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United Nations Policy and the Family: Redefining the Ties that Bind

A Study of History, Forces and Trends

Maria Sophia Aguirre & Ann Wolfgram*

I. INTRODUCTION

The themes and language of overpopulation and women's rights have been a part of mainstream conversation and international and national political discussion for nearly four decades now.¹ Rights lobby-

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1. Discussion of population demographics was first brought to the fore of the international arena at a series of conferences following the founding of the International Statistical Institute ("ISI") in 1885. It was not until 1927, however, at a World Population Conference organized by Margaret Sanger with the assistance of the International Labor Organization ("ILO") and the League of Nations, that population demographics became the central issue of discussion. *See generally*, Barbara Duden, *Population*, in THE DEVELOPMENT DICTIONARY 146 (W. Sachs ed., 1992); WARREN S. THOMPSON, DANGER SPOTS IN WORLD POPULATION (1929) [hereinafter THOMPSON, DANGER SPOTS]; WARREN S. THOMPSON, POPULATION AND PEACE IN THE PACIFIC (1946); Kingsley Davis, *The World Demographic Transition*, 237 ANNALS AM. ACAD. POL. SCI. 1, 4-15 (1945); Frank Lorimer, *Population Trends in the Orient*, 23 FOREIGN AFF. 668 (1945); H. Singer, *Economic Progress in Underdeveloped Countries*, 16 SOC. RES. 1 (1949); Simon Szreter, *The Idea of Demographic Transition and the Study of Fertility Change: A Critical Intellectual History*, 19 POPULATION DEV. REV. 659 (1993). Almost forty years later, some international organizations such as the World Bank, then headed by Robert McNamara, and the United Nations ("UN"), through their population division, took the lead on the overpopulation campaign. In 1965, the United Nations, under the auspices of the Economic and Social Council ("ECOSOC"), convened a conference in Belgrade to discuss economic and social development, fertility and family planning, and the need for both research and administration in those areas. *See* The World Population Conference, UN ECOSOC, U.N. Doc. E/Conf. 41/1 (1966). The following year, the United Nations Population Fund ("UNFPA") was created under the leadership of U. Thant, then Secretary General. UNFPA was founded on the basic assumption that every woman of reproductive age *wanted* the right to limit her fertility and that the UN needs to provide the means for regulating it. *See* UNFPA's mission statement at <http://www.unfpa.org/about/mission/english.html>.

In spite of these efforts, many countries strongly resisted and objected to the politicization of fertility and to the industrialized countries' insistence on the fertility-development dichotomy. This resistance came clearly to the surface at the 1974 Bucharest UN conference, the third Population and

ists, environmental action groups, advocates of children's autonomy, and other interest groups have brought the institution of the family to the center of political debate within international legal and policy-making circles, particularly at the United Nations ("UN").² Especially within the last decade, these groups have made persistent efforts to redefine not only the relationships within the family unit, but the very concept of "family" itself.³ In the UN conferences of the last twenty years, population, gender, women's rights, children's rights, healthcare, and education were the main issues that framed the debate on the family and ultimately influenced many policy initiatives regarding it.⁴

Development Conference convened by the UN. United Nations World Population Conference, U.N. Doc. E/Conf. 60/19, U.N. Sales NO. E.75.XIII.3 (1974). During conference discussions, a clear polarization regarding population growth developed between the industrialized countries, led by the United States, United Kingdom, and Germany, and the third world countries. The third world countries strongly opposed the proposed plan of action to address underdevelopment in terms of fertility and called instead for the establishment of a new world economic order to redistribute resources, since they attributed underdevelopment to an unfair distribution of resources. The opposition from less developed countries led population control promoters to reframe their population control arguments over the next ten years. See discussion *infra* Part IV; see *supra* note 24.

2. See POPULATION POLICIES RECONSIDERED: HEALTH, EMPOWERMENT AND RIGHTS (Gita Sen et al. eds., 1994) (outlining the women rights perspective and its connection to the UN). See also *Women's Empowerment and Reproductive Health: Links Throughout the Lifecycle*, UNFPA Advocacy Series (2000) [hereinafter *Links Throughout the Lifecycle*]; Radika Coomaraswamy, Reinventing International Law: Women's Rights as Human Rights in the International Community, Edward A. Smith Visiting Lecturer (1997), at <http://www.law.harvard.edu/programs/HRP> (under Projects and Publications/Edward A. Smith Lecturers) (last visited April 25, 2002).

3. Some of the leading groups advocating a redefinition of the family include: International Planned Parenthood Federation ("IPPF"); the Women Environment and Development Organization ("WEDO"); the Asian Pacific Forum on Women, Law, and Development ("APWLD"); International Gay and Lesbian Human Rights Commission ("IGLHRC"). The various definitions of "family" that these groups claim exist have been outlined by the UN. U.N., FAMILY: CHALLENGES FOR THE FUTURE, 36-42 (1996). The UN proposes some of these interpretations of "family" include: two parents and their biological child, extended families, "same-gender relations," and "mutual support" communities. *Id.*

4. This view is clearly reflected in some of the conventions and declarations specifically addressing women's rights and family issues that followed the *Convention on the Elimination of All Forms of Discrimination Against Women*, G.A. Res. 34/180, U.N. GAOR, 34th Sess., 107th plen. mtg. (1979) [hereinafter CEDAW], available at gopher://gopher.un.org/00/ga/cedaw/convention. See also *Declaration on the Elimination of Violence Against Women*, G.A. Res. 48/104, U.N. GAOR (Supp.) (No. 49) at 217, U.N. Doc. A/48/49 (1993) [hereinafter DEVAW], available at <http://www1.umn.edu/humanrts/instree/e4devw.htm>; U.N. WORLD CONFERENCE, REPORT OF THE WORLD CONFERENCE TO REVIEW AND APPRAISE THE ACHIEVEMENTS OF THE UNITED NATIONS DECADE FOR WOMEN: EQUALITY, DEVELOPMENT, PEACE, A. Conf. 116/28/Rev. 1 (1986) [hereinafter Nairobi Forward-Looking Strategies]; *Convention on the Rights of the Child*, A/Res/44/25, U.N. GAOR, 61st plen. mtg. (1989) [hereinafter Convention on the Rights of the Child], available at <http://www.unhcr.ch/html/menu3/b/k2crc.htm>; *Report of the World Conference of the United Nations Decade for Women, Equality, Development and Peace*, A/Conf. 94/35 (1980) [hereinafter Copenhagen '80]. This view was also reflected in the Programmes of Action produced by the UN conferences, which include specific chapters addressing women, children, and the family, independently of the subject matter of the conference. For example: Global Action for Women Towards Sustainable and Equitable Development, (chapter 24) and 'Children and Youth in Sustainable Develop-

A clear definition of what constitutes a family, as well as an understanding of the legal characterization within international law of relationships among family members, is of primary importance. It is upon these basic understandings that policies regarding the family are promulgated in the international arena, many domestic laws regarding the status of the family are formed, and a large spectrum of regulations that involve the family, from medical and benefit plans to sex education classes, are designed.⁵ This paper will argue that in addition to the effect the UN's approach to the family has had on international and domestic laws and policy, the UN's approach threatens the fundamental organic unity of the family itself, and consequently, the development of human and social capital.⁶ A large body of scientific evidence now shows that human beings develop best within a functional family that includes a biological or adoptive mother and father in a stable marriage.⁷

ment' (chapter 25) as part of Agenda 21 which was dedicated to the environment. Earth Summit Agenda 21, <http://www.un.org/esa/sustdev/agenda21text.htm>; *Programme of Action of the United Nations International Conference on Population and Development*, International Conference on Population and Development, U.N. Doc. A/CONF.171/13 (1994), available at <http://www.unfpa.org/icpd/reports&doc/icpdpoae.html> [hereinafter Cairo '94]. In Cairo '94's Programme of Action, which was dedicated to population and development, we find chapters entitled "Gender Equality, Equity, and Empowerment of Women" (chapter IV), "The Family, its Roles, Rights, Composition, and Structure" (chapter V), and "Reproductive Rights and Reproductive Health" (chapter VII). Programme of Action of the United Nations International Conference on Population and Development, <http://www.iisd.ca/linkages/Cairo/program/p00000.html>

5. In the late 1990s, several Latin American countries introduced, and in some cases even approved, laws that quoted directly, or followed closely, UN international conferences of the 1990s. Examples of such laws include the sexual and reproductive health education programs in Nicaragua, Honduras, El Salvador, and Argentina. As of the time this article was written, only Argentina's House of Representatives had passed the proposed law and it had not yet been approved by both houses. See *Cámara de Diputados de la Nación, Ordenes del Día N° 1000* (Oct. 5, 2000) y 1147 (Apr. 18, 2001), available at <http://www.diputados.gov.ar> under *Basos de Datos*. Furthermore, in some countries, UN conventions that have been ratified by the governing bodies and have been incorporated into their constitutions, giving them a status higher than domestic laws. See, CONST. ARG. Pt. II, title I, ch. IV, art. 75, pt. 22 (August 22, 1994), available at <http://www.senado.gov.ar/web/constitucion/cuerpol.html>.

6. Social capital has been defined in several ways. One definition that aptly encompasses the concept is "an instantiated informal norm that promotes cooperation between two or more individuals." Francis Fukuyama, *Social Capital and Civil Society*, International Monetary Fund, WP/00/74, at 3 (April 2000) [hereinafter Fukuyama, *Social Capital*]. These norms can range from a norm of reciprocity between two friends, all the way to complex and elaborately articulated doctrines like Christianity and Confucianism. *Id.* Human capital is generally understood as the physical and technical efficiency of the population. See GARY S. BECKER, *HUMAN CAPITAL* (1991).

7. See generally Paul R. Amato & Bruce Keith, *Parental Divorce and the Well-Being of Children: A Meta-Analysis*, 110 PSYCHOL. BULL. 26 (1991); William S. Aquilino, *The Life Course of Children Born to Unmarried Mothers: Childhood Living Arrangements and Young Adult Outcomes*, 58 J. MARRIAGE FAM. 293 (1996); Lise M.C. Bisnaire et al., *Factors Associated with Academic Achievement in Children Following Parental Separation*, 60 AM. J. ORTHOPSYCHIATRY 67 (1990); Douglas B. Downey, *Understanding Academic Achievement Among Children in Stepphouseholds: The Role of Parental Resources, Sex of Stepparent, and Sex of Child*, 73 SOC. FORCES 875 (1995);

Empirical evidence also shows that when the family is disrupted, the individual and social costs are very large.⁸ It is therefore important that the law promote rather than undermine this fundamental institution of society.

In the Universal Declaration of Human Rights, one of the UN's defining documents, the UN member states called for protection of the family as the "natural and fundamental group unit of society"⁹ and stated that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence. . ."¹⁰ However, a subtle shift began in the 1960s due to an increasing emphasis on population control and again in the 1970s with the emergence of a more radical women's rights lobby. This fundamental shift in attitude began to frame the family in the language and context of human rights and population control.¹¹ The understanding and treatment of the family as a group began to be seen as detrimental to women, a source of exploitation and abuse that hampers women's full development and infringes on their human rights.¹² As a result of this shift, policymakers and theorists began to break down a once organic entity, united by blood and kinship, into a collection of autonomous individuals bound together by contract and goodwill.¹³

Today the UN has introduced a new definition of the family: "family in its various forms."¹⁴ This definition is broader than any prior under-

Darin R. Featherstone et al., *Differences in School Behavior and Achievement between Children from Intact, Reconstituted, and Single-Parent Families*, 27 *ADOLESCENCE* 1 (1992); Bryan Neighbors et al., *Is Parental Divorce a Critical Stressor for Young Adolescents? Grade Point Average as a Case in Point* 27 *ADOLESCENCE*, 638 (Spring 1992); Jay Teachman et al., *Sibling Resemblance in Behavioral and Cognitive Outcomes: The Role of Father Presence*, 60 *J. MARRIAGE FAM.* 835 (1998). See also Patrick F. Fagan, *How Broken Families Rob Children of their Chances for Future Prosperity*, HERITAGE FOUNDATION BACKGROUNDER n.1283 (June 11, 1999), available at <http://www.heritage.org/library/backgrounder/bg1283.html> [hereinafter Fagan, *Broken Families*]; Patrick F. Fagan, *Education and Family Structure*, *J. MARRIAGE FAM.* (forthcoming 2001) [hereinafter Fagan, *Education and Family Structure*].

8. See FRANCIS FUKUYAMA, *THE GREAT DISRUPTION: HUMAN NATURE AND THE RECONSTITUTION OF SOCIAL ORDER* (1999) [hereinafter FUKUYAMA, *THE GREAT DISRUPTION*]; Maria Sophia Aguirre, *Family, Economics, and the Information Society: How Are They Affecting Information Society: How Are They Affecting Each?*, 28 *INT'L J. SOC ECON.* 225 (2001) [hereinafter Aguirre, *Family, Economics, and the Information Society*]; Fagan, *Broken Families*, *supra* note 7.

9. *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. GAOR, U.N. Doc. A/RES/217A (III), at art. 16.3 (1948) [hereinafter *Declaration of Human Rights*].

10. *Id.* at art. 12.

11. See *supra* note 4 and accompanying text; *Declaration on the Elimination of Discrimination Against Women*, G.A. Res. 2263 (XXII), GAOR (1967).

12. See *infra* Parts V.A.2, V.A. 3.

13. See discussion *infra* Part V.

14. See Cairo '94, *supra* note 4, at ¶ 5.1. See also *Report of the Ad Hoc Committee of the Whole of the Twenty-Third Special Session of the General Assembly: Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action*, U.N. GAOR, 23d Special Sess., Supp

standing of nuclear, extended, or even female-headed families and leaves the public and its policymakers with an ambiguous term that potentially includes any group wishing to call itself "family."¹⁵ This ambiguity may lead to a myriad of social, political, and legal problems ranging from marriage, tax, and health law to family, education, and property law. Certain factions within the UN seemingly see the Universal Declaration of Human Rights of 1948, regarded by a majority of countries and by international law as the most authoritative international instrument on human rights, as practically obsolete and in need of major modifications, if not outright substitution.¹⁶ In so advocating, these factions subscribe to a

No. 3, U.N. Doc. A/S-23/10/Rev. 1, at ¶ 60, 82(c) (2000) [hereinafter Beijing+5]; Cairo '94, *supra* note 4, at ¶5.9.

15. The UN understands the "various forms of family" as composed of three groups: Nuclear, extended, and reorganized families. FAMILY: CHALLENGES FOR THE FUTURE, *see supra* note 3, at 36-41. The groups, in turn, are divided into subgroups. The nuclear family subgroups include: biological, social, one-parent, adoptive, and in vitro. The extended family subgroups include: three-generation, kinship, tribal, and polygamous. Finally, the reorganized subgroups include: remarried, community living, and same-gender. *Id.* at 42. *See also infra* Part V.A(1) (arguing that the equality has been interpreted to mean interchangeability). What the empirical evidence shows, is that the type of family that is best for persons and society is a natural family that is functional, i.e., a mother and a father with their biological children in a stable relationship. *See supra* note 7-8 and accompanying text. Broken families, single parents, or same sex couples do not benefit the normal development of children. There is ample evidence that people living under these arrangements are at a disadvantage psychologically, emotionally, academically, as well as sociability and health wise. *See* HOMOSEXUALITY AND AMERICAN PUBLIC LIFE (Christopher Wolfe ed., 1999); DAVID POPENOE, LIFE WITHOUT FATHER: COMPELLING NEW EVIDENCE THAT FATHERHOOD AND MARRIAGE ARE INDISPENSABLE FOR THE GOOD OF CHILDREN AND SOCIETY (1996); DAVID POPENOE & BARBARA DAFOE WHITEHEAD, SHOULD WE LIVE TOGETHER? WHAT YOUNG ADULTS NEED TO KNOW ABOUT COHABITATION BEFORE MARRIAGE (1997), available at <http://marriage.rutgers.edu/SWL.T.html>; Susan L. Brown & Alan Booth, *Cohabitation Versus Marriage: A Comparison of Relationship Quality*, 58 J. MARRIAGE FAM. 668 (1996); Allan V. Horowitz & Helene Raskin White, *The Relationship of Cohabitation and Mental Health: A Study of Young Adult Cohort*, 60 J. MARRIAGE FAM. 505 (1998); Jan E. Stets, *The Link Between Past and Present Intimate Relationships*, 14 J. FAM. ISSUES 230 (1993); Patrick F. Fagan & Robert Rector, *The Effects of Divorce on America*, HERITAGE FOUNDATION BACKGROUNDER n 1373 (June 5, 2000), available at <http://www.heritage.org/library/backgrounder/bg1373.html>; Bridget Maher, *Families Do Matter: Some Thoughts on the Latest Adolescent Health Study*, IN FOCUS (2000), available at <http://www.frc.org/get/ifa01c1.cfm?CFID=376705&CFTOKEN=10559270>; Susan Orr, *Single Parenthood: Life Without Father*, IN FOCUS (2000), available at <http://www.frc.org/get/ifa01b1.cfm?CFID=376705&CFTOKEN=10559270>.

16. In 1987, a report of the World Commission on Environment and Development, entitled *Our Common Future*, asked for the production of a "new charter" that would "consolidate and extend the most important legal principles" by means of "new norms. . . needed to maintain livelihoods and life on our shared planet" and "to guide state behavior in the transition to sustainable development." Earth Charter Initiative, *About Us: Earth Charter Project 1945-1992*, at http://www.earthcharter.org/aboutus/overview1945_1992.htm. *See also* OUR COMMON FUTURE: WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT (1987). The Committee also recommended that this charter "be later extended to a status of a Convention, defining the sovereign rights and reciprocal responsibilities of all the States regarding the environment and sustainable development." *Id.* This initiative has been taken up by the Earth Charter Initiative who has written a draft of the proposed new convention called the Earth Charter, which is to be presented in June of 2002 to

school of thought that views human rights as evolving and thereby regard later, less binding and less comprehensive documents as more important because they are more attuned to progress.¹⁷ By defining the family and its members in terms of an evolving, progressive notion of rights, the UN has implicitly accepted that the ties that bind the family are no longer permanent or sacred, but transitory, breakable, and subject to interven-

the General Assembly of the UN for incorporation. See <http://www.earthcharter.org/earthcharter/charter.html>.

There are others movements within the UN that hope to reinterpret basic human rights documents. These reinterpretations include creating such "fundamental rights" as abortion on demand and freedom from "discrimination based on sexual orientation" as well as condemning the "stereotype" of motherhood. Round Table of Human Rights Treaty Bodies on Human Rights Approaches to Women's Health, with Focus on Sexual and Reproductive Health and Rights, United Nations Division for the Advancement of Women, the United Nations Population Fund, and the United Nations High Commissioner for Human Rights, 22-23 (December 1996). See also *id.* at 7, 11, 12, 18, 23-24, 27, 28, 33-34, 36-37. For a report of the meeting see <http://www.unfpa.org/modules/intercenter/reprights/glcen.htm>.

The United Nations High Commissioner on Human Rights, Mary Robinson, stated at the Symposium on Human Rights in the Asia-Pacific Region,

Today's world is more complex than it was fifty years ago. . . . The agenda set by the [Universal] Declaration [of Human Rights] is surprisingly apt for these new complexities—whether they are linked to the rights of indigenous peoples, or the right to development, or discrimination on the ground of gender or on the basis of sexual orientation - but who could have imagined in 1948 that we would use the 50th anniversary of the Declaration as an *opportunity to reposition these fresh concerns and others in our order of priorities?*"

Mary Robinson, *The Universal Declaration of Human Rights: A Living Document*, Remarks at Symposium on Human Rights in the Asia-Pacific Region (January 27, 1998) (emphasis added), available at <http://www.unu.edu/unupress/Mrobinson.html#top>. See also Mary Ann Glendon, *The Tension Between Individual Liberty and Family Protection in the UN Universal Declaration of Human Rights*, in LIBER AMICORUM MARIE-THÉRÈSE MEULDERS-KLEIN 283 (J. Pousson-Petit ed., 1998) [hereinafter Glendon, *Individual Liberty and Family Protection*]; Janne Haaland-Matlary, International Norm-Creation in Human Rights and Its Domestic Impact: Strategies for Promoting Natural Law, Paper presented at the Pontifical University of the Holy Cross, Faculty of Social Communications (Oct. 12, 2001) [hereinafter Haaland-Matlary, International Norm-Creation].

17. The *Report of the Committee on the Elimination of Discrimination Against Women*, which was presented to the General Assembly with recommendations regarding specific countries' compliance with the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") conveys this particular interpretation. *Report of the Committee on the Elimination of Discrimination Against Women*, U.N. GAOR, 54th Sess., Supp. 38 A/54/38 Rev. 1, (May 4, 1999), available at <http://www.un.org/womenwatch/daw/cedaw/21report.pdf>. For example, the Committee recommended to Kyrgyzstan, "that lesbianism be reconceptualized as a sexual orientation" and, therefore, be depenalized because it constitutes discrimination against women according to Article 1 of CEDAW. *Id.* at ¶ 128. None of these, so called "rights" by the Committee, are present in the Universal Declaration of Human Rights.

Similarly Dr. Nafis Sadik, speaking at the plenary session on the closing day of the Cairo '94 Conference stated "the document I promoted is important because it counteracted and allowed [women] to go against people supporting an agenda that was dictated by backwardness." Nafis Sadik, *Population and Development: Investment in the Future*, DEVELOPMENT ISSUES: PRESENTATIONS TO THE 48TH MEETING OF THE DEVELOPMENT COMMITTEE 1 (Sept. 13, 1994) [hereinafter Sadik, *Population and Development*].

tion and redefinition.¹⁸

The changing definition of family in UN documents has been significantly influenced by non-state actors interacting through transnational advocacy networks,¹⁹ with each other, with states, and with international organizations. These non-state actors have become significant players in international policy-making and consequently in the creation of soft law. The legal scholars Abbot and Snidal note that "soft law"²⁰ is often highly influential and is often treated by interested actors as if it were hard law.²¹ Such has been the case with the documents produced by the UN

18. CEDAW requests governments to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." CEDAW, *supra* note 4, at art. 5(a). It also exhorts countries to implement an "education [that] includes a proper understanding of maternity as a social function . . ." *Id.* On the basis of these articles, the Committee, expressed in its report of 1998, reprimanded Croatia regarding its "consistent emphasis placed on women's roles as mothers and caregivers in Croatian legislation pertaining to variety of areas . . . reinforces traditional and stereotypical role expectations, which tend to limit women's full participation in society." Report of the Committee on the Elimination of Discrimination Against Women, Sess. 18 and 19, A/53/38/Rev.1, ¶103, available at <http://www.un.org/womenwatch/daw/cedaw/18report.pdf>. The Committee similarly reprimanded Belarus and recommended the elimination of "Mothers' Day" and "Mothers' Award" because of the perpetuation of women's "traditional roles." Report of the Committee on the Elimination of Discrimination Against Women, Sess. 22 and 23, A/55/38, ¶¶ 342, 361, available at <http://www.un.org/womenwatch/daw/cedaw/a5538.pdf>.

19. Margaret Keck and Kathryn Sikkink note a "transnational advocacy network includes those actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services." Margaret Keck & Kathryn Sikkink, *Traditional Advocacy Networks in International and Regional Politics*, 51 INT'L SOC. SCI. J. 89 (1999) (noting this definition was based on a discussion in J. Mitchell, *Networks, Norms, and Institutions*, in NETWORK ANALYSIS (J. Boissevain & J. Mitchell eds. 1973)).

20. Kenneth W. Abbot & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421, 422 (2000). "The realm of 'soft law' begins once legal arrangements are weakened along one or more of the dimensions of obligation, precision and delegation. This softening can occur in varying degrees along each dimension[,] . . . in different combinations across dimensions," and comes in a variety of forms. *Id.* Hard laws, on the other hand, refer to "legally binding obligations that are precise (or can be made precise through adjudication or the issuance of detailed regulations) and that delegate authority for interpreting and implementing laws." *Id.* at 421 (internal citations omitted).

21. See *id.* at 423-425. The International Planned Parenthood Federation aptly conveys the effect that NGOs can have on international law:

The [IPPF] Charter on Sexual and Reproductive Rights is based on twelve rights, which are grounded in core international human rights instruments, and additional rights that IPPF believes are implied by them. . . . [It] represents IPPF's response to the challenge of interpreting human rights language and applying it to sexual and reproductive health care issues.

The International Planned Parenthood Fed'n, *IPPF Charter on Sexual and Reproductive Rights* 9 (1996), available at <http://www.ippf.org/charter/summary.htm> [hereinafter *IPPF Charter on Sexual and Reproductive Rights*]. "By drawing on relevant extracts from international human rights treaties, the Charter demonstrates the legitimacy of sexual and reproductive rights as key human rights issues." *Id.* at 6. Since these treaties have the status of international law, states that have ratified them have entered into legally binding obligations to honor them within the

conferences in the last two decades:²² “[A]iming for soft law bases for new norms is a preferred strategy [of civil societies at the UN] because its status in the international political system is so ambiguous. . . . Thus, soft law is the preferred tool for those who want to change norms.”²³ Since the International Conference of Population and Development (“ICPD” or “Cairo ’94”) in 1994, UN family policy has come under intense scrutiny by national governments and civil societies from around the globe as they have come to recognize the broad implications of binding legislation in this area.²⁴ Such scrutiny is critical because these policies, once ratified and enacted by member states, have the potential to affect, for better or worse, the daily lives of people in every locale, as well as to influence policies at every level of government, ranging from healthcare and education to childcare and parenting.²⁵ This paper will

legislative frameworks of their own countries. The Charter has been designed as a tool to help NGOs to hold governments accountable for promises they have made in upholding human rights in general, and sexual and reproductive rights in particular.

22. See discussion of UN Programmes, Declarations, Conventions, and Protocols of the last twenty years, *infra* Parts III, IV.

23. Haaland-Matlary, International Norm-Creation, *supra* note 16, at 4.

24. Since Cairo ’94, there has been a consistent debate in every conference, with the exception of Habitat II, regarding language that refers to the family, sexual orientation, abortion, reproductive and sexual health and parental involvement in the education of their children is an evidence of this fact. There have been four points on which several countries have expressed reservations to incorporation of UN conferences, including: (1) references to abortion as a method of family planning; (2) defining references to the family as the natural family, i.e., a married heterosexual couple; (3) limiting concepts such as “reproductive rights,” “reproductive health,” or “regulation of fertility” within the context of married couples; and (4) limiting the document’s to the context of the countries’ constitutions, domestic laws, culture and religions. See Cairo ’94, *supra* note 4, at Chapter V: Adoption of the Programme of Action; *Commission on Population and Development: Proposals for Key Actions for the Further Implementation of the Programme of Action of the International Conference on Population and Development*, E/CN.9/1999/PC/4 (Feb. 25, 1999), available at <http://www.unfpa.org/icpd/reports&doc/sg-report.htm>; *Key Actions for the Further Implementation of the Programme of Action of the International Conference on Population and Development*, U.N. GAOR, 21st Special Sess., U.N. Doc. A/S-21/5-Add.1 (1999), available at <http://www.unfpa.org/icpd/reports&doc/215a1e.pdf> [hereinafter Cairo+5]; *Report of the Fourth World Conference on Women and Platform for Action*, U.N. Department for Policy Coordination and Sustainable Development, U.N. Doc. A/CONF. 177/20 (1995) [hereinafter Beijing ’95]. See generally, Mary Ann Glendon, *The Family and Society: International Organizations and the Defense of the Family*, in LA FAMIGLIA: DONO E IMPEGNO, SPERANZA DELL’UMANITÀ: ATTI DEL CONGRESSO INTERNAZIONALE 31 (1998), available at <http://www.simbahayan.org/B5-intorgsGlendon.html>; Glendon, *Individual Liberty and Family Protection*, *supra* note 16, at 283; Teresa Stanton Collett, *Marriage, Family, and the Positive Law*, 10 NOTRE DAME J.L. ETHICS & PUB. POL’Y 467 (1996); Richard G. Wilkins & Kathryn O. Balmforth, *The International Criminal Court, Human Rights and the Family*, INSIGHT PAPERS, FAM. RES. COUNCIL (1999), available at <http://www.frc.org/papers/isight/index.cfm?get=IS98J2&arc=yes>.

25. The Programme of Action of Cairo ’94 expressly suggests the need for a change of cultures and it goes on to explicitly describe, in chapter II, how to carry it out:

Government, non-governmental organizations, and the private sector should make a greater and effective use of the entertainment media, including radio and television soap operas and drama, folk theater, and other traditional media to encourage public discussion

examine how the United Nations policy has dealt with the family in the past, assess how its policies have changed throughout the years in various conferences, and analyze the actual and potential effects these changes have had and may have on societies around the globe.

II. PLAYERS AND PERSPECTIVES IN THE DEBATE

A full understanding of the development of the international discussion surrounding the family requires an introduction to the perspectives and players that have shaped the debate in the past and continue to shape it today. In the past decade, the number of transnational advocacy networks that operate through Non-Governmental Organizations (“NGOs”) has grown significantly.

[T]he growth of national NGOs is to be found in single-issue areas, and these groups easily network in horizontal ways. Modern communication helps this organizational form. NGOs typically seek out causes where it is easy to present the issue as a singularly good thing; as an improvement or progress, and use human rights language as mode of argumentation and as justification. First, something is defined as a human right. . . Then it is justified because it is a human right.²⁶

of important but sometimes sensitive topics related to the implementation of the present Programme of Action. . . When the entertainment media—especially dramas—are used for advocacy purposes or to promote particular lifestyles, the public should be so informed.

Cairo '94, *supra* note 4, ¶ 11.23. Similar recommendations of how governments and education programs can influence culture and, specifically adolescents, can be found in the Programme of Action for Beijing '95, *supra* note 24, ¶ 33, 75, 83 (a), & 124 (k).

26. Haaland-Matlary, International Norm-Creation, *supra* note 16, at 4. A clear example of how this strategy works can be found in the Preamble of the IPPF CHARTER ON SEXUAL AND REPRODUCTIVE RIGHTS, which states:

This Charter on Sexual and Reproductive Rights is based on twelve rights which are grounded in core international human rights instruments and additional rights that IPPF believes are implied by them. The Standards section draws heavily on documents which won international consensus at four key UN conferences which took place between 1993 and 1995, namely the UN World Conference on Human Rights (Vienna, 1993); the UN International Conference on Population and Development (Cairo, 1994); the UN World Summit for Social Development (Copenhagen, 1995); and the UN Fourth World Conference on Women (Beijing, 1995).

The Charter represents IPPF's response to the challenge of interpreting human rights language and applying it to sexual and reproductive health care issues. The classification of specific issues under certain rights represents IPPF's judgment of where each issue should best appear; the listing of any issue under any specific right does not preclude action being taken on that issue under another right.

It should be noted that, by their membership in international human rights conventions, states recognize legal duties that arise under international law—many provisions in international conventions quoted in the Charter are obligations that governments have entered into and to which they can be held accountable.

IPPF recognizes that rights entail responsibilities, as they apply to both individuals

In the case of the family, five major groupings have had a significant impact: the population control perspectives, the women's rights perspectives, the children's rights perspectives, sexual and reproductive rights perspectives, and the gender perspective.

A. *The Population Control Perspectives*

This particular group has several sub-categories, many of which view population growth as a problem²⁷ that needs to be controlled.²⁸ Some of these groups see high population growth in Malthusian terms, population growth is the main cause of poverty and an obstacle to development because the more people there are in a given area the fewer resources there are to support or develop them.²⁹ Another faction of the population control perspective, Neo-Malthusians, sees people as destroyers of resources and violators of environmental limits.³⁰ Other groups within this category see high population growth as a source of instability between governments, especially between the richer, developed nations, and poorer, less developed countries because less developed nations have

and states. IPPF also recognizes that whereas the existence of these rights – as articulated in international conventions which governments have voluntarily entered into – is indisputable, there is a margin of discretion which can apply to the way in which these rights can be implemented and enjoyed in different settings. IPPF further recognizes the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights when raising the issue of violations as their criteria will be founded in internationally accepted codes of conduct. The Charter provides a base-line to facilitate the monitoring of such violations.

IPPF CHARTER ON SEXUAL AND REPRODUCTIVE RIGHTS, *supra* note 21, at 9.

27. See generally FRANK FUREDI, *POPULATION AND DEVELOPMENT: A CRITICAL INTRODUCTION* (1997); JULIAN L. SIMON, *THE ULTIMATE RESOURCE II* (1996). [hereinafter SIMON, II]; Ann F. Wolfgram, *Population, Resources & Environment: A Survey of the Debate* (1999), available at <http://arts-science.cua.edu/econ/faculty/aguirre>; Maria Sophia Aguirre, *Sustainable Development: Why the Focus on Population?*, J. OF INTL. SOC. ECON. (forthcoming 2002) [hereinafter Aguirre, *Sustainable Development*].

28. H. Singer, *Economic Progress in Underdeveloped Countries*, 16 SOC. RES. 1 (1949), relying on Malthusian theory, supporting the notion that population was a serious obstacle for development. ANSLEY J. COALE & EDGAR M. HOOVER, *POPULATION GROWTH AND ECONOMIC DEVELOPMENT IN LOW-INCOME COUNTRIES: A CASE STUDY OF INDIA'S PROSPECTS* (1958), was the first academic work that attempted to provide both the theoretical and the empirical support for the position that population is a serious obstacle for development. Some of the organizations that continue supporting these view and that are actively involved with UNFPA include, among others, the Population Council, Population Services International, Family Care International, Family Health International, and IPPF.

29. See LESTER R. BROWN ET AL., *BEYOND MALTHUS: NINETEEN DIMENSIONS TO THE POPULATION CHALLENGE* (1999).

30. See Garret Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968), reprinted in *MANAGING THE COMMONS* 3 (John A. Baden & Douglas S. Noonan, eds., 2d ed. 1998). See also PAUL R. EHRLICH, *THE POPULATION BOMB* (1968); GARRET HARDIN, *THE OSTRICH FACTOR: OUR POPULATION MYOPIA* (1999); PAUL HARRISON, *THE THIRD REVOLUTION: ENVIRONMENT, POPULATION AND A SUSTAINABLE WORLD* (1992).

younger, growing populations, and most developed nations struggle with fast aging, shrinking populations.³¹ Some human rights advocates within this perspective, especially the radical women's rights lobby,³² perceive population growth to be symptomatic of a larger problem of women's oppression; the more children a woman has, the less opportunity she has for her own self-actualization and development.³³ Consequently, these women's rights lobbyists see population control policies as a necessary means to guarantee women's rights and sustain development. In 1994, the UN ICPD conference in Cairo supported this overt linkage between women's rights and population issues in 1994.³⁴

In contrast, there are other groups who argue that population growth

31. See NICHOLAS EBERSTADT, *THE TYRANNY OF NUMBERS: MISMEASUREMENT AND MISRULE* (1995) [hereinafter EBERSTADT, *THE TYRANNY OF NUMBERS*; PAUL KENNEDY, *PREPARING FOR THE TWENTY-FIRST CENTURY* (1993).

32. For purposes of this paper, radical women groups is defined as organizations that voice the empowerment of women through "infertility," which is to say that they promote and demand the recognition of changes in the patterns of human reproduction and advocate homosexuality as a recognized style of life. These lobbyists typically group themselves at the UN under three caucuses: Women's Caucus for Gender Justice, Human Rights Caucus, and the Lesbian Caucus. These groups also include World Population and Development Organization ("WEDO"), the Asian Pacific Forum on Women, Law and Development ("APWLD"), Development Alternatives with Women for a New Era ("DAWN"), the International Women Health Coalition, the Center for Reproductive Law and Policy, and the International Gay and Lesbian Human Rights Commission ("IGLHRC").

33. The Asian Pacific Forum on Women, Law and Development NGO circulated a paper on May 14, 1994 at the United Nation's Cairo Preparatory Committee Meeting, which argued that "The institution of the family constitutes of both the ideological and material ground for structures of dependence and gender differences that strengthen inequality and women's oppression. . . Religion and cultural practices are key factors in shaping and maintaining values which inform social roles for women which are oppressive." Asia Pacific Forum on Women and, Law Development (May 14, 1994) (unpublished document distributed at Cairo '94) (on file with the author). Similarly, Dr. Sadik, the executive director of the United Nations Population Fund stated that

[I]ndividuals must have access to education, basic health care and quality reproductive health including family planning services. . . Gender equality and women's empowerment are core, crucial elements of this vision. As your Secretary of State, Madeleine Albright recently said "Advancing the status of women is not only a moral imperative. . . it is the smart thing to do." Taken together, these elements. . . are all essential to achieving our international development and population objectives.

Nafit Sadik, Statement delivered at a Reception for Representatives of NGOs, USAID, U.S. State Department and U.S. Congress (May 7, 1997) (transcript available at <http://www.unfpa.org/about/cd/1997/abort-dc.htm>) [hereinafter Sadik, Statement].

34. One of the listed principles of the Cairo '94 report states,

Advancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility, are cornerstones of population and development-related programmes. The human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in civil, cultural, economic, political and social life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex, are priority objectives of the international community.

Cairo '94, *supra* note 4, at Chapter II, Principle 4 (emphasis added). See also *id.* ¶ 4.1, 4.4, 4.11.

is not a problem, but instead argue that more people equate to more innovation and a greater ability to address issues such as environment, technology, and poverty.³⁵ These groups argue that investment in human capital increases development and can boost economic growth and technological developments, which, in turn, benefit the population and the environment.³⁶ Finally, there are those who oppose population control for religious reasons, believing the procreative act to be a highly personal act within the private sphere, and therefore, outside the public realm and beyond government intervention.³⁷

B. *The Women's Rights Perspectives*

The radical women's rights lobby³⁸ believes that family responsibilities to several children curtail a mother's ability to work outside the home, as well as limit her personal growth.³⁹ Thus, they see the family as furthering women's oppression and societal subordination.⁴⁰ It follows, that for these groups, access to "reproductive health information and services"⁴¹ will free women because ignorance of available services

35. See GARY S. BECKER, HUMAN CAPITAL: A THEORETICAL AND EMPIRICAL ANALYSIS WITH SPECIAL REFERENCE TO EDUCATION (1993) [hereinafter BECKER, HUMAN CAPITAL]; BECKER, TREATISE ON THE FAMILY, *supra* note 6. See generally ESTER BOSERUP, ECONOMIC AND DEMOGRAPHIC RELATIONSHIPS IN DEVELOPMENT (1990); ESTER BOSERUP, POPULATION AND TECHNOLOGICAL CHANGE: A STUDY OF LONG-TERM TRENDS (1981); JULIAN L. SIMON, THE ULTIMATE RESOURCE (1981) [hereinafter SIMON]; SIMON II, *supra* note 27; JULIAN L. SIMON, HOODWINKING THE NATION (1999) [hereinafter SIMON, HOODWINKING THE NATION]; MARIA SOPHIA AGUIRRE, THE ECONOMIC CONSEQUENCES OF THE UN CONFERENCES OF THE '90S (forthcoming 2002) [hereinafter AGUIRRE, ECONOMIC CONSEQUENCES]; Aguirre, *Sustainable Development*, *supra* note 27; Maria Sophia Aguirre & Cecilia Hadley, *Hindered Growth: The Ideology and Implications of Population Assistance*, REV. DEV. ECON. (forthcoming 2002) [hereinafter Aguirre, *Hindered Growth*].

36. See generally JACQUELINE KASUN, POPULATION AND ENVIRONMENT (1991); SIMON II, *supra* note 27; Don Fullerton & Robert Stavins, *How Economists See the Environment*, 395 NATURE 433 (1998); Jeffrey A. Krautkraemer, *Nonrenewable Resource Scarcity*, 36 J. ECON. LITERATURE 2065 (1998); Robert Stavins, *Clean Profits: Using Economic Incentives to Protect the Environment*, 48 POL'Y REV. 58 (1989).

37. See generally FURDEI, *supra* note 27.

38. See *supra* note 32.

39. See generally CELIA AMORÓS, HACIA UNA CRÍTICA DE LA RAZÓN PATRIARCHAL (1985); SIMON DE BEAUVOIR, LE DEUXIÈME SEXE (1949); BETTY FRIEDAN, BEYOND GENDER: THE NEW POLITICS OF WORK AND FAMILY (Brigid O'Farrell ed., 1997); BETTY FRIEDAN, FEMININE MYSTIQUE (1963); KATE MILLETT, LA POLITIQUE DE MÂLE (1971).

40. See sources cited *supra* note 2.

41. Cairo '94 defines reproductive health information and services as including family planning services which is defined as

Contraceptive commodities and service delivery; capacity-building for information, education and communication regarding family planning and population and development issues; national capacity-building through support for training; infrastructure development and upgrading of facilities; policy development and programme evaluation; management

results in women have more children than they desire.⁴² A second group of the women's lobby, however, believes that the women's rights movement should promote the right of women to be women, whether they work in the home or outside of it.⁴³ This group argues that motherhood and the family do not oppress women, but rather offer women fuller expression.⁴⁴ Therefore, they maintain that radical women's rights groups risk making women a policy tool and fail to recognize the fullest dimensions of womanhood by reducing women to their reproductive and sexual traits or capacities.⁴⁵

C. The Children's Rights Perspectives

The traditional perspective holds children as the recipients of parental protection and guidance.⁴⁶ Recent perspectives, which have gained

information systems; basic service statistics; and focused efforts to ensure good quality care.

Cairo '94, *supra* note 4, ¶ 13.14(a). Reproductive health services are defined as

[I]nformation and routine services for prenatal, normal and safe delivery and post-natal care; abortion (as specified in Paragraph 8.25); information, education and communication about reproductive health, including sexually transmitted diseases, human sexuality and responsible parenthood, and against harmful practices; adequate counseling; diagnosis and treatment for sexually transmitted diseases and other reproductive tract infections, as feasible; prevention of infertility and appropriate treatment, where feasible; and referrals, education and counseling services for sexually transmitted diseases, including HIV/AIDS, and for pregnancy and delivery complication.

Id. ¶ 13.14(b).

42. To members of this group, the term "mother" is an increasingly pejorative term, as demonstrated by developments at the Cairo '94, *supra* note 4; Cairo+5, *supra* note 24, Beijing+5, *supra* note 14, and other UN meetings. See discussion *infra* Part IV. See also *Women's Empowerment and Reproductive Health: Links Throughout the Lifecycle*, UNFPA Advocacy Series (2000) [hereinafter *Links Throughout the Lifecycle*].

43. See Mary Ann Glendon, *A Glimpse of the New Feminism*, 175 AMERICA 1, 10 (1996) [hereinafter *Glendon, A Glimpse of the New Feminism*]; JANNE HAALAND-MATLARY, IL TEMPO DELLA FIORITURA. PER UN NUOVO FEMMINISMO (1999); Janne Haaland-Matlary, *Womanhood on Women's Own Terms*, CRISIS (March 21, 1997).

44. See Mary Ann Glendon, *Feminism and the Family: An Indissoluble Marriage*, 124 COMMONWEALTH 3, 11 (1997) [hereinafter *Glendon, Feminism and the Family*]; Mary Ann Glendon, *Is the Economic Emancipation of Women Today Contrary to a Healthy, Functioning Family?*, in THE FAMILY, CIVIL SOCIETY, AND THE STATE 87 (Christopher Woolfe ed., 1998); Cecilia Acevedo Royals, *The Indispensable Role of the Woman/Mother in Building the Civilization of Love*, paper delivered at the Second Pan-American Conference of Family and Education (May 1996) available at <http://www.interlog.com/~alandp/2IndispensableRoleWoman.htm>.

45. See ELIZABETH FOX-GENOVESE, FEMINISM IS NOT THE STORY OF MY LIFE: HOW TODAY'S FEMINIST ELITE HAS LOST TOUCH WITH THE REAL CONCERNS OF WOMEN (1996); CHRISTINA HOFF SOMMERS, WHO STOLE FEMINISM? HOW WOMEN HAVE BETRAYED WOMEN (1994); CORNELIUS F. MURPHY, JR., BEYOND FEMINISM: TOWARD A DIALOGUE ON DIFFERENCES (1995).

46. See *Convention on the Rights of the Child*, *supra* note 4, at art. 3.2. *International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), GAOR at art. 23.4, 24 (1966), available at http://unhchr.ch/html/menu3/b/a_ccpr.htm. [hereinafter *International Covenant on Civil and Political Rights*]; *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200A (XXI),

prevalence in the last thirty years, wish to endow children with greater autonomy, regardless of age, and argue that autonomous children hold certain rights over and against their parents.⁴⁷ This view is premised on the presumption that the family fosters discrimination and abuse.⁴⁸ Children's rights were previously thought to be held by parents in their child's stead until they reached majority precisely because it was considered the natural, most protective, and therefore, best condition for a child to develop.⁴⁹ Some authors consider that the view of the autonomous child won out in 1989 with the signing of the Convention on the Rights of the Child.⁵⁰ In contrast, others argue that the autonomous child per-

GAOR at art. 10.1, 10.3, 13.3 (1966), available at http://unhchr.ch/hrml/menu3/b/a_ceser.htm. [hereinafter International Covenant on Economic, Social and Cultural Rights]; *Declaration of the Rights of the Child*, G.A. Res. 1386(XIV) at ¶ 6 (1959), available at <http://www.unhchr.ch/html/menu3/b/25.htm> [hereinafter Declaration of the Rights of the Child]; *Declaration of Human Rights*, *supra* note 9, at art. 26.3.

47. See THE BEST INTERESTS OF THE CHILD: TOWARD A RECONCILIATION OF CULTURE AND HUMAN RIGHTS (Philip Alston, ed., 1994) [hereinafter THE BEST INTERESTS OF THE CHILD].

48. See GERALDINE VAN BUEREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD: INTERNATIONAL STUDIES IN HUMAN RIGHTS (1995). See also Children and Domestic Violence Organization at <http://www.ChildrenandDomesticViolence.org>.

49. See Michael Farris, *Parental Rights Under Assault*, THE FAMILY IN AMERICA (The Howard Center for Family, Religion and Society, Rockford, Ill.) (Apr. 2000); Akira Morita, *Beyond the Myth of Children's Rights*, Address before World Congress of Families II (Nov. 15, 1999), available at http://www.worldcongress.org/gen99_speakers/gen99_morita.htm. This position is well summarized by Bruce R. Hafen & Jonthan O. Hafen, *Abandoning Children to Their Autonomy: The United Nations Convention on the Rights of the Child*, 37 HARV. INT'L L.J. 449 (1996):

Children are inherently dependent persons—a concept less of law than of nature. So the question is on whom will children depend, not whether they should be dependent. In this “struggle between the family and the State for the minds of the young,” the pluralistic democratic tradition has looked to parents and families, not to the state, to teach children the values, beliefs and commitments that sustain an open society.

Id. at 484.

The following ruling of the Supreme Court of Canada, presents a good summary of what the western legal traditional view of the parent-child relation is:

... Our society is far from having repudiated the privileged role parents exercise in the upbringing of their children. This role translates into a protected sphere of parental decision making which is coated in the presumption that parents should make important decisions affecting their children both because parents are more likely to appreciate the best interests of their children and because the state is ill equipped to make such decisions itself. Moreover, individuals have a deep personal interest as parents in fostering the growth of their children.”

Richard B. and Beena B. v. Children's Aid Society of Metropolitan Toronto [1995] 9 RFL. 4th 157, 207 (Can.).

50. *Convention on the Rights of the Child*, *supra* note 4. One scholar affirms that:

The 1989 Convention, on the other hand, consciously breaks new ground, creating “an important addition to human rights jurisprudence”; namely, the notion of autonomy-based “individual personality rights” for children, a concept that includes such adult-style civil rights as “speech, religion, association, assembly and the right to privacy”. This notion does not reflect prior United Nations approaches to children's needs or rights, nor did it originate in requests initiated by delegated from U.N. member nations. Rather, during the 1980s certain nongovernmental organizations (NGOs) formed an ad hoc group

spective seriously challenges parental rights, which were recognized by the Universal Declaration of Human Rights and clearly stated in the 1989 conventions as well.⁵¹ Opponents argue that the autonomous child perspective effectively serves to drive a wedge in the parent-child relationship by setting parent and child on equal footing with regard to autonomy and rights, while neglecting an understanding of the organic relationship between parents and children.⁵²

D. Sexual and Reproductive Rights Perspective

Tied to the population control perspective and the women's rights perspective, and increasingly, to children's rights, the sexual and reproductive rights perspective argues that by recognizing women's, and adolescent children's, sexual and reproductive rights, more reproductive information and services can be made available.⁵³ They sustain the view that women using these services will have fewer children, and that this in turn, will free women from the home and will enable personal development, while at the same time curbing population growth and the spread

that located governmental sponsors for the "totally new right" of individual personality, which the NGO group promoted by taking an unusually direct role in helping to draft the Convention.

Hafen, *Abandoning Children to Their Autonomy*, *supra* note 49, at 458-59.

51. See Dallas Miller, Protecting Children by Respecting Parents, Address before World Congress of Families II (Nov. 14-17, 1999), available at http://www.worldcongress.org/gen99_speakers/gen99_miller.htm; Morita, *supra* note 49. Both authors support this proposition and base their claim on the text of the preamble as well as on art. 3.2, 5, 8, 9.1, and 14.2 of the *Declaration of Human Rights*, *supra* note 9.

52. Miller, *supra* note 51, citing United Nations Committee on the Right of the Child, 8th Session Observations of the Committee on the Right of the CHILD: United Kingdom of Great Britain and Northern Ireland, (January 1995). Specifically, the article references the Committee's 1995 Report on Great Britain and Northern Ireland:

The committee was severely critical of Great Britain for what they viewed as more than 20 violations of the Convention. The more prominent violations according to the committee were that Great Britain allowed parents to opt their children out of sex education classes in government schools without the consent of the child. Great Britain was also criticized for allowing corporal punishment and allowing parents to home school their children. . . .Curriculum in schools must be changed so that principles of the "autonomous child" as set in the Convention are taught throughout the school. . . .The UNCRC is unique compared to other international human rights documents in that for the first time it sets up children as having independent rights as against their parents with power of the State driving the wedge between children and their parents.

Id. at 5.

53. According to Dr. Nafis Sadik, past executive director of the United Nation Population Fund, when a woman "trapped in the web of tradition that determines [her] worth solely in terms of [her] reproductive role, realizes that she can make decisions regarding her reproductive function, this experience of autonomy spreads to other aspects of her life. It is the first, essential step on the road to empowerment and to making contributions to the real development of society." Sadik, *Population and Development*, *supra* note 17, at 126.

of diseases like AIDS.⁵⁴ This view has been supported in UN Conferences over the past twenty-five years, most recently in Cairo, Beijing, and their follow-up conferences.⁵⁵ Opponents charge that this view is based on the false premises that all women want fewer children, motherhood is an oppressive institution, and that population growth is a social evil.⁵⁶

E. The Gender Perspective

Supporters of an alternative and inclusive understanding of gender argue that the traditional binary understanding of gender as male and female restricts personal sexual expression since, they argue, the differences between genders respond to cultural, social, and psychological structures and not to biological conditions.⁵⁷ The gay-lesbian lobby,

54. Though reproductive rights are never presented as a means to this end but always as an end in themselves, UNFPA who has had a key role in their recognition, affirms that "reproductive and sexual rights for the individual, whether man or woman, are foundation stones of prosperity and a better quality of life for all people. As such, they are absolutely essential to any hope of achieving sustainable development." *The Right to Choose: Reproductive Rights and Reproductive Health* United Nations Population Fund 28 (1999), available at <http://www.unfpa.org/modules/intercenter/reprints/theright.htm> [hereinafter UNFPA, *Right to Choose*]. Accordingly, the relationship between reproductive rights and development is one in which "global and national needs coincide with personal rights and interests." *Id* at 4. Similarly, Gertrude Monguella, the Secretary-General of the Fourth World Conference on Women voiced this presumption in:

[The] great force for transforming the lives of women in the developing world is the spread of family planning services. . . . Society may tell [women] that she should have seven or eight children. Her husband and his parents may tell her the same. Her status may well depend upon it. And she may well declare this same wish to conform to prevailing social values. But without such pressures, *I do not believe that any woman in her right mind wants eight children* (emphasis added).

Gertrude Mongella, *Change for the Last and the Least*, UNICEF: THE PROGRESS OF NATIONS 31 (1994).

55. Reproductive health is defined in Cairo '94 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 to its functions and processes," Cairo '94, *supra* note 4, ¶ 7.2. Reproductive health was first recognized as a right in Cairo '94. *Id* ¶ 7.3, and since then has been included in several UN documents, including Beijing '95, *supra* note 24, Cairo+5, *supra* note 24, and Beijing+5, *supra* note 14. In following conventions, the definition of reproductive services and rights was extended and further claim was asserted that the reproductive health services described in the ICPD (Cairo '94) Programme of Action, *supra* this note, are necessary in order to guarantee a basic human right to a large portion of humanity. See Cairo '94, *supra* note 4, at ¶ 13.4. For example, the Platform of Action of the Fourth World Conference on Women states ". . . the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment." Beijing '95, *supra* note 24, at ¶ 92. Furthermore, this right is not only basic, but also a necessary precondition if women are to effect progress in other aspects of empowerment. See *id*.

56. See Haaland-Matlyar, International Norm-Creation, *supra* note 16; Aguirre, *Hindered Growth*, *supra* note 35.

57. One of the notions discussed at the Beijing PrepCom, regarding gender proposes a new social order where "the sexes have multiplied beyond currently imaginable limits," a world where the

radical women's rights groups, and population control groups such as the International Planned Parenthood Federation (IPPF) are the main supporters of an understanding of gender that allows for bisexual, transsexual, homosexual orientations.⁵⁸ The population control perspective is supportive of alternative gender language insofar as non-heterosexual couples have fewer children,⁵⁹ while the gay-lesbian lobby and radical women's groups want greater sexual "freedom of expression."⁶⁰

III. HISTORICAL BACKGROUND AND DEVELOPMENT

The Universal Declaration of Human Rights was significant for the family. It begins by protecting the institution of marriage by stating that those "men and women of full age," who are free and consenting, have "the right to marry and found a family."⁶¹ The Declaration also stated that within the family men and women are "entitled to equal rights as to marriage, during marriage and at its dissolution."⁶²

Article 16 recognized the family as the "fundamental" and the "natural" group unit of society.⁶³ As such, the member states declared in the

classifications of "parent and child, male and female, heterosexual and homosexual," would "have to be dissolved as sources of division" because society "would permit ambiguity in a culture that had overcome sexual divisions." Anne Fausto-Sterling, *The Five Sexes: Why Male and Female are Not Enough*, THE SCIENCES 20 (March/Apr. 1993).

Similarly, during the same PrepCom the conference leadership offered the following definition of gender: "Gender refers to the socially-ascribed roles given to person on the basis of their sex. This means that they are not inherent in one sex or another, imprinted in our DNA. Rather, they are differences by sex that have emerged because of culture and experience. This means that these roles can change and be changed." John R. Mathiason, *IT and the Advancement of Gender Equality: International Perspective*, at <http://www.unu.edu/globseminar/2001/shimane/index.htm>.

58. See JAMISON GREEN & HOLLY DEVOR, *FTM: FEMALE-TO-MALE TRANSSEXUALS IN SOCIETY* (1997); ALICE DOMURAT DREGER, *HERMAPHRODITES AND THE MEDICAL INVENTION OF SEX* (1998); ANN FAUSTO-STERLING, *SEXING THE BODY: GENDER POLITICS AND THE CONSTRUCTION OF SEXUALITY* (2000); BERNICE L. HAUSMAN, *CHANGING SEX: TRANSSEXUALISM, TECHNOLOGY, AND THE IDEA OF GENDER* (1995); SUZZANE KESSLER, *LESSONS FROM THE INTERSEXED* (1998). See generally <http://mirror.ippf.org> (in particular IPPF/BBC Sexwise project, IPPF Youth Voice Initiative, and the IPPF Annual Review of 1998).

59. "In order to be effective in the long run, family planning programmes should not only focus on attempting to reduce fertility within existing gender roles, but rather on changing gender roles in order to reduce fertility." Division for the Advancement of Women, *Gender Perspective in Family Planning Programs*, in WOMEN 2000: WOMEN IN EXTREME POVERTY 18 (1994).

60. See sources cited and text *supra* note 57-58.

61. *Declaration of Human Rights*, *supra* note 9, at art. 16.1

62. *Id.*

63. *Id.* at art. 16.3. The Article specifically states that:

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

same article, the family is entitled to protection by both society and the state. The language clearly does not support a view of society and/or the state as a substitute for the family, or for parents. Rather, it sees the family as an institution that should be supported and promoted by society and the state, with the latter institutions playing a subsidiary role with regard to the family and the role of the parents. The document reaffirms this by outlining the specific rights that are guaranteed to the family. Article 12 states that a person's family and home shall be protected from "arbitrary interference,"⁶⁴ while Article 25 notes that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care, and necessary social services. . . ."⁶⁵ Thus, the Universal Declaration, while underlining the primary position of the natural family as the fundamental group unit of society,⁶⁶ also upholds the fundamental rights of individual members that need to be met should the family fail to provide them.

Different members of the family and different roles within it are also protected by the Declaration. Mothers and children are "entitled to special care and assistance."⁶⁷ The document also acknowledges the natural

(3) The family is the *natural and fundamental group unit of society and is entitled to protection by society and the State*"

Id. (emphasis added).

64. *Id.* at art. 12. The full text of art. 12 reads: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the *protection of the law against such interference or attacks*" (emphasis added). *Id.*

65. *Id.* at art. 25. The full text of art. 25 reads:

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Id.

66. The *Universal Declaration* recognizes the family as the "natural . . . group unit," *id.* at art. 16.3, of society and acknowledges in its art. 16.1 that men and women have the right to marry, *id.* Within the document, when referring to the family, it addresses the figure of the father, mother, and children, *id.* at art. 25, as well as acknowledges the rights of parents to educate their children, therefore, referring implicitly to the mother and father, *id.* at art. 26.3. Thus, it can be said that the Declaration acknowledges a natural family, i.e., a heterosexual couple committed in a stable relationship with their biological children. An understanding of the natural family can be found in Aristotle's *Politics*. For example, at the beginning of Book I, he says that "male and female must unite for the reproduction of the species." ARISTOTLE, *POLITICS* 9 (Peter L. Phillips Simpson trans., U. of N.C. Press 1997). It continues "[t]he first communities are the two natural ones of (i) husband and wife for generation and (ii) master and slave for survival. These two together form the household," thus acknowledging that an heterosexual couple with children constitute the family. *Id.*

67. *Declaration of Human Rights*, *supra* note 9, at art. 25.2.

rights of parents in the family, particularly in the area of education.⁶⁸ Specifically, Article 26.3 of the Universal Declaration refers to the right of parents to “choose the kind of education that shall be to given their children,” and not only declares protection for this right, but also distinguishes it as a right that is a “prior” right, and therefore, above intervention from the state or any other body outside the family unit.⁶⁹

Until the late 1960s, these rights, as defined by the Universal Declaration, were essentially reaffirmed in UN documents without much further elaboration. The UN documents during this period dealt with the institution of marriage by clearly reaffirming it as the founding relationship upon which the family was built.⁷⁰ The Convention on the Consent to Marriage of 1962 was aimed at “eliminating completely child marriages and the betrothal of young girls before the age of puberty”⁷¹ and reaffirmed that marriage should be founded on “full and free consent,”⁷² given by men and women of “full age.”⁷³ In its preamble, the Recommendation on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, also recognized that “the family group should be *strengthened* because it is the basic unit of every society, and that men and women of full age have the right to marry and to found a family, that they are entitled to equal rights as to marriage and that marriage shall be entered into only with the free and full consent of intending spouses.”⁷⁴ These conceptions of marriage and family set a precedent that has been essentially reiterated in subsequent documents.⁷⁵

In 1966, the International Covenant on Economic, Social and Cultural Rights (“International Covenant”) significantly expanded already prevalent ideas regarding the family that earlier UN documents⁷⁶ had ex-

68. *Id.* at art. 26.3.

69. *Id.*

70. See generally *International Covenant on Civil and Political Rights*, *supra* note 46; *International Covenant on Economic, Social and Cultural Rights*, *supra* note 46; *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, G.A. Res. 1763 A (XVII) (1962), available at <http://unhchr.ch/html/menu3/b/63.htm>. [hereinafter *Convention on Consent to Marriage*].

71. *Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, G.A. Res. 1763 (XVII), GAOR at preamble (1962), available at <http://unhchr.ch/html/menu3/b/64.htm>. [hereinafter *Recommendation on Consent to Marriage*].

72. *Id.*

73. *Id.*

74. *Id.* (emphasis added).

75. See *International Covenant on Civil and Political Rights*, *supra* note 46; *International Covenant on Economic, Social and Cultural Rights*, *supra* note 46.

76. Such documents include *Recommendation on Consent to Marriage*, *supra* note 69; *Convention on Consent to Marriage*, *supra* note 70; *Declaration of the Rights of the Child*, *supra* note 46; *Declaration on Human Rights*, *supra* note 9.

pressed. It reaffirmed the basis of freedom in the consent to marry, as well as the natural and fundamental characteristic of the family.⁷⁷ However, the International Covenant went beyond the original guarantee of protection, declaring, “the widest possible protection and assistance should be accorded the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.”⁷⁸

The International Covenant also referred to individuals within the family. Article 10.2, for instance, clearly linked motherhood with pregnancy, recognizing that “special protection should be accorded to mothers during a reasonable period before and after childbirth. During such a period working mothers should be accorded paid leave or leave with adequate social security benefits.”⁷⁹ In this way, the International Covenant upheld the role of motherhood—that is, the act of conceiving, birthing, and caring for children—as socially significant and as meriting protection. It also recognized that mothers who work should receive certain economic benefits in the event of childbirth. In a similar way, childhood was also recognized as having specific rights, including protection from “economic and social exploitation” and from discrimination “for reasons of parentage or other conditions.”⁸⁰

The International Covenant also addressed other social issues related to the family, particularly in the areas of health and education. With regard to health, member states simply acknowledged “the right of everyone to the enjoyment of the highest attainable standards of physical and mental health”⁸¹ and promised to make “provision for the reduction of the still birth-rate and of infant mortality and for the healthy development of the child.”⁸² The articles dealing with health made no reference to sexual or reproductive health, a topic that has come to dominate the UN’s approach to health in the conferences during the last twenty years and has consequently siphoned monies away from more pressing health issues,⁸³ particularly in less developed nations. Rather, the architects of

77. See *International Covenant on Economic, Social and Cultural Rights*, *supra* note 46, at art. 10.1.

78. *Id.*

79. *Id.* at art. 10.2.

80. *Id.* at art. 10.3.

81. *Id.* at art. 12.1.

82. *Id.* at art. 12.2 (a).

83. Some of the leading causes of death for women and men in developing countries, according to the World Health Organization, are acute lower respiratory infections, malaria, tuberculosis, diarrhoeal diseases, and AIDS. See World Health Report 1996 Executive Summary, *Fighting Disease, Fostering Development*, at <http://www.who.int/whr/2001/archives/1996/exsume.htm> (last visited April 26, 2002).

the International Covenant made broad calls for "the improvement of all aspects of environmental and industrial hygiene,"⁸⁴ "the prevention, treatment and control of epidemic, endemic, occupational and other diseases,"⁸⁵ as well as "the creation of conditions which would assure to all medical service and medical attention in the event of sickness."⁸⁶

The International Covenant's section on education also made significant provisions that further developed the earlier affirmation of the right of parents to select the type of education given their children. The International Covenant made a further stipulation that parents, in choosing education for their children, are not limited to state-run facilities. It also included religion and morality within the purview of education, stating that parents had the right to educate their children according to their own religious convictions:

States Parties . . . undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.⁸⁷

UN documents protected the freedom of parents to govern their children's education and religious formation until 1989, when the Declaration on the Rights of the Child greatly diminished this freedom.⁸⁸

In a similar manner, the International Covenant on Civil and Political Rights restated the principle that the family is the natural and fundamental group unit of society and reaffirmed the right to marry and found a family and that spouses have equal rights in marriage.⁸⁹ It made a further addition to the subject of the dissolution of marriage, stipulating, "in the case of dissolution, provision should be made for the necessary protection of any children."⁹⁰ The covenant then went on to describe the suggested provisions as: "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society, and the State."⁹¹

84. *International Covenant on Economic, Social and Cultural Rights*, *supra* note 46, at art. 12.2 (b).

85. *Id.* at art. 12.2 (c).

86. *Id.* at art. 12.2 (d).

87. *Id.* at art. 13.3.

88. See discussion *infra* Parts V.B.

89. *International Covenant on Civil and Political Rights*, *supra* note 46, at art. 23.4

90. *Id.*

91. *Id.* at art. 24.

Even though the protection of children in the event of dissolution of marriage was not defined any further, the State Parties clearly emphasized the role of parents as primary protectors of their children.

The International Conference on Human Rights that followed two years later in 1968 in Tehran marked a significant milestone. In the Proclamation of Tehran,⁹² Article 16 clearly identified the basic right of couples to freely determine the number and spacing of their children.⁹³ Recognition of this basic right was important in that it protected the right of the couple to determine family size and spacing, free from state coercion, intervention or draconian family planning policies such as those later instituted in China. Thus, The UN recognized that individual families, not the state, ultimately should determine their own fertility.

IV. THE FERTILITY FACTOR: THE FAMILY, THE UN, AND POPULATION CONTROL

The right of individual families to determine their own fertility, and the classically liberal thinking which upheld it were not seriously challenged in the UN until the 1974 Population and Development Conference in Bucharest. Subsequent ICPDs continued to strongly link the family to population and development.⁹⁴ These conferences, particularly the last two conferences in 1984 and 1994, also made a progressively explicit link between family planning, women's rights, and population and development; thereby placing the family firmly at the center of the debate on women's rights and population control.⁹⁵ Since then, most UN docu-

92. *Proclamation of Tehran, Final Act of the International Conference on Human Rights*, at 3, U.N. Doc. A/CONF./32/41 (1968).

93. "The protection of the family and of the child remains the concern of the international community. *Parents have a basic human right to determine freely and responsibly the number and the spacing of their children.*" *Id.* at art. 16.

94. These subsequent conferences included: Rome (1954), Belgrade (1965), Bucharest (1974), Mexico (1984), and Cairo (1994). U.N. World Population Conference, Aug. 31-Sept. 10, 1954, Rome, Italy, U.N. ESOCOSOC, U.N. Doc. E/Conf. 13/A12(1995) (Rome Report); U.N. World Population Conference, U.N. ECOSOC, U.N. Doc. E/Conf. A1/1 (1966); U.N. World Population Conference, Aug. 19-30, 1974, Bucharest, Hungary, U.N. Doc. E/Conf. 60/19, U.N. Sales No. E.75.XIII.3 (1974); Report of the International Conference on Population, U.N. Doc. E/Conf. 76/19, U.N. Sales No. E.58.XIII (1984) [hereinafter Mexico '84]; Cairo '94, *supra* note 4.

95. Cairo's Programme of Action, Cairo '94, *supra* note 4, explicitly states that:

The International Conference on population and Development is not an isolated event. Its programme of Action builds on the considerable international consensus that has developed since the World Population Conference at Bucharest in 1974 and the International Conference on population at Mexico City in 1984, to consider the broad issues of and interrelationships between population, sustainable economic growth and sustained development, and advances in the education, economic status and empowerment of women.

Id. at ch. I.5. Later on, in Principle 4, the document specifies that:

ments have referred to the family in the context and language of those two debates. Recent UN documents have also shifted their analysis away from a "group unit" understanding of family to "individuals within an institution," who are seen as holding a contractual relationship in need of protection from other family members.⁹⁶ This is especially evident in the treatment of women and the girl child within the context of the family in UN documents.⁹⁷

The first Population and Development Conference convened in Rome in 1954, with the second following in Belgrade in 1965. According to one scholar, these meetings were not so much concerned with crafting population policy, but with scientifically examining population trends in different regions of the world.⁹⁸ This changed with the 1974 conference in Bucharest. As a scholar notes, this particular conference was especially divisive because "the key issue at Bucharest... was whether population policy or development policy should have primacy where population problems were concerned."⁹⁹ Many developed nations, most notably the U.S., saw population growth as a threat to food security and national stability.¹⁰⁰ Other nations, specifically developing countries, saw population growth as a key to further development.¹⁰¹ The result of this deadlock was a plan of action that avoided the language of target setting and instead asked countries to "consider adopting popula-

Advancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility, are cornerstones of population and development-related programmes. The human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights.

Id. at ¶ 2.4.

96. See discussion *infra* Parts V.B.

97. See discussion *infra* pg 34-35, 54-58.

98. See STANLEY P. JOHNSON, *WORLD POPULATION: TURNING THE TIDE, THREE DECADES OF PROGRESS* 109-11 (1994).

99. *Id.* at 109.

100. See R. R. Adams, *The Population Explosion*, Records of U.S. President's Committee to Study the United States Military Assistance Program, Container n. 15 (1959) (on file at Dwight D. Eisenhower Library, Abilene, Kan.) [hereinafter *Memorandum 200*]. See also PETER J. DONALDSON, *NATURE AGAINST US: THE UNITED STATES AND THE WORLD POPULATION CRISIS 1865-1980* (1990).

101. See Seamus Grimes, *The Ideology of Population Control in the UN Draft Plan for Cairo*, 13 *POPULATION RES. POL'Y REV.* 209, 209-224 (1994), available at http://www.cicred.ined.fr/rdr/rdra/revues/revue75-78/88-75-78_a.html (explaining objections raised repeatedly at Bucharest and the emphasis placed on population at the expense of development). For example, the African countries insisted that the major need was for rapid economic and social development; Zambia portrayed the prevailing attitude: "It is highly erroneous to jump to the conclusion that Zambia's economic failures were due to rapid population increase." JOHNSON, *supra* note 98, at 115 (internal citation omitted).

tion policies, within the framework of socio-economic development.”¹⁰² With regard to family planning, the text adopted sought to “encourage appropriate education concerning responsible parenthood and make available to persons who so desire advice on the means of achieving it.”¹⁰³ While the conference did not call for implementation of certain population policies or targets, it effectively brought into the international forum the idea that population control and funding for ‘population assistance’ was necessary for development, security and stability.¹⁰⁴

Between 1974 and 1984, many changes occurred in international attitudes toward population control. Family planning programmes and population control initiatives proliferated in developed and developing nations alike under the auspices of the UN and other non-governmental agencies like IPPF. However, during this same period, China introduced a draconian one-child per couple policy in an attempt to assert more control over population growth.¹⁰⁵ The Chinese policy had the effect of turning the public mind against any sort of population control policy that seemed coercive or threatened a couple’s right to “freely determine the number and spacing of children,” as recognized in earlier UN documents, especially the 1968 Tehran document.¹⁰⁶ The result was a change in the language used by population control advocates to describe the policies they supported; rather than population control, they turned to references about “family planning assistance” and spoke of “reproductive education and services” in the context of providing better healthcare.¹⁰⁷ Thus, while the packaging changed significantly, the substance of the population control argument remained the same.¹⁰⁸ The population control ad-

102. JOHNSON, *supra* note 98, at 122.

103. *Id.*

104. Bucharest '74, *supra* note 94, at ¶ 1.

105. For a detail count and evidence of how China enforced its draconian policy see JOHN S. AIRD, *SLAUGHTER OF INNOCENTS: COERCIVE BIRTH CONTROL IN CHINA* (1990) and STEVEN W. MOSHER, *BROKEN EARTH: THE RURAL CHINESE* (1983).

106. *Proclamation of Tehran*, *supra* note 92, at art. 16.

107. A good summary of this strategy is presented in the following paragraph of the *Memorandum 200*:

In the case of LDC countries uncommitted to population programs our efforts must be fine-tuned to their particular sensitivities and attitudes. In the main, we should avoid the language of ‘birth control’ in favor of ‘family planning’ or ‘responsible parenthood’, with the emphasis being place on child spacing in the interest of health of child and mother and the well being of the family and community. Introduction and extension of primary health services are, in fact, the principle way of successfully introducing family planning into many of these countries.

Memorandum 200, *supra* note 100, at 7.

Implementation of these policies can be found in the Cairo '94, *supra* note 4, Document Chapters VII and VIII and in the Beijing '95, *supra* note 24, Chapters IV section C and I.

108. The change of language was at heart not a change of policy regarding population control,

vocates also began to clearly link women's rights to population control, arguing that provision of reproductive education and services would free women from the home and allow them greater personal development, which would in turn improve family life.¹⁰⁹ The provision of reproductive education and services would also have the secondary effect of reducing population growth. Population control advocates capped this argument with the charge that failure to provide "reproductive services and education" restricted a couple's ability to freely plan and space their children.¹¹⁰

Several factors evidence the adoption of core population control arguments within the UN, even in light of the shift in public opinion. First,

but was instead a strategy to win acceptance. The content of the comprehensive package of "reproductive health services," outlined in later United Nations reports, referred to as "costed population packages," included as its major components family planning and basic reproductive health services. ICPD '94, *supra* note 42, at ¶ 13.14. Furthermore, an examination of the allocation of funds within this package reveals that \$69.47 billion (or 89% of the \$77.7 billion requested in the document to cover this package) was allocated to the components of family planning and basic reproductive health services. *Id.* at ¶ 13.15. Nevertheless, whether the language used is of women empowerment, the feminization of women, women's health, or the pollution of the environment, the connection is always made to the adverse effect that population has on these issues. *See e.g.*, Agenda 21, *supra* note 4, at ch. 3, 5, 6, 25; Cairo '94, *supra* note 4, chapters III, IV, VI, VII, and XI; and Beijing '95, *supra* note 24, chs. III, IV-A, C, H, K.

109. For example, in Cairo '94, *supra* note 4, the following argument is made: "Countries should act to empower women and should take steps to eliminate inequalities between men and women as soon as possible by: . . . (c) eliminating all practices that discriminate against women, assisting women to establish and realize their rights, including those rights that relate to reproductive and sexual health," which in turn is essential to "sustainable development." *Id.* at ¶ 4.4 (c).

The empowerment and autonomy of women and the improvement of their political, social, economic and health status is a highly important end in itself. In addition, it is essential for the achievement of sustainable development. . . . In addition, improving the status of women also enhances their decision-making capacity at all levels in all spheres of life, especially in the area of sexuality and reproduction. This, in turn, is essential for the long-term success of population programmes. Experience shows that population and development programmes are most effective when steps have simultaneously been taken to improve the status of women.

Id. at ¶ 4.1. *See also* Cairo '94, *supra* note 4, ¶ 7.2 (quoted *infra* note 55).

110. IPPF CHARTER ON SEXUAL AND REPRODUCTIVE RIGHTS, *supra* note 21. Right 8 states: IPPF recognizes and believes that the right to decide whether or when to have children is implied by the right, that all persons have, to decide freely and responsibly the number and spacing of their children and to have access to the information, education and means to enable them to exercise this right, and further recognizes that special protection should be accorded to women during a reasonable period before and after childbirth, and, therefore, commits itself to the following: 8.1 All women have the right to information, education and services necessary for the protection of reproductive health, safe motherhood and safe abortion and which are accessible, affordable, acceptable and convenient to all users. 8.2 All persons have the right of access to the widest possible range of safe, effective and acceptable methods of fertility regulation. 8.3 All persons have the right to be free to choose and to use a method of protection against unplanned pregnancy which is safe and acceptable to them.

Id. at 20.

Nafis Sadik, director of the UNFPA and secretary-general of the Population and Development Conference in Cairo (1994), praised China's approach to population control in an interview given to a Chinese reporter in 1991. "China has every reason to feel proud of and pleased with its remarkable achievements made in its family planning policy and control of its population growth over the past ten years," Dr. Sadik said, adding that UNFPA would "popularize China's experiences in population growth control and family planning in other countries."¹¹¹ Eight years earlier, in 1983, IPPF had come to the same conclusion by calling the Chinese population control goals and targets "consistent" with its own goals and objectives and welcoming the Chinese Family Planning Association as a member of IPPF.¹¹²

Second, The final document from the Mexico City ICPD of 1984 clearly reflected the shift in rhetoric from "coercion" to "assistance." By 1984, the General Assembly had adopted the Convention on the Elimination of all Forms of Discrimination Against Women ("CEDAW"), which stressed the necessity of full equality and integration of women in society.¹¹³ However, it also clearly linked women's equality and social and economic freedom with her reproductive capacity, thus placing the issues of reproduction and family size firmly within the human rights context.¹¹⁴ The Mexico City document reflected these changes, stating in paragraph 25:

Improving the status of women and enhancing their role is an important goal in itself and will also influence family life and size in a positive way. Community support is essential to bring about the full integration and participation of women into all phases and functions of the development process. Institutional, economic and cultural barriers must be

111. Maria Susana Garcia-Robles, *The UN Conference on Women: The Politics Behind the UN Conferences and the Debate over Sexual Orientation and Gender* (1995) (unpublished manuscript) (on file with author).

112. *Id.*

113. See CEDAW, *supra* note 4, at preamble, arts. 3, 10, 11, and 13.

114. CEDAW establishes that the States Parties should take "appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: . . . (b) To have access to adequate health care facilities, including information, counselling and services in family planning. . . ." CEDAW, *supra* note 4, art. 14.2. It goes on to treat the matter of discrimination of women in marriage stating:

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: . . . (c) 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.

Id. at art. 16.1.

removed and broad and swift action taken to assist women in attaining full equality with men in the social, political and economic life of their communities. To achieve this goal, it is necessary for men and women to share jointly responsibilities in areas such as family life, child-caring and family planning. Governments should formulate and implement concrete policies which would enhance the status and role of women.¹¹⁵

The Mexico City document also made other recommendations on family planning, but was careful to avoid any negative connotations of draconian coercion. For example, the document recommended, on the assumption that most couples wanted fewer children, that “governments should, as a matter of urgency, make universally available information, education and the means to assist couples and individuals to achieve their desired number of children.”¹¹⁶

Mr. Rafael Salas, Director of UNFPA at the time, repeated this urgency in his opening address to the Conference. Mr. Salas, using the Malthusian rhetoric of limits,¹¹⁷ made clear that population control—or more euphemistically “global family planning”—was the only way in which development, peace, and security could be assured.¹¹⁸ He told the delegates that “population stabilization will make it less difficult for developing countries to improve their levels of living. Voluntary family planning is a vital means of reaching this global goal . . . It is essential that population programmes be maintained until the promise of stabilization is within sight.”¹¹⁹ He also exhorted conference attendees to believe that

[O]nly the determined, rational and humane national population policies of countries can bring about a more satisfying future for the forthcoming generations. Governments must plan and work to bring about a global society that is secure and viable, one in which individuals can develop their full potential free from the capricious inequalities of development and the threats of environmental degradation. This should

115. Mexico '84, *supra* note 94, at ¶ 25.

116. *Id.*

117. Thomas Robert Malthus, in his 1798 *Essay in the Principle of Population*, introduced a relationship between population growth and what he termed subsistence. THOMAS ROBERT MALTHUS, *ESSAY IN THE PRINCIPLE OF POPULATION* (Oxford U. Press 1993). The first grew geometrically while the second increased only at an arithmetic ratio. Thus, he proposed the existence of an inverse relationship between population growth and development derived from the law of diminishing returns. This law is the belief that more people mean fewer goods for each person; thus, as population grows, poverty inevitably increases. He believed that man's ability to increase his food supply was constrained in three particular ways: through land scarcity, limited productive capacity of cultivated land, and the law of diminishing returns.

118. See JOHNSON, *supra* note 98, at 177.

119. *Id.*

be done without violating the dignity and freedom of the human person *and by giving all people the knowledge and the means to bring forth only the children for whom they can provide the fullest opportunities for growth.* . . .¹²⁰

Unfortunately, Mr. Salas did not elucidate in his address as to who would determine what should be considered an adequate standard of living for a family or what constitutes the “fullest opportunity for growth,” but rather held up population control as the key to combating poverty and underdevelopment as is evident by the two previous quotes.¹²¹

By the time of the 1994 Cairo ICPD, the population control advocates had successfully embedded much of their message into several conference documents—most particularly at the 1992 Earth Summit in Rio (“Agenda 21”), where Malthusian language of limits came to dominate rhetoric about population and development.¹²² Couched in more

120. *Id.* (emphasis added).

121. When challenged, this relationship fails both theoretically and empirically. Analyses at both levels suggest that there is no statistically proven simple relationship between population growth and economic growth, population size and economic growth, population size and resources, or population growth and environment, or population growth and poverty. The absence of a correlation contradicts the conventional Malthusian deductive conclusion. The only persuasive argument in the face of this absence of correlation is a plausible scenario in which one or more specified variables that have been omitted from the analysis would, in fact, lead to a negative relationship between population growth and economic growth. See SIMON II, *supra* note 27. Thus, results suggest that population growth is not the only relevant variable for development, poverty or the environment and thus, empirical evidence suggests that Malthus’ dynamic growth theory has failed. See AGUIRRE, ECONOMIC CONSEQUENCES, *supra* note 35; Aguirre, *Sustainable Development*, *supra* note 27.

Furthermore, evidence shows that most underdeveloped countries that have implemented population control policies have not shown definite signs of success in overcoming the problems of development, problems that are often attributed to the “population trap.” In fact, since the seminal work of Coale and Hoover, several studies have followed supporting or contradicting population control policies. See COALE & HOOVER, *supra* note 28. See also sources cited *infra* notes 27, 35, 36.

122. This topic is present in chapters 3 and 5 of the *Agenda 21*, “Combating Poverty” and “Demographic Dynamics and Sustainability,” where important connections were reaffirmed and which incorporated a Malthusian dimension to the understanding of sustainable development. *Agenda 21*, *supra* note 4, at chs. 3 & 4. After acknowledging that “poverty is a complex multidimensional problem with origins in both the national and the international domains” and that “no uniform solution can be found for global application, [but] rather, country-specific programmes to tackle poverty . . . are crucial for a solution to this problem.” *Id.* at chs. 3.1, 5. The document goes on to list a series of law-like maxims that must apply to every country, but most especially to developing countries. Paragraph 3.2 states that “an effective strategy for tackling the problems of poverty, development and environment simultaneously should begin by focusing on resources, production and people and should cover demographic issues, enhanced health care and education, the rights of women, the role of youth and of indigenous people and local communities and democratic participation process in association with imported governance,” *Id.* at ¶ 3.2.

Furthermore, in paragraph 3.8(j), under the activities to combat poverty, it calls upon governments, “as a matter of urgency . . . [to take] measures to ensure that women and men have the same right to decide freely and responsibly on the number and spacing of their children and have access to the information, education and means . . . This recommendation fails to provide any special goal for

friendly terms of “sustainable development,” the substance of the argument that population growth equals poverty had changed little, except in style and presentation.¹²³

This population argument strongly influenced the Cairo conference, which was the largest intergovernmental conference on population and development held. More than 11,000 people participated from all levels of society, with 179 nations taking part in the negotiations.¹²⁴ The kinder and gentler approach to population control was very much present at the conference. As a UNFPA backgrounder noted, the Cairo Programme of Action (“POA”) ostensibly endorsed

[A] new strategy that emphasizes the integral linkages between population and development and focuses on meeting needs of individual men and women, rather than on achieving demographic targets. The key to this new approach is empowering women and providing them with more choices through expanded access to education and health services, skill development and employment, and through their full involvement in policy- and decision-making processes at all levels.¹²⁵

The backgrounder assured that the empowerment of women is the “key to improving the quality of life for everyone.”¹²⁶ Another backgrounder noted that “advancing gender equality, eliminating violence against women and ensuring women’s ability to control their own fertility were acknowledged as cornerstones of population and development

this particular activity, as is the case for the other activities proposed in this section.” *Id.* at ¶ 3.8(j). The document also states that “governments should take active steps to implement programs to establish and strengthen preventive and curative health facilities, which include women-centered, women-managed, safe and effective reproductive health care and affordable, accessible services, as appropriate, for the responsible planning of family size” *Id.*

Chapter 5 dedicates three program areas to population reduction. Paragraph 5.3 proposes that, as a basic action policy, countries must “address the linkages of demographic trends and factors, resource use, appropriate technological dissemination, and development. Population policy should also recognize the role played by human beings in environmental and development concerns. There is a need to increase awareness of this issue.” *Id.* at ¶ 5.3. Paragraph 5.17 is more specific in this regard, declaring, “Policies should be designed to address the consequences of population growth built into population momentum, while at the same time incorporating measures to bring about demographic transition. They should combine environmental concerns and population issues within a holistic view of developments whose primary goals include the alleviation of poverty; secure livelihoods; good health; quality of life; improvement of the status and income of women and their access to schooling and professional training; as well as fulfillment of their personal aspirations; and empowerment of individuals and communities.” *Id.* at ¶ 5.16.

123. *Agenda 21* specifies “the focus [of population control] is on specific cross cutting measures—in particular, in the areas of basic education, primary/maternal health care, and the advancement of women.” *Id.* at ¶ 3.6.

124. See UNITED NATIONS POPULATION FUND, ICPD Background (1994), at <http://www.unfpa.org/icpd/background>, [hereinafter ICPD Background].

125. *Id.*

126. *Id.*

policies.”¹²⁷ Indeed, the table of contents of the Cairo POA had the appearance of a document of the World Conference on Women: Chapter IV dealt with Gender Equality, Equity and Empowerment of Women; Chapter V was entitled “The Family, Its Roles, Composition and Structure”; Chapter VII, “Reproductive Rights, [Sexual and Reproductive Health] and Family Planning; and almost every chapter that did not have women’s issues as their main subject treated them in detail in a subsection.¹²⁸ Thus, the conference made an explicit connection between women’s rights—particularly their ‘reproductive rights’—and population and development.

In the meetings preceding and during the Cairo conference, leaders of prominent NGOs seriously challenged the institution of the family.¹²⁹ For example, the Asian Pacific Forum on Women, Law and Development (“APWLD”) circulated a paper at the Cairo PrepCom, which argued that:

[T]he institution of the family constitutes both the ideological and material ground for structures of dependence and gender differences that strengthen inequality and women’s oppression. . . . Religion and cultural practices are key factors in shaping and maintaining values which inform social roles for women which are oppressive. . . . Religion . . . is certainly one of the means by which oppression is achieved.¹³⁰

Many radical women’s rights groups and the major population control NGOs supported this sentiment.¹³¹ The viewpoint that family and home is a source of oppression surfaced many time, and under many guises, during the conference.¹³²

127. UNITED NATIONS POPULATION FUND, ICPD+5, at <http://www.unfpa.org/icpd/index.htm>.

128. See Cairo ’94, *supra* note 4, at Table of Contents.

129. The declarations of Susan Davis, at the time executive director of the Women’s Environment and Development Organization (WEDO), which convened the Women’s Caucus at Cairo at the end of the conference, encapsulates the NGOs’ position: “We’ve introduced feminist discourse into world governments.” *Women’s Perspectives: Bishakha Datta*, 3 PEOPLE AND THE PLANET, No. 4, available at http://www.oneworld.org/patp/pp_con2_v3n4.html.

130. Garcia-Robles, *supra* note 111, at 4.

131. At the end of the conference, the Women Caucus formed what they called the ‘Women Watching ICPD.’ This group was composed by NGO or groups of NGOs that actively worked in the document of the conference. They included: WEDO, CEWI a group of Norwegian groups, the Development Alternatives with Women for a New Era (“DAWN”), the Women’s Health Coalition, the International Women’s Health Coalition, and Asian Pacific Forum on Women, Law and Development (“APWLD”). Other actively involved organizations included IPPF, and the Inter American Parliamentary Group on Population and Development (“APGPD”).

132. Some of the discussions included the negotiations over paragraph 4.17 regarding “patterns of gender discrimination within the family” with regard to the girl child, and over chapter V entitled “Family, its Roles, Composition and Structure”, especially paragraphs 5.1 and 5.9. See INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, Linkages: The Cairo Conference Home Page, at <http://www.iisd.ca/linkages/cairo.html> (last visited Apr. 20, 2002).

The document echoed the concern of "the feminization of poverty."¹³³ In an effort to advance women and lift them out of poverty, the UN created a solution primarily tied to a woman's reproductive capacity. The argument was that when women exercise their right to "freely determine the number and spacing of children," they choose to have too many children, who then become an economic burden and lead to greater poverty.¹³⁴ The UN's antidote to such a dire situation was to ensure reproductive health and services to women.¹³⁵ Critics of this approach note that relatively little attention was given to other factors which could play a greater part in the 'feminization' of poverty, such as a lack of education and training or absentee fathers.¹³⁶ Still others argue that the tie between population and poverty is a tenuous correlation at best.¹³⁷

The Cairo document did promote equal access for men and women to educational and training opportunities.¹³⁸ However, the underlying presumption seemed to be that educated women would have smaller families.¹³⁹ To many in UN circles, including activist Gertrude Mongella of WEDO, a large family is a sign of ignorance or lack of education. Mongella voiced this presumption in the 1994 UNICEF Report *The Progress of Nations*:

[The] great force for transforming the lives of women in the developing world is the spread of family planning services. . . . Society may tell [women] that she should have seven or eight children. Her husband and his parents may tell her the same. Her status may well depend upon it. And she may well declare this same wish to conform to prevailing social values. But without such pressures, *I do not believe that any woman in her right mind wants eight children.*¹⁴⁰

The connection between family size, women's reproductive rights, and population was forcefully made throughout the Cairo's Plan of Ac-

133. The phrase "feminization of poverty" was introduced at the Beijing conference in 1995. See Beijing '95, *supra* note 24, at ¶ 17, 48 and sec. A.4. However, the concept was already present at Cairo. See Cairo '94, *supra* note 4, at ¶ 3.12, 3.16, 4.1.

134. Cairo '94, *supra* note 4, at ¶ 3.1, 3.13.

135. See *id.* at ¶ 3.14, 3.18, 4.4 (c), 6.4.

136. See Aguirre, *Family, Economics, and the Information Society*, *supra* note 8.

137. See *id.* See also, NICHOLAS EBERSTADT, PROSPEROUS PAUPERS & OTHER POPULATION PROBLEMS (2000); EBERSTADT, THE TYRANNY OF NUMBERS, *supra* note 31; SIMON II, *supra* note 27; Gale Johnson, *Population, Food, and Knowledge*, 90 AM. ECON. REV. 1 (2000).

138. See Cairo '94, *supra* note 4, ¶ 3.8, 3.27, 3.19, 4.2, 4.4, 4.18.

139. The presumption that higher education leads to lower fertility, brings with it the danger of instrumentalizing education to obtain the goal of lower population growth rather than the development of women as a whole. Consequently, the effort in education has been narrowed to the incorporation of sexual and reproductive health education rather than to the actual implementation of secondary, technical, and advanced education.

140. UNICEF, *THE PROGRESS OF NATIONS*, *supra* note 54, at 31 (emphasis added).

tion, but most particularly in Chapter IV. The document defined reproductive health in these terms:

[A] state of complete physical, mental and social well-being and not merely the absence of disease and infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so.¹⁴¹

With this definition, the UN's role in the most intimate act between a husband and wife went from one that sought disease prevention to the invasive role of sex therapist. However, the document went further to delineate the origin and meaning of reproductive rights as related to this definition of reproductive health.

These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and the means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion and violence as expressed in human rights documents.¹⁴²

The document also made an effort to extend these rights to adolescents in order to "enable them to deal in a positive and responsible way with their sexuality."¹⁴³ Indeed, paragraph 7.7 of Cairo's Plan of Action called for reproductive health-care programmes to be designed "to serve the needs of women including adolescents."

The Cairo ICPD also attempted to redefine family relationships within the family, especially in reference to adolescents and children, but most particularly the girl child.¹⁴⁴ In redefining the family relationship, the ICPD rejected its stated purpose of achieving harmony and unity within the family.¹⁴⁵ The document claimed, "The human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights"¹⁴⁶ and placed emphasis on the protection of the rights of the girl-child over and above the needs and rights of other

141. ICPD '94, *supra* note 42, at ¶ 7.2.

142. *Id.* at ¶ 7.3.

143. *Id.*

144. See Cairo '94, *supra* note 4, ¶ 4.15, 4.17, 4.19 (section B of Chapter IV, entitled "The girl child").

145. "Changes in both men's and women's knowledge, attitudes and behavior are necessary conditions for achieving the harmonious partnership of men and women." *Id.* at ¶ 4.24.

146. *Id.* at prin. 4.

children, particularly in the areas of education and health. In the subsection dedicated to the girl child, the document called for actions to “eliminate all forms of discrimination against the girl child and the root causes of son preference,”¹⁴⁷ to “increase public awareness of the value of the girl child, and concurrently, to strengthen the girl child’s self-image, self-esteem, and status,”¹⁴⁸ and to “improve the welfare of the girl child, especially in regard to health, nutrition and education.”¹⁴⁹ The Cairo document did not advocate for the full development of the male siblings of the girl child,¹⁵⁰ and chose to place the needs of female children above those of male children.¹⁵¹ The non-avocation of male children was based on the presumption that “in all societies discrimination on the basis of sex often starts at the earliest stages of life, greater equality for the girl child is a necessary first step in ensuring that women realize their full potential and become equal partners in development.”¹⁵² This exclusive focus on the girl child, not only affects the girl child’s brothers, but the entire family as a whole, for while the document advocated equality of girls and boys and denounced “son preference,” by neglecting to treat boys in a positive manner, they unconsciously (or perhaps consciously) promoted “daughter preference.”¹⁵³ This type of approach, rather than affecting positively the family, introduces a source of division and tension.

The Cairo POA also had a further negative effect on the family due to its treatment of adolescents and reproductive health. Although the conference document’s goal was to deal with population issues, it rejected coercive population programmes and instead declared “governmental goals for family planning should be defined in terms of unmet needs for information and services.”¹⁵⁴ With regard to adolescents, the document called for increased involvement of adolescents in family-planning programmes and reproductive health information and services. For example, in paragraph 6.15, it requests that:

147. *Id.* at ¶ 4.16 (a).

148. *Id.* at ¶ 4.16 (b).

149. *Id.* at ¶ 4.16 (c).

150. Programs that emphasize the discrimination of one group over and against the other typically end in reverse discrimination and a system that perpetuates injustice and discrimination. A more constructive and positive way of combating the discrimination of the girl child, whenever it is present, is to emphasize through education programs and policies the fundamental equality of all children while acknowledging the natural differences that exist between girls and boys. This alternative perspective, seeks equality of opportunity and not of outcome.

151. The Cairo '94 document did this by addressing the needs of the “girl child” separately and by only referring to “sons” in a negative light. See Cairo '94, *supra* note 4, at ¶ 4.15, 4.19, 4.29.

152. *Id.* at ¶ 4.15.

153. See *id.* at ¶ 4.17.

154. *Id.* at ¶ 7.12.

Youth should be actively involved in the planning, implementation and evaluation of development activities that have a direct impact on their lives. This is especially important with respect to information, education and communication activities and services concerning [sexual and reproductive health], including the prevention of early pregnancies, sex education and the prevention of HIV/AIDS and other sexually transmitted diseases. Access to, as well as confidentiality and privacy of, these services, must be ensured with the support and guidance of their parents and in line with the Convention on the Rights of the Child.¹⁵⁵

Language suggesting adolescent involvement in family-planning programmes repeated throughout the document, and had particular bearing on the relationship between parents and children.¹⁵⁶ The ideas expressed in the 1989 Convention on the Rights of the Child were clearly present in the document, namely that since children are autonomous and independent possessors of rights, they need not be protected by their parents.¹⁵⁷ Thus, parents' rights were practically reduced to "support and guidance"¹⁵⁸ of their children's choices, whether those choices are for good or ill.

One lasting outcome of the conference that has had a lasting effect on the UN's understanding of the family was the introduction and inclusion of language which attempted to redefine the natural family as "various forms of family"¹⁵⁹ and again, when it spoke in vague terms of "other unions."¹⁶⁰ By introducing such language, the UN rejected the idea of the natural family as consisting of one man, one woman, and children. The redefined family allowed for "other unions", which do not reflect the natural family pattern based on blood and kinship.¹⁶¹ The ambiguous language also revealed a profound disregard for children in that the architects seemed to disregard the importance of the family environment in raising children.¹⁶² Thus, "family" could be understood as a heterosexual union with children, as a family's extended family, as a homo-

155. *Id.* at ¶ 6.15.

156. *Id.*, see also *id.* at ¶¶ 7.9, 7.47, 11.13, 11.14, 13.9(f), 15.5.

157. See *id.* at prin. 4, 9 & ¶ 7.37.

158. *Id.* at ¶¶ 7.37, 7.47, 7.48.

159. *Id.* at prin. 9, ¶¶ 5.1, 5.9.

160. *Id.* at ¶ 6.11.

161. See discussion *infra* note 15.

162. In principle 9 of the Cairo '94 document, recognition of the importance of the family as the "basic unit of society" is recognized, but no reference is made to the importance of the parents for the normal development of their children. See Cairo '94, *supra* note 4, at prin. 9. Rather, it affirms the importance of the free consent of the spouses and the equality of husband and wife. Similarly, when the "rights and responsibilities of parents" were addressed, an additional qualification was made regarding "the needs of adolescents," but no link was made between the need of children of their parents' care and proper development. *Id.* at ¶¶ 6.15, 7.45, 11.9, 11.24,

sexual union with children, as any number of unions of “alternative” orientation, or as any conglomeration of people wishing to call themselves “family.”¹⁶³ The movement away from the “natural” family unit to the “contrived” or even “unnatural” family unit had begun in earnest, fueled by the belief that these “contrived” groups, held together merely by contract, were better for children than the natural family.¹⁶⁴

The follow-up conference to Cairo, dubbed “Cairo +5,” was held in New York in September 1999. The outcome document noted the progress in the various actions called for by the Cairo conference and highlighted areas for improvement with regard to the Cairo goals.¹⁶⁵ With regard to the family, there were many significant developments and departures from the original Cairo document, most particularly in the area of adolescents and access to “reproductive information and services.” Indeed, while the Cairo document at least gave a nod to the “rights and responsibilities of parents” vis-à-vis their children in the area of reproductive health, the Cairo+5 document made no such attempt. Rather, in places where adolescent reproductive health was discussed (particularly in Section IV), the document either did not mention parents at all or referred to them only insofar as they supported access to reproductive health information and services.¹⁶⁶ Paragraph 73 (a) states that governments should:

In order to protect and promote the right of adolescents to the enjoyment of the highest attainable standards of health, provide appropriate, specific, user-friendly and accessible services to address effectively their reproductive and sexual health needs, including reproductive health education, information, counseling and health promotion strategies. These services should safeguard the rights of adolescents to privacy, confidentiality and informed consent, respecting their cultural values and religious beliefs and in conformity with relevant existing international agreements and conventions.¹⁶⁷

Paragraph 73 (d) and (e) recognizes the role of parents and the family, but only insofar as they support adolescent access to reproductive health information and services. The document states that governments should:

163. See discussion *infra* note 15.

It should be noted that over forty countries placed reservations on the whole document, and over eighty nations on parts of it. See UNITED NATIONS POPULATION FUND, Report of the International Conference on Population and Development (Oct. 18, 1994), at <http://www1.umn.edu/humanrts/resolutions/49/128GA1994.html> (last visited Apr. 22, 2002).

165. See Cairo+5, *supra* note 24, ¶¶ 9, 10.

166. See *id.* at ¶¶ 52(b-c), 68, and sec. IV.E.

167. *Id.* at ¶ 73 (a).

(d) Acknowledge and promote the central role of families, parents and other legal guardians in educating their children and shaping their attitudes, and ensure that parents . . . are educated about and involved in providing sexual and reproductive health information . . . so that they can fulfil their rights and responsibilities toward adolescents;

(e) . . . ensure that adolescents, both in and out of school, receive the necessary information, including information on prevention, education, counseling and health services to enable them to make responsible and informed choices and decisions regarding their sexual and reproductive health needs, in order to, inter alia, reduce the number of adolescent pregnancies.¹⁶⁸

It should go without saying that the particular understanding of the family advocated by this document and the role of parents vis-à-vis their children, and especially their adolescent children, places the family in a very tenuous, contractual situation. The introduction of the language of rights into the family unit, while attempting to eliminate grievous situations such as abuse and adolescent, out-of-wedlock pregnancy, has had the deleterious consequence of destroying the organic unity of the family. The original conception of the Universal Declaration of Human Rights in which society and states had only a subsidiary role with regard to the family unit in the protection and promotion of its members, was substituted by introducing a new human right: reproductive rights. The creation of this right, which has been defined as a “basic right of all couples and individuals”¹⁶⁹ and as the “fundamental basis for government- and community-supported policies and programmes in the area of reproductive health, including family planning,”¹⁷⁰ has resulted in both societal and state intervention in the family.¹⁷¹

168. *Id.*

169. Cairo '94, *supra* note 4, at ch II, princ. 8.

170. *Id.* at ¶ 7.3.

171. The Cairo '94 Document requests in paragraph 7.6 that all countries to “strive to make accessible through the primary health-care system, reproductive health to all individuals of appropriate ages as soon as possible and no later than the year 2015,” and urges all political and community leaders “to play a strong, sustained and highly visible role in promoting and legitimizing the provision and use of family-planning and reproductive health services. *Id.* Governments at all levels are urged to provide a climate that is favourable to good-quality public and private family-planning and reproductive health information and services through all possible channels.” *Id.* at ¶ 7.6. The document goes on to demand that “leaders and legislators at all levels must translate their public support for reproductive health, including family planning, into adequate allocations of budgetary, human and administrative resources to help meet the needs of all those who cannot pay the full cost of services.” *Id.* at ¶ 7.2.1.

V. THE FAMILY IN THE HUMAN RIGHTS FRAMEWORK

Since the 1968 World Conference on Human Rights in Tehran, the discussions on the family and family relationships have continued to be placed in a human rights paradigm. One of the most glaring limitations of modern rights language and the human rights framework is its inability to address organic groups such as the family.¹⁷² This, of course, is ultimately rooted in a Lockean understanding of rights,¹⁷³ which is individualistic in its nature and is only capable of addressing individuals and groups composed of individuals bound by contractual agreement. Thus, members of an organic social unit such as the family are progressively discussed in terms of their own individual rights over and against those of other members of the family—women’s rights over and against men’s

172. See generally Mary Ann Glendon, *Foundations of Human Rights: The Unfinished Business*, 44 AM. J. JURIS. 1 (1999) [hereinafter Glendon, *Foundations of Human Rights*]. Glendon describes the dangers implicit in the strictly individualistic understanding of human rights by noting the emphasis placed on “rights envisioned without individual or social responsibility; one’s favorite rights touted as absolute with others ignored; the rights-bearer imagined as radically autonomous and self-sufficient; the trivialization of core freedoms by special interests posing as new rights.” *Id.* at 8. None of these characteristics allow for a treatment of the family as an organic unit, which implies the acknowledgment of individuals and not merely autonomous human beings, but as persons that are inserted in community and family relations.

The UN, however, approaches the family as a group of individuals who possess certain rights which need to be protected by the State. This view is captured by the statement of a UN Secretary, “the family is limited by the human rights of its members. The protection and assistance provided to the family should safeguard those rights.” Glendon, *Feminism and the Family*, *supra* note 43, at 4. Thus, we find within UN documents, language that addresses family issues on individual bases. For example, the Cairo Document calls States to provide individuals the “highest standard of sexual and reproductive health” so they can exercise basic right of reproductive health, but no reference to the family is made in this context. Cairo ‘94, *supra* note, at ¶ 7.2 and 7.3. Parents are simply there to “support and guide” the child who also has autonomous rights. Cairo+5, *supra* note 24, at ¶¶ 52(b-c), 68, and sec. IV.E. Similarly, the Beijing Document proclaims that “women’s rights are human rights,” but it does not acknowledge the rights of the family to protection as such. Beijing ‘95, *supra* note 24, at art.14. Such individualistic views have threatened the family’s autonomy. *Fifty Years After the Declaration: The United Nations Record on Human Rights* presents examples of these threats within American legislation such as the changes in the governmental education system regarding sexual education and services, and concludes that “what happened, . . . was that the right of parents to direct the upbringing of their children was transformed into a general right of family privacy, which in turn was transformed into a right of personal privacy and autonomy in sexual matters.” FIFTY YEARS AFTER THE DECLARATION: THE UNITED NATIONS RECORD ON HUMAN RIGHTS 4, 5-6 (Teresa Wagner & Leslic Carbone eds. 2001).

173. John Locke advocated that it is in man’s interest – not because man is naturally social - to form an organized society for the more effectual preservation of their liberties and rights. Thus, he saw the law within society as a means to protect each of its member against others’ possible abuse of his rights. See JOHN LOCKE, TWO TREATISES ON GOVERNMENT 341-42 (CAMBRIDGE U. PRESS 1960). This understanding of rights sees human rights as absolute and as a string of essentially separated guarantees, thus fails to realize that rights are interrelated and hierarchically ordered. See Glendon, *Foundations of Human Rights*, *supra* note 172; Glendon, *Individual Liberty and Family Protection*, *supra* note 24.

rights, parents' rights over and against children's rights.¹⁷⁴ This position ignores that there is a hierarchy of rights, as well as the reality that all rights are interconnected.¹⁷⁵ The view that rights are interconnected and that a hierarchy of rights exists is embodied in the Universal Declaration of Human Rights.

A. Women's Rights and the Family

The UN has been on the forefront of the women's rights movement. The UN's involvement has taken four distinct stages: from 1946-1962, the UN worked "to secure women's legal equality"; 1963-1975, the UN recognized "women's role in development"; 1976-1985, the UN established the Decade for Women; and 1986-1995, the UN worked with women "toward equality, development and peace."¹⁷⁶ The first two stages saw the establishment of the Commission on the Status of Women in 1946, and by 1967, the General Assembly had adopted the Declaration on the Elimination of Discrimination against Women, which was ostensibly aimed at protecting economic and social rights of women, such as the right to vote, equal opportunities in education and employment, access to health care, including family planning, and equal rights in marriage and in the decisions regarding the number and spacing of children.¹⁷⁷ The first two stages of UN involvement, of course, placed the idea of reproductive health and rights firmly on the UN agenda.

The third phase, coincident with the UN Decade for Women, ushered in "an important transformation in its understanding of the role of women."¹⁷⁸ The UN began to closely link the role of women in development to issues such as "poverty, overpopulation, illiteracy, food shortages, malnutrition, and poor health conditions."¹⁷⁹ However, as later conferences demonstrate, the role of women in combating underdevelopment became increasingly tied to control of their fertility.¹⁸⁰ Connecting underdevelopment and fertility issues, had serious ramifications for the family and family relationships, particularly as women were increasingly described as victims of circumstances, victims of male domination

174. See discussion and sources cited *infra* notes 46 and 49.

175. See Glendon, *Knowing the Universal Declaration of Human Rights*, *supra* note 16, at 1163-1164.

176. BOUTROS BOUTROS-GHALI, *Introduction to THE UNITED NATIONS AND THE ADVANCEMENT OF WOMEN 1945-1996*, 3-7 (rev. ed. 1996).

177. See CEDAW, *supra* note 4, at 7.a, 10, 11, 12, 16, and 16.e.

178. BOUTROS-GHALI, *supra* note 176, at 5.

179. *Id.*

180. Cairo '94, *supra* note 4, at ¶¶ 4.1 and 4.4(c).

and violence, and ultimately, victims of their own biology.¹⁸¹ The third phase and its subsequent developments will be our focus here.

1. Mexico City and CEDAW: defining discrimination

The World Conference of the International Women's Year, held in Mexico City in 1975 ("Mexico City") inaugurated the UN Decade for Women. Mexico City focused on the issues of discrimination against women (the first conference to do so, thus setting in motion the processes which would culminate with the drafting of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)) and the role of women in economic and social life, particularly in development.¹⁸² The final document also focused on equal rights and responsibilities of men and women within family life and society at large, and also argued for the equal right of men and women to determine the number and spacing of children.¹⁸³ The Conference issued the World Plan of Action ("POA"), which set up guidelines for the advancement of women over the next ten-year period, including increases the level of education, participation in public life, provisions for health education and services; and improvements in housing and sanitation.¹⁸⁴ The POA also encouraged the enactment of legislation that would improve access to family planning as a part of an overall increased provisions for health, education, and services.¹⁸⁵ However, to the dismay of the women's rights advocates, the Plan noted that, "since there are wide divergences in the situation of women in various societies, cultures and regions, reflected in differing needs and problems, each country should decide upon its own national strategy and identify its own targets and priorities."¹⁸⁶ This willingness to allow sovereign nations the freedom to assess and determine their own needs and priorities decreased, especially with the passage of CEDAW, in which the UN assumed the responsibility of setting targets and priorities for countries.¹⁸⁷

181. See Garcia-Robles, *supra* note 111, at 1.

182. See Mexico '84, *supra* note 94, at preamble.

183. See *id.* at ch. I, § A.

184. See *id.* at ch.II.

185. See Report of the World Conference of the International Women's Year, U.N. E/Conf. 66/34, at ¶ 49(h) (1976) [hereinafter WCW '75].

186. *Id.* at ¶ 28.

187. Articles 17, 18 and 21 of the CEDAW explain some of the mechanisms and the activities that the Committee of CEDAW undertakes. See CEDAW, *supra* note 4, at arts. 17, 18, & 21. Further details were developed in the CEDAW Protocol, which implements and further defines the activities of the Committee of CEDAW.

In 1979, the General Assembly adopted CEDAW, a legally binding instrument with status as an international treaty, after over three years of fractious debate.¹⁸⁸ CEDAW attempted to define women's rights and to apply these rights to all societies.¹⁸⁹ The treaty has significant impact on the family and family relations in that it concentrated on reproduction and women's reproductive rights, relations between the sexes, and the impact of culture on those relationships, as well as the redefinition of the concept of human rights to give a "formal recognition to the influence of culture and tradition on restricting women's enjoyment of their fundamental human rights."¹⁹⁰ This emphasis on reproductive rights was a marked shift from the earlier women's conference in Mexico City, which was much more interested in the development and promotion of the multi-faceted character of women than it was in fertility control.¹⁹¹ The treaty also articulated a new understanding of discrimination as it applied to women:

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or other field.¹⁹²

CEDAW also argued that discrimination against women in any field "hampers the growth of the prosperity of society and the family."¹⁹³ This definition became increasingly important to women's rights advocates, especially as they began to look for ways to define reproductive and sexual rights.¹⁹⁴ Recently, the definition of discrimination has become important in defining violence against women—particularly "marital rape"

188. CEDAW was approved with an extraordinary number of reservations attached by ratifying states on the grounds of religion, culture, tradition and economics. See CEDAW, *supra* note 4; WOMEN, POLITICS, AND THE UNITED NATIONS (Anne Winslow ed. 1995).

189. Sections I-IV of the convention enumerate these rights, reminding all States Parties to the International Covenants on Human Rights that they "have they have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights" CEDAW, *supra* note 4, at ¶ 3.

190. CEDAW, *supra* note 4, at intro.

191. See *id.* at arts. 10(h), 11(f), 14.2 (b), and 16 (e).

192. *Id.* at art. 1.

193. *Id.* at preamble.

194. See discussion and sources cited regarding Agenda 21 *infra* notes 107, 121, and 122 (where concept of 'sustainable development', which links population control with economic development was coined).

and "domestic violence."¹⁹⁵ These definitions have obvious implication on the family and family relationships and calls into question the rights of other family members, especially fathers, sons and daughters.

A basic premise of the Convention was the idea that "women must be as free as men to make choices not only in the political and legal sphere, but also in such areas as marriage, the home and family life generally."¹⁹⁶ Within the sphere of marriage and family, the document called for increased protection and recognition of the social function of maternity,¹⁹⁷ while at the same time, it called for "recognition of the common responsibility of men and women in the upbringing of their children."¹⁹⁸ In recent years, this call for *equality* of rights between the sexes in the family context has been interpreted to mean *interchangeability*, or that the maternal role can be filled by either male or female (the gender lobby would have it apply even further to homosexuals, bisexuals, transsexuals).¹⁹⁹ Therefore, since 1979 groups have advocated some

195. See Beijing '95, *supra* note 24, Platform of Action, at ¶ 224.

Violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms. Taking into account the Declaration on the Elimination of Violence against Women and the work of Special Rapporteurs, gender-based violence, such as battering and other domestic violence, sexual abuse, sexual slavery and exploitation, and international trafficking in women and children, forced prostitution and sexual harassment, as well as violence against women, resulting from cultural prejudice, racism and racial discrimination, xenophobia, pornography, ethnic cleansing, armed conflict, foreign occupation, religious and anti-religious extremism and terrorism are incompatible with the dignity and the worth of the human person and must be combated and eliminated. Any harmful aspect of certain traditional, customary or modern practices that violates the rights of women should be prohibited and eliminated. Governments should take urgent action to combat and eliminate all forms of violence against women in private and public life, whether perpetrated or tolerated by the State or private persons.

Id. (emphasis added).

Similarly, in DEVAW violence is defined to include:

Violence against women shall be understood to encompass, but not be limited to, the following: Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation"

DEVAW, *supra* note 4, at art. 2(a).

196. BOUTROUS BOUTROUS-GHALI, *supra* note 176, at 42.

197. See CEDAW, *supra* note 4, at preamble, ¶ 13.

198. *Id.* at art. 5(b).

199. See *Report on the World Social Condition*, UN Commission for Social Development, UN Doc. E/95/15 at 156 (1997) (gender is a mere "social construct" not tied to "immutable biological differences"); SARA RUDDICK, *MATERNAL THINKING: TOWARDS A POLITICS OF PEACE*, (1989); Sara Ruddick, *Rethinking "Maternal" Politics*, in *THE POLITICS OF MOTHERHOOD: ACTIVIST VOICES FROM LEFT TO RIGHT* 369, 372 (Alexis Jetter et. al., eds. 1977) (arguing that anyone may "deploy a maternal identity and celebrate maternal relationships, exploiting the symbols of motherhood evocative in their particular culture").

have decided that there is no particularly unique gift that women bring to their children as women or mothers, or in other words, that "maternity" is something that any person can do.²⁰⁰

The language of equality permeated Article 16, which dealt explicitly with marriage and family. Article 16(d) further recognized that men and women have "the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children."²⁰¹ Equality was also applied to the procreative act between husband and wife, stating in Article 16(e) that husbands and wives have "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."²⁰²

2. *Copenhagen & Nairobi: linking advancement of women with fertility reduction and the war against stereotypes and motherhood.*

The themes introduced in CEDAW were reaffirmed at the World Conference of the UN Decade for Women: Equality, Development and Peace ("Copenhagen '80"). The conference sought to assess the progress and obstacles encountered in the Commission on the Status of Women's goal of advancement,²⁰³ as well as to outline "a programme of concrete action for the second half of United Nations Decade for Women: Equality, Development and Peace."²⁰⁴ The POA began by stating that:

[T]he improvement of the status of women requires action at the national, local and family levels. It also requires a change of men's and women's attitudes towards their roles and responsibilities in society. The joint responsibility of men and women for the welfare of the family in general and the care of their children in particular should be affirmed.²⁰⁵

It also called for legislative measures that would guarantee protection for the social function of parenthood and maternity.²⁰⁶ The POA was careful to note that maternity leave "should be understood to be the period which is required by expectant mothers for the protection of their health before childbirth and by mothers for the recovery of their health

200. See generally Cynthia Fuchs Epstein, *Views of Motherhood*, in DECEPTIVE DISTINCTIONS (1988).

201. CEDAW, *supra* note 4, at art. 16.

202. *Id.*

203. See Copenhagen '80, *supra* note 4, at ¶ 2, 6-9.

204. *Id.*

205. *Id.* at ¶ 47.

206. *Id.* at ¶ 64.

after childbirth.”²⁰⁷ At this time, advocates of a multiple understanding of gender had not challenged the linkage between childbirth and maternity. Parenthood, a role fulfilled by both sexes, was contrasted against maternity, fulfilled by females, when the document recognized that “the raising of children is a joint responsibility of parents and the community at large, efforts should be made to provide for parental leave available to either parent.”²⁰⁸ This link between maternity, motherhood, and child-bearing was repeated throughout the document. The document also called for respect and protection of maternity in society and in the workplace.²⁰⁹ Since ‘80, however, all references to maternity have been interpreted away from this traditional understanding of the role of motherhood and toward an inclusive understanding of motherhood as applicable to anyone regardless of sexual orientation.

The major sub-theme of Copenhagen was “Employment, Health and Education.” It emphasized the need for greater education and integration of women into the workforce,²¹⁰ but did not yet characterize work in the home as a symbol of male oppression, as later conferences would do.²¹¹ The section on health discussed family planning as one of many health needs for women such as nutrition, pregnancy, disease, and sanitation.²¹² Family planning had not yet become the central and overriding focus of women’s health issues, but was clearly growing in importance. As the issue of “reproductive health” became increasingly tied to women’s rights throughout the 1980s and ‘90s,²¹³ other health issues such as clean water and malaria were no longer recognized.²¹⁴ The section on health

207. *Id.*

208. *Id.*

209. *See id.* (sections entitled “Family Planning,” “The Role of Women on Building a Society of Peace”, and “Integrated Focus on the Health and Well-being of Women”).

210. *See id.* at sec. II.

211. *See* Nairobi Forward-Looking Strategies, *supra* note 4, at ¶ 171 and 228. Specifically, paragraph 171 proposes an alteration of the education system:

Extensive measures [sic] should be taken to diversify women’s vocational education and training in order to extend their opportunities for employment in occupations that are non-traditional or are new to women and that are important to development. The present educational system, which in many countries is sharply divided by sex, with *girls receiving instruction in home economics and boys in technical subjects, should be altered.*”

Id. at ¶ 171 (emphasis added).

212. *See* Copenhagen ‘80, *supra* note 4, chp. II.

213. Two additional important documents of the 1980s with regard to reproductive health include Mexico ‘84, *supra* note 94, and the Nairobi Forward-looking Strategies, *supra* note 4. In the 1990s, the advancement was even more evident because it was during these years that a concrete definition and description of services and rights were included in the UN documents.

214. The two main causes of death in adult populations in developing countries are malaria and tuberculosis; the relatively inexpensive treatment of these diseases has been increasingly overlooked in UN documents. *See* World Health Organization, *Malaria*, at <http://www.who.int/health->

did discuss the integration of family planning information and fertility regulation training into school curricula, "so that both men and women can take the responsibility for family planning, to promote the health, safety and welfare of mothers and infants and to enable women to exercise the right to decide freely and responsibly for the number and spacing of their children."²¹⁵ No mention, however, was made of a father's contribution to the decision-making process regarding the number and spacing of children, thus fracturing that organic relationship by pitting the woman's rights in reproduction against the man's. The same paragraph also attributed maternal and infant mortality rates to "too frequent pregnancies, pregnancies at the extremes of the reproductive age and the frequency and danger of secretly performed abortions."²¹⁶ Through this type of wording, rather than emphasizing the need for better prenatal and postnatal care, unblinking credence was given to the population control position that pregnancy itself is the cause of maternal and infant mortality rates.²¹⁷

The Copenhagen conference was significant for proponents of women's rights because it raised the issue of violence against women for the first time.²¹⁸ However, since it was couched in terms of physical and mental health and the social factors that contribute to violence, rather than in terms of human rights,²¹⁹ no instruments were put in place to punish perpetrators of violence. Recognizing the gap between the public and the private spheres, the UN respected the privacy of the home and the family while condemning violence and the factors that contribute to it. The UN also called effective help for women and research into the causes of violence against women, "with a view to eliminating it."²²⁰ The UN's approach to dealing with the sensitive and important issue of violence against women and domestic violence is significant for the fam-

topics/malaria.htm (last visited April 25, 2002).

215. Copenhagen '80, *supra* note 4, at ¶ 146.

216. *Id.*

217. It is worthwhile to note that the World Health Organization, reports that the leading causes of death for women worldwide are cardiovascular diseases including heart disease and cerebrovascular diseases (32.7 percent), infectious and parasitic diseases (18.5 percent), Cancer (11.6 percent), respiratory infections (7.0 percent), and respiratory diseases (6.3 percent). Perinatal conditions, which constitute 4.4 percent, occupies the 7th position, if injuries are included (6.3 percent). No reference is made to pregnancies at the extreme of the reproductive age. Annex Table 2 Deaths by Cause, Sex and Mortality Stratum in WHO Regions, Estimates for 2000, in WORLD HEALTH ORGANIZATION REPORT, MENTAL HEALTH: NEW UNDERSTANDING, NEW HOPE, at <http://www.who.int/whr/2001/main/en/annex/annex2.htm> (last visited April 25, 2002).

218. See Copenhagen '80, *supra* note 4, sec. 1.

219. See *id.* at ¶¶ 70-72.

220. *Id.* at ¶ 73.

ily. The movement of the discussion from prevention of domestic violence and support of victims to addressing the issue in terms of human rights violations transferred the domestic violence discourse from "soft" international law and policy to "hard" domestic law, thus according the family no protection from state intervention or intervention via international instruments.²²¹

The UN Decade for Women ended in 1985 with a conference in Nairobi, Kenya to assess the actions taken in the last decade and to establish a programme of action until the year 2000.²²² The review complained that many countries had failed to meet the objectives set by previous conferences²²³ and blamed this failure on obstacles such as poverty and underdevelopment,²²⁴ as well as on "major factors in the enduring inequality of women and *de jure* and *de facto* discrimination against them; the continuation of women's subordinate roles in development, a consequence of physiological, social and cultural biases."²²⁵ The outcome document, called the Nairobi Forward-Looking Strategies, had a significant bearing on the family in that it assumed antagonism in the male-female relationship and emphasized division between men and women in the context of the family through its approach to family planning. Specifically, while the document did not exclusively reserve for women the right to determine the number and spacing in terms of reproductive and sexual rights, paragraph 29 speaks of the right to "control fertility" only in terms of women, and ignores or excludes men in this area. "[T]he issues of fertility rates and population growth should be treated in a context that permits women to exercise effectively their rights in matters pertaining to population concerns, including the basic right to control their own fertility which forms an important basis for the enjoyment of other rights. . . ."²²⁶ The idea that control of fertility is a basis for the enjoyment of rights, but not a right in itself was reiterated in paragraph 156.²²⁷ For some groups, however, this conception of fertility control did not go far enough.

221. See discussion and sources cited *infra* notes 12, 17, 18, 231, and 232.

222. See Nairobi Forward-Looking Strategies, *supra* note 4, at ¶ 5.

223. See *id.* at ¶ 17.

224. See *id.* at ¶¶ 17, 18.

225. BOUTROUS BOUTROUS-GHALI, *supra* note 176, at 42.

226. Nairobi Forward-Looking Strategies, *supra* note 4, at ¶ 29. See also *id.* at ¶¶ 157, 159.

227. The paragraph reads: "the ability of women to control their own fertility forms an important basis for the enjoyment of other rights. As recognized in the World Population Plan of Action and reaffirmed at the International Conference on Population, 1984, all couples and individuals have the basic human right to decide freely and informedly the number and spacing of their children. . . ." *Id.* at ¶ 156.

[T]he statement that family planning is a factor in the ‘enjoyment’ of one’s rights suggests that controlling fertility does not rise to the level of being a right per se. Later UN formulations also declare that the inability to control fertility is a factor that impairs the enjoyment of one’s rights, thus avoiding classifying such acts as a “violation” of any specific rights.²²⁸

In sum, because access to family planning was not seen as a right, but was merely seen as factor *by which one could enjoy* one’s rights, no one could be held legally responsible if access was somehow impaired. However, once reproductive control was recognized as a woman’s right,²²⁹ anyone who violated that right (most likely her husband, or even the state, if it failed to provide access to family planning and reproductive health information and services) could be held legally responsible and prosecuted.²³⁰ Radical women’s rights groups regretted the Nairobi situation because if reproductive and sexual “rights” were not recognized as such, then these “rights” could not be violated and perpetrators could not be punished.²³¹

Paragraph 28 claims that “an improvement in the situation of women could bring about a reduction in mortality and morbidity as well as better regulation of fertility, and hence population growth, which would be beneficial for the environment and, ultimately, for women, children and men.”²³² Paragraph 29 reveals the unapologetic prevalence in mainstream

228. Felice D. Gaer, *And Never the Twain Shall Meet? The Struggle to Establish Women’s Rights as International Human Rights*, in *THE INTERNATIONAL HUMAN RIGHTS OF WOMEN: INSTRUMENTS OF CHANGE* 5, 14 (Carol Elizabeth Lockwood et al. eds. 1998).

229. This was specifically recognized in Beijing ’95, “The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.” Beijing ’95, *supra* note 24, at ¶ 96.

230. In fact, the Beijing Document requests from governments, the incorporation of these rights in their legislation:

“Governments, in collaboration with non-governmental organizations and employers’ and workers’ organizations and with the support of international institutions: . . .

(b) Reaffirm the right to the enjoyment of the highest attainable standards of physical and mental health, protect and promote the attainment of this right for women and girls and incorporate it in national legislation, for example; review existing legislation, including health legislation, as well as policies, where necessary, to reflect a commitment to women’s health and to ensure that they meet the changing roles and responsibilities of women wherever they reside.”

Id. at ¶ 106.b.

231. Good evidence of how some groups would like to use these rights is captured by the interpretations that the CEDAW Committee made of rights regarding abortion. For example, in its recommendations to Columbia, the Committee states that it “believes that legal provisions on abortion constitute a violation of the rights of women to health and life and of article 12 of the Convention.” *Report of the Committee on the Elimination of Discrimination against Women*, 20th Sess., A/54/38, ¶ 393 (1999).

232. Nairobi Forward-Looking Strategies, *supra* note 4, at ¶ 28.

international politics of Malthusian population control arguments. This particular paragraph, in conjunction with the preceding one, links “enjoyment” of women’s right to control her own fertility with population growth and its perceived attendant issues of poverty and resource depletion.²³³ Paragraph 29 closes the Malthusian connection between women’s rights, fertility and population “concerns.” “The issues of fertility rates and population growth should be treated in a context that permits women to exercise effectively their rights in matters pertaining to population concerns, including the basic right to control their own fertility which forms an important basis for the enjoyment of other rights.”²³⁴ This linkage, while seriously challenged by many countries, policy-makers and theorists,²³⁵ continues to enjoy favor even today at UN conferences, most recently evidenced at the ICPD+5 and the Beijing+5 conferences.²³⁶

The Nairobi conference was also significant for families because it signaled the beginnings of a conscious effort to change “traditional” gender roles. The document spoke of working to change “stereotyped images of women”²³⁷ and “attitudinal discrimination”²³⁸ towards women. While the document may have aimed for the laudable goal of encouraging a positive and dignified view of women, use of language such as “stereotyped,” “traditional,” and “customary” emphasized instead a description of women as victims of widespread, systemic discrimination, particularly in societies that wished to protect the role of women in the family and as mothers.²³⁹ The increased use of this type of language in the UN conferences has resulted in a subtle sort of social engineering.²⁴⁰

233. *Id.* at ¶ 29.

234. *Id.*

235. See discussion and sources cited *infra* notes 1, 35 and 36.

236. See discussion *infra* Part V.B.2.

237. Nairobi Forward-Looking Strategies, *supra* note 4, at ¶ 206.

238. *Id.* at ¶ 11.

239. This view was also included in the Cairo and Beijing Documents. Several countries expressed their desire to protect the concept of family and motherhood. For example, many countries introduced among their reservations to the Programme of Action, wording similar to the one submitted by Argentina and Honduras. While Argentina stated that, “although the family may exist in various forms, in no case its origin and foundations, i.e., the union between man and women, which produces children, be changed.” Cairo ’94, *supra* note 4, at ch V (Adoption of the Programme of Action), ¶ 21. Honduras, in its reservations, stated that “terms such as “family composition and structure”, “types of families”, “different types of families”, “other unions” and similar terms can only be accepted on the understanding that in Honduras these terms will never be able to mean unions of persons of the same sex.” *Id.* at ¶ 10. Similarly, the Islamic Republic of Iran submitted the following reservation in Beijing: “. . . although the family is the basic unit of society and as such plays a significant role in the advancement of women and promotion of human development, the Platform for Action falls short in recognizing its contribution and the importance of its stability and integrity.” Beijing ’95, *supra* note 24, at ¶ 4.14.

240. For example, The Nairobi Forward Looking Strategies states of the document that “the

The language of gender roles in the Nairobi document was gradually applied to the roles of men and women in the family, resulting in a call to utilize the educational system and media outlets to show that “stereotyped images. . . can have a profoundly adverse effect on attitudes towards and among women.”²⁴¹

The document again raised the topic of violence in the family.²⁴² The reality of domestic violence is a sad and tragic one, and all parties involved should be dealt with compassionately and humanely, while respecting their dignity.²⁴³ However, the document, while wishing to address this sensitive issue, instead advocated a position that essentially swapped one repressive regime for another. It clearly held men responsible for domestic violence in general and urged that governments put in place “repressive measures” against “the authors of this maltreatment.”²⁴⁴

Governments should undertake effective measures, including mobilizing community resources, to identify, prevent and eliminate all violence, including family violence, against women and children and to provide shelter, support and reorientation services for abused women and children. These measures should notably be aimed at making women conscious that maltreatment is not an incurable phenomenon, but a blow to their physical and moral integrity, *against which they have the right (and the duty) to fight, whether they are themselves the victims or the witnesses.* Beyond these urgent protective measures for maltreated women and children, as well as repressive measures for the

obstacles to the equality of women created by stereotypes, perceptions of and attitudes towards women should be totally removed. *Elimination of these obstacles will require, in addition to legislation, education of the population at large through formal and informal channels, including the media, non-governmental organizations, political party platforms and executive action.*” The Nairobi Forward Looking Strategies, *supra* note 4, at ¶ 56 (emphasis added).

241. *Id.* ¶ 206

242. *Id.* ¶¶ 262, 245, 258, 287.

243. It seems appropriate to indicate that what the statistics tend to show is that domestic violence is higher in situations where the male involved is not the husband. For example, the 1995 report of the US Department of Justice indicates that: “In 29% of all violence against women by a long offender, the perpetrator was a humbad, ex-husband boyfriend, or ex-boyfriend—an intimate. Compared to men, women were about 6 times more likely to experience violence committed by an intimate.” *Violence against Women: Estimats from the Redesigned Survey*, Special Report for the Bureau of Justice Statistics (Aug. 1995) at 3, at <http://www.ojp.usdoj.gov/bjs/abstract/femvied.htm> (last visted April 25, 2002). The 29% breaks down as follows: Spouse 9%, ex-spouse 4%, ex-boyfriend 16%. *Id.* “Among victims of violence committed by an intimates, the victimization rate of women separared was about 3 times higher than that of divorced women and about 25 times higher than that of married women. *Id.* at 4.

“Over 85% of abusive parents were abused or neglected themselves,” and “prison population studies show that 80-90% of all inmates were abused as children.” Belflower Center for the Prevention of Child Abuse *Breaking the Cycle of Abuse*, at <http://community.cleveland.com/cc/bellflowercenter> (last visited April 25, 2002).

244. Nairobi Forward Looking Strategies, *supra* note 4, ¶ 231.

authors of this maltreatment, it would be proper to set in motion long-terms supportive machineries of aid and guidance for women and children, as well as the people, often men, who maltreat them.²⁴⁵

The document did not formally recommend that perpetrators of domestic violence be held accountable vis-à-vis the juridical or criminal systems, nor did it suggest that states were responsible by not prosecuting violent actors. However, it did speak of violence in the family in the language of human rights.²⁴⁶ Groups wishing to preserve the privacy of the home and family viewed the characterization of family in the terms of human rights language as problematic.²⁴⁷ Such language could introduce the possibility of government intervention if perpetrators of domestic violence were seen as violators of human rights and therefore punishable by law. In addition, the troubling problem of definition persisted in the conference; no UN document had heretofore laid down a comprehensive definition of domestic violence. However, the document had defined domestic violence in a predominately "patriarchal" power paradigm, declaring that men were usually the oppressors and "authors of this maltreatment."²⁴⁸

3. Vienna and Beijing: making the connection between discrimination and violence against women

The issue of violence against women was raised again in 1993 at the World Conference on Human Rights in Vienna (Vienna '93).²⁴⁹ Between Nairobi and Vienna '93, women's rights groups had begun to shift their focus from simply eliminating discrimination to eliminating discrimination through the language and framework of violence.²⁵⁰ They

245. *Id.* (emphasis added).

246. *See id.*

247. Some of these organizations include the Howard Center, the Family Research Council ("FRC"), The Association for Family Finances in America, Focus on the Family, Concern Women for America, and the Catholic Family and Human Rights Institute. *See* Press Release, Family Research Council, The U. N. Needs to Stop Social Engineering (Jun. 12, 2001), at <http://www.frc.org/get/p01f07.cfm>; *Nicaragua Delegate fired for pro-Family Views/Briefs Policy Makers*, FAX ARCHIVE OF CATHOLIC FAMILY AND HUMAN RIGHTS INSTITUTE (Mar. 2, 1001), at http://www.c-fam.org/FAX/volume_4/faxv4n11/html; Catherina Hurlburt, *UN Convention on the Rights of the Child: A Treaty to Undermine the Family*, CONCERNED WOMEN FOR AMERICA (2001), at http://cwfa.org/library/nation/2001-09_pp_un-conv-child.html; and Mark Cowan, *U.N. Child Exploitation Campaign Trouble Some*, FAMILY NEWS IN FOCUS (NOV. 28, 2001) at <http://www.family.org/cforum/fnif/news/a0018683.html>.

248. *See* FIFTY YEARS AFTER THE DECLARATION, *supra* note 172.

249. The Declaration states, "Deeply concerned by various forms of discrimination and violence, to which women continue to be exposed all over the world." Vienna '93, *supra* note 26, at ¶ 10 (emphasis added).

250. *See* Gaer, *supra* note 228.

began to promote the view that states could be held responsible for their inactions as well as their actions, following the jurisprudential model that held states responsible for massive disappearances within the state, vis-à-vis the experience of Latin America.²⁵¹ In the case of Latin America, state actors are held responsible for violence committed by non-state actors. Ken Roth, former director of Human Rights Watch, discouraged this manipulation of jurisprudence, warning that “without the requirement of systematic complicity by the state, the defense of human rights could be ‘gradually transformed into an exercise of crime control.’”²⁵² Roth and others also criticized the CEDAW committee’s argument that gender-based violence qualifies as a form of discrimination, claiming that it would create special groups with special rights, thereby destroying any universal understanding of human rights.²⁵³ Women’s rights groups have failed to address this critical concern, and instead have skirted the issue by arguing that “exclud[ing] the private realm from human rights discourse is wrong. . . [for as some feminists argue,] . . . the liberal division of society into public and private spheres does not operate neutrally, for women’s concerns are generally left to the private sphere, where regulation is traditionally considered inappropriate. This . . . entrenches women’s inequality.”²⁵⁴

This agenda of women’s rights groups with regard to discrimination and violence became more apparent in Vienna, alarming groups that shied away from ideas of centralized governmental control and wished to protect the liberal division of public and private spheres.²⁵⁵ The document of this conference dealt with the issue of violence in two specific ways: by first, calling for the General Assembly to issue the DEVAW;²⁵⁶ and second, by calling for the appointment of a Special Rapporteur on Violence against Women.²⁵⁷ DEVAW defined violence against women to be understood as:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, includ-

251. *See id.* at 22.

252. *Id.*

253. *Id.*

254. *Id.*

255. *See generally* Wade Horn, *The Family, Civil Society, and the State*, Address before World Congress of Families II (Nov 14-17, 1999), available at http://www.worldcongress.org/gen99_speakers/gen99_horn.htm; C. Gwendolyn Landolt, *The Family at the United Nations: Where Do we Go from Here?* Address before World Congress of Families II (Nov. 14-17, 1999), available at http://www.worldcongress.org/gen99_speakers/gen99_landolt.htm.

256. *See* Vienna ‘93, *supra* note 26, ¶ 38.

257. *See id.* ¶ 40.

ing threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life.²⁵⁸

Article 2 of the same document, listed generic forms of violence that encompassed physical, sexual, and psychological violence occurring in the family and the community (i.e. battery, sexual abuse of female children, dowry-related violence, and marital rape).²⁵⁹ Such definitions of violence are broad and wide-ranging, not limited to acts of violence themselves, but extended to even the threat of such possible violence. With regard to the family, the Declaration categorized family relationships according to sex, and called for special protection against women from violence in the family, but offered no such protection to boys or men.²⁶⁰ Thus, the human rights groups' concerns came to pass: DEVAW essentially treated females as a special group with special rights not extended to other groups in the human family.²⁶¹ Despite this, DEVAW did not declare violence against women a violation of human rights *per se*; violence was still seen as restricting the enjoyment of one's rights.²⁶² However, DEVAW did lay the linguistic framework for Beijing and later conferences.

The Vienna '93 call for a Special Rapporteur on Violence against Women also had special bearing on the family and family relationships. The office of Special Rapporteur creates an extra-conventional mechanism by which individuals can submit complaints of alleged violations of human rights; in the case of violence against women, individual women are now able to submit a communication detailing an alleged act of violence to the Special Rapporteur on Violence Against Women in the international body of the United Nations.²⁶³ In 1997, Radika Coomaras-

258. DEVAW, *supra* note 4, at art. 1.

259. See *Violence Against Girls and Women: A Public Health Priority*, UNFPA Advocacy Series (2000) [hereinafter *Violence Against Girls and Women*].

260. See DEVAW, *supra* note 4, at art. 2(a), ¶ 8.

261. The first paragraph of the DEVAW makes an explicit reference to the right of all human beings by "[r]ecognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings," *Id.* ¶ 1, but goes on to narrow such view by stating its concern "that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence." *Id.* ¶ 7.

262. DEVAW paragraph 5, specifically affirms "that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms. . ." *Id.* ¶ 6.

263. The task of the Special Rapporteur, as defined by the Commission on Human Rights, is to "seek and receive information on violence against women, its causes and consequences" and to "recommend measures, ways and means, at the nation, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences." Commission on Human

wamy, Special Rapporteur on Violence against Women, made it quite clear to a group of Harvard college students that her particular office sees the family and the home as the source of violence against women.

The family has come to be seen as a political unit which may entertain power hierarchies that use their power arbitrarily and violently. Intimacy and privacy are no longer justifications for the non-intrusion of the state. It is important that the hierarchy within the family be challenged and equalized, and that victims of violence within the home be given redress.²⁶⁴

Ms. Coomaraswamy advocated "an activist and interventionist state extending protection to the battered, violated woman."²⁶⁵ Indeed, her understanding of violence in the human rights context extended into the home, expressing that "one can only hope that the common values of human dignity and freedom will triumph over parochial forces attempting to confine women to the home. Only then will we be able to celebrate the true victory of women's rights recognized as fundamental human rights."²⁶⁶

This philosophy was quite evident at the Fourth World Conference of Women in Beijing in 1995, where sexual and reproductive rights for women and girls were overriding themes, particularly in the areas of health and education.²⁶⁷ Although it was expressly understood that no new rights were to be introduced into the text,²⁶⁸ ambiguous language was used throughout the document in reference to sexual and reproductive rights. While this ambiguous language gave no explicit recognition of reproductive 'rights' as rights *per se*, the language did appear to give indirect recognition.²⁶⁹ For example, the document recognized reproductive health as a woman's right,²⁷⁰ and then proceeded to argue that women's rights were human rights.²⁷¹ Thus the connection, albeit indi-

Rights Resolution 1994/45 (ESCOR, Supp. No. 4 at 140, ¶ 7 (a), (1994/95)).

264. COOMARASWAMY, *supra* note 2.

265. *Id.*

266. *Id.*

267. See Beijing '95, *supra* note 24, ¶¶ 83(k-l), §§ C-D, F-G, I-J.

268. Paragraph 95, before defining reproductive rights, states that "reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents." *Id.* ¶ 95.

269. For this reason, some delegations made this point explicit in their reservations. For example, the Islamic Republic of Iran included among its reservations that "[t]he Islamic Republic of Iran holds that the rights referred to in those paragraphs [96 and 232 (f)] fall in the category of existing human rights and do not establish any new rights." *Id.* ¶ 5.14.

270. See *id.* ¶ 96.

271. See *id.* ¶¶ 9, 12.

rect, was made sufficiently clear so as to ensure that the language of “reproductive rights” would be on the agenda of future conferences.

In the area of health, the document emphasized the need for sexual and reproductive health care as a priority above all other health concerns and needs of women and girls, such as nutrition, sanitation, tropical diseases, maternal morbidity, and maternal mortality among others.²⁷² For instance, paragraph 106 (e), when speaking of primary health care, refers to “care services of high quality, including sexual and reproductive health care, which includes family planning information and services, and giving particular attention to maternal and emergency obstetric care.”²⁷³

Within the area of education, the document called for governments to “[r]emove all legal, regulatory and social barriers, where appropriate, to sexual and reproductive health education within formal education programmes regarding women’s health issues[,]”²⁷⁴ making no mention of parents’ rights vis-à-vis their children in this area.

In addition, the document placed a heavy emphasis on the need to eliminate “stereotyped” gender roles in the family and society via educational and mass media channels.²⁷⁵ Education and media, of course, have long been recognized to be critical in shaping the attitudes, ideas and culture of a society. Clearly, the architects of the Beijing document saw the opportunity to conduct strategic social engineering by calling for the alteration of ideas on gender, sex and sexuality, and reproductive rights through the powerful channels of education and media.²⁷⁶

A radical development in the document came in reference to the girl-child and in the explicit discussion of adolescent sexual and reproductive health. In section L, dedicated to the girl-child, the document again reiterates the need to alter gender role conceptions.

Girls and adolescents may receive a variety of conflicting and confusing messages on their gender roles from their parents, teachers, peers and the media. Women and men need to work together with children and youth to break down persistent gender stereotypes, taking into ac-

272. See Beijing ‘95, *supra* note 24, ¶ 106(e). A clear evidence of this overemphasis is that the phrase “reproductive health” appears 27 times in the document while tropical diseases, which are the principle cause of death in developing countries, only is mentioned two times. Similar disproportion can be found with the other health needs in developing countries such as hospitals and other diseases that are afflicting great numbers of people in developing countries such as malaria, dengue, or tuberculosis.

273. *Id.*

274. *Id.* ¶ 83(k).

275. See *id.* ¶ 83(a).

276. See *id.* ¶¶ 33, 72, 83(a), 125(j), 129(d), 180(b), 241(d), § j.2.

count the rights of the child and the responsibilities, rights and duties of parents.²⁷⁷

With the exception of the boilerplate clause recalling the responsibilities, rights and duties of parents at the end of the paragraph, the unfortunate attitude toward parents is clear: when it comes to the types of gender roles that are conveyed to their children, parents are a part of the problem of “persistent gender stereotypes.”²⁷⁸ One way that parents can be a positive influence on their children, according to the document, is to “break down”²⁷⁹ these persistent stereotypes. What exactly these stereotypes are, the document does not enumerate. However, if one analyzes the positions taken toward different gender roles throughout the document, it soon becomes evident. “Positive” gender roles are those not associated with the home and motherhood—it is the exceptional reference that speaks of these institutions in affirmative terms.²⁸⁰ The terms “mother” and “motherhood” was used more negatively than positively; indeed, with exception of one positive²⁸¹ and two neutral references,²⁸² all of the references to motherhood were negative. Clearly, according to radical feminist ideologies prevalent at Beijing, motherhood was a stereotype to be broken down.²⁸³

In addition, the family was frequently cast in a negative light in relation to girls. For example, the document called for governments and NGOs to “[f]ormulate policies and programmes to help the family. . . in its supporting, educating and nurturing roles, with particular emphasis on the elimination of intra-family discrimination against the girl child.”²⁸⁴ This portrayal of the family is negative in two respects: first, it identifies the family as a hotbed of discrimination against women and girls;²⁸⁵ and second, with the persistent attempts by radical women’s rights groups to link discrimination to violence against women and girls, and to have violence against them recognized as a violation of human rights, it further blurs the line between private and public spheres.²⁸⁶

277. *Id.* ¶ 262.

278. *Id.*

279. *Id.* ¶ 180(b).

280. *Id.* ¶ 180(b).

281. *Id.* ¶ 29.

282. *Id.* ¶¶ 88(b), 106(r).

283. See generally Janne Haaland-Matlary, *The Family Under Siege: The Western Political Process and the Example of the Beijing Conference*, ANTHROPOTES: REVISTA DI STUDI SULLA PERSONAE LA FAMILIGIA (1996) [hereinafter Haaland-Matlary, *The Family Under Siege*]; Garcia-Robles, *supra* note 111.

284. Beijing ‘95, *supra* note 24, ¶ 285(a).

285. See *id.* ¶ 117.

286. See *id.* ¶ d.1.

Section L also clearly speaks of adolescent sexual activity and reproductive health. The document argues that “sexual violence and sexually transmitted diseases, including HIV/AIDS, have a devastating effect on children’s health, and girls are often more vulnerable than boys to the consequences of unprotected and premature sexual relations. Girls often face pressures to engage in sexual activity.”²⁸⁷ The solution to this situation is to “strengthen and reorient health education and health services, particularly primary health care programmes, including sexual and reproductive health, and design quality health programmes that meet the physical and mental needs of girls and that attend to the needs of young, expectant and nursing mothers.”²⁸⁸ This assumes adolescent sexual activity is widespread among teenage populations. It also implies that adolescent sexual activity is a good thing, since the document only suggests health and education programmes that support such activity (i.e. safe sex campaigns) and fails to mention abstinence.²⁸⁹ In the area of primary health care, it assumes that the primary health care need of girls and adolescents is in the area of sexual and reproductive health.²⁹⁰ Oddly enough, the document makes no mention of the need to combat diarrhea (a major killer of young children in developing nations),²⁹¹ or tuberculosis (the number one killer of young women in developing nations),²⁹² or tropical diseases such as malaria.²⁹³

The follow-up conference to the FWCW (“Beijing+5”) was held in New York in June 2000. The fragile consensus that had been eventually constructed at Beijing was severely threatened and nearly crumbled at several points during the follow-up conference.²⁹⁴ The issues, which lay at the core of the conflict, were attempts made by the European Union (“EU”) and JUSCANZ (a voting bloc made up of Japan, the U.S., Canada, Australia, New Zealand, Luxembourg and South Korea) to introduce

287. *Id.* ¶ 269.

288. *Id.* ¶ 281.

289. *See id.* ¶¶ c-c, g.

290. *See id.* ¶ 1.5.

291. *See Reducing Mortality from Major Killers of Children*, World Health Organization (1998), available at <http://www.who.int/inf-fs/en/fact178.html> [hereinafter *Reducing Mortality*].

292. *TB is the Single Biggest Killer of Young Women*, World Health Organization (1998), available at <http://www.who.int/inf-pr-1998/en/pr98-40.html>.

293. World Health Organization, *Malaria*, *supra* note 214; *Reducing Mortality*, *supra* note 291.

294. *See Earth Negotiations Bulletin*, vol. 14, n.38-39, available at <http://www.iisd.ca/vol14/enb1438e.html>, and <http://www.iisd.ca/vol14/enb1439e.html> (June 1-5, 2000) (detailed description of the negotiations); *see also Activists Worry that Stalemate Could Result from “Snail-like” Pace of Official Negotiations*, THE EARTH TIMES, June 8, 2001, available at http://www.earthtimes.org/beijing2000/beijingplusfiveconservativesblastjun8_00.htm.

indeterminate and vague language concerning gender roles, homosexuality, abortion, and the reproductive rights of the girl child. Members of developing nations were dismayed that JUSCANZ consistently ignored parental rights and denigrated traditional roles such as motherhood. Perhaps one of the most contentious of the JUSCANZ-backed issues was language regarding the reproductive rights of the girl child. Such language aimed to ensure the girl child's full realization of her sexuality and sought to entitle the girl child to private and confidential sexual and reproductive information, counseling and services both in and out of school by implementing national mechanisms, policies, and programs. This issue, in addition to the failure of JUSCANZ to acknowledge the rights and responsibilities of parents to educate and provide for their own children, angered many voting members.²⁹⁵

With regard to the family, the Beijing+5 document reiterated the need to strengthen the family²⁹⁶ but retained the "various forms of family language" inherited from the ICPD conference.²⁹⁷ It also reaffirmed the right of couples to determine the number and spacing of their children.²⁹⁸ It recalled the definition of reproductive health that was defined in Cairo,²⁹⁹ but added language on sexual health to the definition of reproductive health,³⁰⁰ and therefore:

[R]eproductive health care is defined as the constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counseling and care related to reproduction and sexually transmitted diseases.³⁰¹

The document went on to link this definition of sexual and reproductive health to the concept of reproductive rights, stating that "reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents, and other consensus documents."³⁰² The document then argued that these

295. The issues mentioned in these paragraphs came up throughout the span of the negotiations, however, May 31st-June 9th were especially relevant in this respect. See generally Beijing+5, *supra* note 14. The details can be found at *Earth Negotiations Bulletin*, *supra* note 294.

296. See Beijing+5, *supra* note 14, ¶ 60.

297. See *id.*

298. See *id.* ¶ 72(j).

299. See *id.* ¶ 72(i-j).

300. Point 72(i) of the Beijing+5 Document states: "It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counseling and care related to reproduction and sexually transmitted diseases." *Id.* ¶ 72(i).

301. *Id.*

302. *Id.* ¶ 72(j)

rights are based on “the basic right of all couples *and individuals* to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.”³⁰³ The linkage between sexual health and reproductive rights was an obvious step on the part of groups interested in a formal recognition of “sexual rights.”³⁰⁴ The recognition of such rights would essentially equate to formal recognition of rights based on sexual orientation and would then mean according to non-heterosexual couples the rights reserved for heterosexual couples—the right to marry, the right to found a family, as well as other rights and protections accorded the family by the Universal Declaration and other UN documents.³⁰⁵

The definition of reproductive rights also included the link between reproduction and violence since the document argued that reproductive rights not only includes the right to determine the number and spacing of children, but also “their right to make decisions concerning reproduction free of discrimination, coercion, *and violence*, as expressed in human rights documents.”³⁰⁶ This is significant for natural marital relations since it not only assumes an antagonism between husbands and wives that reaches violent proportions, but also introduces the idea of marital rape, which was mentioned in paragraph 14 and 69(d):

303. *Id.* (emphasis added).

304. During the conference, Family Care International, an organization that promotes sexual and reproductive rights and which works closely with IPPF, the International Health Coalition, the Women Caucus, and similar kinds of organizations, distributed a publication entitled *Sexual & Reproductive Health*. In it they clearly state this intent:

The rights-based approach to sexual and reproductive health adopted at the International Conference on Population and Development (ICPD) in 1994 reflects a new global policy consensus on the relationship between population policy and sexual and reproductive health and rights. . . . The rights-based approach is built on existing international human rights agreements and recognizes sexual and reproductive health and rights as important ends in themselves.

Sexual & Reproductive Health Briefing Cards, Family Care International (2000), available at http://www.familycareintl.org/briefing_cards_2000/rights.htm. The document goes on to define sexual rights as the right to “decide freely and responsibly on all aspects of their fertility, including protecting and promoting their sexual and reproductive health; be free of discrimination, coercion or violence in their sexual lives and in all sexual decisions; and expect and demand equality, full consent, mutual respect, and shared responsibility in sexual relationships.” *Id.*

305. During the Beijing '95 Conference, Palesa Beverley Ditsie, speaking on behalf of the International Gay and Lesbian Human Rights Commission urged the General Assembly by requesting the delegates “to make this a conference for all women, regardless of their sexual orientation, and to recognize in the Platform for Action that lesbian rights are women’s rights and that women’s rights are universal, inalienable, and indivisible human rights. I urge you to remove the brackets from sexual orientation.” Palesa Beverley Ditsie, Statement delivered at International Gay and Lesbian Human Rights Commission United Nations Fourth World Conference on Women (Sept. 13, 1995), at <http://www.hartford-hwp.com/archives/28/014.html>.

306. Beijing+5, *supra* note 14, ¶ 72(j) (emphasis added).

Establish legislation and/or strengthen appropriate mechanisms to handle criminal matters relating to all forms of domestic violence, including marital rape and sexual abuse of women and girls, and ensure that such cases are brought to justice swiftly.

Organizations such as IPPF have advocated the use of abortion in situations where rape, which result in “forced pregnancy”,³⁰⁷ and have sought to have this view, inserted into UN documents.³⁰⁸ In the case of the marital relationship, if the couple found they were pregnant and the husband wanted the baby, but the wife did not, she could claim marital rape. If abortion were legally recognized as a ‘method of family planning’ in violent situations, the wife could procure an abortion against her husband’s wish and against the law of the country but under protection of international law. This would introduce antagonism and fragmentation into the marital relationship, in addition to that which the UN already presumes to exist. Of course, UN legislation already exists to deal with women in violent situations. Paragraph 69 addresses the issue of violence against women, calling for governments to:

As a matter of priority, review and revise, where appropriate, legislation, with a view to introducing effective legislation including on violence against women, and take other necessary measures to ensure all women and girls are protected against all forms of physical, psychological, and sexual violence, and are provided recourse to justice;³⁰⁹

Treat all forms of violence against women and girls of all ages as a criminal offence punishable by law including violence based on all forms of discrimination;³¹⁰

307. IPPF includes in its Charter of Sexual and Reproductive Right, the right to “Liberty and Security of the Person.” After defining the content of this right, it states that it “further commits itself to taking all steps to ensure the attainment of the following rights: . . . the right to be free from forced pregnancy, sterilization and abortion.” IPPF CHARTER ON SEXUAL AND REPRODUCTIVE RIGHTS, *supra* note 21, at 13.

308. For example, in March 2000, in preparation for Beijing+5, Equality Now, which is an activist radical group based in New York, issued the following statement:

Equality Now and its campaign partners have since been calling on governments to repeal or amend laws which discriminate against women prior to the Beijing + 5 Special Session of the United Nations General Assembly, to be held from 4-9 June 2000. Paragraph 232(d) of the Beijing Platform for Action calls on states to “revoke any remaining laws that discriminate on the basis of sex.” Section IV of the draft Outcome Document for the Special Session includes a provision calling on States to “repeal all discriminatory legislation by 2005.

Words and Deeds: Holding Governments Accountable in the Beijing + 5 Review Process, Women’s Action 16.3 (Mar. 2000), at http://www.equalitynow.org/action_eng_16_3.html.

309. Beijing+5, *supra* note 14, ¶ 69(a).

310. *Id.* ¶ 69(b).

Violence against women is still considered an impairment of women's *enjoyment* of their human rights, and not a human rights violation per se. However, if radical women's rights groups had their way, recognition of violence against women as a violation of a human rights would not only extend to violence in the community, but would also extend to the home and to sexual and reproductive rights.³¹¹

Adolescents and the girl child also received attention in the area of reproductive health. The document again recalled the language of ICPD and Beijing and called for education and services to enable adolescents "to deal in a positive and responsible way with their sexuality."³¹² This reference to sexuality operates on two levels insofar as it: 1) refers to adolescent sexual activity in general,³¹³ and 2) allows for a "transgendered" interpretation. This much is clear, for in the same paragraph, the document talks about women's "sexuality" in terms of sexual activity, not reproduction. The document states that, "the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence."³¹⁴ Adolescents were also to be the beneficiaries of government programmes that "provide them with education, information and appropriate, specific, user-friendly, and accessible services without discrimination to address effectively their reproductive and sexual health needs."³¹⁵

The document did make reference to the rights, duties and responsibilities of parents and legal guardians in this area, but placed in on equal footing with the adolescents' right to "privacy, confidentiality, respect and informed consent."³¹⁶ This piece of verbal jockeying effectively tied the hands of parents, since the right to confidentiality and privacy essentially excluded parents from the process entirely. The education and information which adolescents are to have access to includes programmes that "*inter alia*, build adolescent girls' self esteem and help them take responsibility for their own lives; promote gender equality and responsible sexual behavior; raise awareness about, prevent and treat sexually transmitted infections, including HIV/AIDS and sexual violence and abuse; counsel adolescents on avoiding unwanted and early pregnancies."³¹⁷

311. *See supra* notes 264-266.

312. Beijing+5, *supra* note 14, ¶ 72(j).

313. *See id.* ¶¶ 32-33, 72(j), 79(f).

314. *Id.* ¶ 72(k).

315. *Id.* ¶ 79(f).

316. *Id.*

317. *Id.*

Thus, it can be seen that while developing countries made serious efforts throughout the conference to protect the natural family and family relationships, they lost significant ground in the areas of gender and sexual rights, as well as in the area of adolescent reproductive health and rights.³¹⁸

In sum, the previously described developments seems to suggest that the natural family has fared badly especially regarding women's rights in the twenty or so years since CEDAW. Women's rights groups and population control advocates have introduced into UN documents,³¹⁹ soft international laws, the presupposition of the existence of antagonism, discrimination and violence within the family and family relationships and as a result have based policy on this seriously flawed and erroneous assumption.

B. Children's Rights and the Family

The area of children's rights has also received a great deal of attention in international policy making circles, and particularly at the UN.³²⁰ In 1989, the General Assembly proposed to member states the ratification of the Convention on the Rights of the Child.³²¹ The document enjoyed quick ratification by many member states, including the United States.³²² However, this document clearly reveals a marked departure in the UN's understanding of family and family relationships, especially the relationship between parent and child.³²³

Historically, the relationship between parent and child was understood to be one of protection. Because of their immaturity, the law argued that children lacked the emotional and intellectual competency to make fundamental decisions for themselves, and that parents and legal guardians had the right to make those essential decisions in their stead.³²⁴ Furthermore, the children had the right to the protection of their parents. This attitude was clearly seen in article 26.3 of the Universal Declaration

318. See *Earth Negotiations Bulletin*, *supra* note 294, n.38 (position of the developing countries on this area). By attempting to introduce ambiguous gender language, especially in terms of sexual rights, radical feminist groups and transsexual and homosexual rights groups hoped to gain formal UN recognition of homosexuality/transsexuality as separate genders with specific rights. See *supra* note 305.

319. See R. Christopher Preston & Ronald Z. Ahrens, *United Nations Convention Documents in Light of Feminist Theory*, 8 MICH. J. GENDER & L. 1 (2001).

320. See THE BEST INTERESTS OF THE CHILD, *supra* note 47; VAN BUEREN, *supra* note 48.

321. See Convention on the Rights of the Child, *supra* note 4.

322. See *id.* The convention has been ratified by 192 countries. Only one country has not ratified: Somalia.

323. See *supra* notes 50-52.

324. See *supra* notes 46, 49.

of Human Rights, where the founders of the UN recognized the right of parents to choose the kind of education that their children would receive. The International Covenant on Economic, Social and Cultural Rights ("ICCESCR") enunciated the stipulation that parents were not limited to state-run facilities for the education of their children.³²⁵ The ICCESCR also included religion and morality within the parameters of education, and declared that parents had the right to educate their children according to their own religious convictions.³²⁶ The Declaration of the Rights of the Child was based on the understanding of children as the beneficiaries of parental protection.³²⁷ The Declaration based this on a principle of subsidiarity: "the main responsibility lay with individual men and women and it was only when they were found wanting that the State should intervene. That is, the free nations contended that protection and education of the child are fundamentally the province of natural parental authority, which should not extend to state law."³²⁸

However, this conception of the parent-child relationship began to shift. Social scientists note that the 1960s ushered in an era of profound distrust of authority and persons in positions of authority. Theorists of family and family relationships began to question and distrust natural parental authority and consequently began to propose a contractual family unit;³²⁹ parental rights do not transcend state authority but are granted to parents by the state in the minds of these theorists. The state set up contractual relationships of rights and duties between parent and child.³³⁰ This image of the family was a major departure from the traditional image of the family as an organic unit, bound together by blood and kinship. As Morita observed in 1999, this "new doctrine put the family in the position of mere caregivers, bound to the observance of the child's rights."³³¹ Children's rights advocates brought this new doctrine of the

325. See International Covenant on Economic, Social and Cultural Rights, *supra* note 46, at art. 13.3.

326. See *id.*

327. Declaration of the Rights of the Child, *supra* note 46, at princ. 6.

328. Morita, *supra* note 49, at 2. Specifically, the 1959 Convention states in Principle 6 that "Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support." Declaration of the Rights of the Child, *supra* note 46, at princ. 6-7. Similarly, Principle 7 when referring to the right of the child to receive education, it states that "that responsibility lies in the first place with his parents." *Id.* at princ. 7.

329. See Morita, *supra* note 49, at 6-7.

330. See LEON SHASKOLSKY SHELEFF, GENERATIONS APART: ADULT HOSTILITY TO YOUTH (1981).

331. Morita, *supra* note 49, at 3.

parent-child relationship into the crafting process of the Convention on the Rights of the Child.³³²

The Convention is based on two fundamental principles of interpretation of children's rights: 1) the principle of the evolving capacities of the child,³³³ and 2) the principle of the best interests of the child.³³⁴ The first is based on the idea that as children mature, their capacity for decision-making and participation in adult activity grows. The second is founded on the idea that all action taken with regard to children should have their best interest as the primary concern. The crafters of the Convention also included four other related principles, now referred to as the 4 P's: Participation, Protection, Prevention and Provision.³³⁵ It is the first P, participation, which has caused the most controversy,³³⁶ because most UN documents since the Convention have focused on making provision for children's access and participation in every area of life, including the area of sexual activity. Children's right advocate Geraldine Van Bueren sees the situation more benignly, arguing that "at issue is whether the best interests of the child is served by focusing exclusively on the child's welfare or whether children are entitled to participate in decisions affecting their own destinies."³³⁷

Article one of the Convention laid the basic parameters for the document by stating that human beings under the age of eighteen are considered children and that once majority is attained at eighteen parental guidance is not required.³³⁸ The principle of subsidiarity on which the earlier Declaration was founded was weakened in the document: Article Two states that "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of the parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."³³⁹ However, Article Five notes that "States Parties shall respect the responsibilities, rights and duties of parents, or where applicable, . . .to provide, in a manner consistent

332. See generally Hafen, *supra* note 49.

333. See Convention on the Rights of the Child, *supra* note 5, at arts. 5, 14.

334. See *id.* at art. 3.1.

335. See Convention on the Rights of the Child, *supra* note 4, at arts. 9, 23.1, 31, 40 (participation); arts. 3, 15.2, 16.2, 17(e), 18, 20, 22, 25, 38 (protection); arts. 2(e), 19.2 (prevention); arts. 5, 8, 9.3, 12.2, 14, 19.2, 20, 22.2, 23.2, 25, 27.3, 32 (provision).

336. This controversy has particularly arisen around articles 9 and 31. Convention on the Rights of the Child, *supra* note 4, at arts. 9, 31.

337. VAN BUEREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD, *supra* note 48, at 16.

338. Convention on the Rights of the Child, *supra* note 4, at art. 1.

339. *Id.* at art. 3.2

with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.³⁴⁰ Article Nine states that "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine...that such separation is necessary for the best interests of the child."³⁴¹

The document recognizes several autonomous rights of the child, the most basic of which is the inherent right to life.³⁴² Other rights include: the right to form and express his or her own views;³⁴³ the freedom to seek, receive and impart information and ideas of all kinds via any media of choice;³⁴⁴ the freedom of thought, conscience and religion;³⁴⁵ and the freedom of association and peaceful assembly.³⁴⁶ With the exception of the freedom of thought, conscience and religion, parents' rights and duties are not mentioned. Rather the document states that these rights should not be limited, except to protect public safety, order, health or morals or the fundamental rights and freedoms of others.³⁴⁷

This characterization of children's rights presents problems in the already tricky task of child rearing. The above defined rights, imply that according to international law, children have the right to associate with whomever they wish, regardless of whether their parents think they are or not a bad influence. Additionally, it also means that mothers and fathers cannot censor information, whether via television, movies or the Internet. Consequently, in these and other areas, including education, health, religion and morality, parents' rights have been severely curtailed by two principles, which in themselves are vague and indeterminate: the evolving capacities of the child and the best interests of the child. Capacities and maturity vary drastically from individual to individual;³⁴⁸ the document does not outline a standard by which the capacities of the child may be measured. In addition, the document fails to specify who determines what constitutes the "best" interests of the child. To those who interpret the document on the basis of parental distrust, it would be the

340. *Id.* at art. 5.

341. *Id.* at art. 9.1.

342. *See id.* at art. 6.1.

343. *See id.* at art. 12.1.

344. *See id.* at art. 13.1.

345. *See id.* at art. 14.2.

346. *See id.* at art. 15.1.

347. *See id.* at arts. 13.2, 15.2.

348. *See* JAMES YOUNISS, PARENTS AND PEERS IN SOCIAL DEVELOPMENT (1980) (detailed analysis).

state that would determine best interests.³⁴⁹ To those who uphold an organic understanding of the parent-child relationship, it would be the parent.³⁵⁰ However, as UN documents created since 1989 have demonstrated, the former interpretation seems to currently be in favor in international policy making circles.

The Cairo and Beijing conferences and their follow-up meetings aptly convey the widespread adoption of the parental distrust interpretation within international circles in reference to adolescent reproductive health and rights. The push to guarantee adolescents the right to reproductive health information began in Cairo,³⁵¹ and was extended to include reproductive counseling and services at the Beijing conference.³⁵² Both Cairo and Beijing made references to the rights, duties and responsibilities of parents in these areas, but Beijing weakened parents' fragile foothold by placing them on equal footing with the adolescent's right of "access to information, privacy, confidentiality, respect and informed consent."³⁵³ According to the UN, girls and adolescents need help in learning how "to deal in a positive and responsible way with their sexuality."³⁵⁴ In addition, the UN has also declared that adolescents also have the right to sexual education, as well as reproductive information and services.³⁵⁵ It has generally been the case that as the UN has endeavored to open access to all areas of decision-making for children, they have simultaneously ignored the rights of parents in these areas. For example, the UN has sought to encourage adolescent access to all areas of adult sexuality and reproduction (i.e. health care information and services, and contraceptives).³⁵⁶ Indeed, as women's rights advocates continue push to have reproductive and sexual rights increasingly recognized by the UN, it will only be a matter of time before these same groups seek to make those same concessions available to adolescents and children.³⁵⁷

349. See THE BEST INTERESTS OF THE CHILD, *supra* note 47; VAN BUEREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD, *supra* note 48.

350. See Farris, *supra* note 49; Hafen, *supra* note 49; Morita, *supra* note 49.

351. See Cairo '94, *supra* note 4, ¶ 7.46.

352. See Beijing '95, *supra* note 24, ¶ 267, 281(d-e, g).

353. *Id.* ¶ 107(e).

354. Beijing+5, *supra* note 14, ¶ 33.

355. See Beijing '95, *supra* note 24, ¶ 267.

356. *Id.* ¶ 281(d-e, g).

357. At the time this article is written, the negotiations of the UN Child Summit are still unfinished. These negotiations were suspended on August 31, 2001, because of the lack of consensus over several points, one of them being the access of children and adolescents to reproductive health services. These negotiations will reassume on May 8-10, 2002. See *Latin American Countries Push for Abortion in Child Document*, Fax Archive of Catholic Family and Human Rights Institute, (Aug. 31, 2001) (detailed discussion of the different positions), at http://www.c-fam.org/FAX/Volume_4/faxv4n37.html.

VI. CONCLUSIONS

Over the past two decades, UN documents have drastically redefined the family unit from its original conception under in the 1948 Universal Declaration. Of the many ways these changes that have impacted the family and family relationships, the greatest impacts have come via the human rights discourse, especially in the area of sexual and reproductive aspects that has dominated international policy circles since the 1970s.³⁵⁸ Soft law instruments and non-binding international documents have been the preferred tools used by interested actors, wielded as if they were hard law.³⁵⁹ This has been because soft law in the international political system is generally ambiguous and be used to introduce new norms and change existing ones.³⁶⁰ As one traces the evolution of the treatment of the family in UN documents it is apparent that the human rights discourse has introduced fragmentation into policies regarding the family. Human rights language, understood in the Lockean sense, is limited to *individual* rights and fails to acknowledge the hierarchical and interconnected nature of all rights.³⁶¹ Human rights language thus understood is inadequate when applied to organic groups such as the family, because it only addresses individuals in the group and not the group as a whole.

Human rights language has its place; it protects people from many evils and promotes and preserve human dignity.³⁶² However, if international and national policy making circles persist in operating in the "human rights/individual rights paradigm," they need to make allowances for the unique relationships in a family that go beyond any understanding of individual rights and duties. Governments at every level of civil society need to make allowances for these fundamental and natural sorts of relationships that are not addressed due to the limitations of human rights language. In addition, international bodies like the UN and national governments need to craft policies which address every dimension of family

358. See discussion *infra* Part V.

359. See generally Abbot, *supra* note 20.

360. See Haaland-Matlary, *The Family Under Siege*, *supra* note 283.

361. Glendon, *Foundations of Human Rights*, *supra* note 172.

362. The Universal Declaration of Human Rights does acknowledge such reality in its preamble by stating:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people."

Declaration on Human Rights, *supra* note 9, pmb. ¶¶ 1-2.

life and the family as an organic unit, not just the sexual and reproductive aspects. To do so, they must recognize the existence of an interconnected hierarchy of rights.³⁶³

The family is critical to the maintenance of civil society. As the Universal Declaration and UN documents acknowledge, the family is the natural and fundamental group unit of society.³⁶⁴ The home is where human beings learn how to live in society; it is where they learn friendship and love for their fellow man.³⁶⁵ The norm must be preserved; to treat the family, as a hotbed of discrimination and violence, as radical women's rights groups often do, is to demean it and rob it of its dignity.³⁶⁶ To treat it as the source of rampant overpopulation, as population control advocates do, is to reduce it to sex and reproduction.³⁶⁷

The family is multidimensional, material and spiritual, and as such, has the capacity to affect every sector of society.³⁶⁸ International and national policy must begin to address these dimensions. Families can protect the environment by teaching responsible consumption. Families can reach out to aging populations by encouraging intergenerational interaction. Families can help to combat social ills such as pornography and violence by promoting the inherent dignity of every human person and by teaching their children about the unique gift of sex in the marriage relationship. Civil society depends on the family for its own health and well-being;³⁶⁹ if policy makers continue to demean or reduce the family and fail to address it in its multidimensional character, civil society will necessarily suffer.

363. See Glendon, *Foundations of Human Rights*, *supra* note 172.

364. See *Declaration of Human Rights*, *supra* note 9, at art. 15.3.

365. See generally FUKUYAMA, *THE GREAT DISRUPTION*, *supra* note 8; Fagan, *Broken Families*, *supra* note 7.

366. See Beijing '95, *supra* note 24, ¶¶ 113(a), 117.

367. As we have seen, this view is, to some extent, present in the Cairo '94 document. Paragraphs 1.8, 1.12 and 6.4 are some of the paragraphs that incorporate this view. Cairo '94, *supra* note 1, ¶¶ 1.8, 1.12, 6.4.

368. See generally Fagan, *Broken Families*, *supra* note 7.

369. See generally FUKUYAMA, *THE GREAT DISRUPTION*, *supra* note 8.