

# FROM HUMAN RIGHTS TO PROGRAM REALITY: VIENNA, CAIRO, AND BEIJING IN PERSPECTIVE

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## INTRODUCTION: WORLD IN TRANSITION

With the end of the Cold War and the fall of the former Soviet Union, the world has been seeking politically a "New World Order." The content and definition of this new order is changing from a world dominated by a single power, having vast responsibilities for the maintenance of order and the preservation of human rights, to a world order aimed at achieving balance through a multi-power system including Europe, the United States, Japan, China, and possibly other powers.<sup>1</sup> Simultaneously, the role of the United Nations is developing and changing, while the expectations of the world are rising. This Article concerns the impact on women's human rights of recent global developments, including the World Conference on Human Rights in Vienna in June 1993, the International Conference on Population and Development (ICPD) in Cairo in September 1994, and the upcoming World Conference on Women in Beijing in August 1995.

Today, the United Nations is challenged both to make and maintain peace, as well as preserve and promote human rights (including women's rights), through treaties, conferences, and commissions. Peoples faced with enduring civil wars, ethnic cleansing, or similar catastrophes look to the United Nations with great expectations. They assume that the United Nations acts as a world

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1. See Mohamed H. Heikal, *Opening Address to the Conference on Human Development in Alexandria on October 27, 1994*, AL AHRAM DAILY, Oct. 29, 1994, at 5.

government that has enforcement powers, without realizing that the United Nations' capabilities are only equal to the contributions made by its individual members.

In evaluating the world agenda for the twenty-first century, it is important to understand the political, economic, and social context within which change is taking place. Satellite communication, commonly known as the "CNN phenomenon," has had a tremendous impact on policymakers, public opinion, and the world's consciousness with respect to human rights violations. Gone are the days when events of racial discrimination, ethnic cleansing, or violence passed unnoticed. The revolution in the field of communications has made immediate information on human rights violations worldwide available to human rights organizations.

The economic arena is in a similar state of transition. The General Agreement on Tariffs and Trade (GATT) is attempting to reorganize world trade on the basis of global free market economy. A strong trend towards economic integration, trade blocs, and common markets is emerging, as, for example, with the European Community, the North American Free Trade Agreement (NAFTA), and more recently, the Middle East. The world is once again recognizing the importance of cooperation between the developed and the developing countries, both between the North and the South and within the South itself, in an effort to face the challenges of sustainable development. On the other hand, a trend towards disintegration of economies is also apparent in the case of the former Soviet Union and Yugoslavia.

Despite certain positive indications in economic development, wide-spread poverty remains the major challenge facing humanity. The gap between the rich and the poor is continually widening, not only in terms of developed and developing countries, but also between individuals within each nation. The gap between rural and urban standards of living is also widening. Figures show that the share of income and social services allocated to rural areas is half of the share to urban areas. Moreover, women in general remain the poorest of the world's poor, despite the importance of their role in the development process.<sup>2</sup>

Poverty is often accompanied by unemployment, malnutrition, illiteracy, the low status of women, exposure to environmental risks, and limited access to social and health services, including reproduc-

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2. Egyptian Nongovernmental Organizations, Platform to the International Conference on Population and Development, Chapter I, Sept. 1, 1994, at 4.

tive health services. With respect to their impact on external debt, the problems of poverty and unemployment have been the object of the world's attention. Attempts to resolve these problems at the international level have resulted in structural adjustment programs implemented by the developing countries under the supervision of the International Monetary Fund (IMF) and the World Bank. These adjustment programs often have aggravated the problems of poverty and unemployment.

With the right to development reaffirmed as a human right, the cultural and social dimensions of development are also being recognized as part of the objective of human development. Human resource development is defined by such traditional indicators as education, health, and housing, as well as nontraditional indicators, such as the state of the environment, the situation of women, and democracy and human rights. These elements are in an interdependent relationship, where the deterioration of one leads to the deterioration of another. Human development indicators have been on the decline in recent years. Nonetheless, in the context of economic, political, and social pressures, fundamentalism or religious extremism is on the rise. This extremism, known as "terrorism" when it turns violent, can be found in all religions, including Islam, Christianity, Judaism, and Hinduism.

This state of transition represents the context in which Vienna and Cairo have taken, and Beijing will take place. These events represent links in a chain of world conferences, which began with the Earth Summit in 1992 and which will include the Social Development Summit in 1995 and Habitat II in 1996. This conglomeration of conferences underscores the importance of setting women's priorities on the world's agenda at this point in time. Vienna and Cairo represented unique opportunities for the women's movement. Parts I and II of this Article demonstrate how the women's movement has utilized these opportunities to the maximum possible extent.

### I. VIENNA SIGNALS PROGRESS ON WOMEN'S RIGHTS

The World Conference on Human Rights in Vienna provided women's groups and nongovernmental organizations (NGOs) with an excellent platform for advocating the integration of women's rights as human rights into the Vienna Declaration and Programme of Action. In addition, the Conference provided an opportunity to strengthen U.N. mechanisms for enforcing women's human rights, particularly with respect to implementation procedures under the

Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention), as well as mechanisms to eliminate violence against women, both in the private and public spheres. Subsequent to the Conference, mechanisms to eliminate violence against women were secured through the adoption of the Draft Declaration on Violence Against Women and the appointment of a special rapporteur on violence against women, as called for in the Vienna Declaration and Programme of Action. Additionally, other important issues (such as reproductive rights, the indivisibility and universality of human rights, and the isolation of women) were also addressed at the Conference.

In addition to participants in government delegations to the Vienna Conference, 5000 people attended the NGO Forum, representing over 1500 women's and human rights groups and organizations from all over the world. The NGO Forum was a three-day conference prior to the official governmental conference, and produced and submitted a set of recommendations to the Vienna Conference. Those recommendations, in turn, were formally accepted as a U.N. Document.<sup>3</sup>

During the two weeks of the Vienna Conference, the NGOs held workshops and seminars on issues pertaining to human rights. The Women's Caucus met every day to discuss problems and update participants on developments from the World Conference and the NGO Forum. The Women's Caucus also organized advocacy and lobbying activities with governmental delegates to ensure that the voices and messages of women were heard. Eventually, many of the recommendations made by the Women's Caucus became part of the Vienna Declaration and Programme of Action,<sup>4</sup> including the recognition that:

- a.) The human rights of women and the girl child are an inalienable, integral and indivisible part of human rights and that the eradication of all forms of discrimination on grounds of sex, are priority objectives of the international community.
- b.) Gender based violence in all its forms is incompatible with the dignity and worth of human persons and must be eliminated.
- c.) The human rights of women should form an integral part of human rights activities, including the promotion of all human rights instruments relating to women.<sup>5</sup>

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3. See U.N. Doc. A/Conf.157/7 (June 14, 1993).

4. See Paper of the Working Group on Women's Rights of the NGO Forum at the World Conference on Human Rights: Vienna (June 10-12, 1993); see also Vienna Declaration and Programme of Action, *infra doc. biblio*.

5. Vienna Declaration and Programme of Action, *infra doc. biblio*, pt. I, § 18.

Specifically, section 38 of Part II of the Vienna Declaration and Programme of Action calls on the General Assembly to adopt the Draft Declaration on Violence Against Women, and emphasizes violations of human rights against women in situations of armed conflict.<sup>6</sup> Section 40 calls for the appointment of a special rapporteur on violence against women.<sup>7</sup> These goals were fulfilled in 1993 when the Assembly adopted the Declaration on Violence Against Women, and a special rapporteur on violence against women was appointed.<sup>8</sup>

Furthermore, the Conference encouraged the goal of universal ratification of the Convention on the Elimination of All Forms of Discrimination Against Women by all States by the year 2000.<sup>9</sup> It also requested that the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) review the reservations made by States Parties, and encouraged those States to withdraw reservations contrary to the object and purpose of the Convention.<sup>10</sup>

This Conference also recognized the importance of women's enjoyment of the highest standard of physical and mental health throughout their lifespan and reaffirmed the principle of equality between men and women.<sup>11</sup> Furthermore, it underscored women's right to accessible and adequate health care and the widest range of family planning, as well as equal access to education at all levels.<sup>12</sup>

## II. CAIRO: WOMEN'S PROGRESS CONFIRMED

Whereas the Vienna Conference on Human Rights focused on the interrelationship among democracy, development, and human rights, the International Conference on Population and Development (ICPD) in Cairo focused on the need to reconceptualize population issues based on the integration and interdependence of three variables: population, development, and the environment. The ICPD emphasized the need both to reformulate those population policies most concerned with the demographic dimension of population

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6. Vienna Declaration and Programme of Action, *infra doc. biblio.*, pt. II, § 38.

7. Vienna Declaration and Programme of Action, *infra doc. biblio.*, pt. II, § 40.

8. See U.N. Doc. ICN.6/WG.2/1992/L.3, approved by U.N. General Assembly (1993); see also INTERNATIONAL WOMEN'S HUMAN RIGHTS LAW CLINIC OF CITY UNIVERSITY OF N.Y. ET AL., SEXUAL AND REPRODUCTIVE RIGHTS AND HEALTH AS HUMAN RIGHTS: CONCEPTS AND STRATEGIES FOR THE NGO FORUM OF THE ICPD, CAIRO (1994).

9. Vienna Declaration and Programme of Action, *infra doc. biblio.*, pt. III, § 39.

10. Vienna Declaration and Programme of Action, *infra doc. biblio.*, pt. III, § 39.

11. Vienna Declaration and Programme of Action, *infra doc. biblio.*, pt. III, § 41.

12. Vienna Declaration and Programme of Action, *infra doc. biblio.*, pt. III, § 41.

changes and to adopt suitable macroeconomic and socioeconomic policies that would promote sustained economic growth in the context of sustainable development in all countries.

The ICPD Programme of Action is more action-oriented than Declarations and Programmes of Action adopted by previous international conferences. The Programme of Action adopted a uniform manner of drafting, starting in each section with the basis of action, followed by a determination of the objectives and a statement of the actions proposed. The Programme of Action is more detailed than the Vienna Declaration and Programme of Action, and attempts to identify quantitative and qualitative goals that are measurable and attainable.

Women's groups and organizations participated actively in the preparatory stages for the ICPD through various channels, including the NGO Forum, the Women's Caucus, and through membership in governmental delegations to the ICPD. The vast majority of the ideas advocated in preparatory meetings or committees by women's groups and NGO's during the 1991-1993 period were included in the final draft Programme of Action. This draft came to Cairo with less than ten percent of the wording in brackets.

The NGO Forum met from September 5-13, 1994. During this period, there were an average of ninety events per day, including seminars, lectures, debates, documentary films, and cultural shows. A total of some 800 NGO events reflected the opinions and aspirations of the NGOs on the main issues debated by the ICPD. The voices of the NGOs were heard through the media and directly by government delegates.

The Women's Caucus was the most organized caucus in the NGO Forum and managed to attract the attention of not only women's groups but of all NGO participants. The Caucus held meetings every day to discuss developments at the ICPD and the NGO Forum and update participants, as well as to organize lobbying and advocacy activities in order to influence the negotiation of the Draft Programme of Action taking place at the ICPD. It also encouraged regional women's caucuses, and attempted to consolidate their efforts.

Women's organizations organized their lobbying activities through the NGO members of the governmental delegations. Lobbying meetings were held every day both to update members of the lobbying teams on the various negotiations and to organize strategies for lobbying for the following day. In addition, NGOs were allowed direct interventions during the ICPD to express their opinion on the various issues.

*Significant Provisions of the ICPD Programme of Action*

Several aspects of the Programme of Action, adopted by consensus by the ICPD in September 1994, are noteworthy. In response to the advocacy of women's groups,<sup>13</sup> gender equality, equity and empowerment of women, the elimination of all kinds of violence against women, and women's reproductive rights are recognized throughout the document as cornerstones of population and development-related programs. The human rights of women and girls are reaffirmed as integral parts of human rights.<sup>14</sup> Similarly, the right to development is recognized as a fundamental human right.

*A. Gender Equality, Equity, and Empowerment of Women*

Chapter IV of the Programme of Action (Gender Equality, Equity and Empowerment of Women) emphasizes that the empowerment of women and the improvement of their political, social, economic, and health status is not only an important end in itself, but also an essential condition for the achievement of sustainable development.<sup>15</sup>

The Programme identifies detailed steps necessary to eliminate inequality between men and women, including: establishing mechanisms for women's equal participation and equitable representation at all levels of the political process and public life; eliminating all discriminatory practices against women (including those related to reproductive and sexual health, violence against women, and discriminatory practices by employers); promoting the fulfillment of women's potentials through education; development of skills and employment; and the elimination of poverty, illiteracy, and ill-health among women.

This section also recognizes that the full participation and partnership of both women and men is a requirement of productive and reproductive life, including shared responsibilities for the care and nurturing of children and maintenance of the household. Butressing these conclusions, Chapter VII recognizes that reproduc-

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13. See, e.g., WOMEN'S ENVIRONMENTAL DEVELOPMENT ORGANIZATION, WOMEN'S CAUCUS PRIORITY AMENDMENTS CIRCULATED DURING THE ICPD CAIRO, SEPTEMBER 5-15, 1994, AND THE RIO STATEMENT, INTERNATIONAL CONFERENCE ON REPRODUCTIVE HEALTH AND JUSTICE (International Women's Health Coalition (IWHC) & Citizenship, Studies, Information, Action (CEPIA) 1994).

14. ICPD Programme of Action, *infra doc. biblio.*, chs. IV, VII, VIII (quoting Vienna Declaration and Programme of Action, *infra doc. biblio.*, § 18).

15. ICPD Programme of Action, *infra doc. biblio.*, ch. IV, § 4.1.

tive health care programs should be designed to serve the needs of women and must involve women in the leadership, planning, decisionmaking, management, implementation, and evaluation of services.<sup>16</sup> Programs to educate men and enable them to share more equally in family-planning, domestic, and child-rearing responsibilities, as well as accept the major responsibility for sexually transmitted diseases were also encouraged.<sup>17</sup> Chapter IV recognizes the importance of implementing programs and policies to enable employees, particularly women, to organize their family and work responsibilities (such as day-care facilities and flexible work hours). Similar rights are required for those working in the informal sector, including agriculture, which is where the majority of women in developing countries are working without any legal support or necessary services. Chapter IV also emphasizes the importance of signing, ratifying, and implementing the existing agreements that promote women's rights, particularly the Women's Convention, the Declaration on the Elimination of Violence Against Women, the Vienna Declaration, and the ICPD Programme of Action.<sup>18</sup>

### *B. Programs for Adolescents and the Girl Child*

The importance of eliminating all forms of discrimination against girls was emphasized. Such discrimination includes son preference, female infanticide, prenatal sex selection, and the woeful state of the welfare of the girl child with respect to health, nutrition, and education.<sup>19</sup> The goal of universal primary education in all countries before the year 2015 was confirmed. In addition, access to all levels of higher education, vocational education, and technical training for girls and women was endorsed.

In line with the Convention on the Rights of the Child, and in order to promote adequate development of responsible sexuality, sex education and services for young people (with the guidance and support of their parents) were endorsed in the Programme of Action. Meeting the educational and service needs of adolescents were confirmed as important prerequisites to enable adolescents to deal in

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16. ICPD Programme of Action, *infra doc. biblio.*, ch. VII, § 7.7.

17. ICPD Programme of Action, *infra doc. biblio.*, ch. VII, § 7.8.

18. ICPD Programme of Action, *infra doc. biblio.*, ch. IV, § 4.5.

19. The minimum age of marriage, female genital mutilation, child trafficking, and child pornography were also areas of concern. The Programme of Action urges governments to prohibit such practices and support the efforts of NGOs in their campaigns to eliminate such activities.



a positive and responsible way with their sexuality. Inadequate levels of knowledge about human sexuality and poor quality reproductive health informational services, prevalence of sexual behavior, discriminatory social practices, negative attitudes towards women and girls, and the limited power many women and girls have over their sexual and reproductive lives were identified as underlying causes for underutilization of reproductive health services.

### C. *Reproductive Rights, Reproductive Health, and Family Planning*

Chapter VII (on Reproductive Rights and Reproductive Health) and Chapter VIII represent the two most controversial chapters on which the negotiators spent the majority of their time and energy.<sup>20</sup> The most contentious issue was abortion. Admittedly, however, the difficult fight over the drafting of Chapters VII and VIII, which continued for a major part of the ICPD, significantly helped facilitate the negotiations over Chapter IV on Gender Equality, Equity, and Empowerment of Women.

Negotiations over these chapters were the most sensitive and the most difficult because of the role played by conservative religious institutions in attacking the draft Programme of Action as contrary to religious and ethical values.<sup>21</sup> Controversy focused on the draft's impact, both explicit and implicit, relating to the right of abortion, including the definition of reproductive rights. Additionally, both the Vatican and certain Islamic groups opposed proposed language in the draft that recognized various forms of the family, including single-parent households. They criticized language that recognized the right of adolescents to family planning services and sex education. Nonetheless, the language in the final Programme of Action is quite strong.

Reproductive health is defined in section 7.2 as a state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and its functions and processes.<sup>22</sup> This definition is consistent with the World Health Organization (WHO) definition. By implication, reproductive health is affirmed to include: the right to have a safe and satisfactory sex life; the capability to reproduce and decide freely on the number and spacing of one's children; and the right to have access to both information and safe, effective, affordable, and

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20. ICPD Programme of Action, *infra doc. biblio.*, chs. VII, VIII, §§ 7.2, 8.25.

21. *See, e.g.*, Presentation By the Delegation of the Holy See, 3d Preparatory Committee Meeting, United Nations (Apr. 1994).

22. ICPD Programme of Action, *infra doc. biblio.*, ch. VII, § 7.2.

acceptable methods of family planning consistent with the principle of informed choice.

Reproductive rights are defined in the sections to embrace certain human rights that are already recognized in national laws, international human rights documents, and other relevant U.N. consensus documents.<sup>23</sup> Thus (as indicated in Chapter I, section 1.15), the ICPD does not create any new rights, but rather affirms the application of universally recognized human rights standards to all aspects of population programs. These rights include the right of all couples and individuals to decide freely and responsibly about the number, spacing, and timing of their children, the right to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. Reproductive rights also include the right to make decisions concerning reproduction free of discrimination, coercion, and violence. The importance of promoting the responsible exercise of reproductive rights for all people is underlined as the fundamental basis for governmental and community-supported policies and programs in reproductive health, including family planning.

Universal access to quality family planning services by the year 2015 is set as an objective to be attained by all countries.<sup>24</sup> All family planning programs are required under section 7.23 to improve their quality of care, and detailed measures are identified in order to achieve this objective.<sup>25</sup> These measures include: making services affordable, convenient, and accessible; ensuring a sufficient and continuous supply of essential high quality contraceptives; and providing accessible, complete, and accurate information about various family planning methods, including health risks and benefits and the method's effectiveness in preventing AIDS and other sexually transmitted diseases. Violence against women, including domestic violence and rape, is specifically recognized in section 7.35 as one cause of the rising numbers of women at risk from AIDS and other sexually transmitted diseases.<sup>26</sup>

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23. ICPD Programme of Action, *infra doc. biblio.*, ch. VII, § 7.3.

24. ICPD Programme of Action, *infra doc. biblio.*, ch. VII, § 7.16. Section 7.6 of the Programme of Action underscores the importance of making all reproductive health services available to all individuals of appropriate age through the primary health care system before the year 2015. These reproductive health services include family planning, counseling, information, education and communication services, prenatal care, safe delivery, postnatal care, prevention and treatment of infertility, abortion services, and the treatment of reproductive tract infections, sexually-transmitted diseases, and other reproductive health conditions. *Id.*

25. ICPD Programme of Action, *infra doc. biblio.*, ch. VII, § 7.23.

26. ICPD Programme of Action, *infra doc. biblio.*, ch. VII, § 7.35.

The need to protect women and children from sexual abuse, exploitation, trafficking, and violence, both through open discussion and educational programs at the national and community levels,<sup>27</sup> and through the strengthening and enforcement of local laws, was underscored.

Appropriate direction and guidance in sexual and reproductive matters is recognized to be one of the rights, duties, and responsibilities of parents and other persons legally responsible for adolescents. Countries are required, however, to ensure that programs and attitudes of health care providers do not restrict access of adolescents to appropriate services and information. This, like programs of education and counseling, is recognized as necessary to address sexual abuse of adolescents.<sup>28</sup>

During the final preparatory stages of the ICPD, the Programme of Action was severely criticized as being unethical and contrary to religious values. The Programme of Action was attacked as promoting abortion as an unconditional and legitimate right that would be binding on all the countries that adopted the Programme of Action. Conservative religious groups and religious extremists exploited this issue to advocate cancelling the ICPD or, at least, refusing to attend the ICPD.

Ironically, the campaign mounted by the Vatican against the Programme of Action coincided with that of Al Azhar University of Egypt. Al Azhar issued statements criticizing the Draft Programme of Action as "allowing abortion in cases other than those permitted by Sharia (Islamic law) and protecting homosexual or heterosexual relations outside the frame of legal marriage."<sup>29</sup> On the other hand, the Grand Mufti of Egypt issued an opinion supporting the draft Programme of Action in principle, while criticizing the length and drafting of the document as misleading and possibly understood to encourage extra-marital relations and same sex marriages, which are condemned by Islam. He also criticized ambiguities in the Arabic version as largely due to bad translation.<sup>30</sup>

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27. ICPD Programme of Action, *infra doc. biblio.*, ch. VII, § 7.39.

28. ICPD Programme of Action, *infra doc. biblio.*, ch. VII, § 7.45.

29. See International Islamic Center for Population Studies & Research, Al Azhar University, Special Issue on Al Azhar Views on the Draft ICPD Programme of Action (Aug. 1994). Al Azhar is the oldest and most prestigious Islamic university in the world.

30. The Grand Mufti is the official authority having the right to issue opinions or *fatwa* related to Islamic issues in Egypt. See Dr. Mahamed S. Tantawy, *The Grand Mufti, Reading of the Draft ICPD Programme of Action*, AL AHRAM DAILY, Aug. 24, 1994, at 9.

In fact, Islamic scholars and religious groups have differed on the legality of abortion during the first four months of pregnancy.<sup>31</sup> Islam adopts ensoulment, according to Islamic theory, after 120 days of pregnancy. In his opinion about abortion,<sup>32</sup> Al Azhar clarified that abortion is permitted to protect the health of the mother. The Grand Mufti of Egypt also stated that his opinion on abortion may differ from case-to-case, but that the right to induced abortion in cases of rape and incest should be supported.

Given the difference of opinion on abortion and the sensitivity of the subject, the negotiations on section 8.25 took more than five days of hard work. The final Programme of Action included, as one of its major principles, the sovereign right of each country to implement the recommendations contained in the Programme of Action within the framework of its national laws.

The following wording regarding abortion ultimately was adopted:

In no case should abortion be promoted as a method of family planning. All Governments and relevant intergovernmental and non-governmental organizations are urged to strengthen their commitment to women's health, to deal with the health impact of unsafe abortion as a major public health concern and to reduce the recourse to abortion through expanded and improved family planning services. Prevention of unwanted pregnancies must always be given the highest priority and all attempts should be made to eliminate the need for abortion. Women who have unwanted pregnancies should have ready access to reliable information and compassionate counseling. Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process. In circumstances in which abortion is not against the law, such abortion should be safe. In all cases, women should have access to quality services for the management of complications arising from abortion. Post-abortion counseling, education and family planning

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31. The following is a summary of various religious groups' opinions with regard to the legality of abortion: One group confirms that infanticide cannot happen prior to ensoulment, i.e., prior to 120 days of pregnancy. Another group, including Zaidiya, some Hanafis, and some Shafies, support abortion during the first 120 days of pregnancy for a cause not necessarily strictly related to the mother's physical health. Part of this group does not consider abortion prohibited, but strongly discouraged abortion without specific indications. A third group, such as some Malkies, does not prohibit abortion, but strongly discourages it. Total prohibition, however, is the position held by the majority of the Malkies. See A.M. Shaaban, *A Resume of Islam's Position on Family Planning and Abortion*, presented in the NGO Forum in Cairo (Sept. 1994).

32. See Mahamed S. Tantawy, *Article on Abortion*, AL AHRAH DAILY, Aug. 10, 1993, at 9.

services should be offered promptly which will also help to avoid repeat abortions.<sup>33</sup>

#### D. *The Role of the Nongovernmental Sector*

The Programme of Action recognized the contribution of NGOs in increasing public knowledge and education and contributing to successful implementation of the Programme of Action. In order to enhance NGO contribution at all levels, the Programme confirmed that NGOs should have a key role in the national and international development process and that governments and intergovernmental organizations should engage in a dialogue with NGOs and local community groups with full respect for their autonomy, while at the same time integrating them in the decisionmaking process. Governments were also encouraged to include NGOs in country delegations to regional and international conferences and fora. The participation of women's organizations in the design and implementation of population and development programs was recognized as essential and critical to meeting objectives and implementing the Programme of Action.

NGOs themselves were called upon to strengthen interaction with their constituencies and grassroots organizations, ensure visibility of their activities, mobilize public opinion, and participate in implementation of population and development programs. Chapter XVI also emphasized the role of NGOs in monitoring the implementation of the Programme of Action through progress reports.<sup>34</sup> These reports are to be provided by governments on a regular basis in order to evaluate progress towards achieving the objectives and goals of the Programme of Action.

### III. PROGRAM REALITY

A famous Egyptian commentator remarked that the Cairo Conference turned out to be a women's conference, and that most of the recommendations and priorities established in the Programme of

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33. ICPD Programme of Action, *infra doc. biblio.*, ch. VIII, § 8.25 (defining unsafe abortion as procedure for terminating unwanted pregnancy either by persons lacking necessary skills or in environment lacking minimal medical standards or both); *see also id.* § 7.24 ("Governments should take appropriate steps to help women avoid abortion, which in no case should be promoted as a method of family planning, and in all cases provide for the humane treatment and counseling of women who have had recourse to abortion.").

34. ICPD Programme of Action, *infra doc. biblio.*, ch. XVI, § 16.10.

Action related directly or indirectly to women and the enhancement of women's rights, women's health, and women's empowerment.

While there is no doubt that significant progress was achieved for women at Vienna and Cairo, it is essential that women's basic human rights are reaffirmed, detailed, and recognized in the Social Summit in Copenhagen and the Women's Conference in Beijing to be held in September 1995. This is but the first step, however, on a long and difficult road. Effective implementation of international human rights treaties, conventions, and documents requires the promulgation of laws to effectuate the substance of these documents, as well as procedures for monitoring and enforcement.<sup>35</sup> Women face three alternative scenarios in their efforts to implement into national law and practice the gains achieved at Vienna, Cairo, and Beijing.

#### A. *Absence of Law*

In many cases, there is no law to govern a specific situation. In Egypt, for example, there was no law prohibiting or permitting female circumcision or female genital mutilation (FGM). There was only an administrative decision of the Minister of Health prohibiting female circumcision in the Ministry's health units. Following a CNN report about a typical procedure by nonmedical persons regarding female circumcision in the Ministry's health units, last September, in the midst of the Cairo Conference, the Ministry of Health changed its policy so as to reduce health hazards of surgery when performed outside of the clinics by nonmedical personnel.

In cases where there is an absence of legislation, or where the law is silent, there is usually a difference of opinion. For example, some groups attempt to construe female genital mutilation as an intentional injury that would be a criminal offense under the penal law.<sup>36</sup> Conversely, following the principle of statutory construction that "all that is not prohibited is permitted," other groups construe the legal situation to permit female genital mutilation.

Passing a law on this specific issue would certainly be a great accomplishment for the women's movement in Egypt. It would not, however, guarantee the eradication of female genital mutilation, as this has become a deeply rooted Egyptian custom and habit. In the course of resisting change, conservative groups, including religious

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35. See generally REBECCA COOK, WOMEN'S HEALTH AND HUMAN RIGHTS (World Health Organization 1994).

36. See BOOKLET ON SCIENTIFIC FACTS RELATED TO FEMALE CIRCUMCISION 16 (Egyptian Society for the Prevention of Harmful Practices 1993) (legal aspects contributed by Salah Owins, Supreme Court Judge).

extremist groups, attempt to find medical and religious justifications for the practice. Other groups with vested interests, such as the nonmedical practitioners of this harmful practice, also resist attempts to eradicate it.

Eliminating FGM therefore will require much more than passing a law. As with other harmful cultural practices, it will require changing patterns of behavior, traditions, and customs, through education, awareness-raising, and advocacy.

### B. *An Inadequate Law*

In certain situations, a law protecting women's rights in a particular area may exist, but may be inadequate vis-a-vis international human rights obligations. For example, inadequate laws may reflect reservations to international conventions. The Women's Convention is one of the most popular conventions in the area of reservations. This makes the process of changing inadequate laws more difficult, but not impossible.

An example of an inadequate law that in effect discriminates against women is the Egyptian Nationality Law, which does not give the children of an Egyptian mother who is married to a non-Egyptian the right to Egyptian nationality.<sup>37</sup> This law is subject to an Egyptian reservation to Article 9.2 of the Women's Convention.<sup>38</sup>

The Egyptian Government supports its reservation by explaining that the text of this law is intended to protect the children of the Egyptian mother married to a non-Egyptian. Research has proven, however, that depriving such children of the right to Egyptian nationality has caused them substantial damage, both materially and psychologically. Moreover, denying these children the right to dual nationality is inconsistent with the Egyptian Nationality Law itself, which admits the principle of dual nationality for Egyptians in general.

Women's groups in Egypt have been advocating changes for nearly twenty years. They are now contemplating filing a case before the Supreme Constitutional Court in an attempt to obtain a judgment ruling that the law is contrary to the Egyptian Constitution, which provides for equality between men and women.

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37. Nationality Law No. 26 (1975) (Egypt), reprinted in EGYPTIAN OFFICIAL GAZETTE NO. 22 (1975).

38. Women's Convention, *infra doc. biblio.*, art. 9.

### C. *An Adequate Law*

In many cases, the laws are adequate and correspond strictly to the relevant international human rights documents. Implementation, however, is deficient. The following example demonstrates several of the reasons for inadequate enforcement.

#### 1. *Lack of enforcement mechanisms*

According to Article 18 of the 1971 Egyptian Constitution, education is a right ensured by the State and is compulsory at the primary level.<sup>39</sup> The Constitution does not make any distinction between Egyptian boys and girls with respect to this right; in fact, it provides for *de jure* equality in every respect. When one looks at the figures, however, there is a significant difference between the percentage of educated men and educated women. A number of illustrations demonstrate this disparity.

According to the figures published by the Central Agency for General Mobilization and Statistics (CAMPAS), in 1986, 49.4% of Egyptians were illiterate. The percentage of illiteracy among women, however, was 62.5%, as compared to 37.4% among men. This data also shows that the percentage of female students enrolled in primary education in urban areas is 95%, while it falls to 78% in the villages of the Delta, and down to 65% in the villages of Upper Egypt. In remote areas, it falls further to 57%.<sup>40</sup>

This demonstrates that the principle of equality, confirmed by the Egyptian Constitution and law, is not implemented, and that there is *de facto* discrimination against women and girls in education. That reality is largely due to traditions that do not encourage the education of girls, who are considered better suited for household chores or working in the fields.<sup>41</sup>

#### 2. *No exercise of rights*

An example of an adequate law that is not implemented because of the failure of beneficiaries to exercise their rights is the law on political rights. According to the 1971 Egyptian Constitution, the

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39. EGYPTIAN CONST. art. 18 (1971).

40. See N. Remzi, Research Paper for the NGO Forum on Socio-economic Inequality (June 1994).

41. Early marriage of Egyptian girls, particularly in rural areas, is another reason for the low percentage of enrollment of girls in primary schools. Compulsory primary education for all Egyptian children at the age of six is also not enforced by the Government.



Egyptian woman and the Egyptian man have equal rights without distinction. Moreover, the law requires that all citizens entitled to exercise political rights, whether male or female, enroll themselves in the electoral register. According to census figures for 1986, however, while the electorate was 22 million, only 10 million males and 3.8 million females were actually enrolled.

In 1986, there were thirty-seven female members of Parliament, representing 6.4% of the members of Parliament, of whom thirty were elected for the women's seats, four elected outright, and three appointed. By 1990, after the Supreme Constitutional Court issued a judgment cancelling the women's allocated seats as contrary to the principle of equality, the representation of women in Parliament decreased to seven elected and three appointed female members.<sup>42</sup>

The figures demonstrate that women's participation in political life, whether as voters or candidates, is not commensurate with their numerical weight in society, where they constitute slightly less than fifty percent of the population. This is sometimes attributed to the general political climate, which does not encourage political participation for men or women, as well as the weakness of the existing political parties and other institutions in civil society. It may also be attributed to several changes in the laws governing elections, which were implemented during the period from 1983 to 1990 as a result of claims that proportionate elections were unconstitutional. In effect, women's principal responsibility is to the family, and women are only permitted to occupy leadership positions to the extent these responsibilities are met.

Further, women are not cognizant of their political rights or the manner in which those rights can be exercised. A dearth of organizations, governmental agencies, or NGOs that may help to increase women's consciousness of their legal rights has meant that the presence of women in political life has not improved substantially. Such groups could assist them in enforcing their rights or by promoting the nomination of female candidates for public positions, including seats in Parliament. In this respect, it should be noted that existing political parties have not been active in promoting the participation of women in the political activities they sponsor.

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42. MONA ZULFICAR, *THE EGYPTIAN WOMAN IN A CHANGING WORLD* (The New Civic Forum ed., 1993).

### 3. *Gender bias and traditions*

An example of an adequate law that is not properly implemented because of gender bias and traditions is the Egyptian Labor Law.<sup>43</sup> Egyptian laws affirm the principle of equality with respect to the right to work without discrimination between men and women. In addition, Articles 10 and 11 of the Constitution impose on the State obligations both to protect mothers and children and to reconcile women's duties towards their families with their work in society.<sup>44</sup> The Labor Law specifically provides for equal treatment between men and women, while giving women the protection required under international conventions with respect to dangerous jobs, night work, and maternity leave.

Although Egyptian women by law enjoy equal employment opportunities, in practice, the implementation of these laws shows that, to a great extent, equality has not been achieved. Figures show that women in Egypt are still a minority of the workforce and that there is room for improvement of the working opportunities available to them. In addition, all women in the informal sector do not enjoy any legal protection or social security as they are unpaid workers who have absolutely no rights under the law. It should also be noted that some fields of work, such as the judiciary, are still closed to women, while their presence in others, such as defense or police work, is only symbolic. Further, in certain areas, the percentage of female workers is diminishing, despite the fact that these areas suffer from a shortage of workers and a drop in the quality of services. These areas include health care services, security, communications, and justice.<sup>45</sup>

There are also other significant underlying causes that explain the retreat from the principle of equality in the work force. For example, the lack of ancillary services, such as day care centers, restricts the ability of working women to manage their dual responsibilities at work and home. In addition, prevailing economic conditions do not allow working women to buy time-saving modern equipment that can help reduce the drudgery of household tasks and allow them to channel their efforts to more productive activities.

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43. Labor Law No. 137 (1981) (Egypt), *reprinted in* EGYPTIAN OFFICIAL GAZETTE NO. 33 (1981).

44. EGYPTIAN CONST. arts. 10, 11 (1971).

45. See Mona Zulficar, *Women and Population*, Paper presented at the American University of Cairo Symposium, the NGO Forum of the ICPD, Cairo on Sept. 5, 1994 (American University of Cairo ed., 1994).

The greatest threat undermining the principle of equality between men and women, however, has been the call by certain religious extremists for women to return to their homes and give up both their right to work and their responsibilities in social development and production. Those groups demand the isolation of women and the concomitant restriction of their role to child-bearing and child-rearing. This call conveniently overlooks the fact that twenty-two percent of Egyptian families are supported by women and that women play essential and indispensable roles in the development of society.

Campaigns to disseminate the idea that women's work is essential for the development process at both the micro and the macro levels are required to enhance the implementation of the law. Training programs to help upgrade the capabilities of women are also necessary. In addition, programs should be developed to defend women who are unfairly denied job opportunities or promotions.

#### CONCLUSION

The above examples illustrate that there is a long road from the ideal set forth in international human rights documents to programmatic reality. The latter will require fundamental changes in ideas and patterns of behavior, as well as the establishment of mechanisms to monitor and enforce the relevant laws. Vienna and Cairo stand as milestones on the road to women's empowerment and enjoyment of their full human rights. The goals for Beijing are to confirm the successes at Vienna and Cairo and to develop and refine implementation, monitoring, and follow-up mechanisms in order to facilitate the long and tedious process of ensuring implementation.

NGOs have a critical role to play in this process. The ICPD Programme of Action confirmed that the partnership between governments and NGOs is essential for the formulation, implementation, monitoring, and evaluation of population and development objectives and activities.<sup>46</sup> NGOs are important voices of the people. Their associations and networks provide an effective means of focusing local and national initiatives and addressing pressing population, environmental, migration, economic, and social-development concerns.

Empowerment of NGOs is also necessary to enhance people's participation in the process of development. The empowerment of NGOs means the empowerment of women. In many countries, particularly developing countries, most NGOs are managed by women,

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46. ICPD Programme of Action, *infra doc. biblio.*, ch. XV, § 15.1.

and women are more positively involved in NGO work. In fact, working in the NGO sector is more like a training institution for the development of women's skills and self-confidence, empowering women to participate effectively in political life. Hence, the wording of the Programme of Action, which recognizes NGOs as partners with governments enjoying autonomy and deserving respect and support, constitutes a successful step forward for the women's movement.