nations”:

[The] great force for transforming the lives of women in the developing world is the spread of family planning services. . . . Society may tell [women] that she should have seven or eight children. Her husband and his parents may tell her the same. Her status may well depend upon it. And she may well declare this same wish to conform to prevailing social values. But with-

out such pressures, *I do not believe that any woman in her right mind wants eight children* (emphasis added).<sup>47</sup>

The connection between family size, women's reproductive rights and population was made forcefully throughout the Cairo POA, but most particularly in Chapter IV. The document defined reproductive health as:

A state of complete physical, mental, and social well being and not merely the absence of disease and infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so.<sup>48</sup>

With this definition, the UN's role in the most intimate act between a husband and wife went from one that sought disease prevention to the invasive role of sex therapist. However, the document went further to delineate the origin and meaning of reproductive rights as related to this definition of reproductive health:

These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and the means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion and violence as expressed in human rights documents.<sup>49</sup>

The document also made an effort to extend these rights to adolescents in order to "enable them to deal in a positive and responsible way with their sexuality." Indeed, Paragraph 7.7 called for reproductive health-care programmes to be designed "to serve the needs of women including adolescents." No mention was made in either case of the parents' *rights and responsibilities* (language introduced by the Convention on the Rights of the Child, to be discussed later) in the care and education of their children in these matters.

The Cairo ICPD also attempted to redefine family relationships within the family, especially in reference to adolescents and children, most particularly the girl-child. The document first notes that "the human rights of women and the girl-child are an inalienable, integral, and indivisible part of universal human rights."<sup>50</sup> The document placed emphasis on the protection of the rights of the girl-child over and above the rights and needs of other children, particularly in the areas of education and health. In the subsection dedicated to the girl child, the document called for actions to "eliminate all forms of discrimination against the girl child and the root causes of son preference,"<sup>51</sup> to "increase public awareness of the value of the girl child, and concurrently, to

strengthen the girl child's self-image, self-esteem, and status,"<sup>52</sup> and to "improve the welfare of the girl child, especially in regard to health, nutrition, and education."<sup>53</sup> It did not advocate for the full development of the male siblings of the girl child—her brothers—and chose to place the needs of female children above those of male children. This action was based on the presumption that "in all societies discrimination on the basis of sex often starts at the earliest stages of life, greater equality for the girl child is a necessary first step in ensuring that women realize their full potential and become equal partners in development."<sup>54</sup> This not only affected the girl-child's brothers, but the entire family as a whole, for while the document advocated equality of girls and boys and denounced "son preference," by neglecting to treat boys in a positive manner, they unconsciously (or perhaps consciously) promoted "daughter preference."<sup>55</sup>

The Cairo POA also had a further negative effect on the family due to its treatment of adolescents and reproductive health. As a conference document whose goal was to deal with population issues, it rejected coercive population programmes and instead declared that "governmental goals for family planning should be defined in terms of unmet needs for information and services."<sup>56</sup> With regard to adolescents, the document called for increased involvement of adolescents in family-planning programmes and reproductive health information and services:

Youth should be actively involved in the planning, implementation, and evaluation of development activities that have a direct impact on their lives. This is especially important with respect to information, education, and communication activities and services concerning [sexual and reproductive health], including the prevention of early pregnancies, sex education and the prevention of HIV/AIDS and other sexually transmitted diseases. Access to, as well as confidentiality and privacy of, these services, must be ensured with the support and guidance of their parents and in line with the Convention on the Rights of the Child.<sup>57</sup>

This language was repeated throughout the document, and had particular bearing on the relationship between parents and children. The idea expressed earlier in the 1989 Convention on the Rights of the Child is clear—since children are autonomous and independent possessors of rights, they need not be protected by their parents. Thus parents' rights reduced to "support and guidance" of their children's choices, whether those choices are for good or ill.

One outcome of the conference that had a lasting effect on the UN's understanding of the family was the introduction and inclusion of language which attempted to redefine the natural family as "various forms of family" and again, when it spoke in vague terms of "other unions." By introducing such language (referred to in subsequent conferences and

reports), the UN rejected the idea of the natural family as consisting of one man, one woman, and children. The redefined family allowed for "other unions" that do not reflect the natural family pattern based on blood and kinship. The ambiguous language also revealed a profound disregard for children in that the architects seemed to disregard the importance of the family environment in raising children. Thus, "family" could be understood as a heterosexual union with children, as a family's extended family, as a homosexual union with children, as any number of unions of "alternative" orientation, or as any conglomeration of people wishing to call itself "family." The movement from the "natural" family unit to the "contrived" or even "unnatural" family unit had begun in earnest,<sup>58</sup> in the belief these groups held together by contract were better for children than the natural family.

The follow-up conference to Cairo, dubbed "Cairo+5," was held in New York in September 1999. The outcome document<sup>59</sup> noted the progress in the various actions called for by the Cairo conference and also highlighted areas for improvement with regard to the Cairo goals. With regard to the family, there were many significant developments and departures from the original Cairo document, most particularly in the area of adolescents and access to "reproductive information and services." Indeed, while the Cairo document at least gave a nod to the "rights and responsibilities of parents" vis-à-vis their children in the area of reproductive health, the Cairo+5 document made no such attempt. Rather, in places where adolescent reproductive health was discussed (particularly in Section IV), parents were either not mentioned or were referred to only insofar as they supported access to reproductive health information and services. Paragraph 73 (a) states that governments should:

In order to protect and promote the right of adolescents to the enjoyment of the highest attainable standards of health, provide appropriate, specific, user-friendly, and accessible services to address effectively their reproductive and sexual health needs, including reproductive health education, information, counseling, and health promotion strategies. These services should safeguard the rights of adolescents to privacy, confidentiality, and informed consent, respecting their cultural values and religious beliefs and in conformity with relevant existing international agreements and conventions.<sup>60</sup>

Paragraph 73 (d) and (e) recognizes the role of parents and the family, but only insofar as they support adolescent access to reproductive health information and services. It states that governments should:

(d) Acknowledge and promote the central role of families, parents, and other legal guardians in educating their children and shaping their attitudes, and ensure

that parents . . . are educated about and involved in providing sexual and reproductive health information . . . so that they can fulfil their rights and responsibilities toward adolescents;

(e) . . . ensure that adolescents, both in and out of school, receive the necessary information, including information on prevention, education, counselling, and health services to enable them to make responsible and informed choices and decisions regarding their sexual and reproductive health needs, in order to, inter alia, reduce the number of adolescent pregnancies.<sup>61</sup>

It should go without saying that the particular understanding of the role of the family and parents vis-à-vis their children, and especially their adolescent children places the family in a very tenuous, contractual situation. The introduction of the language of rights into the family unit, while attempting to eliminate grievous situations such as abuse and adolescent, out-of-wedlock pregnancy, had the deleterious consequence of destroying the organic unity of the family. The original conception of the Universal Declaration of Human Rights (1948), in which society and states had a subsidiary role with regard to the family unit in the protection and promotion of its members, was substituted by a new definition of new human rights: human rights included reproductive rights. The new conception of human rights entitled both society and the state to intervene within the family.

### The Family in the Human Rights Framework

Since the 1968 World Conference on Human Rights in Tehran, the discussions on the family and family relationships have continued to be placed in a human rights paradigm. One of the most glaring limitations of modern rights language and the human rights framework is its inability to address organic groups such as the family. This, of course, is ultimately rooted in a Lockean understanding of rights, which is individualistic in its nature; it is only capable of addressing individuals and groups composed of individuals bound by contractual agreement. By its very nature, then, modern Lockean human rights language addresses only individuals; thus, members of an organic social unit such as the family are progressively discussed in terms of their own individual rights over and against those of other members of the family—women's rights over and against men's rights, parents' rights over and against children's rights. This position, as Glendon has pointed out, ignores that there is a hierarchy of rights, as well as the reality that all rights are interconnected.<sup>62</sup> Therefore, these rights are balanced against each other. This view is embodied in the Universal Declaration.

#### *Women's Rights and the Family*

The UN has been on the forefront of the women's rights movement and describes its involvement as having four dis-

tinct stages. From 1946–1962, the UN worked “to secure women’s legal equality”; 1963–1975, the UN recognized “women’s role in development”; 1976–1985, the UN established the Decade for Women; and 1986–1995, the UN worked with women “toward equality, development and peace.”<sup>63</sup> The first two stages saw the establishment of the Commission on the Status of Women in 1946, and by 1967, the General Assembly had adopted the Declaration on the Elimination of Discrimination against Women, which ostensibly aimed at protecting economic and social rights of women, such as the right to vote; equal opportunities in education and employment; access to health care, including family planning; and equal rights in marriage and in deciding the number and spacing of children. This, of course, placed the idea of reproductive health and rights firmly on the UN agenda.

The third phase, coincident with the UN Decade for Women, ushered in “an important transformation in its understanding of the role of women.”<sup>64</sup> They began to closely link the role of women in development to issues such as “poverty, overpopulation, illiteracy, food shortages, malnutrition and poor health conditions.”<sup>65</sup> However, as later conferences demonstrate, the role of women in combating underdevelopment became increasingly tied to control of their fertility. This had serious ramifications for the family and family relationships, particularly as women were increasingly described as victims of circumstances, victims of male domination and violence, and ultimately, victims of their own biology.<sup>66</sup> Therefore, it will be this third phase and subsequent developments from it that will be our main focus here.

### 1. *Mexico City and CEDAW: Defining Discrimination*

The World Conference of the International Women’s Year, held in Mexico City (1975) inaugurated the UN Decade for Women. Mexico City focused on the issues of discrimination against (the first conference to do so, thus setting in motion the processes which would culminate with the drafting of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)) and the role of women in economic and social life, particularly in development. The final document also focused on equal rights and responsibilities of men and women within family life and society at large, and also began to argue for the equal right of men and women to determine the number and spacing of children. The conference issued the World Plan of Action (POA), that set up guidelines for the advancement of women over the next ten-year period, such as increases in the level of education; participation in public life; increases in provision for health education and services;<sup>67</sup> and improvements in housing and sanitation. The POA also encouraged the enactment of legislation that would improve access to family planning as a part of overall increased provision of health educa-

tion and services. However, to the dismay of the women’s rights advocates, the plan noted that “since there are wide divergences in the situation of women in various societies, cultures, and regions, reflected in differing needs and problems, each country should decide upon its own national strategy and identify its own targets and priorities.”<sup>68</sup> This willingness to allow sovereign nations the freedom to assess and determine their own needs and priorities decreased, especially with the passage of CEDAW in 1979, in which the UN began to assume the responsibility of setting targets and priorities for countries.

In 1979, the General Assembly adopted CEDAW, after over three years of fractious debate. A legally binding instrument with status as an international treaty, CEDAW attempted to define women’s rights and to apply these rights to all societies. The treaty has significant impact on the family and family relations in that it is very much concerned with reproduction and women’s reproductive rights, relations between the sexes, and the impact of culture on those relationships, as well as redefining the concept of human rights to give a “formal recognition to the influence of culture and tradition on restricting women’s enjoyment of their fundamental human rights.”<sup>69</sup> This emphasis on reproductive rights was a marked shift from the earlier women’s conference in Mexico City, which was much more interested in the development and promotion of the multi-faceted character of women, rather than simply on fertility control. The treaty also articulated a new understanding of discrimination as applied to women:

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or other field.<sup>70</sup>

CEDAW also argued that discrimination against women in any field “hampers the growth of the prosperity of society and the family.”<sup>71</sup> This definition became increasingly important to women’s rights advocates, especially as they began to look for ways to define reproductive and sexual rights. Recently, the definition of discrimination has become important in defining violence against women—particularly “marital rape” and “domestic violence.” This obviously involves the family and family relationships and naturally calls into question the rights of other family members, especially fathers, sons and daughters.

A basic premise of the convention was the idea that “women must be as free as men to make choices not only in the political and legal sphere, but also in such areas as

marriage, the home and family life generally."<sup>72</sup> Within the sphere of marriage and family, the document called for increased protection and recognition of the social function of maternity, while at the same time, it called for "recognition of the common responsibility of men and women in the upbringing of their children."<sup>73</sup> In recent years, some people have further interpreted this call for *equality* of rights between the sexes in the family context to mean *interchangeability*. In this view, the maternal role can be filled by either male or female (the gender lobby would have it apply even further to homosexual, bisexual, transsexual, etc.).<sup>74</sup> And so, since 1979 some have decided that there is no particularly unique gift that women bring to their children as women or mothers—that "maternity" is something that any person can do.

The language of equality permeated Article 16, which dealt explicitly with marriage and family. Article 16(d) further recognized that men and women have "the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children." Equality was also applied to the procreative act between husband and wife, stating in Article 16(e) that husbands and wives have "the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."

## 2. *Copenhagen and Nairobi: Linking Advancement of Women with Fertility Reduction and the War against Stereotypes and Motherhood.*

These themes were reaffirmed at the World Conference of the UN Decade for Women: Equality, Development and Peace (Copenhagen, 1980), which sought to assess the progress and obstacles encountered in the Commission on the Status of Women's goal of advancement, as well as to outline "a programme of concrete action for the second half of the UN Decade for Women: Equality, Development and Peace." At the national level, the program of action first stated:

The improvement of the status of women requires action at the national, local and family levels. It also requires a change of men's and women's attitudes towards their roles and responsibilities in society. The joint responsibility of men and women for the welfare of the family in general and the care of their children in particular should be affirmed.<sup>75</sup>

It also called for legislative measures that guaranteed protection for the social function of parenthood and maternity. It was careful to note that maternity leave "should be understood to be the period which is required by expectant mothers for the protection of their health before childbirth and by mothers for the recovery of their health after childbirth."<sup>76</sup> At this time, the linkage between childbirth and maternity had not been challenged by advocates of a multiple understand-

ing of gender. Parenthood (a role fulfilled by both sexes) was contrasted against maternity (fulfilled by females) when the document recognized that "the raising of children is a joint responsibility of parents and the community at large, efforts should be made to provide for parental leave available to either parent."<sup>77</sup> This link between maternity, motherhood, and childbearing was repeated throughout the document, as well as calls for respect and protection of maternity in society and in the workplace. Since then, however, all references to maternity have been interpreted away from this traditional understanding of the role of motherhood as linked to childbirth and toward an inclusive understanding of motherhood as applicable to anyone of whatever sexual orientation.

The major sub-theme of Copenhagen was "Employment, Health, and Education." It emphasized the need for greater education and integration of women into the workforce, but did not yet view work in the home as a symbol of male oppression, as later conferences tended to do. The section on health discussed family planning as one of many health needs for women such as nutrition, pregnancy, disease, and sanitation. Family planning had yet to become the central and overriding focus of women's health issues, but was clearly growing in importance; as the issue of "reproductive health" was increasingly tied to women's rights throughout the 1980s and 90s, most other health issues such as clean water and malaria ceased to be recognized.<sup>78</sup> However, the section did discuss the integration of family planning information and fertility regulation training into school curricula "so that both men and women can take the responsibility for family planning, to promote the health, safety and welfare of mothers and infants and to enable women to exercise the right to decide freely and responsibly for the number and spacing of their children."<sup>79</sup> No mention was made of a father's contribution to the decision-making process, thus fracturing that organic relationship by pitting the woman's rights in reproduction against the man's. The same paragraph also attributed maternal and infant mortality rates to "too frequent pregnancies, pregnancies at the extremes of the reproductive age and the frequency and danger of secretly performed abortions." Rather than on emphasizing the need for better prenatal and postnatal care, unblinking credence was given to the population control position that pregnancy itself is the cause of this particular ill.

The Copenhagen conference was significant for proponents of women's rights because it raised the issue of violence against women for the first time. However, since it was couched in terms of physical and mental health and the social factors that contribute to violence, rather than in terms of human rights, no instruments were put in place to punish perpetrators of violence. Still recognizing the gap between the public and the private spheres, the UN respected the privacy of the home and the family while condemning violence

and the factors that contribute to it, as well as calling for provision of effective help for women and research into its causes “with a view to eliminating it.” How the UN deals with the sensitive and important issue of violence against women and domestic violence is significant for the family. For, once discussion went beyond prevention of domestic violence and support of victims to talking about it in terms of human rights violations and the transfer was made between “soft” international law and policy to “hard” domestic law, the family was no longer protected from state intervention or intervention via international instruments.

The UN Decade for Women ended in 1985 with a conference in Nairobi, Kenya, to assess the actions taken in the last decade and to establish a programme of action until the year 2000. The review complained that many countries had failed to meet the objectives set by previous conferences and blamed this failure on obstacles such as poverty and underdevelopment, as well as on “major factors in the enduring inequality of women and *de jure* and *de facto* discrimination against them; the continuation of women’s subordinate roles in development, a consequence of physiological, social, and cultural biases.”<sup>80</sup> The outcome document, called the Nairobi Forward-Looking Strategies, had a significant bearing on the family in that it assumed antagonism in the male-female relationship and emphasized division between men and women in the context of the family through its approach to family planning. While the document did not reserve exclusively for women the right to determine the number and spacing in terms of reproductive and sexual rights, Paragraph 29 speaks of the right to “control fertility” only in terms of women and ignores or excludes men in this area: “the issues of fertility rates and permits women to exercise effectively their rights in matters pertaining to population concerns, including the basic right to control their own fertility which forms an important basis for the enjoyment of other rights. . . .”<sup>81</sup> This idea that control of one’s fertility is a basis for the enjoyment of one’s rights, but not a right in itself was reiterated in Paragraph 156. For some, however, this conception of fertility control did not go far enough since:

The statement that family planning is a factor in the “enjoyment” of one’s rights suggests that controlling fertility does not rise to the level of being a right per se. Later UN formulations also declare that the inability to control fertility is a factor that impairs the enjoyment of one’s rights, thus avoiding classifying such acts as a “violation” of any specific rights.<sup>82</sup>

In sum, because access to family planning was not seen as a right, but was merely seen as factor *by which one could enjoy* one’s rights, no one could be held legally responsible if access was somehow impaired. However, once reproductive control was recognized as a woman’s right, anyone who violated that right (most likely her husband, or even the state, if it

failed to provide access to family planning information and services) could be held legally responsible and thereby prosecuted. Radical women’s rights groups regretted the Nairobi situation; again, if reproductive and sexual “rights” were not recognized as such, then they could not be considered to be violated and perpetrators of violations of these ‘rights’ could not be punished.

Paragraph 29 reveals the unapologetic prevalence in mainstream international politics of Malthusian population control arguments. This particular paragraph, in conjunction with the preceding one, links women’s right to “enjoyment” of control of their own fertility with population growth and its perceived attendant issues of poverty and resource depletion. Paragraph 28 claims that “an improvement in the situation of women could bring about a reduction in mortality and morbidity as well as better regulation of fertility, and hence population growth, which would be beneficial for the environment and, ultimately, for women, children and men.” Paragraph 29 closes the Malthusian connection between women’s rights, fertility and population “concerns:”

The issues of fertility rates and population growth should be treated in a context that permits women to exercise effectively their rights in matters pertaining to population concerns, including the basic right to control their own fertility which forms an important basis for the enjoyment of other rights.

This linkage, while seriously challenged by many countries, policy-makers and theorists, continues to enjoy favor even today at UN conferences, most recently evidenced at the ICPD+5 and the Beijing+5 conferences.<sup>83</sup>

The Nairobi conference was also significant for families in that one can see the beginnings of a conscious effort to change “traditional” gender roles. The document spoke of working to change “stereotyped images of women”<sup>84</sup> and “attitudinal discrimination”<sup>85</sup> towards women. While the document may have aimed for the laudable goal of encouraging a positive and dignified view of women (i.e., on television, etc.), use of the language “stereotyped” and “traditional” or “customary” tended to concentrate on a description of women as victims of widespread, systemic discrimination, particularly in societies that wished to protect the role of women in the family and as mothers. Increasing use of this type of language in the UN conferences has resulted in a subtle sort of social engineering. The language of gender roles in the Nairobi document was gradually applied to the roles of men and women in the family, with calls to utilize the educational system and media outlets to show that “stereotyped images . . . can have a profoundly adverse effect on attitudes towards and among women.”<sup>86</sup>

The document raised again the topic of violence in the family. The reality of domestic violence is a sad and tragic one, and all parties involved must be dealt with compassionately

and humanely, respecting their dignity. However, the document, while wishing to address this sensitive issue, seemed to want to swap one repressive regime for another, so to speak. It clearly held men responsible for domestic violence in general, and urged that governments put in place “repressive measures” against “the authors of this maltreatment.”<sup>87</sup>

Governments should undertake effective measures, including mobilizing community resources, to identify, prevent, and eliminate all violence, including family violence, against women and children and to provide shelter, support, and reorientation services for abused women and children. These measures should notably be aimed at making women conscious that maltreatment is not an incurable phenomenon, but a blow to their physical and moral integrity, against which they have the right (and the duty) to fight, whether they are themselves the victims or the witnesses. Beyond these urgent protective measures for maltreated women and children, as well as repressive measures for the authors of this maltreatment, it would be proper to set in motion long-term supportive machineries of aid and guidance for women and children, as well as the people, often men, who maltreat them.<sup>88</sup>

The document did not formally recommend that perpetrators of domestic violence be held accountable vis-à-vis the juridical or criminal systems, nor did it suggest that states were responsible through omission by not prosecuting violent actors. However, it did speak of violence in the family in the language of human rights. Groups wishing to preserve the privacy of the home and family viewed this as problematic. Such language could introduce the possibility of government intervention if perpetrators of domestic violence were seen as violators of human rights and therefore punishable by law. In addition, there was the troubling problem of definition: no UN document had heretofore laid down a comprehensive definition of domestic violence. However, it had defined it in a predominately “patriarchal” power paradigm, declaring that men were usually the oppressors and “authors of this maltreatment.”

### 3. *Vienna and Beijing: Making the Connection between Discrimination and Violence against Women*

The issue of violence against women was raised again in 1993 at the World Conference on Human Rights in Vienna. Between Nairobi and Vienna 1993, women’s rights groups had begun to shift their focus from simply eliminating discrimination to eliminating discrimination through the language and framework of violence. They began to promote the view that states could be held responsible for their inactions as well as their actions, following the jurisprudential model that held states responsible for massive disappearances within the state, vis-à-vis the experience of Latin America.<sup>89</sup> In the case of Latin America, state actors are held

responsible for violence committed by non-state actors. Ken Roth, former director of Human Rights Watch, discouraged this manipulation of jurisprudence, warning that “without the requirement of systematic complicity by the state, the defense of human rights could be ‘gradually transformed into an exercise of crime control.’”<sup>90</sup> Roth and others also criticized the CEDAW argument that gender-based violence qualifies as a form of discrimination, claiming that it would create special groups with special rights, thereby destroying any universal understanding of human rights.<sup>91</sup> Women’s rights groups have failed to address this critical concern, and instead have skirted the issue by arguing that “exclud[ing] the private realm from human rights discourse is wrong,” for as some feminists argue, “the liberal division of society into public and private spheres does not operate neutrally, for women’s concerns are generally left to the private sphere, where regulation is traditionally considered inappropriate. This. . . entrenches women’s inequality.”<sup>92</sup>

This agenda of women’s rights groups with regard to discrimination and violence became more apparent in Vienna, alarming groups that shied away from ideas of centralized governmental control and wished to protect the liberal division of public and private spheres. The document of this conference dealt with the issue of violence in two specific ways: by calling for the General Assembly to issue the Declaration on the Elimination of Violence Against Women (DEVAW) and by calling for the appointment of a Special Rapporteur on Violence against Women. DEVAW defined violence against women to be understood as:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivations of liberty, whether occurring in public or private life.<sup>93</sup>

Article 2 listed generic forms of violence that encompassed physical, sexual, and psychological violence occurring in the family and the community (i.e., battery, sexual abuse of female children, dowry-related violence, marital rape, etc).<sup>94</sup> Such definitions of violence are broad and wide-ranging, not limited to acts of violence themselves, but extended to even the threat of such possible violence. With regard to the family, the declaration categorized family relationships according to sex, and called for special protection against women from violence in the family, but offered no such protection to boys or men. Thus, the human rights groups’ concerns came to pass: DEVAW essentially treated females as a special group with special rights not extended to other groups in the human family. Despite this, DEVAW did not declare violence against women a violation of human rights *per se*; violence was still seen as restricting the enjoyment of one’s rights. However, DEVAW did lay the linguistic framework for Beijing and later conferences.

The Vienna 1993 call for a Special Rapporteur on Violence against Women also had special bearing on the family and family relationships. The office of Special Rapporteur creates an extra-conventional mechanism by which individuals can submit complaints of alleged violations of human rights; in the case of violence against women, individual women are now able to submit a communication detailing an alleged act of violence to the Special Rapporteur on Violence Against Women in the international body of the UN.<sup>95</sup> In 1997, Radika Coomaraswamy, Special Rapporteur on Violence against Women, made it quite clear to a group of Harvard college students that her particular office sees the family and the home as the source of violence against women.

The family has come to be seen as a political unit which may entertain power hierarchies that use their power arbitrarily and violently. Intimacy and privacy are no longer justifications for the non-intrusion of the state. It is important that the hierarchy within the family be challenged and equalized, and that victims of violence within the home be given redress.<sup>96</sup>

Coomaraswamy advocated “an activist and interventionist state extending protection to the battered, violated woman.”<sup>97</sup> Indeed, her understanding of violence in the human rights context extended into the home, expressing that “one can only hope that the common values of human dignity and freedom will triumph over parochial forces attempting to confine women to the home. Only then will we be able to celebrate the true victory of women’s rights recognized as fundamental human rights.”<sup>98</sup>

This philosophy was quite evident at the Fourth World Conference of Women in Beijing in 1995, where the overriding themes were sexual and reproductive rights for women and girls, particularly in the areas of health and education. Although it was expressly understood that no new rights were to be introduced into the text, ambiguous language was used throughout the document in reference to sexual and reproductive rights. While there was no explicit recognition of reproductive ‘rights’ as rights *per se*, the language was sufficiently ambiguous and indirect so as to give indirect recognition. For example, the document recognized reproductive health as a woman’s right, and then proceeded to argue that women’s rights were human rights and human rights were women’s rights. Thus the connection, albeit indirect, was made sufficiently clear so as to ensure that the language of “reproductive rights” would be on the agenda of future conferences.

In the area of health, the document emphasized the need for sexual and reproductive health care as a priority above all other health concerns and needs of women and girls, such as nutrition, sanitation, tropical diseases, maternal morbidity, maternal mortality, among others. For instance, paragraph 106 (e), when speaking of primary health care, refers *only* to “sexual and reproductive health care, which includes family

planning information and services, and giving particular attention to maternal and emergency obstetric care.”<sup>99</sup>

Within the area of education, the document called for governments to “remove all legal, regulatory and social barriers, where appropriate, to sexual and reproductive health education within formal education programmes regarding women’s health issues,”<sup>100</sup> making no mention of parents’ rights vis-à-vis their children in this area. In addition, there was a heavy emphasis on the need to eliminate “stereotyped” gender roles in the family and society via educational and mass media channels.<sup>101</sup> Education and media, of course, have long been recognized to be critical in shaping the attitudes, ideas and culture of a society. Clearly, the architects of the Beijing document saw the opportunity to conduct strategic social engineering by calling for the alteration of ideas on gender, sex and sexuality, and reproductive rights through the powerful channels of education and media.

A radical development in the document came in reference to the girl-child and in the explicit discussion of adolescent sexual and reproductive health. In the section L, dedicated to the girl-child, the document again reiterates the need to alter gender role conceptions:

Girls and adolescents may receive a variety of conflicting and confusing messages on their gender roles from their parents, teachers, peers, and the media. Women and men need to work together with children and youth to break down persistent gender stereotypes, taking into account the rights of the child and the responsibilities, rights, and duties of parents.<sup>102</sup>

With the exception of the boilerplate clause recalling the responsibilities, rights and duties of parents at the end of the paragraph, the unfortunate attitude toward parents is clear: when it comes to the types of gender roles that are conveyed to their children, parents are a part of the problem of “persistent gender stereotypes.” One way that they can be a positive influence on their children, according to the document, is to “break down” these persistent stereotypes. What exactly these stereotypes are, the document does not enumerate; however, if one analyzes the positions taken toward different gender roles throughout the document, it soon becomes evident. “Positive” gender roles are those not associated with the home and motherhood—it the exceptional reference that speaks of these institutions in affirmative terms. The terms ‘mother’ and ‘motherhood’ were used more negatively than positively; indeed, with exception of one positive and two neutral references, all of the references to motherhood were negative. Clearly, according to radical feminist ideologies prevalent at Beijing, motherhood was a stereotype to be broken down.

In addition, the family was frequently cast in a negative light in relation to girls. The document called for governments and NGOs to “formulate policies and programmes to

help the family . . . in its supporting, educating, and nurturing roles, with particular emphasis on the elimination of intra-family discrimination against the girl child."<sup>103</sup> This portrayal of the family is negative in two respects: 1) it identifies the family as a hotbed of discrimination against women and girls; and 2) with the persistent attempts by radical women's rights groups to link discrimination to violence against women and girls, and to have violence against them recognized as a violation of human rights, it further blurs the line between private and public spheres.

Section L also clearly speaks of adolescent sexual activity and reproductive health. The document argues that "sexual violence and sexually transmitted diseases, including HIV/AIDS, have a devastating effect on children's health, and girls are often more vulnerable than boys to the consequences of unprotected and premature sexual relations. Girls often face pressures to engage in sexual activity."<sup>104</sup> The solution to this situation is to "strengthen and reorient health education and health services, particularly primary health care programmes, including sexual and reproductive health, and design quality health programs that meet the physical and mental needs of girls and that attend to the needs of young, expectant and nursing mothers."<sup>105</sup> This assumes adolescent sexual activity is widespread amongst teenage populations. It also implies that adolescent sexual activity is a good thing, since the document only suggests health and education programs that support such activity (i.e., safe-sex campaigns), and fails to mention abstinence. In the area of primary health care, it assumes that the primary health care need of girls and adolescents is in the area of sexual and reproductive health. Oddly enough, the document makes no mention of the need to combat diarrhea (a major killer of young children in developing nations),<sup>106</sup> or tuberculosis (the number one killer of young women in developing nations),<sup>107</sup> or tropical diseases such as malaria.<sup>108</sup>

The follow-up conference to the FWCW (Beijing+5) was held in New York in June 2000. The fragile consensus that had been eventually constructed at Beijing was severely threatened and nearly crumbled at several points during the follow-up conference. The issues which lay at the core of the conflict were attempts made by the EU and JUSCANZ (a voting bloc made up on Japan, the U.S., Canada, Australia, New Zealand, Luxembourg, and South Korea) to introduce indeterminate and vague language concerning gender roles, homosexuality, abortion, and the reproductive rights of the girl child. Members of developing nations were dismayed that JUSCANZ consistently ignored parental rights and denigrated traditional roles such as motherhood. Perhaps one of the most contentious of the JUSCANZ-backed issues was language regarding the reproductive rights of the girl child. Such language aimed to ensure the girl child's full realization of her sexuality and sought to entitle the girl child to private

and confidential sexual and reproductive information, counseling and services both in and out of school by implementing national mechanisms, policies and programs. This angered many voting members, in addition to the failure of JUSCANZ to acknowledge the rights and responsibilities of parents to educate and provide for their own children.

With regard to the family, the Beijing+5 document reiterated the need to strengthen the family, but retained the "various forms of family language" inherited from the ICPD. It also reaffirmed the right of couples to determine the number and spacing of their children. It recalled the definition of reproductive health that was defined in Cairo, but added language on sexual health to the definition of reproductive health, and therefore a component of reproductive health care:

Reproductive health care is defined as the constellation of methods, techniques and services that contribute to reproductive health and well being by preventing and solving reproductive health problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counselling and care related to reproduction and sexually transmitted diseases.<sup>109</sup>

The document went on to link this definition of sexual and reproductive health to the concept of reproductive rights, stating that "reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents."<sup>110</sup> The document then argued that these rights are based on "the basic right of all couples *and individuals* to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health" (emphasis added).<sup>111</sup> This clear linkage between sexual health and reproductive rights was an obvious step on the part of groups interested in a formal recognition of "sexual rights." The recognition of such rights would essentially mean formal recognition of rights based sexual orientation and would then mean according to non-heterosexual couples the rights reserved for heterosexual couples—the right to marry, the right to found a family, as well as other rights and protections accorded the family by the Universal Declaration and other UN documents.

The definition of reproductive rights also included the link between reproduction and violence. The document argued that reproductive rights not only include the right to determine the number and spacing of children, but also "their right to make decisions concerning reproduction free of discrimination, coercion *and violence*, as expressed in human rights documents" (emphasis added).<sup>112</sup> This is significant for natural marital relations since it not only assumes an antagonism between husbands and wives that reaches

violent proportions, but also introduces the idea of marital rape, which was mentioned in paragraph 103 (c):

Establish legislation and/or strengthen appropriate mechanisms to handle criminal matters relating to all forms of domestic violence, including marital rape and sexual abuse of women and girls, and ensure that such cases are brought to justice swiftly.

Organizations such as IPPF have advocated the use of abortion in situations such as rape which result in pregnancy (they refer to this as 'forced pregnancy'), and these groups have sought to have this inserted into UN documents. In the case of the marital relationship, if the couple found they were pregnant and the husband wanted the baby, but the wife did not, she could claim marital rape. If abortion were legally recognized as a "method of family planning" in violent situations, the wife could, under protection of international law, procure an abortion against her husband's wish and the law of the country. This would introduce antagonism and fragmentation into the marital relationship, in addition to that which the UN already presumes to exist. Of course, legislation is already in the UN books to deal with women in violent situations. Paragraph 103 addresses the issue of violence against women, calling for governments to:

As a matter of priority, review and revise, where appropriate, legislation, with a view to introducing effective legislation including on violence against women, and take other necessary measures to ensure all women and girls are protected against all forms of physical, psychological, and sexual violence, and are provided recourse to justice;<sup>113</sup>

Treat all forms of violence against women and girls of all ages as a criminal offence punishable by law including violence based on all forms of discrimination;<sup>114</sup>

Violence against women was still considered to be an impairment of women's *enjoyment* of their human rights, and not a human rights violation per se. However, if radical women's rights groups had their way, recognition of violence against women as a violation of a human right would not only extend to violence in the community, but would also extend to the home and to sexual and reproductive rights.

Adolescents and the girl-child also received attention in the area of reproductive health. The document again recalled the language of ICPD and Beijing and called for education and services to enable adolescents "to deal in a positive and responsible way with their sexuality."<sup>115</sup> This reference to "sexuality" operates on two levels insofar as it: 1) refers to adolescent sexual activity in general, and 2) allows for a "transgendered" interpretation. This much is clear, for in the same paragraph, the document talks about women's "sexuality" in terms of sexual activity, not reproduction. The document states that "the human rights of women include their

right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination, and violence."<sup>116</sup> Adolescents were also to be the beneficiaries of government programs that "provide them with education, information and appropriate, specific, user-friendly, and accessible services without discrimination to address effectively their reproductive and sexual health needs."<sup>117</sup>

The document did make reference to the rights, duties, and responsibilities of parents and legal guardians in this area, but placed in on equal footing with the adolescents' right to "privacy, confidentiality, respect, and informed consent."<sup>118</sup> This piece of verbal jockeying effectively tied the hands of parents, since the right to confidentiality and privacy essentially excluded parents from the process entirely. The education and information which adolescents were to have access to included programs that "*inter alia*, build adolescent girls' self esteem and help them take responsibility for their own lives; promote gender equality and responsible sexual behaviour; raise awareness about, prevent and treat sexually transmitted infections, including HIV/AIDS and sexual violence and abuse; counsel adolescents on avoiding unwanted and early pregnancies."<sup>119</sup> Thus, it can be seen that while developing countries made serious efforts throughout the conference to protect the natural family and family relationships, they lost significant ground in the areas of gender and sexual rights,<sup>120</sup> as well as in the area of adolescent reproductive health and rights. It is also clear that the natural family has fared badly with regard to women's rights in the twenty or so years since CEDAW: women's rights groups and population control advocates have introduced into UN documents, soft international laws, the presupposition of the existence of antagonism, discrimination and violence within the family and family relationships and have based policy on this seriously flawed and erroneous assumption.

#### *Children's Rights and the Family*

The area of children's rights has also received a great deal of attention in international policy making circles, and particularly at the UN. In 1989, the General Assembly proposed to member states the ratification of the Convention on the Rights of the Child. The document enjoyed quick ratification by many member states, including the U.S. However, this document clearly revealed a marked departure in the UN's understanding of family and family relationships, especially the relationship between parent and child.

Historically, the relationship between parent and child was understood to be one of protection. Because of their minority, the law argued that children lacked the emotional and intellectual maturity to make fundamental decisions for themselves, and that parents and legal guardians had the right to make those fundamental decisions in their stead.

Furthermore, the children had the right to the protection of their parents, precisely because they needed it. This attitude was clearly seen in Article 26 of the Universal Declaration of Human Rights, where the founders of the UN recognized the right of parents to choose the kind of education that their children would receive, and this was reaffirmed and developed further later covenants. The International Covenant on Economic, Social, and Cultural Rights enunciated the stipulation that parents were not limited to state-run facilities. More importantly, they included religion and morality within the parameters of education, and declared that parents had the right to educate their children according to their own religious convictions.<sup>121</sup> This understanding of children as the beneficiaries of parental protection was the fundamental principle on which the 1959 Declaration of the Rights of the Child was based. The Declaration based this on a principle of subsidiarity: "the main responsibility lay with individual men and women and it was only when they were found wanting that the State should intervene. That is, the free nations contended that protection and education of the child are fundamentally the province of natural parental authority, which should not extend to state law."<sup>122</sup>

However, this conception of the parent-child relationship began to shift. Social scientists note that the 1960s ushered in an era of profound distrust of authority and persons in positions of authority. Theorists of family and family relationships began to question and distrust natural parental authority and consequently began to propose a more contractual family unit. In their minds, parental rights and authority did not precede the state, but were granted by the state, which set up contractual relationships of rights and duties between parent and child. This image of the family was a major departure from the traditional image of the family as an organic unit, bound together by blood and kinship. As Morita observes, this "new doctrine put the family in the position of mere caregivers, bound to the observance of the child's rights."<sup>123</sup> Children's rights advocates brought this new doctrine of the parent-child relationship into the crafting process of the Convention on the Rights of the Child.

The convention is based on two fundamental principles of interpretation of children's rights: 1) the principle of the evolving capacities of the child; and 2) the principle of the best interests of the child. The first is based on the idea that as children mature, their capacity for decision-making and participation in adult activity grows. The second is founded on the idea that all action taken with regard to children will have their best interest as the primary concern. The crafters of the convention also included four other related principles, now referred to as the four "Ps": Participation, Protection, Prevention, and Provision. It is the first "P," participation, which has caused the most controversy, in that most UN documents since the convention have focused on making provi-

sion for children's access and participation in every area of life—even, as we have seen, the area of sexual activity. Children's right advocate Geraldine Van Bueren sees the situation more benignly, arguing that "at issue is whether the best interests of the child is served by focusing exclusively on the child's welfare or whether children are entitled to participate in decisions affecting their own destinies."<sup>124</sup>

Article 1 laid the basic parameters for the document by stating that human beings under the age of eighteen are considered children; majority is attained at eighteen years and thereafter parental guidance is not required. The principle of subsidiarity on which the earlier declaration was founded was weakened fairly quickly in the document: Article 2 states that "States Parties undertake to ensure the child such protection and care as is necessary for his or her well being, taking into account the rights and duties of the parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."<sup>125</sup> However, Article 5 notes that "States Parties shall respect the responsibilities, rights and duties of parents, or where applicable . . . to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present convention."<sup>126</sup> Article 9 states that "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine . . . that such separation is necessary for the best interests of the child."<sup>127</sup>

The document recognizes several autonomous rights of the child, the most basic one of which is the inherent right to life.<sup>128</sup> Others include: the right to form and express his or her own views;<sup>129</sup> the freedom to seek, receive, and impart information and ideas of all kinds via any media of choice;<sup>130</sup> the freedom of thought, conscience, and religion;<sup>131</sup> and the freedom of association and peaceful assembly.<sup>132</sup> With the exception of the freedom of thought, conscience and religion, parents' rights and duties are not mentioned; rather the document states that these rights shall not have limitations placed on them, except to protect public safety, order, health, morals, or the fundamental rights and the freedoms of others.

This presents problems in already tricky task of child rearing. According to international law, children have the right to associate with whomever they wish, regardless of whether their parents think they are "a bad influence." Additionally, mothers and fathers cannot censor information, whether via television, movies or the Internet. In these and other areas, including education, health, religion, and morality, among others, parents' rights have been severely curtailed by two principles, which in themselves are vague and indeterminate: the evolving capacities of the child and the best interests of the child. Capacities and maturity vary drastically from individual

to individual; the document does not outline a standard by which the capacities of the child may be measured. In addition, the document fails to specify who determines what constitutes the “best” interests of the child. To those who interpret the document on the basis of parental distrust, it would be the state that would determine best interests. To those who uphold an organic understanding of the parent–child relationship, it would be the parent. However, as UN documents created since 1989 have demonstrated, the former interpretation seems to be in current favor in international policy making circles.

The Cairo and Beijing conferences and their follow-up meetings demonstrate this. One area that reveals this interpretation clearly comes in reference to adolescent reproductive health and rights. The attempt to guarantee adolescents the right to reproductive health information began in Cairo, and was extended to include reproductive counseling and services at the Beijing conference. Both Cairo and Beijing made references to the rights, duties, and responsibilities of parents in these areas, but Beijing weakened parents’ fragile foothold by placing them on equal footing with the adolescent’s right “access to information, privacy, confidentiality, respect, and informed consent.”<sup>133</sup> According to the UN, girls and adolescents need help in learning how “to deal in a positive and responsible way with their sexuality.”<sup>134</sup> This theme had its origin in Cairo and was played out even through the last conference (Beijing+5). In addition, they also had the right to sexual education, as well as reproductive information and services.<sup>135</sup> It has generally been the case that as the UN has endeavored to open access to all areas of decision-making for children, they have simultaneously ignored the rights of parents in these areas. For example, the UN has sought to encourage adolescent access to all areas of adult sexuality and reproduction (i.e. health care information and services, contraceptives, etc). Indeed, as women’s rights advocates continue push to have reproductive and sexual rights increasingly recognized by the UN, it will be a matter of time before they seek to make those same concessions available to adolescents and children.

### Conclusions

As we have seen, UN documents of the last two decades have drastically redefined the family unit which was upheld and protected by the Universal Declaration in 1948. In many ways, the changes that have impacted the family and family relationships the greatest have come via the human rights discourse that has dominated international policy circles since the 1970s. Soft law instruments non-binding international documents—have been the preferred tool used by interested actors as if they were hard law. This has been so because their status in the international political system is so ambiguous and thus provided a useful instrument to new norms and change in norms. It is precisely this discourse that introduced fragmentation into policies regarding the family. Human rights language understood in the Lockean sense, by

its very nature, is limited to and addresses *individual* rights, and fails to acknowledge the hierarchical and interconnected nature of all rights. Human rights language thus understood fails when it comes in contact organic groups such as the family, since it can only address individuals in the group and not the group as a whole.

Human rights language has its place in our world—it protects us from many evils and seeks to preserve human dignity. However, if international and national policy making circles persist in operating in the human rights—individual rights paradigm, they need to make allowances for the unique relationships in a family that go beyond any understanding of individual rights and duties. Governments at every level of civil society need to make allowances for these fundamental and natural sorts of relationships that are not addressed due to the limitations of rights language. In addition, international bodies like the UN and national governments need to craft policies that address every dimension of family life and the family as an organic unit, not just the sexual and reproductive aspects, with which recent documents have been obsessed. To do so, recognition of the existence of a hierarchy of rights as well as the fact that the rights are interconnected is essential.

The family is critical to the maintenance of civil society. As the Universal Declaration and UN documents to this day acknowledge, it is the natural and fundamental group unit of society. The home is where human beings learn how to live in society; it is where they learn friendship and love for their fellow beings. This must be preserved; to treat the family, as a hotbed of discrimination and violence, as radical women’s rights groups often do, is to demean it and rob it of its dignity. To treat it as the source of rampant overpopulation, as population control advocates do, is to reduce it to sex and reproduction.

The family is multidimensional, material, and spiritual, and, as such, has the capacity to affect every sector of society. International and national policy must begin to address these dimensions. Families can help the environment by teaching responsible consumption. Families can reach out to aging populations by encouraging intergenerational interaction. Families can help to combat social ills such as pornography and violence by promoting the inherent dignity of every human person and by teaching their children about the unique gift of sex in the marriage relationship. Civil society depends on the family for its own health and well being; if policy makers continue to demean or reduce the family and fail to address it in its multidimensional character, civil society will necessarily suffer the consequences.

### NOTES

1. \*We wish to thank the Vollmer Foundation for providing support for this research, and to Reza Saidi, Lynn Wardle, Mary Meade, Ana Marta Gonzalez, and Alejandra Segura for

their helpful comments. Universal Declaration of Human Rights, Article 16.3. Document A/RES/217 A (III). 177/20.

2. *Ibid.*, Art. 12.

3. Abbot K.W. and Snidal, D. (2000).

4. Haaland-Matlary. 2001, p. 4.

5. *Ibid.*, p. 4.

6. Brown *et al* is a good example of this particular aspect of the population control argument, 1999.

7. Ehrlich (1968), Hardin (1968 and 1998) and Harrison (1992), provide succinct summaries of this aspect.

8. i.e., human capital theorists such as Gary Becker (1964, 1991, and 1993), and human creativity proponents such as Simon (1981, 1996, 1999), Aguirre (2001b,c) and Boserup (1981 and 1990).

9. See Furedi (1997) for further exposition of these and other groups involved in the population debate.

10. See Sen, Germain, and Chen (1994) and Coomaraswamy (1997) for a clear outline of this perspective.

11. To members of this group, the term 'mother' is an increasingly pejorative term, as recent developments at ICPD+5, Beijing+5 and other UN meetings have demonstrated. See UNFPA's latest publication (2000a) entitled "Women's Empowerment and Reproductive Health: Links throughout the Lifecycle" for a glimpse of this perspective.

12. See Fox-Genovese (1996), Hoff Sommers (1995), and Murphy (1995) for a view of this perspective.

13. See Van Bueren (1995) and Alston (1994) for a more detailed exposition of this position.

14. See Morita (1999) and Farris (2000) for a more detailed exposition of this position.

15. See Haaland-Matlary (2000) and Aguirre and Hadley (2001) for an exposition of this position.

16. Universal Declaration of Human Rights, Art. 16.

17. *Ibid.*

18. *Ibid.*, Art. 25.2.

19. *Ibid.*, Art. 26.3.

20. Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, preamble.

21. *Ibid.*, preamble.

22. *Ibid.*, preamble.

23. International Covenant on Economic, Social and Cultural Rights, Art. 10.1.

24. *Ibid.*

25. *Ibid.*, Art. 10.3

26. *Ibid.*, Art. 12.

27. *Ibid.*, Art. 12.2 (a).

28. *Ibid.*, Art. 12.2 (b).

29. *Ibid.*, Art. 12.2 (c).

30. *Ibid.*, Art. 12.2 (d).

31. *Ibid.*, Art. 13.3

32. International Covenant on Civil and Political Rights, Article 23.4

33. *Ibid.*, Art. 24.

34. Johnson (1994), 109.

35. *Ibid.*, 122.

36. *Ibid.*

37. Garcia-Robles (1995), p.3.

38. UNFPA (1984), Recommendation 25.

39. Johnson (1994), 177.

40. *Ibid.*

41. Online document.

42. *Ibid.*

43. Online document.

44. Garcia-Robles (1995), 4.

45. See Aguirre (2000) for a review of these findings.

46. Aguirre (2001b), Johnson (2000), Simon (1996), Eberstadt (1995 and 2000) present some of this evidence.

47. UNICEF (1994), 31.

48. ICPD'94, para. 7.2.

49. *Ibid.*, 7.3.

50. *Ibid.*, Principle 4.

51. *Ibid.*, 4.16 (a).

52. *Ibid.*, 4.16 (b).

53. *Ibid.*, 4.16 (c).

54. *Ibid.*, 4.15

55. *Ibid.*, 4.17

56. *Ibid.*, 7.12.

57. *Ibid.*, 6.15.

58. It should be noted that over forty countries placed reservations on the whole document, and over eighty nations on parts of it.

59. "Key Actions for the further implementation of the Programme of Action of the International Conference on Population and Development" (Cairo+5).

60. Cairo+5.

61. *Ibid.*

62. Glendon (1998), "Knowing the Universal Declaration of Human Rights," *Notre Dame Law Review*, 75:5.

63. United Nations (1995), 3-7.

64. *Ibid.*, 5.

65. *Ibid.*, 5.

66. Garcia-Robles (1995), 1.

67. WCW '75, Paragraph 49 (h).

68. *Ibid.*, Paragraph 28.

69. CEDAW, Introduction.

70. CEDAW, Article 1.

71. *Ibid.*, preamble.

72. United Nations (1995), 42.

73. CEDAW, Art. 5(b).

74. See Sara Ruddick (1977) and (1989). In her 1977 piece, Ruddick argues that motherhood is not linked to sex or biology. Anyone may "deploy a maternal identity and celebrate maternal relationships, exploiting the symbols of motherhood evocative in their particular culture" (p. 372).

75. Copenhagen 1980, Paragraph.47.
76. Copenhagen, 1980, Paragraph 64. A/CONF.94/35 (80.IV.3)
77. *Ibid.*
78. The two main causes of death in adult populations in developing countries are malaria and tuberculosis; the relatively inexpensive treatment of these diseases has been increasingly overlooked in UN documents. See WHO, *Malaria Prevention and Control*, Division of Control of Tropical Diseases (2000); Bernard Bradin, "Tropical Diseases," *The Medical Journal of Australia*, 158:1.
79. Copenhagen, 1980, Paragraph 146.
80. United Nations (1995), 46.
81. Nairobi(1985), Paragraph 29. Also see Paragraphs 157 and 159.
82. Gaer (1998), endnote 58.
83. Evidence of this will be examined in a later section; the linkage of women's rights and population control was made more complex at the ICPD+5 and the Beijing+5 conferences by the introduction of issues such as gender, homosexuality, abortion and the right of girls and adolescents to reproductive information and services.
84. Nairobi (1985), Paragraph 206.
85. *Ibid.*, Paragraph 11.
86. *Ibid.*, Paragraph 206.
87. *Ibid.*, Paragraph 231.
88. *Ibid.*, Paragraph 231.
89. Gaer (1998), p. 22.
90. *Ibid.*
91. *Ibid.*
92. *Ibid.*
93. DEVAW, Article 1. A/RES/48/104.
94. See UNFPA, *Violence Against Girls and Women: A Public Health Priority*, UNFPA Advocacy Series (2000).
95. The task of the Special Rapporteur, as defined by the Commission on Human Rights, is to "seek and receive information on violence against women, its causes and consequences" and to "recommend measures, ways and means, at the nation, regional, and international levels, to eliminate violence against women and its causes, and to remedy its consequences." Commission on Human Rights Resolution 1994/45 (ESCOR, 1994, Suppl. No. 4, p. 140), para. 7 (a).
96. Radika Coomaraswamy, *Reinventing International Law: Women's Rights as Human Rights in the International Community*, 19.
97. *Ibid.*, 20.
98. *Ibid.*, 27.
99. Report of the Fourth World Conference on Women (Beijing 1995), Paragraph 106 (e). A/CONF.177/20.
100. *Ibid.*, 83 (k).
101. *Ibid.*, 83 (a).
102. *Ibid.*, 262.
103. *Ibid.*, 285 (a).
104. *Ibid.*, 269.
105. *Ibid.*, 281 (c).
106. WHO, "Reducing Mortality from Major Killers of Children"
107. "Medecins sans frontieres"; also WHO "TB is the Single Biggest Killer of Young Women," press release (26 May 1998); accessible online.
108. WHO, "Malaria Prevention and Control," Fact Sheet from the WHO Division of Control of Tropical Diseases, also WHO, "Reducing Mortality from Major Killers of Children."
109. Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action (Beijing+5), 107. (g) ter.
110. *Ibid.*
111. *Ibid.*
112. *Ibid.*
113. *Ibid.*, 103 (a).
114. *Ibid.*, 103 (b).
115. *Ibid.*, 107 (g) ter.
116. *Ibid.*
117. *Ibid.*, 115 (f) bis.
118. *Ibid.*
119. *Ibid.*
120. By attempting to introduce ambiguous gender language, especially in terms of sexual rights, radical feminist groups and transsexual and homosexual rights groups hoped to gain formal UN recognition of homosexuality/transsexuality as separate genders with specific rights.
121. International Covenant on Economic, Social, and Cultural Rights, Art. 13.3
122. Akira Morita, "Beyond the Myth of Children's Rights," paper presented at the World Congress of Families II (Geneva, November 1999).
123. *Ibid.*
124. Geraldine Van Bueren, *The International Law on the Rights of the Child*, International Studies in Human Rights, vol. 35 (Dordrecht: Martinus Nijhoff Publishers, 1995), 16.
125. Convention on the Rights of the Child, Art. 2. A/RES 44/25 (1989).
126. *Ibid.*, art. 5.
127. *Ibid.*, art. 9.
128. *Ibid.*, art. 6.
129. *Ibid.*, art. 12.1.
130. *Ibid.*, art. 13.1.
131. *Ibid.*, art. 14.2.
132. *Ibid.*, art. 15.1.
133. Beijing 1995, 107 (e).
134. Beijing+5, 107 (g) ter.
135. Beijing '95, Paragraph 267.

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