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Articles

The "Other" Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women

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Introduction

The adoption of the Convention on the Elimination of All Forms of Discrimination Against Women in 1979 was one of the major achievements of the United Nations Decade for Women (1976-85). Following the entry into force of the Convention in 1981, the Committee on the Elimination of Discrimination Against Women (CEDAW or the Committee), the expert body established by the Convention to monitor its implementation, commenced its work in 1982. As of the end of 1988, the Committee had held seven sessions.
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Although the Convention has been open for signature only since 1980, it has as many States Parties as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Despite this evidence of broad support for its objectives, the Convention and the Committee have attracted considerably less attention than the other human rights treaties and their respective committees among those active in the field of international human rights.

The most sustained interest in the Convention and the Committee has been among those who are especially interested in the human rights of women or the role of women in development; the general human rights literature still seems largely indifferent to the Convention and CEDAW's activities. The women's rights community and, to a lesser extent, the human rights community, have made efforts to integrate women's rights issues into the human rights agenda, but progress has been slow.

The purpose of this article is to fill some of the informational void about CEDAW by reviewing its work, to identify the major problems and challenges facing the Committee, and to suggest ways in which it can be more effective.


7. For an extensive bibliography on international law relating to discrimination on the basis of sex, see Cook, The International Right to Nondiscrimination on the Basis of Sex, 14 Yale J. Int'l L. — (1989).

8. So far as I am aware, no detailed study of the Committee's work has been published since Margaret Galey's 1984 survey, which examined the work of the Committee through the end of its third session. See Galey, International Enforcement of Women's Rights, 6 Hum. RTS. Q. 463, 475-88 (1984). For a recent overview of some of the legal issues involving the Committee's work, see Oeser, Legal Questions in the Committee on the Elimination of Discrimination Against Women, 14 Bulletin of the GDR Committee for Human Rights 86 (1988).
I. The Convention and the Committee

The Convention is a comprehensive statement of the right to nondiscrimination on the basis of gender. Not only does it codify many of the provisions of existing treaties dealing with discrimination on the basis of sex, but it also extends the principle of sexual nondiscrimination into new areas. States Parties to the Convention commit themselves to eliminate discrimination against women and to ensure women the opportunity to enjoy their human rights and fully develop their potential.

The Convention's supervisory mechanism is modeled on those of the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. The Convention establishes the Committee on the Elimination of Discrimination Against Women, a body of 23 experts elected by the States Parties to serve in their personal capacity. CEDAW is one of five supervisory bodies consisting of independent experts charged with monitoring the implementation of a U.N. human rights treaty. Its experience to date has been similar in many respects to that of the Committee on the Elimination of Racial Discrimination and the Human Rights Committee. CEDAW has faced many of the same procedural and jurisdictional issues as these bodies and has drawn extensively on their methods in developing its own procedures.


10. See, for example, article 5, dealing with the need to modify sex-stereotyped attitudes and practices, and article 14, focusing on the particular problems faced by rural women, both areas which were not dealt with in earlier human rights treaties relating to discrimination against women.


12. ICCPR, supra note 5, arts. 28-45. Unlike these instruments, the Convention does not make any provision for individual or inter-State complaints to be made to the Committee.


14. Apart from CEDAW, these expert committees are the Human Rights Committee (established by the ICCPR, supra note 5); the Committee on the Elimination of Racial Discrimination [hereinafter CERD] (established by the Racial Discrimination Convention, supra note 11); the Committee against Torture [hereinafter CAT] (established by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. GAOR Supp. (No. 51), U.N. Doc. A/39/51 (1985)); and the Committee on Economic, Social and Cultural Rights (established in 1985 pursuant to E.S.C. Res. 1985/17, 1985 U.N. ESCOR Supp. (No. 1) at 15, U.N. Doc. E/1985/85 (1986)). In this article I will be using the term “treaty body” to include all of these entities.
The Committee is established "[f]or the purpose of considering the progress made in the implementation of the Convention." 15 The Convention assumes that the major part of that task will be the examination of reports submitted by States Parties. The Committee reports annually on its activities to the General Assembly through the Economic and Social Council, 16 and it may make suggestions and general recommendations based on its examination of reports and information received from States Parties. 17 The Convention also gives the Committee the power to invite specialized agencies of the United Nations to provide it with relevant information. 18

The Committee has reached an important juncture in its work. In the course of seven sessions from 1982-88, it has established a procedural framework, examined a substantial number of reports of States Parties, commenced the review of second periodic reports, and begun to explore its broader powers. Having completed the preliminary stages of its work, the Committee must now directly address issues relating to its effectiveness as a supervisory body.

To enhance the Convention's overall effectiveness, the Committee should adopt several measures. First, it must act to ensure that States Parties adequately fulfill their reporting obligations. Second, it must further develop its own internal procedures to promote more effective consideration of reports. Third, concerted measures are needed to ensure that specialized agencies play a meaningful role in CEDAW's work. Fourth, the Committee needs to encourage and facilitate participation in its work by national and international non-governmental organizations (NGOs). Fifth, the Committee must broaden its agenda beyond the review of reports, and begin to develop a detailed substantive jurisprudence of the Convention which draws together the accumulated experience of the Committee and the States Parties. Finally, greater efforts must be made to integrate the Committee's work with other relevant activities of the U.N. system to ensure that women's issues do not continue to suffer from the conceptual and institutional marginalization that has been their fate in the past. 19

15. Women's Discrimination Convention, supra note 1, art. 17(1).
16. Id. art. 21(1). The annual reports of the Committee are published as supplements to the Official Records of the General Assembly.
17. Women's Discrimination Convention, supra note 1, art. 21. See infra text accompanying notes 146-62.
18. Id. art. 22. See infra text accompanying notes 130-45.
19. In addition to the problems peculiar to reporting under the Convention, CEDAW also faces the two major problems which threaten to undermine the effectiveness of the U.N. human rights reporting system as a whole: inadequate resources and the failure of States Parties to submit adequate reports on time, or at all. For an excellent general discussion of the
II. Criteria for Assessing the Committee's Work

In assessing the work of CEDAW, one must recognize at the outset the limitations of such an international supervisory body. Although CEDAW is not a body of governmental representatives, it is nonetheless created by governments and its members are nominated and elected to positions on the Committee by States Parties. Governments are also in a position to influence the allocation of resources to the Committee. Thus, the scope of its activities and its effectiveness are ultimately constrained by the support which States Parties are willing to give it. By the same token, the nature of the Committee means that it has a level of access to governments which other groups may lack.

CEDAW's powers to promote implementation of the Convention are relatively limited. The Committee has no quasi-judicial powers enabling it to pronounce a State Party in violation of the Convention and to order an appropriate remedy. While it may offer suggestions to individual States, or to the States Parties generally, as to appropriate ways to pursue the Convention's goals, its major means for exerting pressure on States to comply with their obligations lies in its public review of individual country reports. Many governments care whether the supervisory committees make positive or adverse comments on their human rights performance. A positive appraisal in an international forum of a country's commitment and efforts can give impetus to further progress. An adverse assessment can embarrass a government at home and abroad, ideally providing it with some incentive to do more in the future. In addition to promoting the Convention's objectives by scrutinizing the reports of individual countries, the Committee can promote the Convention's objectives by encouraging other international bodies to incorporate them into a large number of international programs and activities.

In both cases, the impact of the Committee's assessment depends on support from the States Parties as a whole. CEDAW needs the States Parties to ensure that it is given adequate resources to function efficiently, to support its role as a critic of individual States Parties which have not fulfilled their obligations, and to support the pursuit of the Convention's goals in other international fora. Thus the Committee must, as problems facing the treaty supervisory bodies, see Dutch Human Rights and Foreign Policy Advisory Committee, Human Rights Conventions Under U.N. Supervision (July 1988), reprinted as Annex to U.N. Doc. A/C.3/43/5 (1988) [hereinafter Dutch Human Rights Report].

20. Summary records of the Committee's meetings are also issued. The annual report of the Committee to the General Assembly is a public document and is considered by the Economic and Social Council and the General Assembly.
a tactical matter, conduct its work in a manner so as not to alienate a large number of States Parties.

One of the difficulties involved in assessing the direct impact of CEDAW's work on developments in a particular country arises from the multiplicity of forces which may motivate particular changes there. It may be impossible to determine when public review of reports by CEDAW is the primary reason for change, in particular where the changes involve not just the amendment of specific discriminatory laws but also the introduction of broad-ranging social policies.\(^{21}\)

Any assessment of the effectiveness of the work of CEDAW must also take into account factors internal and external to the review of national reports by the Committee.\(^{22}\) Among these factors are the following: whether the reporting procedure itself functions effectively and meaningfully,\(^{23}\) whether the work of the Committee has a significant and useful impact on other international bodies responsible for promoting rights guaranteed by the Convention, and perhaps most importantly, whether the process has had any impact on national laws, practices and conditions.

The Committee has reviewed reports diligently, but as will appear from the discussion that follows, it has been only modestly successful in its efforts because it is still relatively new and also because it has been bedeviled by resource problems.

Thus, CEDAW's work must be evaluated in the overall context of international and national efforts promoting the advancement of women. The Committee plays an important and distinctive role in that process,

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\(^{23}\) Relevant factors include the extent to which States Parties fulfill their obligation to submit timely reports, the quality of the reports, the extent to which they are rigorously examined by the Committee, the response of States Parties to the Committee's requests for additional information, and the effectiveness of the Committee's procedures for following up these requests.
yet it is just one of many entities working toward the same goals. Its work needs to draw on and contribute to the activities of other groups, whether they be international organizations, governmental agencies or non-governmental actors.

The ultimate criterion for success is whether the process contributes to a greater awareness and observance of the human rights of women in domestic fora. If the examination of reports “does not find an echo transcending the relevant conference room in Geneva or New York” and is “just seen as a sort of fever crisis which has to be endured once every [four] years, the whole exercise remains more or less useless.”24 The reporting process must have official and unofficial linkages back into the domestic forum if it is to have any significant impact on domestic policies. Developing these linkages represents the Committee’s most important challenge, but it requires the cooperation of governmental organizations and independent NGOs to do so.

III. The Composition of the Committee

A. CEDAW’S Membership

Article 17(1) of the Convention provides that, in the election of the twenty-three members of the Committee, consideration be given “to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.” The current composition of the Committee is largely in accordance with that injunction.25 At the same time, one of the most striking features of CEDAW’s membership is that, with one exception, all its members have been women. CEDAW thus provides a stark contrast to the other human rights treaty bodies where, as of 1988, women comprised a grand total of seven out of sixty-four members.26 CEDAW has drawn attention


25. As of March 1988, the 94 States Parties to the Convention comprised 25 African states, 25 Latin American and Caribbean states, 19 Western European and other states, 15 Asian states and 10 Eastern European states. Following the March 1988 election, the Committee has a slight over-representation of the Western European group and a slight under-representation of African nations. The allocation of seats among the regional groups that would result from a strict adherence to a principle of proportional representation is as follows (present representations are in parentheses): African 6 (presently 5), Latin American 6 (presently 6), Western European 4-5 (presently 6), Asian 3-4 (presently 3), and Eastern European 2-3 (presently 3). See 1988 CEDAW Report, supra note 3, Annex I.

to the under-representation of women on the other treaty bodies as an area in which States Parties need to carry out their obligations under article 8 of the Convention, which provides that States Parties shall ensure women equal opportunities to participate in the work of international organizations.\textsuperscript{27}

Professional diversity is another distinguishing characteristic of CEDAW.\textsuperscript{28} The membership of bodies such as the Human Rights Committee and the Economic, Social and Cultural Rights Committee has usually been comprised almost exclusively of lawyers. Many members are or have been law professors who have represented their countries in various international fora; most others have been career diplomats. Relatively few have had extensive experience in areas other than law and international relations.\textsuperscript{29} In contrast, only about half of the experts who have served as CEDAW members are lawyers. Other members come from such areas as medicine, public health and hospital administration, political science, geography, trade union and labor relations, education, social work and engineering. This diversity of experience has been reflected in the Committee's questions and has been valuable to the Committee's work, particularly in the areas of economic and social rights and development.

\textsuperscript{27} At its 1988 session the Committee rejected a proposed general recommendation to States Parties that they nominate men for election to CEDAW. This proposal was put forward in response to various comments made about the all-female membership of CEDAW at the May 1987 meeting of ECOSOC. The proposal called on States Parties to nominate both male and female experts for election to CEDAW.

The Committee rejected the recommendation for a number of reasons. First, since States Parties have the power to nominate persons for election to CEDAW, a number of CEDAW members argued that the Committee should not presume to tell States Parties how they should go about exercising that prerogative. Second, members of the Committee pointed out that the proposal could easily lead to the loss of the only human rights treaty forum in which a clear majority of the members were women. See supra note 26. Some members of the Committee felt that States Parties should first direct their efforts to bringing about equitable representation of women on the other human rights treaty bodies and other international bodies before seeking to have equal numbers of men and women on CEDAW.


B. The Independence of CEDAW Members

Essential to the effective functioning of a committee like CEDAW is an independent and critical stance on the part of its members. In her examination of the Committee's work up to 1984, Margaret Galey raised doubts as to whether the composition of the Committee was conducive to its acting in an independent manner; she argued that the fact that most CEDAW members held some form of official post in their respective countries gave rise "to serious questions as to the extent they can or do serve in their personal capacity independent of governments."30 While the concerns that Galey raised are real,31 the subsequent experience of the Committee suggests her conclusion was overly pessimistic.

The gist of Galey's thesis was that diplomats and other governmental officials are less likely to be objective and exacting in their scrutiny of States Parties' reports than individuals who do not hold such positions. The inference is that career diplomats may be unduly sympathetic to the sensitivities of their own and other States, which are generally reluctant to have their human rights practices scrutinized closely. Even persons with non-diplomatic governmental appointments, the argument continues, are beholden to governments and may refrain from vigorous prosecution of their duties so as not to offend them. Moreover, public officials are socialized into thinking institutionally, and they may find it difficult to step back from a governmental perspective when analyzing the position of women.

It is probably true that the presence of diplomats as members of CEDAW has the potential to make its work less critical. Yet they, like public officials generally, may also be more aware of the potential for, and limitations of, government to effect important social changes.32 Moreover, of approximately 40 individuals who have served on CEDAW up to 1988, only about eight have been career diplomats or have held diplomatic appointments during the time they were members of the Committee. The majority have held some other type of public position. But, in general, neither group has displayed a lack of independence, re-

30. Galey, supra note 8, at 478.
31. In the earlier sessions of the Committee, the approach of some members (in particular those from Eastern Europe) did not appear consistent with their role as independent experts; they seemed to act as partisans of their own countries and regional allies. Broader ratification of the Convention has brought a more diverse membership to the Committee, diminishing the overall influence of the most pronounced partisan positions.
32. Indeed, the presence of career diplomats has brought some practical advantages to CEDAW's work. Their knowledge of procedural matters and substantive developments elsewhere in the U.N. system has been useful to a Committee suffering from a lack of technical and legal support.
jected an activist role for the Committee, or undermined its critical stance. In a number of cases attitudes that suggested a less than independent approach may have been attributable, in fact, not so much to members' official positions but to the generally low regard for human rights and women's rights held in the countries from which they come.

Perhaps the major reason for the relatively critical stance that CEDAW as a collective body has been able to maintain is a factor not mentioned by Galey: the feminist background of most of CEDAW's members. Nearly all the members of CEDAW have been involved in some manner with feminist or other groups working to advance the position of women. In fact, in many cases their expertise on issues of particular concern to women and their commitment to the cause of women's equality have been decisive factors in their appointment to the official positions they hold as well as in their nomination to CEDAW.

As a result of their involvement in feminist activities, CEDAW members' commitment to women's rights is often deeper than their commitment to government institutions. This dimension of experts' backgrounds also means that they have access to networks and communities outside the governmental structure to which other officials, particularly male officials, may not; these contacts provide not only information but also a different perspective and a sense of solidarity and support for the work of the Committee.

C. The Influence of Regional Groupings on the Work of the Committee

Despite this sense of common purpose, CEDAW members display different approaches to their work. On the whole, the Western European and Latin American experts tend toward a high degree of independence and a critical stance toward countries from all regions and levels of development, including nations from their own regions. The performance of the Asian and African experts has varied; some have been among the most active members of the Committee, while others have been relatively passive. In some cases, a rigorous scrutiny of developing countries appears to have been tempered by the perception of the difficulties they face in the promotion of equality for women. When they have deemed it appropriate, however, a number of these experts have been extremely critical of developing countries.

By contrast, the various Eastern European experts have tended to be over-laudatory of Eastern European countries' achievements, and have sought to deprecate any suggestion that women still face inequalities in those societies. At the same time, some of these members downplay the advances in Western European countries, while highlighting the continuing problem areas in those countries. They have also adopted a generally restrictive interpretation of the powers of the Committee, except in relation to a small number of subjects where a more expansive approach serves broader political goals.

IV. The Reporting Procedure

A. The Reports of States Parties: Submission and Adequacy

Under article 18 of the Convention, States Parties agree to submit to the Secretary-General of the United Nations "a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the . . . Convention and on the progress made [in that regard]." Initial reports are due within one year after a


35. A vivid example of the different approach to reports from Eastern European and Western countries is the approach taken by the USSR expert, Biryukova, supported by the expert from Bulgaria, during the Committee's consideration of the reports of the USSR, Bulgaria and a number of Western countries. A concerted effort was made to summarize the USSR's presentation and achievements in the most favorable light, while a similar effort was made to downplay achievements of countries such as Canada, Sweden, Norway, and the Philippines. See U.N. Doc. CEDAW/C/SR.28-SR.30 (1984); U.N. Doc. CEDAW/C/SR.32, paras. 46-49, 58 (1984); U.N. Doc. CEDAW/C/SR.38, paras. 17-26 (1984); U.N. Doc. CEDAW/C/SR.48 (1985), paras. 73-79; U.N. Doc. CEDAW/C/SR.61, paras. 92-143 (1985); U.N. Doc. CEDAW/C/SR.62, paras. 1-50 (1985).

36. This latter approach has been most clear in relation to matters mentioned in the preamble to the Convention: the necessity of international peace, disarmament and a just world economic order as preconditions to the achievement of the goals of the Convention. While a number of Eastern European members have placed considerable rhetorical emphasis on these matters, they have largely failed to explore them seriously as part of the dialogue with States Parties. See infra text accompanying notes 104-09.
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State becomes a party to the Convention and every four years thereafter, or sooner if the Committee so requests.37

The reporting procedure is the raison d'être of the Committee's activities, and the way in which it functions gives some indication of the extent to which States Parties are genuinely committed to the goals of the Convention. The major aspects of the reporting process addressed here are the extent to which States Parties have fulfilled their obligation to submit periodic reports, the quality and adequacy of those reports, and the reasons for any shortcomings that have developed in the reporting system.

In most cases reports are prepared by government officials with little input from NGOs. The government body responsible for preparing the report will vary from State to State. In some countries, the ministry which coordinates policies affecting women may be responsible; in others, the responsibility may be assigned to the national legal department. Often, the foreign ministry will have some input to ensure that public relations considerations are adequately taken into account.

Many of the inadequacies of national reports result from a lack of coordination between the various officials who have relevant information and expertise. Responsibility is often assigned to officials with special expertise in women's affairs, who may lack experience in preparing reports for human rights supervisory bodies and may be unaware that the government has already submitted relevant material to other international bodies under different human rights treaties. Those officials with expertise in the area of human rights reporting often do not have the requisite expertise in women's affairs in their countries nor do they know which groups to contact to obtain information that the government does not possess. Neither group may be aware of the resources available internationally to assist them in their reporting obligations.38

1. Status and quality of the reports

As of March 1988, the Committee had received fifty-six initial and twelve second periodic reports, of which it had considered forty-five ini-


tial and two second periodic reports. Thirty-six initial reports and thirty-six second periodic reports had not yet been submitted.

Not surprisingly, the reports submitted to CEDAW by States Parties have varied considerably in volume, quality and candor. Some reports provide very little material on the extent to which the provisions of the Convention have been implemented and a frequent tendency of reports is to be self-congratulatory rather than self-critical.

The other major shortcoming of reports has been their proclivity merely to describe official policies and the legal guarantees of equality between women and men, without giving sufficient information about the extent to which these formal guarantees are realized in practice. Many reports fail to provide information about the economic and social position of women; most frustrating is the paucity of comparative statistics which would enable the Committee to assess women's progress over time absolutely and in relation to men.

Many reports deal with only some of the areas covered by the Convention, avoiding those areas that are controversial or in which the country concerned has signal ly failed to fulfill its obligations under the treaty. Yet other reports also display a misunderstanding of the normative content of provisions of the Convention.

Of course, these inadequacies are not confined to reports submitted by States Parties under the Women's Discrimination Convention; they are also found in reports submitted to other human rights treaty bodies. These shortcomings have their origin in the nature of an international reporting procedure, and are exacerbated by the factors which have begun to undermine the treaty reporting system in recent years. Difficulties specific to reporting under the Women's Discrimination Convention contribute to the problem. While CEDAW can take steps to improve

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40. Id.
41. During the 1988 session, at one extreme was the two page report submitted by Mali (later supplemented), which referred briefly to a number of relevant constitutional and legal provisions but contained no material on the actual social position of women in Mali. U.N. Doc. CEDAW/C/S/Add.43 (1987). At the other extreme was Australia's comprehensive report which ran to over 200 pages. U.N. Doc. CEDAW/C/5/Add. 40 (1986); U.N. Doc. CEDAW/C/5/Add. 40/Add. 40/Amend. 1 (1988).
42. The initial report of Romania provides an extreme example. It proclaims: "In Romanian socialist society the exploitation of man by man has been eliminated. There is at present a perfect unity of interests between the individual and society, since the obstacles to the promotion of full equality between citizens have been removed. As a result, all discrimination against women, who are equal in rights with men, has disappeared." U.N. Doc. CEDAW/C/5/Add.45, at 2 (1987).
43. See generally DUTCH HUMAN RIGHTS REPORT, supra note 19.
44. The unavailability of sex-segregated statistics in many areas, for example, makes it difficult to assess whether particular policies have a disproportionately adverse impact on women, or whether women as a group need services that men do not.
the situation, a more comprehensive remedy will require more than independent action by CEDAW.

One step CEDAW has taken is to adopt two sets of guidelines to help States Parties prepare their reports and to facilitate the Committee's consideration of them. Unfortunately the Committee has had mixed success in persuading States Parties to observe these guidelines. Although CEDAW members and others initially were optimistic that compliance would improve markedly once the guidelines were formulated, many reports prepared after their adoption have failed to adhere to them.

At least part of the problem may lie in the fact that the guidelines are too general. They simply do not specify the type of detailed information needed under each of the articles of the Convention. Thus, while some of the articles are quite detailed and self-explanatory, others are not and need further explanation. The inadequacies of many reports clearly reflect a lack of knowledge of the requirements of the Convention that could be best remedied through promulgation of more detailed guidelines.


48. Compare, for example, articles 10 and 16 with articles 6 and 15.

49. While a thorough examination of the Committee's annual reports and summary records would indicate to a country preparing its report the sorts of issues under the individual
Accordingly, the elaboration of more specific guidelines would be a worthwhile undertaking for future sessions of the Committee.\textsuperscript{50} The Committee could, for example, provide States Parties with a list of questions commonly asked by members during consideration of reports.\textsuperscript{51} Alternatively, a detailed list of the types of information relevant to specific articles of the Convention could be developed which could be adopted by the Committee as the basis for guidelines or recommendations to States Parties.\textsuperscript{52} More modestly, the Committee could adopt additional guidelines detailing the types of information relevant to those articles which are most commonly covered inadequately in reports.

Although the utility of a manual which gives detailed guidance to reporting States has been recognized, as yet no manual of this sort has been prepared by the U.N. secretariat or adopted by any of the supervisory committees.\textsuperscript{53} However, both the Commonwealth Secretariat and the International Women’s Rights Action Watch, an NGO established to monitor implementation of the Convention, have published manuals designed to assist States Parties and NGOs in preparing reports on the implementation of the Convention and monitoring national progress on the articles of the Convention, many countries cannot be expected to undertake this task, particularly developing countries which may not have the resources for such an effort.


51. Individual CEDAW members have suggested that the Committee draw up a detailed list of questions, and that a model report be provided to States Parties. U.N. Doc. CEDAW/C/SR.46, paras. 40, 46 (1985); U.N. Doc. CEDAW/C/SR.79, para. 5 (1986); U.N. Doc. CEDAW/C/SR.100, para. 51 (1987). However, other members do not consider such measures necessary to ensure that states comply with their reporting obligations. U.N. Doc. CEDAW/C/SR.46, para. 42 (1985).

52. Both CERD and the Human Rights Committee have developed detailed guidelines specifying matters which should be covered in relation to specific articles of the Racial Discrimination Convention and the ICCPR. CERD, with a considerable contribution from UNESCO, see infra note 137, developed detailed guidelines on the implementation of article 5 of the Racial Discrimination Convention, U.N. Doc. A/37/18, chap. IX (1982), and has used its power to make general recommendations on what it considers relevant issues under other articles. For the detailed guidelines adopted by CERD, see U.N. Doc. A/40/600/Add. 1, at 27-32 (1985).

Similarly, the Committee of Ministers of the Council of Europe has adopted a detailed article-by-article list of the types of information that States Parties to the European Social Charter should include in their reports to the Committee of Independent Experts that reviews reports under that instrument. See EUROPEAN SOCIAL CHARTER: FORM FOR THE REPORTS SUBMITTED IN PURSUIT OF ARTICLE 21 OF THE CHARTER (1981); D. HARRIS, THE EUROPEAN SOCIAL CHARTER 201-02 (1984).

53. The Chairpersons of a number of the treaty bodies at their meeting in 1984 suggested that preparation of a manual on reporting under the human rights treaties would considerably assist States Parties in the fulfilling their reporting obligations. U.N. Doc. A/39/484, para. 31(a) (1984) [hereinafter 1984 Chairpersons’ Report]. The 1988 Chairperson’s meeting made a similar recommendation, 1988 Chairpersons’ Report, supra note 27, para. 87, which was endorsed by the General Assembly in G.A. Res. 43/115, para. 5, U.N. Doc. A/RES/43/115 (Dec. 8, 1988). Such a manual is currently being prepared by the Centre for Human Rights in collaboration with UNITAR but, as of late 1988, it was far from completion.
It is to be hoped that CEDAW will endorse these manuals and take similar steps itself as soon as possible.

2. Reasons for overdue and inadequate reports

A number of factors contribute to the present malaise of the U.N. human rights treaties reporting system. The most obvious cause of a failure to submit adequate reports is a lack of commitment to the goals of the various conventions. The commitment to women's human rights may be even weaker than in other areas.

Of course, lack of political will is not the only reason for delinquency in reporting. Other reasons often adduced for the inadequacy of reports include the lack of personnel with the expertise necessary for the preparation of reports, lack of resources to devote to the compilation of reports, lack of coordination between the relevant government bodies, the complexity of the information required under some treaties, and the heavy burden imposed on States (particularly small or developing ones) which have ratified a number of human rights treaties and which may have to prepare a number of reports within a short time.

Developing countries have the greatest difficulty in fulfilling their reporting obligations under the various treaties; in many cases they simply do not have the expertise or resources available to do the job properly, if at all. As of March 4, 1988 there were twenty-one States Parties whose initial reports to CEDAW were more than two years overdue.


56. For example, as of June 1, 1986, the regional breakdown of States Parties to U.N. human rights treaties which had more than two reports overdue was the following: Africa (36), Latin America (20), Asia (12), Western Europe (4), Eastern Europe (1). Reporting Obligations of States Parties to United Nations Conventions on Human Rights: Report of the Secretary-General, U.N. Doc. A/41/510, para. 12 (1986). These figures reflect only the number of reports submitted; experience shows that a certain percentage of those actually submitted are not satisfactorily prepared.

57. The problem is particularly acute with regard to the provision of detailed empirical information, which is of fundamental importance to the assessment of women's comparative progress in economic and social terms. See U.N. Doc. CEDAW/C/SR.53, para. 28 (1985); U.N. Doc. CEDAW/C/SR.122, para. 31 (1988). Nonetheless, a number of developing countries have submitted detailed and reasonably comprehensive reports. One example is the report of Nigeria. See U.N. Doc. CEDAW/C/5/Add.49 (1987); U.N. Doc. CEDAW/C/5/Add.49/Amend.1 (1987).
due (some were as much as five years late); all of these were small and/or developing countries.\footnote{They were Barbados, Bhutan, Brazil, Cape Verde, Congo, Democratic Yemen, Dominica, Ethiopia, Guatemala, Guinea, Guyana, Haiti, Kenya, Laos, Liberia, Mauritius, Peru, St. Lucia, St. Vincent and the Grenadines, Togo, and Tunisia. \textit{1988 CEDAW Report, supra} note 3, Annex II. Of the 36 initial reports which were overdue, 16 were from African states (of 25 States Parties), 12 were from Latin American and Caribbean states (of 25 States Parties), 4 were from Asian states (of 15 States Parties), 4 were from Western European states (of 19 States Parties) and none were from Eastern European states (of 10 States Parties).}

3. \textit{Suggestions for improvements}

Various suggestions to alleviate the problem have been made.\footnote{See, for example, the reports of the 1983 and 1988 meetings of the Chairpersons of the treaty bodies. \textit{1984 Chairpersons' Report, supra} note 53, paras. 30-40; \textit{1988 Chairpersons' Report, supra} note 27, paras. 78-100. \textit{See generally DUTCH HUMAN RIGHTS REPORT, supra} note 19.} These corrective measures would require both unilateral and cooperative action by CEDAW.

One measure suggested is the coordination of guidelines among the various treaty bodies. Each treaty body presently asks States Parties to supply general background information concerning the population and the governmental and social organization of the State, as well as the relationship between treaties and national law. If the treaty bodies could agree on a uniform content and format for this information, States could submit one document containing this information, to be updated regularly, freeing them from providing substantially similar information in slightly different forms to the various treaty bodies.\footnote{The guidelines of the various treaty bodies as of 1985 were consolidated in the compilation \textit{Reporting Obligations of States Parties to United Nations Conventions on Human Rights: Report of the Secretary-General}, U.N. Doc. A/40/600/Add.1 (1985).} While this measure might be of some use, it seems unlikely to significantly lighten the reporting burden, since the general background information is a minor part of a report.

It has also been suggested that if the individual treaty bodies exchanged information about the human rights situation in individual countries, States would not need to provide as much information to other committees. This measure, too, is probably of only limited utility, in view of the different provisions of the various treaties, the timing for submission under the different reporting cycles, and the sense of autonomy of the individual committees. Nonetheless, such an exchange might be useful, particularly if material provided under treaties with a particular focus (the Women's Discrimination Convention, for example) were provided to bodies dealing with treaties with more general, but overlapping concerns (the Human Rights Committee, for example). However, it does
not seem likely to do a great deal to reduce CEDAW's informational requirements.

Other suggestions have included the provision of special training in the area of human rights reporting through fellowships, seminars, bilateral assistance, assistance by members of the treaty bodies, or assistance from specialized agencies or independent experts. All of these suggestions have been taken up to some extent by one treaty body or another, but the overall impact has been limited.

CEDAW has endorsed the holding of training seminars and the provision of technical assistance within the U.N. technical and advisory services program, and a number of seminars on reporting under the Convention have been scheduled. There have been occasional suggestions made by CEDAW members that States Parties enlist the aid of other U.N. organs in the preparation of their reports, but there has been little follow-up on these suggestions.

Given the limited scope and impact of these suggestions, CEDAW must act more decisively within its own domain if the problem is to be addressed effectively. In addition to issuing more detailed guidelines and perhaps ultimately a handbook on reporting under the Convention, CEDAW should also offer its assistance to States Parties that are having difficulties preparing their reports and encourage them to utilize the technical advisory services available within the U.N. human rights system, from the specialized agencies, and from international or national NGOs.

V. Consideration of Reports by the Committee

A. "A Constructive Dialogue"

The Committee has endorsed the concept of a "constructive dialogue" with States Parties as the basis for its consideration of reports. The notion of a constructive dialogue is one that has developed in the work of other committees; it embodies a distinction between a procedure in which allegations of specific human rights violations can be made and considered, and one in which the supervisory body considers the overall progress made in the implementation of a convention by examining the reports of States Parties. This approach envisions the States Parties and the Committee as engaged in a joint enterprise to advance the goals of

61. 1988 CEDAW Report, supra note 3, para. 46.
63. See Oeser, supra note 8, at 89.
the Convention by cooperative endeavors involving the exchange of information, ideas and suggestions.\(^4\)

In general, CEDAW's consideration of reports has taken place in a cordial and non-adversary atmosphere. However, members of the Committee take their function seriously and have consistently questioned the representatives of States Parties in detail about the contents of their reports and the position of women in their countries. Members of the Committee have not hesitated to express views that reports are inadequate or that particular laws or policies are inconsistent with the objectives of the Convention.

The strongest criticism has come in cases in which the members of the Committee believe that a State Party is not taking the Committee's work or its own reporting and substantive obligations under the Convention seriously. CEDAW members have regularly criticized developed countries for inadequate reporting or failure to fulfil their substantive obligations.\(^5\) While they are certainly aware of the difficulties developing countries face in preparing reports and in implementing the Convention,\(^6\) members of the Committee have also been quite critical of developing countries whose reports or actions do not display evidence of a good faith effort to implement the Convention.\(^7\)


Nonetheless, even when CEDAW members make critical comments, other members of the Committee go to some lengths to commend the country for those efforts it has taken and to rephrase the criticism in somewhat muted form. The aim of the latter group is to avoid alienating the State, and instead to encourage it to continue to take part in further interaction with the Committee. 68

It is essential to the integrity of the review process that CEDAW members be prepared to adopt an adversary stance towards States Parties in appropriate cases. Of course, these questions and criticisms are those of individual members and not a formal collective pronouncement by CEDAW. The Committee has not regularly adopted a collective appraisal of individual reports in which it indicates what it considers to be the inadequacies in a country’s report and implementation of the Convention. It started to do so at its sixth session, 69 but in view of the difficulty of agreeing on a meaningful statement, it discontinued the practice while reserving its power to make such an appraisal in an appropriate case. 70

A particular manifestation of this avoidance of collective pronouncements is the fact that CEDAW has never formally pronounced a State Party to be in violation of the Convention, even though the members have clearly felt that some States have failed to carry out their obligations. The Committee is unlikely to adopt such a pronouncement, as it might exceed its powers, and would in any case certainly give rise to counter-productive opposition within CEDAW and from many States Parties. Nonetheless, the difference may be one of form rather than substance, in view of the other means CEDAW has of making its views known. 71 In many cases, a barrage of similar questions or criticism from Committee members without dissent by other experts will make clear the shared view that a State is not implementing the Convention, even if no

did not fall within the Committee’s mandate. U.N. Doc. CEDAW/C/SR.80, paras. 1-20 (1986).


71. See Alston, supra note 22, at 358-59.
formal decision to that effect is or can be adopted. Similarly, a general observation by CEDAW that a number of States Parties were failing to take particular steps, thereby contravening the Convention, would probably be contentious but acceptable.

The other dimension of a constructive dialogue, the exchange of ideas and experience between the Committee and States in order to assist States in the implementation of the Convention, has remained largely rhetorical. The Committee has not made a concerted effort to make detailed suggestions to individual States about specific measures and, in its general recommendations addressed to all States Parties, has only provided broad guidance on measures which the Committee would like States Parties to take.

B. General Features

A number of general features of the Committee's examination of reports can be identified; many of them parallel the experiences of the other supervisory committees. One feature of CEDAW's approach has been to press States Parties to provide information that shows the actual position of women in their societies and not just the formal legal status. To this end, it has consistently sought meaningful statistics and other empirical information about women's position in each country.

Another characteristic of CEDAW's consideration of reports has been an effort to overcome the common tendency of States Parties to paint an excessively favorable picture of the condition of women in their societies, making no reference to the difficulties experienced in their implementation of the Convention. However, the development of a more candid, self-critical approach to reporting by States Parties may only be possible when there is an adequate source of independent information such as that provided by NGOs, against which the Committee, the public and other governments can assess the accuracy of the State Party's report.


73. See infra notes 153-154.

74. Article 18(2) of the Convention provides that reports "may" indicate factors and difficulties affecting the degree of fulfillment of obligations under the Convention. In its guidelines the Committee has expressed the view, on the basis of which it has operated in practice, that reports "should reveal obstacles to the participation of women on an equal basis with men in the political, social, economic and cultural life of their countries, and give information on types and frequencies of cases of non-compliance with the principle of equal rights." U.N. Doc. CEDAW/C/7, supra note 45, para. 7 (1983).

75. See infra text accompanying notes 122-29.
Finally, the issues on which CEDAW has focused during the examination of individual reports have often been determined by the content and emphasis of the report being considered, as well as the particular interests of individual experts, and any information which they may have received independently. Consequently, in the early sessions, some articles of the Convention were not given a great deal of attention. However, as the Committee has gained more experience and has adopted a more systematic way of working through the Convention article by article, the questions asked of States Parties now cover nearly all of the articles.

C. CEDAW's Procedures

1. Initial reports

For consideration of initial reports, the Committee has developed a procedure modeled on those adopted by CERD and the Human Rights Committee. The meetings of CEDAW are public and the normal procedure is for the consideration to take place in the presence of a representative of the State concerned. After a formal introduction by the State representative, individual members of the Committee make general comments on the report. The Committee's questioning then moves through the Convention article by article. The representative generally answers the questions a day or two later after consultation with her government. Alternatively, the representative may undertake to send supplementary information to the Committee or include in the government's next report information that could not be obtained in the time available.

As mentioned above, the Committee has not made a collective pronouncement about the adequacy of individual reports or the extent to which it considers a State to have failed in carrying out its obligations under the Convention. As a result, a State is left to extract from the sometimes inconsistent directions of members’ questioning guidance for its further implementation of the Convention. Certainly, an appraisal by the Committee as a whole, if it identified CEDAW’s collective perception of those areas which required particular attention in implementation and in the country's next report, would be valuable.

While the lack of formal restrictions on individual experts' right to ask questions can be time-consuming if members repeat questions, this pro-

76. The CEDAW procedure has evolved over time; the description here is the procedure followed at the 1988 session of the Committee, which is likely to be followed in the immediate future.
78. The Committee adopted the system of article-by-article questioning at its sixth session in 1987. 1987 CEDAW Report, supra note 37, para. 51.
79. See supra text accompanying note 70.
cess seems to have worked reasonably well. At the seventh session, for example, there was some repetition of questions, but on the whole members showed reasonable restraint. They reiterated questions only where they wished to emphasize that the concern or praise expressed by one member of the Committee was shared by a number of members.

As a result, the Committee seems to have made reasonably efficient use of its time considering reports. Estimates for the time devoted to the consideration of each initial report vary from four and a half to six hours, compared with an average of twelve hours spent by the Human Rights Committee on each report it considers.\(^8\) Nonetheless, a greater effort to coordinate questions by experts, particularly in relation to individual articles of the Convention, is needed.\(^8\) This would save additional time and enhance the development of specialization in relation to particular subject areas among experts. Specialization could be of considerable use in drafting substantive recommendations and gathering background information on particular subjects, as well as for working with the specialized agencies and other bodies with expertise in particular areas.\(^8\)

2. Second and subsequent periodic reports

At its seventh session the Committee began to consider second periodic reports. It adopted on an experimental basis a proposal, put forward by one of its two working groups,\(^8\) intended to expedite their consideration. The procedure involves preparation by a working group early in the session of a list of questions on a report. This list is then circulated among the members of the Committee and sent to the representants of the Committee for their consideration. The list is then circulated among the members of the Committee and sent to the representatives of the specialized agencies and NGOs for their comments.

80. The estimate of four and one-half hours is that of the Director of the Division for the Advancement of Women, CEDAW's secretariat in personal correspondence with author; the estimate of six hours appears in REPORT OF IWRAW THIRD ANNUAL SEMINAR: ORGANIZING TO WATCH, 5 (1988) [hereinafter IWRAW REPORT]. If the Committee continues with the procedures for considering second and subsequent reports that it adopted at its seventh session, see infra text accompanying notes 83-86, less time may be required for the consideration of each second or subsequent periodic report. However, if the Committee begins to receive substantial amounts of independent information from the specialized agencies, NGOs and other sources, it may not be able to deal with individual reports as rapidly.

81. At the seventh session, one of the working groups suggested that individual members of the Committee act as coordinators of questions in relation to specific articles or of general comments in relation to a number of countries. 1988 CEDAW Report, supra note 3, paras. 31-35. Members would still have been free to ask individual questions after the coordinators had presented theirs. Such a proposal, if implemented, would have eliminated unnecessary repetition, promoted a consistent approach, and presumably in the longer term have led to the development of a certain expertise in specific articles by members of the Committee. CEDAW, while agreeing that these were useful proposals, was not prepared to adopt it as a mandatory rule. U.N. Doc. CEDAW/C/SR.128, paras. 3-12 (1988).

82. See infra text accompanying notes 120-45 and 226-38.

83. The Committee has established two working groups to help expedite its work. One concentrates on the Committee's procedures, while the other considers proposals for suggestions and general recommendations which the Committee is empowered to adopt under article 21 of the Convention. See infra text accompanying notes 146-60.
sentatives of the State Party prior to the actual consideration by CEDAW of the report. The representative of the State then has time to prepare answers to these written questions for the meeting with the Committee. The list of questions is not exhaustive and members may ask any additional questions they wish the State’s representative. The representative can reply at this meeting or provide the information later.

This procedure was based on the Human Rights Committee’s procedure for second and later reports.84 While this procedure expedited consideration of the two second periodic reports considered,85 a number of Committee members were not satisfied with it, as they felt that it transformed them from being active participants in the discussion with the government representatives into passive observers of it.86 However, in view of the backlog of reports and the time constraints the Committee faces, some efficient method of coordinating questions is necessary.

3. Follow-up to the examination of reports; the provision of additional information

CEDAW faces two major problems in relation to reports. First, many reports are not submitted on time; indeed, the reports of some countries are years overdue.87 The Committee has attempted to persuade States to submit overdue reports, mainly by sending them regular reminders and, in some cases, by making unofficial approaches to representatives of States whose reports have not been submitted. However, the large number of overdue initial and second reports shows CEDAW’s limited

84. See Report of the Human Rights Committee, 39 U.N. GAOR Supp. (No. 40), paras. 58-66, U.N. Doc. A/39/40 (1984). One difference between the Human Rights Committee’s program of work and CEDAW’s is that a good deal of the preparatory work for the former’s sessions, including the preliminary identification of issues to be raised during the Committee’s discussion with states of the contents of their reports, is done by small working groups which meet prior to the official session. The Economic, Social and Cultural Rights Committee has also followed the practice of sending questions to states in advance of its formal discussion of reports with government representatives. While to date these lists have been prepared during the session, the ESCRC proposed at its 1988 session that it be permitted to establish a pre-sessional working group to carry out this task. See 1988 ESCRC Report, supra note 70, para. 361. By the end of its seventh session, CEDAW had not yet addressed the issue of the establishment of pre-sessional working groups. Establishing one or more such working groups would assist the Committee’s work significantly, but funds would need to be found to cover the additional expenses.

85. Consideration of the second periodic reports of Sweden and Hungary took fewer than three hours in total, compared with approximately four to six hours for each initial report. U.N. Doc. CEDAW/C/SR.127, paras. 17-18 (1988); see supra note 80.


87. 1988 CEDAW Report, supra note 3, Annex II. As of March 1988, of the 36 countries whose initial reports were overdue, 9 had been sent 4 reminders, 7 had been sent 3 reminders, 4 had been sent 2 reminders and 16 had been sent 1 reminder. U.N. Doc. CEDAW/C/16, at 6-7 (1988).
power to ensure that delinquent States submit their reports; sending regular reminders simply does not work.

The second problem is that many of the reports that are submitted are grossly inadequate. The Committee has devised a procedure to deal with States that submit unsatisfactory reports where these are not scheduled to be considered by the Committee until its following session. One of CEDAW's two working groups examines the report and identifies any deficiencies. After review by the Committee, the Chairperson sends a letter to the States Party requesting submission of additional information in accordance with the Committee's guidelines. The Committee's success with this procedure has been mixed; some States respond, while others do not.

An important consequence of the failure of States Parties to provide adequate reports, and CEDAW's limited power to follow up its requests for supplementary information, is that consideration of many reports consists mainly of experts asking for information on subjects on which insufficient or no information has been provided. Many of the requests are for crucial material which should have been included in the country's first report. In the absence of a significant input from the specialized agencies, NGOs or other sources, the Committee has great difficulty in assessing the progress made by the State Party in implementing the Convention in such cases. Even if a State agrees to supply the information subsequently to the secretariat or to include it in its next periodic report, the State escapes review for at least another four years. The Committee does have the power to request an additional report earlier. It has never used this power, although it could have done so in a number of cases.

It is still too early to assess whether States Parties who submit their second periodic reports will make good on their promises to supply the information that was missing from their initial reports or that they prom-

89. For example, Nigeria submitted a revised report when further information was requested, U.N. Doc. CEDAW/C/SR.123, para. 2 (1988), while Mali did not respond to requests for further information before the 1988 session of CEDAW commenced, although it did so during the session.
92. Women's Discrimination Convention, supra note 1, art. 18(1) (b).
93. Such a step would have been appropriate, for example, in the case of Mali and Sri Lanka because of the failure of their reports to describe adequately the position of women in their societies, even though this failure was remedied to some extent by informative oral presentations to the Committee.
ised to provide in response to questions from the Committee. One can, however, assume that the variable record of States in submitting reports will be repeated here. If the review of reports is to be truly effective, CEDAW must develop more effective means of obtaining the information from other sources or of pressing recalcitrant governments to provide it.

4. Backlog of reports

As of March 1988, the backlog of reports that have been submitted but not yet considered by the Committee was twenty-one; there were also seventy-two reports which were due but which had not been received. Even with the failure of many States Parties to submit their reports on time, the workload of the Committee has increased rapidly since its establishment and the problem of considering reports in the limited time available is a serious one. Ironically, the process of examining reports has been saved from collapse only by the failure of many States Parties to submit their reports on time.

In view of the large number of States Parties to the Convention, CEDAW's ability to consider reports within a reasonable time after their submission, preferably before the submission of the next periodic report, is largely dependent on the time and resources made available to it and the efficiency of its procedures for the examination of reports.

If CEDAW continues to follow the same procedures for the examination of reports that it has followed up until now, the period of two weeks provided in the Convention for CEDAW's sessions will simply be insufficient for it to despatch its work in a satisfactory manner. Provision of additional meeting time for the Committee could alleviate the situation somewhat, but this is not a long-term solution, and it is, in any event, contingent on the agreement of the General Assembly to allocate additional funding for that purpose. While the General Assembly approved CEDAW's extended session in 1988, it refused to accede to CEDAW's request for additional meeting time at its 1989 session. Short of amending the Convention, a course that can be undertaken only by States Parties and one which is fraught with danger, CEDAW cannot rely on being able to hold extended sessions but must devise methods for dealing with its increasing workload more efficiently, both during and between its sessions.

While CEDAW's examination of reports has been relatively efficient, it could be improved by the practice of assigning individual country reports

94. Of the two second reports considered in 1988, Sweden’s did provide the relevant information, while Hungary’s added little to its initial report.
95. 1988 CEDAW Report, supra note 3, Annex II.
to members for preliminary analysis and critique between sessions. This practice would enable requests for additional information and a detailed list of questions to be formulated for each report in advance of the Committee's session. Assigning responsibility to individual members for coordinating questions by article would also be desirable, along with continuing efforts to eliminate unnecessary repetition and excessively long-winded presentations by States.

VI. Substance of Issues Concerning CEDAW

While the questions asked by CEDAW members have ranged over all the areas covered in the Convention, the Committee has not explicitly articulated any collective view of its understanding of the models of equality/nondiscrimination embodied in the Convention. Furthermore, although there is widespread agreement on the Committee about the existence of women's inequality and subordination, no unified theory about the nature and causes of that oppression has emerged.

The Convention itself embodies a number of different perspectives about the causes of women's oppression and the steps needed to overcome it. It imposes an obligation to ensure that women enjoy formal equality under the law,97 and it recognizes that temporary affirmative action measures are necessary in many cases if guarantees of formal equality are to become reality.98 Various provisions of the Convention also embody a concern that women's reproductive lives should be under their own control, and that the State should ensure that women's choices are not coerced and do not prejudice them in their access to social and economic opportunities. The Convention also recognizes that there are experiences to which women are subjected which need to be eliminated (such as rape, sexual harassment and other forms of violence against and sexual exploitation of women which affect women asymmetrically), whether or not they can be fitted neatly within an equality model which requires that there be a direct male comparison available. In short, underlying the Convention is a view that women are entitled to all the rights and opportunities which men enjoy; in addition, their particular abilities and needs arising from biological differences between the sexes must also be recognized and accommodated, but without detracting from their entitlement to equal rights and opportunities with men.

CEDAW members' questions and comments have reflected these different, and at times apparently conflicting, perspectives. While members

97. Women's Discrimination Convention, supra note 1, art. 2(a).
98. Id. art. 4.
have disagreed on the evaluation of conditions in particular countries and the measures needed to ameliorate women’s subordinate position, on the whole the Committee has achieved a high degree of consensus and has been able to avoid major splits over highly politicized issues. In view of the agreement on many issues, it is unfortunate that the Committee has not chosen to express its collective view of individual States Parties’ performance and to identify the areas which it considers a high priority for further action, though, if it were to do so, the apparent consensus might turn out to be limited to the expression of fairly general sentiments.

The Committee has consistently sought details of the legal and institutional framework within which the Convention is implemented. The likelihood that reservations which individual States Parties have entered to the Convention will be withdrawn, the relationship between the provisions of the Convention and national law, the effectiveness of remedies provided by national law, the publicity given to the Convention in each country, the national machinery established to coordinate the implementation of the Convention, and its place in the overall political power structure are all routinely discussed.

The formal legal equality of women has also been an important focus of questions. Differential treatment of men and women under nationality laws, the limited contractual capacity of women in some countries, the equal right of a woman to choose a family name and to have an independent domicile, and discrimination against women in the content and enforcement of various penal laws are some of the topics the Committee has raised.

The under-representation of women in the higher decision-making levels of public affairs, including political parties, the public service, international delegations and trade unions, has been a major theme in CEDAW’s questions and comments, as have suggestions that affirmative action measures be implemented to ensure that women can actually enjoy the rights to which they are formally entitled.

Questions have focused on the need to recognize the extent of women’s economic contribution in the household (and to encourage the greater

99. The main areas in which differences have emerged are the matters mentioned in the preamble to the Convention, the approach the Committee should adopt in relation to the eradication of female genital mutilation, and the appropriate response by the Committee to the rebuff by ECOSOC and the General Assembly of its 1987 request that the U.N. system undertake studies on the impact of Islamic law and customs on women’s social and legal situation. See infra text accompanying notes 191-95. There have also been differences of opinion over the extent of the Committee’s powers, including whether it can or should make collective pronouncements about the extent of States Parties’ compliance with the Convention.
assumption by men of domestic and family responsibilities) and to ensure women's fair access to the waged labor market. In the area of employment, the Committee has directed its inquiries to the existence of laws against discrimination and harassment, the degree of protection they really provide to women, the extent of sex segregation in various occupational categories, the realization of the principle of equal pay for work of equal value, the existence of laws which exclude women from some occupations or limit their prospects in others, the scope of parental leave, and the availability of child care facilities for working parents. The participation of younger women in the educational system and the steps taken to ensure that they are not directed only into traditionally female occupations, as well as the educational opportunities for older women, have also been topics of inquiry.

Of major importance has been the family, including issues such as polygamy, the right to divorce and remarry, the economic consequences of divorce, and rights to custody of children. The availability of family planning information, access to abortion counselling and services, and the policy of the State in relation to the institution of the family and women's role within it have been other major topics of concern to CEDAW members.

The Committee has also raised issues such as the existence of prostitution, its legal status and social causes, the selective enforcement of prostitution laws against women who work as prostitutes rather than their "clients" or other exploiters, as well as the international dimensions of trafficking in women. One particularly important theme has been that of violence against women, both within and outside the home, and the response of the legal system and society at large to that violence. In this context the extent of traditional cultural practices which affect women particularly, such as female genital mutilation, and the steps undertaken to deal with them have also been discussed.

Among the other topics that have attracted the Committee's attention has been the existence of disparities between women's and men's physical and material existence, especially but not exclusively in developing countries. Of particular concern have been the high rates of maternal mortality in many countries and differential mortality and literacy rates for young boys and girls. While these issues are often raised with State representatives, their responses about how these disparities are to be dealt with are often general. In this area the Committee would do well to encourage States to adopt programs setting progressive goals for the elimi-
nation of such disparities over time.\textsuperscript{100} Indeed, some States have already done so,\textsuperscript{101} and this way of focusing on specific problems and their solution over time is useful across the range of economic and social rights.

If there is an overarching theme to the Committee's questioning it is probably article 5's obligation to take steps to discourage stereotyped attitudes about the roles of men and women.\textsuperscript{102} The Committee has been particularly interested in the roles of the media and the educational system in perpetuating and changing stereotypes. It has been extremely critical of general policy statements or particular social arrangements which give primacy to motherhood, to the neglect of women's other roles and of men's responsibilities as fathers.\textsuperscript{103}

Some members of the Committee have also displayed an interest in the steps which States Parties have taken to bring about the conditions which the preamble to the Convention declares to be indispensable to the achievement of equality for women, \textit{inter alia}, the promotion of international peace and security, the abolition of all forms of colonial and imperial domination, the promotion of development, and the establishment of a new international economic order.\textsuperscript{104}

The major issue that has been raised is that of international peace and security. While members from Eastern European States have been prominent in asking questions about and praising the involvement of women in national and international peace movements,\textsuperscript{105} they have not been

\textsuperscript{100} Alston makes this suggestion in the context of the Economic and Social Covenant. Alston, \textit{supra} note 22, at 358.


\textsuperscript{102} One issue which has been significantly absent from the Committee's agenda is that of sexual preference and discrimination against lesbians, an issue of major importance to many feminists from all parts of the world. \textit{See} Bunch, \textit{Reflections on Global Feminism after Nairobi}, in C. BUNCH, \textit{PASSIONATE POLITICS} 346, 350 (1987). Apart from the areas of child custody and adoption, the matter has hardly been mentioned. This reflects the largely heterosexist orientation of the Convention and, presumably, caution on the part of Committee members who would be somewhat apprehensive of the likely hostile reaction of many States Parties if the issue were raised with any frequency.


\textsuperscript{104} \textit{See supra} note 36.

\textsuperscript{105} Asking questions on such matters represents an expansive approach to the interpretation of the Convention, an attitude which these experts have not always displayed in relation to other questions concerning the powers of the Committee. The inclusion of some of the paragraphs of the preamble was a highly contentious issue in the drafting of the Convention, being opposed by a number of Western states on the ground that reference to broader political goals was inappropriate in this type of Convention. \textit{See} W. McKEAN, \textit{EQUALITY AND DISCRIMINATION UNDER INTERNATIONAL LAW} 192 (1983); Burrows, \textit{supra} note 13, at 423-24;
alone in doing so. There is a consensus in the Committee that the preambular matters, in particular the promotion of international peace and development, are important issues for women, both in their impact on women’s status and well-being and in the actual and potential contributions of women to the achievement of these goals.\(^\text{106}\)

As a result, there has generally been no objection from other CEDAW members when matters raised in the preamble are discussed.\(^\text{107}\) However, there have on occasion been sharp exchanges when some members believed that others were raising these issues in order to make partisan political points. This has been felt to be the case when some members from socialist States have implied in their questions and comments that, while socialist States have contributed significantly to the promotion of international peace and third world development, Western capitalist nations have done little to promote, or indeed have impeded, the attainment of these goals.\(^\text{108}\)

Although some attention has been given to these issues, CEDAW members have not really explored the implications of the preamble for the actions which States should undertake to benefit women. The impact of military budgets on social programs that benefit women particularly is an obvious area that could be examined in the context of the goal of peace,\(^\text{109}\) but this line of questioning has not been taken up.


It is arguable that States Parties are not obliged to report on the steps undertaken to achieve the conditions referred to in the preamble except to the extent that they overlap with their obligations under the substantive articles of the Convention, which are primarily focused on actions taken with respect to women within the territorial jurisdiction of a State Party. Nonetheless, states have generally volunteered this information or provided it in response to questions from the Committee.

106. The members of the Committee have shown a sensitivity to and interest in the way race, class and level of development interact with sex to produce different problems for women in various societies. However, they have focused primarily on differences within a State, such as the situation of women belonging to minority or disadvantaged groups. Examples are immigrant women, U.N. Doc. CEDAW/C/SR.114, para. 21 (1988), Australian Aboriginal women, U.N. Doc. CEDAW/C/SR.114, paras. 20, 24, 62 (1988), and Maori women, U.N. Doc. CEDAW/C/SR.105, paras. 13, 17, 64, 67 (1988).

107. At its fifth session, the Committee adopted a “Resolution on the International Year of Peace,” in which it expressed, inter alia, its support for the objectives of the International Year of Peace and called on States Parties to the Convention and all members of the United Nations “to show their commitment to peace and to the advancement of women by taking steps to ensure the equal participation of women in all bodies, committees and institutions at the national or international level, which have the power to make decisions concerning peace, war and disarmament.” 1986 CEDAW Report, supra note 37, Annex I.


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There are, of course, many ways in which the actions of States have an impact on women outside their territory, as the preamble recognizes with its references to development, racism and colonialism. However, there has been little examination by CEDAW of the effect of the actions of State Parties on women in other countries and of whether the Convention imposes any obligations on States Parties in respect of such actions. Because of the nature of CEDAW’s reporting system, the main focus of CEDAW’s examination has been on the domestic impact of a State’s actions.

The major exceptions to this domestic focus have been questions involving trafficking in women, sex tourism, the influence of transnational corporations on the position of women in developing countries, and women migrating temporarily or permanently to other countries, whether as workers or “mail order brides.”

There are many other issues that could be considered in this context: whether a government ensures that its development aid projects benefit women as well as men, whether its scholarship and training programs for individuals from developing countries are offered on an equal basis to women, whether the operations of its nationals overseas involve the exploitation of women, whether its support of decisions made by “neutral” and “rational” multilateral bodies such as the IMF and the World Bank leads to the policies that disadvantage women particularly, whether its approach to particular foreign policy issues takes into account the interests of women (e.g. the implications for women of bringing about the Soviet withdrawal from Afghanistan), or the impact that exports of products from its territory may have on women in other parts of the world.

It is indisputable that all these types of actions can seriously affect the position of women in other countries. Many problems with a transnational dimension cannot be addressed by one government alone, but require cooperation between nations if they are to be overcome. It is equally clear that many of these issues generate great controversy, generally for reasons other than their effect on women. A serious concern with the issues raised in the preamble would lead to the raising of some

114. See, for example, the approach taken by Sweden in relation to its international cooperative activities. U.N. Doc. CEDAW/C/SR.18, para. 17 (1983).
of these questions and, presumably, suggestions to States Parties that they cooperate in specific cases. However, to date CEDAW's concern with the international dimensions of women's subordination and the transnational scope of the Convention have remained largely confined to the peace movement and disarmament.

Despite the obvious relevance of these transnational issues to women's status, it is unlikely that they will be given much attention by CEDAW. In the first place, to do so would raise questions about the extent of CEDAW's jurisdiction. Although the Convention does not specifically limit the actions to be taken to advance the position of women to those whose primary impact is within the territory of the State Party or on its nationals, that is clearly its main focus. The major exceptions are article 6, relating to trafficking in women, which in many cases requires international cooperation for its eradication, and article 8, which arguably applies to the promotion of opportunities for women in international organizations generally. Beyond that, and apart from the general provisions of articles 2 and 3 and the matters recited in the preamble, there is no clear indication that the scope of a State Party's reporting obligations extends to the transnational impact of its actions, and States might resist what they see as an illegitimate attempt by CEDAW to extend its range of inquiry too far.

This limitation only serves to underline the fact that the primary standard of equality applied through the Women's Convention is national, a standard criticized by some as neglectful of the more important inequalities between developed and developing countries. While this criticism is certainly valid and important in ensuring that these inequalities are not rendered invisible, for women in developing countries who lack equal access to such basics as food and health care, pursuit of a national stan-

115. Often the most effective action a country can take in this regard is to nominate its own nationals for positions. This was the view that CEDAW members expressed when discussing General Recommendation 8 which calls on States Parties to ensure equal opportunities for women to participate in the work of international organizations. *1988 CEDAW Report, supra* note 3, para. 770.

116. CERD has dealt with a similar issue. In 1972 it adopted a recommendation welcoming the inclusion in States Parties' reports of information about their relations with South Africa. This "invitation" was subsequently repeated, and some pressure was put on states (mainly Western European) which did not take up the invitation. CERD's assertion of its jurisdiction to consider national policies which had the effect of supporting racial discrimination in other countries was endorsed by the General Assembly over dissent from a number of Western European nations. See N. Lerner, *The U.N. Convention on the Elimination of All Forms of Racial Discrimination* 110-11 (2d ed. 1980); Buergenthal, *Implementing the U.N. Racial Convention*, 12 Tex. Int'l L.J. 187, 194-95 (1977).

117. See, e.g., Fahnbulleh, *The U.N. Women's Decade: An Offer We Couldn't Refuse*, 1 Third World Women's J. 17, 17 (1986) ("[T]o whom are the poorest of the Third World's women to be equal? Third World men?").
standard of equality can bring considerable benefits. In addition, ensuring women’s equal participation in all aspects of social and economic activities means providing them with equal access to education, land, credit and development assistance; this in itself is an important way of promoting national development and acting on the disparities between the developed and underdeveloped worlds. \(^{118}\) National governments may not be able to address all the problems facing women within their territory, but they can address at least some.

VII. Sources of Information Available to CEDAW

It is conventional wisdom that the effectiveness of a reporting procedure in scrutinizing the observance of human rights depends on the receipt by the monitoring body of information additional to that provided by the reporting State. The lack of such information is a major impediment to the effectiveness of CEDAW’s work. The Committee has had to rely almost exclusively on the reports of the States Parties and the knowledge of its members. Although members have referred to material other than that contained in the reports of States Parties, these references have been fairly sporadic. \(^{119}\) There has been little material provided to CEDAW by the specialized agencies, other bodies in the U.N. system or by established human rights NGOs, while some of those NGOs concerned with the rights of women that have begun to monitor the work of the Committee have had only limited experience in the international human rights arena.

A. Information Available Within the U.N. System

CEDAW has made only very limited use of other material available within the U.N. system dealing with the position of women. This includes information supplied by States Parties in their reports under other human rights treaties and statistics available in U.N. sources. There are a number of avenues by which this material can be obtained. For exam-

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ple, States Parties themselves could provide it; they have a clear interest in ensuring material already submitted to other U.N. bodies is available to CEDAW in an appropriate form.\textsuperscript{120}

Another source of such information is the United Nations itself. While the Vienna secretariat of the Committee seems to have problems in procuring this sort of information due to lack of resources,\textsuperscript{121} there are other bodies within the U.N. system, such as the U.N. Statistical Office and the regional commissions, which are the repositories of large amounts of relevant information supplied by States Parties or gathered by those bodies in other ways. If CEDAW’s secretariat continues to be unable to provide the Committee with the information it needs, there appears to be no reason why the Committee could not directly request these bodies to provide relevant information on the countries whose reports are being reviewed.

B. Information from NGOs

The most promising avenue for obtaining useful independent information is still likely to be international and national NGOs, a number of which have consistently provided detailed critiques of country reports to bodies such as the Human Rights Committee.\textsuperscript{122} There are some indications that NGO attention to the work of CEDAW is growing and that in the future more material will be available from NGO sources.\textsuperscript{123}

At this stage the Committee has not developed any procedure whereby it may formally request or receive reports from non-governmental orga-

\textsuperscript{120} For example, in 1987 the representative of Bangladesh asked the Committee to consider how relevant information about countries that had already been supplied to organizations such as the ILO and UNESCO could be made available to CEDAW. U.N. Doc. CEDAW/C/SR.99, para. 5 (1987). The obvious way to make use of such material without requiring States Parties to submit copies would be for CEDAW to request the specialized agencies to supply it with relevant extracts from or summaries of this material. See infra text accompanying notes 130-145.

\textsuperscript{121} At its 1987 session the Committee requested the secretariat to provide it with a compilation of official U.N. statistics on the countries whose reports were to be considered in 1988. The secretariat lacked the resources to perform that work. The Committee renewed its request at its 1988 session, Evatt, \textit{supra} note 72, at 8, but the secretariat's ability to respond will depend on the availability of additional resources.

\textsuperscript{122} NGOs such as the International League for Human Rights, Amnesty International and the Anti-Slavery Society regularly supply information about human rights violations to U.N. human rights bodies. As yet, they have not begun to contribute to the work of CEDAW; part of the reason is because most of these organizations have Geneva (and often New York) offices, but no Vienna office of any size. The fact that CEDAW’s activities and its secretariat are based in Vienna, while all the other human rights treaty bodies are based in Geneva, clearly affects the level of NGO input into the Committee’s work.

\textsuperscript{123} A number of NGOs, in particular the International Women’s Rights Action Watch, have begun to monitor the work of the Committee and are moving towards the preparation of critiques of country reports.
nizations. Doubts have been expressed about the possibilities for the formal involvement of NGOs in the work of the Committee in view of the fact that there is no mention of them in the Convention and that a proposal to permit NGO participation was not taken up during the drafting process. Nonetheless, neither of these facts seems to pose insurmountable barriers to such involvement, particularly in the light of the experience of other committees which have, by their practice, expanded their jurisdiction beyond what was arguably envisaged by those who originally drafted their enabling treaties.

The Human Rights Committee has not asserted that it has the power formally to receive NGO submissions, although its members regularly receive them informally and use them for questioning States Parties. However, both the Economic, Social and Cultural Rights Committee and the Committee against Torture (CAT) are able to receive formal submissions from NGOs. While the power of the ESCRC derives from its status as a subsidiary body of ECOSOC, CAT asserted a right to receive such submissions, even though the Torture Convention made no provision to this effect; CAT's actions may provide a precedent for CEDAW to emulate.

Another alternative is the possibility of NGOs supplying information to ECOSOC, the Commission on the Status of Women or the Commission on Human Rights (or other relevant bodies), pursuant to ECOSOC

124. Such material has been informally received and circulated on occasion by individual Committee members and has formed the basis of questions to States Parties. For example, a critique of the Japanese report prepared by a number of Japanese women's organizations was provided informally to CEDAW members and used as the basis of various questions asked by the experts. See supra note 119.


126. There are advantages for both the Committee and governments if such material is received officially, as it gives governments an opportunity to respond to the information. See Alston, supra note 22, at 369.


128. Overcoming initial opposition from one member, CAT in 1988 adopted Rule 62(1) which permits "non-governmental organizations in consultative status with the Economic and Social Council to submit to it information, documentation and written statements, as appropriate, relevant to the Committee's activities under the Convention." Report of the Committee Against Torture, 43 U.N. GAOR Supp. (No. 46) at 30, U.N. Doc. A/43/46 (1988); U.N. Doc. CAT/C/SR.2, paras. 82-88 (1988); U.N. Doc. CAT/C/SR.6, paras. 2-4 (1988). There was no suggestion that this power was limited to cases in which CAT has jurisdiction to investigate complaints.

In view of the approach taken by CAT, there is no compelling reason why CEDAW should not adopt a similar approach. For a discussion of this interpretive approach, presuming a committee's competence to regulate its own procedure absent an explicit bar in the text of its enabling treaty, see Tyagi, Cooperation Between the Human Rights Committee and Nongovernmental Organizations: Permissibility and Propositions, 18 Tex. Int'l L.J. 273, 284 (1983).
Resolution 1296 (XLIV). CEDAW members could then refer to these documents. While this might not be the most efficient method of getting material to CEDAW, it would have the effect of creating a broader audience for material critical of governments than would be reached by the practice of informal submission of such material to CEDAW members.

C. The Role of the Specialized Agencies

Under article 22 of the Convention, the specialized agencies are entitled to be represented at the meetings of the Committee at which the implementation of such provisions of the Convention as fall within the scope of their activities is considered. Article 22 also grants the Committee the power to invite the agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

To date, the contribution of the specialized agencies to the work of CEDAW has been extremely disappointing, a situation for which both the Committee and the agencies must share the blame. The Committee has been divided over the extent of the cooperation it should seek from the agencies. As a result, it has not invited representatives to address or participate in meetings of the Committee, and its invitations to the agencies to provide it with relevant material have been in general terms. CEDAW has utilized any information received from them only as background material.

The agencies' interest in the work of the Committee appears to be relatively limited, a situation exacerbated by CEDAW's apparent unwillingness to accord them a meaningful role in the review process. Only the ILO and UNESCO have regularly sent representatives to attend CEDAW sessions, but their role has been little more than that of observers. In response to CEDAW's requests for information, only the ILO


130. See U.N. Doc. CEDAW/C/SR.31, paras. 21-28 (1984); U.N. Doc. CEDAW/C/SR. 53, para. 8 (1985); U.N. Doc. CEDAW/C/SR. 101, paras. 21-28 (1987). Differences among CEDAW members on the role the agencies should play are the result of their different approaches to the proper role of the Committee. Those who wish to make the Committee a truly effective watchdog take an expansive view of its function and powers, including the extent to which it can request material from the agencies. Those who do not share this view take a more restrictive view of CEDAW's powers, emphasizing that, in accordance with general international law, when a State surrenders part of its sovereignty (as it does when it allows its human rights performance to be examined by an international body), that surrender is to be construed narrowly.

CEDAW has submitted substantial material regularly; the contributions of WHO, the FAO and UNICEF have been minimal. Most of the material supplied was originally prepared for some other purpose and therefore does not focus specifically on the interrelationship between the provisions of the Convention and the work of the agencies; the information deals instead with the activities of the agencies designed generally to improve the condition of women. With the exception of material provided by the ILO, none of the reports by the specialized agencies have dealt in detail with the countries whose reports were being examined by CEDAW at the same session. As a result, most of the information has been of very limited utility in the review of individual country reports.

The information possessed by the specialized agencies relevant to CEDAW's activities falls into two broad categories: general information about their activities promoting the advancement of women, including the interpretation and application of normative instruments adopted under their auspices; and detailed information relating to the position of women in specific countries. The first type of information can be useful for informing the Committee of common difficulties arising in the agencies' areas of expertise and of the availability of specialized technical assistance that it can recommend to States Parties. The second sort of information is useful for supplementing or contradicting an inadequate or incorrect official report.

In addition to providing more detailed country-specific information to CEDAW, the specialized agencies could make a significant contribution

132. CEDAW's experience with the specialized agencies seems to parallel that of the supervisory groups established to monitor the implementation of the Economic and Social Rights Covenant. See Alston, supra note 22, at 358-59; A. Mower, International Cooperation for Social Justice 67-123 (1985).


134. See, for example, the recent detailed study of the ILO in relation to the implementation of the Discrimination (Employment and Occupation) Convention 1958 (ILO No. 111). ILO, Equality in Employment and Occupation: General Survey by the Committee of Experts on the Application of Conventions and Recommendations (1988).

135. See, for example, the annual reports prepared by the ILO Committee of Experts on the Application of Conventions and Recommendations for the International Labour Conference, which are provided to CERD. The ILO now provides similar material to the ESCRC, although its earlier reports under the Economic and Social Covenant contained evaluative comments by the Committee of Experts on the extent of states' compliance with the Covenant. CEDAW is not regularly provided with the annual report of the Committee of Experts, although excerpts relating to reporting countries have been provided to CEDAW by the ILO on a number of occasions.

136. Some of the information that could be supplied by the agencies falls into both categories. See, for example, UNICEF's annual publication, The State of the World's Children, which contains both general information and statistical information on women in individual countries.
by providing substantive input into its interpretive work, whether by
making suggestions as to the content of guidelines for specific articles or
by contributing material to more ambitious studies on the content and
implementation of articles which fall within the areas of competence of
that agency.\textsuperscript{137} Similarly, assistance in setting achievable standards in
the area of economic and social rights is an area in which the expertise of
the agencies would be of particular value.

To make the participation of the specialized agencies in its work mean-
ingful, CEDAW must take the initiative and prevail upon the agencies to
provide it with detailed country-specific information. To do this, the
Committee must address detailed requests to the various agencies, speci-
fying the types of information it requires for its work.\textsuperscript{138}

Closer cooperation between CEDAW and the specialized agencies
could also be promoted by assigning individual members the responsibil-
ity of working with a particular agency. With one member aware of rele-
vant information available from each of the agencies, the Committee
would be better able to tailor its requests to individual agencies.\textsuperscript{139}

Proposing that the specialized agencies play a more meaningful role in
CEDAW's work assumes that the Committee as a collective body can be
persuaded to adopt such a course of action. In the past, while some mem-
bers have advocated this, others have been diffident about, or opposed to,
making detailed requests to the agencies, to the provision of country-
specific information by the agencies, or to allowing the agencies to par-
ticipate in the meetings of the Committee. The result has been the gen-
eral requests to the agencies and the innocuous responses by them
already mentioned.

Thus, attempts to make the participation of the agencies in the work of
CEDAW more meaningful are likely to be met by opposition within the

\textsuperscript{137} For example, UNESCO, in addition to providing CERD with a background paper on
its activities relevant to article 7 of the Racial Discrimination Convention (U.N. Doc. CERD/
C/13 (1977), prepared an analysis of the substantive content of the article and the contents of
States Parties' reports relating to it. U.N. Doc. CERD/C/69 (1980). It also prepared guide-
lines for the implementation of and reporting under article 7, U.N. Doc. CERD/C/69/Add.1
(1981), on which CERD drew to prepare its own guidelines. In view of the limited secretariat
support available to CEDAW for the preparation of such material, CEDAW should consider
requesting assistance of this sort from UNESCO and other specialized agencies.

\textsuperscript{138} The need for committees to address specific requests to the agencies to ensure focused
responses was recognized by the 1988 meeting of Chairpersons of the treaty bodies, who rec-
ommended that requests by the treaty bodies to the specialized agencies be “as precise as

\textsuperscript{139} Conversely, there would need to be a specified contact person within the agency with
substantive responsibility for work related to the areas covered by the Convention. See the
recommendation made by the 1988 Chairpersons' meeting. 1988 Chairpersons' Report, supra
note 27, paras. 67, 96.
CEDAW Committee, primarily from those members who adopt a restrictive interpretation of the Committee's powers under the Convention.

There is no explicit restriction on CEDAW's power to ask the agencies to provide it with information in the wording of the Convention. Article 22 could equally well apply to requests for general or country-specific reports; the *travaux préparatoires* are of no assistance in resolving the question. Any such restriction must be implied in the scheme of review established by the Convention.

The model for article 22 appears to have been article 18 of the Economic and Social Covenant, under which the specialized agencies have submitted reports to the bodies which have reviewed the reports of States under the Covenant. In particular, the practice under the Economic and Social Covenant has included the provision by the ILO of country-specific information. Although there are some differences between the supervisory system under the Covenant and that established by the Convention, the similarity of the wording would nonetheless support a broad interpretation of article 22.

140. Neither the Racial Discrimination Convention nor the ICCPR makes explicit provision for the representation of the specialized agencies at the meetings of CERD or the Human Rights Committee or for the submission by the specialized agencies to those committees of general or country-specific reports on the implementation of those two treaties. Both these Committees have entered into arrangements with the ILO and UNESCO enabling these agencies to contribute to their work. In relation to CERD, see N. Lerner, *supra* note 116, at 148-50; Buergenthal, *supra* note 116, at 204-06; and in relation to the Human Rights Committee, see Report of the Human Rights Committee, 40 U.N. GAOR Supp. (No. 40), paras. 592-606, U.N. Doc. A/40/40 (1978).


142. That task was performed from 1979 until 1986 by a Sessional Working Group (of ECOSOC) of Governmental Experts, and since that time by the Committee on Economic, Social and Cultural Rights. See generally Alston, *supra* note 22, 340-50.

143. For example, the Covenant provides that, where States Parties have already provided relevant information to the specialized agencies, they may simply refer to that information and are not obliged to repeat it in their reports. This means that the provision of country-specific information by the specialized agencies would be essential to the effective review of national reports. Further, the Convention established an expert committee, the members of which could be expected to have considerable detailed knowledge of the area, while the Covenant chose ECOSOC, a political body, to monitor the implementation of the Covenant, thus arguably necessitating input from the agencies.
Although arguments in favor of a narrower view can be made, a broad view of the article is clearly preferable. The Convention explicitly states that CEDAW has the power to invite the specialized agencies to contribute, plainly on the assumption that they possess expertise that may assist the Committee in its work. If the Committee decides that certain categories of information would assist it, then it would hardly promote an important object and purpose of the Convention (enabling the Committee to review effectively the reports of States) to conclude that the Committee could not request information it felt it needed, information which in many cases may be publicly available in official documents or publications.

CEDAW should make requests to the agencies for detailed country-specific information. Any objection to the Committee's requesting country-specific information from the agencies lies essentially in a desire to minimize the scrutiny to which States Parties are subject. It may be that this is one issue on which the Committee must depart from its usual practice of proceeding by consensus and decide the matter by a majority vote in order to prevent the passivity of some members and the delaying tactics of others from preventing the Committee from obtaining the agency input it needs.

VIII. Suggestions and General Recommendations

A. The Power

Article 21 of the Convention provides that the Committee may “make suggestions and general recommendations based on the examination of reports and information received from the States Parties.” The power is almost identical to that conferred on CERD by the Racial Discrimination Convention, and by which CERD has dealt with many of the

144. The arguments that have been advanced in relation to CERD and CEDAW include ones to the effect that allowing other bodies to provide material which may evaluate the extent of States Parties' performance of their obligations under the treaty would be subverting the committee, to whom the role of evaluation belongs; that the treaty provides that the committee is established to review the reports of States Parties, not to consider reports from other bodies; and that, as the committee is empowered to make recommendations and suggestions on the basis of the reports of States Parties and information received from them, it cannot consider information from other sources. All these arguments founder on the fact that article 22 makes specific provision for input from the agencies and that a restrictive approach to the sorts of information CEDAW may receive from them would hardly promote effective review of country reports.


146. Supra note 11, art. 9(2).
same interpretive questions that CEDAW has addressed in the context of article 21.147

CEDAW has spent a good deal of time discussing the scope of article 21. Much of that discussion has been repetitive and unproductive, due in part to the lack of legal and expert human rights advice available to the Committee.148 A somewhat restrictive view of the power for most practical purposes has emerged from these discussions, although the Committee has reserved its power to act on a broader interpretation in the future.

Article 21 provides that the Committee may make “suggestions” and “general recommendations.” Apart from differences in emphasis, there would appear to be only one important difference between suggestions and general recommendations: it seems that suggestions are not required to be “general.” Presumably, therefore, they could address the situation in a particular State and be addressed to that State or to other appropriate bodies.

The nature of a “general” recommendation is less clear. The word “general” may mean that any recommendations made to a State Party must not deal with the specific circumstances of individual cases, but only with more general issues affecting the implementation of the Convention in that State. Alternatively, the word “general” may be intended to indicate that recommendations must concern the situation in more than one State Party. The latter interpretation has been accepted in the context of the Racial Discrimination Convention. Since article 21 of the Women's Convention was modelled on article 9(2) of the Racial Discrimination Convention, such an interpretation would seem to be an appropriate understanding of article 21.149

However, despite some division of opinion among its members, the Committee has taken the view that, in appropriate cases, it can base both suggestions and general recommendations on its examination of the re-


149. This was the view of the U.N. Office of Legal Affairs, summarized in 1986 CEDAW Report, supra note 37, para. 359.
report of an individual State Party. Nonetheless, a significant number of Committee members are clearly reluctant to adopt formal recommendations and suggestions directed to an individual State Party, lest this be misconstrued as an exercise of investigative and adjudicatory functions in relation to individual complaints for which the Convention makes no provision. This reluctance is evident from the Committee's 1988 decision in which it stated that its usual practice would be to address suggestions to ECOSOC and other bodies in the United Nations system and to address general recommendations to the States Parties as a body.

The Committee's reluctance to address a suggestion or recommendation directly to an individual State Party is not likely to be of great practical significance; CEDAW has other, less formal ways of making its views known to States Parties. In most cases, the matters which might be appropriate subjects for a suggestion to an individual State—the need to seek assistance in the preparation of its report, policies it might wish to consider adopting, or matters about which it should provide information in subsequent reports, for example—could just as easily be raised with the State Party during the consideration of its report and would not need to be the subject of a formal decision by the Committee. Similarly, the Committee can communicate its view that a State is violating the Convention without adopting a formal resolution to that effect. It is clearly appropriate for the Committee to discuss with a State the alleged existence of widespread violations of women's rights within its jurisdiction and to indicate measures which might remedy the situation. In such cases, CEDAW's views can be made clear in the form of concluding observations on the report of the State or can be packaged in the form of general recommendations, both of which would appear in the Committee's annual report.

150. 1987 CEDAW Report, supra note 37, paras. 57-60; U.N. Doc. CEDAW/C/SR.97, paras. 28-59 (1987). The Committee has not fully addressed the use of material provided by sources other than States Parties. Analogous use of such material by CERD has been supported as necessary to maintaining that Committee's independence. See 1978 CERD Study, supra note 147, paras. 119-29 (1978). The logic applies to CEDAW as well.

151. 1988 CEDAW Report, supra note 3, para. 58; U.N. Doc. CEDAW/C/SR.131, paras. 38-51 (1988). This decision was part of the Committee's effort to introduce a measure of terminological order into the various resolutions and decisions it had adopted. This task was undertaken only at its seventh session and was partly in response to the criticism it received in 1987 in ECOSOC and the General Assembly for adopting resolutions in "inappropriate" form. See infra text accompanying notes 191-95. In addition to the decision on suggestions and general recommendations, the Committee decided that "decisions" of the Committee would relate only to its methods of organizing its own work and its internal procedures; these will appear only in the body of its annual report. Id.

152. See Alston, supra note 22, at 358-59.
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The Committee has not considered in any detail whether there are any restrictions as to the material on which suggestions and general recommendations may be based. The argument has been made in relation to CERD that suggestions and general recommendations can be based only on the material supplied by States Parties, an argument designed to restrict experts from using material obtained from the specialized agencies or other sources that might contradict the account given by government reports. The argument has been soundly rejected in relation to CERD on the ground that any attempt to limit the knowledge on which Committee members may draw in formulating suggestions and general recommendations is quite artificial and impractical and would deny the independent expert nature of the Committee's membership. The same reasoning applies in the case of CEDAW and the most that such an argument is likely to achieve is the studious avoidance in the formulation of suggestions and recommendations of any references to other documentation.153

B. Recommendations Adopted to Date

Thus far the Committee has adopted eight general recommendations154 formally designated as such155 directed to States Parties. These recommendations have been of two types: those that recommend to States Parties that they take specific steps in fulfilling their reporting and other obligations under the Convention156 and those that deal with spe-


154. The Committee has adopted a number of resolutions that, while not labelled as such, are in substance recommendations and/or suggestions. For example, both sets of the Committee's guidelines for reporting arguably fall into this category. Another instance is the "General observations arising from the fifth session of the Committee," adopted by the Committee at its fifth session. 1986 CEDAW Report, supra note 37, para. 365. These called upon States Parties to include in their reports specific information relating to rural women and the employment of women, and contained two paragraphs that were reiterated in substance in General Recommendation 3, 1987 CEDAW Report, supra note 37, para. 578, and General Recommendation 8, 1988 CEDAW Report, supra note 3, para. 770.

155. It also adopted a number of "decisions" at its 1987 session, some of which were in effect suggestions and general recommendations. 1987 CEDAW Report, supra note 37, para. 580.

specific procedural matters or the institutional and resource problems facing the Committee.157

The Committee has also agreed on the substance of a number of other general recommendations which it has not yet forwarded to the States Parties.158 Formally, the Committee has adopted only one suggestion, a request that it be provided with additional meeting time for its 1989 session.159

C. Development of a "Jurisprudence" of the Convention

The decisions, suggestions, and general recommendations adopted by the Committee so far have been relatively modest in their scope, dealing with either procedural or resource matters or general exhortations to States Parties to carry out their obligations under the Convention. As yet, the Committee has not sought to develop a detailed jurisprudence of the substantive articles of the Convention drawing together the experience and insights it has gained from its consideration of the reports of States Parties and other material.160 While CEDAW does not have the formal power to interpret the Convention authoritatively, it necessarily interprets the Convention in the course of its work, even if only implicitly. In any event, the sort of interpretive exercise that might be undertaken, if worded appropriately, would not be viewed as an attempt to arrogate ultimate interpretive power to itself but rather as an appropriate exercise of the power to make suggestions and general recommenda-


158. These concern the collection of statistics, the provision of technical assistance and training courses, and equal pay for work of equal value. 1988 CEDAW Report, supra note 3, para. 764; U.N. Doc. CEDAW/C/SR.130, paras. 4-6 (1988). The Committee is also considering a recommendation on genital mutilation, but has not yet decided which of two proposed drafts it wishes to adopt. U.N. Doc. CEDAW/C/SR.129, para. 15 (1988).


Both the Human Rights Committee and CERD offer models of how that task might be undertaken.

1. The general comments of the Human Rights Committee

Since 1981 the Human Rights Committee has used its power to make "general comments" to develop a jurisprudence of the articles of the Covenant and to improve the quality of reporting under it. The Committee described its purpose in making such general comments in the following terms:

The Committee so far has examined 44 initial reports and, in some cases, additional information and supplementary reports. This experience, therefore, now covers a significant number of the States which have ratified the Covenant, at present 67. They represent different regions of the world with different political, social and legal systems and their reports illustrate most of the problems which may arise in implementing the Covenant, although they do not afford any complete basis for a world-wide review of the situation as regards civil and political rights.

The purpose of these general comments is to make this experience available for the benefit of all States Parties in order to promote their further implementation of the Covenant; to draw their attention to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedure and to stimulate the activities of these States and international organizations in the promotion and protection of human rights. These comments should also be of interest to other States, especially those preparing to become parties to the Covenant and thus to strengthen the cooperation in the universal promotion and protection of human rights.

Since that time the Human Rights Committee has adopted a number of general comments, initially dealing with general matters relating to reporting, but then moving on to examine various articles of the Cove-
nant in detail. In its general comments dealing with specific articles, the Committee has often given its view of the scope of the relevant article and drawn attention to the deficiencies in reporting under it. Practices falling short of the standards guaranteed by the article are pointed out, and suggestions are made as to ways in which States can satisfy their obligations to guarantee specific rights. While the general comments adopted by the Committee have not always been uncontroversial in substance or even in quality, it does seem that their utility has become generally accepted. The Economic, Social and Cultural Rights Committee has announced its intention to formulate general comments along the lines of those adopted by the Human Rights Committee. As article 21 provides CEDAW with an almost identical power to that of the ESCRC, the practice under the Economic and Social Covenant provides considerable support for CEDAW's having the power to embark on a similar exercise.

In the case of CEDAW, general observations of this sort, whether labelled as suggestions or general recommendations, might draw together the issues that frequently arise in the Committee's consideration of individual articles (and should therefore normally be covered in reports) and include suggestions for programs to address these issues. A synthesis of


168. The ESCRC has the power to make "suggestions and recommendations of a general nature," E.S.C. Res.1985/17, para. (f), 1985 U.N. ESCOR Supp. (No. 1) at 15, U.N. Doc. E/1985/85 (1986); this power has been interpreted by the Committee and ECOSOC as equivalent to the Human Rights Committee's power to make general comments. See 1988 ESCRC Report, supra note 70, paras. 366-70.
this sort could provide extremely valuable guidance for States Parties in their efforts to fulfill their obligations under the Convention, and would be consistent with CEDAW’s role of assisting States Parties in implementing the Convention through the exchange of ideas and experience. It could also be extremely useful for other groups attempting to use the Convention as a basis for domestic change.

2. CERD’s practice

CERD has not used its power to make suggestions and general recommendations in quite the same way as the Human Rights Committee. Nonetheless, it has taken steps to develop detailed examinations of provisions of the Racial Discrimination Convention and has produced studies on articles 4 and 7 of the Convention. While these were prepared as the result of invitations to CERD to contribute to the Second World Conference to Combat Racism and Racial Discrimination, such a formal invitation is presumably not necessary for the preparation of such studies. CERD has considered the possibility of producing studies on other articles of the Convention. Detailed studies of this kind can be an extremely useful way of making available the accumulated experience of the Committee and States Parties and of promoting a wider awareness and understanding of provisions of the relevant convention. It is clearly the sort of undertaking that CEDAW should consider in the future.


173. An interesting innovation that serves similar goals was adopted by the Economic, Social and Cultural Rights Committee in 1988. At each session of the Committee, a specific right or article of the Covenant is the focus of a day-long discussion. The purpose of this procedure is “to enable the Committee to review in a more synthetic manner the totality of the reports which it had received on a specific matter, to facilitate the exchange of experience among states and to develop a better understanding of the content and implications of different rights,” the discussion to be based on States Parties’, reports and other relevant materials. 1988 ESCRC Report, supra note 70, para. 349.
3. Suggestions for action by CEDAW

There are a number of areas which CEDAW could address if it decides to develop a jurisprudence of the Convention by elaborating general comments or detailed studies of particular articles of the Convention. In view of CEDAW's shortage of time and resources, such efforts would only be possible if the Committee were willing to expand the role of individual CEDAW members between sessions by assigning them responsibility for preparing draft general recommendations or studies.¹⁷⁴

A prudent starting point for CEDAW might be an area such as nationality law, a subject which has been well covered in CEDAW's questions to States Parties. There is a high degree of international consensus in this area, as well as considerable case law and State practice on similar treaty provisions.¹⁷⁵ As some States Parties still seem to misunderstand the extent of their obligation not to discriminate in the area of nationality law,¹⁷⁶ it would be a useful clarification of their responsibilities under the Convention.

Starting with a relatively uncontroversial subject also would make it easier for CEDAW to legitimate a practice of elaborating detailed interpretive comments; once this is accomplished, more sensitive subjects can be addressed. Treatment of more controversial subjects will provoke stronger responses from States, but these are likely to be directed against the substance of the formulation rather than against the legitimacy of the practice itself. The ESCRC has so far proved to be quite adept in introducing procedural initiatives, often of considerable substantive importance, while at the same time managing to avoid major controversy by its adept presentation of its initiatives as falling firmly within established practice in other committees or U.N. bodies.¹⁷⁷ CEDAW would do well to emulate ESCRC's example. Even so, no matter how adroitly CEDAW packages its initiatives, it will inevitably draw fire from States Parties if it attempts to take steps which look as if they might have an effect on the position of women. Indeed, the Committee will have failed in its task if this does not occur.

¹⁷⁴ Both the Human Rights Committee and CERD have assigned such tasks to individual committee members and the ESCRC is proposing to do likewise.


¹⁷⁷ See, for example, the way in which the ESCRC has outlined its intentions to elaborate general comments. See supra note 168.
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An area of particular importance to which CEDAW must direct its attention is the developing jurisprudence of the other committees, in particular that of the Human Rights Committee. The Human Rights Committee has now elaborated a large number of general comments interpreting the articles of the ICCPR and giving influential interpretations of major civil and political rights. With the exception of those comments concerning the articles of the ICCPR which deal specifically with non-discrimination, there is virtually no explicit mention of women in those general comments nor does there appear to be any recognition that gender is an important dimension in defining the substantive content of individual rights.

For example, the general comment dealing with privacy makes no mention of the importance that this right has assumed in women's struggle for control over their reproductive lives. Similarly, the general comments on the right to life do not address the implications of that right for women's access to abortion. Although they do refer to the need to reduce infant mortality, they ignore the differential threats to life facing women and girls and the consequences for a State's obligation to ensure enjoyment of the right to life without discrimination. This neglect of women's experiences pervades the general comments, despite the fact that women are assured equal enjoyment of the rights guaranteed by the Covenant. Thus, CEDAW could make a major contribution to the development of substantive human rights law by exploring the limitations of these mainstream interpretations of important civil and political rights and introducing women's different perspectives into that discourse. As the Convention guarantees equal enjoyment of essentially the same rights guaranteed by both Covenants, it is quite appropriate for CEDAW to undertake this task.

IX. Reservations

The issue of reservations—those limitations to the obligations imposed by a treaty that a State Party specifies when becoming a party—has been one of the most contentious matters that has arisen in relation to the

178. See supra note 165.
182. CEDAW should also monitor the work of the ESCRC, which is about to embark on the formulation of general comments in areas with significant gender dimensions, such as the right to shelter. See supra note 168.
Convention. The Convention has been subject to more substantive reservations than probably any other major human rights treaty. While some of these reservations are relatively narrow in scope, others are wide-ranging and have the potential to limit significantly the obligations undertaken by the reserving States and to undermine the pursuit of the objectives of the treaty.\(^{183}\)

There are a number of issues that arise in relation to reservations: the nature and scope of the reservations made, the permissibility of those reservations, the manner in which their validity is to be determined, and the implications of the reservations for the obligations of States Parties.\(^{184}\) This section focuses on the extent to which reservations have influenced the practice of the Committee and the ways in which CEDAW's response to them has affected its relationship with the States Parties. Ultimately, the important questions are tactical ones: how to encourage the withdrawal of existing reservations, limit the number and extent of new ones, and monitor closely the impact of those presently in force.

### A. CEDAW's Approach

It is in the Committee that the most focused examination of the practical impact of the various reservations has taken place. While CEDAW does not have the power to decide the incompatibility of reservations, it necessarily has to deal with issues relating to their scope; in particular, it must ascertain the extent to which implementation of the other obligations assumed by the relevant State Party is impeded by the reservations it has entered.

As well as questioning States on the extent to which women enjoy equality in the areas covered by reservations and exhorting them to withdraw reservations the Committee considers unnecessary,\(^{185}\) CEDAW has


\(^{185}\) There are a number of reservations which are in substance not really reservations at all in that they purport to excuse a State Party's failure to take steps which the Convention does not in fact oblige it to take. Into this category fall the reservations made to discriminatory laws excluding women from particular forms of employment, where those laws are enacted in compliance with the State Party's obligations under the relevant ILO conventions.
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consistently encouraged States to review and withdraw their reservations.\textsuperscript{186} The Committee has also sought to determine how reservations to individual articles undermine a State Party's ability to fulfill the obligations it has accepted under other articles of the Convention, while endeavoring to establish the practical impact of broad, sweeping reservations on the implementation of individual articles of the Convention.\textsuperscript{187}

The most contentious reservations and the ones that seem most threatening to the integrity of the treaty regime are the broad reservations which indicate that the obligations of major articles of the Convention are accepted only to the extent that they are consistent with the requirements of the Islamic \textit{Shari'a} \textsuperscript{188} or with traditional customs and practices.\textsuperscript{189} These reservations cause particularly severe problems, the more so as they are bound up with larger issues of cultural identity and the resistance of what is perceived as Western cultural imperialism.

Yet the content of these broad reservations is by no means clear; they essentially constitute an ambit claim. Although their potential effect on


\textsuperscript{186} In essential respects the approach of CEDAW has been similar to that of the Human Rights Committee, which, in the view of one commentator, “has not hesitated to question states on their reservations to the covenant and to criticize those felt overly broad or of questionable compatibility with the covenant.” Shelton, \textit{supra} note 166, at 417.


\textsuperscript{188} See the reservations of Bangladesh, Egypt and Iraq in \textit{HUMAN RIGHTS TREATIES, supra} note 183, at 143, 147-48, 152.

\textsuperscript{189} See, for example, the reservation of Malawi, which states that its government, in view of the persistence of traditional attitudes and practices, does not accept those provisions of the Convention which oblige it to ensure immediate realization of equality to the extent that this obligation would conflict with those traditions. U.N. Doc. CEDAW/SP/13, at 16 (1988). To the extent that the Convention permits the gradual realization of its guarantees, provided appropriate steps are taken towards that goal, this reservation is probably not even necessary. If, however, it is intended to be a justification for failure to take what would be considered “appropriate measures,” it raises serious problems of incompatibility. A State has considerable discretion in deciding what are appropriate steps, however, and it is unlikely that failure to progress at a rapid rate would amount to a violation, except in the case of a failure to reform discriminatory laws.
the scope of the obligations assumed under the Convention is considerable, their actual impact may vary from country to country. There is, for example, considerable dispute within Islamic communities about the extent to which various practices which discriminate against women or treat them in a manner different from men are necessary to an Islamic way of life, rather than a particular interpretation which has been developed to reinforce largely patriarchal structures. Nonetheless, the understanding of the governments which entered these reservations seems to be that there are a number of practices and traditions which are central to Islam and which are not likely to be changed, and that these are inconsistent with the models of equal treatment of men and women envisaged by the Convention.190

The first task in relation to these reservations is to determine the extent of inconsistencies between the Convention and traditional practices in individual countries. It is clear that many of the restrictions on women's roles in Islamic countries are not consistent with the model of equality embodied in the Convention and that fundamental assumptions about the different but complementary roles of women and men in social life do not comport with that model either.

CEDAW has encountered considerable opposition to its attempts to deal with reservations based on Islamic law and practices. In 1987, after examining a number of reports from Islamic countries, it requested that the United Nations system as a whole "promote or undertake studies on the status of women under Islamic laws and customs." 191 This request was received with hostility in ECOSOC 192 and the General Assembly,193 and CEDAW's request was firmly rebuffed.194 CEDAW reaffirmed its position at its 1988 meeting, stating that the reference by a number of States Parties to Islamic law and practices in their reservations meant that it would be useful for the Committee to have material on the subject.195

190. For examples of some perceived and actual conflicts between Islam and the models of equal treatment envisaged in the Convention, see Sullivan, Advancing the Freedom of Religion or Belief Through the U.N. Declaration on the Elimination of Religious Intolerance and Discrimination, 82 AM. J. INT'L L. 487, 514-17 (1988).
191. 1987 CEDAW Report, supra note 37, para. 580 (Decision 4).
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However, it is clear the request will go no further within the U.N. system and any such studies will have to come from elsewhere.

B. The Strategic Importance of the Reservations Issue

Unlike the Racial Discrimination Convention, which provides that a reservation is to be considered incompatible with the Convention if at least two-thirds of the States Parties object to it, the Women’s Discrimination Convention provides no similar procedure for deciding authoritatively whether a reservation is valid, apart from the possibility of reference of the issue to the International Court of Justice under article 29 of the Convention, a provision rendered largely nugatory by the reservations to that provision. The only feasible options open to a State Party which considers that a reservation is incompatible with the Convention are to file an objection to the reservation and to raise the matter at meetings of the States Parties or other bodies such as ECOSOC or the General Assembly.

The absence of such a procedure has meant that the issue has given rise to a continuing battle of words among certain States Parties, some of whom have expressed strong objections to many reservations on the ground that they are incompatible with the object and purpose of the Convention, while others have strongly defended their right to enter reservations to the Convention without having other States act as self-appointed arbiters of their validity. To date the States Parties have been unable to resolve the issue.


196. Racial Discrimination Convention, supra note 11, art. 20(2).

197. At the most recent meeting of the States Parties to the Convention in March 1988, the dispute continued. Despite attempts to formulate a resolution which reflected the views of both sides to the controversy and to keep the matter under review, the most that the States Parties could agree upon was a procedural decision to take note of the reports by the Secretary-General to the General Assembly on reservations to the Convention and of the views expressed on the question at the General Assembly, the Economic and Social Council, and the States Parties’ meeting. U.N. Doc. CEDAW/SP/14, at 3 (1988). Although previous General Assembly resolutions had called on States Parties to review their reservations, no mention was made of the subject in the 1988 General Assembly resolution dealing with the work of the
It seems unlikely that the reservations issue will be definitively resolved by authoritative pronouncements on the validity of particular reservations; indeed that might be counter-productive. In the long run, the important issue is not how or whether to get a definitive legal pronouncement on the validity of certain reservations but the impact of the reservations on the attainment of the Convention's objectives. The stances adopted by the States Parties which have been prominent on opposite sides of the controversy have been fairly extreme. The defenders of the Convention against reservations hope that their raising the issue will focus attention on existing reservations and cause them to be construed narrowly or even withdrawn, while at the same time discouraging further reservations, particularly ones which are broad and undefined in their scope. On the other hand, the rather extreme stance of some reserving States is no doubt intended to ensure a degree of autonomy for States Parties in deciding what international commitments they are prepared to assume.

CEDAW has a major role to play in ensuring that reservations do not undermine the goals of the Convention, a task which it can best perform by continuing to ascertain the practical impact of reservations in individual countries and encouraging the withdrawal of existing reservations. Even though the present plethora of reservations to the Convention is a highly unsatisfactory situation, the fact that even reserving States are brought within a reporting system is an important development in that it subjects their performance in advancing the condition of women to external scrutiny.\textsuperscript{198}

X. Problems: Resources, Marginalization and Invisibility

A. Resources

The preceding discussion has identified many areas in which CEDAW could or should expand its activities. But the reality is that the Committee lacks the meeting time and the resources to carry out even its most basic functions properly. The manner in which this problem is resolved

\textsuperscript{198} There are other avenues for action in the case of a number of States Parties. Many of the States Parties which have entered reservations to the Convention have ratified without reservation the International Covenants and other instruments under which they assumed obligations to promote sexual equality in the enjoyment of various rights. Interchanges of information between the various committees as well as the provision of information by NGOs to other committees would be one way of subjecting a state concerned to additional scrutiny and pressure.
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will ultimately determine whether CEDAW will be able to undertake a broader agenda or whether it will be restricted to performing, under difficult circumstances, little more than its basic task of reviewing States Parties’ reports.

There is a perception among the members of the Committee that it is the poor cousin of the human rights treaty bodies and is provided with technical and legal resources at a level far below that provided to the other treaty bodies. CEDAW meets for considerably less time than any of the other major treaty bodies, although some of these committees have had to curtail their activities in recent years as a result of financial constraints.

The level of support provided to CEDAW and the other committees is the result of a rather complicated and obscure series of decisions with the U.N. system and among States Parties, and also of the geographical division between “human rights” bodies (located in Geneva) and their “women’s issues” counterparts (located in Vienna). It is extremely difficult to compare precisely the levels of resources provided to each of the treaty bodies. U.N. budgetary documents do not break down the allocation of resources in such a way as to facilitate the comparison, and efforts to have the secretariat produce figures in an appropriate form have so far been of little avail.

199. Until recently, the Human Rights Committee met regularly three times a year for three week sessions preceded by one week meetings of its pre-sessional working groups. CERD had also been meeting for three weeks twice a year. Since the commencement of its work in 1987, the Economic, Social, and Cultural Rights Committee has met once a year for a three week session. As of the end of 1988 the Torture Committee had held only one session of one week’s duration. U.N. Doc. A/43/46, at 1 (1988).


201. The Human Rights Committee had to cancel one of its 1986 sessions and take other measures as a result of financial constraints. See Nowak, supra note 166, at 288. CERD has also had to cancel sessions and take other economy measures as a result of its financial problems, which are due in large part to the failure of a number of states to pay their assessed contributions. States Parties to CERD pay the cost of the travel for members of the Committee while support services are provided by the U.N. secretariat. See Report of the Committee on the Elimination of Racial Discrimination, 42 U.N. GAOR Supp. (No. 18), paras. 18-19, U.N. Doc. A/42/18 (1987).

202. A comparison of the relative level of resources must take into account the length and frequency of their sessions (and any pre-sessional working groups), the level of sessional and inter-sessional support provided by the secretariat, the workload of the committees, and the relative efficiency with which they carry out their work. These factors are influenced not only by the committees themselves, but also by decisions of the States Parties and U.N. bodies.

Two points do seem clear, however. The first is that all the treaty bodies have been provided with inadequate levels of ongoing secretariat support, exacerbated in some cases by rapidly increasing workloads. While the financial crisis of the United Nations has been at least partly responsible for this, it also appears that human rights and other activities on the political and geographical periphery (that is, outside New York) are relatively easy targets for inequitable financial cutbacks. The second point is that, among the treaty bodies, CEDAW enjoys a particularly disadvantaged position, having been provided at its inception with such a low level of secretariat support that it can function at little more than a subsistence level as its workload has increased.

The two committees which are most directly comparable to CEDAW are the Human Rights Committee and the Economic, Social and Cultural Rights Committee, the expenses of which, like those of CEDAW, are borne entirely out of the United Nations budget. It is difficult to conclude that CEDAW's workload is any less than that of the ESCRC or so much smaller than that of the Human Rights Committee as the relative time allocated for CEDAW sessions would suggest. Yet CEDAW has less meeting time than either of these bodies or CERD. Despite the fact that the Human Rights Committee and CERD have had to cancel sessions and restrict some other activities recently for financial reasons, they still appear to be in a better position than CEDAW.

204. See generally Dutch Human Rights Report, supra note 19.
206. This was acknowledged by the 1988 meeting of Chairpersons which recommended that “more adequate staffing resources should immediately be provided to service the Committee on the Elimination of Discrimination against Women and, as soon as the overall financial situation permits, additional resources should be provided to the other committees in respect of the discharge of all of their responsibilities.” 1988 Chairpersons' Report, supra note 27, para. 85. See also G.A. Res. 43/100, para.13, U.N. Doc. A/RES/43/100 (1988).
207. The relevant conventions provide that, while the expenses of the members of CERD and CAT are to be paid by the States Parties, secretariat assistance is to be provided by the United Nations. Methods Applied Under Different Human Rights Instruments as Regards Their Financial Implications, U.N. Doc. E/1988/85 at 3, 5 (1988). The problems which CERD is facing are due primarily to the failure of many States Parties to pay their assessed contributions.
208. See supra note 199.
209. In the present financial crisis it may perhaps seem churlish and even dangerous to complain about CEDAW's difficulties in comparison to the other treaty bodies which are also beleaguered by resource problems. The dangers of squabbling over the division of the pie when the real problem is its inadequacy are clear. However, such criticism is indeed justifiable when comparable bodies with similar servicing needs are provided with quite different levels of support. When, all too familiarly, the body which receives short shrift just happens to be one that deals with matters concerning women, one needs to ascertain exactly what resources are being made available to the various bodies and the reasons for those allocations, as well as to ensure that any inequities are remedied.
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Since article 20 of the Convention limits the time for CEDAW's sessions, it is difficult to argue that the United Nations is responsible for the fact that the two weeks provided for by the Convention are inadequate for its work. The responsibility for providing CEDAW with inadequate meeting time must be laid at the door of the States involved in drafting the Convention. If they were genuinely determined to ensure the effective functioning of the Committee, they committed, at the very least, a major error of judgment in specifying a time period for its meetings, especially a period as short as two weeks. The view that a committee overseeing implementation of the Women's Discrimination Convention would require considerably less time than CERD needed for its work is a reflection of the priority assigned to women's human rights. The only way to remedy this defect in the Convention would be to amend article 20, but that path is uncertain and dangerous.

However, CEDAW's problems are not limited to its inadequate meeting time. While the provision of inadequate meeting time cannot be blamed directly on the United Nations, it can be blamed for the failure to provide CEDAW with adequate secretariat support. Although it is difficult to pinpoint exactly how much is allocated to each committee or to point to specific decisions involving discriminatory allocations of funds, it appears that the U.N. has not provided CEDAW with the level of servicing which other committees appear to be able to take for granted.

210. Article 20 of the Convention, supra note 1, provides that the Committee “shall normally meet for a period of not more than two weeks annually” in order to consider reports.

211. Initiating the amendment process provided for under art. 26 of the Convention might provide an opportunity for substantive amendments beyond those proposed for art. 20. The attitude of some States Parties suggests such an opportunity might be used to propose amendments weakening obligations imposed by the Convention.

One partial solution might be the establishment of a pre-sessional working group along the lines of those established by the Human Rights Committee and proposed by the Economic, Social and Cultural Rights Committee for its work. 1988 ESCRC Report, supra note 70, para. 348. At present, CEDAW's two working groups meet only during the two week session, a situation which imposes a considerable burden on the experts involved. A pre-sessional working group could perform a variety of useful functions including some of those tasks presently undertaken by the sessional working groups. Assuming that the meeting of a pre-sessional working group did not constitute a meeting of the Committee for the purposes of article 20, and that funds could be found for it, this may provide a certain amount of relief. Otherwise, a greater delegation of tasks to members between sessions appears to be the only feasible way to proceed.

212. Article 17(9) of the Convention, supra note 1, provides that “[t]he Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee” under the Convention.

213. CEDAW is funded through the Vienna-based bodies, while resources for the other treaty bodies are allocated through the Centre for Human Rights in Geneva. It is almost impossible for an outsider to determine whether the higher level of servicing provided to the
B. Problems of Separation and Marginalization

1. The Geneva - Vienna separation

The geographical and administrative separation of the Geneva and Vienna human rights bodies also affects the level of specialist human rights and international legal advice available to CEDAW. It seems clear that, if CEDAW's secretariat were based in Geneva as part of the Centre for Human Rights, it would be easier for CEDAW to be kept abreast of developments in the human rights areas and to draw on the expertise of those who have been involved in other areas of human rights.\textsuperscript{214} Inclusion of CEDAW's concerns in the overall human rights project and the coordination of the work of the treaty bodies and other human rights bodies would also become easier. The States Parties and the General Assembly have recognized the need for greater coordination and cooperation between the Geneva- and Vienna-based human rights bodies,\textsuperscript{215} but only a limited amount has been done so far to promote this goal.\textsuperscript{216} The problem may be such that only geographical integration of the Vienna-based bodies and the Geneva-based ones can overcome it.


CEDAW interprets the Convention as giving it the power to select its own venue; the Committee has decided to meet regularly in both New York and Vienna.\textsuperscript{217} Members feel that its sessions in New York receive

Geneva-based bodies results from a skewed distribution of resources, a greater level of efficiency on the part of the Geneva secretariat, or other factors.

Nonetheless, one incident suggests CEDAW is treated less favorably in the U.N. budget process than the other committees. Although the draft programme budget for 1988-89 had provided for Vienna staff to travel to New York to service CEDAW's annual meeting there in 1988, U.N. Doc. A/C.5/42/16, paras. 6-8 (1987), the Advisory Committee on Administrative and Budgetary Questions (ACABQ) eliminated this funding, essentially as a cost-cutting measure designed to force CEDAW to hold all its meetings in Vienna. See U.N. Doc. A/42/7/Add.4, paras. 6-11 (1987) (approved by the 5th Committee at U.N. Doc. A/42/910, para. 53 (1987)). As a result, CEDAW had inadequate secretarial support for its 1988 meeting and was unable to adopt its report at the end of its session. 1988 CEDAW Report, supra note 3, para. 773. The Human Rights Committee, which also holds one annual meeting in New York, received the full funding budgeted to bring eight members of its Geneva staff for its March-April 1988 meeting in New York. U.N. Doc. A/42/6 (sect. 23), para. 23.9 (1987).


\textsuperscript{216} Among the measures suggested are the regular exchange of the committees' reports, id., para. 14, and regular meetings of the Chairpersons of the treaty bodies. See 1988 Chairpersons' Report, supra note 27, paras. 78-100. The mutual exchange of annual reports now takes place on a regular basis.

more publicity than those in Vienna, and that the Committee has greater visibility amongst States Parties and better access to them if it meets alternately in New York and Vienna. Members and States Parties have also supported the holding of regular sessions in New York as well as Vienna on the ground that this makes it easier for those countries without permanent missions in Vienna, many of which are developing countries, to present their reports to CEDAW.  

It has been suggested to the Committee on a number of occasions that it hold all its sessions in Vienna because its secretariat is based there—not only would the Committee receive better secretariat support, it is argued, but the cost of financing the Committee's sessions would be reduced. However, there is some disagreement as to whether CEDAW does receive better support services at its Vienna meetings and, although at first impression it seems that CEDAW's meetings in New York cost more than those in Vienna because of the need to pay for Vienna staff to come to New York, the issue is not entirely free from doubt. Nor has the location of the secretariat or relative cost been determinative of the venue for meetings of other committees.

There are good reasons for CEDAW to meet alternately in New York and Vienna, as the States Parties themselves have recognized. But, as the sabotage of CEDAW's 1988 session in New York by the decision of the ACABQ shows, it is not enough for States Parties to adopt such resolutions without ensuring that the necessary funds are made available.

endorsed CEDAW's power to decide on venue and have not pressured CEDAW to reverse its decision. U.N. Doc. CEDAW/SP/14, at 4 (1988).

218. These views were expressed at the meeting of the States Parties in March 1988 (personal observation by author).


220. Fluctuations in exchange rates and the unpredictability of the availability of conference servicing staff at the different venues make it difficult to say categorically that meetings in New York will always cost more than those in Vienna. I am grateful to David Stuart for pointing this out to me.

221. In 1976, in response to unilateral secretariat actions which changed the venue for one of its sessions without consultation with members of the Committee, CERD strongly asserted its independent position under the Racial Discrimination Convention and its right to decide on the venue for its sessions. CERD also rejected the assumption that the location of the relevant secretariat was the sole factor which should determine the venue and made similar points to those raised by CEDAW members in justifying the need to meet in New York as well as Vienna. U.N. Doc. A/31/18, paras. 288-300, Annex V (1978).


223. See supra note 213.
C. The Future

The problems of inadequate resources and institutional separation have a major substantive impact on CEDAW’s work, severely hobbling the Committee in any efforts to go beyond examining the reports submitted by States Parties and to undertake broader projects within the framework of the Convention.

There is relatively little that CEDAW itself can do in response to the resources crisis.224 The States Parties have the responsibility of ensuring that the Committee is provided with adequate resources to carry out the tasks they have assigned to it. States Parties must do more than merely subscribe to expressions of support for the Committee and concern for its plight. They must ascertain the exact amount of resources supplied to the various committees and take concrete steps within the U.N. budget process to ensure that CEDAW does not bear an inequitably large share of the already disproportionate financial cuts that have been suffered by the U.N. human rights programs.225

XI. The Need for Coordination and Exchange of Information Between CEDAW and the Other Human Rights Treaty Bodies

CEDAW must ensure that its work does not take place in an international vacuum. To do that, it needs to be aware of relevant developments elsewhere in the U.N. system and to ensure that its work contributes to those activities. Links between CEDAW and the Commission on the Status of Women (CSW) are already established but need to be developed further. States Parties’ reports to CEDAW are an important resource for the Commission in its ongoing task of monitoring the Nairobi Forward Looking Strategies.226 CEDAW can also have a significant input into the policy-making role of the Commission by helping to identify, based on its

224. See supra note 212.
225. A number of States Parties have started to take more positive action to ascertain what the true resources position of CEDAW is and to ensure that both it and the other treaty bodies do not continue to receive inadequate resources. These efforts culminated in G.A. Res. 43/100, U.N. Doc. A/RES/43/100, paras. 11-15, para. 18 (1988). Whether these efforts will be successful remains to be seen; lobbying on the budgetary decisions which can implement or frustrate the gist of the resolution is plainly necessary.
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examination of country reports, where major obstacles to women's equality still exist. The possibility of NGOs utilizing their power to make sub-
missions to ECOSOC and CSW to enhance the flow of independent information to CEDAW has already been mentioned.227 Finally, since the Committee does not have jurisdiction to deal with allegations of vio-
lations of women's human rights, CEDAW should encourage the develop-
ment of the Commission's confidential communications procedure into a powerful monitoring tool.228

CEDAW must pay particular attention to the jurisprudence of the other committees as they formulate general comments and decide individual cases.229 The general comments of the Human Rights Committee have already been mentioned as a case in which the mainstream human rights bodies have largely excluded women's distinctive experiences from their purview;230 that committee has also already heard a number of individual communications involving claims of sex discrimination.231 CERD has also begun to exercise its individual complaint jurisdiction,232 and the ESCRC is about to embark on the formulation of comments under the Economic and Social Covenant. It is essential for CEDAW to monitor closely these developments in the other committees.

227. See supra text accompanying notes 122-129.
229. In addition, close attention must be paid to the relevant parts of reports by States Parties to other treaty bodies and their reception by those committees, as this could in many cases benefit CEDAW's consideration of reports submitted to it by the same states. Although there is presently some exchange of information (including annual reports) between the committees, more needs to be done.
230. See supra text accompanying notes 178-182.
CEDAW also needs to monitor closely important work being done by other human rights bodies, in particular the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which is engaged in work in the areas of prostitution, slavery, female circumcision and other practices affecting the health of women.233

CEDAW's secretariat is unlikely to be able to provide substantial assistance for such a monitoring task. NGOs can certainly help, but ultimately CEDAW itself must ensure that it is well-briefed on pertinent developments in other bodies. As suggested earlier in relation to a liaison between the specialized agencies and the Committee, assigning individual Committee members the task of monitoring developments in a particular body and reporting back on a regular basis would seem to be an effective way of doing this.234 This proposal assumes, of course, that CEDAW members, all of whom have other commitments, would be willing to adopt these extra obligations. If effectively done, such close monitoring could contribute significantly to the quality of CEDAW's consideration of reports, its elaboration of a jurisprudence of the Convention, and the identification of problem areas requiring policy responses.

Quite apart from the treaty bodies and other human rights bodies, CEDAW also needs to pay attention to other U.N. bodies engaged in work relevant to the goals of the Convention. The need for much closer liaison with the specialized agencies has already been mentioned. The work of the Committee on Crime Prevention and Control235 requires CEDAW's attention, as it has begun to take up issues of violence against women and other relevant issues.236 Since the majority of the world's refugees are women,237 the work of the Office of the United Nations High Commissioner for Refugees has direct relevance to that of the Committee, both generally and in the case of individual countries. At the very least, CEDAW should consider inviting representatives of these and other bodies to provide it with information, either directly or through the Secretary-General, about their work as it relates to women generally and

234. *See supra* text accompanying notes 130-145.
CEDAW in specific countries, though the latter would no doubt prove considerably more contentious.238

XII. The Impact of CEDAW at the National Level

One of the major challenges facing CEDAW is publicizing its work at the national level. This is essential to ensure that the process of reviewing reports has the maximum impact possible in stimulating or contributing to changes in law, policy and practices.

Publicizing the contents of government reports is more easily said than done. Government reports are issued as U.N. documents of general distribution and are therefore available in theory to anyone (assuming one knows that a national report has been submitted), but obtaining copies of them prior to CEDAW’s meetings in time to prepare a response can be difficult, particularly for national NGOs.

CEDAW has called on governments to publicize their reports and its consideration of them,239 but it remains to be seen what result this will have. In some cases, governments take steps to ensure that the reports have limited national circulation or none at all.240 Although some governments distribute copies of their reports nationally (and many others claim to have done so), one can be justifiably skeptical about the extent to which governments do actually publicize their reports. One can be even more skeptical about assurances that details of CEDAW’s criticism of State reports are publicized by the government.241

Ensuring broader circulation of what are in many cases self-serving documents is, of course, only a preliminary step to obtaining detailed and

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238. Precedent for inviting bodies other than States Parties or the specialized agencies certainly exists. In 1987, CEDAW invited a representative of the U.N. Office for Namibia to address it. 1987 CEDAW Report, supra note 37, paras. 8-10. CEDAW has also invited the Coordinator for the Improvement of the Status of Women in the Secretariat to address it on a number of occasions. 1986 CEDAW Report, supra note 37, paras. 6-8; 1988 CEDAW Report, supra note 3, paras. 15-20. These invitations were issued pursuant to Rule 17 of CEDAW’s Rules of Procedure, which provides that the “Secretary-General or his representative may make oral or written statements to the Committee concerning any question under discussion.” 1983 CEDAW Report, supra note 45, at 26.


240. Bangladesh represents an extreme case: its initial report to CEDAW is apparently a classified document and is not available for general distribution in Bangladesh. U.N. Doc. CEDAW/C/5/Add. 34 (1986). Another way of restricting circulation is illustrated by the Thai report, which was submitted in English, U.N. Doc. CEDAW/C/5/Add. 51 (1987), but which the government apparently has no plans to make available in Thai.

241. To help overcome this reluctance on the part of governments, the 1988 meeting of Chairpersons recommended that U.N. information offices in reporting countries do more to publicize national reports and the reports of the treaty bodies, a suggestion CEDAW should support. 1988 Chairpersons’ Report, supra note 27, para. 98.
accurate information about the position of women in individual countries. National NGOs are particularly well-placed to provide this information to CEDAW and can do so most effectively if they are aware of contents of their government's official report. Greater efforts must therefore be made by CEDAW and international NGOs to involve domestic NGOs in the reporting procedure. This not only makes CEDAW's review more effective, but may give these bodies additional leverage in their struggle for change at the national level. Although involvement of NGOs in CEDAW's work has been limited to date, it must increase if the review process is to have real influence nationally.

The importance of the international and national press should also not be forgotten, as it is through the media that the most effective pressure can be put on governments. Both CEDAW and NGOs need to cultivate the press, which now gives considerable attention to the work of the Geneva-based human rights bodies, to ensure that knowledge of the Committee's activities and its appraisal of the position of women in individual countries is not restricted to a few cognoscenti.

XIII. The Future of CEDAW

In its first seven years, CEDAW has defined its basic organizational and procedural arrangements and developed a detailed sense of some of the common problems facing women in many countries. The Committee is now at an important stage in its development and faces a number of choices about the contribution it will make in the future to the achievement of the goals of the Convention and the advancement of women.

Although CEDAW is not in complete control of its own fate, an energetic approach on its part can achieve a great deal. It is up to the States Parties to follow through on their expressed commitment to the Convention and the Committee by fulfilling their own reporting obligations adequately, by exerting pressure on other States Parties to do so, and by seeing that CEDAW actually receives the resources which the States Parties themselves have acknowledged as essential to the performance of the functions they have assigned it. Similarly, while NGOs also have a major role to play in publicizing and supporting the work of the Committee there is little the Committee can do to ensure that they assume this role, beyond encouraging and facilitating any contribution they wish to make.

Ultimately, however, it is up to the Committee to take the initiative in defining an expanded, constructive role for itself, if it expects the continued support of those who are committed to the achievement of the goals of the Convention. A number of steps have been suggested in this article and elsewhere by which CEDAW might enhance its examination of State
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reports and play a more expansive role in developing international understanding of women’s human rights. All of these assume the individual and collective willingness of members of CEDAW to undertake additional burdens under difficult conditions. Should they choose to do so, support for their activities will be forthcoming and the results worthwhile, but the choice is in their hands.