

Constructing a Global Law-Violence against Women and the Human Rights System

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This ethnographic analysis of one of the core human rights conventions suggests that despite the lack of enforceability of this convention and its operation within the framework of state sovereignty, it is similar to state law. The Convention on the Elimination of All Forms of Discrimination against Women, or CEDAW, the major UN convention on the status of women, articulates a vision of women's equal protection from discrimination and addresses gender-based violence as a form of discrimination. It had been ratified by 171 nation states as of mid-2003. Its implementation relies on a complex process of periodic reporting to a global body meeting in New York and a symbiotic if sometimes contentious relationship between government representatives and international and domestic NGOs. Like state law, it serves to articulate and name problems and delineate solutions. It provides a resource for activists endeavoring to address problems of women's status and turns the international gaze on resisting nations. Its regulatory strength depends on the cultural legitimacy of the international process of consensus building and related social movements to define social justice in these terms. Thus, like state law, its impact depends on its cultural legitimacy and its embodiment in local cultures and legal consciousness. This examination of CEDAW as quasi law extends our understanding of law as a plural and a symbolic system rooted in a particular historical moment of globalization.

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One of the major ways the international human rights system endeavors to prevent violence against women is by international law, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This is the major United Nations treaty governing women's status. It has been widely ratified and in theory incorporated into the national legal systems of ratifying countries. Yet, many legal scholars, activists, and NGOs are concerned about the lack of enforcement mechanisms within this legal process (see, e.g., Byrnes and Connors 1996, 679; Afsharipour 1999; Ulrich 2000, 637; Resnik 2001, 678; Bayefsky 2001).¹ The committee charged with monitoring compliance with CEDAW, like the committees monitoring the other five major UN treaties, has limited power to compel states to comply with the obligations they assumed by ratifying the treaty (see also Foot 2000, 269–70).

Because treaty bodies work within the global structure of sovereignty, they are not empowered to impose sanctions on noncompliant states. The primary mechanism for inducing compliance with CEDAW is the preparation of periodic reports that are presented by national governments to an oversight committee, called a treaty body, at UN headquarters in New York. Pressure is exerted through exposure, shaming, and appeal to the international standards articulated in the convention. Committee members see the process as a “constructive dialogue” in which they pose questions to governments. The committee has little recourse against states that prepare thin reports or cover up discriminatory practices. They cannot prevent a government from providing evasive or scanty answers although they can write critical “concluding comments” that are sent to governments and posted on the Internet. There is a new individual complaint procedure for CEDAW, but relatively few states have ratified it yet. Overall, compliance depends on the will and commitment of national political actors and pressures from other countries and nongovernmental organizations (NGOs). A recent major study of all six treaty bodies concludes “the gap between universal right and remedy has become inescapable and inexcusable, threatening the integrity of the international human rights legal regime. There are overwhelming numbers of overdue reports, untenable backlogs, minimal individual complaints from vast numbers of potential victims, and widespread refusal of states to provide remedies when violations of individual rights are found” (Bayefsky 2001, xiii).

1. E.g., Bayefsky argues that “If rights are not followed by remedies, and standards have little to do with reality, then the rule of law is at risk” (2001, 7). Byrnes and Connors point out that women-specific human rights tend to have less effective implementation procedures than other human rights, an indication of a pervasive second-class status of women's human rights (1996, 679). However, in her study of the impact of the human rights system on China, Rosemary Foot notes that there is a debate about the way norms are diffused in the global system, with some emphasizing the role of constraint and fear of consequences for noncompliance while others stress the constitutive role of norms and the symbolic significance of compliance for a nation's self-identity (2001, 5–6). She concludes that both are important for China.

CEDAW is law without sanctions. But a closer examination of the way the CEDAW process operates suggests that although it does not have the power to punish, it does important cultural work by articulating principles in a formal and public setting and demonstrating how they apply to the countries under scrutiny. The process of ratification, preparing reports, and presenting and discussing reports fosters new cultural understandings of gender and violence. The central regulatory feature of the Women's Convention and its hearings is the definition and naming of problems and the articulation of solutions within a prestigious global forum. National and international NGOs as well as other international actors endeavor to shame noncompliant governments. This is a cultural system whose coin is admission into the international community of human-rights-compliant states. At the heart of the legal process of monitoring this international human rights convention is the cultural work of altering the meanings of gender and of state responsibility for gender equality. Much sociolegal scholarship suggests that similar processes are basic to the way state law regulates behavior as well. Only a small fraction of conflicts actually become cases in court and compliance depends largely on individual consciousness of law (see Merry 1990; Ewick and Silbey 1998).

Despite its lack of sanctions, CEDAW can be considered part of an emerging global system of law. As global law has expanded, it has acquired greater influence over national and local systems of law. In the late twentieth century, global social reform movements such as feminism and human rights advocacy have increasingly turned a transnational gaze on local and national laws and practices and found them wanting.² International human rights law offers new opportunities to pressure offending governments. Keck and Sikkink's study of transnational NGOs shows the critical role they play in defining social problems, giving them names, and doing the research necessary to document their scope and severity (1998). Indeed, they show how the category of violence against women itself was cobbled together by NGOs out of several distinct issues. Since the end of the cold war, the idea that legitimate sovereignty rests on democratic governance and humane treatment of citizens has been growing, so that the new international "standard of civilization" includes acceptance of human rights (Foot 2000, 11). During the 1990s, sovereignty was increasingly defined as contingent on a country's human rights performance (Foot 2000, 251–52). These ideas resonate with colonial era conceptions of what it means to be a "civilized" nation and a respected member of the international community.

This article, along with the symposium as a whole, seeks to reconceptualize violence against women in intimate relationships as a problem rooted in structural conditions such as political economy, globalization, the expan-

2. This process is analogous to the constant renegotiation of the boundaries of federal, state, and local control in the United States (see Resnik 2001, 670–79).

sion of capitalism, and the growing inequality between rich and poor nations as well as in the dynamics of interpersonal interactions. Although the interpersonal framework has come to dominate U.S. understandings of violence against women, the international movement takes a far more structural approach. The articles in this symposium locate discussions about violence against women within these larger structural systems. They examine the regulation of violence against women in light of the changing relationships between national and international law and the emerging notions of international legal regulation of violence against women. They consider the way relations between wealthy donor states and poor recipient states affect the operation of this system.

The work of the committee that monitors compliance with CEDAW provides a good venue in which to explore these issues. Country reports typically discuss the extent of violence against women and efforts to control it, while committee members frequently ask government representatives questions about gender-based violence. This article discusses the country reports of Guinea, India, and Egypt and their presentations at the CEDAW committee in 2000 and 2001, some of which I observed. At these hearings, held at UN headquarters in New York, the CEDAW committee encourages governments to change national and local laws, institutions, and cultural understandings that discriminate against women. The convention articulates the principle of gender equality in the enjoyment of human rights and in the elimination of gender-based discrimination in marriage, work, education, politics, the legal system, and the family. Like other human rights discourses and instruments, it is committed to universalism: to the idea that there are minimal standards of human dignity that must be protected in all societies (An-Na'im 1992; Ignatieff 2001; Schuler 1992; see Wilson 1996). Universal gender equality requires eliminating those laws and institutional practices that treat women in discriminatory ways. It advocates stopping discriminatory practices and introducing compensatory measures for past inequalities. With reference to violence against women, the underlying theory is that improving women's status with relation to men will reduce their vulnerability to violence.³

Others have suggested different approaches to protecting women from violence. For example, although some Islamic states insist that women and men are not equal, it is nevertheless possible within this religious tradition to critique violence against women (Hajjar 2001, 11). At a conference on women in Palestine that I attended in Gaza in 1999, many of the Palestinian women argued for a reinterpretation of Islam that would provide them more choice and safety, but they did not ask for gender equality nor did they

3. This is, however, not always so straightforward. E.g., Joan Fitzpatrick argues that equal treatment fails to protect women from violence by police since women's special vulnerabilities to gender-based violence may be buried in the larger category of police abuse (1994, 545).

reject Islam. Similarly, some conservative Christian groups in the United States emphasize the inequality of man and woman in marriage while stressing the duty of husbands to honor their wives (see Merry 2001b). Gender equality as a way of dealing with women's vulnerability to violence is a culturally specific approach to the problem, one promoted by secular Euro-American feminists as well as feminists in many other parts of the world. It seems to be the most effective strategy, but it is not the only one. Moreover, although no country has come close to achieving gender equality, even those that have achieved relative equality still experience violence against women. As Jane Collier argues, with the transition to a modern, relatively egalitarian, family system in which women as housewives are viewed as spending family resources in place of an earlier system in which women were seen as producers of goods for the family, women may become more rather than less vulnerable to violence (1997).

The convention focuses primarily on eliminating discrimination against women to equalize their status with men. Feminists have long pointed out the limitations of a rights-based framework for preventing violence against women in the United States (see Schneider 2000). There are other international challenges to this secular, rights-based vision of justice. Some come from religious groups rather than feminists—groups that emphasize preserving the family over protecting the woman. In contrast, the principle of equal rights stresses the value of individual autonomy and physical safety over the sacredness and permanence of the family. One of the major debates about wording at the 2000 Beijing Plus Five conference, the five-year review of the Beijing World Conference on Women in 1995, concerned religious versus secular views of the good society. The United States and Europe wanted to include language on reproductive rights and sexual orientation, although the Holy See and many nations in other parts of the world objected, including some Islamic countries. Some countries claimed that a religiously organized society provided more stability and safety for women than a secular one. There were other differences as well. African countries sought to include the relationship between gender violence and globalization, poverty, armed conflict, and structural adjustment in the texts while more affluent nations resisted. Cuba fought against overly strong systems of monitoring compliance and was joined by Libya and Pakistan, all countries that are concerned about the loss of sovereignty in such monitoring systems.

The human rights regime articulates a particular cultural system, one rooted in a secular transnational modernity. This view is contested by alternative ones such as religious nationalism. CEDAW, like the rest of the human rights regime, assumes that culture, custom, or religion should not condone violations of human rights. The committee members of CEDAW often present a united front against recalcitrant or evasive government representatives. They uniformly condemn injurious cultural practices that discriminate against women, a position clearly articulated in the text of the

convention. This universalizing approach is structured by the convention itself. The committee's mandate is to apply it to all countries equally. Countries that ratify it assume the burden of conforming to its requirements, regardless of their specific cultural attributes. This is the mission that the committee adopts. Thus, the committee is not explicitly promoting transnational modernity but is pressing governments to conform to the terms of a convention that embodies many of the ideals of that modernity. The convention is the product of global negotiation and consensus building by government representatives within several UN deliberative bodies such as the Commission on the Status of Women and the General Assembly (Jacobson 1992, 445–46). It offers a universal vision of a just society in which local differences do not justify continuing discrimination against women. In other words, claims to culture do not justify deviation from the culture of transnational modernity. Cultural differences are respected, but only within limits. Cultural difference does not justify assaults on the bodily integrity of vulnerable people. The human rights community generally resists seeing claims to cultural difference as a valid justification for practices that they define as harmful to women, children, or other vulnerable populations.

CULTURE AS AN OBSTACLE IN HUMAN RIGHTS DISCUSSIONS

When government representatives, committee members, or the convention invoke culture in CEDAW proceedings, it is more often as an obstacle to change than as a mode of transformation or as a resource. Culture often appears as a relatively static and homogenous system, bounded, isolated, and stubbornly resistant. The convention and, to some extent, the committee members rely on a vision of culture that imagines it as integrated, consensual, and sustained by habitual compliance with its rules. This usage, similar to the model of culture developed in the mid-twentieth century in anthropology, differs dramatically from models of culture developed over the last two decades. These models emphasize culture as an historical product, constantly being made and remade and rife with internal conflicts and differences (see Comaroff and Comaroff 1991, 1997). Rather than operating as an isolated and smoothly humming machine, a cultural system is in constant and creative interaction with other societies and with transnational forces. When the drafters of the convention thought about culture, they used the former meaning. Further, they used culture to describe other worlds, not their own. Similar language appears in other documents about violence against women. The Declaration on the Elimination of Violence against Women (1993) obliges states to condemn violence against women and not to invoke custom, religion, or culture to limit their obligations. Two key consensually produced human rights documents, the Vienna Declaration

and Program for Action (United Nations 1993) and the Beijing Declaration and Platform for Action (United Nations 1995), require states to eliminate traditional, customary, and cultural practices harmful to women (Byrnes and Connors 1996, 22–23). The convention and the questions of the experts suggest that certain features of cultural belief and institutional arrangements, such as patterns of marriage, divorce, and inheritance, can serve as barriers to women's progress. The committee and other human rights groups identify and seek to change "harmful traditional practices" rooted in custom and tradition, of which female genital mutilation is the prototype. Many who write about women's rights to protection from violence see culture as a problem rather than as a resource (Bunch 1990, 1997; Cook 1994b, 1994c; but see Green 1999). Activists blame patriarchal traditional culture for many aspects of women's subordinate status.

Government representatives at CEDAW hearings also portray practices that disadvantage women as rooted in patriarchal culture, presenting this as an apparently fixed and homogenous cultural space that seems beyond intervention and change. These arguments are typically used to justify non-compliant national policies such as discrimination against women in access to schooling or divorce. Governments sometimes blame their failure to encourage gender equality on intractable patriarchal culture.

On the other hand, committee members and NGO representatives recognize the importance of building on national and local cultural practices and religious beliefs to promote transformations of marriage, family, and gender stereotypes. They argue that reforms need to be rooted in existing practices and religious systems if they are to be accepted (see An-Na'im 1992). Thus, alongside the portrayal of culture as an unchanging and intransigent obstacle lies another more fluid conception of culture. The former view is, as scholars have noted, often connected to racialized understandings of "others" forged during the colonial era (Sinha 2001, 1581, 1583–92; Razack 1998; Volpp 2000). The latter is closer to the current anthropological theorization of culture (see Merry 2001a). In other words, there is an old vision of culture as fixed, static, bounded, and adhered to by rote juxtaposed to a more modern understanding of culture as a process of continually creating new meanings and practices that are products of power relationships and open to contestation among members of the group and by outsiders. In CEDAW discussions, when culture is raised as a problem, its old meaning is invoked. This is, of course, the way the term is used in the convention itself, which explicitly condemns cultural practices that discriminate against women in articles 2 and 5 (see below). When culture is discussed as a resource, or when there is recognition that the goal of the CEDAW process is cultural reformulation, the second meaning is implied. Needless to say, the coexistence of these two quite different understandings of culture in the same forum is confusing. I think it obscures the creative cultural work that the CEDAW process accomplishes.

I have been doing ethnographic research on the strategies to diminish violence against women deployed by the United Nations in its efforts in several of its bodies: the Commission on the Status of Women, the High Commission on Human Rights, special international meetings such as the UN General Assembly Special Session (Beijing Plus Five), and hearings held by the CEDAW committee. I observed part or all of five CEDAW sessions—two in 2001, two in 2002, and one in 2003—each of which lasted three weeks and considered reports from about eight countries. I interviewed eight experts serving on the committee and talked to NGO representatives from reporting countries and from international NGO groups. I also talked to local activists and some government representatives from Fiji, India, and Hong Kong after they returned home from attending CEDAW hearings.

CREATING CULTURE IN THE CEDAW PROCESS

The CEDAW Monitoring Process

CEDAW is one of six UN conventions that has been widely ratified and is monitored by a committee, referred to as a treaty body. The six conventions of the UN system form the legal core of the human rights system. Conventions enter into force through national ratification. The other treaties are the Covenant on Economic, Cultural, and Social Rights, the Covenant on Civil and Political Rights, the Covenant against Racial Discrimination, the Convention against Torture, and the Convention on the Rights of the Child (see Bayefsky 2001, 2; Jacobson 1992). Treaty bodies monitor compliance with ratified treaties by requiring countries to write periodic reports detailing their efforts to put the treaty into force. The committee reads and comments on the report. The process of preparing, presenting and discussing the reports encourages governments to think about situations within their countries relevant to the treaties and to consider ways of improving them. Many of these treaty bodies have developed an optional protocol that allows individuals to file complaints directly with the committee.⁴ CEDAW has its own optional protocol that entered into force by late 2000. It allows individual women or groups to submit claims of violations of rights protected under the convention to the CEDAW committee, but only after all domestic remedies have been exhausted and only in countries that have ratified it. The protocol also creates a procedure by which the committee can inquire into situations of grave or systemic violations of women's rights (DAW 2000, 7). As the optional protocol comes into force more widely, there will be a new system of sanctioning in place, but it applies

4. Complaints and inquiry procedures are particularly important for the High Commission on Human Rights, which has, since 1978, appointed special rapporteurs, representatives, and working groups to carry out investigative procedures (see Foot 2000, 34–36).

only to those countries that have ratified it. By mid-2002, 41 states had ratified it but no complaints had yet been received. CEDAW experts encouraged national delegations to ratify the optional protocol and urged NGOs to bring forward complaints under the new procedure at the July 2001 meeting. The monitoring and surveillance procedures of the six treaty bodies are the centerpiece of the legal implementation of human rights. In a recent major study of the six treaty bodies, Bayefsky concludes: "It is the legal character of these rights which places them at the core of the international system of human rights protection. For these rights generate corresponding legal duties upon state actors, to protect against, prevent, and remedy human rights violations" (2001, 5). Some countries have produced 20 or more reports and the most frequently reporting country, the United Kingdom, has produced 38 (Bayefsky 2001, 244–51).

The reasons why a nation would choose to ratify CEDAW and subject itself to periodic reporting and examination are not obvious. They are linked, I think, to claims to civilized status in the present international order, much as ideas of civilization provided the standard for colonized countries during the imperial era. Fanon's famous afterword to *Wretched of the Earth* (1963) testifies to the power of this idea as he urged decolonizing nations to look to sources of moral virtue other than the ideas of the rights of man established by Europe. Bayefsky notes that states may consider ratification an end in itself and, given the relatively brief and infrequent monitoring process, are not seriously concerned about the national consequences (2001, 7). On the other hand, the work of Foot (2000) and many others emphasizes the importance of compliance with human rights instruments for participation in the international community and for benefits such as aid, trade relations, and foreign investment.

By mid-2002 the convention had been ratified by 170 nation states. The United States has not ratified CEDAW, along with Afghanistan, Somalia, and about 16 other states. The convention has been under consideration by the Senate since the early 1980s and, according to a spokesman from the U.S. delegation to the UN, was voted out of committee with a set of reservations and declarations in 1994. The Senate committee again voted to approve it in 2002. In her study of human rights in China, Foot notes that the U.S. failure to ratify many important human rights conventions has undermined its credibility as a promoter of international human rights (2000). There has been considerable discussion of the U.S. failure to ratify this convention as well as several other core human rights conventions, with explanations ranging from the lack of domestic political support by a constituency that feels its rights are already adequately protected to the nation's system of popular sovereignty, which means that ratification requires a legislative vote rather than an executive order (Ignatieff 2002). It appears that the 2002 consideration of the CEDAW treaty in the U.S. Senate committee was strongly opposed by conservatives including the Christian right,

although this information comes from e-mail listserves rather than press coverage, which was minimal. Even in the United States, there is considerable disagreement about the value of human rights.

The Convention

The CEDAW convention incorporates features of the Universal Declaration of Human Rights (1948), the International Covenants of Civil and Political Rights and on Economic, Social, and Cultural Rights, and International Labor Organization conventions. It emphasizes a vision of gender relations in terms of equal rights for men and women and explicitly prohibits discrimination on the basis of sex. It was built on conventions on the political rights of women and the nationality of married women developed in the 1950s. Between 1965 and 1967 the Commission on the Status of Women expanded it into a declaration (DAW 2000, 4; see also Jacobson 1992). In 1979 it was adopted as a convention by the General Assembly and opened for ratification. It achieved a sufficient number of ratifications to go into force by 1981.

CEDAW has been described as an international bill of rights for women. It focuses on eliminating discrimination against women that violates the principle of equality of rights and respect for human dignity (DAW 2000, 5). It reflects ideas about women's status developed during the 1950s to 1970s and emphasizes the principle of nondiscrimination and legal equality, focusing only on discrimination against women rather than on all discrimination on the basis of sex (Jacobson 1992, 446). The 1950s and 1960s equal rights orientation is supplemented by 1970s concerns with political and economic development (Reanda 1992, 289–90). Thus, it endeavors to remove barriers that prevent women from being the same as men. Feminist scholars have queried whether an approach that uses similarity to males as a standard can achieve substantive equality for men and women (e.g., Charlesworth 1994). Some have advocated interpreting discrimination not as difference but as disadvantage, powerlessness, and exclusion (Cook 1994c, 11–12). Others note the very limited sphere of women's lives that is governed by the law and that can be improved through the law and the state (Charlesworth 1994; Coomaraswamy 1994). Coomaraswamy points out that in South Asia, the law has relatively little autonomy with relationship to the state and is often viewed with suspicion as a consequence of the colonial past (1994, 46–47). Finally, as Charlesworth argues, the law is a patriarchal institution and is part of the structure of male domination, with its emphasis on rationality, objectivity, and abstraction and its opposition to emotion, subjectivity, and contextualized thinking, often seen more as the province of women (1994, 65).

Despite the inadequacies of a nondiscrimination framework, this is the approach enshrined in the convention. The committee has developed several general recommendations interpreting the convention on issues such as health and violence against women that go beyond the discrimination framework and focus more on social and economic development. As Cook points out, violence against women is an issue that reveals acutely the limitations of the gender-neutral approach to equality and raises the need for special treatment—such as the creation of shelters—rather than formal equality (1994c, 20).

The 30 articles to the convention cover a broad array of social issues such as political participation, education, employment, health, and the special difficulties faced by rural women. States parties are required to eliminate discrimination in the exercise of civil, political, economic, social, and cultural rights both in the public domain and in the family (DAW 2000, 5). CEDAW not only proscribes discrimination but also advocates positive steps such as the elimination of sex-role stereotypes in the media and educational materials and the creation of “temporary special measures” to benefit women, measures that are not forms of discrimination but efforts to overcome past disabilities. The thrust of the convention is a focus on legal regulations that selectively disempower women, such as regulations requiring women to have their husbands’ permission to acquire passports, but it is based on the assumption that producing equal rights for women requires changing marriage laws, access to education and employment, and gender images within the media.

CEDAW explicitly calls for cultural changes in gender roles. Article 2, the core of the convention, requires states parties: “f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” (DAW 2000, 14). Article 5 on sex roles and stereotyping calls on states parties to take all appropriate measures: “a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” (DAW 2000, 18). In 1987, after considering 34 reports, the CEDAW committee produced general recommendation 3, noting

the existence of stereotyped conceptions of women, owing to socio-cultural factors, that perpetuate discrimination based on sex and hinder the implementation of article 5 of the Convention, Urges all States parties effectively to adopt education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women. (DAW 2000, 56)

In 2001, one expert observed to me that she found it striking that in all the countries they had considered, including the apparently most progressive Scandinavian countries, gender stereotypes had proved extremely resistant to change. While there was clearly greater equality in some countries, stereotypes about men and women persisted, particularly focused on ideas of women as caretakers.

Violence against women was not included in the initial convention, probably because it was not a widely recognized issue at the time the convention was being prepared. It is now discussed extensively in country reports and during hearings. At least eight articles bear indirectly on violence against women, including those on gender stereotypes, trafficking in women, prostitution, disruptions of employment through sexual harassment, women's health including in rural areas, and women's position in the family (Bernard 1996, 80). In 1989 the committee adopted general recommendation 12, recommending consideration of the issue and requiring statistics on gender violence. General recommendation 19 in 1992 developed the issue further, defining gender-based violence as a form of discrimination "that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men" (DAW 2000, 63). This recommendation became the basis for the UN General Assembly Declaration on Violence against Women in 1993 (UN General Assembly 1994, 217). A former CEDAW member, Desiree Bernard of Guyana, considers this declaration one of the most significant efforts to combat violence against women even though it is not binding on member states (1996, 81). It urges states to condemn violence against women and not to invoke any custom, tradition, or religious consideration to avoid their obligations toward its elimination.

CEDAW general recommendations are not legally binding in the same way as the text of CEDAW, but they are designed to show states parties their obligations when they are not mentioned or not sufficiently explained in the convention itself. Committee members frequently ask questions about the extent of violence and the strategies a government has taken to reduce it. The committee encourages reporting states to recognize the close relationship between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms and to take positive measures to eliminate all forms of violence against women (DAW 2000, 63–66). Thus, it grounds its concern about gender-based violence in the overarching framework of discrimination. Gender-based violence is defined as "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and any other deprivations of liberty" (General Recommendation 19). The recommendation specifies all the rights and freedoms that gender-based violence infringes, such as the right to equality in the family and the right to equal protection under the law.

Ratification

States that ratify CEDAW are obliged to incorporate it into their domestic legislation (see Cook 1994a). According to Schoepp-Schilling (2000), a member of the CEDAW committee for 12 years, states parties are obliged to undertake all legislative and other appropriate measures to eliminate discrimination against women without delay. She notes that this contrasts with other conventions, such as the International Covenant on Economic, Social, and Cultural Rights, which obliges states to take steps to achieve “progressively” the full realization of rights. Nevertheless, she notes that states often hide behind financial shortfalls and other difficulties as excuses for not initiating reforms. Indeed, in the hearing on the Burundi country report in 2001, there was widespread recognition by CEDAW committee members that in a largely rural country undergoing a protracted civil war, relatively little could be anticipated in the way of reforms to benefit women. It is common for states of the global South to complain that they need more financial help from the global North in order to make the desired changes.

States may ratify CEDAW with reservations to particular items of the convention by declaring that certain parts of the treaty are not binding on them. The committee discourages this and endeavors to persuade ratifying states to remove their reservations. In the past, this convention had more reservations to it than any other (DAW 2000, 6; see also Cook 1990). A recent study shows that CEDAW is not the most reserved convention, yet it still has 123 reservations, declarations, and interpretive statements, which are in effect reservations. Three-quarters of these (76%) refer to the substance of the text itself rather than to its procedures (Bayefsky 2001, 66). Forty-nine states parties, or 30% of those that have ratified CEDAW, have entered reservations. In comparison, the Convention on Civil and Political Rights has 181 reservations, 88% of which are normative, from 35% of states parties. The Convention on the Rights of the Child has 204, 99.5% of which are normative, from 32% of states parties. Thus, like CEDAW, these conventions are heavily circumscribed by reservations. Some of the reservations are to core portions of the convention, such that they undermine the purpose of the convention itself. Egypt, for example, entered a general reservation on article 2, explaining that it is “willing to comply with the content of this article provided that such compliance does not run counter to the Islamic Shari’a” (Egyptian Non-Governmental Organizations Coalition 2000, 5). Yet article 2 embodies the core of the convention, stating: “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women, and to this end undertake” and lists a variety of constitutional, legal, and legislative measures to eliminate this discrimination. Bayefsky notes that article 2 has 5 general reservations, another 8 nor-

mative general declarations and interpretive statements, and 12 more specific reservations, while there are 25 reservations to article 16, the article that requires equality in marriage and family law (2001, 66, 717–18).⁵ The CEDAW committee is concerned that reserving on article 2 constitutes failure to adopt the spirit of the Convention. On the other hand, as Schoepp-Schilling (2000) notes, even states with significant reservations present reports and engage in dialogue with the committee's experts, so this may still be constructive for them.

The Committee Hearings

The dialogue between a country and the committee occurs during the regular meetings of the CEDAW committee. At these hearings, the committee of 23 reads the report and meets with a delegation from the country, often a high-ranking minister for women's affairs. The committee members, called experts because of their knowledge and experience in the field, ask questions about discrepancies between the actions of the country and the obligations it assumed when it ratified the convention. The experts are expected to act independently and not to speak for their national governments. These experts are nominated by their national governments and elected for four-year terms by the state signatories to the convention. They are chosen to fit into pre-established regional groupings in order to guarantee adequate regional representation. According to one expert, she was selected because the NGOs in her country encouraged her government to nominate her, and her government then negotiated with other governments to get its candidate elected. Her primary base of support was the NGO community. Experts are lawyers, diplomats, government bureaucrats, scholars, judges, medical doctors, and educators (Schoepp-Schilling 2000). Based on the biographies they provided to the UN as candidates for election to CEDAW, of the 2002 committee more than half (14) have primarily NGO or academic backgrounds; of the 14, 2 are also in elected political positions, and 1 recently joined her government after an NGO career. Four of these are full professors, coming from Israel, Sri Lanka, Sweden, and Turkey. They bring considerable academic expertise and independence to the process. About one-third (8) are primarily employees of their national governments in the

5. The CEDAW committee has said that articles 2 and 16 are core provisions of the convention and that reservations that challenge central principles are contrary to the provisions of the convention and to general international law. "Reservations to articles 2 and 16 perpetuate the myth of women's inferiority and reinforce the inequalities in the lives of millions of women throughout the world. The Committee holds the view that article 2 is central to the objects and purpose of the Convention. . . . [R]eservations to article 16, whether lodged for national, traditional, religious, or cultural reasons, are incompatible with the Convention and therefore impermissible" (from CEDAW, A/53/38/rev.1, paras. 6, 8, 15, 16, 17, as quoted in Bayefsky 2001, 69).

foreign service or women's ministries. This adds up to 22: One committee member was recently brought on, for whom I did not have information, and a second just replaced another member, so I used the information for the previous member. The experts generally have considerable previous exposure to UN activities and are often educated in other countries. Of the 22 for which I have information, at least 15 studied at some point in Europe or North America, and at least 16 had attended other UN meetings and conferences. This is a highly educated and transnationally active group of people (CEDAW/SP/1996/3; CEDAW/SP/1998/3; CEDAW/SP/2000/6). Since CEDAW hearings began in 1983, all but two of the experts have been women.

There are sometimes previous connections between country delegations and the committee. For example, the chair of the Egyptian delegation was a former member of CEDAW. She said that things had really changed since the early days (the early 1980s), when the committee was thought of as a group of women pestering governments. In general, experts serve in addition to holding regular jobs and devote considerable time to their responsibilities, for which they receive expenses but little remuneration.⁶ They bring to the process impressive credentials in terms of scholarship and publication, NGO activism, extensive government service, and strong backgrounds in international participation. Most have a strong background in women's issues. The tenor of the hearings is always serious, and, although it is unfailingly polite, it sometimes takes on an edge of criticism. Rarely are criticisms explicit, however. More often, experts speak of "concerns" or of the need for more information. Privately, some experts commented to me on how frustrated they felt about one or another country's report, such as its abysmal gender-based statistics or failure to implement policies, but they did not level such accusations against governments in the hearings. If a country acknowledges that it has had difficulty in implementing CEDAW, the experts tend to be more supportive than if a country tries to cover up its failures.

The experts present a united front in these hearings, although they do differ on some issues, such as abortion and the value of separate legal systems for different religious communities within a country. Those more closely connected to NGO or academic communities tend to challenge governments more than those employed by their national governments. The latter tend to be less confrontational and more inclined to praise a country's efforts than to condemn its shortfalls. Despite these differences, the hearings give a sense of unanimity among the experts as they pose questions to government representatives.

The CEDAW committee, which has been meeting since 1982, was

6. They are paid only \$3,000 a year for 8 weeks of meeting time and considerable preparation between meetings (Bayefsky 2001, 99).

originally restricted to meeting once a year for two weeks. In 1995 it expanded to three weeks a year and in 1997 three weeks twice a year. In 2002, it held an exceptional third meeting to catch up with the backlog of reports. Country reports were initially only two to three pages according to a long-term member of the committee, but now routinely run to 60 pages and occasionally up to 150 pages. By March 2000, CEDAW had considered 104 initial reports, 72 second reports, 45 third reports, and 13 fourth periodic reports (DAW 2000, 8). By 2001, it was common practice to hear two or even three periodic reports from the same country at once. However, a substantial number of ratifying states have failed to file a report at all or have fallen behind. By mid-2001, 49 states had not filed an initial report, 65 were late in filing their second periodic report, 42 the third periodic report, 52 the fourth, and 41 were late in their fifth periodic report. Several states that ratified in the early 1980s have never filed a report and thus appear in all of these lists, such as Brazil, Bhutan, Congo, Costa Rica, and Togo (UN Secretary General 2001, CEDAW/C/2001/II/2).

The focus of the CEDAW committee's work is reading the periodic reports of signatory countries, asking questions, and writing concluding comments. Every ratifying country is obligated to provide an initial report within one year of ratification on the legislative, judicial, and administrative measures it has adopted to comply with the convention and obstacles it has encountered, and to prepare subsequent reports periodically every four years. For initial reports, the committee uses a two-stage process. First, the national delegation presents its report and the committee members, sitting in a large conference room at the UN building in New York, go through it carefully and ask questions, request clarification, and note contrasts with other countries' experiences with these particular reforms. Second, the national delegation returns to the committee two or three days later and provides answers to these questions. Some answers are brief and inconclusive and some issues are not addressed, but the committee can do little under these circumstances.

For subsequent reports, a subcommittee consisting of a representative from each of four geographical regions meets at the end of the previous session to read the report and pose questions to which the national representatives should provide written responses within 40 days. At the next meeting of CEDAW six months later, government representatives present an updated overview statement of perhaps one hour and are asked further questions by the experts to which they reply immediately. This process is thorough: one country complained that it had received 64 additional questions before the meeting. The questions and the replies, as well as the country reports, are available to all the members of the committee.

The goal of the reporting process is to promote change in the government by forcing it to review domestic law, policy, and practice and to assess to what extent it is complying with the standards of the convention. Ac-

According to the division that supports the process, "Strengths and weaknesses are submitted to public scrutiny, while consideration of the report by CEDAW provides a forum for discussion with a wholly independent body whose brief is to provide constructive assistance so that States meet their treaty obligations" (DAW 2000, 8). Questions by experts frequently point out the need for more information, particularly statistics disaggregated by sex, in order to assess the relative participation of women in school, government, and the workplace, for example. Their questions show how the convention applies to the country giving the report, pinpoint areas where there is not compliance, and provide comparative information about how other countries have handled these issues. The tenor is unfailingly polite and courteous, although questions are sometimes pointed. The experts I have talked to emphasize that their goal is to be constructive as well as critical. One expert said that this was a political process, and if a country chooses to ignore it, there is nothing the committee can do. Sometimes governments find the experience of reporting helpful. One of the government ministers said that the attention and concern of the international community about women's rights energized her and supported her work.

After hearing these reports, the committee meets in closed session to develop its "concluding comments" for each country, which praise or express concern about its efforts to comply with the convention as well as make recommendations to be considered at the next review four years hence. These comments are publicly available and in recent years have been posted on the Internet. Governments differ in the extent to which they make these comments public, but NGOs may publicize them in an effort to shame the government into more action. There is, as Schoepp-Schilling (2000) notes, little sanctioning power beyond the capacity to "shame" noncompliant states parties.

In recent years, NGOs have begun to offer important support for this process (see Afsharipour 1999, 157). Although their input was described as minimal in the 1980s, the situation is changing (Jacobson 1992, 467). NGOs are encouraged to write "shadow reports," which provide their version of the status of women in their countries, and are often offered training in producing these reports by UN agencies such as UNIFEM or UNDP (see, e.g., UN Economic and Social Commission 2000; Afsharipour 1999, 165). Some representatives of NGOs appear at the committee meetings in New York, where they are not allowed to speak but can sit in the conference room and informally lobby the experts, suggesting questions to ask. They also have a special session with the experts. Their shadow reports are available to the committee. A second source of information for committee members are reports by other UN agencies such as the Food and Agriculture Organization (FAO), UNICEF, UNIFEM, and the ILO on the status of women in a particular country. Finally, a U.S.-based NGO, the International Women's Rights Action Watch (IWRAP) and its Asia-Pacific office based in Malaysia have

aided in training NGO representatives and regularly produced shadow reports on the countries under examination (see, eg., Afsharipour 1999, 165). IWRAW began as a channel for NGOs to get information to committee members, initially summarizing information and presenting it to committee members in the 1980s (Jacobson 1992, 467). In the last few years, IWRAW-AP has focused on bringing national NGOs to the CEDAW hearings in New York and encouraging them to write their own shadow reports. Both IWRAW and UNIFEM fund NGO representatives if possible. The CEDAW committee sets aside an afternoon to hear NGO presentations at the beginning of each session. The government delegations are not present. At the January 2002 meeting, which I attended, most of the members were present to hear the NGO representatives make their oral statements. Country hearings are attended by representatives of international NGOs such as Equality Now, IWRAW, and national NGOs from that country as well as a scattering of students. The results of these hearings are made available to other UN agencies such as the Commission on the Status of Women (CSW), the Economic and Social Council (ECOSOC), and the General Assembly. However, it does not appear that they are considered extensively by these bodies, based both on my own observations of CSW meetings and comments by Jacobson (1992, 463–65).

Escaping Surveillance

There are a variety of ways for countries to escape scrutiny. One is to fail to write a report or to do so only after a long delay. The list of countries that are derelict in their reports is very long. By January 1, 2000, there were 242 overdue reports to CEDAW from 165 states parties. Overall, 78% of all states parties had overdue reports, although the average for all treaty bodies is an equally high 71% (Bayefsky 2001, 471). The second is to write a superficial or partial report. Sometimes reports just recite the provisions of the constitution or other legislation or are very brief and do not offer candid self-evaluations of a state's compliance with its treaty obligations (Bayefsky 2001, 21; Jacobson 1992). The third is to send low-level government representatives instead of high-level delegations of ministers or assistant ministers. In 2002, Uruguay, complaining that it was financially strapped, asked its UN mission in New York to report and sent no one from the country, much to the displeasure of the CEDAW committee. The UN mission rarely is as informed about national issues as leaders of women's ministries. A fourth is to evade direct answers to questions. A fifth is to promise changes that do not in fact take place. A sixth is to reserve on important articles on the grounds that they conflict with basic cultural, legal, or religious tenets of the country. A seventh is to refuse to present a report even after it has been submitted (Bayefsky 2001, 23).

Although the NGO community is present at CEDAW hearings to help publicize the discussions and conclusions, treaty body meetings such as the CEDAW hearings are quite different from the major meetings of governments and NGOs common at the end of the twentieth century such as the Beijing Conference of 1995 or the Beijing Plus Five meeting in New York in 2000. Participation is far smaller than at these conferences or at meetings such as the Commission on the Status of Women or the High Commission for Human Rights. Moreover, participation varies significantly depending on the country and the number of NGOs it has, as well as on funding for attending and for staying in New York. During the discussion of Egypt's report in January 2001, a large audience of NGO representatives attended, making up an audience of perhaps 30 people. Egypt has a large NGO community. Burundi and Kazakhstan had smaller audiences, and very few NGOs attended the report on the Maldives. Similarly, in the July 2001 CEDAW meetings, discussions of very small countries with few NGOs, such as Andorra, generated very few NGO observers, while more, about 15–20, came to hear the reports of Vietnam, Nicaragua, and Guyana. Nevertheless, NGOs make a critical contribution to the process. Based on her detailed survey of all six treaty bodies, Bayefsky concludes "The treaty bodies have been heavily dependent on information from NGOs in preparing for the dialogue with states parties. State reports are self-serving documents that rarely knowingly disclose violations of treaty rights" (2001, 42).

Clearly, governments can escape this system, but they face internal pressure from national NGOs, who may be supported by international donors and therefore active even if the country does not have enough wealth to support them. In theory, they face pressure from other countries as well via their NGOs, as Keck and Sikkink argue in their boomerang metaphor (1998), but I saw little evidence of pressure by other nations. Instead, it was primarily domestic NGOs that used the hearings to exert pressure on governments to comply. Countries are concerned about their reputations in the international community, but they clearly differ in their vulnerability to international pressure depending on their size, wealth, form of government, and dependence on the international community for trade, aid, and other symbolic and material forms of exchange. Countries that are economically and politically dominant, such as the United States, may resist the system by failing to ratify at all.

Country Reports and Conversations about Culture

How is culture discussed in the CEDAW process? As we have seen, demands for cultural change are a fundamental part of the convention. Experts' questions often focus on the need to change gender stereotypes and eliminate harmful cultural practices and customs. Many countries, on the

other hand, respond that they are unable to achieve progressive change because of the persistence of patriarchal culture, tradition, customs, or ancient ways. I will discuss the way culture emerged in the reports and discussions of three countries: Guinea, India, and Egypt.

Although the theme of culture as static and resistant to change appeared in many reports, it occupied a particularly prominent role in Guinea's report, heard in the July 2001 CEDAW meetings. Guinea's report demonstrated the discrepancy between a legal system promoting formal equality between men and women and the practices of everyday life. It shows how the concept of culture is used to explain and justify that discrepancy. This was Guinea's initial report, but also its second and third periodic report, since it had not filed any reports since ratifying the convention in 1982. In the opening speech and in the country report, the delegation from Guinea emphasized the extent of gender equality in its constitution and its laws. There are equal rights to work, to unionize, to strike, to own land, to be free from discrimination at work, and to be elected to political office. The penal code is equal for all. All work for the same task is to be paid equally. Moreover, the government representatives argued that Guinea has carried out huge efforts to implement the convention, despite wars and a heavy burden of foreign debt. It is now drawing up a plan for the country for the next 10 years, endeavoring to strengthen civil society to benefit women, to encourage the private sector, to develop a national program for youth and for population management, and to support programs for village communities. The government is working on a document to reduce poverty and holding workshops that will develop a poverty-alleviation initiative. This initiative will include gender studies and attention to women in the informal sector. Thus, both the delegation and the report present Guinea as a modern country engaging in planning and fully committed to the principle of gender equality.

Yet, the report also says, "Both in general terms and within the home, Guinean women remain in a subordinate position to men who exercise power in virtually all areas of life. Guinean women live in a society and culture that is traditionally androcratic and where marriage is often polygamous" (UN CEDAW 2001, 31). With reference to article 5(a), the report included several customary practices in its definition of violence against women. It listed: (1) beating, (2) repudiation, (3) levirate, (4) sororate, (5) early and forced marriage, and (6) sexual mutilation. Thus, it merged established kinship practices, FGM/C (female genital mutilation/cutting), and physical violence. Even beating was described as a traditional right for a man, although reprehensible. The report continues: "The persistence of cultural traditions and customary law perpetuates certain prejudices which sanction violence against women. On the other hand, there is no sex-based discrimination in the law and most acts of violence are subject to legal penalties" (UN CEDAW 2001, 32). Violence is attributed to customary practices,

while law opposes it. The government and NGOs have carried out public awareness campaigns about violence against women, including “the eradication of traditional practices that are harmful to mothers and children, to control of sexually-transmitted diseases and AIDS and to the elimination of the practice of forced and early marriage.” But the report acknowledges that various forms of violence against women, including the levirate and female excision, are still widely practiced, particularly in rural areas. Although the laws are not discriminatory, in practice the family is patriarchal, the man controls the domicile, and children by the age of seven are under his control. Women are assigned a narrow range of tasks, and their lives seem governed by fears that they will become pregnant before marriage. For example, with reference to education, the report says:

There are many parents who still believe that education is not indispensable, or even necessary, for girls. They bring their daughters up to find a “good husband” before it is too late. Their priority is to prepare their daughters to become ideal, or model wives, by which they mean submissive wives. For them, it would be unwise to allow girls to go to school with boys. Even if a girl managed to avoid all the “traps” at school and were to graduate and join the Civil Service, she would, according to this thesis, have too much freedom. This would undermine the authority of her husband, who, it should be remembered, is seen as the bridge between a bride and God. (UN CEDAW 2001, 49)

Although this report portrays the problems for women as rooted in a traditional culture that will not change, women’s levels of health, education, and employment are strikingly low. The rate of female illiteracy was 85%; outside the capital city, it was 93–96% (UN CEDAW 2001, 61, 66). Only 11% of students in higher education are women (UN CEDAW 2001, 21). Although a 1992 study found that the cohort fertility rate was seven children per woman, only 2–3% use birth control. There is a high rate of infant mortality and maternal mortality (666 per 100,000 live births) and a low life expectancy of 53 (UN CEDAW 2001, 4, 21). The median age for women at marriage is 16. Women do most of the subsistence agricultural work, producing 80% of all food (UN CEDAW 2001, 22). Thus, the report locates responsibility for the widespread violence women suffer in an intractable traditional culture rather than in the government’s failure to provide schools, health clinics, and jobs for women. The government offers women legal rights but not the means for asserting them. The explanation it offers for this disparity, however, is culture. The report concludes: “Generally speaking, however, while women in the Republic of Guinea are accorded the same legal rights as men, these gains are powerfully diluted in their daily lives by the coexistence of modern law with customs and traditional and religious practices” (UN CEDAW 2001, 123). This conclusion was followed

by a long list of all the international conventions that the government of Guinea has signed and ratified.

The experts praised the delegation for its political will and commitment to women's equality, but noted that there were serious gaps in its accomplishment of that goal. They questioned the low level of education and health care, the possibility of an Islamic or customary legal system operating on different principles from the national law, and the disparity between the progressive laws and the lack of efforts to implement them. They noted the contradictions between the laws promoting gender equality and those giving power over the domicile, marriage, and children to men. Several stressed the importance of more education for women as well as for men (62% illiterate), and encouraged more work on female genital mutilation, still a widespread practice. The tenor of questions was praise for the political will of the delegation but skepticism about the extent of equality on the ground and an insistence that the government invest more resources in women, especially women's education. Criticisms were framed as concerns. It was clear, however, that the experts were not persuaded by the argument that Guinea had done all it could despite its claims about the intractable nature of its "traditional culture."

The report was presented by a large delegation of 12 government ministers, lawyers, doctors, and professors, about evenly divided between men and women. The men were dressed in dark Western suits, the women in elaborate West African gowns. All spoke French to one another as they waited in the elegant lounge outside the conference room in New York. Thus, as the national elites participate in this international forum and construct a modern legal system they juxtapose their urban and educated world, in touch with the international community, to that of the apparently ancient and unchanging traditional culture of the rural areas, riddled with patriarchal culture. Such cultural framing resonates with the colonial past. Moreover, it is a framing driven by economic necessity. Guinea describes itself as eager to pursue democratization based on a liberal development model and as a country with vast mineral resources dependent on foreign partnerships (UN CEDAW 2001, 6–7). Appearing to promote the human rights of women by ratifying treaties is critical to economic development since it marks the nation as modern and suitable for foreign investment. Culture provides a good excuse for failure. Yet, this analysis fails to consider the way culture itself is constituted by the systems of law, government, education, and politics within which groups of people live.

In the presentation of the initial report from India in January 2000, which I did not observe, experts raised similar concerns about the negative effects on women of the persistence of religious laws for family and marriage life. There are separate personal laws for the religious communities of India: Hindus, Muslims, Christians, and Parsis, laws that in most cases have not been reformed for a long time. The committee was concerned about some

of the provisions in these personal laws and worried that the principle of non-state intervention was impeding progress in guaranteeing women's rights because the government only intervened when religious communities requested intervention (Press Release WOM/1162 453rd Meeting (PM) 24 January 2000, www.un.org/News/Press/docs/2000/200000124.wom1161.doc.html, p. 2). Experts noted that ethnic and religious groups tended to maintain patriarchal traditions and that perpetuating the personal laws of these ethnic and religious communities was incompatible with women's rights and a breach of the convention (Press Release WOM/1161, 24 Jan 2000, www.un.org/News/Press/docs/2000/200000124.wom1161.doc.html, 6/18/01, p. 4). One expert commented that the report had not included customary practices and other factors that produced violence against women; while another noted that eliminating existing discrimination required altering social and cultural values often perpetuated by religious and ethnic communities (PM press release, 24 January 2000, p. 4). The committee was firm that there needed to be a single, nondiscriminatory system. It pressed India to adopt a uniform code for all its religious communities and to eliminate separate personal laws on the grounds that they were discriminatory. Here they juxtaposed a secular modernity to a religiously based and oppressive set of family laws. The government representative simply ignored this comment, however. According to the UN press release, in her reply, the secretary of the Department of Women and Child Development in India failed to address the issue of separate personal laws for religious and ethnic communities at all (press release WOM/1171 31 January 2000, www.un.org/News/Press/docs/2000/200000131.wom1171.doc.html, p. 3). One of the experts reiterated her concern about waiting for the religious communities themselves to amend their personal and family laws and thought that it was important to give them an incentive to seek change. On the other hand, a member of the committee familiar with such plural legal regimes told me afterwards that she felt that eliminating separate personal laws in India was neither necessary nor possible. The rest of the committee, which thought that there should be a secular uniform legal code, overruled her. Separate legal codes for religious communities are a form of cultural particularity that does not fit into the overall framework of CEDAW. Moreover, at least some if not all of the codes of these religious communities violate the nondiscrimination provisions of the convention.

In its extensive concluding comments, the committee praised India for its constitutional guarantee of fundamental human rights and the recognition of a fundamental right to gender equality and nondiscrimination, as well as for its affirmative action program, which has reserved 33% of seats in local government bodies for women (UN CEDAW Report 2000, 9). But it worried that there had not been steps taken to reform the personal laws of different ethnic and religious groups in order to conform to the convention and that the policy of nonintervention perpetuates sexual stereotypes,

son preference, and discrimination against women (UN CEDAW Report 2000, 10). Thus, the committee urged India to adopt a secular universalism in its laws governing the family, a significant cultural break from a past practice developed and crystallized under British colonial control. Further, the committee expressed concern about the high rate of gender-based violence against women, “which takes even more extreme forms because of customary practices, such as dowry, sati and the devadasi system. Discrimination against women who belong to particular castes or ethnic or religious groups is also manifest in extreme forms of physical and sexual violence and harassment” (UN CEDAW Report 2000, 11). The committee recognized that there is legislation against these practices but encouraged the government to implement this legislation.

Thus, both the government spokesperson and the experts attributed at least part of the violence experienced by women to customary practices and to the personal laws of ethnic and religious communities. While applauding the equal gender rights provided in national government documents and noting the existence of laws against dowry, discrimination against Dalits, and sex-selective abortions, the committee worried about the lack of implementation of laws and the inadequate allocation of resources for women’s development in the social sector, which they saw as serious impediments to the realization of women’s human rights in India (UN CEDAW Report 2000, 10). Again, this discussion portrays the urban elites as progressive, nonculturally defined groups confronting recalcitrant ethnic, religious, lower-caste, and rural communities steeped in old cultural practices such as personal laws that they will not willingly abandon. It advocates a secular society of gender equality and views practices detrimental to women as legacies of ancient customs maintained by the rural poor and religious minorities. Of course, this universalizing approach is structured by the convention itself and the committee’s mandate to apply it to all countries equally. Those who ratify it take on the obligation to conform, regardless of their specific cultural attributes, and it is this mission that the committee adopts.

International standards are important in India. The country is a very active and articulate participant in all the human rights meetings I have attended. In an article on a new domestic violence bill in a major English-language Indian daily, the *Times of India*, the author notes that the Vienna Accord of 1993 (United Nations 1993) and the Beijing Platform of Action of 1995 (United Nations 1995) have acknowledged the existence of domestic violence as a problem. Moreover, the article continues that the intervention of the state to protect women against violence, especially in the family, has been strongly recommended by the UN committee on CEDAW (7 January 2002, 7). This article, in the mainstream press, indicates that international documents are recognized and seen as important in defining problems and legitimating, if not directing, their solution. Compliance with international obligations appears to be politically desirable, while the failure to

achieve international standards is blamed on the culture of poor, marginal, and rural peoples.

However, the issue of separate personal laws is a highly charged political one in India, particularly given the recent resurgence of Hindu nationalism and Hindu-Muslim tension and violence (Singh 1994; Hossain 1994). Flavia Agnes, an activist from Bombay, argues that the demand for replacing separate personal laws with a uniform code has become part of communal politics in India (1996, 105–11). When India signed (but did not ratify) CEDAW in 1980, it entered a declaration saying, with regard to articles 5(a) and 16 (1), “the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent” (Byrnes and Connors 1996, 52–53). Yet, this reservation was removed when India ratified CEDAW in 1993 (Coomaraswamy 1994, 53). The Constitution of India includes provisions for creating a secular family law. Women’s groups have long pushed this idea, but without receiving much government support (Singh 1994, 378–80).

During the colonial period, the British left the regulation of family relationships to religious heads or local caste or community bodies, so that at the time of independence, there was a great diversity of cultural practices (Agnes 1996, 106). With the communal conflict in India at the time of partition, Muslim leaders came to see personal laws as a symbol of their cultural identity and resisted state interference in personal laws. When a divorced Muslim woman, Shah Bano, received maintenance payments from the Supreme Court, the Muslim minority community protested, and in 1986 India passed legislation that excluded Muslim women from the protections of criminal statutes providing for maintenance of divorced women. Coomaraswamy notes that Hindu fundamentalists used this case to promote the idea of a uniform law that would be Hindu rather than Islamic (Coomaraswamy 1994, 54). Meanwhile, Agnes says that there was little publicity for the way the Hindu community moved out of the realm of secular and common law to allow men to maintain male privileges in succession, such as the 1976 Special Marriage Act. There is now a strong demand for a uniform code, particularly by Hindu communal forces that see this as an important part of its antiminority propaganda. They focus on the inadequacies of Muslim law, despite the clear gender biases of Hindu law that lead to murders, suicide, and female feticide in the Hindu community. “A myth created by the media is that the ‘enlightened’ Hindus are governed by an ideal gender-just law and this law now needs to be extended to Muslims in order to liberate Muslim women” (Agnes 1996, 107). Agnes concludes that reforms are necessary, but that it is important to avoid placing fuel in the hands of antiminority forces (1996, 111).

In this situation, the CEDAW committee faced not the barrier of a “tenacious ancient culture” but the colonial ossification of marriage laws

and the very contemporary politicization of culture. The convention's requirement of gender equality fed into preexisting communal hostilities. Women's subordinate status has been ethnicized: redefined as fundamental to the maintenance of an ethnic identity. This is not a process rooted in the past but one created by contemporary political struggles.

But culture is not always perceived as a barrier by governments, NGOs, and CEDAW experts. Sometimes it provides the basis for innovative reforms. For example, Egypt developed a new divorce law for women modeled on an older rural practice. Egypt, which ratified CEDAW with significant reservations, presented its report in January 2001. Questions focused on the challenges for human rights of the patriarchal culture of the country and the Egyptian system of religious law, *shari'a*, which is premised on inequality for women. The representative from Egypt announced proudly that in January 2000 a new family law was passed that enables women to divorce their husbands unilaterally. She said that this law had to be justified in terms of "our own culture and religion." Passage of the new law was possible because unilateral divorce by women was a practice already followed in rural areas and because proponents were able to find some support for gender equality in religious texts. This enabled them to counter the arguments of many—particularly Islamic law professors in religious universities—who claimed that allowing women to divorce was opposed to Islam. Instead, they claimed that there is gender equality in Islam but that patriarchal culture has transformed its everyday practices. The National Committee for Women, some of whose members had attended the Beijing Conference in 1995, promoted the new law, demonstrating the powerful effects of transnational human rights ideas and the conferences that develop them. Women's and human rights advocates pushed for the law, although the version passed was a watered down one which allowed a woman to divorce without proof if she refunded her dower to the husband and forfeited all financial rights and claims from the marriage (Hajjar 2001, 41).

This example shows how the reforms promoted by transnational elites do not necessarily lead to global cultural homogeneity. They can spawn new cultural arrangements and adaptations framed in local terms. However, understanding culture as fixed, homogeneous, and as a barrier to change, as the transnational human rights system and government leaders tend to do, impedes recognizing these local cultural adaptations as well as the extent to which cultural practices are continually contested (see, e.g., Green 1999; Comaroff and Comaroff 1991, 1997). This is the difference between imagining culture as a rock or as a river.

These struggles over culture within women's human rights are a reflection of postcolonial modernity: the delicate dance between asserting cultural distinctiveness, striving to reap some of the wealth of colonial countries, participating in international human rights forums, and working to improve the status of women and to promote the rule of law and democratic gover-

nance by signing treaties and making good faith efforts to make changes while attributing failures to the traditional culture of rural, backward people and ethnic minorities. The postcolonial modern is continuous with the colonial modern, with the same complicated stance about difference and membership. Postcolonial elites who come to these forums face critique from the affluent North for their failures to become a modern nation. They turn the blame on others within their countries, others now defined by class, ethnicity, and rural residence rather than colonial status or race. The rural poor and minorities are now the groups saddled with custom, tradition, and unthinking compliance according to both postcolonial elites and the transnational elites of the UN system. Gender equality is presented as a universal modern notion, not as a cultural practice of some countries of the North and some elites of the South. Reform and capitalism merge uneasily in a new, and at the same time, old, imperial partnership.

CREATING CULTURE THROUGH DOCUMENTS

Unlike the CEDAW process, much of the rest of the UN system focuses on producing policy documents that have no legal force. Documents discussing violence against women take several forms. The High Commission on Human Rights has issued a resolution condemning violence against women and another condemning trafficking for several years. The Beijing Conference in 1995 generated the widely regarded Platform for Action and the five-year review, Beijing Plus Five, the so-called outcome document. The Commission on the Status of Women also produces every year two consensual policy statements, called agreed conclusions, as well as a number of resolutions. These documents specify problems and identify solutions. They are produced through a protracted process of consensual decision making (see Riles 1999). As I watched the efforts to produce a consensual outcome document at the Beijing Plus Five conference in New York in June 2000, I was surprised at the effort expended on producing a document and on its precise wording. I wondered why the document itself mattered and how it was used after the conference. There were large debates about which phrases to leave in and which to exclude that clearly had political undertones. Listing sexual orientation as one of the ways women's roles varied around the world, for example, provoked an enormous controversy. I observed similar processes in other UN meetings in New York and Geneva that developed declarations or outcome documents dealing with violence against women. For example, groups of member states can present resolutions to the UN Human Rights Commission, which are accepted by consensus or by vote. As I watched a group of government representatives from states as such as the United States, Canada, Japan, Russia, and the Netherlands formulate a proposal condemning violence against women and strug-

gling over every phrase, I wondered why the particular phrases were so important. For example, the United States resisted including a sentence urging governments to ratify the Women's Convention instead of urging them to consider ratifying CEDAW, in all likelihood because it has not yet done so.

Do these documents matter? Or more precisely, how do they matter? Is the wording important? Only the conventions become law, and they do so only when ratified. As we have seen, the process of forcing a state to comply even with treaties it has ratified is largely indirect and persuasive. Documents such as the outcome document from Beijing Plus Five and the Platform for Action of the 1995 Beijing Conference are of an entirely different character from the conventions. They represent an effort to achieve a global consensus, but they are not legally binding. The documents articulate desirable behavior and aspirations for women, not laws that must be obeyed.

Yet, these platforms, declarations, and resolutions do matter. Like CEDAW and its hearings, they exert moral pressure on recalcitrant countries. These policy statements have the legitimacy of international procedures. As they define problems and frame social issues in the language of human rights and freedom from discrimination and gender equality, they provide a language of argument that resonates with the values of a secular global modernity. Ratifying covenants, submitting periodic reports, and attending UN meetings and conventions offer the elites of many nations opportunities to circulate in the global space of modernity. Many of these elites already participated in global modern spaces as students. Circulating in this domain opens doors for trade, investment, and foreign aid, while those who refuse to participate can face economic and political penalties. Adherence to international standards has both symbolic and material benefits. For example, at a March 2002 meeting of the National Assembly of Nigeria to put in motion a framework to repeal all laws that inhibit the protection of fundamental human rights, the chairman of the occasion, Chief Phillip Ume, said that the subject of human rights has become so important all over the world that "it is now the benchmark for the assessment of good governance and good governments. As well as being the pre-qualification and pre-condition for the grant of aids by international donor agencies" (from article in *Punch*, 4 March 2002, by Clara Nwachukwu Owerri, circulated by womensrightswatch-nigeria//kabissa.org on March 14, 2002). Foreign aid and tourism are often connected to maintaining a good reputation as well (see Foot 2000). There is an appeal to global modernity, driven by economic as well as sociocultural forces, which is reminiscent of the power of the concept of civilization during the era of empire. In the postcolonial era, the glamour of the modern is still juxtaposed to backward others, but now it includes those who are "developing" but still burdened by "traditional harmful practices." Human rights are of course a fundamental part of the global modern. The fight against "culture" is a deeply cultural one.

The Role of NGOs

NGOs play a critical role in making the documents known, and the documents themselves represent an important resource for them. They pressure governments and join with allies in other countries to pressure their governments. As Keck and Sikkink note, they may use a boomerang tactic in which the NGO from one country links with the NGO of another, more powerful one, which then puts pressure on its government to push the less powerful government to change (1998). Government representatives at UN meetings often refer to the importance of “civil society” and its essential role in their activities. They are obviously pointing to practices of exposure, pressure, and monitoring. It is notable that the NGOs pay a great deal of attention to the documents and are deeply engaged in trying to influence what they say.

But, the relationship is not as mutually supportive and positive as this analysis suggests. The CEDAW committee is far more supportive of NGO input than the government-based UN bodies such as the Commission on the Status of Women (CSW) or the High Commission on Human Rights (HCHR). Despite talk about the importance of civil society, NGO access to governmental decision makers in UN meetings such as CSW, HCHR, and even Beijing Plus Five is extremely limited. Important decisions are often made in closed-door negotiating sessions as governments strive to hammer out a consensus on a document. NGO representatives may wait outside the door, hoping to talk to their national representatives, but they are not allowed to participate. At the resolution drafting sessions of the Human Rights Commission in Geneva, some chairs would allow NGOs to be present but not to speak. Even those who allowed them to submit language in writing paid little attention to their suggestions. For example, in a session in 2001 drafting a resolution about trafficking that I observed, an NGO suggested developing some mechanism for dealing with the demand rather than only the supply of trafficked women, something such as retraining male customers in wealthy countries. She was permitted to submit this suggestion in writing only, not orally. Governmental representatives from Japan and Europe quickly quashed the suggestion as too vague.

NGOs are also allowed to speak from the floor at CSW and HCHR meetings, but are given very short time periods and are required to present their statements in written form in advance. The attention of the government delegates is typically less during NGO interventions, with more talking and walking around, than during other deliberations. Government representatives are often uncomfortable about NGO statements, worried that they will try to embarrass them and expose problems. Some NGOs say that governments fear that they will be too radical. Many governments wish to restrict NGO speaking time and to know in advance what they are going to say. Thus, opportunities for NGO input into the discussion and document

production process are highly circumscribed and informal. NGO representatives typically describe their task as lobbying their government representatives and often see this as their central mission. Some governments, such as that of the United States, hold regular formal briefings for NGOs at major meetings such as CSW or Beijing Plus Five to inform them about the U.S. delegation's activities. These are typically settings where NGOs are to listen rather than give feedback.

In contrast, many of the members of the CEDAW committee are quite positive toward NGOs and make an effort to listen to them informally and to come to the NGO briefing, which was attended by at least 18 of the 23 members at the 2002 meeting. Those experts who have NGO backgrounds are particularly receptive to NGO representatives. I often heard these experts pose questions suggested by NGOs to the government representatives. In this sense, the NGO presence at CEDAW meetings is very important and successful.

But, in order to gain access to the space where any of these UN meetings are held and government representatives are available for lobbying, an NGO must receive consultative status from the UN. While this was a relatively easy process in the past, there has recently been a great increase in applications and a tendency to scrutinize applicants far more closely.⁷ In order to acquire consultative status, an NGO must apply through a complex procedure and describe in detail the nature of the organization, its mission, its membership, and its financial status. The decision can take over a year.⁸ As the number of NGOs has expanded, the pressure on the UN to accommodate them has also increased, as has the difficulty of determining which groups should earn this status. Without consultative status, an NGO cannot participate in these meetings. The UN recognizes that the process for achieving consultative status is difficult and may deter small organizations in developing countries. It has made efforts to make the process more acces-

7. The website for the Conference of NGOs in Consultative Status with the United Nations Economic and Social Council (CONGO) (www.congo.org/ngopart/constat.htm) describes the process of gaining consultative status as follows: "The basis for the consultative relationship between the United Nations and non-governmental organizations was set forth most recently following an extensive intergovernmental review that culminated in ECOSOC Resolution 1996/31. This relationship is the principal means through which ECOSOC receives input from NGOs into its deliberations at public meetings and in its subsidiary bodies as well as in UN international conferences and their preparatory bodies. Each year the approximately 2,000 NGOs now holding consultative status receive the provisional agenda of ECOSOC. They have certain privileges to place items on the agenda of ECOSOC and its subsidiary bodies; they may attend meetings, where they may submit written statements and make oral presentations to governments."

8. The criteria for consultative status are: (1) the applying organization's activities must be relevant to the work of ECOSOC; (2) the NGO must have a democratic decision making mechanism; (3) the NGO must have been in existence (officially registered) for at least two years in order to apply; (4) The major portion of the organization's funds should be derived from contributions from national affiliates, individual members, or other nongovernmental components (www.un.org/esa/coordination/ngo, March 2002).

sible, but it is still difficult, particularly for NGOs in developing countries for whom faxing and communication difficulties loom large.

Moreover, NGOs are not of equal status. There are three categories of membership: general, special, and roster. The number of representatives who may attend and the opportunities for speaking depend on the status of the NGO. Most are in special consultative status although some of the older and larger ones have the more privileged status of general consultative status and small newcomers are often given roster status. According to the UN website (www.un.org/esa/coordination/ngo) listing the NGOs in consultative status, as of November 2001 there were approximately 2,000 such, of which about 130 were in general status, about 1,000 in special, and 900 in roster. Examples of NGOs in general consultative status are Soroptomist International, Rotary International, and Zonta International. Organizations in special consultative status include European Women's Lobby, International Federation of University Women, Italian Centre of Solidarity, and the Salvation Army. The European Union of Women and International Association for Counseling are both roster organizations. Such organizations are less likely to be able to afford to send a staff member to the conference, although many send volunteers. Many of the NGOs that are able to send representatives regularly are large, international, membership-based organizations, such as those listed above, or religiously affiliated, usually Protestant or Catholic groups.

Many of these NGOs are based on large established religions or are funded by transnational philanthropy or government grants. Although there are some radical NGOs, such as the Women's International League for Peace and Freedom, most are mainstream organizations such as professional businesswomen's associations or the Girl Scouts. The left, progressive, social activist NGO is the minority. These groups vary significantly in their political views of social change and how agents of change should be empowered. The more conservative groups seem content to give vulnerable groups such as battered women a voice, while the more radical ones want to focus attention on economic and structural inequalities.

It is obviously expensive and difficult for South NGO members to attend UN meetings in Europe or the United States. Many who do come are working in projects with international donors, but this does not guarantee that they will be able to participate on a regular basis. Yet only those NGO representatives who go year after year develop the expertise in personnel, lobbying, and the texts of documents essential to making an impact on the document-drafting process. NGO representatives who know the language used in past documents and how to find it are much more influential in lobbying than those who lack this expertise since there is usually a preference for using "agreed-upon" language from some other document rather than forging new wording. Consequently, the leading NGO representatives tend to be experienced heads of major U.S., Canadian, and European organi-

zations. I heard little complaint about this situation by developing countries' NGO representatives, however. Instead, there is generally a sense of camaraderie and support as well as openness to learning from one another. Nevertheless, the hurdles for NGO participation from poorer parts of the world are quite substantial, and it seems that many who come are sent by NGOs receiving substantial international funding, usually from Europe or North America.

Despite the celebrated interdependence of civil society and the international system of law, the relationship between states and NGOs is fraught with tension and ambivalence. While some governments welcome NGO participation, others resist. Some do not want NGOs to be involved in the process at all and insist that the UN is a body of governments. Some governments of the South are uncomfortable about criticism and embarrassment from NGOs. They fear public exposure and will be angry at the NGOs when they get back home. One NGO representative from Africa said that some governments even threaten treason trials against outspoken NGO representatives, and many are unhappy about NGO criticisms. The US also resists criticisms by NGOs. My observations of briefings by the U.S. delegation to the NGOs at the CSW in 2001 and 2002 as well as at the Beijing Plus Five Conference, for example, show that they focus on providing information about U.S. government activities rather than looking for NGO input or criticism. At a March 2002 U.S. briefing to NGOs, a representative from the Women's International League for Peace and Freedom pointed out that discussions of gender and poverty need to take into account the way U.S. economic policies are producing global poverty. The U.S. team seemed annoyed by this comment, and one member accused the NGO representative of being unpatriotic.

While there is general recognition that NGOs perform a valuable service in identifying issues, doing research to support them, and advocating for particular causes, an important task of many NGOs is exposing government failures. This makes many governments uneasy, particularly since the task of state representatives to these global forums is to portray their countries in the most favorable light. The CSW begins with hours of speeches in which each country emphasizes its accomplishments in the field of women's issues. It is not surprising that the CEDAW process is far more open to NGO participation than the commissions and world conferences that are made up of government delegations. The system of shadow reports and NGO briefings during CEDAW sessions has institutionalized NGO input into the process, yet even here, aside from the separate briefing meeting that lasts about an hour and a half, NGOs have no formal space to speak, and only some experts are really interested in NGO input.

As in so many other areas of UN activity, this relationship is a developing and changing one. NGOs are gradually gaining more acceptance and a stronger voice, but still face considerable resistance to their participation

among some governments. And, as in many other areas of international activity, the sharp disparities in resources between North and South radically limit the ability of some NGOs to participate in the process. It is common for North foundations and governments to fund NGOs from the South. But issues of importance to the North tend to take precedence, and these issues change. Trafficking in women is a new issue, for example, which responds to North concerns as well as to South agendas. Human rights documents create the legal categories and legal norms for controlling violence against women, but the dissemination of these norms and categories depends on NGOs seizing this language and using it to generate public support or governmental discomfort. This is a fragile and haphazard process, very vulnerable to existing inequalities among nations and the availability of donors.

CONCLUSIONS

This analysis indicates that the critical feature of the CEDAW process is its cultural and educational role: its capacity to coalesce and express a particular cultural understanding of gender. Like more conventional legal processes, its significance lies in its capacity to shape cultural understandings and to articulate and expand a vision of rights (see Ewick and Silbey 1998; Merry 2000). This is a form of global legality that depends deeply on its texts, not for enforcement but for the production of cultural meanings associated with modernity and the international. It is ultimately dependent on generating political pressure on states from the CEDAW committee, from sympathetic leaders within a country, and from international and national nongovernmental organizations. There are clearly ways to slip through this grid of surveillance, including the U.S. strategy of failing to ratify CEDAW at all.

This perspective on CEDAW underscores its culturally constitutive role, a phenomenon that others have argued is characteristic of law within nation states (see Sarat and Kearns 1993; Ewick and Silbey 1998; Merry 1990). Indeed, international human rights law is like nation state law in its focus on the cultural production of norms. In both forms of legality, law operates more in the routines of everyday life than in moments of trouble. Compliance depends on the extent to which legal concepts and norms are embedded in consciousness and cultural practice. Legal documents in both situations name problems, specify solutions, and articulate goals. Both state law and international human rights treaty law influence cultural meanings and practices beyond the reach of their sanctions. This examination of CEDAW hearings shows the culturally constitutive nature of law in its global materialization.

In the human rights process governing violence against women, there emerges from time to time a conception of culture as homogeneous, static,

“primitive,” and resistant to change. Such a concept of culture often serves to marginalize as “other” those to whom it is attributed. Culture is also assumed to be a set of beliefs that determines behavior. The fact that the global legal process, as with all legal processes, is engaged in cultural transformation remains unspoken. A theory of culture as contested, historically produced, and continually defined and redefined in a variety of settings (see Lazarus-Black and Hirsch 1994; Lazarus-Black 1994) rarely appears in country reports or in CEDAW hearings. With a more complex understanding of culture and cultural transformation, however, it would be possible to see the human rights monitoring process as a gradual cultural transformation rather than as law without sanctions confronting intractable cultural differences.

There is a discursive world created in these forums that juxtaposes culture to the law—culture is out there, in the hinterland, with the minorities, while here there is law, with culture hiding from view, buried in the everyday practices of modernity. This opposition between culture and law is created in the situation, however. In terms of everyday practices, what is being produced in these legal settings, in the midst of modernity, is culture—a culture that relegates culture to the margins. But it is possible to locate both the culture of the center—the human rights system—and the culture of the margins—the village—on the same plane. The village and the UN are on the same terrain, although clearly unequal in power. Cultural production takes place in each of these locations, as preexisting pieces are reconstituted and rearranged.

Indeed, this examination of CEDAW and other human rights processes makes clear that these are powerful sites of cultural production. What is taking place is the generation of documents by a large body of sovereign states through a consensual process that confers international legitimacy on the documents. These processes follow a fairly consistent set of procedures and are organized around a key set of concepts such as political will, human rights, and capacity building. The documents themselves name problems, specify solutions, articulate areas of global consensus, and offer moral visions of the good society, replicating language developed in one setting in the next. That this vision is articulated in law-like documents produced through quasi-legislative processes increases its creative cultural possibilities.

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