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CEDAW and Treaty Compliance: Promoting Access to Modern Contraception

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CEDAW and Treaty Compliance: Promoting Access to Modern Contraception

ABSTRACT

Modern contraception is widely recognized as a crucial component of family planning services and is recognized as a reproductive right under international human rights law. However, unmet need for contraception remains high, as many women in the developing world lack access to family planning services. This Note examines the role of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its powers as a treaty monitoring body in increasing access to modern contraception. Drawing on empirical research, the example of CEDAW's influence on abortion rights, and the domestic politics theory of treaty compliance, this Note argues that, under certain conditions, CEDAW can effectively pressure member states to reduce unmet need for contraception by mobilizing domestic actors to influence national policies, laws, and investments aimed at increasing access to contraception. This Note presents specific CEDAW enforcement mechanisms that are particularly effective and argues that CEDAW should focus its attention on two countries in particular—Sierra Leone and Haiti.

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I. INTRODUCTION

A mother of nine children, Zainabu was fully aware of the dangers of pregnancy and childbirth.¹ Sierra Leone, Zainabu's home country, has the highest maternal mortality rate in the world.² When a non-profit provider of sexual and reproductive health care services visited her village, Zainabu decided to learn about the availability of family planning options.³ After discussing condoms, the pill, and long-acting or permanent methods, she decided to undergo a tubal ligation, which is a twenty-five minute operation performed under local anesthetic.⁴ "By stopping having children, we'll be able to give all our attention to the ones we have," Zainabu stated in explanation of her decision to seek contraception.⁵

As Zainabu's story demonstrates, access to modern contraceptive methods enables a woman to control the number and timing of her children. With this control comes health and economic benefits for the woman, her family, and her country.⁶ Modern contraception is relatively inexpensive, and its power to benefit and transform the lives

1. *How Have Contraceptives Changed Your Life?*, BILL AND MELINDA GATES FOUND., <http://www.gatesfoundation.org/What-We-Do/Global-Development/How-have-contraceptives-changed-your-life> (last visited Sept. 12, 2017) [<https://perma.cc/7PYW-GXHT>] (archived Jan. 19, 2018).

2. *How Have Contraceptives Changed Your Life?*, *supra* note 1; *Country Comparison: Maternal Mortality Rate*, CENT. INTELLIGENCE AGENCY WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2223rank.html> (last visited Jan. 20, 2017) [<https://perma.cc/C6DZ-XMQR>] (archived Jan. 19, 2018).

3. *How Have Contraceptives Changed Your Life?*, *supra* note 1.

4. *Id.*

5. *Id.*

6. See Bob Carr et al., *Giving Women the Power to Plan Their Families*, 380 *THE LANCET* 80, 80 (2012) (discussing that the benefits of contraception include safer pregnancies, higher access to education for women and girls, and greater financial security for women and their families); see also *infra* text at notes 10–32.

of the poorest and most vulnerable women is tremendous. The ability to delay or prevent pregnancies is truly lifesaving—approximately 800 women die each day from causes related to pregnancy or childbirth.⁷ Access to contraception is especially important in areas of conflict, such as the refugee crisis of the war in Syria, and in regions plagued by infectious diseases, such as Zika.⁸

While women's rights advocates, health professionals, and economists recognize the importance of access to contraception, unmet need for modern contraceptives remains high in certain parts of the world, especially in developing regions.⁹ This Note argues that international treaty monitoring bodies have not fully exercised their monitoring powers to ensure and encourage member states' compliance with treaty obligations regarding access to contraception. In particular, this Note contends that one treaty monitoring body, the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), can and should do more to pressure its member states to increase access to contraception and reduce unmet need, in part by providing local advocacy groups with the information needed to create change in the member states' domestic policies.

In Part II, this Note explains the importance of access to modern contraceptive methods as a fundamental reproductive right and discusses the continuing unmet need for and regional disparities in the access to contraception. Part III then examines the role of CEDAW and its powers as a treaty monitoring body, analyzing the particular situations and circumstances in which CEDAW is most effective at ensuring member states' compliance with treaty obligations. The research suggests, and this Note argues, that CEDAW's efforts will be most effective within a country with engaged domestic actors, the presence of women's health-focused non-governmental organizations (NGOs), a degree of political liberalization, and high unmet need for contraceptives and family planning services. As an example of

7. Briget Katz, *Why 222 Million Women Can't Get the Birth Control They Need*, N.Y. TIMES (Sept. 26, 2015), <http://nytlive.nytimes.com/womenintheworld/2015/09/26/why-222-million-women-cant-get-the-birth-control-they-need/> [<https://perma.cc/QQR7-DL4P>] (archived Jan. 19, 2018).

8. See Sandra Kruse et al., *Reproductive Health Services for Syrian Refugees in Zaatri Camp and Irbid City, Hashemite Kingdom of Jordan: An Evaluation of the Minimum Initial Services Package*, 9 CONFLICT & HEALTH (SUPP. 1) S4 (2015), <https://conflictandhealth.biomedcentral.com/articles/10.1186/1752-1505-9-S1-S4> [<https://perma.cc/C2UU-ETGS>] (archived Jan. 19, 2018); Jonathon M. Katz, *The dilemma of Zika: Pregnancy warnings rise in a region lacking contraception*, STAT (Feb. 1, 2016), <https://www.statnews.com/2016/02/01/zika-pregnancy-warnings-latin-america/> [<https://perma.cc/3MZE-BS6M>] (archived Jan. 19, 2018).

9. See SEDGH ET AL., GUTTMACHER INSTITUTE, UNMET NEED FOR CONTRACEPTION IN DEVELOPING COUNTRIES: EXAMINING WOMEN'S REASONS FOR NOT USING A METHOD (June 2016), <https://www.guttmacher.org/report/unmet-need-for-contraception-in-developing-countries> [<https://perma.cc/4LTX-TFEU>] (archived Jan. 19, 2018) ("As of 2014, an estimated 225 million women in developing regions had an unmet need for modern contraception.").

CEDAW's ability to shape the policies of its member states, this Note discusses CEDAW's efforts regarding abortion rights and access to abortion services. In Part IV, this Note argues that CEDAW should use similar efforts to put pressure on countries with low access and high unmet need for modern contraceptives to make national policies, laws, and investments aimed at increasing access to contraception. Additionally, CEDAW should require member states to include data on access to contraception in their annual reports, so that CEDAW, national advocacy groups, and NGOs can better understand where progress has been made and where access to contraception remains low. Drawing on the analysis in Part III, this Note additionally presents two country-specific situations, Sierra Leone and Haiti, where CEDAW might use certain treaty monitoring actions to effectively encourage an increase in access to family planning services and modern contraception.

II. MODERN CONTRACEPTION AS A REPRODUCTIVE RIGHT

A. Health and Economic Benefits of Modern Contraceptives

Access to contraception has been linked to many health, societal, and economic benefits for women and for the societies in which they live. These benefits include safer pregnancies,¹⁰ higher access to education for women and girls,¹¹ and greater financial security for women and their families.¹² Access to contraception has been proven to reduce maternal mortality rates, for example, by lowering excessive hazards associated with pregnancies that are "too early, too late, too many, or too frequent" and by reducing the number of deaths caused by complications from abortions.¹³ Access to contraception or family planning methods is explicitly linked to lower rates of abortion, and in particular, lower rates of unsafe abortions.¹⁴

These effects are particularly potent in poorer and less developed countries where resources are scarce and women are likely to be living in poverty. Girls, often forced into marriage when they are still teenagers, can stay in school longer when they are able to delay pregnancy.¹⁵ The children born to women who have access to family

10. Saifuddin Ahmed et al., *Maternal Deaths Averted by Contraceptive Use: An Analysis of 172 Countries*, 380 THE LANCET 111, 111 (2012) (providing empirical evidence that the use of contraception is a substantial and effective primary prevention strategy to reduce maternal mortality in developing countries).

11. Carr et al., *supra* note 6.

12. *Id.*

13. Ahmed et al., *supra* note 10.

14. *Id.*

15. Carr et al., *supra* note 6.

planning methods also benefit.¹⁶ When women are able to control the number and spacing of their pregnancies, they are able to devote more food, time, and resources to the children they already have. For example, research has shown that these children are more likely to go to school and to do better in school.¹⁷

Further, access to modern contraception is a relatively inexpensive and cost-effective method of improving the lives of the most vulnerable women in the poorest regions of the world.¹⁸ As discussed above, the benefits of modern contraception and the ability of a woman to control the spacing and number of her children are almost incalculable. The investment costs of providing these benefits are relatively low.¹⁹ Modern contraception includes methods such as birth control pills or condoms, which are inexpensive to provide and to teach women to properly use.²⁰ Intrauterine devices (IUDs) are also particularly cost-effective and practical, because they involve a one-time insertion that provides months of birth control.²¹ Additionally, organizations such as the Bill and Melinda Gates Foundation are currently working to create cheaper and more effective methods of contraception.²² Overall, providing family planning services is extremely cost-effective, even for less developed and poorer countries, because the benefits that come with access to contraceptives are significant.

Access to modern contraceptive methods can be particularly important in the context of global epidemics and sexually transmitted diseases.²³ The ongoing spread of the Zika virus is one such example. The Centers for Disease Control and Prevention has determined that *Zika* can be spread through sex,²⁴ and the disease is also linked to

16. *Id.*

17. *Id.* at 80.

18. See Babatunde Osotimehin, *Family planning save lives, yet investments falter*, 380 THE LANCET 82, 82 (2012) (noting that “[f]amily planning is a proven and cost-effective health intervention).

19. *Id.*

20. *Family planning/Contraception*, WHO (July 2017), <http://who.int/mediacentre/factsheets/fs351/en/> [<https://perma.cc/VWS6-V2Y4>] (archived Jan. 19, 2018) [hereinafter *WHO Family Planning*].

21. *Id.*

22. *Family Planning: A Strategic Overview*, THE BILL AND MELINDA GATES FOUND., <http://www.gatesfoundation.org/What-We-Do/Global-Development/Family-Planning> (last visited Jan. 9, 2018) [<https://perma.cc/8EX9-SYY4>] (archived Jan. 19, 2018).

23. For example, the use of latex condoms sometimes proves to be an effective barrier against STD pathogens. *Condom Fact Sheet In Brief*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Mar. 25, 2013), <http://www.cdc.gov/condomeffectiveness/brief.html> [<https://perma.cc/VYM8-XXG3>] (archived Jan. 19, 2018).

24. *Zika Virus: Sexual Transmission & Prevention*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Aug. 2, 2017), <https://www.cdc.gov/zika/prevention/sexual-transmission-prevention.html> [<https://perma.cc/U48J-2H82>] (archived Jan. 19, 2018). The *Ebola* virus is another example of a sexually transmitted disease. See *Interim advice on the sexual transmission of the Ebola virus disease*, WHO (Jan. 21, 2016),

severe birth defects in children born to women who have contracted the virus.²⁵ Health officials in countries where the disease is pervasive are warning women to wait until the epidemic is over to get pregnant.²⁶ However, in many of the Latin American countries hit hardest by the spread of Zika, millions of women lack the education and access to contraception needed to control pregnancies.²⁷ These women risk becoming pregnant while infected with Zika—a severe danger to both the mother and the child.²⁸

Access to contraception is also crucial in areas of violent conflict, where women are particularly vulnerable to sexual violence and are particularly unable to have safe pregnancies.²⁹ For example, over half of the three million Syrian refugees fleeing the war or who are internally displaced within Syria are women and girls.³⁰ These refugees are estimated to include 200,000 pregnant women, of whom almost 15 percent are at risk of poor pregnancy outcomes.³¹ Among refugees, sexual violence is pervasive, pregnancies are often unsafe, and access to contraception is low.³²

B. Family Planning in International Treaties

The importance of family planning is reflected in international law. In 1979, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women (the Convention).³³ The treaty, which has been ratified by 189 countries,³⁴ entered into force on September 3, 1981, and has been described as an international bill of rights for women.³⁵ The thirty-article treaty touches on all aspects of women's economic, social, and

<http://www.who.int/reproductivehealth/topics/rtis/ebola-virus-semen/en/> [<https://perma.cc/Q9TA-RTGZ>] (archived Jan. 19, 2018) (describing the spread of Ebola through semen).

25. Jonathon M. Katz, *The dilemma of Zika*, *supra* note 8.

26. *Id.*

27. *Id.*

28. *Zika Virus: Sexual Transmission & Prevention*, *supra* note 24.

29. Kruse et al., *supra* note 8.

30. *Id.*

31. *Id.*

32. *Id.*

33. Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW Convention].

34. For a list of all signatories to the treaty, see *Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en (last visited Jan. 9, 2018) [<https://perma.cc/W7CD-PT3X>] (archived Jan. 19, 2018) [hereinafter *CEDAW Signatories*]. Note that the United States has signed the Convention but has not ratified it. *Id.*

35. U.N. Dep't of Pub. Info., *Short History of CEDAW Convention*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/cedaw/history.htm> (last visited Jan. 9, 2018) [<https://perma.cc/YK7U-92WJ>] (archived Jan. 19, 2018).

political rights.³⁶ Several articles of the Convention specifically reference reproductive rights. Article 12 focuses on health. It states that parties to the treaty should take “all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care service, *including those related to family planning*.”³⁷ Article 10 focuses on eliminating discrimination between men and women in the field of education, and specifically includes “[a]ccess to specific educational information to help to ensure the health and well-being of families, including information and advice on *family planning*.”³⁸ Article 16 is dedicated to marriage and family life, and obligates states to ensure that women and men are afforded the “same rights to decide freely and responsibly *on the number and spacing of their children* and to have access to the information, education and means to enable them to exercise these rights.”³⁹

Other international treaties also recognize the right of people to plan and control the spacing and number of children in a family. For example, the African Charter on Human and People’s Rights⁴⁰ and Convention on the Rights of Persons with Disabilities⁴¹ include specific language regarding the right to family planning education and methods.

36. *Id.*

37. CEDAW Convention, *supra* note 33, art. 12 (emphasis added).

38. *Id.* art. 10(h) (emphasis added).

39. *Id.* art. 16 (emphasis added).

40. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa art. 14, July 11, 2003, Afr. Com’n on Human and People’s Rights. The Protocol states,

States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes: a) the right to control their fertility; b) the right to decide whether to have children, the number of children and the spacing of children; c) the right to choose any method of contraception; d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS; e) the right to be informed on one’s health status and on the health status of one’s partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices; g) the right to have family planning education.

Id.

41. Convention on the Rights of Persons with Disabilities art. 23, Dec. 13, 2006, GA Res. 61/106. The Convention states,

States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that... (b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided.

Id.

Modern contraception is widely recognized as a vital part of the right to family planning services.⁴² As will be discussed in more detail below, the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is tasked with monitoring implementation of and compliance with the Convention,⁴³ recognizes access to modern contraceptive methods as part of the treaty's "family planning" obligations.⁴⁴ The World Health Organization (WHO) considers modern contraceptive methods to include combined oral contraceptives, or "the pill," hormone implants, monthly injectable contraceptives, IUDs, combined contraceptive patches and vaginal rings, male and female condoms, sterilization, and emergency contraception.⁴⁵ The WHO also considers methods such as the Basal Body Temperature or Standard Days, which are used to track a woman's fertile days, to be effective in preventing unwanted pregnancies.⁴⁶ However, traditional methods, such as withdrawal or using a calendar to count the days of a woman's cycle, are not considered to be modern forms of contraception, nor are they proven to be effective.⁴⁷ Women using these traditional methods are much more likely to become pregnant than users of modern contraceptive methods.⁴⁸

Modern contraceptive method users constitute 90 percent of all contraceptive use.⁴⁹ However, in fifty-four countries, less than half of

42. See CTR. FOR REPROD. RTS. & THE U.N. POPULATION FUND, THE RIGHT TO CONTRACEPTIVE INFORMATION AND SERVICES FOR WOMEN AND ADOLESCENTS 6 (2010), <https://www.unfpa.org/sites/default/files/resource-pdf/Contraception.pdf> [<https://perma.cc/M35F-7QUZ>] (archived Jan. 19, 2018) ("Women's and adolescents' right to contraceptive information and services is grounded in internationally recognized human rights, including the right to life, the right to the highest attainable standard of health, the right to decide the number and spacing of one's children, the right to privacy, the right to information, and the right to equality and non-discrimination.")

43. *Committee on the Elimination of Discrimination Against Women*, OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx> (last visited Jan. 9, 2018) [<https://perma.cc/A58X-62TG>] (archived Jan. 19, 2018).

44. See, e.g., Comm. on the Elimination of All Forms of Violence Against Women, Concluding Observations: Malawi, ¶ 35, CEDAW/C/MWI/CO/7 (Nov. 24, 2015) [hereinafter CEDAW Malawi Observations] (recommending that the State works to "ensure the availability and accessibility of modern forms of contraception and reproductive services to all women in the State party"); Comm. on the Elimination of All Forms of Violence Against Women, Concluding Observations: Bolivia, ¶ 2, CEDAW/C/BOL/CO/5-6 (July 28, 2015) [hereinafter CEDAW Bolivia Observations] (recommending that the State should "conduct awareness-raising campaigns about modern contraceptive methods in indigenous languages and increase access to safe and affordable contraceptives throughout the State party").

45. *WHO Family Planning*, *supra* note 20.

46. *Id.*

47. *Id.*

48. *Id.*

49. POPULATION DIV., U.N. DEPT OF ECON. AND SOC. AFFAIRS, TRENDS IN CONTRACEPTIVE USE WORLDWIDE 1 (2015), <http://www.un.org/en/development/desa/population/publications/pdf/family/trendsContraceptiveUse2015Report.pdf>

total demand for family planning was met by modern methods.⁵⁰ This means that half of the demand for family planning in these countries is met by traditional methods, which are proven to be significantly less effective at preventing unwanted pregnancies.⁵¹

CEDAW “underscores the importance of ensuring access to reproductive health care, because neglect of these services disproportionately burdens women.”⁵² Accordingly, CEDAW encourages access to a “wide-range of contraceptive methods, and recommends the repeal of laws banning the display or sale of contraceptives.”⁵³ It also encourages the availability of contraceptives for men.⁵⁴

Since the Convention entered into force in 1981, and in particular since the International Conference on Population and Development (ICPD) in 1994, there have been great strides in improving women’s reproductive rights and health, including access to contraception. In 1994, over 150 countries met in Cairo, Egypt for the ICPD.⁵⁵ ICPD “transformed population and development [policy] into *reproductive health* [policy]” and “shifted population policy away from fertility regulation and toward the notion of reproductive health, predicated on the exercise of reproductive rights and women’s empowerment.”⁵⁶ This shift is particularly important in the context of family planning services. It is important to distinguish between national policies aimed at population control and those aimed at increasing women’s reproductive autonomy.⁵⁷ For example, some governments may push access to contraception, not to provide women with the ability to choose when to have children, but to severely limit pregnancies in an effort to reduce population growth. Since the ICPD, women’s rights and health advocacy groups have sought to enhance women’s ability to plan and

[<https://perma.cc/4XQF-R87Q>] (archived Jan. 19, 2018) [hereinafter CONTRACEPTIVE USE REPORT 2015].

50. *Id.* Additionally, demand may be underestimated or underreported in many situations. For example, demand may be lower in a country where women lack the basic information to desire contraception. *Id.* at 14 (“As new norms about family planning and family size start to take hold, demand for family planning can outpace the availability and use of contraceptives, and thus unmet need for family planning can remain stable or even increase.”).

51. *WHO Family Planning*, *supra* note 20.

52. MARSHA A. FREEMAN ET AL., *THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY* 321 (Oxford Univ. Press 2012).

53. *Id.*

54. *Id.*

55. Laura Reichenbach & Mindy Jane Roseman, *Global Reproductive Health and Rights: Reflecting on ICPD*, in *REPRODUCTIVE HEALTH AND HUMAN RIGHTS: THE WAY FORWARD* 3 (2009).

56. *Id.* at 4 (emphasis added).

57. See BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLICIES* 224 (Cambridge Univ. Press 2015) (noting the crucial shift from population control to women’s empowerment).

control the number and spacing of their children. This includes pressuring governments to improve access to contraception, as well as fighting against government policies that incentivize permanent contraception methods as a means of population control.⁵⁸

C. *Continuing Unmet Need and Regional Disparities in the Access to Contraception*

Globally, women with unmet need for family planning constitute approximately 12 percent of married or in-union women.⁵⁹ Unmet need is defined as “the percentage of married or in-union women of reproductive age who want to stop or postpone childbearing, but who report that they are not using any method of contraception to prevent pregnancy.”⁶⁰ However, the global average masks the great disparities in contraception use and unmet need for family planning between regions and within countries.⁶¹ In the least developed countries and regions, close to one in four women who want access to family planning currently lack access to these services.⁶² For example, in 2015, unmet need for family planning in Sub-Saharan, Eastern, and Western African countries was 24 percent of married or in-union women—double the world average.⁶³ In the least developed countries, contraceptive use prevalence hovers around 40 percent, compared to a global average of 64 percent.⁶⁴

There are an estimated 142 million women globally with unmet need for family planning.⁶⁵ This number is expected to increase to 143 million by 2030, despite progress in increasing access to contraception, due to population growth in developing African countries.⁶⁶ Women in the poorest and least developed countries in the world are still the most likely to lack access to the contraceptive methods and the education needed to control the spacing of pregnancies or to prevent unwanted pregnancies.⁶⁷ As noted above, many of these women are also the most vulnerable to disease epidemics or violent conflicts.⁶⁸

There are many challenges to increasing access to contraception that might explain why unmet need remains high in some parts of the world. Insufficient funding, particularly in developing countries, is a

58. Reichenbach & Roseman, *supra* note 55, at 8.

59. CONTRACEPTIVE USE REPORT 2015, *supra* note 49.

60. *Id.* at 4. Note that this data, focused on married women, fails to take into account the practices and needs of sexually-active women who are not married. *Id.*

61. *Id.*

62. *Id.*

63. CONTRACEPTIVE USE REPORT 2015, *supra* note 49, at 8.

64. *Id.*

65. *Id.* at 19.

66. *Id.*

67. *Id.* at 8.

68. See *infra* text at notes 23–32.

primary challenge.⁶⁹ While cost-effective, contraception nonetheless requires an investment of funding and resources in countries where both remain scarce. Developing countries often rely on foreign aid, NGOs, or charities to supplement funding for contraception.⁷⁰ These funding issues are likely to be exacerbated by the Trump administration's reinstatement of the Mexico City policy, or "global gag rule," in January of 2017.⁷¹ The policy requires that all NGOs certify that they will not perform abortions or give abortion counseling as a condition for receiving US health care funding or assistance.⁷² Previous enactments of the policy have forced clinics to close or reduce contraceptive supplies due to a lack of funding.⁷³ Marie Stopes International predicts an increase in maternal and pregnancy-related deaths as a result of the reduced funding.⁷⁴ Organizations such as Marie Stopes and other NGOs will have to rely on private donors or other governments to fill the funding gap resulting from reduced US assistance.⁷⁵

Further, weak distribution systems, lack of reliable monitoring and data collection mechanisms, and cultural or information barriers also contribute to the stalemate in improving access to contraception.⁷⁶ Like access to other medical services or care, there are many areas of the world in which women are simply unable to get to locations where such services are provided.⁷⁷ This may also exacerbate inequalities *within* countries, where the availability of modern contraception might be lower in rural regions than in urban areas.⁷⁸

69. Osotimehin, *supra* note 18.

70. Katz, *supra* note 7.

71. See Somini Sengupta, *Trump Revives Ban on Foreign Aid to Groups that Give Abortion Counseling*, N.Y. TIMES (Jan. 23, 2017), https://www.nytimes.com/2017/01/23/world/trump-ban-foreign-aid-abortions.html?mcubz=3&_r=1 [<https://perma.cc/Y7QT-RQJ7>] (archived Jan. 19, 2018) (discussing the policy and reactions to its implementation).

72. *Id.* Although every Republican President since Ronald Reagan has implemented the Mexico City policy, the Trump Administration's version is more severe, as it cuts off *all* U.S. health-care assistance, not just family planning funding. This includes funding for HIV and primary care, for example. Sarah Boseley, *How Trump signed a global death warrant for women*, GUARDIAN (July 21, 2017), <https://www.theguardian.com/global-development/2017/jul/21/trump-global-death-warrant-women-family-planning-population-reproductive-rights-mexico-city-policy> [<https://perma.cc/33C2-AQW2>] (archived Jan. 19, 2018).

73. Boseley, *supra* note 72.

74. *Id.*

75. Jill Filipovic, *The Global Gag Rule: America's Deadly Export*, FOREIGN POLY (Mar. 20, 2017), <http://foreignpolicy.com/2017/03/20/the-global-gag-rule-americas-deadly-export-trump-africa-women-reproductive-rights/> [<https://perma.cc/E8JC-GTBW>] (archived Jan. 19, 2018).

76. Osotimehin, *supra* note 18.

77. *Id.*

78. Access to contraception is impacted by the ability and resources of women to reach the family planning services or health care centers that provide contraception. *Id.* at 83. However, most of the data collected on unmet need can only be used to analyze

Proper contraception use is also linked to sexual education, which is often deficient in many developing countries.⁷⁹ Effective access to contraception requires providing women with the information and education necessary to make choices regarding their reproductive health.⁸⁰ For example, concern about side effects and health risks is an often-cited reason for unmet need for contraception.⁸¹ These concerns may often be the result of inaccurate information or the lack of sexual health education.⁸² Further, in areas where cultural or religious norms stifle the discussion of sexual relationships or sexual health, it is often difficult for women, especially young women and girls, to inquire about or request contraception methods.⁸³ For example, the Catholic Church expressly opposes the use of contraception, even by married couples.⁸⁴ Such religious beliefs may validly weigh in a woman's decision to not use family planning methods. However, religious beliefs can also prevent women seeking family planning methods from choosing modern contraception; in some situations, these women may opt for the less effective, traditional methods.⁸⁵

Although there are several organizations—such as the United Nations Population Fund, the Gates Foundation,⁸⁶ and the Center for Reproductive Rights—that focus on women's reproductive rights under international law, much of the attention thus far has been on access to abortion.⁸⁷ There has been much emphasis on liberalizing laws that restrict abortion, especially laws that explicitly or practically do not

regional disparities, not intra-country disparities. See CONTRACEPTIVE USE REPORT 2015, *supra* note 49, at 4–6.

79. See Heather D. Boonstra, *Advancing Sexuality Education in Developing Countries: Evidence and Implications*, 14 GUTTMACHER POL'Y REV. 17, 18 (2011) (“[S]exuality education of any kind is not available in many regions of the world, adolescents' knowledge of sexual and reproductive health is not detailed, and myths are common.”).

80. See CEDAW Convention, *supra* note 33, art. 10(h) (requiring equal access to sexual health education and information).

81. SEDGH ET AL., *supra* note 9.

82. *Id.* at 7.

83. See *Religion, contraception and abortion factsheet*, FAMILY PLANNING ASS'N (Nov. 2016), <http://www.fpa.org.uk/factsheets/religion-contraception-abortion> [https://perma.cc/XG86-QT5N] (archived Jan. 19, 2018) (noting that various religious beliefs and cultural norms make some women reluctant to seek an abortion).

84. *Id.*

85. *Id.*

86. *Family Family: A Strategic Overview*, THE BILL AND MELINDA GATES FOUND., <http://www.gatesfoundation.org/What-We-Do/Global-Development/Family-Planning> (last visited Jan. 9, 2018) [https://perma.cc/KV3Z-HSC3] (archived Jan. 19, 2018).

87. See, e.g., *Abortion*, CTR. FOR REPRODUCTIVE RTS., <https://www.reproductiverights.org/our-issues/abortion> (last visited Nov. 13, 2017) [https://perma.cc/6M9F-RBRG] (archived Jan. 19, 2018) (detailing the Center's work on the issue of abortion). *But see Family Planning*; U.N. POPULATION FUND, <http://www.unfpa.org/family-planning#> [https://PERMA.CC/BZ5V-WLHS] (archived Feb 3., 2018) (noting that its goals include family planning rather than a narrower focus on safe abortion).

allow for exceptions to save the life of the mother.⁸⁸ For the reasons discussed above, access to contraception is an equally vital component of reproductive rights and health.⁸⁹ In regions where unmet demand is high and contraceptive use is low, member states often fail to meet their treaty obligations under the Convention to eliminate discrimination in access to family planning and sexual health education. As noted above, unmet demand for contraception is particularly high in Sub-Saharan, Eastern, and Western African countries.⁹⁰ The majority of the countries in this region are member states under the Convention.⁹¹

III. THE COMMITTEE ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

A. CEDAW Enforcement Mechanisms

CEDAW is a body of independent experts tasked with monitoring the implementation of the Convention.⁹² CEDAW does so by collecting the reports from member states on the progress the state has made in implementing the obligations of the Convention and preparing reports on member states' progress.⁹³ It can also request specific information from a member state as to a particular issue or aspect of the treaty implementation.⁹⁴ CEDAW also issues general recommendations that can elaborate on its views of the obligations imposed by the Convention.⁹⁵ After the adoption of the Optional Protocol to the Convention, individuals can also file complaints with CEDAW against member states.⁹⁶ Individuals can use this complaint process to allege that the member state violated the terms of its treaty obligations by failing to protect their rights as outlined in the Convention.⁹⁷ In these instances, CEDAW can issue a quasi-judicial decision where it takes

88. *Id.*

89. *See supra* text at notes 10–32.

90. CONTRACEPTIVE USE REPORT 2015, *supra* note 24, at 8.

91. *CEDAW Signatories*, *supra* note 34.

92. *Introduction of the Committee on the Elimination of All Forms of Discrimination Against Women*, OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Introduction.aspx> (last visited Jan. 9, 2018) [<https://perma.cc/W6FM-MY26>] (archived Jan. 19, 2018).

93. *Id.*

94. *Id.*

95. *General Recommendations of the Committee on the Elimination of All Forms of Discrimination Against Women*, OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx> (last visited Jan. 9, 2018) [<https://perma.cc/2UHK-WC5Q>] (archived Jan. 19, 2018).

96. G.A. Res. 54/4, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, art. 2 (Oct. 15, 1999) [hereinafter *Optional Protocol*].

97. *Id.*

into consideration all the information submitted by both sides and determines whether the member state did in fact fail to uphold its treaty obligations.⁹⁸ However, these CEDAW “rulings” are rather limited in effect because CEDAW does not have any further enforcement mechanisms that can be used to remedy the violation.⁹⁹ Therefore, it is up to individuals or national actors to seek further enforcement at the domestic level.

As noted above, CEDAW lacks an official enforcement mechanism, similar to the monitoring bodies of many international human rights treaties.¹⁰⁰ However, this does not mean that CEDAW is powerless to implement the Convention. By monitoring member states’ progress and by ruling on violations, CEDAW can put pressure on countries in ways that have produced tangible policy changes and results.¹⁰¹ As will be discussed below, the Committee has used its monitoring functions to successfully pressure states to liberalize strict anti-abortion laws in the past.¹⁰² In the past ten years, CEDAW has considered cases regarding strict abortion laws and ruled that the laws violated the Convention.¹⁰³ In doing so, it allowed reproductive rights advocates in the member states to pressure their governments to change their policies.¹⁰⁴ This example demonstrates that violations of CEDAW can be used to advocate for policy changes, even though CEDAW lacks further enforcement mechanisms.

This example of CEDAW’s influence on abortion laws is further supported by empirical studies and a domestic politics theory of treaty compliance.¹⁰⁵ National advocacy groups and NGOs can cite CEDAW decisions to spur action and create political pressure on national lawmakers.¹⁰⁶ More generally, empirical studies have shown a statistically significant impact of the ratification of CEDAW on various

98. *Id.* art. 7.

99. *See id.* (providing no further enforcement mechanism after CEDAW issues its opinion).

100. *See* Fabiola Carrión, *Public Interest Practitioner Section: How Women’s Organizations are Changing the Legal Landscape of Reproductive Rights in Latin America*, 19 CUNY L. REV. 37, 41 (2015) (noting the limited powers of several treaty monitoring bodies, including CEDAW).

101. *See id.* (arguing that the decisions and observations of treaty monitoring bodies can “guide countries in their compliance” and be used by domestic actors to pressure government action).

102. *See* Kelsey Zorzi, Note, *Essay: The Impact of the United Nations on National Abortion Laws*, 65. CATH. U. L. REV. 409, 409 (2015) (arguing that CEDAW pressured states into liberalizing their abortion laws).

103. *Id.*

104. *Id.*

105. *See* SIMMONS, *supra* note 57, at 202–04 (arguing that the ratification of the Convention has improved access to modern forms of contraception for women in some ratifying countries).

106. *Id.*

fundamental women's rights, including reproductive rights.¹⁰⁷ Therefore, these empirical studies and the case study of CEDAW's influence on abortion laws support the proposition that pressure by CEDAW in the form of its judicial decisions and Concluding Observations have actual power to influence domestic policies and laws of the Convention's member states.¹⁰⁸

B. Domestic Politics Theory of Treaty Compliance

A significant amount of scholarly work is dedicated to explaining why states chose to ratify international treaties and how those treaties are enforced.¹⁰⁹ Recently, scholars have questioned the effectiveness of enforcing international law at the international level, for example through the United Nations or other international bodies.¹¹⁰ UN treaty bodies, such as CEDAW, are limited to enforcing compliance through reporting requirements, recommendations, and dialogue with member states.¹¹¹ Noting that enforcement through international mechanisms is commonly viewed as somewhat unsuccessful, Ingrid Wuerth argues in her paper, *International Law in the Post-Human Rights Era*, that international human rights law should be acknowledged as "soft international obligations" that, under the right circumstances, can translate into "binding domestic law."¹¹² This can be accomplished by "naming and shaming," transnational human rights advocacy movements, soft or nonbinding norms, active civil society, iterative engagement with international review bodies, domestic enforcement procedures, diplomatic pressure, regional human rights enforcement, conditioning of development aid, and so on.¹¹³

Wuerth's argument that soft international law can translate into binding domestic law is further supported by empirical studies on the effect of treaty ratification on domestic politics, including CEDAW-specific research.¹¹⁴ For example, in her book, *Mobilizing For Human*

107. See *id.* (noting the particular characteristics under which CEDAW ratification is most likely to have an impact on a member State's policies or laws). However, the effectiveness of enforcing international law is not certain in all situations. See Ingrid Wuerth, *International Law in the Post-Human Rights Era*, 96 TEX. L. REV. 279, 317 (noting the low level percentage of report filed on time to treaty monitoring bodies as an example of the lack of effectiveness of such bodies). Therefore, this Note focuses on CEDAW-specific research and examples; its conclusions may not translate to other treaties or areas of international law.

108. See *infra* text at notes 122–37.

109. See Wuerth, *supra* note 107 (noting the difficulties in measuring compliance with international law and in assessing whether compliance is caused by the treaty, or by other factors).

110. See *id.* at 286 (noting that "international human rights law is under growing attack").

111. *Id.* at 317.

112. *Id.* at 346.

113. *Id.*

114. See, e.g., SIMMONS, *supra* note 57.

Rights: International Law in Domestic Policies, Beth Simmons argues that ratified treaties change the “domestic politics of the ratifying country.”¹¹⁵ This domestic politics theory of treaty compliance suggests that ratified treaties influence agendas, litigation, and mobilization in the treaty’s member states.¹¹⁶ Essentially, the domestic politics theory of treaty compliance argues that international human rights, as enshrined in ratified treaties, are best enforced at the national level, either through litigation in domestic courts or the creation of national laws and policies.¹¹⁷ For example, the ratification of a treaty can increase the potential success of citizens and advocacy groups mobilized around a certain issue.¹¹⁸ The obligations of a ratified human rights treaty can also be used as the foundation of or as support for the decisions of domestic courts.¹¹⁹ The ratification of a treaty or references to a specific treaty obligation can be used to call attention to an issue at the domestic level of a member state.¹²⁰ This empirical evidence suggests that international treaties, including CEDAW, can be most effective when used by citizens and advocacy groups to influence domestic law and policies.¹²¹

Other scholars agree that, under certain conditions, there is a positive correlation between the adoption of treaties and an improvement in human rights standards within the member states.¹²² In *Human Rights Experimentalism*, Grainne de Burca argues that treaties, including the Convention, “can contribute to bringing about domestic change through the interaction of local NGOs with international treaty bodies and state actors in an ongoing iterative cycle of reporting and review.”¹²³ In particular, de Burca highlights two important conditions under which treaties are likely to contribute to the improvement of human right standards: (1) a degree of political liberalization within the member state; and (2) a reasonably active

115. *Id.* at 113.

116. *Id.*

117. *See id.* (noting that enforcement of human rights at the *international* level creates collective action problems that are difficult to solve, but that the effect of enforcement at the domestic level can be profound).

118. *See id.* at 126 (arguing that “international law helps local actors set priorities, define meaning, make rights demands, and bargain from a position of greater strength than would have been the case in the absence of their government’s treaty commitment”).

119. *See id.* at 130 (“Treaties make litigation possible because they are (or they give rise to) domestically enforceable legal obligations.”).

120. *See id.* at 138–39 (arguing that the ratification of international human rights treaties increases domestic mobilization within the ratifying state).

121. *Id.* at 202–03.

122. *See, e.g.,* Grainne de Burca, *Human Rights Experimentalism* 2 (N.Y.U. Sch. of Law, Public Law & Legal Theory Research Paper No. 17-06, 2017) (arguing that recent empirical research supports this correlation).

123. *Id.* at 26.

domestic civil society that is engaged with the UN treaty reporting regime.¹²⁴

De Burca emphasizes the various roles filled by NGOs as domestic civil society actors.¹²⁵ This is relevant in the context of reproductive rights and contraception, as NGOs are deeply involved in these issues. De Burca discusses how NGOs provide information to treaty bodies, such as CEDAW.¹²⁶ NGOs can either directly help the member state produce its report, or file a “shadow report” with additional information.¹²⁷ Additionally, NGOs can “mobilize to pressurize governments in carrying out the steps indicated in the committee’s concluding observations, and organize advocacy and other forms of pressure to encourage governments to abide by them.”¹²⁸

The empirical evidence specific to CEDAW provides additional clues as to the conditions where Convention might be most likely to effectuate an improvement in contraception access.¹²⁹ Simmons found that the ratification of CEDAW was most likely to have an impact on a member state’s policies or laws in countries: (1) that were neither stable democracies nor stable autocracies, but rather in transitional phases; (2) that were secular (i.e., did not have an official religion); and (3) where women had the ability to access the domestic judicial systems for enforcement of their rights.¹³⁰ The ability of ordinary citizens or advocacy groups to seek domestic enforcement of women’s rights is significantly limited when they are unable to access the country’s judicial system. Additionally, it is important for the judicial system to be sufficiently independent from the legislative or executive branches of a government, such that courts are a credible possibility for enforcing a policy that might not be supported by other political players in a country.¹³¹ Some countries explicitly include international treaties or law as binding on domestic courts, essentially incorporating the treaty into a country’s domestic law.¹³² However, in judicial systems not directly bound by international law, international treaties or quasi-judicial systems may still be persuasive and cited.¹³³

As noted above, religion is also significant in the context of reproductive rights.¹³⁴ CEDAW has not been very effective in countries with officially religious governments.¹³⁵ These countries—for example,

124. *Id.*

125. *Id.*

126. *Id.* at 13.

127. *Id.*

128. *Id.* at 14.

129. SIMMONS, *supra* note 57, at 202–03.

130. *Id.*

131. *Id.* at 132, 220.

132. *Id.* at 129–30.

133. *Id.* Additionally, the state can pass implementing legislation to make the international obligations into binding domestic law. *Id.* at 130.

134. *Id.* at 220–21

135. *Id.* at 230.

Saudi Arabia—have either ratified CEDAW with many reservations, which limit their obligations, or otherwise refuse to comply with treaty obligations that are in direct conflict with their religious beliefs.¹³⁶

In agreement with de Burca's argument discussed above,¹³⁷ Simmon's study found that another significant factor was the presence of NGOs within the country.¹³⁸ NGOs often help women mobilize around an issue and provided legal information or resources to take an issue to court.¹³⁹ It is often NGOs that play pivotal roles in strategic litigations.¹⁴⁰ For example, it was NGOs in Brazil that successfully brought a case to CEDAW, alleging that the Brazilian government was in violation of its treaty obligations. The NGOs argued that the government failed to provide adequate maternal hospital care, resulting in the preventable death of a young mother.¹⁴¹ After reviewing the case, CEDAW found Brazil to be in violation of the Convention.¹⁴² CEDAW recommended that Brazil develop national standards on maternal and reproductive health care.¹⁴³ After litigating the case at CEDAW, these NGOs continued to work with the Brazilian government to develop specific measures to implement CEDAW's recommendations.¹⁴⁴

NGOs play vital roles, particularly in developing countries, in providing access to modern contraception and sexual or reproductive education more generally.¹⁴⁵ The presence of such NGOs likely suggests that more women in the country have some familiarity with modern contraceptives and are more likely to have some knowledge regarding their basic reproductive rights.¹⁴⁶ The NGOs can also work to provide information and mobilize women across the country around an issue.¹⁴⁷

Therefore, the domestic politics theory of treaty compliance suggests that CEDAW's limited enforcement powers can nonetheless be effective. For example, CEDAW's quasi-judicial opinions, general recommendations, or concluding observations as to a specific member

136. *Id.* at 208.

137. *See supra* text at notes 123–28.

138. SIMMONS, *supra* note 57, at 210–12.

139. *Id.*

140. *See* Nancy Northup, *Reproductive Rights at Home and Abroad*, 15 CUNY L. REV. 265 (2012) (discussing the Center for Reproductive Rights's crucial role in several important reproductive rights cases).

141. *Id.* at 272.

142. *Id.*

143. *Id.* at 274.

144. *Id.*

145. *See* SIMMONS, *supra* note 57, at 216 (“One of the central findings in much of the case study research in the area of women’s rights has been the crucial role of women’s international NGOs as a driving force not only for construction and interpretation of international law, but also for maintaining compliance pressures.”).

146. *See id.* at 132 (noting that “legal literacy” has been a crucial part of some NGOs’ strategies to encourage women to claim their rights).

147. *Id.* at 204.

state's compliance can be used to drive the domestic political agenda or mobilize citizens and national advocacy groups around a particular cause.¹⁴⁸ Such efforts are likely to be most effective in countries with a presence of NGOs devoted to women's reproductive or health care rights and an independent judiciary.¹⁴⁹ Further, as will be discussed below, CEDAW's experience in effectuating change in member states' abortion laws supports these propositions drawn from the wider empirical evidence.

C. CEDAW's Influence on Domestic Abortion Laws

CEDAW has issued numerous quasi-judicial decisions in which it found violations of the Convention regarding abortion access or sexual violence.¹⁵⁰ In most of these instances, a member state denied a woman access to abortion, or the member state's criminal laws did not adequately protect a victim of rape or domestic violence.¹⁵¹ CEDAW's "overriding concern as to punitive abortion laws is the increased probability of higher maternal mortality and morbidity rates and denial of women's substantive equality, thereby contravening Article 12 [of the Convention]."¹⁵²

Although not binding precedent, the courts of member states are certainly able to consider CEDAW judicial decisions. Examples of this interplay can be found in abortion cases: CEDAW found the member state's laws to be in violation of the Convention, the law was later challenged in the national courts, and the domestic court cited the CEDAW decision to support its conclusions.¹⁵³ While a CEDAW decision finding a violation of of the Convention may not be binding on a national court, it can certainly be persuasive.¹⁵⁴ CEDAW's jurisprudence can also be used as a tool or example for how domestic courts can interpret human rights law as a basis for the right to abortion access.¹⁵⁵

CEDAW has been quite effective in influencing national laws and policies regarding abortion.¹⁵⁶ For example, in 2000, in response to Luxembourg's periodic report, CEDAW raised concerns that the

148. See *id.* at 209 (noting that the ratification of the Convention positively influenced the formation of women's organizations in ratifying countries).

149. *Id.* at 203.

150. See, e.g., Views of the Committee on the Elimination of Discrimination Against Women, *L.C. v. Peru*, U.N. Doc. CEDAW/C/50/D/22/2009 (Nov. 4, 2011) [hereinafter *CEDAW L.C. v. Peru*] (calling for abortion to be legalized in cases where pregnancy results from rape or incest).

151. See, e.g., *id.*

152. MARSHA A. FREEMAN ET AL., *supra* note 52, at 322.

153. *Id.*

154. See Carrión, *supra* note 100, at 39 (arguing that international jurisprudence "paved the way" for national courts to recognize a right to abortion).

155. *Id.* at 50.

156. See Zorzi, *supra* note 102.

country's abortion laws "appear[ed] anachronistic," especially in comparison with other European countries.¹⁵⁷ In the next decade, Luxembourg further liberalized its abortion laws, in part to ensure that the country's laws were in step with those of other European countries.¹⁵⁸

In other cases, the domestic courts of member states rely on the language of the Convention or CEDAW's general recommendations to attack or uphold a domestic law or policy. An Argentinian domestic court relied on the Convention's Article 12 to "permit lawful abortion in the case of a 15-year-old girl who was raped, because forcing her to carry the pregnancy to term would treat her as a 'mere instrument.'"¹⁵⁹ Colombia provides another example of CEDAW's influence on a member state's judiciary and its decisions. Prior to 2006, abortion was completely illegal in Colombia.¹⁶⁰ The Colombian Supreme Court in 2006 legalized abortion in specific circumstances, such as in cases of risk to the health or life of the mother and cases of rape.¹⁶¹ In its decision, the Court explicitly cited the recommendations of several treaty-monitoring bodies, including a CEDAW opinion.¹⁶²

Ethiopia provides an additional illustration of the Convention's influence on a member state's abortion legislation and policies. Ethiopia liberalized its abortion law in 2005 to allow access to abortions in cases where the woman's life or health is at risk, cases of rape, incest, and fetal impairment, and in cases where the woman has a physical or psychological disability.¹⁶³ Additionally, Ethiopia's government developed technical and procedural guidelines for abortion service providers.¹⁶⁴ The regulations ensured that service providers understood the law and what was required of them to comply. The government of Ethiopia stated that it amended its abortion laws in part to comply with international law, such as CEDAW.¹⁶⁵ The government expressly referenced the Convention as the foundation for reproductive rights, as well as the United Nations' Millennium Development Goal to reduce maternal mortality.¹⁶⁶

157. *Id.* at 410.

158. *Id.* (arguing that the country's shift in abortion laws was, at least in part, influenced by CEDAW's opinions).

159. MARSHA A. FREEMAN ET AL., *supra* note 52, at 322.

160. Zorzi, *supra* note 102, at 425.

161. Sentencia C-355/06, Constitucional Court, Part IV, ¶ 10.1, 10.3 (2006) (Colom.).

162. *Id.*

163. FAMILY HEALTH DEP'T, GOV'T OF ETHIOPIA, TECHNICAL AND PROCEDURAL GUIDELINE FOR SAFE ABORTION SERVS. IN ETHIOPIA, PART I (JUNE 2006), http://phe-ethiopia.org/resadmin/uploads/attachment-161-safe_abortion_guideline_English_printed_version.pdf [<https://perma.cc/H34L-PVRC>] (archived Jan. 20, 2018).

164. *Id.*

165. Zorzi, *supra* note 102, at 421.

166. *Id.*; see also MDG 5: improve maternal health, WHO (May 2015), http://www.who.int/topics/millennium_development_goals/maternal_health/en/

The above examples of CEDAW's influence on the abortion laws or policies of member states support the domestic politics theory of treaty compliance. The abortion laws of Luxembourg, Colombia, and Ethiopia were not directly changed at the international level. Rather, national political actors, such as individual citizens and advocacy groups, used domestic enforcement and advocacy mechanisms to generate change in abortion laws. CEDAW played a crucial role in highlighting where the country was in violation of a treaty obligation and providing domestic advocates with information and a basis in international human rights law.¹⁶⁷ The remainder of this Note will argue that CEDAW should play a similar role in other countries, by mobilizing domestic actors, such as NGOs or advocacy groups, to pressure their governments into improving access to contraceptives and other family planning services.

IV. PROMOTING DOMESTIC ENFORCEMENT OF TREATY OBLIGATIONS TO INCREASE ACCESS TO MODERN CONTRACEPTION

A. CEDAW's Approach to Modern Contraception

As noted previously, CEDAW specifically considers access to modern contraceptive methods as part of the treaty's "family planning" obligation of Article 12 and the right to freely decide on the number and spacing of children, as guaranteed in Article 16.¹⁶⁸ Family planning is also specifically referenced in Article 10, which focuses on the elimination of discrimination in the field of education: requiring "access to specific educational information to help ensure the health and well-being of families, including information and advice on family planning."¹⁶⁹

CEDAW has further addressed the Convention's family planning obligation in the context of specific member states' compliance. For example, in CEDAW's 2015 Concluding Observations regarding the combined fifth and sixth periodic reports of the Plurinational State of Bolivia, the Committee noted, "[t]he lack of comprehensive education on sexual and reproductive health and rights and family planning services, and limited access to *modern contraceptives*, including emergency contraception."¹⁷⁰ It then recommended that Bolivia introduce sexual health education and "conduct awareness-raising

[<https://perma.cc/V9XU-B2D2>] (archived Feb. 21, 2018) ("Reduce by three quarters, between 1990 and 2015, the maternal mortality ratio.").

167. See, e.g., Carrión, *supra* note 154, at 49 (citing the example of Colombia and its abortion laws).

168. CEDAW Convention, *supra* note 33, art. 12, 16; see also *supra* text at notes 37–39.

169. CEDAW Convention, *supra* note 33, art. 10(h).

170. CEDAW Bolivia Observations, *supra* note 44, ¶ 28 (emphasis added).

campaigns about modern contraceptive methods in indigenous languages and increase access to safe and affordable contraceptives throughout” the country.¹⁷¹ This recommendation is linked to the treaty’s obligations regarding education on reproductive and sexual health, as outlined in Article 16.¹⁷²

Also published in 2015, CEDAW’s Concluding Observations on the seventh report from Malawi expressed concern about the high number of teenage pregnancies, the lack of education on sexual and reproductive health, and the “limited access in the State party to modern contraceptives.”¹⁷³ The Committee linked these issues with Malawi’s extremely high maternal mortality rate of 460 deaths per 100,000 live births.¹⁷⁴ The Committee then recommended that Malawi “address the large number of teenage pregnancies by ensuring access to age-appropriate education on sexual and reproductive health and rights,” as well as “[e]nsure the availability and accessibility of modern forms of contraception and reproductive services to all women in the State party.”¹⁷⁵

The Convention’s Article 12 “requires ensuring women’s access to general health care services equally with men and access to services that predominantly women employ, illustrated by its specification of family planning.”¹⁷⁶ Additionally, practical access to health care services “depends on [women’s] possession and comprehension of necessary information.”¹⁷⁷ In the context of family planning services, women must have information regarding the types of contraceptives available, effectiveness and safety, and risks or potential side effects. CEDAW’s obligations recognize that without such information, women are in effect denied access to family planning services. For example, a woman may not use an available contraceptive method if she has false, misleading, or incomplete information about its health risks, such that she does not feel comfortable or safe using it.

CEDAW’s General Recommendation on women and health specifically addresses the treaty obligations of Article 12.¹⁷⁸ CEDAW recommended that member states should include in their reports “what measures they have taken to ensure timely access to the range of services that are related to family planning, in particular, and to

171. *Id.* ¶ 29.

172. CEDAW Convention, *supra* note 33, art. 16.

173. CEDAW Malawi Observations, *supra* note 44, ¶ 34. Using 2015 estimates, Malawi’s maternal mortality rate is the thirteenth highest in the world. *Country Comparison: Maternal Mortality Rate*, *supra* note 2.

174. CEDAW Malawi Observations, *supra* note 44, ¶ 34.

175. *Id.* ¶ 35.

176. MARSHA A. FREEMAN ET AL., *supra* note 52, at 312.

177. *Id.* at 319.

178. Comm. on the Elimination of All Forms of Violence Against Women, General Recommendation No. 24: Article 12 of the Convention (Women and Health), U.N. A/54/38/Rev.1 (1999) [hereinafter CEDAW General Recommendation 24].

sexual and reproductive health in general.”¹⁷⁹ Further, “[p]articular attention should be paid to the health education of adolescents, including information and counselling on all methods of family planning.”¹⁸⁰ Young, unmarried women often need family planning services, but lack the education to request information about available methods. As another particular example of the Convention’s influence on a member state, Argentina’s domestic court used the language of the Convention’s Article 12 and CEDAW’s general recommendations to “uphold the constitutionality of a[n Argentinian] law requiring the provision of sexual and reproductive health services to all fertile persons, including adolescent girls.”¹⁸¹

CEDAW also recommended that the governments of member states “[p]rioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance.”¹⁸² The Committee also directly noted the link between the lack of access to contraception and a state’s failure to meet its Article 12 treaty obligations.¹⁸³ The General Recommendation noted how studies “that emphasize the high maternal mortality . . . and the large numbers of couples who would like to limit their family size *but lack access to or do not use any form of contraception* provide an important indication for States parties of possible breaches of their duties to ensure women’s access to health care.”¹⁸⁴

Additionally, Article 14 requires that “States Parties shall take into account the particular problems faced by rural women” and “shall take all appropriate measures to eliminate discrimination against women in rural areas.”¹⁸⁵ The article includes a requirement that women in rural areas “have access to adequate health care facilities, including information, counselling, and services in family planning.”¹⁸⁶ Article 14 is a recognition that women in rural areas face problems that might be different than the ones faced by urban women of the same country. “[CEDAW] concludes that rural living increases women’s socio-economic disadvantages due to lack of access to services including health, education, water, sanitation, and transport.”¹⁸⁷ Such isolation can be determinative to a women’s access to health care services, including contraceptives. This is often a result of the limited health facilities or providers in the most rural and isolated regions of a country. Therefore, Article 14 suggests that a member state is in

179. *Id.* ¶ 23.

180. *Id.*

181. MARSHA A. FREEMAN ET AL., *supra* note 52, at 322.

182. CEDAW General Recommendation 24, *supra* note 178, ¶ 31.

183. *Id.* ¶ 17.

184. *Id.* (emphasis added).

185. CEDAW Convention, *supra* note 33, art. 14.

186. *Id.* art. 14(2)(b).

187. MARSHA A. FREEMAN ET AL., *supra* note 52, at 359.

violation of its treaty obligations when rural women have much lower access to contraception, in comparison to women in urban areas of the country.

CEDAW's General Recommendation regarding equality in marriage and family relations also specifically references contraception. "In order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in Article 10(h)."¹⁸⁸ Article 10 "speaks to the importance of providing a base from which decisions about family size and other health related issues can be made."¹⁸⁹ CEDAW has also recommended that member states "ensure that sex education programmes are widely promoted and targeted at girls and boys, and include special attention to the prevention of early pregnancies."¹⁹⁰

Therefore, CEDAW's Concluding Observations and its General Recommendations make it clear that the Convention requires member states to ensure access to modern contraception, as well as the information and education necessary to make informed choices about family planning methods. The foundation for these obligations is found in the Convention's language of Article 12's "family planning" services, Article 10's access to information and advice on family planning,¹⁹¹ and Article 16's right to "decide freely and responsibly on the number and spacing of their children."¹⁹²

However, CEDAW's powers to enforce these rights are limited to writing general recommendations, issuing concluding observations as to a specific member state's compliance, and reviewing cases brought by individual citizens through the Optional Protocol.¹⁹³ Regardless of these limitations, the domestic politics theory of treaty compliance and CEDAW's participation in the successful liberalization of abortion laws suggest that CEDAW will not be powerless to improve access to modern contraception.

188. Comm. on the Elimination of All Forms of Violence Against Women, General Recommendation No. 21: Equality in Marriage and Family Relations, U.N. DOC. A/49/38 (1994) [hereinafter CEDAW General Recommendation No. 21].

189. FREEMAN ET AL., *supra* note 52, at 269.

190. Comm. on the Elimination of All Forms of Violence Against Women, Concluding Observations: Timor Leste, ¶ 38, CEDAW/C/TLS/CO/1 (Aug. 7, 2009).

191. CEDAW Convention, *supra* note 33, art. 10.

192. *Id.* art. 16.

193. *Optional Protocol*, *supra* note 96. Under the Protocol, individuals can also file complaints with CEDAW against member states. In these complaints, individuals allege that the member State violated the terms of its treaty obligations by failing to protect their rights as outlined in the Convention. However, CEDAW has no direct mechanism to enforce its quasi-judicial decisions. See *supra* text at notes 97–100.

First, CEDAW should focus its efforts on countries that are most likely to be open or responsive to its pressure.¹⁹⁴ Pressure by CEDAW would likely be most effective in developing countries where the unmet need for contraception is still high.¹⁹⁵ High unmet need is often found in countries with policies that limit access to modern contraception, fail to provide women with the information and education to make informed choices about family planning, or fail to support health care service providers with adequate resources.¹⁹⁶ Domestic advocacy groups can push to pass national regulations and guidelines aimed at service providers or women, which outline what information should be provided regarding family planning methods.¹⁹⁷

For example, it may be easier to mobilize national interest in reproductive health issues in a country where local NGOs provide women with information, education, and access regarding their reproductive rights and modern contraception. Women and advocacy groups are also more likely to successfully enforce their rights through domestic courts in countries with independent and accessible judicial systems.¹⁹⁸ CEDAW should consider accepting and reviewing more cases about access to contraceptives through the quasi-judicial process outlined in the Convention's Optional Protocol.¹⁹⁹ This would likely be most effective in countries with an active presence of NGOs or domestic women advocacy groups, who can then litigate the case in domestic courts.

The Committee should also stress the importance of including contraception data in member states' annual reports, so that national advocacy groups and NGOs can better understand where improvement is needed. This data should include information such as contraception prevalence rates, rates of unmet need for contraception, and types of contraception used.

Compared to CEDAW's activism regarding abortion laws of member states, the Committee has been less active and less effective in ensuring compliance with treaty obligations regarding access to modern contraceptives and other family planning services and education. The Concluding Observations, outlined above, are typical of CEDAW's references to modern contraception in response to member states' periodic reports.²⁰⁰ National laws that prohibit all abortion

194. See SIMMONS, *supra* note 57, at 230 (noting that the Convention's ratification had the strongest positive influences in countries where women had incentives to demand access).

195. Osotimehin, *supra* note 18.

196. *Id.*

197. See Carrión, *supra* note 154, at 55 (arguing that guidelines "unpack complicated laws" to describe them in ways that both service providers and patients can understand).

198. *Id.*

199. *Optional Protocol*, *supra* note 96.

200. For a detailed description, see *supra* text at notes 174–97.

access, even in cases of rape, incest, or when the mother's life is in danger, can be directly challenged in either domestic courts or CEDAW's quasi-judicial process.²⁰¹ Usually these cases involve a citizen of the member state who challenges the law after being denied an abortion and suffering harm or death.²⁰² Access to contraception, compared to abortion laws, is not as easily litigated or raised in judicial or quasi-judicial procedures. The harm suffered by a woman who lacks access to contraception is less concrete—in many cases, it is the missed benefits of the ability to control the number and spacing of her children.

Access to contraception might also be harder to challenge in a judicial case because countries rarely implement laws that directly prohibit or prevent contraception use. Rather, a state's failure to comply with treaty obligations as to family planning services (other than abortion) usually comes from a failure to act affirmatively to ensure access to contraception. States often simply fail to enact policies or regulations that ensure health care providers are offering options and information regarding family planning services and methods. States may also fail to fund reproductive health care services, such that women can afford the family planning services provided. Therefore, other CEDAW enforcement mechanisms, such as offering Concluding Observations as to whether a specific member state is in compliance with its treaty obligations, may be better suited to the context of contraception access. Concluding Observations are an opportunity for CEDAW to highlight where states are succeeding or failing in meeting their treaty obligations. To accurately determine compliance, CEDAW should additionally require states to provide the relevant data and information regarding contraception access in their periodic reports, which are required every four years pursuant to Article 18 of the Convention.²⁰³

In summary, empirical research, the domestic politics theory of treaty compliance, and CEDAW's past influence on member states' abortion laws suggest that CEDAW efforts will be most effective within a country with engaged domestic actors, the presence of women's health-focused NGOs, a degree of political liberalization, and high unmet need for contraceptives or family planning services. CEDAW should request that member states provide information on access to contraception and relevant policies on family planning services. CEDAW can also use concluding observations to highlight where states have been successful in improving access or where low access remains a significant issue. The remainder of this Note will be dedicated to discussing two countries, Sierra Leone and Haiti, in which CEDAW's

201. See Carrión, *supra* note 154, at 42–45 (discussing how treaties may serve as a legal basis for abortion rights).

202. *Id.* at 44–45.

203. CEDAW Convention, *supra* note 33, art. 18.

powers might be effectively wielded to increase access to contraception or continue the progress made regarding access to family planning methods.

B. Sierra Leone

In Sierra Leone, unmet need for contraception remains relatively high. Zainabu's story, discussed in the introduction, is by no means unique for women in Sierra Leone.²⁰⁴ One in four married women and one in three unmarried, sexually active women in Sierra Leone have unmet need for contraceptive methods.²⁰⁵ Over half of unmarried women in Sierra Leone are sexually active.²⁰⁶ Further, approximately 24 percent of births to married women are unplanned.²⁰⁷ Pregnancy and childbirth remains dangerous for women in Sierra Leone, which has the fifth highest maternal mortality rate in the world.²⁰⁸ Women in Sierra Leone cite unawareness of contraceptive methods, high cost, lack of access, and concern about side effects or health issues as reasons why they do not currently use contraception.²⁰⁹

Sierra Leone is a signatory to the Convention. In 2012, its government made a commitment to improving access to contraception.²¹⁰ Its commitment includes increasing its family planning budget and engaging private sector providers to scale-up family planning services, particularly in marginalized communities.²¹¹ However, the country is not on track to meet its goal of reducing unmet need to 10 percent by 2020.²¹² Additionally, compared to the commitments made by other African countries, Sierra Leone's plan lacks detail and is not thorough. For example, the Democratic Republic of the Congo developed a fifty-page National Multisector Strategic Plan, which partners government ministries and NGOs and aims to "acknowledge[] the right of Congolese women and couples to make free and informed choices regarding the timing and number of children they

204. See *supra* text at notes 1–5.

205. SEDGH ET AL., *supra* note 9, at 15.

206. *Id.* at 23.

207. *Id.* at 13.

208. *Country Comparison: Maternal Mortality Rate, supra* note 2.

209. *Id.* at 37, 44.

210. GOV'T OF SIERRA LEONE, FAMILY PLANNING 2020 COMMITMENT (July 11, 2012), <http://ec2-54-210-230-186.compute-1.amazonaws.com/wp-content/uploads/2016/10/Govt.-of-Sierra-Leone-FP2020-Commitment-2012.pdf> [<https://perma.cc/N3QQ-KY3Q>] (archived Jan. 20, 2018) [hereinafter SIERRA LEONE COMMITMENT].

211. *Id.*

212. *Id.*; see also *Investing in family planning is key to saving women's lives in Sierra Leone*, U.N. POPULATION FUND (July 4, 2017), <http://sierraleone.unfpa.org/en/news/investing-family-planning-key-saving-women%E2%80%99s-lives-sierra-leone> [<https://perma.cc/B9R7-KG32>] (archived Feb. 21, 2018) (noting that unmet need for contraception remains at 25 percent).

wish to have.”²¹³ The governments of Malawi,²¹⁴ Kenya,²¹⁵ and Senegal²¹⁶ have also produced in-depth, strategic plans for reducing their high levels of unmet need for conception and increasing education and accessibility to family planning methods.

Therefore, Sierra Leone has both high unmet need and a government that has acknowledged access to contraception must be improved.²¹⁷ Additionally, NGOs such as Marie Stopes International and Family Planning 2020 have centers in the country.²¹⁸ These NGOs can aid in providing information and mobilizing women across the country around an issue.²¹⁹ The presence of such NGOs suggests that more women in Sierra Leone have some familiarity with modern contraceptives and are more likely to have some knowledge regarding their basic reproductive rights.

Further, Sierra Leone has both ratified and domesticated the Convention.²²⁰ Sierra Leone law requires that ratified international treaties also be domesticated by implementing legislation before the treaty has the force of law in the country.²²¹ Therefore, domestic courts can directly apply the Convention’s obligations as law.²²² However, litigation of this kind may not be as effective in the case of contraception as it has been with abortion. Contraception is not illegal in Sierra Leone.²²³ The problem is rather one of access to contraception,

213. MINISTRY OF PUBLIC HEALTH, DEMOCRATIC REPUBLIC OF THE CONGO, FAMILY PLANNING: NATIONAL MULTISECTORAL STRATEGIC PLAN (2014–2020) (2014), http://ec2-54-210-230-186.compute-1.amazonaws.com/wp-content/uploads/2014/10/DRC_National_Family_Planning_Plan_English.pdf [<https://perma.cc/9F4P-59R6>] (archived Jan. 22, 2018).

214. GOV’T OF MALAWI, MALAWI COSTED IMPLEMENTATION PLAN FOR FAMILY PLANNING, 2016–2020 (2016), <http://ec2-54-210-230-186.compute-1.amazonaws.com/wp-content/uploads/2016/10/Malawi-CIP-for-FP-2016-2020.pdf> [<https://perma.cc/YZ8A-UB82>] (archived Jan. 20, 2018).

215. MINISTRY OF PUBLIC HEALTH & SANITATION, GOV’T OF KENYA, NATIONAL FAMILY PLANNING, COSTED IMPLEMENTATION PLAN (2012), http://ec2-54-210-230-186.compute-1.amazonaws.com/wp-content/uploads/2014/02/Kenya_National_Family_Planning_Costed_Implementation_Plan_2012-2016.pdf [<https://perma.cc/ZCD9-623F>] (archived Jan. 22, 2018).

216. MINISTRY OF HEALTH AND SOC. WELFARE, REPUBLIC OF SENEGAL, NATIONAL FAMILY ACTION PLAN 2012–2015 (2012), http://ec2-54-210-230-186.compute-1.amazonaws.com/wp-content/uploads/2014/10/Senegal_National_FP_Action_Plan_English.pdf [<https://perma.cc/SQ3K-UL5A>] (archived Jan. 22, 2018).

217. See SIERRA LEONE COMMITMENT, *supra* note 210.

218. Sierra Leone, MARIE STOPES INT’L, <https://mariestopes.org/where-we-work/sierra-leone/> (last visited Jan. 9, 2017) [<https://perma.cc/RG99-6UVE>] (archived Jan. 22, 2018) [hereinafter *Sierra Leone*].

219. See de Burca, *supra* note 122, at 14.

220. HUMAN RIGHTS COMM. OF SIERRA LEONE, SUBMISSION TO THE 1ST REPORT TO UNIVERSAL PERIODIC REVIEW MECHANISM (2010), http://lib.ohchr.org/HRBodies/UPR/Documents/session11/SL/HRC_SL_HumanRightsCommissionSierraLeone-eng.pdf [<https://perma.cc/ZD9Y-H8YF>] (archived Jan. 22, 2018).

221. *Id.*

222. *Id.*

223. *Id.*

and more generally, education or information regarding family planning. In light of this, CEDAW's quasi-judicial process may not be significantly helpful in pressuring Sierra Leone to better comply with its treaty obligations.

Rather, CEDAW could highlight Sierra Leone's progress, as well as the work that remains to be done. For example, CEDAW's last Concluding Observations on Sierra Leone's periodic report, published in 2014, does not mention contraception or family planning.²²⁴ This is a missed opportunity. CEDAW should request that Sierra Leone include specific information regarding unmet need for contraception within its next required report. In particular, information that breaks down unmet need according to specific regions or areas of the country might be helpful, as Sierra Leone includes rural, hard-to-access, and marginalized communities.²²⁵ The government may be unaware that these communities are falling behind in terms of access to contraception, because country-wide surveys mask these community- or region-specific trends. This type of information could be useful both to the government and NGOs in Sierra Leone working to improve access to contraception.

C. Haiti

Haiti is another CEDAW signatory country with high unmet need for contraception and a high maternal mortality rate, at 350 deaths per 100,000 live births.²²⁶ Almost half of births among married women are unplanned.²²⁷ Thirty-five percent of married women and 59 percent of sexually active, unmarried women report unmet need for contraceptives.²²⁸ While some women cite high cost, unawareness of methods, or lack of access as reasons for their inability to receive the contraceptives they need, 51 percent of married Haitian women with unmet need report side effects and health concerns as the reason they do not use contraception.²²⁹ Over one-third of unmarried, sexually active women cite side effects or health concerns as well.²³⁰ This suggests that Haitian women are not adequately informed about family planning methods and the relative safety of modern contraception, which often includes only low risks of side effects.

224. Comm. of the Elimination of All Forms of Violence Against Women, Concluding Observations on the sixth periodic report of Sierra Leone, CEDAW/C/SLE/CO/6 (Mar. 10, 2014).

225. See *Sierra Leone*, *supra* note 218 (noting that Marie Stopes International provides "contraception directly to women in remote areas of the country, including fishing communities off the coast, accessible only by boat").

226. *Country Comparison: Maternal Mortality Rate*, *supra* note 2. In comparison, the maternal mortality rate in the United States is 14 deaths per 100,000 live births. *Id.*

227. SEDGH ET AL., *supra* note 9, at 12.

228. *Id.* at 14.

229. *Id.* at 36.

230. *Id.* at 43.

CEDAW has previously noted its concerns regarding Haiti's "inadequate budget allocated to the health sector, particularly to maternity care, [] women's limited access to basic health services, [] the high rates of maternal mortality and early pregnancies, and the extremely low use of modern contraceptives, and the excessive use of abortion as a method of family planning."²³¹ However, CEDAW only generally recommended that Haiti should provide "adequate and affordable access to modern methods of contraception, including emergency contraception, for women and girls and men and boys."²³²

Haiti has always been a poor country, and the earthquake of 2010 had massive ramifications for Haiti's fragile economy and health infrastructure.²³³ Additionally, Haiti is currently experiencing high annual birth rates and high total fertility rates.²³⁴ As abortion remains illegal in Haiti, access to contraception is even more important for women to be able to control the number and spacing of their children.²³⁵ Similar to Sierra Leone, rural and isolated parts of the country experience higher unmet need for contraceptives and reduced access to family planning and other reproductive health care, as well as sexual health education.²³⁶ For example, in some isolated parts of the country, reaching the nearest health clinic requires a two-hour walk.²³⁷

However, the aftermath of the 2010 earthquake provided a possible positive result—an influx of international aid and the presence of additional NGOs.²³⁸ These organizations, working with other advocacy groups, citizens, and CEDAW, could pressure the government to introduce regulations or policies that require health care providers to give women certain information regarding family planning and access to contraception.

CEDAW should also require certain information regarding side effects under the Convention's Article 10 education obligations, as the article specifically references "information and advice on family

231. Comm. of the Elimination of All Forms of Violence Against Women, Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Haiti, ¶33, CEDAW/C/HTI/CO/8-9 (Mar. 9, 2016).

232. *Id.* ¶ 34.

233. *Improving Access to Family Planning in Haiti Amidst the Threat of Zika Virus*, U.N. POPULATION FUND (May 10, 2016), <http://www.unfpa.org/news/improving-access-family-planning-haiti-amidst-threat-zika-virus#sthash.clQdxkV6.dpuf> (last visited Feb. 28, 2017) [<https://perma.cc/RT5L-RW6C>] (archived Jan. 22, 2018) [hereinafter *Improving Access in Haiti*].

234. *Id.*

235. *See Abortion in Haiti: Dangerous and Illegal*, NAT'L PUB. RADIO (Dec. 3, 2015), <https://www.npr.org/templates/story/story.php?storyId=248990602> [<https://perma.cc/6AUL-NB68>] (archived Jan. 22, 2018) (noting that abortion is illegal and that many women in Haiti would like access to contraception, but do not have access).

236. *Improving Access in Haiti*, *supra* note 233.

237. *Id.*

238. *Id.*

planning.”²³⁹ In order to make informed decisions about what type of family planning method to use, women need to know about the many modern forms of contraception, traditional forms, and the various side effects and health concerns raised by each.²⁴⁰ As noted previously, over half of married women in Haiti with unmet need reported side effects and health concerns as the reason they do not use contraception.²⁴¹ This suggests that reproductive health care providers in Haiti are not accurately informing women about the relative safety of modern contraception, which often include only low risks of side effects.

In Haiti, CEDAW pressure could capitalize on the presence of NGOs focused on providing health care and the Haitian government’s recent interest in promoting access to contraception among the nation’s poorest and most isolated women.²⁴² In late 2014, the Haitian Ministry of Health teamed up with the United Nations Population Fund to provide general health and family planning services through mobile clinics.²⁴³ The clinics were widely popular, as hundreds of women—usually unable to reach family planning services—sought contraceptives from the mobile providers.²⁴⁴ CEDAW should seize this opportunity by soliciting information on Haiti’s contraceptive access, family planning education, and unmet need from the Haitian government or NGOs. Highlighting the success and demand for mobile clinics would emphasize that the government needs to continue to improve access to general health care and family planning services in the most rural and isolated parts of Haiti. By examining Haitian efforts to improve access and evaluating the work that remains to be done, CEDAW would provide NGOs and other domestic actors in Haiti with the information needed to continue pressuring the Haitian government to take much needed action to improve both the quality and the reach of family planning services and education.

V. CONCLUSION

Access to modern contraception is a crucial component of women’s health care and is correctly recognized by international human rights treaties as a reproductive right. The ability to plan or delay pregnancy provides women, families, and societies with countless health and economic benefits. Since its ratification, the Convention on the Elimination of All Forms of Discrimination has been used successfully to improve the human rights standards of member states. The

239. CEDAW Convention, *supra* note 33, art. 10(h).

240. CEDAW General Recommendation No. 21, *supra* note 188.

241. SEDGH ET AL., *supra* note 9, at 36.

242. *Improving Access in Haiti*, *supra* note 233.

243. *Id.*

244. *Id.*

Convention and its monitoring committee, CEDAW, have been most effective as a way to mobilize domestic actors in member states and to provide them with the information and foundation in international law necessary to pressure and influence their governments. CEDAW should use the full weight and power of its enforcement mechanisms, including reporting requirements and concluding observations, to pressure governments that are failing to meet treaty obligations regarding family planning services and access to contraception. The mobilization of NGOs or other domestic actors and the interactions between CEDAW and these local actors can successfully pressure member states to change or improve domestic policies. These policies can increase access to contraception among the millions of women who are currently unable to plan or control the number and spacing of their children.

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