Case Number: 2011-0168-F

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the Clinton Presidential Library Staff.

Folder Title: Interagency Working Group: Human Rights Treaties [7]				
Staff Office-Individual: Legal Advisor-Krass, Caroline				
Original OA/ID Number: 3114				
Row: 40	Section: 1	Shelf: 3	Position: 1	Stack: V

- The right to a joyful maternity, which includes a freely decided, wished, and safe pregnancy,
- The right to humanised medical treatment, meaning that a woman's body, her fears, intimacy, and privacy needs should be treated with dignity and respect.
- The right to be treated as an integrated person and not as a biological reproducer by the health services.
- The right to have access to integrated health services which respond to women's specific needs, taking into consideration special characteristics such as age, activities, economic needs, race, and place of origin.
- The right to have access to education that fosters self-care and self-knowledge of the body, promoting self-esteem and empowerment.
- The right to receive information and counselling that promotes the exercise of a free, gratifying, and responsible sexuality, not necessarily conditioned to pregnancy.
- The right to have access to sufficient and appropriate information and counselling and to modern and safe contraceptives.
- The right to have working and living conditions and environments that do not affect women's fertility or health.
- The right not to be discriminated against in the work place or in educational institutions on the basis of pregnancy, number of children, or marital status.
- The right that biological processes such as menstruation, pregnancy, birth, menopause, and old age be considered as natural events and not as illness.
- The right to receive value and respect for cultural knowledge and practices related to women's health.
- The right to have an active and protagonist participation in the community and Governmental decision-making levels of the health system.
- The right to have access to public health services that take care of battered women and victims of all forms of violence.

(from: "CEDAW, Colombia and Reproductive Rights," at 5-6)

The overarching principle that informs the Colombian health policy is its recognition of the importance of women's active involvement. The policy stresses that all women have the right to be active participants in decisions that affect their health, lives, bodies, and sexuality. The policy sets out basic measures — that depend on women's agency — for ending discrimination against women in health care. Women must be empowered, so that the exercise of their rights is guaranteed; women must be afforded equal opportunities; pluralism and differences must be respected; health care must emphasise both women's freedom and privacy; and the social participation of women in active roles must be facilitated.

V. THE CEDAW REPORTING PROCESS

When a State ratifies CEDAW, it undertakes the obligation to present reports at the United Nations on the progress it has made implementing women's human rights. The first report is due one year after ratification, and a further report is required every four years following that date. These reports are made to the CEDAW Committee. The Committee engages in a "constructive dialogue" with the Government delegation presenting the report regarding implementation of the Convention, and comments on whether the steps the Government has taken to implement CEDAW constitute adequate progress. The Committee also produces recommendations ("concluding comments") about the actions the Government should be taking under CEDAW, and about areas in which it might focus its efforts. Both the State reports and the summaries of the Committee's concluding comments are public documents.

The CEDAW Committee is comprised of 23 experts from diverse backgrounds, which reflect the areas of substantive concern covered by the Convention. Experts are elected by the States Parties to the Convention for a term of four years and serve in their personal capacity.

Women's NGOs are not formally included in the CEDAW Committee sessions at which Government reports are presented, but their communication with the Committee is a crucial part of the process. The Committee has welcomed independent information to help it assess Government claims and to determine where improvements are needed, and the Committee has called on NGOs to help provide that information. For this purpose, many NGOs have joined together in coalitions to prepare "shadow reports" for the Committee, which describe the state of women's human rights in their countries and comment on their Governments' reports.

Women's NGOs have used the reporting process to good effect: to hold their Governments accountable for the claims and commitments made at the CEDAW Committee sessions, to continue dialogue with their Governments on implementing the CEDAW Committee's concluding comments, and as a vehicle to raise public awareness within their own countries.

Zimbabwe

The Government of Zimbabwe presented its first report to the CEDAW Committee in January 1998. The report painted a glowing portrait of the state of women's human rights in Zimbabwe, and its centrepiece was the 1982 *Legal Age of Majority Act (LAMA)*. This Act is very important to women in Zimbabwe. It places men and women on an equal legal footing, giving both full legal capacity at the age of 18. Because of *LAMA* women can: enter into any contract, includ-

© United Nations

most important contributions they felt CEDAW could make to the reform of Indian law. Women's equality rights are already recognised and respected in many of India's laws affecting public life. However, discrimination has not been challenged in the key laws that regulate and structure private life. The Indian personal laws, which control matters such as inheritance, property rights, and adoption, continue to follow patriarchal principles. For example, according to Hindu personal law, daughters are denied most of the important coparcenary property rights that are granted to sons; women's right to the family dwelling home is subordinate to men's rights; women's guardianship of their children is secondary to that of men's; and wives cannot initiate adoption. Women's NGOs characterise the present Indian legal order as guaranteeing only formal, and not substantive, equality for women. They believe that so long as private life is thoroughly regulated according to patriarchal principles, it will not be possible for women to exercise their public rights in a meaningful way. As Rani Jethmalani, of Women's Action Research and Legal Action for Women (WARLAW), explains the problem:

> The regime of personal laws which are gender discriminatory and violate article 14 of CEDAW have reduced women to second class citizens. Unless these laws are amended women cannot be empowered to combat violence and cultural practices that frustrate and deny them equality and dignity. It is futile to empower women by giving them decisive voices in decision making bodies where those voices are feeble and unequal without at the same time changing the — If each voice including the voices of women is to significance and ing then t voices must be the voices of persons and not (*Kali's Yug*, at 18).

What Indian women's NGOs find especially valuable about the way the Convention conceptualises equality is its recognition that equality in private life and equality in public life are integrally connected. CEDAW requires the State to ensure conditions of equality in all aspects of women's lives, not just in their public legal and political interactions. In particular, article 5 of CEDAW obliges the Government to intervene in private life and eliminate "prejudices and other customary practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men or women." In addition, CEDAW article 16 requires that the State guarantee relations of equality within marriage and family relations. With its reservations on articles 5 and 16, however, the Indian Government appears to have adopted a strategy of passive inaction on discrimination in women's private lives, under the rubric of respect for the wishes of minority communities.

WARLAW has developed an innovative and incisive legal challenge to force the Government to take action on its CEDAW commitments. In 1994, it brought a petition to the Indian Supreme Court. The petition asks the court to order the Government to state exactly how it intends to determine whether communities want the personal laws changed — and to state exactly how the Government intends to include the voices of women from these communities when making its assessment. In effect, WARLAW is challenging the monolithic and static model of community that is implicit in the Government's declaration. WARLAW is taking the position that the Government cannot simply assume that communities discriminatory traditions to continue unchanged, or that community leaders nec- ly for the women in their communities.

Morocco

The Government of Morocco presented its first report to the CEDAW Committee in January, 1997. The Association Démocratique des Femmes du Maroc (ADFM) prepared a shadow report, in consultation with other Moroccan women's NGOs, which informed the CEDAW Committee's very detailed and productive dialogue with the Government delegation.

When Nouzha Skalli, Vice President of ADFM, returned from New York to Morocco, she organised a public meeting about the CEDAW session. It was hosted by ADFM and was attended by over 100 representatives of women's NGOs, the national press, and other organisations interested in women's human rights. Several newspapers published articles and interviewed Skalli about her participation in the CEDAW session. The Moroccan press expressed its disagreement with the claim the Government delegation had made to the CEDAW Committee, that the current legal status of Moroccan women is the result of a consensus in the country.

VI. RESERVATIONS

As of November 1998, CEDAW had been ratified by 162 States, although many of them ratified with reservations that limited their obligations to implement CEDAW principles in significant ways. The focus of these reservations varies. Frequently they concern potential conflicts between CEDAW and customary or religious law, or they reduce the State's obligations in the area of family relations.

States are entitled to enter reservations when they sign on to a convention or treaty, but according to the Vienna Convention on the Law of Treaties, reservations that are not compatible with the object and purpose of the Convention should not be permitted. Many of the reservations that States have entered on CEDAW seem to have crossed this line. States have reserved on whole areas of rights entitlement. In a few instances, they have made reservations that would seem to remove their obligation to implement the Convention as a whole. For example, Malaysia has reserved on CEDAW's implementation (article 2(f)), that requires the State "to take all appropriate measures" to end discrimination against women.

The high number of CEDAW reservations that effectively withhold key Convention guarantees from women, or that undermine its core concepts of gender equality and non-discrimination, is deeply troubling. The CEDAW Committee has expressed its concern, and both the Vienna Declaration and the Beijing Programme of Action have urged countries to withdraw reservations "that are contrary to the Convention or which are otherwise incompatible with international law."

Because so many substantial reservations have been entered on the Women's Convention, women's NGOs frequently find themselves in the position of having to conduct two separate campaigns to bring CEDAW home. After ratification, their work has to begin a second time, to remove the constraints that reservations impose on CEDAW's application. Even if the State cannot be convinced to lift its reservations completely, real progress can be achieved if a blanket reservation to a CEDAW article can be narrowed down, so that all women are not deprived of this article's protection in all circumstances. Women's NGOs are engaged in important work on reservations, and there have been some successes — for example, Brazil has lifted its reservation, and Bangladesh has limited its reservation.

India

India ratified CEDAW in 1993 but effectively reserved on the articles relating to cultural and customary practices (5(a)) and to equality in marriage and family relations (16(1)). The Government made a declaration stating that it would follow a "policy of non-interference in the personal affairs of any Community without its initiative and consent" when implementing these provisions.

This declaration has been deeply troubling to women's NGOs, as it seriously undermines one of the

VIII. REFERENCES

Articles

Andrews, Penelope. "Striking the Rock: Confronting Gender Equality in South Africa" (1998), 3 *Michigan Journal of Race and Law* 307.

Arihla, Margareth. "The Convention in São Paulo, Brazil: Women's Human Rights at the Local Level," paper presented at the International Women's Rights Action Watch conference, Vienna, 1993.

Byrnes, Andrew. "The Convention on the Elimination of All Forms of Discrimination Against Women," in Benedek, W. et al, eds., *Human Rights of Women: International and African Perspectives* (London: Zed Books, 1998).

Byrnes, Andrew. "Human Rights Instruments Relating Specifically to Women, with Particular Emphasis on the Convention on the Elimination of All Forms of Discrimination Against Women," in the *Hong Kong Judicial Colloquium on Women's Rights*, Hong Kong, 20-22 May 1996.

Cook, Rebecca. "State Accountability for Women's Health" (1998), 49 *International Digest of Health Legislation* 265.

Cook, Rebecca. Ed. *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994).

Dairiam, Shanthi. *Commentary on Malaysia's Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women* (Kuala Lumpur: International Women's Rights Action Watch Asia Pacific, 1996).

Freeman, Marsha. (draft of forthcoming book on the use of CEDAW in test-case litigation, International Women's Rights Action Watch).

Hecht, Jonathan. "The Legal Protection of Women's Rights in China" (1995), *China Rights Forum* 1.

International Human Rights Law Group. *Guidelines for Preparing Shadow Reports to State Party Reports under the Women's Convention* (draft, 1998).

International Women's Rights Action Watch (IWRAW), *The Women's Watch* (vol. 1-11).

IWRAW. *The Women's Convention and CEDAW: Opportunities & Challenges in Light of Beijing.* Proceeding of colloquium of the International Women's Rights Action Watch and the Committee on the Elimination of Discrimination Against Women, New York, January 1996.

IWRAW. *Paulista Convention on the Elimination of All Forms of Discrimination against Women* (English translation).

Jethmalani, Rani. ed., *Kali's Yug: Empowerment, Law and Dowry Deaths* (Har-Anand Publications, 1995).

Miller, Alice M. "Realising Women's Human Rights: Non-Governmental Organisations and the United Nations Treaty Bodies" in Elizabeth Prugl and Larry Meyer, eds., forthcoming publication.

Morgan, Martha. and Mónica María Alzate Buitrago. "Constitution-Making in a Time of Cholera: Women and the 1991 Colombian Constitution" (1992), 4 *Yale Journal of Law and Feminism* 353.

Morgan, Martha. "Taking Machismo to Court: Culture Wars and the Gender Jurisprudence of the Colombian Constitutional Court" (1998), 30 *University of Miami Inter-American Law Review* (forthcoming).

Petersen, Carol. "Equality as a Human Right: the Development of Anti-Discrimination Legislation in Hong Kong" (1 34 *Columbia Journal of Trans* *l Law* 335.

Plata, María Isabel. "Reproductive Rights as Human Rights — Colombia," in Rebecca Cook. Ed. *Human Rights of Women* (Philadelphia: University of Pennsylvania Press, 1994).

Plata, María Isabel and Adriana de la Espriella. "CEDAW, Colombia and Reproductive Rights," unpublished.

Pradhan Malla, Sapana. "Challenging Nepal's Inheritance Law" (1997), 1 *Women in Politics Resource Network Newsletter.*

Rwezaura, B.A. "Tanzania: Family Law and the New Bill of Rights" (1990-91), 29 *Journal of Family Law* 453.

Seng, Michael P. "In a Conflict Between Equal Rights for Women and Customary Law, the Botswana Court of Appeal Chooses Equality" (1993), 24 *University of Toledo Law Review* 563.

Verucci, Florisa. "Women and the New Brazilian Constitution" (1991), 17 *Feminist Studies* 551.

Interviews and Correspondence

Penelope Andrews, Florence Butegwa, Andrew Byrnes, Hilary Charlesworth, Rebecca Cook, Shanthi Dairiam, Krishanthi Dharmaraj, Unity Dow, Alda Facio, Marsha Freeman, Nyaradzai Gumbonzvanda, Ipek Ilkkaracan, Rani Jethmalani, Vesna Kesic, Robin Levi, Sandy Liebenberg, Sarah Longwe, Gordana Lukac-Koritnik, Alice M. Miller, Monica E.M. Mhoja, Martha Morgan, Rumbidzai Nhundu, Pramila Patten, Jacqueline Pitanguy, María Isabel Plata, Kasia Polanska, Sapana Pradhan Malla, Lucía Rayas, Nouzha Skalli

Case Citations

Aldridge v Booth
(1988) E.O.C. pp. 92-222; 80 A.L.R. 1

Dhungana v Nepal
Supreme Court of Nepal, Writ No. 3392 of 1993, 2 August 1995, unreported.

Ephrohim v Pastory
87 I.L.R. 106; [1990] L.R.C. (Const.) 757

Sara H. Longwe v Intercontinental Hotels
1992 / HP / 765

Unity Dow v Attorney General
[1991] L.R.C. (Const.) 574; [1992] L.R.C. (Const.); reprinted in (1991) 13 *Human Rights Quarterly* 614-26.

Vishaka v State of Rajasthan
#195614, Writ Petition (Criminal) Nos 666-70 of 1992; reprinted by the National Alliance of Women, *Landmark Judgement Series-1.*

Colombian Constitutional Court Decisions
Domestic violence: Sentencia No. T-529/92
School admission: Sentencia No. T-420/92 & T-292/94
Property rights: Sentencia No. T-494/92
Women prisoners: Sentencia No. T-2293

VII. CONTACTS

The following people have generously agreed to be listed as contacts for additional information, and have been drawn from those who provided material for this publication.

Australia
Hilary Charlesworth
Professor and Director of the Centre for International and Public Law
Faculty of Law
Australian National University
ACT 0200
Australia
Tel: 61-2-6249-0455/0454
Fax: 61-2-6249-0150
E-mail: hilary.charlesworth@anu.edu.au

Botswana
Justice Unity Dow
Private Bag 1
Lobatse
Botswana
Tel: 267-330-801
Fax: 267-332-317
E-mail: udow@info.bw

Brazil
Jacqueline Pitanguy
CEPIA – Cidadania, Estudos, Pesquisa, Informação, Ação
Rua do Russel 694 – Apt. 201
Gloria – Rio de Janeiro
CEP 22210-010
Tel/Fax: 021-2052136
E-mail: cepia@ax.apc.org

Colombia
María Isabel Plata
Executive Director
PROFAMILIA
Calle 34 no. 14 - 52
Bogota
Colombia
Tel: 571-338-3160
Fax: 571-338-3159
E-mail: profamil@colomsat.net.co

Costa Rica
Alda Facio
Director, Women, Gender and Justice Program
UN Latin American Institute for Crime Prevention (ILANUD)
Tel/Fax: 506-225-3784
also Fax: 506-233-7175
E-mail: aldaf@expreso.co.cr

Martha Morgan
Professor of Law
University of Alabama School of Law
P.O. Box 870382
Tuscaloosa, Alabama 35486-0382
Tel: 205-348-1131
Fax: 205-348-3917
E-mail: mmorgan@law.ua.edu

Croatia
Martina Belic
Coordinator
B.a.B.e
Prilaz Gjure Dezelica 26
10,000 Zagreb
Croatia
Tel/Fax: 3851-4846176
E-mail: babe@zamir.net

Vesna Kesic (of B.a.B.e.)
74 Butler Street
Brooklyn, New York
11231
E-mail: kesicv@newschool.edu

Hong Kong
Andrew Byrnes
Associate Professor, Faculty of Law
University of Hong Kong
Pokfulam Road
Hong Kong
China
Tel: 852-2859-2942
Fax: 852-2559-3543
E-mail: abyrnes@hkusua.hku.hk

India
Rani Jethmalani
Advocate, Supreme Court of India
28 Feroze Shah Road
New Delhi - 110001
Tel: 91-11-3388054
Fax: 91-11-3315227
E-mail: warlaw@del3.vsnl.net.in

Mauritius
Pramila Patten, Bar at Law
President of Women's Legal Action Watch
President of FIDA – Mauritius
204 Sterling House
Lislet Geoffroy Street
Port Louis
Mauritius
Tel: 230-211-8190
230-211-6683
230-211-6717
Fax: 230-211-4590
E-mail: patra@intnet.mu

Morocco
Nouzha Skalli, Vice Président
Association Démocratique des Femmes du Maroc
30, Rue Sidi Belyout, Apt. 54, 5ème étage
Morocco
Tel/Fax: 212-2-31-45-47
e-mail: bennis@casanet.net.ma

Nepal
Sapana Pradhan Malla, Advocate
Post Box No. 2923
Kathmandu, Nepal
Tel: 977-1-223-553
977-1-242-683
Fax: 977-1-240-627

South Africa
Heléne Combrinck (Senior Researcher)
Women & Human Rights Project
Community Law Centre
University of the Western Cape
Private Bag X17
Bellville 7535
South Africa
Tel: 27-21-959-3605/8
Fax: 27-21-959-2411
E-mail: hcombrin@uwc.ac.za

Tanzania
Monica E.M. Mhoja, Advocate
Coordinator, Women's Legal Aid Centre
P.O. Box 10463
Dar-es-salaam
Tanzania
Tel: 255-51-73339 (res)
0812-788-289 (mobile)
Fax: 255-51-183028
E-mail: mhojam@com.hotmail

Uganda
Florence Butegwa
Managing Consultant
Associates for Change
P.O. Box 9627
Kampala
Uganda
Tel: 256-41-342-230
Fax: 256-41-250-993
E-mail: butegwa@starcom.co.ug

USA - San Francisco
Krishanthi Dharmaraj and Robin Levi
Executive Director and Advocacy Coordinator
WILD
340 Pine Street, Suite 302
San Francisco, California 94104
Tel: 415-837-0795
Fax: 415-837-1144
E-mail: wild@igc.apc.org

Zambia
Sarah Longwe
Partner, Longwe Clarke & Associates
Development Consultants
36 Villa Wanga
Chelston
P.O. Box 37090
Lusaka
Zambia
Tel: 260-1-283-484
260-1-700-829 (cell phone)
Fax: 260-1-226-200
E-mail: sara&roy@zamnet.zm

Zimbabwe
Rumbidzai Nhundu
Assistant Director
Women's Action Group
P.O. Box 135
Harare
Zimbabwe
Tel: 2634-339-292
2634-308-738
Fax: 2634-339-161
E-mail: wag@africaonline.co.zw

NATIONAL SECURITY COUNCIL

OFFICE OF MULTILATERAL AND HUMANITARIAN AFFAIRS

FAX COVER SHEET

NATIONAL SECURITY COUNCIL

17th & Penn, N.W.
Washington, D.C.
20504

Did you get a complete, clear transmission? If not, please call:

(202) 456- 9141

From: Scott Busby 456-9141 (phone) /456-9140 (fax)

To:		FAX
	Caroline Krass	69110
	Harold Koh, State/DRL	647-5283
	Steve Wagenseil, State/DRL	647-4344
	Andre Surena, State/L	736-7116
	Nancy Rubin, State/IO	686-9058
	Beverly Zweiben, State/IO / John Blodgett	647-4628
	Jon Levitsky, State/P	647-0844
	David Killion, State/H	647-9667
	Anita Botti/Durriya Ghadiali, State/G/PICW	647-5337
	James Castello/Chris Tenorio, DOJ/DAG	514-6897
	Richard Jerome, DOJ/AAG	307-3904
	Julie Fernandes, DOJ Civil Rights	616-3413
	Bo Cooper, DOJ/INS	514-5491
	David Koplow/Iliana Davidson, DoD/GC	(703) 614-9789
	Jim Schear/DoD	(703) 614-0442
	Mac DeShazer, DOL	219-5980
	Joel Fishman, USIA	619-5646
	Elizabeth Wilcox, Treasury	622-8378
	Alex Wohl/Francisco Garcia, Education	401-3130
	Irene Bueno, Domestic Policy Council	65581
	Alex Arriaga	647-4501

Date: 5/19/99

No. of pages to follow: 4

RE: Human Rights IWG meeting tomorrow, May 20, 2 p.m., Room 208 OEOB. Agenda and Education paper attached. Please call Dora with clearance info, 456-9141.

Agenda
IWG on Human Rights Treaty Implementation
2 p.m., May 20, 1999
OEOB, 208

June 17th

1. Public Outreach
   - Response to letter from NGOs/NSC
   - Sharing of agency reps list/NSC

2. Torture Convention
   - Status of report/State
   - Update on Justice task force/DoJ

3. Race Convention
   - Status of report/State

4. Treaty Ratification
   - Discussion of CEDAW ratification strategy/State
   - ILO Convention 111/DoL

5. Discussion of Education paper on Universal Declaration/DoE

6. Compliance Plan
   - Set up State/DRL and NSC meeting

7. New Business

Koh/Andrews paper on the dp

HK- paper on compliance w/ Geneva Convention
Eric/Scott to bring up at SVTS
to make public

302135

COMMISSION ON
SECURITY AND COOPERATION IN EUROPE
234 FORD HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-1901

April 19, 1999

The President
The White House
Washington, DC 20500

Dear Mr. President:

As you prepare to host the leaders of the North Atlantic Treaty Organization and those aspiring to eventual membership in the Alliance, I urge you to underscore in public and in private the fundamental importance of the principles upon which NATO was founded: democracy, individual liberty, and the rule of law. The genocide unfolding in Kosovo today is a poignant reminder of the essential nature of these principles to the maintenance of peace and security. Protection and promotion of human rights is thus an integral aspect of genuine security.

With respect to long-standing NATO allies, I urge you to forthrightly raise human rights issues during the summit with the leaders of Turkey. Notwithstanding President Demirel's signature to the 1975 Helsinki Final Act, Turkey continues to blatantly violate many of the very OSCE human rights commitments it has agreed to on the basis of consensus. Experts at a recent Helsinki Commission hearing documented Turkey's clear, gross and uncorrected human rights violations, including the widespread and systematic use of torture. I urge you to establish a high-level bilateral working group with Turkey aimed at encouraging much needed systemic and legal reforms, as well as reviewing individual human rights cases in advance of the OSCE Istanbul Summit and beyond.

As a strong supporter of NATO enlargement and in my capacity as Chairman of the Commission on Security and Cooperation in Europe, I have consistently emphasized the importance of human rights and democratization in the expansion process. The NATO Enlargement Facilitation Act (P.L. 104-208) makes clear that the human rights records of emerging democracies in Central and Eastern Europe interested in joining NATO should be evaluated in light of the obligations and commitments of these countries under the UN Charter, the Universal Declaration of Human Rights, and the Helsinki Final Act. Accordingly, with respect to those countries which have most recently joined the alliance, human rights should remain a central core element of our bilateral discussions. In particular, I hope you will raise with Czech leaders the need to pass legislation to ensure that Roma who have been denied Czech citizenship since 1993 are able to receive it immediately and end discrimination against Czech Americans in the area of property restitution and compensation.

With respect to countries that have expressed an interest in Alliance membership, I believe the extraordinary turn-around in Slovakia and the commitment of the Slovak people to democracy,

both illustrated by the most recent parliamentary elections there, deserves acknowledgment and support. Meanwhile, the Government of Bulgaria has demonstrated its commitment to NATO's core values and continues to aggressively pursue political and economic reform. Bulgaria should also be recognized for the constructive and important role it has played in promoting peace and stability in the Balkans. Frankly, I had hoped that Romania would have built upon the progress made in the immediate aftermath of President Constantinescu's election. I urge you to take advantage of Romania's keen interest in NATO membership to press for further political and economic reforms in that country.

I would also point out that Croatia holds the potential for significant political change in the near future. While NATO membership is not realistic at this point, the door should be opened to Croatia's participation in the Partnership for Peace Program if the parliamentary elections scheduled for later this year are free and fair and do not contribute to continued concerns about Croatia's involvement in Bosnia's internal politics. Of course, there must also be steady progress in the return of Serbs originally from Croatia.

With respect to the Baltic States, I see no justification in further delay in opening accession negotiations with Latvia, Lithuania, and Estonia. Having persevered for 50 years and overcome the odds by regaining their independence, the Baltic countries deserve to be fully integrated into the West, including NATO.

Mr. President, we must take advantage of the unique opportunity we have today to embrace those countries in the region that have demonstrated their commitment to democracy, human rights, and the rule of law. A mere rhetorical affirmation that the door to the Alliance remains open will not do justice to those countries that have endeavored to meet established criteria for NATO membership. Accordingly, I urge you not to artificially delay the extension of invitations to qualified candidates.

Sincerely,

Christopher H. Smith, M.C.
Chairman

CHS\rjm

THE WHITE HOUSE

WASHINGTON

April 26, 1999

MEMORANDUM FOR GLYN T. DAVIES
NSC Executive Secretariat

FROM: JANET MURGUIA
Legislative Affairs

SUBJECT: PRESIDENTIAL CORRESPONDENCE

Attached are copies of letters sent to the President by various Members of Congress. Since these letters address national security issues, we would appreciate your assistance in drafting the responses.

Thank you very much for your assistance. If you have any questions, please call Eli Joseph at x67500.

The following is a brief description of the letters:

1) Sen. Max Cleland (D-GA), Sen. Pat Roberts (R-KS) and Sen. Olympia J. Snowe (R-ME), concerning the current situation in Kosovo and the Snowe-Cleland Amendment to the National Defense Authorization Act of 1999;

2) Sen. Daniel K. Inouye (D-HI), concerning the President's upcoming meeting with Prime Minister Obuchi of Japan and next year's G-8 summit to be hosted by Japan;

3) Sen. George V. Voinovich (R-OH) and Sen. Michael D. Crapo (R-ID), concerning the current situation in Kosovo;

4) Rep. Benjamin A. Gilman (R-NY), concerning the future stability of Southeastern Europe in light of the current conflict in Serbia-Montenegro;

5) Rep. Benjamin A. Gilman (R-NY), recommending the sale of long-range early warning radar to Taiwan;

6) Rep. William F. Goodling (R-PA), concerning the current situation in Kosovo;

7) Rep. Joseph M. Hoeffel (D-PA) and seventeen other Members of Congress, concerning the current situation in Kosovo;

8) Rep. Cynthia McKinney (D-GA), concerning possible human rights violations at the Buenos Aires Yoga School in Argentina;

9) Rep. Jose E. Serrano (D-NY), concerning the American military presence on the Island of Vieques;

10) Rep. Christopher H. Smith (R-NJ), concerning the NATO summit and countries that have expressed an interest in joining the Alliance;

11) Rep. Christopher H. Smith (R-NJ) and four other Members of Congress, expressing concern over the massive inflow of foreign aid into Indonesia in light of upcoming national elections; and,

12) Rep. Frank R. Wolf (R-VA), enclosing a copy of his remarks from the floor of the House of Representatives on April 21 concerning the current situation in Kosovo.

Enclosures

Room 4725 -G Phone: (202) 747-1385

DRL/MLA - (202) 647-4344

Fax

To: Jamie Baker **From:** Jeff Glassman **Pages:** 7

Phone: (202) 456-9110 **Date:** ~~22 April 99~~ 26 April 99

Re: PROPOSED REMARKS FOR A/S KOH **CC: Ms. Gerson**

☐ **Urgent** ☐ **For Review** x **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:**

PLEASE PROVIDE CLEARANCE OR COMMENTS FOR PROPOSED REMARKS REGARDING HUMAN RIGHTS EXCEPTION TO THE HAGUE CONVENTION.

647-1385

→ Jeff Glassman

< 74344

4/20/99 Draft

"Reconciling the Hague Judgments Convention with International Human Rights Litigation in National Courts"

Harold Hongju Koh
Assistant Secretary of State for Democracy, Human Rights and Labor
Talking Points for NYU Law School Conference on Hague Judgments Convention
April 30, 1999

I am glad to be here at NYU Law School to discuss the potential effects of the Hague Judgments Convention on domestic human rights litigation. In my prior career as a professor of civil procedure and international business transactions, I lectured and published about the entire design and reach of the Hague Judgments Convention with respect to international civil and commercial matters. My remarks today, however, address a narrow question of human rights policy: how can the Judgments Convention be reconciled with current human rights litigation in national courts by plaintiffs who are victims of human rights abuse?

My answer, in brief, is in three parts:

first, that U.S. law and policy have long favored the assertion of civil jurisdiction in tort cases where the plaintiff's claim is based on a violation of internationally recognized human rights;

second, that whatever choice the Convention may make about "transient jurisdiction" in non-human rights cases, the proposed exception permitting civil jurisdiction over human rights torts would be fully consistent with the purposes of the Hague Judgments Convention and national obligations under international human rights treaties; and

third, that preserving such a jurisdictional basis for "human rights torts" would not open the floodgates of litigation in any relevant national jurisdiction, while the opposite result could impair the ability of States Parties to the new Convention to fulfill their duties under international human rights law.

1. U.S. law and policy favor civil jurisdiction in human rights cases

As this group well knows, U.S. courts have historically entertained civil tort litigation in cases where the court's jurisdiction has been predicated solely upon the transient presence of the defendant within the territory of the United States. See *Burnham v. Superior Court of California*, 495 U.S. 604 (1990 (upholding the exercise of general jurisdiction over a defendant based on transient presence on a variety of grounds).

Burnham did not involve a foreign defendant, and in the years since, the U.S. Supreme Court has not granted plenary review to a case holding that the *Burnham* rule should apply, where foreign domiciliary was served while transitorily present in the U.S. Some

MEMORANDUM

To: Human Rights Treaty Interagency Working Group of the NSC
From: Francisco Garcia, Alexander Wohl
U.S. Department of Education (ED)
Date: March 26, 1999
Re: Ideas for dissemination of the Universal Declaration on Human Rights

Background:

At the March 12, 1999 interagency workgroup meeting you asked us to present a list of options that the Department or the Administration might be able to pursue in response to a request from the United Nations to participate in disseminating the Universal Declaration of Human Rights (UDHR) in recognition of its 50th anniversary. As we told the group during that meeting, unlike many other nations, our national Department of Education is barred by law from directing instruction in any specific content area in U.S. public schools, and so it would be impossible to disseminate it specifically as the Secretary General of the United Nations suggested, "by introducing it to all primary education curricula." Notwithstanding the fact that there is no "national" elementary or primary curriculum, the Secretary or the President can nonetheless exercise other options to inform the nation's educational community about the principles proclaimed in the UDHR. These options include:

1. **Compliance with Executive Order**

The President could establish an Executive Order mandating that Federal agencies which fund educational programs will recognize and affirm the principles set forth in the UDHR in those programs they coordinate. Education related programs that would be affected under such an order could include cooperative extension services, Head Start, management, instructor, or service certification and/or training, as well as applicable ED programs for supporting curriculum, instruction, teaching, and content areas.

Wherever it is feasible and appropriate as part of its programs and initiatives, ED will establish appropriate measures to implement the Executive Order. Those measures can include non-regulatory program guidance, policy statements, ED employee training, Internet/Intranet postings or links, and assemblies designed to inform ED employees and customers of the UDHR and how the principles align with ED's mission and goals.

Dear Secretary-General Annan and High Commissioner Robinson:

Thank you for your letter regarding the 50th anniversary of the Universal Declaration of Human Rights. I share your commitment to advancing the noble principles in that document.

As you may know, to mark the 50th anniversary of the Universal Declaration, I issued an Executive Order relating to the implementation of Human Rights Treaties in the United States. The chief purpose of that Order was to reaffirm to all components of our Federal Government our duty and commitment to implement fully the obligations we have undertaken by ratifying certain human rights instruments. To enhance our ability to do so, the Order established an Interagency Working Group on Human Rights Treaties that will consider and coordinate actions on these matters. A copy of the Executive Order is enclosed for your reference.

The Group has already met several times and will continue to do so on a monthly basis. The Group is ~~already~~ pursuing several of the objectives you urge, including the signature and ratification of additional human rights instruments. We will keep you apprised of significant developments in the areas referenced in your letter.

Again, thank you for sharing your views with me on these important issues.

Sincerely,

Secretary-General Kofi Annan
High Commissioner for Human Rights Mary Robinson
United Nations, NY 10017

Enclosure

THE SECRETARY-GENERAL

19 January 1999

Excellency,

We have just concluded the historic commemoration of the 50th Anniversary of the Universal Declaration of Human Rights. We are most grateful to you and your Government for your participation in this event and for your affirmation of commitment to the purposes of the Universal Declaration.

The United Nations and its Member States could pay no greater tribute to those who framed the Universal Declaration of Human Rights than by giving practical meaning to their ideas and vision. We would jointly urge all Governments to set themselves the following objectives:

- All States should sign and ratify the two Covenants and the four principal Conventions within the next five years;
- All States should make the Universal Declaration known to every one of their citizens, starting by introducing it to all primary education curricula;
- All states should implement the General Assembly's Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, not just formally but in a true spirit of support for human rights defenders everywhere;
- Most importantly, all States should redouble their efforts to implement the 30 Articles of the Universal Declaration in full.

We look forward to hearing from you on the progress made by your Government in implementing the above.

Accept, Excellency, the assurances of our highest consideration.

Mary Robinson
High Commissioner for Human Rights

Kofi A. Annan

His Excellency
Mr. William J. Clinton
President of the United States of America
Washington, D.C.

2. Outreach to the Community of Teachers and Learners and Establishment of Departmental Policies

Secretary Riley may choose to disseminate the UDHR to educators and the general public in one or more of the following ways:

- By sending a letter to Chief State School Officers encouraging each State to review the UDHR and incorporate its principles wherever possible to improve students' understanding of, and commitment to, ensuring those rights among their fellow citizens and as citizens in a global community;

- By issuing a statement to the press or presenting a speech or other public communication that focuses on Article 26 of the UDHR, *Everyone has the right to education.* The text of that article states:

  1) Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

  2.) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

  3.) Parents have a prior right to choose the kind of education that shall be given to their children."

  The Secretary's message might focus on this nation's commitment to ensuring that every child in the U.S. (regardless of origin, language, disability, gender, race, etc.) has access to public education.

  This statement could specifically address other issues (tolerance, freedom of movement, equal justice under the law, etc.) and articles for which the Secretary believes education is the key element to ensure that these rights are acknowledged and that all human rights are universally respected and realized; and

- By disseminating the UDHR to ED officials whose broad program structures might provide additional venues for disseminating the principles in the UDHR (e.g., Office of Bilingual Educaiton and Minority Languages Affairs (OBEMLA), Law-related education,

Women's Equity Education Act, Teacher training programs). Those programs may then choose to incorporate the principles into program priorities, program literature, non-regulatory guidance, conference presentations, and other relevant materials that are aligned with their statutory authority and mandate.

The Secretary could undertake these efforts at any time, or coordinate them with appropriate events, such as Independence Day, National Education Week, United Nations Children's Day, or in accordance with other relevant days of commemoration.

CEDAW Ratification
1999 Administration Strategy & Timeline

Summary

This Administration has taken unprecedented steps to promote women's human rights and pursue CEDAW ratification. Already, the President and First Lady have called for ratification, the Secretary has raised CEDAW with Senator Helms and others, and White House officials have raised the issue with Senator Lott. CEDAW ratification will require a concerted Administration strategy. Support is also needed from congressional and other political leaders – both Democrat and Republican, leaders of broad based non-governmental groups, and other opinion makers.

Signal a Change

An action-forcing strategy with high-level engagement is crucial to build support for CEDAW. It is essential to signal a change in atmosphere that makes it now possible to pursue ratification. Opposition by key congressional offices has created a defeatist, self-fulfilling obstacle to ratification. A campaign in support of CEDAW may also spark an opposing campaign. Next steps:

- High Profile Event – An event launching a concerted effort with key political leaders, opinion makers, and grassroots supporters at an appropriate location. S*ummer/Fall.*
- Briefing – Congressional briefing sponsored by mainstream Democrat and Republican with statements on the impact of CEDAW ratification on human rights policy. *May/June.*
- Concerted Calls – Calls to congressional leaders and others to emphasize this priority. This could the follow grassroots initiative May 10-14. Additional follow-up calls and discussion in congressional visits by Administration principals. *May/June.*
- Integrate with Other Issues – Ensure CEDAW is raised regularly in the context of other Administration priorities, whether in one-on-one meetings with Senators or at high profile events on other issues that affect human rights. *Ongoing effort to seek opportunities.*

Sending a Clear and Consistent Message

The Administration's message must convey why it is important to ratify, even though U.S. law and the CEDAW package are consistent.

- Elements of the message:
  - The U.S. urges other countries to ratify human rights treaties, lack of U.S. ratification is inconsistent and undermines our urging others to ratify conventions.
  - CEDAW is a tool to hold governments accountable human rights violations perpetrated against women.
  - Countries worldwide recognize the U.S. leadership on human rights and lack of U.S. ratification sends the wrong message about the significance of international human rights standards and the importance of protecting women's human rights.
  - Ratification gives us added leverage in foreign policy; policy leverage is the key issue, since U.S. law and the CEDAW package are consistent.
  - We urge countries to ratify CEDAW because where it has been ratified conditions have improved for women who were victims of violations – lack of U.S. ratification of CEDAW makes it difficult for the U.S. to urge other to ratify it.
  - CEDAW is about elimination of discrimination and granting right on par with those of others, not/not about elevation of women's human rights above those of others.
  - 162 countries have ratified.

- Inter-Agency Working Group – Use the IWG to launch a coordinated message by principals at various agencies. Distribute talking points and "megatalkers." Organize calls to key congressional offices and statements to be delivered at meetings and fora. *May 20.*

- Megatalkers – Department "megatalkers" should be distributed for USG principals to use in speaking publicly and privately in support of CEDAW with relevant audiences in the U.S. and with congressional delegations visiting Embassies. *June.*

Recruiting Advocates

It must be clear that CEDAW enjoys widespread support from mainstream groups across party lines. A variety of high-profile advocates are essential, including Democrat and Republican political leaders (women and men) and grassroots advocates who mobilize major constituencies.

- Secure support – It is essential to secure support from uncommitted Senators and to build a coalition with those already supporting CEDAW. *Ongoing.*

- Build Coalitions – Identify political party leaders, policy analysts, and others who help shape public opinion and work with them to coordinate a bipartisan message. *June.*

- "Proxmire" Senator – Urge one Senator to make daily floor statements in support of CEDAW, just as Senator Proxmire did for ratification of the Genocide Convention. *May.*

- Build House Support – Recruit House members and congressional coalitions to publicize their support for CEDAW. *May and Ongoing.*

- Floor Statements and Speaking Engagements – These are venues for mainstream Senators of each party to express support for CEDAW and its objectives. *Ongoing.*

Elements of a Long-Range Stratetgy

Administration efforts must be consistent and persistent. The message must be heard repeatedly and from various agencies. CEDAW must be treated as a real priority worthy of being traded, if necessary, for other issues.

- Town Meetings – Administration principals should present information about the strategic benefits of ratifying CEDAW in their statements at town meetings. This would help dispel misunderstandings and educate Americans about CEDAW. *Discuss in May with PA.*

- Press Strategy – Working with Public Affairs, the White House and others, we should develop a public outreach campaign to convey this Administration priority. *Discuss in May with PA.*

- Senate Hearing – In conjunction with a supportive, leading Republican, the Secretary could reiterate interest in testifying on CEDAW. Various NGOs –human rights, religious, and business, among others – should also ask for a hearing and to testify. *Summer/Fall.*

- NGO Meetings – Regular meetings to inform them of our activities and hear about theirs. *Every two months or as needed.*

106th Congress:

Assessment of Senate Support for US Ratification of CEDAW

May 1999

FOR:

Akaka, D. (D-HI)°
Baucus, M. (D-MT)°
Biden, J. (D-DE)°+
Bingaman, J. (D-NM)°
Boxer, B. (D-CA)°+
Breaux, J. (D-LA)°
Bryan, R. (D-NV)°
Byrd, R. (D-WV)°
Campbell, B. (R-CO)°
Chafee, H. (R-RI)°
Cleland, Max (D-GA)
Conrad, K. (D-ND)°
Daschle, T. (D-SD)°
Dodd, C. (D-CT)°+
Dorgan, B. (D-ND)°
Durbin, R. (D-IL)
Feingold, R. (D-WI)°+
Feinstein, D. (D-CA)°
Graham, B. (D-FL)°
Harkin, T. (D-IA)°
Hollings, E.(D-SC)°
Inouye, D. (D-HI)°
Jeffords, J. (R-VT)°
Johnson, T. (D-SD)
Kennedy, E. (D-MA)°
Kerrey, R. (D-NE)°
Kerry, J. (D-MA)°+
Kohl, H. (D-WI)°
Landrieu, M. (D-LA)
Lautenberg, F. (D-NJ)
Leahy, P. (D-VT)°
Levin, C. (D-MI)°

FOR:

Lieberman, J. (D-CT)°
McCain, J. (R-AZ)°
Mikulski, B. (D-MD)°
Moynihan, D. (D-NY)°
Murray, P. (D-WA)°
Reed, J. (D-RI)
Reid, H. (D-NV)°
Robb, C. (D-VA)°
Rockefeller, J. (D-WV)°
Sarbanes, P. (D-MD)°+
Snowe, Olympia (R-ME)
Specter, A. (R-PA)°
Thurmond, S. (R-SC)°
Torricelli, R. (D-NJ)+
Warner, J. (R-VA)°
Wellstone, P. (D-MN)°+
Wyden, R. (D-OR)

NEW SENATORS:

Bayh, E. (D-IN)*
Bunning, J. (R-KY)*
Crapo, M. (R-ID)*
Edwards, J. (D-NC)*
Fitzgerald, P. (R-IL)*
Lincoln, B. L. (D-AR)*
Schumer, C. (D-NY)*
Voinovich, J. (R-OH)*

UNKNOWN:

Abraham, S. (R-MI)
Allard, W. (R-CO)
Bennett, R. (R-UT)
Bond, C. (R-MO)
Brownback, S. (R-KS)+
Burns, C. (R-MT)
Cochran, T. (R-MS)
Collins, S. (R-ME)
Craig, L. (R-ID)
DeWine, M. (R-OH)
Domenici, P. (R-NM)
Enzi, M. (R-WY)
Frist, B. (R-TN)+
Gorton, S. (R-WA)
Grams, R. (R-MN)+
Grassley, C. (R-IA)
Hatch, O. (R-UT)
Hutchinson, T. (R-AR)
Inhofe, J. (R-OK)
Kyl, J. (R-AZ)
Lott, T. (R-MS)
Lugar, R. (R-IN)+
Mack, C. (R-FL)
Murkowski, F. (R-AK)°
Nickles, D. (R-OK)
Roberts, P. (R-KS)
Roth, W. (R-DE)
Santorum, R. (R-PA)
Sessions, J. (R-AL)
Shelby, R. (R-AL)°
Smith, G. (R-OR)+
Smith, R. (R-NH)
Stevens, T. (R-AK)
Thomas, C. (R-WY)+
Thompson, F. (R-TN)

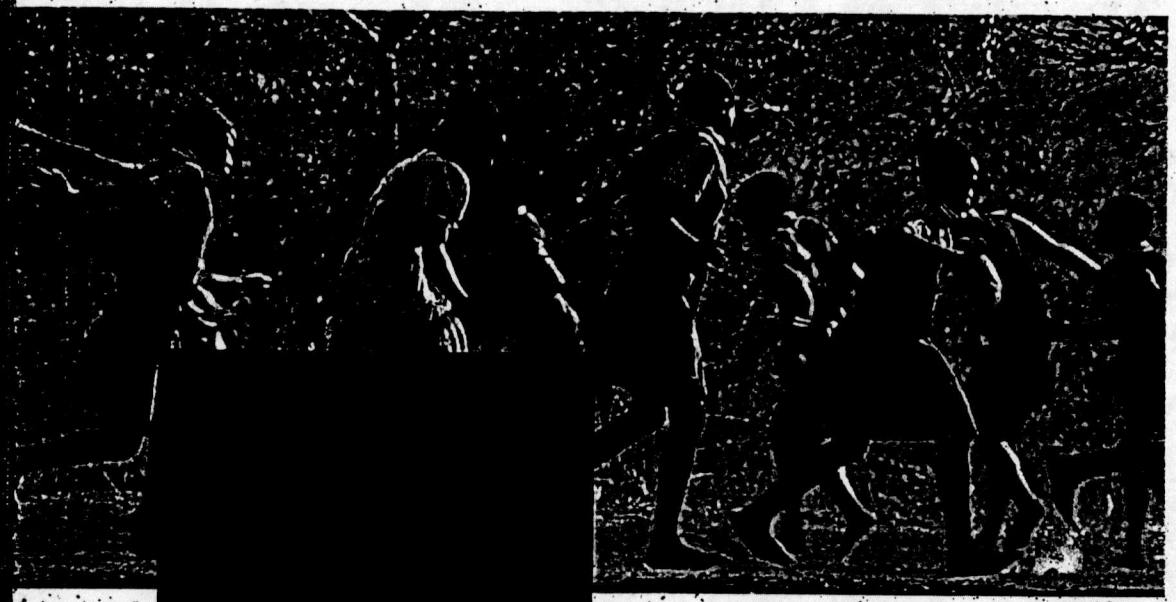
AGAINST:

Ashcroft, J. (R-MO)+
Coverdell, P. (R-GA)+
Gramm, P. (R-TX)
Gregg, J. (R-NH)
Hagel, C. (R-NE)+
Helms, J. (R-NC)+
Hutchison, K. (R-TX)
McConnell, M. (R-KY)

*Newly elected to 106th Congress
+Members of Foreign Relations Committee

°Signed the Sen. Simon "Dear Colleague" letter in the 103rd Congress
Above list is also based on Senators' responses to constituent letters

BRINGING EQUALITY HOME



Implementing the Convention on the Elimination of All Forms of Discrimination Against Women

cedaw

Edited by Ilana Landsberg-Lewis

United Nations Development Fund For Women (UNIFEM)

ceptualisation of equality, which recognises the need for temporary special measures to speed the achievement of equality and provides that these measures are not discriminatory (CEDAW, article 4). They argued that because of the history of discrimination against women in Uganda, the only effective way to guarantee equality in political representation would be to reserve a certain portion of elected seats for women candidates. They were successful — the Constitution reserves a minimum number of parliamentary seats for women, it requires that each administrative district have at least one woman representative, and it provides that at least one-third of the seats in local Government (city, municipal, and rural district councils) must be filled by women.

Brazil

The Brazilian constitution was redrafted in 1988 and now includes extensive guarantees of women's human rights. The move to rewrite the constitution began in 1985, with the restoration of democracy in Brazil and the resurgence of public political activism. Between 1985 and 1988 women's NGOs, the National Council of Women's Rights, jurists, State and municipal councils, and women's deputies in the constituent assembly contributed to a national campaign to ensure that women's rights were given proper constitutional recognition. As part of the drafting process, the National Council of Women's Rights presented over 200 amendments relating to women.

According to Jacqueline Pitanguy, past president of the National Council, CEDAW was a very useful tool for women's advocacy around the constitution. It provided a reference and a framework for articulating specific rights. The Brazilian constitution contains provisions on gender equality, gender-based violence, State responsibility for the prevention of domestic violence, the equality of rights within marriage, family planning, and equality in employment that parallel CEDAW provisions. For example, the constitution revoked the long-standing principle of the husband's leadership ("chefia") of the family unit and established that "the rights and duties relating to the conjugal unit are exercised equally by the man and the woman" (CEDAW article 16). However, the most important contribution the Women's Convention made, according to Pitanguy, came in the form of increased political legitimacy for demands that the Brazilian women's NGOs had been making for some time: "It put our demands on another level, by providing legitimacy and international wording for proposals we had been fighting for since the 1970s. International instruments such as CEDAW set a recognised standard and improved our bargaining and negotiating power."

Brazil ratified CEDAW in 1984, but with a reservation on laws relating to the family. It was only after the passage of the 1988 amendments to the constitution that it was removed — the reservation was now in violation of the Brazilian constitution's guarantees of gender equality.

More recently, São Paulo's Council of Women and women's NGOs have succeeded in passing their own convention to eliminate discrimination against women at the state level in São Paulo. Women's NGOs entered into negotiations with the São Paulo state and local Governments to gain their agreement to support the Convention's general principles, and to convince them to take legislative action to implement CEDAW. Seminars were held with a range of Government institutions to make clear the disparity between what CEDAW requires and the actual living conditions and legal discrimination faced by women in São Paulo.

© UNICEF

has a reasonable apprehension that in relation to the victim's employment or work, whether she is drawing a salary, or honorarium or voluntary, whether in government, public or private enterprise, such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto" (*Vishaka* decision, at page 9-10).

The process through which the sexual harassment guidelines were drafted is worth noting. The Solicitor General, in his capacity as representative of the State, gave official consent to the drafting of national guidelines. They were developed in a series of hearings, as a collaborative effort between the women's NGO lawyers, the solicitor general, and the panel of Supreme Court judges who heard the case. The fact that it was possible for the Government, women's NGO lawyers, and the court to reach a substantive consensus on these guidelines bodes well for their effective implementation.

Botswana

The *Botswana Citizenship Act* was passed in 1984. It was intended to bring citizenship law into conformity with Tswana customary law, and this meant that the nationality of a child born on Botswanan soil would be determined exclusively by the father's nationality (regardless of where the parents were married). For almost two decades before this law was enacted, Botswana's constitution had guaranteed that mothers could also pass their nationality on to children born into a marriage, but this part of the constitution was now repealed.

A Botswanan lawyer and activist, Unity Dow, challenged the *Citizenship Act* in the Botswana High Court in 1990 (*Unity Dow v Attorney General*). She was married to an American, and two of her three children had been born in Botswana after 1984. These two children required residence permits to stay in the country, could leave the country only on their father's passport, would not be allowed to vote, and would be denied the free university education available to citizens. Dow argued that by ordering this treatment, the *Citizenship Act* violated the constitution's guarantees of liberty, equal protection of the law, immunity from expulsion, and the right to be free from degrading treatment. She also made the more difficult argument that the Act was discriminatory. The constitution's protection against discrimination said nothing about discrimination on the basis of sex, although it did specifically prohibit other forms of discrimination.

The High Court found that the constitution should be interpreted as prohibiting sex discrimination: "The time that women were treated as chattels or were there to obey the whims and wishes of males is long past, and it would be offensive to modern thinking and the spirit of the Constitution to find that the Constitution was framed deliberately to permit discrimination on the grounds of sex." (*Dow*, at 623). The Government had not ratified CEDAW, but it had i other internation-al commitments supporting women's human rights. The court ed that it "difficult or impossible to accept" that the framers of the Botswana constitution would intentionally permit sex discrimination "whilst at the same time internationally support non-discrimination against females" (*Dow*, at 624). The court also cited the 1967 *Declaration on the Elimination of Discrimination Against Women*, the precursor to CEDAW (Botswana had participated in the adoption of the declaration, but had not yet ratified the convention).

The Government appealed this decision to Botswana's Court of Appeal, arguing that the constitution was *intended* to discriminate against women, in order to preserve traditional Tswana values. The Court of Appeal rejected this argument and again referred to Botswana's international commitments to find that the constitution prohibited sex discrimination.

This decision was released in 1992, and it was not immediately clear what practical results would follow. The court had left the Government with the choice of either changing the *Citizenship Act*, or amending the constitution to explicitly allow sex discrimination. There was speculation in the Botswanan press that the Government would never enforce the *Dow* decision, as there was not a great deal of public support for reforming the nationality law. In 1993, the Government actually considered holding a referendum on changing the constitution to explicitly permit sex discrimination but abandoned the idea in the face of international and local objections. It was not until 1995, when Botswana was preparing to ratify CEDAW, that the *Citizenship Act* was finally amended. These changes have been maintained, and the *Act* is now gender-neutral, giving equal rights to men and women with respect to the citizenship of their children.

Tanzania

In *Ephrohim v Pastory*, Holaria Pastory brought a court challenge to the Haya customary law that prevented her from selling clan land. She had inherited land from her father, through his will, but when she tried to sell it her nephew applied to have the sale voided. Tanzania's *Declaration of Customary Law* clearly prohibited her sale of the land in section 20 of its rules of inheritance, which states that "women can inherit, except for clan land, which they may receive in usufruct but may not sell."

Pastory argued that this constraint on women's property rights violated the Tanzanian constitution's *Bill of Rights*. As in the *Dow* decision, the court was faced with the difficulty of interpreting a constitutional guarantee of freedom from discrimination that did not make any specific reference to women. The court relied on the fact that the Tanzanian Government had ratified CEDAW, as well as other international treaties and covenants, to find that women were constitutionally protected from discrimination. The court stated that "the principles enunciated in the above named documents are a standard below which any civilised nation will be ashamed to fall" (*Ephrohim*, at 4).

The Tanzanian High Court decided that the rules of inheritance in the *Declaration of Customary Law* were unconstitutional and contravened the international conventions which Tanzania had ratified. Thus, the rights and restrictions around the sale of clan land are the for women and

II. THE COURTS

Judges are not always prepared to base their decisions on international treaties such as CEDAW. If their country has ratified the Convention, they usually have the authority to consider it, either as part of national law or as an aid to interpreting national law, but many judges are unfamiliar and uncomfortable with the idea of doing so. To convince the courts to make use of the Women's Convention, it is often useful to provide examples of other countries in which the courts have done so, as well as instances in which the courts have applied other international treaties and covenants.

Some of the most interesting and significant decisions are produced when a court decides to combine a vague or inadequate constitutional guarantee of women's equality with the principles of gender equality articulated in CEDAW. A two-dimensional constitutional vision is thereby transformed into a three-dimensional vision, and the protection afforded women's human rights becomes stronger and more meaningful than might even have been anticipated when the constitution was drafted.

Popular education has to be part of any litigation strategy. Good arguments can persuade a court to rule in favour of women's human rights, but decisions still have to be implemented. If not enough work has been done to inform and educate the Government and the general public, there is a real possibility that a court's decision will not be properly enforced or even that the decision might be overturned by new legislation.

India

In 1992, a group of women's NGOs brought a petition to the Supreme Court of India in *Vishaka v State of Rajasthan*. Their petition was motivated by the gang rape of a social worker by her own colleagues in a village in Rajasthan, and the failure of local officials to investigate. However, the problem the NGOs asked the court to address was much broader: there were no laws in India that prohibited sexual harassment in the workplace. Relying on provisions of the Indian constitution, on the CEDAW, and the CEDAW Committee's General Recommendation 19 on violence against women, the NGOs argued that the court should draft a law to compensate for the Indian parliament's inaction.

The legal question the court had to resolve was whether the State actually had an obligation to protect women from sexual harassment. The constitution prohibited discrimination on the basis of and guaranteed just and humane conditions of work, but it didn't refer explicitly to sexual harassment. The court decided (in August, 1997) that CEDAW should be used to elaborate and give further meaning to these constitutional guarantees. Although the Convention was not directly part of the domestic law of India, international covenants can be used by the Indian courts to interpret national laws. The court found that by ratifying CEDAW and by making official commitments at the 1995 Beijing world conference on women, India had endorsed the international standard of women's human rights. According to this standard, gender equality requires protection from sexual harassment.

Children in Mauritania © UNICEF Photo/L. Goodsmith

The court drew up a set of guidelines and norms, including detailed requirements for processing sexual harassment complaints, that will bind private and public employers until the Government passes suitable legislation. The definition of sexual harassment employed by these guidelines is a close paraphrase of the definition provided by the CEDAW Committee in General Recommendation 19:

> "...sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as: a) physical contact and advances; b) a demand or request for sexual favours; c) sexually coloured remarks; d) showing pornography; e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Where any of these acts is committed in circumstances where-under the victim of such conduct

nation on the basis of sex in Zambia's new constitution. She also argued that the policy violated articles 1, 2 and 3 of the Convention. The court ruled in Longwe's favour, finding that her constitutional rights had been violated. Because the constitution could be applied in this case, the court did not feel it necessary to rely on CEDAW. However, it did state that the Zambian Government's ratification of CEDAW without reservations meant that the courts should look to the Convention when situations arose that were not covered by domestic law.

It appears, unfortunately, that many Zambian hotels continue to enforce discriminatory entry policies, despite Longwe's court victory. A case brought by Elizabeth Mwanza against the Lusaka Holiday Inn is currently before the High Court.

Colombia

The Constitutional Court, which was instituted under the new Colombian Constitution, has made a number of important decisions involving women's human rights, in addition to the decision on domestic violence (discussed in the previous section). The court has, for example, recognised the principle that women's domestic work has real economic value. When called upon to determine a woman's property rights after the death of her common-law husband, the court recognised her domestic work as having contributed to the acquisition and improvement of their home. In another decision, the Constitutional Court ordered a high school to reaccept a girl who had been expelled for becoming pregnant.

In 1993, the Constitutional Court released a decision regarding the treatment of women prisoners that relied explicitly on CEDAW. A challenge was brought over prison regulations that required women prisoners to be fitted with an IUD or take contraceptives prior to conjugal visits but did not impose any similar conditions on conjugal visits for men. The court ordered that the prison system cease enforcing this regulation, as it violated the constitution's protection against sex discrimination, its guarantee of reproductive and family rights, and the obligation placed on the State to provide women special assistance and protection around pregnancy and birth. The court also found that the regulation was in violation of CEDAW.

Costa Rica

In 1991, at the Costa Rican constitutional court, Alda Facio for Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM) challenged the practice of requiring a husband's consent for medical sterilisation. She argued that this administrative practice violated the constitution's guarantee of equality. The difficulty she faced in making this argument was that the equality guarantee did not specifically mention gender, and it was unclear what the scope of a woman's right to equality under the constitution might be. She proposed that the court interpret the constitution in the light of CEDAW principles for this purpose.

The court did rely on the CEDAW in reaching its decision. It referred to CEDAW's definition of discrimination, and to article 16, which provides that States shall ensure equality in marriage and family relations, to find that the practice violated women's equality rights. The court also found that the Government had a positive obligation to take action to stop this practice. The Government was ordered to inform all public hospitals that they were to publicise this decision, and to inform doctors that they had to cease making requests for husbands' consent. Requests for consent became more and more infrequent, and at present the practice has been discontinued in public hospitals. The problem may be resurfacing, h as the use of private physicians has inc signifi- cantly the few and the Government has g difficulty monitoring control- ling their es.

Participants in march organized by Mujeres por la Democracia/Photo: ©1992 Christopher Takagi, Impact

Nepal

In *Dhungana v Nepal*, the Forum for Women, Law and Development asked the Supreme Court to overturn a law that gave sons a share of ancestral property at birth but severely restricted daughters' entitlements. Section 16 of the Chapter on Partition of Nepal's *National Code* denied daughters a share of their parents' property until they reached the age of 35 without having married, and required that it be returned to the family if a daughter subsequently married. Because CEDAW has the status of national law in Nepal, the case was argued both as a violation of the Convention and as a violation of the constitution's equality guarantee. The Supreme Court found that the law did discriminate against women, but did not act immediately to invalidate it. Instead, the court directed the Nepalese Government to "introduce an appropriate Bill to parliament within one year — by making necessary consultations with recognised Women's Organisations, sociologists, the concerned social organisations and lawyers — and by studying and considering also the legal provisions made in other countries in this regard" (*Dhungana*, at 17).

The Government did not take any real steps to begin drafting new legislation after this decision was released, and women's NGOs decided to take the initiative themselves. A meeting was held with the Minister of Law and Justice and the lawyers who had been involved in the case to demand action. NGOs began work drafting a private bill to revise the inheritance law, which would give daughters inheritance rights at birth and give spouses the right to half of each other's property. They also conducted a study of foreign laws on inheritance rights and of the existing Nepalese system. The various districts of the country were mobilised to rally for support and were consulted for feedback on the proposed bill. At the same time, the Ministry of Women came up with its own draft bill, similar to the private bill.

Unfortunately, the bill the Government introduced in the 11th session of parliament was not based on the principles the NGOs and the Ministry of Women had advocated. It recognises a daughter's right to inherit, but, as with the earlier law, entitlements would be lost upon marriage. Clause 16 of the bill specifies that when a daughter marries after partition, whatever remains of her share in her father's property reverts to the successors of her maternal home. Women's NGOs have made an application to have this aspect of the bill amended.

As of May 1998, parliament still had not discussed the inheritance bill. Women's NGOs organised a demonstration to demand that the bill be moved forward. Over 200 women from over 60 districts in Nepal took part, and more than 100 of them were arrested when they tried to enter the house of representatives (they were released the following day). Among the women who were arrested was member of parliament Sapana Pradhan Malla, who had been legal counsel in the *Dhungana* case.

It is uncertain at present just what changes can be expected to Nepal's inheritance law. But what is already clear is that the law reform campaign has had a real effect on the public discourse around women's human rights in Nepal. According to Sapana Pradhan Malla,

> "...the advocacy to challenge Nepal's inheritance law led by women and women's groups had a positive impact on the empowerment of women in the country. Because of the court decision, the entire society was challenged to start rethinking the patriarchal structure, male supremacy, and the status and individual freedom of women. Women have begun to be vigilant about the issue and link it to the broader issue of equality. Because of the intervention, such issues have been elevated to the level of public debate, forcing Government to reconsider its understanding of the equality clause in the constitution. And women have become part of the law reform process. Finally, the advocacy has united women and NGOs to continue working for the advancement of the human rights of women."

Australia

In 1988, in *Aldridge v Booth*, the court was asked to declare the sexual harassment provisions of Australia's new *Sex Discrimination Act* unconstitutional. According to the Australian constitution, the federal Government's powers to legislate are limited, and restricted to certain areas. Before the Convention was ratified in 1984, it was clear that the federal Government was prohibited from passing national legislation in the area of sexual harassment in employment. However, after ratification, the Government did pass a law, and it relied on the new international obligations it had undertaken as giving it the necessary authority.

The court upheld the *Sex Discrimination Act*, agreeing with the Government that CEDAW ratification had effectively expanded its ability to pass national laws regarding women's human rights. The constitution gave the federal Government the power to legislate with respect to external affairs, and this power included the implementation of its treaty obligations. The court found that this power extended, specifically, to the Government's obligations regarding the prevention of sexual harassment under CEDAW: the CEDAW Committee has defined sexual harassment as discrimination in a General Recommendation, and CEDAW article 4 requires states to eliminate all forms of discrimination against women. The Government therefore had both the authority and the obligation to pass a national law prohibiting sexual harassment.

Zambia

In 1984, in *Longwe v Intercontinental Hotels*, Sara Longwe asked the Zambian ombudsman to order a hotel to stop discriminating against women. The Intercontinental Hotel had been enforcing a policy of refusing women entry unless they were accompanied by a male escort. Longwe had been stopped by a security guard who would not allow her to enter to pick her children up after they had attended a party at the hotel. The ombudsman did find that the hotel policy was discriminatory and forwarded a copy of its ruling to the National Hotels Board, but the policy wasn't changed. In 1992, Longwe was again prevented from entering the same hotel, when she and a group of women's activists tried to meet in the hotel's bar.

Longwe went to the Zambian High Court, as she realised the ombudsman's ruling had been completely ineffective. She argued that the hotel's policy violated her right to freedom from discrimi-

Several cities have already contacted WILD about passing similar laws in their own communities." Advocacy work is currently being done to prepare for the passage of a CEDAW implementation law at the State level in California. If passed, this law would set a standard for the rest of the country.

Hong Kong

Human rights activism intensified in Hong Kong in the late 1980s, following the events in Beijing's Tiananmen Square and in anticipation of the 1997 transfer of Hong Kong from British to Chinese rule. The transfer agreement between the British and Chinese Governments provided that China would respect existing Hong Kong legislation, and activists started to focus their attention on the passage of domestic human rights laws.

The 1991 Bill of Rights Ordinance, based on the International Covenant on Civil and Political Rights, failed to provide significant protection for women's human rights. But the women's NGOs that came together for the first time around this ordinance continued their work, formally becoming the Coalition of Women's Organisations. The Coalition began lobbying for the ratification of CEDAW, the passage of anti-discrimination legislation, and the creation of a Women's Commission.

The first direct elections were held for seats in the Legislative Council in 1991, making that branch of the Hong Kong Government democratically accountable for the first time. During the first election, women's NGOs questioned candidates about their views on women's rights, and made sure that women's issues had a high profile in the campaign. Many of the legislators came to recognise the importance of the women's vote; several legislators became real advocates; and broad support developed in the Council for women's issues. An Ad-hoc Group was formed in the Council to study women's issues, and the motion it introduced on CEDAW ratification was passed unanimously.

The Hong Kong Government was convinced to give its Agreement in Principle that the Women's Convention should be extended to Hong Kong and its agreement to seek approval for the extension from the Chinese Government. Advocacy efforts also persuaded the Hong Kong Government that it had to pass a domestic sex discrimination law to respect the obligations it would be taking on under CEDAW. Several draft bills for this law came to the legislative council. The first was introduced by a legislator who was an advocate for women's rights. It was powerful and comprehensive, and it stated explicitly that the courts were to use the Convention when interpreting the law. The Government then introduced its own sex discrimination bill in order to pre-empt this proposal.

It was the Government's bill that was ultimately passed into law, in 1995, but not in its original form. The Legislative Council called for it to be strengthened. Critics argued that without changes the legislation would fall short of what the Convention required, putting the Government in the position of already failing to meet its commitments the moment CEDAW was extended to Hong Kong. The bill's scope was broadened in important ways. The prohibition against marital status discrimination extended to employment and education (article 1 of CEDAW not restrict it to l . The cc of the 'hostile environment' was added to the harassment provision (CEDAW's General Recommendation 19). As well, the bill provided that special measures taken to ameliorate past discrimination would not be considered discriminatory (CEDAW, article 4).

Costa Rica

Costa Rica became a signatory to the Women's Convention in 1980, but it was not until 1984, following intensive advocacy by women's NGOs and prominent politicians, that CEDAW was ratified. Public attention to the demand for women's human rights continued in 1985 and 1986 during the national election campaigns — presidential candidate Oscar Arias, of the National Liberation Party, openly sought women's votes, and declared that his Government would have the "soul of a woman." He won the election, and the Government programme announced for his party's term in power gave very high priority to women's issues. According to Point 4 of the 1986-1990 National Development Plan, the Government declared that "the policies and programmes directed at women will search for ways to overcome the economic, legal, and political inequalities that present themselves and to develop action in cultural and educational fields to favour the changing of discriminatory patterns, under the premises of equality between the sexes and shared responsibility in the home."

The women who had supported Arias's campaign, and those who now held positions in Government, moved quickly to make sure that the Government kept its election promises. They drafted legislation to implement Costa Rica's CEDAW commitments that initially focused on women's political participation and representation. CEDAW article 7 requires the elimination of discrimination in political and public life, and article 4 allows for temporary affirmative action measures — the bill provided that in the next five national elections, the political parties must nominate male and female candidates in proportion to the percentage of male and female voters in the electorate, and that 25% of the public funds the parties received must be spent to improve women's participation, organisation, and political affiliation. The bill was expanded in later drafts, to include measures guaranteeing women's equality in other key areas addressed by CEDAW, such as education, economic and social life, and violence against women.

A broad coalition of women's NGOs began work on a multidimensional strategy to ensure the bill's passage into law. Town hall meetings were held across the country to increase public awareness of the bill's content and importance. 'Culture-fairs' directed at women and children were also held across the country for the same purpose, using puppet shows, music, dance, theatre, and poetry. Politically prominent women met with individual reporters and media personalities to convince them of the need for such a bill. A demonstration supporting the bill was held in the capital city, in which over 5,000 women marched to the legislative assembly. The Archbishop of the Catholic Church was convinced to hold a meeting of over 300 priests to discuss the bill, and the majority gave their support, some even going on to hold sermons on the theme of women's equality and the need for social change. At the close of the campaign, the women supporting the had a public opinion survey conducted found 63% of the public of the bill, the majority supported it, and 73% app of its es requiring equal and female representation in nom ns for public el .

III. NATIONAL LAWS

The connection between CEDAW advocacy and changes to national legislation often cannot be established very clearly. Many important laws for women have been passed following CEDAW ratification, women's NGOs have frequently used the Women's Convention as a component of their campaigns to push for these laws; and Governments will rely on these laws at CEDAW Committee sessions as proof that they are fulfilling their obligations under the Convention. But there is really no way to show just what was determinative in the passage of any given law. Furthermore, as the Women's Convention increasingly becomes an integral part of a nation's human rights culture, its contribution becomes harder to isolate and identify.

There are, of course, some laws in relation to which the role played by CEDAW is quite clear. These are laws that actually cite CEDAW in their preambles or text, and some have been passed in connection with efforts to get CEDAW ratified — either as preparation for ratification or in response to the Government's failure to ratify.

It is important that public education accompany the effort to pass or amend legislation. Women must be informed about new legal entitlements that have been created, before they can be expected to claim them. Government bureaucracies, local administrators, and police departments must also recognise and respect these new entitlements in order for these claims to be enforced.

United States: San Francisco

In April 1998, by unanimous vote, the San Francisco Board of Supervisors passed an ordinance to implement the CEDAW principles within the city. The ordinance endorses the principles of the Convention, and creates the framework for integrating them into city governance. A San Francisco CEDAW task force is created to oversee implementation, and gender analyses are initiated in the areas of city employment, funding allocation, and service delivery. Action plans will respond to the discrimination identified in these studies. In addition, human rights training will be conducted in all city departments. The city Government has allocated $100,000 in its 1999 budget to fund the first stage of implementation.

Successful passage of the ordinance followed 18 months of intensive political organising, led by the Women's Institute for Leadership Development for Human Rights (WILD).

WILD was recently formed to promote women's human rights in the United States. The challenge, as the group understood it, was to convince women activists that the sort of human rights framework that is provided by CEDAW could really help advance their work. According to WILD, human rights are generally understood to be an international concern, with no relation to women's struggles at the national level. WILD felt that the CEDAW could provide a broader, more integrated perspective that seemed to be missing from American women's advocacy. One of the main values of CEDAW, for WILD, is that it embodies the understanding that "the full spectrum of human rights — civil, political, economic, social and cultural — are inalienable, indivisible and universal". According to WILD: "While criticising human rights abuses abroad, the United States has systematically fallen short of producing these same rights within its own borders. Although the U.S. Government has acknowledged that everyone must have civil and political rights, it has continued to deny that economic, social and cultural rights are fundamental human rights."

The idea of trying to pass a law in San Francisco was developed at a CEDAW training workshop, hosted by WILD in October 1996, along with the San Francisco Women's Foundation, Amnesty International USA, and the Center for Women's Global Leadership. At the end of the workshop's second day, the 24 participants had become convinced that CEDAW was a useful tool, and they also realised that together they had the political resources to organise a drive to pass a city ordinance.

The workshop group set up an ad hoc task force. Regular CEDAW training was scheduled, to prepare women who would join the task force, and members of the initial workshop were trained as facilitators. An initial meeting was set up with the San Francisco Commissioner on the Status of Women, who agreed to support the general concept of a CEDAW implementation ordinance. Discussions were also held with the President of the San Francisco Board of Examiners, who was convinced to act as an advocate for the project with the Board.

The focal point for the campaign was a public hearing, which was held to convince both the city Government and the people of San Francisco that implementing the Convention would make a difference to women's lives. Members of the Board of Supervisors were invited to be panellists at the hearing. They listened to over 2 hours of testimony from women, in the form of personal accounts and policy arguments, about violence against women, economic injustice, and inadequate health care. The members of the Board made a commitment at the end of that hearing to take action. The next day the Board passed a resolution calling for national ratification of CEDAW and stating that the city would begin the process of implementing the Convention locally.

A small working group, composed of representatives from WILD, the Commission on the Status of Women, and the Board of Supervisors, immediately began drafting an implementation ordinance. Discussions continued with the city Government.

The CEDAW ordinance was taken to the Board of Supervisors for a first vote in March 1998. Support was now quite solid for the ordinance, with the supervisors sensing that failing to vote for it might be damaging to them politically. The ordinance was quickly and unanimously passed into law. By their campaign to pass the ordinance the women's NGOs intend to improve conditions for women in San Francisco, but they also hope to have a broader impact on the state of women's human rights in the United States, where the U.S. Government has failed to ratify CEDAW. According to Krishanthi Dharmaraj, of WILD, "This legislation sends a strong message to the U.S. Government that women and girls expect their rights not only to be acknowledged but also enforced. San Francisco may be the first city, but it will not be the last.

IV. GOVERNMENT POLICY

The introduction of a new Government policy may not be as dramatic an event as constitutional change or a high court victory, but a good policy to which the Government is genuinely committed has great value. It can lead quickly to widespread, concrete changes if, for example, it specifies budget allocations for women's issues or quotas for women's representation at decision-making levels.

Policies are often framed in terms of open-ended or long-term Government commitments. It is important that women's NGOs monitor the Government's progress, measuring it against both the policy's stated goals and the Government's obligations under the Convention.

South Africa

The South African Department of Justice is in the process of developing a Gender Policy as part of a broader transformation of the justice system that began with the end of apartheid. The department has been entrusted by the South African Government with the task of making the legal system truly representative and responsive to the needs of all members of South African society. In the introduction to its draft Gender Policy, the Department of Justice recognises the need for a full examination of gender issues, as the legal system has failed women in so many respects:

> For many years South African women who work within the legal system have voiced their concerns about the laws and the legal system. NGOs providing services to women have identified problems with the laws on domestic violence, rape, maintenance, inheritance, and other matters which deeply affect women's lives. The reality is that women have largely been rendered invisible in the legal system. They tend to require legal remedies for problems and violence which occur in their private world — with their husbands, partners, children, other relatives or friends. But the laws upon which they must rely have historically been formulated and applied by men and are not informed by the genuine needs of women (*Draft Gender Policy*, at 4).

The draft Gender Policy outlines the Justice Department's plan for reforming of laws, changing the way the courts operate, improving access to justice, facilitating community outreach, training in gender sensitivity, and increasing the representation of women at all levels.

The Women's Convention is relied upon throughout the policy. At the outset, the Department of Justice notes that South Africa has ratified CEDAW without qualification, and the Convention is listed as one of the primary "guiding principles" that is to inform the transformation of the South African legal system.

Specific Convention articles are also drawn upon in the formulation of and strategies. For example, the policy takes its guidance from CEDAW article 11, on equality in employment, to propose the following: the implementation of an affirmative action policy; the requirement that hiring panels be composed of at least 40% women; setting a target of 30% female employment in management by 1999; the provision of gender sensitivity training at all department levels; and the formulation of a sexual harassment policy. Similarly, when the policy considers the revision of family law, CEDAW articles 2 and 16 provide the framework. The policy also recommends that the South African Law Commission should "draw on the provisions of CEDAW when investigating and making recommendations regarding the harmonisation of common law and indigenous law".

The women's NGOs who presented a shadow report to the CEDAW Committee in July 1998 identified the Department of Justice's Draft Gender Policy as one of the most positive recent developments in South African law.

Colombia

The political impetus around the women's human rights agenda that was generated by the 1991 constitutional process continued after the constitution's passage. According to PROFAMILIA, "the new political will, the incorporation of new groups in the Government, and the networking of feminist groups" led to further changes, as women's NGOs successfully lobbied the Government to adopt new programmes with a gender perspective. One of the most important of these was the policy issued by the Ministry of Public Health in 1992, entitled "Health for Women, Women for Health."

The Convention has helped provide the framework for the new health policy through its conceptualisation of health as a human rights issue. Article 12 of CEDAW requires the State to "eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality between men and women, access to health care services, including those related to family planning." The State must also provide appropriate services in relation to pregnancy (CEDAW, article 12.2); provide educational information to women about family health and family planning (CEDAW, article 10); and ensure that women have equal rights with men to determine the number and spacing of their children, as well as having access to information and the means to make these decisions (CEDAW, article 16). In addition, the CEDAW Committee's General Recommendation on violence against women identifies coercion in relation to fertility and reproduction as a violation of women's human rights.

The Colombian constitution includes several key provisions regarding women's health that were modelled after the rights contained in the Women's Convention. The constitution guarantees women the right to found a family, to choose the number of children they will have, to have access to health education and information, to the enjoyment of a healthy environment, and to health care. The Colombian Health Policy elaborates upon and extends these entitlements by setting out a detailed programme of women's health rights. PROFAMILIA summarised rights in the following way:

It became quite clear to the deputies of the Legislative Assembly that flat opposition to the bill would be highly unpopular. Deputies who were critical of the bill refocused their attention on modifying some of its provisions. At the same time, the women who supported the bill proposed changes based on the input they had received through consultations with a wide range of Costa Rican women's groups. Two new sections reflecting CEDAW principles were added to the bill: an introductory section now declared the State's obligation to guarantee the real equality of men and women in political, economic, social, and cultural life and to remove obstacles blocking women's real equality; another section set out reforms that would be required of Costa Rica's civil, penal, procedural, labour, and family laws.

The bill was passed into law in 1990, as *The Law of Promotion of the Social Equality of Women*. Unfortunately, the provisions relating to women's political participation had been watered down, so that parties were now only encouraged to increase women's nominations and required to spend an unspecified 'percentage' of public funds on improving women's participation. However, most of the bill's other provisions remained intact in the final version. Costa Rica's *Law of Promotion of the Social Equality of Women* requires the following:

- The State must share the cost of child care with all working parents of children under seven years of age;
- Property titles must be registered under the names of both spouses, and single women's property must be registered in their own names;
- Working women are protected against dismissal due to pregnancy; reinstatement can be ordered and employers may be sanctioned;
- Women are entitled to three months' maternity leave following adoption;
- Mothers and fathers are given equal rights over their children;
- Women in common-law relationships are entitled to inherit property of the relationship;
- Regarding the legal prosecution of rape: Female officials must be available for the investigation, women are entitled to be accompanied during forensic examinations, justice personnel are to be given special training, and programmes to combat sex crimes are to be developed;
- The courts are authorised to order an abusive spouse to leave the home and to continue providing economic support;
- Gender stereotypes must be eliminated from educational materials, practices and teaching methods; new training programmes for teachers and women must be financed and conducted; and
- A women's legal defence office is to be instituted to protect women's human rights under both international conventions and national laws and to promote equality between the sexes.

Japan

Japan ratified CEDAW in 1985, and several pieces of legislation were enacted at that time to bring Japanese law into conformity with the Convention. The most important of these were the 1984 amendment to the *Nationality Law*, which conferred Japanese nationality on the children of Japanese women, and the 1985 *Equal Employment Opportunity Law (EEOL)* which prohibited employment discrimination in the private sector. Women's NGOs consistently criticised the *EEOL* because of the weakness of its enforcement provisions, and the Japanese Government was finally convinced in 1997 to amend the law to strengthen these provisions.

China

China passed the *Law on the Protection of Women's Rights and Interests* in 1992. It was developed under the authority of the All China Women's Federation, and was drafted over a three-year period by Government officials and legal academics. The law states that it is intended to implement both the Chinese constitution's guarantee of gender equality and China's obligations under CEDAW.

The law's scope is very broad. Its six chapters set out political rights, educational and cultural rights, labour rights, property rights, rights in marriage and the family, and 'personal' rights encompassing personal freedom, bodily integrity, dignity, honour, and reputation. The law provides that affirmative action measures should be taken to increase women's participation in the legislatures and Government administration. It also issues a general call for greater attention to the structural problems underlying gender inequality in China.

Many of the law's provisions repeat entitlements already established in other recent Chinese legislation, such as the 1980 *Marriage Law*, the 1985 *Inheritance Law*, and the 1986 *General Principles of Civil Law*. Some new protections have been added, however, most notably in relation to housing and agricultural land.

Although the substance of the law is quite progressive, the challenge is implementation. Women are entitled to bring legal claims over the violation of their rights under the law, and the State has control over the progress of these claims. The law's enforcement is actually at the State's discretion. While it is not unusual for a Chinese law to give the State this determinative role, the impact of the *Law on the Protection of Women's Rights and Interests* will depend on the Government's commitment.

ing a marriage contract; acquire and dispose of property; open bank accounts; own businesses; be guardians of their children even if separated or widowed; apply for passports on their own; and access credit facilities. Also, it is *LAMA* that gave Zimbabwean women the right to vote.

Just two weeks after presenting its CEDAW report, the Government brought LAMA to parliament for review and revision, and a move developed to have it completely repealed. The women's NGOs in Zimbabwe were outraged. A group of women's NGOs, including the Women's Action Group (WAG), had gone to the United Nations in New York, and conveyed a shadow report to the CEDAW Committee. They had listened while the Government used *LAMA* to congratulate itself on its women's human rights record before the CEDAW Committee. There seemed to be no relationship between the Government's statements to the international community and its actual legislative agenda for Zimbabwe. According to Rumbidzai Nhundu of WAG, it was clear the Government would feel free "to give with one hand and take with another if there were no people at home committed to keeping the Government accountable. As NGOs, we had to organise ourselves to make sure the Government's promises became a reality."

Women's NGOs immediately began a campaign to defend *LAMA*, and got their concerns into the Zimbabwean press. They publicised their concern about the need for Government adherence to its recently re-iterated CEDAW commitments. They also had to counter the misinformation about the *LAMA* that was coming from some parliamentarians. Some MPs claimed that *LAMA*, and especially its provisions on marriage, had imported foreign values into Zimbabwe's culture and was responsible for social decay. The NGOs argued that this claim about cultural values was false and dishonest: "It appears that instead of discussing economic and other crucial issues, our policy-makers have chosen to make an innocent and well-meaning piece of legislation the scape-goat for all social ills. Unemployment is skyrocketing, and both young boys and girls are forced to loiter in the streets and indulge in unacceptable behaviours. These are the issues that deserve attention." The NGOs also convinced the MPs who were fighting for *LAMA's* repeal to meet with them, and obtained their promise to set up a parliamentary caucus where they could articulate the reasons the Act should be left intact.

By March 1998, they had managed to turn the political tide. The Minister of Justice made a public announcement that LAMA would *not* be changed or repealed.

The NGOs see their successful defence of LAMA as the first step in an ongoing struggle to hold the Zimbabwean Government accountable for its obligations under the Convention. Responsibility for CEDAW monitoring will be divided among the various NGOs according to their expertise, and annual monitoring meetings will lead up to Zimbabwe's second CEDAW report. They are also working to ensure that CEDAW principles are reflected in the forthcoming land redistribution policy, constitutional review, and prevention of discrimination bill. The women's NGOs are determined, according to Nhundu, to "remind the Government of its commitments. We were there in New York, so the Government knows that we were listening to its promises."

Croatia

When the Croatian Government presented its second report to the CEDAW Committee in 1998, a Croatian women's NGO coalition, led by Be Active, Be Emancipated (B.a.B.e) was also present with a shadow report. At the end of the session, the Government delegation promised the Committee that the results of the CEDAW meeting would be publicised in Croatia. However, after they returned, the Government remained silent.

The NGO coalition contacted the Government, trying to arrange a joint press conference, public hearing, or television appearance, but the Government declined to participate. The coalition decided to mount its own publicity campaign — to keep the Government accountable, but also to help develop the public's understanding of the international women's human rights entitlements C had endorsed. Articles on the Convention and on the CEDAW Committee meeting were written by coalition members and published in the Croatian press. When the coalition obtained the CEDAW Committee's concluding comments on Croatia, they translated them and distributed copies to the press as well as to members of parliament. Pressure began to build, as an article appeared in *Tjetnik*, one of the country's leading news magazines, and opposition members of parliament complained publicly that they had to wait to be informed of the CEDAW session by women's NGOs.

The coalition then held a press conference, and this time the Government sent the head of its CEDAW delegation to attend. Press coverage of the conference was strong. The Government has since moved forward on its promise to invite women's NGOs to attend the meetings of the State Commission for Equality.

Mauritius

Mauritius presented its report to the CEDAW Committee in 1995. Women's NGOs were not in attendance to give a shadow report, but women in Mauritius had been consulted prior to the CEDAW session, and their concerns had been communicated to the CEDAW Committee. The Committee relied on this information when the Government representatives presented their account of the state of women's rights in Mauritius, and engaged the Mauritius delegation on the Government's failure to pass legislation prohibiting sex discrimination.

After the session was over, the Government held several press conferences, where it presented a selective report of the Committee's concluding comments. When Pramila Patten, of Women's Legal Rights Action Watch, informed the press that the CEDAW Committee's criticisms were being kept hidden, the Government publicly attacked her credibility. However, she was able to obtain a copy of the Committee's concluding comments, and once they had circulated, the Government backed down. The Prime Minister was reprimanded for the misrepresentation. Soon after, in 1995, Article 16(3) of the Constitution was amended to insert the word "sex" in the definition of discrimination.

Agenda

IWG on Human Rights Treaty Implementation
2 p.m., May 20, 1999
OEOB, 208

1. Public Outreach
   - Response to letter from NGOs/NSC
   - Sharing of agency reps list/NSC
2. Torture Convention
   - Status of report/State
   - Update on Justice task force/DoJ
3. Race Convention
   - Status of report/State
4. Treaty Ratification
   - Discussion of CEDAW ratification strategy/State
   - ILO Convention 111/DoL
5. Discussion of Education paper on Universal Declaration/DoE
6. Compliance Plan
   - Set up State/DRL and NSC meeting
7. New Business

MEMORANDUM

To: Human Rights Treaty Interagency Working Group of the NSC
From: Francisco Garcia, Alexander Wohl
U.S. Department of Education (ED)
Date: March 26, 1999
Re: Ideas for dissemination of the Universal Declaration on Human Rights

Background:

At the March 12, 1999 interagency workgroup meeting you asked us to present a list of options that the Department or the Administration might be able to pursue in response to a request from the United Nations to participate in disseminating the Universal Declaration of Human Rights (UDHR) in recognition of its 50th anniversary. As we told the group during that meeting, unlike many other nations, our national Department of Education is barred by law from directing instruction in any specific content area in U.S. public schools, and so it would be impossible to disseminate it specifically as the Secretary General of the United Nations suggested, "by introducing it to all primary education curricula." Notwithstanding the fact that there is no "national" elementary or primary curriculum, the Secretary or the President can nonetheless exercise other options to inform the nation's educational community about the principles proclaimed in the UDHR. These options include:

1. **Compliance with Executive Order**

The President could establish an Executive Order mandating that Federal agencies which fund educational programs will recognize and affirm the principles set forth in the UDHR in those programs they coordinate. Education related programs that would be affected under such an order could include cooperative extension services, Head Start, management, instructor, or service certification and/or training, as well as applicable ED programs for supporting curriculum, instruction, teaching, and content areas.

Wherever it is feasible and appropriate as part of its programs and initiatives, ED will establish appropriate measures to implement the Executive Order. Those measures can include non-regulatory program guidance, policy statements, ED employee training, Internet/Intranet postings or links, and assemblies designed to inform ED employees and customers of the UDHR and how the principles align with ED's mission and goals.

2. Outreach to the Community of Teachers and Learners and Establishment of Departmental Policies

Secretary Riley may choose to disseminate the UDHR to educators and the general public in one or more of the following ways:

- By sending a letter to Chief State School Officers encouraging each State to review the UDHR and incorporate its principles wherever possible to improve students' understanding of, and commitment to, ensuring those rights among their fellow citizens and as citizens in a global community;

- By issuing a statement to the press or presenting a speech or other public communication that focuses on Article 26 of the UDHR, *Everyone has the right to education.* The text of that article states:

  1) Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

  2.) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

  3.) Parents have a prior right to choose the kind of education that shall be given to their children."

  The Secretary's message might focus on this nation's commitment to ensuring that every child in the U.S. (regardless of origin, language, disability, gender, race, etc.) has access to public education.

  This statement could specifically address other issues (tolerance, freedom of movement, equal justice under the law, etc.) and articles for which the Secretary believes education is the key element to ensure that these rights are acknowledged and that all human rights are universally respected and realized; and

- By disseminating the UDHR to ED officials whose broad program structures might provide additional venues for disseminating the principles in the UDHR (e.g., Office of Bilingual Educaiton and Minority Languages Affairs (OBEMLA), Law-related education,

Women's Equity Education Act, Teacher training programs). Those programs may then choose to incorporate the principles into program priorities, program literature, non-regulatory guidance, conference presentations, and other relevant materials that are aligned with their statutory authority and mandate.

The Secretary could undertake these efforts at any time, or coordinate them with appropriate events, such as Independence Day, National Education Week, United Nations Children's Day, or in accordance with other relevant days of commemoration.

Dear Professor Boyle:

Thank you for your letter to Samuel Berger regarding the Interagency Working Group on Human Rights Treaties. I am responding on his behalf.

The Interagency Working Group is not charged with investigating allegations of human rights violations. Rather, as provided for by Section 3 of Executive Order 13107, individual complaints are referred for action to the agency with responsibility for the issue raised. Thus, your complaint was referred to Department of Justice, which, as you have acknowledged, has responded to you.

I hope this clarifies the procedure by which the Interagency Working Group handles individual complaints of human rights violations. ~~Thank you again for your inquiry.~~

Sincerely,

Scott Busby
Director
Office of Multilateral and
Humanitarian Affairs

Mr. Francis A. Boyle
Professor of Law
University of Illinois at Urbana-Champaign
College of Law
504 East Pennsylvania Avenue
Champaign, IL 61820

NATIONAL SECURITY COUNCIL

OFFICE OF MULTILATERAL AND HUMANITARIAN AFFAIRS

FAX COVER SHEET

NATIONAL SECURITY COUNCIL

17th & Penn, N.W.
Washington, D.C.
20504

Did you get a complete, clear transmission? If not, please call:

(202) 456- 9141

Scott Busby

From: ~~Eric Schwartz~~ 456-9141 (phone) /456-9140 (fax)

To: Caroline

FAX 69110

Date/Time:

No. of pages to follow: 2

RE:

UNIVERSITY OF ILLINOIS
AT URBANA-CHAMPAIGN

College of Law
504 East Pennsylvania Avenue
Champaign, IL 61820

TO: LEGAL MULTILAT
PLS. DRAFT RESPONSE ON BEHALF OF SRB.

April 7, 1999

Interagency Working Group on Human Rights Treaties
c/o Mr. Samuel Berger
Assistant to the President for National Security Affairs
The White House
Washington, D.C. 20504

By Express Mail

COMPLAINT AGAINST THE UNIVERSITY OF ILLINOIS FOR VIOLATING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (CERD)

Dear Mr. Berger:

As you know, on December 14, 1998 I filed the above-mentioned Complaint with the Interagency Working Group on Human Rights Treaties pursuant to the authority of President Clinton's Executive Order of December 10, 1998 on the Implementation of Human Rights Treaties. On January 27, 1999, I received a letter from Mr. Scott Busby of your Office telling me: "We are referring your complaint to the Department of Justice for a response." On March 29, 1999, I received a letter from Acting Assistant Attorney General Bill Lann Lee informing me: "Therefore, we have reviewed your complaint and conclude that the allegations cited do not state a cause of action under U.S. law that the Department of Justice has jurisdiction to investigate." Of course, I did not file my Complaint with the Department of Justice. I filed my Complaint with the Interagency Working Group on Human Rights pursuant to the authority of President Clinton's Executive Order of December 10, 1998.

I am operating under the assumption that President Clinton was most serious when he promulgated his Executive Order on December 10, 1998 concerning the Implementation of Human Rights Treaties. To the best of my knowledge, my Complaint was the first ever filed with the Interagency Working Group on Human Rights Treaties under the authority of President Clinton's Executive Order. I hereby request once again that the Interagency Working Group on Human Rights Treaties itself act upon my Complaint pursuant to the authority and responsibilities vested in the Interagency Working Group by President Clinton in his Executive Order of December 10, 1998. For the Interagency Working Group to refuse to act on my Complaint would render President Clinton's Executive Order of December 10, 1998 a mere scrap of paper. I trust that this is not the intention of the

phone 217-333-0931 • fax 217-244-1478

Interagency Working Group on Human Rights Treaties or yourself.

For the sake of your convenience, I have attached another copy of my pending Complaint to this letter. I look forward to hearing from you at your earliest convenience.

Yours very truly,

Francis A. Boyle

Francis A. Boyle
Professor of Law
Board of Directors
Amnesty International USA (1988-1992)

Attachment

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9903175
RECEIVED: 27 APR 99 19

TO: PRESIDENT

FROM: SMITH, CHRISTOPHER

DOC DATE: 19 APR 99
SOURCE REF: 302135

KEYWORDS: NATO
EUROPE
CO
TURKEY
HUMAN RIGHTS

PERSONS:

CK

SUBJECT: REQUEST TO RAISE HUMAN RIGHTS ISSUES AT NATO SUMMIT TO LEADERS

ACTION: PREPARE MEMO FOR BERGER DUE DATE: 03 MAY 99 STATUS: S

STAFF OFFICER: MCELDOWNEY LOGREF:

FILES: PA NSCP: CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION	FOR CONCURRENCE	FOR INFO
MCELDOWNEY	BUSBY	BAKER
	LACKEY	BANDLER
		BLINKEN
		NAPLAN
		SCHWARTZ

COMMENTS: _____

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSEMK CLOSED BY: DOC 1 OF 1

UNCLASSIFIED

3175

ID# 302135

THE WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

INCOMING

DATE RECEIVED: APRIL 22, 1999

NAME OF CORRESPONDENT: THE HONORABLE CHRIS SMITH

SUBJECT: URGES THE PRESIDENT TO RAISE HUMAN RIGHTS ISSUES WITH TURKEY DURING THE NATO SUMMIT AND URGE THE PRESIDENT TO TAKE ADVANTAGE OF ROMANIA INTEREST IN NATO MEMBERSHIP

		ACTION			DISPOSITION	
ROUTE TO: OFFICE/AGENCY	(STAFF NAME)	ACT CODE	DATE YY/MM/DD	TYPE RESP	C D	COMPLETED YY/MM/DD
LARRY STEIN		ORG	99/04/22			99/4/26
REFERRAL NOTE: NSC						
REFERRAL NOTE:						
REFERRAL NOTE:						
REFERRAL NOTE:						
REFERRAL NOTE:						

COMMENTS: E/C

ADDITIONAL CORRESPONDENTS: MEDIA:L INDIVIDUAL CODES: 1240 ____ ____

__ MAIL USER CODES: (A)R NJ_____ (B)_____ (C)_____

*ACTION CODES:	*DISPOSITION	*OUTGOING CORRESPONDENCE:
*A-APPROPRIATE ACTION	*A-ANSWERED	*TYPE RESP=INITIALS OF SIGNER
*C-COMMENT/RECOM	*B-NON-SPEC-REFERRAL	* CODE = A
*D-DRAFT RESPONSE	*C-COMPLETED	*COMPLETED = DATE OF OUTGOING
*F-FURNISH FACT SHEET	*S-SUSPENDED	
*I-INFO COPY/NO ACT NEC		
*R-DIRECT REPLY W/COPY		
*S-FOR-SIGNATURE		
*X-INTERIM REPLY		

REFER QUESTIONS AND ROUTING UPDATES TO CENTRAL REFERENCE (ROOM 75,OEOB) EXT-2590
KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.

have argued that *Burnham*'s reasoning did not necessarily support jurisdiction over foreign human rights defendants, citing language in Justice O'Connor's opinion in *Asahi Metals Co. v. Superior Court of California*, which warned that "[t]he unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight of assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." 480 U.S. at 114. This dicta raised the question whether it is "reasonable" for the U.S. courts to choose, under U.S. law, to exercise tag jurisdiction over foreigners sued in human rights cases in U.S. courts.

In fact, U.S. precedents strongly suggest that such jurisdictional exercises would be reasonable, and hence, consistent with domestic due process of law. Since 1980, the United States courts have sustained the assertion of civil jurisdiction in human rights tort cases brought by foreigners against foreigners in U.S. courts based on foreign torts, relying solely on tag jurisdiction. Such suits have traditionally been predicated on the Alien Tort Claims Act of 1789, 28 U.S.C. § 1350 (1994), and the Torture Victim Protection Act of 1981, 28 U.S.C. § 1350 note (1994) (TVPA). Beginning with the Second Circuit's decision in *Filartiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980), such suits have been upheld by courts in the First Circuit, *Xuncax v. Gramajo* (D. Mass. 1994); Second Circuit, see *Kadic v. Karadzic*, 70 F 3d. 232 (2d Cir. 1994); Ninth Circuit, see *In re Marcos Litigation*, and Eleventh Circuit, see *Abebe-Jira v. Negewo. See generally* Michael Ratner & Beth Stephens, International Human Rights Litigation in U.S. Courts (1998) (collecting cases).

Several U.S. administrations have supported jurisdiction in such cases as consistent with U.S. human rights policy. In highly publicized amicus briefs filed in *Filartiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980), and *Kadic v. Karadzic*, 70 F 3d. 232 (2d Cir. 1995), *cert. denied*, 116 S.Ct. 2524(1996), the United States Justice and State Departments together supported the exercise of national court jurisdiction over an alien based on transient jurisdiction, in a case where the defendant was being sued for torts in violation of the law of nations, i.e. crimes of universal jurisdiction. [I should disclose that before assuming my current position, I served as co-counsel for the class action plaintiffs in *Doe v. Karadzic* (No. 93 Civ. 878 (PKL) (S.D.N.Y. 1997), one of the two cases decided on the Second Circuit's appeal in *Kadic v. Karadzic*]

The Second Circuit's decision in *Karadzic* suggested that even after *Asahi*, tag jurisdiction will be sustained in U.S. human rights suits. In that case, a class of Bosnian victims (many of them residing in America) sued Radovan Karadzic, the leader of the Bosnian Serb state of Republica Srpska under the Alien Tort Claims Act and other statutes, seeking compensation for atrocities committed in the former Yugoslavia, including rape, murder, forced prostitution, and impregnation, acts of torture, genocide, extrajudicial killing, war crimes, and other crimes against humanity. Karadzic was served with process by hand while visiting New York, in a New York hotel located outside the United Nations headquarters district. The district judge dismissed for for lack of jurisdiction, but on appeal, the Second Circuit reversed, finding both subject matter and personal jurisdiction.

In so saying, the Second Circuit unanimously held, citing *Burnham*, that personal service upon Karadzic "comports with the requirements of due process for the assertion of personal jurisdiction," and that "if [plaintiffs] personally served Karadzic with the summons and complaint while he was in New York but outside of the U.N. headquarters district . . . he is subject to the personal jurisdiction of the District Court." 70 F3d at 232, 248. Moreover, the appeals court rejected Karadzic's claims that he was entitled to immunity from service of process based on the U.N.-U.S. Headquarters Agreement and a claimed federal common law immunity. The Supreme Court then denied *certiorari*, rendering the Second Circuit's ruling on the issue the controlling law of the case, which is ongoing as we speak. 116 S.Ct. 2524 (1996).

Upon analysis, the Second Circuit's reasoning seems fully consistent with the Supreme Court's decision in *Asahi*. While noting the special burdens that civil litigation in the U.S. places on foreign defendants, in *Asahi* Justice O'Connor also noted that "[w]hen minimum contacts have been established, often the interests of the *plaintiff* and the *forum* in the exercise of jurisdiction will justify even the serious burdens placed on the alien defendant." Given that Karadzic was sued in tort for crimes of universal jurisdiction, that Karadzic had other contacts with the United States, that many of the Bosnian plaintiffs reside here, that the U.S. forum has strong interests in punishing the universal crimes alleged, and that no other court (domestic or international) has yet obtained jurisdiction over Karadzic, it seems likely that even if the Second Circuit had explicitly applied the *Asahi* balance of reasonableness, that balance still would have tipped firmly in favor of jurisdiction.

U.S. law also would favor retention of human rights jurisdiction in civil cases after ratification of the Hague Judgments Convention. Article I, Section 8, Clause 10 of the Constitution grants Congress express authority to define and punish offenses against the law of nations, which it has exercised over the years by enacting numerous statutes, including the Alien Tort Claims Act (ATCA) and the Torture Victim Protection Act (TVPA). If the Senate were to ratify the Hague Judgments Convention, it would have ample authority by doing so to preserve existing U.S. cases/law permitting civil jurisdiction in human rights cases.

2. Recognizing a similar basis for civil jurisdiction over human rights torts would be fully consistent with the purposes of the Hague Judgments Convention, and international human rights law.

The main goal of a Hague Convention of jurisdiction and recognition and enforcement of judgments in civil and commercial maters is to increase foreseeability and certainty in the management and resolution of international disputes in civil and commercial matters. As I understand them, the ongoing negotiations are not designed to alter the status quo regarding international human rights litigation in national courts. To the extent that the Convention covers all "civil matters," however, it would also arguably cover human rights litigation, unless that litigation were specifically exempted from the Convention's rules.

As a matter of sound human rights policy, I would suggest that the Convention's negotiators pursue two principal aims in drafting key jurisdictional articles:
first, to leave the state of human rights litigation in national courts undisturbed; and

second, to create the possibility that the rules of the new Convention will have a positive, not adverse, influence on the ability of States Parties to the new Convention to comply with their duties under international human rights law and treaties, and thereby to facilitate the growth of international law.

As currently drafted, the Hague Judgments Convention would interfere with existing human rights precedents in United States courts. The problem lies in the way that the Convention deals with the exercise of territorial jurisdiction. As discussed, under U.S. law, a court may acquire general jurisdiction over an foreign human rights violator who is present in the forum, solely by virtue of personal service of process on his or her person, without regard to where the act or injury occurs. But under Article 10 of the draft Convention, which concerns jurisdiction in the matter of tort, a plaintiff in a tort action may sue only in the State where the act or omission of the defendant that caused the injury occurred or where the injury arose, provided "that the defendant could reasonably foresee that the activity giving rise to the claim could result in such injury in that State." In the current draft of the Convention, Article 3 provides that an individual may be sued for any claim in the courts of the State in which that person is habitually resident. Article 20 outlines eight prohibited bases of jurisdiction, including a provision that would eliminate jurisdiction over a defendant based solely on "the service of a writ upon the defendant within the territory of the States." Significantly, currently bracketed language in Article 20 would create a "human rights exception," permitting suit based on transient jurisdiction for "actions based on a violation of human rights protected by international conventions."

Absent the currently bracketed language in Article 20, adoption of the draft Convention would disrupt the existing U.S. human rights precedent outlined above. In a number of the cases discussed above, a torture victim encountered their torturer in another country and sued him where found. For obvious reasons, those who perpetrate universal crimes will be very difficult to sue in their home countries, where the injuries likely occured. Human rights violators are often controversial political figures or members of the military. In some cases, e.g. the case of Radovan Karadzic, the defendant is consciously dodging arrest or civil process. Nations where such abuses occur are often in upheaval and lack the strong, independent judiciary capable of withstanding undue influence from the accused, their cronies or their political party. Generally, legislation that allows a plaintiff to bring a human rights suit also requires victims of human rights violations to exhaust legal remedies in the place of the injury before bringing action abroad. See e.g., the US TVPA. Many plaintiffs may also be refugees, and it would be inconsistent with the goals of the 1951 UN Refugee Convention for the Hague Judgments Convention to contemplate that a refugee with a well-founded fear of persecution in his homeland be forced to return there as a prerequisite to seeking civil justice.

Given these difficulties, the territorial restriction in the draft Convention seems unduly restrictive of human rights litigation in national courts. The bracketed language in Article 20 creates a human rights exception to Article 20 that would reflect the uniqueness of human rights litigation and counteract the practical impossibility for most victims of human rights abuse to acquire or even seek justice in the violators' habitual residence or in the place where the original act or injury occurred.

Recognizing a "human rights exception" to Article 20 would be consistent with the existing international law of judicial jurisdiction. It is true that Restatement (Third) of the Foreign Relations Law of the United States opines that "Jurisdiction based on service of process on one only transitorily present in state is no longer acceptable under international law *if that is the only basis for jurisdiction and the action in question is unrelated to that state*." § 421, Reporters' Note 5, at 310-11 (emphasis added). But in a case involving human rights torts, the action in question *would* be related to that state, so long as it had accepted the relevant human rights norms by treaty or customary law.

Nor would transitory presence be the only basis for the state asserting jurisdiction over the underlying offense. The Restatement (Third) sec. 404 comment b effectively recognizes this, when it endorses the continuing existence of civil jurisdiction over human rights violations, explaining that, "[i]n general, jurisdiction of the basis of universal interests has been exercised in the form of criminal law, but international law does not preclude the application of non-criminal law on this basis, for example, by providing a remedy in tort or restitution for victims of piracy."

3. Recognizing an exception permitting civil jurisdiction over human rights torts would not open the floodgates of litigation in any relevant national jurisdiction, while the opposite result would impair the ability of States Parties to the new Convention to fulfill their duties under international human rights law.

The human rights exception contemplated by Article 20 is hardly an open-ended exception, since the class of actions involved would be limited to the most egregious recognized by international law. Under U.S. precedents, plaintiffs are required to demonstrate that the offenses alleged are "definable, obligatory, and peremptory," a narrow class of violations that thus far has been read to include only such offenses as genocide, crimes against humanity, torture, disappearance and war crimes. States Parties to the Convention should welcome the opportunity to provide justice for the victims of such abuse.

Moreover, as worded in the bracketed language, the exception would only permit continuation of a preexisting national basis for asserting personal jurisdiction. To win a judgment, a human rights plaintiff would still have overcome existing obstacles posed by subject matter jurisdiction, discovery, procedural bars such as class action certification, sovereign immunity and head-of-state immunity, *forum non conveniens* (if recognized in the forum), the political question doctrine, and obstacles to restraining and executing upon defendant's assets. Perhaps because of the difficulties of surmounting these hurdles, the

entire corpus of human rights litigation in the United States since the *Filartiga* case in 1980 encompasses less than one hundred reported cases, a trivial number when compared, for example, to the transnational commercial litigation reported during the same two decades.

At the same time, failing to include a human rights exception to Article 20 could easily impair the ability of States Parties to the new Judgments Convention to fulfill their duties under international human rights law. A number of international human rights treaties to which a large number of the Hague Conference states are parties, e.g., the Genocide, Apartheid and Torture Conventions, oblige contracting states to enact domestic legislation to provide effective remedies against such abuses. A growing number of Hague Conference states have enacted provisions in their domestic laws that implement these treaty obligations by permitting victims of human rights abuse to bring civil actions in national courts against perpetrators in order to seek compensation and restitution. Moreover, there have been substantial developments in international law denying impunity of illegally seized assets of human rights abusers. Failing to include a human rights exception in the Hague Judgments Convention would impair the ability of States parties to fulfill these obligations under international law and weaken a network of treaties that have been drafted with the express aim of strengthening the enforcement of fundamental human rights worldwide.

4. Conclusion

The proposed human rights exception to Articles 10 and 20 would recognize that transient jurisdiction is crucial to civil human rights litigation in national courts aimed at those accused of gross human rights violations and crimes against humanity. Such violators are often safe at home where they are protected by friendly judicial and political institutions. But if they venture outside of this protective cocoon, gross human rights violators should be on notice that the community of nations will do everything in its power to ensure that they enjoy no legal safe havens. A Judgments Convention designed to facilitate international cooperation through the mutual enforcement of civil and commercial barriers should not unwittingly create procedural barriers to bringing to the bar torturers and genociders who have been dodging civil justice. With a very modest textual change that will do no harm to its core functions, the Convention can help to advance the development of international law, rather than serving as an inadvertent shield for the perpetrators of human rights abuse and violence.

Pls Pass to:
Caroline Krass

from: Dora

Agenda
IWG on Human Rights Treaty Implementation
April 15, 1999
208, OEOB

1. Public/Hill Outreach
   - Reactions to Helms/Smith letters?/All
   - Hill briefing with sympathetic members/State
   - Report on meeting with NGOs/Justice

2. Torture Convention
   - Status of Report/State
   - Status of Task Force on Torturers/Human Rights Abusers/Justice
   - Response to Rapportuer's Report/State & Justice

3. Race Report
   - Status/State

4. Amnesty Issues
   - Status of Commission actions/State
   - Next Steps/ State & Justice

5. Treaty Ratification
   - CEDAW
     - ratification strategy/ DRL
   - ILO Convention 111
     - further action?/Labor

6. Compliance
   - Any action on an overall strategy?/State

7. New Business
   - Education Options Paper on Universal Declaration/Education

THE WHITE HOUSE

WASHINGTON

March 26, 1999

Dear Senator Abraham:

Thank you for your letter regarding Executive Order 13107 relating to the implementation of human rights treaties. I issued this Order on the 50th anniversary of the adoption of the Universal Declaration of Human Rights to reaffirm our commitment to the fundamental values enshrined in that document.

In response to your first point, I can confirm that the Order relates only to the implementation of those human rights treaty obligations the United States has assumed, subject to any reservations, declarations or understandings, as a result of having ratified the respective treaties in accordance with our constitutional procedures. (Per your request, a list of those treaties is attached.) The Order is not intended to implement any treaty the United States has not ratified or to circumvent the Senate's role of providing advice and consent in the ratification process.

Second, the Order does not cause any non-self-executing treaty provision to take on the force of U.S. law. Rather, the Order reaffirms to Executive Branch agencies their role in fulfilling U.S. obligations under those human rights treaties to which the United States is a party and establishes an interagency process that will enhance our ability to carry out such duties.

Third, the Order is not intended to authorize the unilateral modification by the Executive Branch of current reservations, understandings, or declarations contained in the Senate's resolutions of ratification giving advice and consent to these treaties. My Administration would not seek to make such modifications to the resolutions of ratification for these treaties without seeking the Senate's advice and consent.

I hope this information allays any concerns that you or your constituents may have about this Order.

Again, thank you for writing and sharing your concerns with me on this issue.

Sincerely,

Bill Clinton

The Honorable Spencer Abraham
United States Senate
Washington, D.C. 20510-2203

Enclosure

March 24, 1999

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ

FROM: SCOTT BUSBY

SUBJECT: Implementing the Universal Declaration of Human Rights

Attached is a memorandum to the President and a response to Secretary-General Kofi Annan and High Commissioner for Human Rights Mary Robinson on the subject issue.

This response was delayed by our involvement in preparations for the President's trip to Central America, and by our effort to respond to high priority letters from the Congress regarding our recent Executive Order on the Implementation of Human Rights Treaties.

Concurrence by: Caroline Krass

RECOMMENDATION

That you sign the memorandum at Tab I.

Attachments
Tab I Memorandum to the President
Tab A Proposed Response
Tab B Incoming Correspondence

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER

SUBJECT: Implementing the Universal Declaration of Human Rights

Purpose

To respond to a letter from UN Secretary General Kofi Annan and High Commissioner for Human Rights Mary Robinson.

Background

Secretary General Annan and High Commissioner Robinson wrote to thank you for your participation in the commemoration of the 50th Anniversary of the Universal Declaration of Human Rights, and to urge you to implement fully the provisions in that document. Specifically, they recommend that we sign and ratify the principal international human rights treaties, publicize the Universal Declaration among all our citizens, and implement the recent UN Declaration ~~on~~ in support of Human Rights Defenders.

Your response notes that you helped commemorate the 50th anniversary of the Universal Declaration by issuing an Executive Order that reaffirms our duty and commitment to implement those human rights treaties to which we are a party. You note that the Order established an Interagency Working Group on these issues, which, among other things, is pursuing recommendations made by Annan and Robinson.

RECOMMENDATION

That you sign the letter at Tab A.

Attachments
Tab A Proposed Response
Tab B Incoming Correspondence

cc: Vice President
Chief of Staff

Bringing Equality Home

Implementing
the Convention on
the Elimination of
All Forms of
Discrimination
Against Women

cedaw

EXPLANATORY NOTE:

For the sake of clarity, we would like to draw your attention to the following terminology: The acronym "CEDAW" is commonly used to refer to both the Convention on the Elimination of All Forms of Discrimination Against Women *and* to the Committee on the Elimination of Discrimination against Women, responsible for monitoring its implementation. The strictly correct use of "CEDAW" refers to the committee; however, in this publication, we refer to the Convention on the Elimination of All Forms of Discrimination Against Women in several ways: as "CEDAW," "the Women's Convention," and "the Convention." We refer to the monitoring committee as "the CEDAW Committee" or "the Committee".

TABLE OF CONTENTS

FOREWORD 6
INTRODUCTION 8

I. CONSTITUTIONS 10
Colombia 10
Uganda 13
Brazil 14
South Africa 17

II. THE COURTS 18
India 18
Botswana 20
Tanzania 21
Nepal 22
Australia 23
Zambia 23
Colombia 24
Costa Rica 24

III. NATIONAL LAWS 26
United States: San Francisco 26
Hong Kong 28
Costa Rica 29
Japan 31
China 31

IV. GOVERNMENT POLICY 32
South Africa 32
Colombia 33

V. THE CEDAW REPORTING PROCESS 35
Zimbabwe 35
Croatia 37
Mauritius 37
Morocco 38

VI. RESERVATIONS 39
India 39

VII. CONTACTS 42

VIII. REFERENCES 44

FOREWORD FROM UNIFEM'S EXECUTIVE DIRECTOR

UNIFEM is deeply committed to bringing about systematic change that leads to women's empowerment and gender equality. The Fund has integrated a rights-based framework into our work, which means that we view the pursuit of sustainable human development as a fundamental human rights issue and are committed to consistently relating human rights to the development dialogue. We are convinced that a women's human rights framework equips women with a way to define and express their experiences of violence, discrimination, and marginalisation. This framework provides a critical perspective for the development of concrete strategies for change, by employing a gendered lens in the examination of the human rights norms and standards that hold States accountable for creating the conditions necessary to achieve equality and non-discrimination for women in all areas of their lives.

UNIFEM has worked with non-governmental organisations, Governments, and partner agencies in the UN system to ensure that women's human rights continue to be a centrepiece in the follow-up to the world conferences, building on the foundation laid by Vienna and the Beijing Platform for Action. Our work in this area is guided by our understanding that the task of transforming social values and creating a culture of respect for the human rights of women is a complex and lengthy process. Norms and standards of human rights are usually set in the international fora, but once this has been accomplished the next critical step in realising these rights begins through implementation at the national level.

In promoting the realisation of women's human rights, UNIFEM has developed an array of initiatives around the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The CEDAW framework can be tremendously useful in working for legal and policy changes at local, national, and international levels. We have developed new programming aimed at: (a) achieving universal ratification of the Women's Convention and removal/narrowing of States' reservations (b) strengthening awareness of CEDAW and of the capacity of women's organisations to use it in their advocacy work and, (c) collaborating with other partners to support the work of the CEDAW Committee and strengthening the Women's Convention. Indeed, we have pledged to become to CEDAW what UNICEF has been to the Convention on the Rights of the Child.

UNIFEM recently provided CEDAW training to women's NGOs at two global workshops co-sponsored with International Women's Rights Action Watch Asia Pacific and held in New York during the January 1997 and 1998 sessions of the CEDAW Committee. A total of 33 women's human rights advocates from 17 countries reporting to the Committee have participated thus far in the training. These training workshops focused on strengthening women's rights advocates' understanding of the Convention and of the Committee's working methods, as well as exploring CEDAW's potential application to their advocacy work at the national level. The presence of these advocates at the January CEDAW sessions also enabled them to provide valuable information about the status and concerns of women in their countries to both the CEDAW Committee and their reporting Governments. UNIFEM will continue to support annual global training workshops during the January session of the CEDAW Committee, replicate these trainings at the national and regional levels, and to facilitate the connection between global and local advocacy around the Women's Convention.

This year the United Nations is commemorating the 50th anniversary of the Universal Declaration of Human Rights. Such an anniversary invites us to reflect, to glance backward and make an historical assessment of the progress of international human rights and to appreciate how far we have come. But when thinking about women, this is neither an obvious nor an easy exercise. Women's rights as human rights, in a realistic and viable form, have only recently been accepted by the international community as part of the human rights lexicon. CEDAW came into force in 1981, as the first international human rights treaty to systematically and substantively address the needs of women. However, these gains made on paper at the international level simply set the stage for the real work: the implementation of CEDAW and other human rights instruments at the national level. This is where CEDAW really has meaning for women and translates into the potential to improve women's lives and their societies. The history of women's human rights has just begun.

If the stories brought together in this booklet have any single message, it is that women themselves must be and will be the authors of this history. These are stories about new and changed constitutions, about court decisions giving women the legal right to land and to protection from sexual harassment, about laws that prohibit gender-based discrimination, and about Government policies that respect women's health needs. What is apparent in each case is that CEDAW, as a document, did not in and of itself bring about these changes. Rather, it was the determined, cooperative, innovative, and strategic work of women's NGOs — and the stimulation of the political will of Governments — that changed the conditions of women's lives. CEDAW provided them with a powerful, internationally recognised lever.

This booklet does not attempt to provide an exhaustive listing of all of the work that has been done with CEDAW to date, and many of the initiatives it describes are still very much in progress. What it provides is a collection of 'snapshots' of a dynamic process currently taking place around the world as societies explore ways of using the Convention to bring concrete improvements to women's daily lives.

We hope that we have produced a useful resource for women's human rights advocates, Government representatives, policy-makers, and others involved in implementing human rights for women. To this end, we have tried to provide as much information as possible about selected examples of how CEDAW has been successfully implemented to make a real difference. A listing of women's NGOs has been provided in order to facilitate the exchange of information and additional details about successful strategies. The real knowledge on what CEDAW can do for women — and what women can do with the Convention — rests there.

UNIFEM will continue its efforts to help forge the political will to implement the programmes and policies necessary to enable every woman in the world to live a life free from violation and to exercise and enjoy all her human rights. Bolstering the ratification and implementation of CEDAW is a pivotal part of building a culture that understands, respects, and promotes equality for women. In this year of celebrations commemorations of the United Nations' principles of human rights, we at UNIFEM know that freedom, empowerment, sustainable communities, and development cannot be achieved without the full realisation of the human rights of women.

Noeleen Heyzer
Executive Director
UNIFEM
November 1998

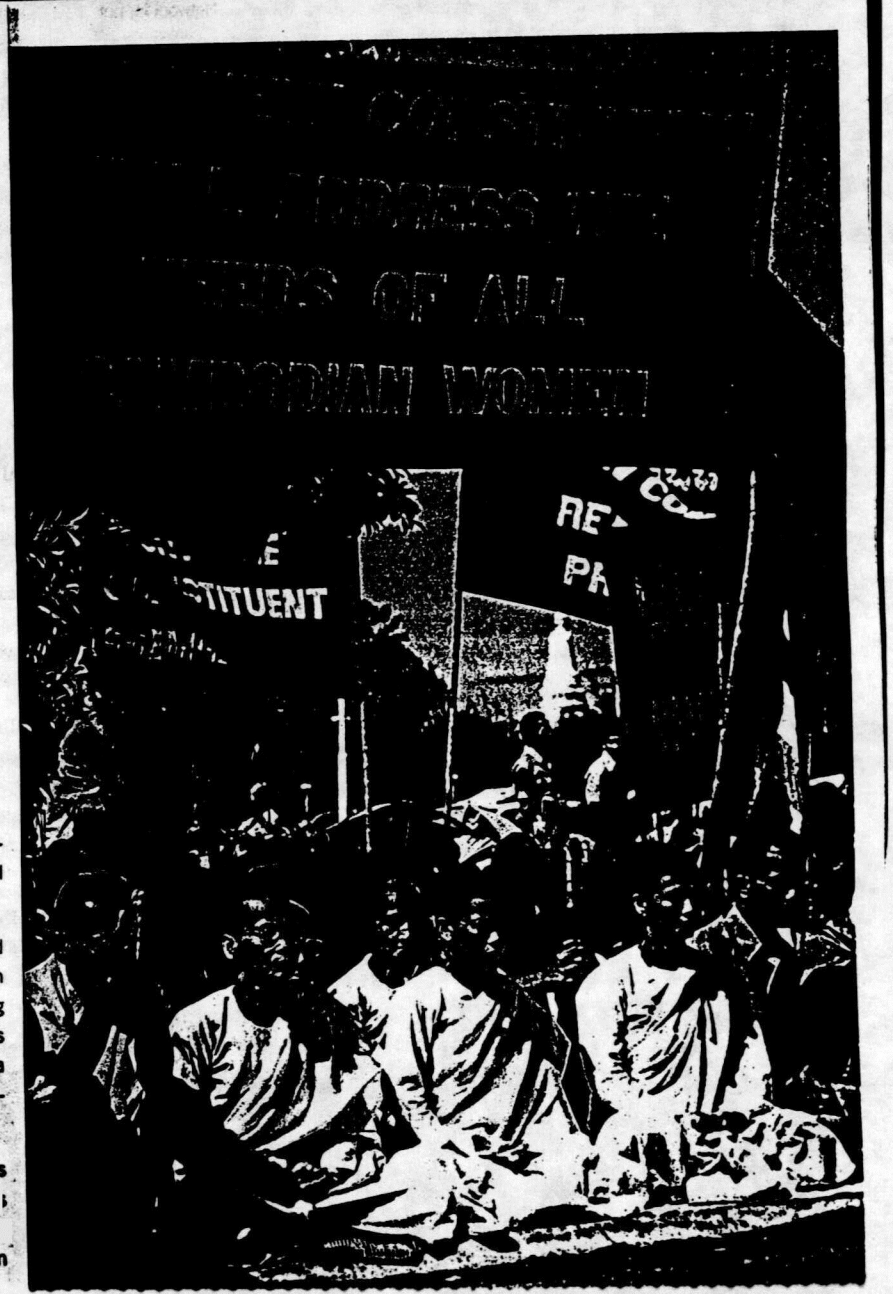
I. CONSTITUTIONS

When women's human rights are included in a national constitution, they become part of a country's baseline for rights protection and Government obligations.

The ways in which constitutions incorporate women's human rights vary a great deal from country to country. Some constitutions make ratified international treaties and covenants part of national law. Other constitutions include explicit guarantees of gender equality, and women's non-governmental organisations (NGOs) have done important work since CEDAW was opened for ratification in 1979 to make sure these provisions are included in their States' constitutions.

Some of the most significant constitutional gains have been won in countries where there has been a broader national move for constitutional renewal, a recent ratification of CEDAW, and an interest from women's NGOs in using CEDAW as an advocacy tool.

CEDAW principles have been integrated into new constitutions and added to more established constitutions through amendments. CEDAW principles can also gain 'constitutional' status in a less direct fashion, when the courts are convinced to use the Women's Convention to help give existing constitutional guarantees of women's equality more detailed and concrete meaning.



Colombia

The Colombian Government ratified CEDAW in 1981, and women's NGOs quickly began exploring ways to use it in their advocacy work. By the mid-1980s, CEDAW had become a central part of campaigns for women's human rights in Colombia.

At the same time, demands were building in Colombia for constitutional reform. It was hoped a new constitution would help move the nation past the period of violent instability it had been experiencing. The President of Colombia invited all sectors of Colombian society — including "feminists and women's organisations" — to bring their reform proposals to the working groups that were developing the new constitution. In response to this call, women's NGOs made a series of proposals about women's human rights, the main proposal being that CEDAW principles should be written into the constitution.

The legislative assembly began drafting the new constitution out of the collected reform proposals in 1991. Women's groups determined that cc s not be overlooked. | s from across the country decided to unite in a single umbrella organisation, for the | to a strategy that would women's human rights high on the constitutional In

April 1991, 34 women's groups issued a statement that appeared in one of the country's leading newspapers. It reminded the assembly that a truly democratic constitution must respect women's rights and needs. It also listed their demands, starting with the incorporation of CEDAW principles. The following month, the Women and the Constituent Assembly National Network (the Network) was officially formed; soon it grew to include more than 70 women's NGOs from across Colombia.

María Isabel Plata and Adriana de la Espriella, of PROFAMILIA, explain why CEDAW was so useful for women trying to influence the shape to be taken by the new constitution:

> "The strengths of the proposals advanced by the Women and Constitution Network lay not only in their recognised support by the women's organisations, but in the fact that they emphasised that the principles embraced in their proposals were mandates contained in international human rights instruments, such as CEDAW. They won legitimacy by being framed as internationally recognised human rights provisions. In this case, the use of international human rights language proved to be an effective strategy for introducing women's rights into the constitution, taking advantage of the fact that Colombia is a country that is constantly scrutinised by the international community for its compliance with human rights principles". ("CEDAW, Colombia and Reproductive Rights", at page 2)."

The Network's efforts were successful. Not everything they advocated appeared in the final draft, but the Colombian constitution includes some of the most detailed and substantive guarantees of women's human rights in the world.

One of the characteristics of CEDAW which the women's NGOs found especially valuable was its real, concrete, and substantive vision of women's equality. The Convention requires States to take measures to bring about substantive, actual equality between women and men, not just formal, 'paper' equality. For example, CEDAW defines discrimination not just as a legal distinction between women and men, but as any form of treatment that has the *effect* of "impairing or nullifying the recognition, enjoyment or exercise by women — of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (CEDAW, article 1). Equality is measured on the basis of women's actual ability to exercise and enjoy their human rights. For this reason, the Convention also provides that temporary affirmative action measures will often be required, and should not be understood as discriminatory — while they do, on paper, privilege women over men, their ultimate effect is to establish a state of greater equality between the sexes.

The Colombian constitution includes several provisions that reflect CEDAW's substantive vision of equality. For example, article 13 of the Colombian constitution guarantees legal equality between women and men not merely by prohibiting discrimination, but also by obliging the Government to actively promote the conditions needed to make legal equality real and effective. The Government also has an obligation to adopt affirmative action-style measures favouring disadvantaged groups to remove the effects of past discrimination. The same approach is taken in article 40, which deals with political representation. It provides that the State must "guarantee the adequate and effective participation of women in the decision-making levels of Public Administration."

The constitution also incorporates further guarantees of women's equality that parallel the provisions of CEDAW. For example, article 42 states that "family relations are based in the equality of rights and duties of couples and in reciprocal respect among all its members" (CEDAW, article16), and it provides that the State must punish "any form of violence within the family." Article 42 also guarantees the right of couples to "freely and responsibly decide the number of their children" and guarantees State assistance and support to women during pregnancy and after birth (CEDAW, articles 16 and 12).

Finally, the constitution created an enforcement mechanism that individual women can use. A Constitutional Court was set up to hear petitions brought by citizens about violations of their rights. It has the power to make an "order of protection" if the petitioner shows that her rights are jeopardised by Government action or inaction. This court made a ground-breaking decision in 1992 in response to a petition brought by a female victim of domestic violence. Her husband's actions were not criminal, according to the Colombian penal code, domestic violence was seen as a private matter that did not concern the State. The court found that the absence of legal recourse violated her rights to life, and to integrity and security of the person. Even more important, the court established the principle that the State has a positive obligation to secure protection for women and prevent husbands from continuing to subject them to violence. The police and the Institute of Family Welfare were ordered to take immediate steps to protect the petitioner.

The national women's Network created to reform the constitution has continued to grow since its inception, and other successes have followed, including the introduction of a national policy on women's health and further constitutional court decisions enforcing women's human rights.

Uganda

The Ugandan constitution was rewritten in 1995. To prepare for the drafting of the new constitution, the Government held consultations across the country. Women's NGOs felt strongly that this process was not designed to include women in a significant way, and started their own parallel consultation process. They also mobilised to get women elected to the Constituent Assembly, which would be drafting the constitution. Once the Constituent Assembly had been established, its women members formed a women's caucus to develop a united position on the proposals that would come before the assembly.

The women working on proposals for the new constitution referred to CEDAW as establishing a minimum acceptable standard, and the Convention is reflected in a number of important provisions of the Ugandan constitution. Its first provision, which declares the constitution's guiding principles, states that the need for gender balance and fair representation is to inform the implementation of the constitution and all Government policies and programmes. The constitution's Bill of Rights states that the rights it sets out are to be enjoyed without discrimination on the basis of sex.

The Ugandan constitution also contains powerful guarantees about women's political participation which are the direct result of the NGO advocacy efforts. The NGOs had relied on CEDAW's con-

The 1992 *Paulista Convention on the Elimination of All Forms of Discrimination Against Women* has been adopted by the state of São Paulo and many São Paulo municipalities. The *Paulista Convention* is open to ratification by all municipalities within the state, and within one year of its passage, municipalities representing approximately 45% of the population had become signatories.

The *Paulista Convention* imposes detailed obligations on the State and local Governments regarding enhancement of women's human rights in the areas of public administration, daycare, education, health care, employment, and the prevention of violence against women. Some of the more important convention requirements are as follows:

- **Public administration:** The State and cities must clearly define programmes and services for women within their jurisdiction; establish quotas in multi-annual plans; pass laws regarding budget orientations; collect sex-disaggregated data for all statistical work undertaken; and establish a woman's advisory council to be composed and directed by women's NGO representatives.

- **Day-care:** The State and cities must provide daycare services through the schools; require training and public examination of day care professionals; make the provision of day care to children between ages 0 and 6 from low-income families a priority until complete coverage is achieved; ensure that services are provided to children with disabilities, including those who are HIV-positive; offer incentives to private companies to build day care facilities; and create a special Government fund for the construction and maintenance of day care facilities.

- **Education:** The State and cities must develop programmes to sensitise the community and contribute to the transformation of discriminatory prejudices and practices; introduce new methods and materials into the school system that aim at the elimination of discriminatory attitudes and the promotion of positive self-image among girls; and develop courses for teachers to enhance their ability to work with the new materials and methods; The State will supply the cities with subsidies, assistance, and technical support to help them achieve these goals.

- **Employment:** The State and cities must create administrative and legal sanctions to ensure equal access to training and education, the right to equal treatment in employment, and special protection for women workers during pregnancy. They must prohibit reference to gender or marital status in employment advertising, the demand for pregnancy testing as a condition of employment, and the dismissal of women following maternity leave.

- **Violence against women:** The State and cities must create programmes and policies to campaign against all forms of violence against women, and the State is to provide subsidies and assistance to the cities for this purpose.

South Africa

South Africa made the transition from an apartheid state to genuine democracy in the early 1990s, and the creation of a new constitution was a key component of this transformation. A broad coalition — composed of women's NGOs, academics, women politicians, and women's trade union groups — worked to ensure that women's human rights were given proper constitutional recognition and protection.

They presented their demands in the form of a charter of women's rights, which incorporated the concerns and issues of women across the country. The coalition drew on the Convention's overall conceptualisation of women's equality as requiring the integrated guarantee of political, civil, economic, social, and cultural rights. They stated, in the charter's preamble, "We set out here a programme for equality in all spheres of our lives, including the law, the economy, education, development and infrastructure, political and civic life, family life and partnerships, custom, culture and religion, health and the media." CEDAW also provided a useful framework for specific rights, and a number of the provisions of the women's charter parallel the rights set out in the Convention. For example, article 2 of the charter states that "women shall have equal legal status and capacity in civil law, including, amongst others, full contractual rights, the right to acquire and hold rights in property, the right to equal inheritance and the right to secure credit" (CEDAW articles 13 and 15).

The coalition's advocacy efforts were highly successful. The South African constitution contains a number of significant provisions guaranteeing women's equality. In the section entitled "Founding Provisions," which set out the fundamental values underpinning the new democratic State, non-sexism is listed alongside non-racialism. The constitution's Bill of Rights prohibits discrimination on the basis of "race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth." The constitution also includes an important provision which, like CEDAW's article 4, states that temporary special measures may be taken to accelerate equality between men and women, and that such measures will not be considered discriminatory.