

## Women's Rights and the Global Population Crisis

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*[C]ontraception and abortion were the true revolutions of the twentieth century, constituting not a power-sharing between women and men, but a transfer of power from men to women. Women alone could decide on maternity, they could determine whether they chose to live with the child's father, to be married and to recognize the father's rights. They [women] alone currently had the power in the family under the law.*

– HENRY STEINER and PHILIP ALSTON

There are differing opinions on the gravity of the global population problem.<sup>1</sup> Some population analysts believe that there could be an environmental doomsday.<sup>2</sup> Other analysts believe that the problem exists only in individual countries and not globally.<sup>3</sup> Almost all analysts, however, share the common belief that lowering birth rates will improve either the global or local situations.<sup>4</sup>

The epigraph of this Comment quotes the French representative to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women<sup>5</sup> (CEDAW), who stated that women in France had the sole power in the family to decide on maternity.<sup>6</sup> Whether this was an accurate statement at the time is not as important as the point it made--there is great tension in the family over the decision to have a child.<sup>7</sup> The decision itself is hugely important to the global population problem.<sup>8</sup> A decision that fails to take into account consequences will almost surely be detrimental to the global population problem.<sup>9</sup>

Countries have taken various approaches to lowering their birth rates. Some countries have implemented extremely coercive programs including strict limits on the number of children per family,

forced sterilization, and forced abortion.<sup>10</sup> More recent attempts to control population have been increasingly cognizant of human rights and hence less coercive; these attempts emphasize making contraception more readily available.<sup>11</sup>

International law states that the family has the ultimate authority to make decisions regarding the number of children they will have.<sup>12</sup> International law also states that women and men should have equal rights.<sup>13</sup> These two statements, unfortunately, are not in harmony with each other. In most countries, the culture, government, religion, and patriarchal system combine to give men most of the power to make decisions regarding the number of children in the family.<sup>14</sup> Women do not have equal rights.<sup>15</sup>

This chapter examines whether a transfer of power within the family is required to cause a desired drop in the world population growth. The first part explores the current state of the population problem and the main impediments to controlling population growth. The second part discusses existing international law on population and women's equal rights. The third part analyzes the differences between the theory and practice of the treaties that on the one hand give the family the right to decide on the number of children, and on the other hand give women equal rights. The fourth part discusses the definitions of coercive programs and whether it is possible for coercive programs to work in harmony with human rights. The fifth part recommends that international law be interpreted differently and a coercive element added so that women have the ultimate power to decide on the number of children they have. Giving women this power will result in better decisions on the number of children in a family and will lower the global population growth rate.<sup>16</sup>

## **The Population Problem**

Ever since Malthus<sup>17</sup> first warned of the harm caused by increasing population, analysts have disagreed as to its severity.<sup>18</sup> The worst situation, according to some analysts, is that if the population continues to grow as it has, the end result could be an environmental doomsday where population is reduced by mass famines and diseases.<sup>19</sup> More moderate warnings are that vital global systems will be damaged beyond repair.<sup>20</sup> The result of this damage will be, according to different analysts, either that large numbers of people will die<sup>21</sup> or that large numbers will be caught in cycles of misery and poverty.<sup>22</sup>

The main methods for rectifying problems caused by overpopulation are to slow the increase of population,<sup>23</sup> decrease the consumption of resources,<sup>24</sup> and increase the amount of resources.<sup>25</sup> Until recently, population planners focused on decreases in reproduction, with public and private initiatives concentrated, *inter alia*, on sterilizing women, providing easier access to contraceptives, and imposing quotas on family size.<sup>26</sup> Some of these initiatives have been successful but the problem remains: predictions are that the 1995 global population of 5.7 billion will double in forty-three years.<sup>27</sup>

Both developing and developed countries must participate in solving the population problem.<sup>28</sup> While the developing countries are expected to account for 90 percent of the future population growth, the developed countries currently consume 75 percent of the global resources.<sup>29</sup> Thus, all countries must undertake population planning; countries that currently have low fertility rates have as much responsibility to reduce fertility and consumption as do countries with high fertility rates.<sup>30</sup> Additionally, countries with low fertility rates often have specific problem areas that should be addressed.<sup>31</sup>

The population problem is global; hence, a global solution is warranted. The United Nations is the appropriate forum for such a solution. Many international treaties and conferences have provisions related to population,<sup>32</sup> including population programs, development strategies, human rights, and specifically women's rights.

### **Existing Law: Women's Rights and Population Growth, and the International Covenant on Civil and Political Rights**

International human rights groups traditionally regard the International Covenant on Civil and Political Rights<sup>33</sup> (ICCPR) as a core instrument of the human rights movement.<sup>34</sup> The ICCPR contains guarantees to the right to life, the right not to be subjected to medical or scientific experimentation, the right not to be subjected to inhumane or degrading treatment, the right to liberty and security of person, the right not to be subjected to arbitrary or unlawful interference with privacy or the family, and the right to marry and found a family.<sup>35</sup> The ICCPR endorses the general principle that there should be no sexual discrimination when implementing its guarantees.<sup>36</sup> Many of the activities associated with population policies, however, violate these civil and political rights and discriminate on the basis of sex.<sup>37</sup>

### **International Conference on Population and Development**

**PRINCIPLES** CEDAW still provides the basic law regarding women's rights and includes statements on population.<sup>38</sup> A major enhancement to CEDAW's statements on population occurred in 1994 when the International Conference on Population and Development<sup>39</sup> (ICPD or Cairo Conference) was held in Cairo. The Cairo Conference was the first conference to combine population

and development<sup>40</sup> strategies. It shifted the emphasis from trying solely to slow population growth to combining decreased population growth with increases in human rights.<sup>41</sup> Quotas and targets were deemphasized, and the focus became the need for greater access to education and information so women could make better decisions about the number of children they conceive.<sup>42</sup>

The Cairo Conference also agreed that human rights must be the foundation of governmental population programs.<sup>43</sup> The delegates believed that these human rights were already recognized in existing national laws and international human rights documents;<sup>44</sup> therefore the next step was to apply the existing human rights to population programs.<sup>45</sup> The Cairo Conference gave individuals the right to make informed choices about reproductive activity.<sup>46</sup> This newly articulated right was of particular significance to women, who were not empowered to make their own reproductive decisions.<sup>47</sup>

The Cairo Conference focused on the fact that empowering women would result in better choices in family planning,<sup>48</sup> give women control over their bodies,<sup>49</sup> and serve an important human rights objective.<sup>50</sup> The implication was that empowering women would result in women choosing to have fewer children.<sup>51</sup> The delegates understood that women are not empowered in the current world to make family planning choices.<sup>52</sup> Restrictions and pressures are placed on women by the State, religion, culture, and male partners.<sup>53</sup> Examples of the restrictions and pressures include violence,<sup>54</sup> laws against owning land,<sup>55</sup> marriage at a young age,<sup>56</sup> and lack of education.<sup>57</sup>

**THE CAIRO PROGRAMME OF ACTION** An output of the Cairo Conference was the Programme of Action<sup>58</sup> (Cairo Programme or Programme), a set of goals and recommendations for population and development. The Programme is today considered the fundamental paradigm for population programs.<sup>59</sup> The implementation of the recommendations contained in the Programme,

however, as in most documents of this kind, was at the discretion of each country.<sup>60</sup> The language of the Programme allowed each country to avoid implementation of a recommendation if the recommendation was inconsistent with national laws and development priorities.<sup>61</sup> This, along with the lack of enforcement so often missing in international treaties and declarations,<sup>62</sup> resulted in actualization well short of the stated goals.<sup>63</sup>

Even though the recommendations were not uniformly implemented, the Programme contained considerable language supporting the empowerment of women.<sup>64</sup> For instance, it stated that gender equality,<sup>65</sup> empowerment of women, and elimination of violence against women are the cornerstones of population and developmental programs.<sup>66</sup> It provided for countries to take full measures to eliminate all forms of exploitation, abuse, harassment, and violence against women,<sup>67</sup> take actions to prohibit female genital mutilation,<sup>68</sup> and take a more forceful position on child marriage.<sup>69</sup>

On the other hand, the Programme took a very moderate approach to abortion.<sup>70</sup> It stated that in no case should abortion be promoted as a method of family planning, but if countries allow abortion, measures should be taken to make abortion safe and to provide follow-up services.<sup>71</sup>

The Programme defined reproductive health as the state of complete physical, mental, and social well-being, including the ability to have a satisfying and safe sex life.<sup>72</sup> Statements on laws that affect population were not limited to those directly regulating reproductive matters, but also included laws regarding the minimum age of marriage, education, status of women, health care, employment, child care, welfare, and old age security.<sup>73</sup> The Programme required States to avoid coercion in all family planning programs.<sup>74</sup>

The Programme failed to acknowledge the collective rights of society.<sup>75</sup> Collective rights were recognized, however, by the 1974 Bucharest World Population Plan of Action,<sup>76</sup> which stated

that family planning must take into account the needs of not just the living, but the needs of future children as well.<sup>77</sup>

### **Effect on Population Programs**

The goal of population programs is to adjust fertility, mortality, migration, and consumption to achieve a better balance in economic and resource demographics.<sup>78</sup> One of the main assumptions of many population programs is that women will choose to have fewer children if given the choice.<sup>79</sup>

The Cairo Programme emphasizes voluntary, informed choices by individuals and couples rather than the coercive measures employed by some States.<sup>80</sup> This approach intends to provide women with sufficient education and economic opportunities so that there are options other than having large families.<sup>81</sup> This human rights-based approach is criticized by some, however, for being too slow when a quicker resolution is necessary.<sup>82</sup> Alternatives to the human rights approach propose direct State action by setting quotas or by providing contraceptive or sterilization programs; these kinds of programs are often considered coercive.<sup>83</sup>

The Cairo Conference provided the framework for major enhancements to population programs. One of the impediments to progress, however, is the role the family plays in reproductive choices.

## **Family Planning**

### **The Rights of the Family in Theory**

The 1948 Universal Declaration of Human Rights (UDHR) describes the family<sup>84</sup> as the natural and fundamental unit of society.<sup>85</sup> Later, as a result of the Tehran Conference in 1969, the

United Nations General Assembly published the Declaration on Social Progress and Development.<sup>86</sup> This was the first United Nations resolution to urge governments to protect families' rights to determine freely and responsibly the number and spacing of children.<sup>87</sup>

The Cairo Programme has many pronouncements on the family. First, it states that the family is the basic unit of society but acknowledges that various forms of the family exist in different social, cultural, legal, and political systems.<sup>88</sup> Second, the Programme states that all couples and individuals have the basic right to decide freely and responsibly the number, spacing, and timing of their children.<sup>89</sup> Third, the Programme states that men and women must equally participate in all areas of family and household responsibilities including family planning, and actions should be taken so that men and women have more choice regarding the balance between domestic and public responsibilities.<sup>90</sup> The Programme also proposes to raise the status of female children by eliminating the root causes of son preference, which results in female infanticide and prenatal sex selection.<sup>91</sup>

None of the aforementioned treaties discusses the definition of a family, apparently silently acknowledging the differences in the various countries and cultures.<sup>92</sup> What is usually thought of as the "normal" family in Western cultures--one wife, one husband, and children--is not the norm throughout the world and is even changing in the Western cultures.<sup>93</sup> The definition of a family is nourished even more today by single parents, same-sex partnerships, and new reproductive technologies that make it far easier for traditional couples, individuals, and partners to become parents.<sup>94</sup>



## **The Rights of the Family in Practice**

**PATRIARCHAL SYSTEMS** In contrast to the stated goals of the treaties that promise equality within the family for deciding the number of children,<sup>95</sup> the power within the family is not with the woman.<sup>96</sup> The power is with the male partner or with other male members of the family.<sup>97</sup> Women do not have an equal role in deciding the number and spacing of children.<sup>98</sup> Patriarchal<sup>99</sup> systems control the family and reproductive decisions with respect to the number and spacing of children,<sup>100</sup> and are often reinforced by religion and tradition.<sup>101</sup>

Patriarchal systems, particularly in developing countries, leave women without political, social, economic, and judicial power.<sup>102</sup> Patriarchal systems essentially assign women the roles of service to family, husband, and children and eliminate the image of women as individuals entitled to self-determination.<sup>103</sup>

Men generally control the decision to reproduce, as well as other aspects of women's lives,<sup>104</sup> but are generally reluctant to use contraceptive methods themselves, thereby leaving women largely responsible for contraception.<sup>105</sup> In developing countries, for instance, only 26 percent of contraceptive users utilize male contraceptive methods such as vasectomies, condoms, withdrawal, or the rhythm method.<sup>106</sup> In some cultures, men are the major objectors to family planning because having children is considered a demonstration of their virility;<sup>107</sup> in others, men believe that pregnancy is a way of keeping women faithful.<sup>108</sup> Some population programs exacerbate these problems by directly requiring the woman to obtain the husband's consent for obtaining contraceptive services.<sup>109</sup>

**REPRODUCTIVE DECISIONS AND POPULATION PROGRAMS** One of the first statements that proposed giving a woman the sole right to decide on the number of children was from

the Yugoslav delegation at the United Nations Conference on Human Rights at Tehran, where the delegation stated that the right to family planning should be the fundamental right of women to conscious motherhood.<sup>110</sup> That kind of statement, however, has not often been voiced and has not become part of international law.<sup>111</sup> Discrimination against women remains pervasive throughout the world, particularly in developing countries with the most serious concerns about population growth.<sup>112</sup> This discrimination denies women their rights of self-determination and reproductive autonomy.<sup>113</sup>

Most population programs focus on women's reproductive behavior.<sup>114</sup> On the surface, this may seem logical since it is women who bear children. In most societies seeking to reduce birth rates, however, men dominate most, if not all, of the decisions in the family, including reproductive decisions.<sup>115</sup>

An additional problem with population programs, whether based on utilitarian perspectives<sup>116</sup> or on human rights perspectives, is that they fail to take into account the underlying sexual behavior between partners.<sup>117</sup> Thus, even when family planning programs focus more on the interests and needs of the family unit, as opposed to coercive programs that solely focus on decreasing fertility, they often ignore the realities of the family decision-making process where men believe they have the right to control the sexuality and fertility of the woman.<sup>118</sup>

The level of equality within a marriage affects the success of family planning and population programs.<sup>119</sup> When reproductive decisions are made through unequal power dynamics caused by patriarchal control, higher fertility rates tend to result than where the decisions are achieved through a truly joint decision-making process.<sup>120</sup>

**PUBLIC AND PRIVATE SPHERES** “Public spheres” and “private spheres” are terms that are often used as categories for assigning men and women to different roles.<sup>121</sup> In the areas of international law and population programs, these terms complicate the discussion of human rights.<sup>122</sup> State court systems<sup>123</sup> and delegates to international conferences may think that anything within the private sphere is outside of their scope.<sup>124</sup> For instance, many think that reproductive rights are different from other human rights since reproduction is more involved with private settings, social custom, and policy,<sup>125</sup> and is therefore part of the private sphere. Thus, these people might think that reproductive rights are outside of the scope of treaties because states have not traditionally taken action regarding the private sphere.<sup>126</sup>

Thinking in terms of private sphere versus public sphere complicates even the basic qualities of human rights. Many believe that private sphere rights exist only theoretically and can only be exercised after a government intervenes to actualize them.<sup>127</sup> In contrast, many believe that public sphere rights are inherent to the individual and can only be taken away by governments.<sup>128</sup> Possibly because of this differentiation, the international human rights community has traditionally been more interested in civil and political rights than it has been in social, economic, and women’s rights.<sup>129</sup>

If countries change their thinking on the role the family plays in reproductive decisions, the question then becomes how to incorporate those changes into population programs. An obstacle to incorporating the changes is the confusion over the definition of “coercive” population programs.

## **The Coercive Element**

### **Coercive Population Programs**

There is no consensus on the definition of a coercive population program.<sup>130</sup> One reason for the confusion may be that the dictionary provides definitions of “coercion” involving force or threat, but also provides alternate definitions involving “compel” or “nullify” without any mention of force or threat.<sup>131</sup> The definitions of coercive population programs can therefore be relatively narrow, such as defining coercive programs as those involving physical force or the threat of severe deprivation, to compel individuals to do what they otherwise would not do.<sup>132</sup> Or the definitions can be much broader, such as defining coercive programs as any program compelling people to submit to family planning demands of any type against their will.<sup>133</sup>

Some writers believe that population programs necessarily include a coercive element.<sup>134</sup> They also believe that terminology is important. The term “family planning programs” in and of itself does not necessarily involve State regulation of fertility since a family planning program that merely educates individuals and couples on contraception and assists with birth planning does not regulate fertility.<sup>135</sup> A “population control program,” in contrast, includes State actions or regulation intended to influence the size of families.<sup>136</sup>

Generally, there is agreement that the more draconian measures concerning limits on the number of children per family are coercive.<sup>137</sup> There is far less agreement, however, on whether other measures, such as government propaganda, are coercive.<sup>138</sup> It could be argued that any government advertising that changes the will of the people is coercive, but more probably the answer depends on the underlying target of the advertising; if the measure that the advertising attempts to promote is coercive, then the advertising itself is coercive.<sup>139</sup> A similar question deals with incentives.<sup>140</sup>

Supporters of incentives argue that incentives are only inducements to change behavior and hence are not coercive.<sup>141</sup> Critics of incentives, however, argue that people who are poor are in no position to make free choices and hence are coerced.<sup>142</sup>

### **Treaties**

The treaties themselves, including CEDAW and the Cairo Conference, do not define coercive programs, and in some cases imply that each country should decide itself whether its programs are coercive.<sup>143</sup> Additionally, there are seeming contradictions. For instance, the Cairo Conference repeatedly states that coercion must not be used.<sup>144</sup> It then contradicts itself, however, by stating that government population programs should take affirmative actions to ensure the rights of individuals and families to make decisions concerning reproduction free of discrimination, coercion, and violence.<sup>145</sup> By failing to define coercion, the Cairo Conference leaves each country to decide, for instance, whether population program elements such as incentives to families and local program directors, or advertisements for condoms, are coercive.<sup>146</sup>

In light of prevailing international human rights law, the vagueness of a definition of a coercive program is troubling for a number of reasons. Some argue that coercion means any action that influences behavior and that any use of coercive practices is antithetical to human rights.<sup>147</sup> The same people argue that even when the goal of coercive practices is to strengthen human rights by making certain conduct compulsory for the benefit of all,<sup>148</sup> the coercive programs should not be used because the ends never justify the means.<sup>149</sup> People with those beliefs never want governments to take any actions related to family rights.<sup>150</sup>

Human rights, however, are of a legal character, and they imply, or sometimes even explicitly invoke, the use of coercion or compulsion to achieve certain ends.<sup>151</sup> For example, the UDHR states both that everyone has the right to education and that education shall be compulsory, thus implying that a coercive element is necessary to ensure that the right is achieved.<sup>152</sup> The same could be said for coercive elements in population programs; governments can take actions to ensure that human rights are achieved.<sup>153</sup>

Although the average global birth rate has been decreasing,<sup>154</sup> it is not sufficient to eliminate the population problem. All countries must undertake further steps.<sup>155</sup> Recently, programs based on human rights have been successful, especially those that concentrate on the education of women and improvement in the status of women.<sup>156</sup> Coercive population programs that attempt to meet target fertility rates through measures such as forced sterilization, contraception, and abortion, have sometimes been successful but only at the expense of human rights.<sup>157</sup> Nevertheless, coercive programs are generally considered to provide faster results because they force quicker change.<sup>158</sup>

## **Recommendations**

The ideal programs for the future would use a human rights-based approach but at a greater speed than in the past.<sup>159</sup> The international treaties, particularly CEDAW and the Cairo Programme, provide human rights-based approaches; they call for the empowerment of women in reproductive decisions by allowing women to make more informed choices.<sup>160</sup> As with all such treaties, however, there is no enforcement power.<sup>161</sup> There are many exceptions within the treaties, and states can comply or not comply based on their current political, religious, and cultural situations.<sup>162</sup>

There is currently a dichotomy between the international treaties. Many treaties specify that there must be equality between women and men,<sup>163</sup> but at the same time define the family as the basic unit of society and as the entity having the joint right to make decisions as to the number and spacing of children.<sup>164</sup> In theory, this makes sense; however, in reality, a large majority of women have no power within the family.<sup>165</sup> This dichotomy must be reconciled in the international treaties. The wording of the treaties need not change since, in an ideal system where all States and individuals comply with the treaties, the wording would be appropriate. The interpretation of the treaties, however, should change in order to take into account the realities of the current patriarchal systems.

As an impetus to change, and as further acknowledgment of the empowerment of women, this chapter suggests that the specific treaty language of “individuals and families shall have the right to freely and responsibly determine the number, spacing, and timing of their children”<sup>166</sup> and “the family is the basic unit of society”<sup>167</sup> be interpreted differently. The decision for the number of children should not be given to the “family,” since the reality is that the family is part of the patriarchal system and hence males usually make the decision.<sup>168</sup> Rather, a better interpretation is to concentrate on the wording that specifies “individuals” and to give sole power for having a child to the woman and not to the family.<sup>169</sup> In the typical partnership of woman and man, since the woman today has far fewer rights than the man, the result of this change of interpretation would be to increase the rights of the woman. Because of the well-regarded proposition that women, when given the choice, will opt for fewer children,<sup>170</sup> giving women this right would result in a decrease in the number of children.<sup>171</sup>

This suggestion is a human rights-based approach. It moves toward equality in the rights of men and women, as all of the treaties specify must be done.<sup>172</sup> Critics may say that this approach is coercive because it infringes on the rights of men and that it causes changes in the current patriarchal

systems.<sup>173</sup> The better way to look at it, however, is that it moves toward equality. Patriarchal systems that infringe on the equal rights of women must be replaced.<sup>174</sup> Coercion that creates more equality should be encouraged.<sup>175</sup> CEDAW, without defining its terms, testifies to the legitimacy of coercive elements by stating that “temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination.”<sup>176</sup> Given the changes in many societies today regarding partners, marriage, and divorce, and given the changes in technology that provide new methods for individuals--including same-sex partners--to have children, this movement away from “families” makes even more sense.

This suggested change in interpretation will further true equality of women and men, and will help abate the population problem by reducing the birth rate.<sup>177</sup> It will not, of course, lead to any immediate change, given the lack of enforcement in international treaties<sup>178</sup> and the embedded patriarchal systems, cultures, and religions.<sup>179</sup> It will, however, better direct the thinking of the international community and will provide a commonality as international organizations and states endeavor to solve the global population problem.

## **Conclusion**

A global population problem truly exists. All countries and international organizations have an obligation to take steps to avoid a potential environmental doomsday. In order to decrease the birth rate, it is not sufficient to state theory in the international treaties. Until practice matches theory, coercive steps need to be taken to give women the ultimate power within the family to decide the number of children they will have. These steps will have the added benefit of moving toward the goal of complete equality between women and men.



## NOTES

<sup>1</sup> See generally Gary E. McCuen, ed., *Population & Human Survival: Ideas in Conflict* (1993) (excerpting debates, opinions, commentary, and analysis on the global population crisis); David Bender & Bruno Leone eds., *Population: Opposing Viewpoints* (1995) (providing articles expounding different viewpoints on global population).

<sup>2</sup> See Paul R. Ehrlich & Anne H. Ehrlich, “The Population ‘Explosion’ is a Serious Threat” in *Population & Human Survival: Ideas in Conflict*, in McCuen, 21 (describing the worst-case scenario where continued population growth will lead to global warming, acid rain, depletion of the ozone layer, epidemics, exhaustion of soils and ground water--all resulting in the premature deaths of billions of people within the next few decades).

<sup>3</sup> See, for example, Michael Fumento, “There is No Population ‘Explosion’” in McCuen, 2-30 (refuting the “alarmist” theories of Paul Ehrlich in his book “The Population Explosion”). But see also Ehrlich & Ehrlich, “The Population ‘Explosion’” (1990) (warning that unless immediate actions are taken to counteract the population explosion, there will be grave global consequences).

<sup>4</sup> See John R. Weeks, *Population: An Introduction to Concepts and Issues* 456 (1994) (stating that the best way to slow down growth in any population is to limit fertility). A major reason for the prevalence of family planning is that it is usually associated with universally accepted health programs. See *id.*

<sup>5</sup> United Nations, General Assembly, Thirty-fourth session, Resolution 34/180, Document A.RES.34/180, 1980 (hereinafter CEDAW) (providing the full text of CEDAW). CEDAW was held in 1980, became effective in 1981, and is generally considered the basic treaty in the field of international women’s rights. See generally, United Nations, Document A/48/38, *Consideration by CEDAW of Country Reports: Political Participation* (excerpted from the annual country report of the French representative to the CEDAW Committee in regard to Article 7 of the Convention) 1993 at 887-924 (hereinafter CEDAW Country Report), in Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* 964 (1996). CEDAW condemned discrimination against women in all forms and required States to take all appropriate measures without delay in order to end the discrimination. See CEDAW, art. 2. These measures could include changes to existing laws, regulations, customs, and practices. See CEDAW, Article 2. Most of the world governments have ratified CEDAW but the United States has not. See generally Malvina Halberstam, *United States Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women*, 31 *Geo. Wash. J. Int’l L. & Econ.* 49 (1997). The United States Congress rejected ratification for a variety of reasons including objection to sections that are interpreted as threatening certain members’ views of the “traditional” family, and concern that the legal structure of the United States would need to change. See generally Joni Seager, *The State of Women in the World Atlas* 104 (1997) (providing a brief overview of CEDAW in relation to current global statistics concerning women); Halberstam, *supra*, at 55-57 (providing a broad analysis of the reservations, understandings, and declarations of the Clinton administration and the Senate concerning ratification, with a particular emphasis on a “non-self-executing” declaration).

<sup>6</sup> See CEDAW Country Report, at para. 329 (providing the source of the statement that appears in the epigraph of this article).

<sup>7</sup> See *infra* notes 95-109 and accompanying text.

<sup>8</sup> See *infra* note 79 and accompanying text.

<sup>9</sup> See *infra* note 79 and accompanying text.

<sup>10</sup> See, for example, John S. Aird, *Slaughter of the Innocents: Coercive Birth Control in China* (1990).

<sup>11</sup> See generally Paul R. Ehrlich et al., *The Stork and the Plow* (1995) 72-98 (providing examples of some of the more recent approaches such as improvements in women's education, health, equity, family planning programs, and value of children).

<sup>12</sup> See, for example, United Nations, General Assembly, Twenty-fourth Session, Resolution 2542, Article 4, Supplement 30, Document A/7630, *Declaration on Social Progress and Development* (1969).

<sup>13</sup> See United Nations, General Assembly, Third Session, Resolution 217, Article 2, Document A/810, *Universal Declaration of Human Rights* (hereinafter UDHR), 1948, at 71 (stating that "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"); United Nations, General Assembly, Twenty-first Session, Supplement 16, Article 3, Document A/6316, *International Covenant on Civil and Political Rights* (hereinafter ICCPR), 1966, at 52 (stating that the ICCPR undertakes to "ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant"); United Nations, General Assembly, Twenty-first Session, Supplement 16, Article 3, Document A/6316, *International Covenant on Economic, Social and Cultural Rights* (hereinafter ICESCR), 1966, at 49 (stating that the ICESCR undertakes to "ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant"); United Nations, General Assembly, Twenty-second Session, Resolution 2263, Supplement 16, Document A/6716, *Declaration on the Elimination of Discrimination Against Women*, 1967, at 35 (declaring the goal of equality between women and men and "condemn[ing] discrimination against women in all its forms").

<sup>14</sup> See *infra* notes 95-109 and accompanying text.

<sup>15</sup> See *ibid.*

<sup>16</sup> See *infra* note 79 and accompanying text.

<sup>17</sup> See Joel E. Cohen, *How Many People Can the Earth Support?* (1995) 61-67 (explaining Thomas Robert Malthus' 1798 theory that unrestricted populations grow exponentially but the production of food can only grow at best linearly, leading eventually to an exhaustion of available resources). Malthus' theories on population growth and its consequences were considered controversial in 1798, and are still debated today. See generally Weeks, *supra* note 4, at 380-81 (providing an overview of the Malthusian theories and criticisms).

<sup>18</sup> See Stanley P. Johnson, *World Population – Turning the Tide: Three Decades of Progress* 221 (1994) (stating that even though the world population was increasing by almost 90 million per year in the late 1980s, 76 countries out of 170 characterized their rate of population growth as satisfactory).

<sup>19</sup> See Cohen, *supra* note 17, at 88-90 (describing the mathematical "doomsday curve," the worst-case scenario if there are insufficient resources to sustain the global population). The terms "carrying capacity" and "sustainability" are central to many of the theories of population. See Ehrlich et al., *supra* note 11, at 3-6 (defining "carrying capacity" as the maximum population that an area can support without reducing its ability to support the same species in the future, and a "sustainable" population as "one whose activities and well-being can be maintained without interrupting, weakening, or losing valued qualities").

<sup>20</sup> See Ehrlich et al., *supra* note 11, at 2, citing the World Scientists' Warning to Humanity (1993) (providing excerpts from a warning issued by many of the world's foremost scientists that the earth is fast approaching many of its limits and that there are no more than a few decades left before the chance to avert the sustainability threat will be lost).

<sup>21</sup> See *ibid.*, at 22 (estimating that 250 million people died of hunger-related causes over the last twenty-five years and that there are up to a billion people in the developing world today who do not have enough food to sustain normal activities). As population increases, resource use, waste production, and environmental degradation will occur, resulting in, *inter alia*, loss of biodiversity, increasing greenhouse emissions, deforestation, ozone depletion, acid rain, and shortages of water and fuel. See *ibid.*, at 31 (providing examples of the harm to the ecosystem).

<sup>22</sup> See Paula Abrams, *Symposium on Population Law: Population Control and Sustainability: It's the Same Old Song but with a Different Meaning*, 27 *Env'tl. L.* 1111, 1111 (1997)(introducing the economic consequences of the population problem).

<sup>23</sup> See Carl Haub & Martha Farnsworth Riche, *Population by the Numbers: Trends in Population Growth and Structure*, in *Beyond the Numbers: A Reader on Population, Consumption, and the Environment* 95, 95-99 (Laurie Ann Mazur ed., 1994)[hereinafter *Beyond the Numbers*] (concluding that declining mortality, and not birth rates, is the main problem today); Erla Zwingle, *Women and Population*, *Nat'l Geographic*, Oct. 1998, at 39 (stating that over the last 30 years, the average number of children born to each woman has fallen from six to three and that the reasons are changes in contraception, health care, and culture, with contraception being the key); Johnson, *supra* note 18, at 225 (providing statistics that the total world fertility rate fell from 3.6 children per woman in 1975 to 3.4 in 1985, the developing countries' rate fell from 4.5 to 4.2, and the developed countries' rate fell to 1.9, but that the rate of decline was actually less than it had been in the preceding decade). Birth rates have fallen in most parts of the world over the last 40 years but because people are living much longer, the absolute number of births (and the total population) continues to increase. See *id.* As an example of decreasing mortality, life expectancy in the developing countries was just under 40 years in 1950 but rose to 62 in the 1990s. See *id.*

<sup>24</sup> See Paula Abrams, *Reservations About Women: Population Policy and Reproductive Rights*, 29 *Cornell Int'l L.J.* 1 (1996), citing *Population Theory and Policy* 441 (Joseph J. Spengler & Otis Dudley Duncan eds., 1956) (explaining that traditional population programs are utilitarian in that they focus on manipulating birth rates for desired demographic goals). Utilitarian programs focus on goals such as men's welfare, per capita income, and military, labor, and economic advantages. See *id.* (providing examples of utilitarian population program goals).

<sup>25</sup> See generally Ehrlich et al., *supra* note 6, at 145-54 (providing an overview of the increased agricultural resources due to improvements in modern techniques).

<sup>26</sup> See Meredith Marshall, Recent Development, *United Nations Conference on Population and Development: The Road to a New Reality for Reproductive Health*, 10 *Emory Int'l L. Rev.* 441 (1996)(providing the background leading up to the International Conference on Population and Development ("ICPD" or "Cairo Conference") in Cairo, Egypt in 1994). An example of a government-sponsored program was India's law that allowed its states to mandate sterilization. See Betsy Hartmann, *Reproductive Rights & Wrongs: The Global Politics of Population Control* 157 (rev. ed. 1995)(stating that Indira Gandhi was responsible for compulsory sterilization programs in India in the mid-1970s); Mahmoud F. Fathalla, *From Family Planning to Reproductive Health*, in *Beyond the Numbers*, *supra* note 23, at 145 (differentiating between "direct" and "indirect" government programs and providing examples of some direct interventions that are "clearly ethically objectionable"). Another example is China's program of one child per family. See Hartmann, *supra*, at 157 (providing an overview of China's population programs). The Chinese program relies on incentives

to both families and local leaders. See Jodi L. Jacobson, *China's "One-Child" Program: An Overview*, in *Population & Human Survival: Ideas in Conflict* 117, 120 (Gary E. McCuen ed., 1993) (providing the example that in one of the stages of China's programs, couples who signed the one-child certificate would get monthly cash payments for fourteen years and their children would get priority for free medical care and education, and would receive jobs at graduation). In attempting to meet these incentives, some localities use coercion, including forced abortion and mandatory insertion of an intrauterine device after a woman's first live birth. See *id.* at 121 (adding that there were criminal penalties for the removal of the intrauterine device); Hartmann, *supra*, at 157 (providing the example of China's periodic campaigns of coercive methods, but also stating that because China's drastic programs have dramatically lowered the birth rate, many people argue that other countries should follow the lead of China). China's program, however, has had spectacular success in lowering the total number of children born per woman. The rate fell from about 6.5 children per woman in 1968 to about 2.2 in 1980. See Cohen, *supra* note 17, at 64 (comparing China's decrease in those 12 years to the 58 years that it took the United States' rate to fall from 6.3 to 3.5). Coercive practices of population programs are not necessarily more effective than programs based more strongly on human rights. For instance, the Indian state of Kerala has programs based on the education, health, and status of women. See Hartmann, *supra*, at 298-300 (explaining that there was no intensive population control effort in Kerala, but rather an emphasis on a number of economic and social issues). Kerala's birth rates are lower than those of China even though Kerala initially had a higher rate. See Amartya Sen, *Fertility and Coercion*, 63 *U. Chi. L. Rev.* 1035, 1056-57 (1996) (providing statistics on Kerala). Kerala is generally considered one of the great success stories of population planning. See Hartmann, *supra*, at 298-300 (providing an overview of Kerala's population program success). Interview with Latha Dhananjayan, former resident of Kerala, in Herndon, Va. (Jan. 5, 1999) (providing information of her experiences while growing up in Kerala and her knowledge of the history of the population programs of the state). Bangladesh is also regarded as a population success story because its 1975 birth rate of seven children per woman fell to less than five in 1990. See Hartmann, *supra*, at 223 (adding that the decrease was achieved even though there was no improvement in social or economic development and hence is an example of a "vigorous" and "aggressive" program). Much of the credit for the decrease is given to the Bangladesh Rural Advancement Committee ("BRAC"), which runs a nationwide network of village clinics. See Zwingle, *supra* note 23, at 40 (analyzing the Bangladesh population program). The other program credited for a large part of the decrease is the microcredit program that makes small loans available to women. See *id.* at 41 (explaining that the microcredit program does not just allow women to bring extra income into the family but increases the family's overall sense of importance, and in many cases provides for additional education for the daughters).

<sup>27</sup> See Cohen, *supra* note 17, at 13, 25-28 (explaining that the current annual growth rates are far higher than any in history and that if the 1995 annual growth rate continues, the population will double in 43 years). Projections of future growth vary. A different projection is that, if the 1995 population rate of increase of 1.6 percent—90 million people—is maintained, the world population will double in 43 years). See Ehrlich et al., *supra* note 11, at 19 (providing the history of the dramatically increasing rate of population doubling). The United Nations projects that by 2050 the population will reach anywhere from 7.7 billion to 11.2 billion. See Zwingle, *supra* note 23, at 38 (providing the most recent United Nations estimate of world population). The United Nations has provided various high and low population estimates in the past. Its 1992 high estimate projected a 2150 population of twenty-eight billion, which will continue to climb. Most analysts, who believe that population will decrease due to disease and lack of resources once the population reaches a certain level, consider a continuous climb unrealistic. See Ehrlich et al., *supra* note 11, at 99 (providing the 1992 United Nations estimate and the reasons why the estimate was considered unrealistic). Conversely, the United Nations low estimates showed a peak size of eight billion in 2050 and then a slow continuous decline until it reached five billion in 2150. See Ehrlich et al., *supra* note 11, at 99 (1995) (providing the low estimates of the United Nations and adding that a peak figure of ten to twelve billion is considered the most likely outcome). Most of the growth is taking place in the cities. One estimate is that by about 2001, over 50 percent of all people will live in cities. See Cohen, *supra* note 17, at 100 (adding that the population living in cities rose from an estimated 1 in 50 in 1800 to 1 in 2 in 1990). Most of the growth (98 percent) is also taking place in the developing countries. See Zwingle, *supra* note 23, at 38 (stating that 98 percent of

population growth is in the developing countries). Since the 1960s, birth rates have significantly declined--by about one-third--and are continuing to decline. See Paul R. Erlich & Anne H. Erlich, *The Population Explosion: Why We Should Care And What We Should Do About It*, 27 *Envtl. L.* 1187, 1188-91 (1997)(stating that in 1997 women on average had four children compared to six in the 1960s).

<sup>28</sup> See Ehrlich et al., *supra* note 11, at 28 (noting that getting the United States to change its massive consumption appears to be a much greater challenge than getting developing countries to slow their population growth). Other countries are seduced by the United States' lifestyle and strive to emulate its consumption, thus putting further pressure on sustainability. See *id.* at 28 (stating that consumption patterns are subject to momentum).

<sup>29</sup> See Marshall, *supra* note 26, at 442 (observing the differences between developed and developing countries).

<sup>30</sup> See Ehrlich et al., *supra* note 11, at 102 (emphasizing that overpopulation and overconsumption should be considered together in international conferences). Having separate United Nations conferences in Rio and Cairo was a serious mistake because it isolated environmental damage from one of its root causes of overpopulation. See *id.* (observing that the failure of the Cairo Conference to deal with overconsumption by the richest countries furthered the flawed opinion that the rich nations are not obligated to deal with the population problem).

<sup>31</sup> See, e.g., Zwingle, *supra* note 23, at 50 (providing the example that the United States has the highest teenage birthrate of any industrialized nation, with four in ten girls becoming pregnant at least once before reaching age 20, and most of the pregnancies being unintended).

<sup>32</sup> See *infra* notes 38-83 and accompanying text (discussing some of the international treaties and conferences that have addressed population issues).

<sup>33</sup> See ICCPR, *supra* note 13.

<sup>34</sup> See Steiner & Alston, *supra* note 5, at 117 (declaring that the core of the universal human rights system is the "so-called International Bill of Rights," which consists of the UDHR, the ICCPR, and the ICESCR).

<sup>35</sup> See ICCPR, *supra* note 13, arts. 6, 7, 23.

<sup>36</sup> See ICCPR, *supra* note 13, art. 3 (stating that the ICCPR undertakes to "ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant").

<sup>37</sup> See Reed Boland et al., *Honoring Human Rights in Population Policies: From Declarations to Action*, in *Population Policies Reconsidered: Health, Empowerment, and Rights* 89 (Gita Sen et al. eds., 1994) (noting that many of the practices of population programs have important human rights implications).

<sup>38</sup> See CEDAW, *supra* note 5, art. 16 (stating that CEDAW prohibits discrimination in all aspects of public and private life and that countries must provide women with the 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).

<sup>39</sup> See *Report of the International Conference on Population and Development, Programme of Action of the International Conference on Population and Development*, Annex, at 5, U.N. Doc. A/CONF. 171/13 (1994)[hereinafter Report of ICPD]. Previous conferences that contributed to the changes of the Cairo Conference included the 1974 World Population Conference in Bucharest. See Johnson, *supra* note 18, at 109-24 (concluding that the key issue of the Bucharest conference was whether population policy or

development policy should have primacy in regard to population problems, and giving examples of the positions of various countries); Weeks, *supra* note 4, at 380-81 (observing highlights of the "world plan of action" that resulted from the Conference). The 1984 International Conference on Population in Mexico City was marred by the reversal of the United States from its previous view that population growth must be slowed in order to promote economic development. See *Report of the International Conference on Population*, U.N. Doc. E/CONF/76/19 (1984); Weeks, *supra* note 4, at 380 (adding that the reversal of the United States derailed what had seemed to be a growing consensus that economic development was impeded by population growth). In Mexico City, the United States indicated that population growth was not necessarily bad and that a free economic environment was the most important element in both development and control of fertility. See *id.* (quoting the declaration that was approved at the conclusion of the Conference and stating that the United States' reversal was a major hindrance to the consensus that had been developing); Johnson, *supra* note 18, at 166-67 (analyzing the impact of the United States' statements). The 1993 World Conference on Human Rights in Vienna occurred the year before the Cairo Conference. See Steiner & Alston, *supra* note 5, at 928-30 (summarizing the main articles of the Vienna Declaration and Cairo Programme that pertained to women).

<sup>40</sup> See Abrams, *supra* note 22, at 1117-18, citing Gayl D. Ness, *The Long View: Population-Environment Dynamics in Historical Perspective*, in *Population-Environment Dynamics: Ideas and Observations* 47-48 (1993) (defining "development" as the economic, social, cultural, and institutional changes that are required to cause decreases in fertility rates). Economic development theorists believe that shifting from an agrarian to industrialized society reduces the economic demand for large families because children in an industrialized society are consumers rather than producers. See *id.* (providing one of the views of economic development theorists). In contrast, social development theorists believe that the critical factors in the reduction of birth rates are increases in the status, education, and economic power of women. See *id.* (providing the critical factors given by social development theorists). A United Nations study concludes that there is extensive empirical evidence on direct and indirect correlation between fertility and education of women. Women with ten or more years of schooling inevitably have fewer children than those without schooling. See Abrams, *supra* note 22, at n.40 (explaining the correlation between education of women and number of children).

<sup>41</sup> See Johnson, *supra* note 18, at 326 (providing the objectives of the conference). But see Ehrlich et al., *supra* note 11, at 102 (emphasizing that the Cairo Conference made a serious error by restricting its focus to population and development issues without also including the issue of overconsumption of resources by developed countries).

<sup>42</sup> See Marshall, *supra* note 26, at 443 (emphasizing that the delegates viewed the Cairo Conference as a "remarkable success because 179 countries with different cultural values reached consensus on how to improve the quality of life while slowing population growth").

<sup>43</sup> See Report of ICPD, *supra* note 39, *pmbl.* ¶ 1.15 (stating that the ICPD affirms the application of universally recognized human rights standards to population programs).

<sup>44</sup> See *id.* (stating that the ICPD does not create any new international human rights but affirms the application of universally recognized human rights standards to population programs).

<sup>45</sup> See *id.* annex, ¶ 7.3 (specifying one of the basic ideas coming from the 1994 Cairo Population Conference).

<sup>46</sup> See *id.* ch. IV (proclaiming the goals for gender equality, equity, and empowerment of women).

<sup>47</sup> See Abrams, *supra* note 24, at 1 (stating that the Cairo Conference greatly changed the thinking about reproductive activity and gave women, who often lack control over their reproductive decision-making, hope for change).

<sup>48</sup> See Marshall, *supra* note 26, at 451-52 (stating that the empowerment of women was an important human rights objective and was the key to having more control over their reproductive rights).

<sup>49</sup> See *id.* at 451 (observing that the Cairo Conference had to face the issue of providing women access to quality reproductive health services which would in turn allow women to have control over their bodies).

<sup>50</sup> See *id.* (stating that the Cairo Conference focused on the empowerment of women as an important human rights objective).

<sup>51</sup> See *infra* note 79 and accompanying text (stating that in every country in which women have had the choice, they have chosen to have fewer children).

<sup>52</sup> See Report of ICPD, *supra* note 39, ch. IV (proclaiming the goals for gender equality, equity, and empowerment of women).

<sup>53</sup> See *infra* notes 95-109 and accompanying text (discussing the realities of the power of men and women in making choices as to the number of children).

<sup>54</sup> See Marshall, *supra* note 26, at 452, citing Marguerite Holloway, *A Global View*, *Sci. Am.*, Aug. 1994, at 77 (providing examples of infanticide, rape, sexual abuse, battering, and bride burning).

<sup>55</sup> See Seager, *supra* note 5, at 120 (stating that the majority of the world's women do not equally own or control property and that property discrimination is particularly noticeable in agrarian countries where women cannot own land but typically work the fields and harvest the food); Marshall, *supra* note 26, at 452 (stating that women are prohibited from owning land in Chile, Columbia, Egypt, Ethiopia, Iraq, Kenya, Nepal, and Panama).

<sup>56</sup> See Seager, *supra* note 5, at 105 (stating that an estimated 40 percent of girls in Nepal are married before the age of fifteen); Nafis Sadik, *Investing in Women: The Focus of the '90s*, in *Beyond the Numbers*, *supra* note 23, at 209, 214 (providing examples that three out of four teenage girls in Africa are mothers, that the average age of marriage in Bangladesh is 11.6 years, and that 58.5 percent of teenage girls in Jordan are married). The Cairo Programme calls on governments to strictly enforce laws concerning the minimum age at marriage. See Report of ICPD, *supra* note 39, ¶ 4.21 (stating that governments should enforce a minimum age of marriage).

<sup>57</sup> See Seager, *supra* note 5, at 120 (explaining that girls are educated in fewer numbers than boys and are taken out of school at an earlier age); Nafis Sadik, *Investing in Women: The Focus of the '90s*, in *Beyond the Numbers*, *supra* note 23, at 209, 212 (stating that parents with little income are far more likely to spend on education for their sons than for their daughters, and giving an example that in Pakistan there are over three times as many boys as girls in secondary school); Report of ICPD, *supra* note 39, ¶ 4.2 (detailing that two-thirds of the illiterate adults world-wide are women, that seventy percent of children not enrolled in primary school are girls, and girls in certain developing countries attend secondary school at a rate less than one-third that of boys).

<sup>58</sup> See Report of ICPD, *supra* note 39.

<sup>59</sup> See Abrams, *supra* note 24, at 1 (stating that the Cairo Conference established a consensus that human rights must be the foundation of population policies).

<sup>60</sup> See Report of ICPD, *supra* note 39, ch. II (affirming that each country may to take into account its local factors when deciding whether to implement the recommendations).

<sup>61</sup> See *id.* (stating that the "implementation of the recommendations is the sovereign right of each country, consistent with national laws and development priorities, with full respect for the various religious and ethical values and cultural backgrounds of its people, and in conformity with universally recognized international human rights.").

<sup>62</sup> See Louis Henkin, *International Law: Politics, Values and Functions*, excerpted in Steiner & Alston, *supra* note 5, at 350-351 (providing the view that compliance with international human rights rule is at the discretion of the states, which have not yet understood an obligation to respect the human rights of their citizens).

<sup>63</sup> See Abrams, *supra* note 24, at 2 (stating that the human rights based recommendations from the Cairo Programme were far removed from the actualization of the recommendations); *id.* at 3 (stating that human rights documents addressing women's issues lack viable enforcement mechanisms).

<sup>64</sup> See Report of ICPD, *supra* note 39, ch. IV (proclaiming the goals for gender equality, equity, and empowerment of women).

<sup>65</sup> See UDHR, *supra* note 13, art. 2 (stating that human rights cannot be distinguished based on sex); ICCPR, *supra* note 13, art. 3; ICESCR, *supra* note 13, art. 3 (stating that the "Covenant undertake[s] to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant."); Declaration on the Elimination of Discrimination Against Women, *supra* note 13, arts. 1,4,6,9,10.

<sup>66</sup> See Report of ICPD, *supra* note 39, ch. II.

<sup>67</sup> See *id.* ch. IV, ¶ 4.9 (stating further that preventive actions should be taken to prohibit trafficking in women, adolescents and children; exploitation through prostitution; and special attention should be paid to those in potentially exploitable situations such as migrant women, women in domestic service, and schoolgirls).

<sup>68</sup> See *id.* ch. IV, ¶ 4.22 (adding that governments should give vigorous support to non-government groups, including religious organizations, to eliminate the practice of female genital mutilation).

<sup>69</sup> See *id.* ch. VI, ¶ 6.11 (stating that countries should create a socio-economic environment conducive to the elimination of all child marriages and should discourage early marriages).

<sup>70</sup> See *id.* ch. VIII, ¶ 8.25 (calling on all governments to deal with the health impact of unsafe abortion and to reduce the recourse to abortion through expanded and improved family-planning services).

<sup>71</sup> See Report of ICPD, *supra* note 39, ch. VIII, ¶ 8.25 (adding that prevention of unwanted pregnancies must be given the highest priority and every attempt should be made to eliminate the need for abortion).

<sup>72</sup> See *id.* ch. VII, ¶ 7.2 (adding that women and men have the right to be informed and to have access to safe, effective, and affordable methods of family planning of their choice).

<sup>73</sup> See *id.* ch. VII, ¶¶ 3.17, 4.21, 6.17.

<sup>74</sup> See *id.* ch. VII, ¶ 7.3 (stating that all women and men must have the right to make their own decisions about reproduction without discrimination, coercion and violence, as stated in international human rights documents). In particular, the protections are linked to the protections in CEDAW and include protection of the rights of nondiscrimination, bodily control, and bodily integrity. See *id.* ch. IV, ¶ 4.5 (stating that all countries should make greater efforts to implement CEDAW and any other treaties that protect women from



economic discrimination and sexual harassment).

<sup>75</sup> See Report of ICPD, *supra* note 39 (failing to mention collective rights).

<sup>76</sup> Report of the United Nations World Population Conference, U.N. Doc. E/CONF.60/19 (1974).

<sup>77</sup> See *id.* ch. 1, ¶ 14(f) (stating that families must take into account the needs of their living and future children as well as their responsibilities toward society; and also that no comparable provision exists in the Cairo Programme). Collective rights can be thought of as future rights. See Luke T. Lee, *Population: The Human Rights Approach*, 6 *Colo. J. Int'l Envtl L. & Pol'y* 327, 338-39 (1995) (discussing collective and future human rights). Under the collective rights theory, families have an obligation to think not only of their current situation but also of how their current decisions will impact the future. See *id.* As an example, if a country places no restraints on family fertility planning because it feels that the right of privacy is the sole determinant, the result could be a proliferation of children which in-turn would infringe upon both the future and collective rights to privacy. See *id.* It is necessary to balance the family's right of privacy and free choice in child bearing with the society's collective interest in privacy. See *id.* "[T]he living have an obligation to refrain from actions that would endanger future generations' enjoyment of the same rights that the living now enjoy." Luke T. Lee, *Population: The Human Rights Approach*, 6 *Colo. J. Int'l Envtl L. & Pol'y* 327, 338-39 (1995). "Negative rights" and "positive rights" indicate some of the human rights issues as developing countries move forward. Negative rights mean freedom from government interference. The first generation civil and political rights were conceived as negative rights, including freedom of opinion, conscience, religion, press, assembly, movement, freedom from arbitrary detention or arrest, and freedom from interference in property. See Stephen P. Marks, *Emerging Human Rights: A New Generation for the 1980s?*, 33 *Rutgers L. Rev.* 435, 438 (1981). As an example the United States Bill of Rights is generally considered to be made up entirely of negative rights. See U.S. Const. amends. I-X. The second generation social, economic and cultural rights are positive rights that require state action, such as the right to an adequate standard of living with adequate food, clothing, housing, and health. See generally A. Eide & Allan Rosas, *Economic, Social and Cultural Rights: A Universal Challenge*, in *Economic, Social and Cultural Rights* 15 (A. Eide et al. eds., 1995). The third generation rights include the right to environment, development, peace, as well as rights to common heritage, communication, and humanitarian assistance. See *id.*

<sup>78</sup> See Abrams, *supra* note 22, at 4, citing Ruth Dixon-Mueller, *Population Policy and Women's Rights: Transforming Reproductive Choice* 5 (1993) (providing the general theory behind population programs).

<sup>79</sup> See Zwingle, *supra* note 23, at 39 (observing that in every place in which women have had the choice, they have chosen to have fewer children, quoting Beverly Winikoff of the Population Council in New York City); *Population, Resources and the Environment-The Critical Challenges* 111 (1991) (stating that women caught in a cycle of repeated pregnancies and births constantly report that they would rather have fewer children and greater spacing between children); Ehrlich et al., *supra* note 11, at 80 (observing that there is considerable evidence that when women are empowered by literacy and job opportunities, they will choose to have fewer children).

<sup>80</sup> See Report of ICPD, *supra* note 39, ch. IV (proclaiming the goals for gender equality, equity, and empowerment of women).

<sup>81</sup> See 3 *World Population 1589-1789* (James A. Joyce ed., 1976) (reprinting reports from various countries made in preparation for the 1974 World Population Conference that detail the significance of the relationships between the status of women and population questions). Numerous studies have shown that the most consistent factor in reducing birth rates is change in the legal and social status of women. See, e.g., Study on the Interrelationship of the Status of Women and Family Planning, U.N. Economic and Social Council, Commission on the Status of Women, 25th Sess., Provisional Agenda Item 5, ¶ 24, U.N. Doc. E/CN.6/575 (1973), reprinted in 3 *World Population* 1648, 1653 (James A. Joyce ed., 1976).

<sup>82</sup> See Abrams, *supra* note 22, at 1115 (commenting on the criticism that the gradual improvements of the Cairo Programme recommendations are inadequate where rapid reductions in birth rates are required).

<sup>83</sup> See *id.* (stating that most governments agree that coercive measures violate human rights but that there is a great deal of disagreement about what constitutes coercive practices and regulation). The earlier population programs focused on distributing contraceptive and sterilization services without addressing the cultural, social, and economic forces that motivate family size, and without addressing the individual needs of the women whose bodies were targeted by the programs. See *id.* at 1122 (discussing the problems with earlier population programs and stating that the "two main criticisms of the programs were that they did not reduce birth rates as much as predicted and that they could be considered to be human rights violations").

<sup>84</sup> See *Black's Law Dictionary* 418 (abr. 6th ed. 1991)(providing the most common definition of "family" as "[a] group of persons consisting of parents and children . . . [and] immediate kindred," but providing various alternate definitions including "a collective body of persons who live in one house and under one head or management" and "[a] group of kindred persons.")

<sup>85</sup> See UDHR, *supra* note 13, art. 16 (adding that all men and women, without limitation due to race, nationality or religion, have the right to marry and to found a family and that they are entitled to equal rights in marriage). There is some indication that the intent of the wording about families in this and other treaties was to differentiate families from governments and therefore to protect "family" matters from government intrusion.

<sup>86</sup> See Declaration on Social Progress and Development, *supra* note 12.

<sup>87</sup> See UDHR, *supra* note 13, art. 4 (stating that the family is a basic unit of society, that governments should assist and protect the family so that it may fully assume its responsibilities within the community, and that parents have the exclusive right to determine freely and responsibly the number and spacing of their children). Subsequently, CEDAW restated the same proposition. See CEDAW, *supra* note 5, art. 16 (stating that countries must provide women with the 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).

<sup>88</sup> See Report of ICPD, *supra* note 39, ch. V, ¶ 5.1 (adding that traditional notions of gender-based division of parental and domestic functions are no longer applicable and that governments should promote equality of opportunity for family members, especially the rights of women and children in the family). Family planning has also been described as a basic human right. See Lee, *supra* note 77, at 328 (stating that "on Human Rights Day, December 10, 1966, twelve heads of state proclaimed in the Declaration on Population by World Leaders that family planning is a basic human right and that the opportunity to decide the number and spacing of children is a basic human right"). The United Nations did not officially recognize the principle that family planning constitutes a basic human right until May 1968, when the United Nations Conference on Human Rights in Tehran proclaimed that "parents have a basic human right to determine freely and responsibly the number and the spacing of their children." Final Act of the International Conference on Human Rights, U.N. Doc. A/CONF.32/41 (1968), U.N. Sales No. F. 68.XIV.2.

<sup>89</sup> See Report of ICPD, *supra* note 39, ch. VII, ¶ 7.3 (adding that full attention should be given to the promotion of equitable gender relations and that reproductive health eludes many people because of inadequate knowledge of reproductive issues, discriminatory social practices, negative attitudes toward women and girls, and the limited power that many women and girls have over their sexual and reproductive lives); see also Final Act of the International Conference on Human Rights, *supra* note 88, at 3 (providing a statement from the Proclamation of Teheran, an output from the 1968 International Conference on Human

Rights).

<sup>90</sup> See Report of ICPD, *supra* note 39, ch. IV, ¶ 4.26 (stating that equal participation of women and men in family and household responsibilities should be promoted and encouraged by governments).

<sup>91</sup> See *id.* ch. IV, ¶¶ 4.16-4.18 (stating the advocacy of increased education for all girls and that all leaders must speak out and act forcefully against gender discrimination within the family, based on preference for sons).

<sup>92</sup> See *ibid.* (failing to define a family); CEDAW, *supra* note 5 (failing to define a family); UDHR, *supra* note 13 (failing to define a family); Report of the United Nations World Population Conference, *supra* note 76 (failing to define a family).

<sup>93</sup> See *id.* ¶ 5.2 (acknowledging that better policies need to be developed to take into account the growing number of single-parent households).

<sup>94</sup> See *id.* ¶ 7.17 (stating that in-vitro fertilization techniques should be provided in accordance with ethical guidelines and medical standards).

<sup>95</sup> See *supra* notes 85-91 and accompanying text (discussing the treaties stating that all couples and individuals have the basic right to decide freely and responsibly the number, spacing, and timing of their children).

<sup>96</sup> See Hartmann, *supra* note 26, at 46-47 (declaring that "the harmonious household is largely a myth" and that where men make decisions, many women must battle to survive physically and emotionally). But see *id.* at 47 (comparing the fact that poor women often have more power within the family because their labor is considered vital to family survival).

<sup>97</sup> See *id.* (explaining, for example, that women in poor families are often dependent on men because the men are the ones who interface with the world outside of the home).

<sup>98</sup> See Ehrlich et al., *supra* note 11, at 81 (stating that in societies where women have low status, the women have little or no choice in decisions concerning the number of children). Even when women do have some independence, men use their power over the women to force sexual favors, and children often result. See *id.* (discussing the "power imbalance" between women and men).

<sup>99</sup> See *Webster's Third New International Dictionary of the English Language* 1656 (1986) (defining "patriarchy" as a "social organization marked by the supremacy of the father in the clan or family in both domestic and religious functions, [and by] the legal dependence of wife or wives and children . . .").

<sup>100</sup> See Abrams, *supra* note 22, at 1123, citing Dixon-Mueller, *supra* note 78, at 24-27) (adding that patriarchal systems also impact the marriage age, divorce, and maternal health).

<sup>101</sup> See Hartmann, *supra* note 26, at 53-54 (explaining that the Catholic Church condemns all artificial forms of birth control while Islam's views on family planning are interpreted differently by various religious authorities).

<sup>102</sup> See Dixon-Mueller, *supra* note 78, at 23-27 (discussing the patriarchal bases of social control and stating that the patriarchal system is the most fundamental threat to a woman's right to self-determination).

<sup>103</sup> See *Not in God's Image* 144-53, 220-33 (Julia O'Faolain & Lauro Martines eds., 1973)(providing the judicial examples that until the mid-nineteenth century, women in most cultures lacked the legal capacity to

sue, could not give evidence in court, could not own, manage, or inherit property, and in many cases were not even considered a legal person).

<sup>104</sup> See supra notes 102-103 and accompanying text (discussing the lack of power and the roles assigned to women).

<sup>105</sup> See Zwingle, supra note 23, at 47 (indicating that studies show that men are generally reluctant to use contraceptive methods that directly involve them, examples being withdrawal, abstinence, condoms, the rhythm method and vasectomies).

<sup>106</sup> See id. (stating that men tend to leave contraceptive methods to women).

<sup>107</sup> See Zwingle, supra note 23, at 46 (discussing some of the reasons that men object to population planning).

<sup>108</sup> See *ibid.*

<sup>109</sup> See Dixon-Mueller, supra note 78, at 25 (discussing the use of contraceptives in population programs).

<sup>110</sup> See Lee, supra note 39, at 329, citing U.N. GAOR 2nd Comm., 23rd Sess. at 143, U.N. Doc. A/CONF.32/C.2/SR.1-13 (1968)(referring to U.N. GAOR UN 2nd Comm., 23rd Sess., U.N. Doc. A/CONF.32/C.2/L.19 (1968) (providing the statement of the Yugoslav delegation).

<sup>111</sup> See Report of ICPD, supra note 39 (failing to discuss the right of a woman to decide on the number of children); CEDAW, supra note 5 (failing to discuss the right of a woman to decide on the number of children); UDHR, supra note 13 (failing to discuss the right of a woman to decide on the number of children); Report of the United Nations World Population Conference, supra note 76 (failing to discuss the right of a woman to decide on the number of children).

<sup>112</sup> See supra notes 95-109 and accompanying text (discussing the realities of the power of men and women in making choices as to the number of children).

<sup>113</sup> See Abrams, supra note 24, at 1 (including discrimination against women as one of the problems working against the recommendations of the Cairo Programme).

<sup>114</sup> See id. at 11 (adding that women are the targets of most population programs).

<sup>115</sup> See supra notes 95-109 and accompanying text (discussing the realities of the power of men and women in making choices as to the number of children). Some critics think that the true reason that women are the target is that women have always been subject to extensive social control and hence are easier to control. See Abrams, supra note 24, at 11 (providing reasons that women are the target of most population programs). The same critics think that another basic reason that women are targeted is that women cannot be trusted to make such an important decision. See id. (adding that those critics believe that women should not have independent authority to make decisions over such a significant matter of social policy).

<sup>116</sup> See Abrams, supra note 24 and accompanying text (providing the perspective of utilitarian programs).

<sup>117</sup> See Abrams, supra note 22, at 1123 (recognizing that "population programs have largely failed to consider the complexity of the gender dynamics concerning fertility").

<sup>118</sup> See Cynthia B. Lloyd, *Family and Gender Issues for Population Policy*, in *Beyond the Numbers*, supra note 23, at 249 (providing a study from Indonesia that husbands' fertility preferences are very different from wives, and that a husband's approval is often the most important determinant of whether the wife actually uses

contraceptives).

<sup>119</sup> See supra notes 99-103 and accompanying text (discussing the realities of the power of men and women in making choices as to the number of children).

<sup>120</sup> See Abrams, supra note 24, at 12, citing Paula E. Hollerbach, Power in Families, Communication, and Fertility Decision-Making, 3 *Population & Env't* 146, 166 (1980) (referring to studies that show family planning is affected by the level of equality within the family).

<sup>121</sup> See CEDAW, supra note 5, introduction (stating that cultural patterns assign the public sphere to men and the private sphere to women).

<sup>122</sup> See Elizabeth K. Spahn, *Waiting for Credentials: Feminist Theories of Enforcement of International Human Rights*, 44 Am. U. L. Rev. 1053, 1062 (1995) (explaining that categorizing women in the private sphere causes some critics to resist human rights for women because of possible conflicts with other types of human rights related to privacy, culture, and religion). Further confusion arises because of the categorizations of the marketplace and government as public sphere, and the family and civil society as private sphere. See id. at 1077-78 (discussing the confusion caused by the interrelation of the different public and private spheres). This leads to confusion because the marketplace is also often considered as part of civil society. See id. (explaining the additional complication when women are categorized in the private sphere).

<sup>123</sup> See *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992) (holding that the "domestic relations" exception in the United States federal courts is still valid but that the facts of the case itself did not meet the exception). But see Judith Resnik, *Revising the Canon: Feminist Help in Teaching Procedure*, 61 U. Cinn. L. Rev. 1181, 1188 (1993)(providing a criticism of the "domestic relations exception" and generally discussing the absence of women from the federal courts); Naomi Cahn, *Family Law, Federalism, and the Federal Courts*, 79 Iowa L. Rev. 1073, 1073 (1994)(discussing the unimportance of "family law" in both the United States Federal and state courts). The "domestic relations" exception doctrine in the United States federal court system traditionally held that cases involving divorce, child custody, or alimony cannot be heard in the federal court system even though they would otherwise qualify under diversity rules. See *Ankenbrandt*, 504 U.S. at 689 (including discussion of the tradition of the "domestic relations" exception in the Court analysis). The gender bias of the "domestic relations exception" was somewhat alleviated by passage of the Violence Against Women Act that created a Federal act for violence motivated by gender. See Violence Against Women Act, 42 U.S.C. § 13981 (1994). There was even a compromise here, however, that still placed restrictions on supplemental jurisdiction for state claims of divorce, alimony, custody, or property division. See id. ¶(e)(4). Additionally, those claims cannot be removed to federal court. See Violence Against Women Act, supra.

<sup>124</sup> See Spahn, supra note 122, at 1077 (stating that the categorization of women in the private sphere has been used to uphold a double standard).

<sup>125</sup> See Reed Boland, *Symposium on Population Law: The Environment, Population, and Women's Human Rights*, 17 *Env'tl. L.* 1137, 1156 (1997) (discussing the role of the private sphere in human rights). See generally Arthur H. Robertson & John G. Merrills, *Human Rights in the World* (1989) (discussing sources of social and economic rights).

<sup>126</sup> See Boland, supra note 125, at 1156 (stating that population programs are based on rights that do not fit the normal human rights models because they are more in the private sphere).

<sup>127</sup> See id. (analyzing the different interpretations of human rights when subjecting them to public sphere and private sphere thinking).

<sup>128</sup> See *id.* (analyzing the different interpretations of human rights when subjecting them to public sphere and private sphere thinking).

<sup>129</sup> See *id.* (stating that international human rights advocates have been less interested in social, economic, and women's rights and hence have treated reproductive rights as something of a stepchild). The fact that reproduction in many ways deals directly with issues that are unique to women may also be a reason that the human rights community has been less interested in them. See *id.* (observing that since issues such as conception, pregnancy, and childbirth are more directly related to women, the international human rights community has not traditionally given them as high a priority as issues that relate more inclusively to both men and women).

<sup>130</sup> See Aird, *supra* note 10, at 12 (stating that seemingly innocent expressions such as "propaganda" or "persuasion" may actually disguise sinister intent).

<sup>131</sup> See *Black's Law Dictionary* 177 (abr. 6th ed. 1991)(defining "coercion" as "[c]ompulsion; constraint; compelling by force or arms or threat. It may be actual, direct, or positive, as where physical force is used to compel act against one's will, or implied, . . . as where one party is constrained by subjugation to other to do what his free will would refuse."); see also *Webster's Third New International Dictionary of the English Language* 439 (1986) (defining "coercion" as "1a. The . . . use of physical or moral force to compel to act or assent. . . . 2. The application of sanctions or force by a government usu. accompanied by the suppression of constitutional liberties in order to compel dissenters to conform").

<sup>132</sup> See Donald P. Warwick, *The Ethics of Population Control*, in *Population Policy: Contemporary Issues* 21, 28 (Godfrey Roberts ed., 1990)(discussing the different interpretations of coercion).

<sup>133</sup> See Aird, *supra* note 10, at 17 (providing the author's definition of coercive population programs).

<sup>134</sup> See Hartmann, *supra* note 26, at 153 (observing that even the Cairo Programme, while opposing direct coercion, supports what could be called "soft sell" coercion through media channels).

<sup>135</sup> See Abrams, *supra* note 24, at 4-5 (contrasting family planning programs and population control programs).

<sup>136</sup> See *id.*

<sup>137</sup> See Aird, *supra* note 10, at n.47 (implying that China's easing of the more overtly coercive practices of its population programs still contained the coercive practices of family planning targets, sterilization for couples with two or more children, forced abortion for unauthorized pregnancies, forced insertion of intrauterine devices, and absolute prohibition on more than two children per couple). Other examples of measures that are generally considered coercive are having "cadres" repeatedly visit the houses of women who have refused to comply with other coercive directives, and enforcing economic penalties on a woman or family that has not complied. See *id.* at 17 (providing more examples from the China program that are generally considered coercive). But see *id.* at 16 (stating that China did not consider most of its measures coercive because there was no overt physical coercion, and that China changed its definition of coercive practices depending on whether it was easing or intensifying the demands of its programs).

<sup>138</sup> See *id.* at 12 (providing the example of propaganda that China "advocates" that each couple have only one child but that the "advocacy" is actually carried out by "ideological mobilization").

<sup>139</sup> See *id.* at 4 (stating that defenders of China's population program believe that effective propaganda is one of the major factors in the program's "success" and do not consider the propaganda to be coercive).

<sup>140</sup> See Boland, *supra* note 26, at 1156 (providing the pronatalist example of incentives given by Romania as special allowances for mothers with large families, indemnities for the birth of third and subsequent children, and increases of taxes on persons with no children). But see Fathalla, *supra* note 125, at 145 (providing other examples of the pronatalist Romanian program that were not based on incentives).

<sup>141</sup> See Hartmann, *supra* note 26, at 66 (explaining the view of incentive supporters that incentives are voluntary since people are free to choose either to accept or refuse them). The World Bank uses incentives extensively for its programs and does not consider them coercive. See *id.* (providing the view of the World Bank that incentives and disincentives are the normal way to carry out its programs).

<sup>142</sup> See *id.* at 66-68 (adding that incentive programs do not change people's attitudes about family planning and may actually make the experience very negative, causing a backlash). See Abrams, *supra* note 24, at 7 (stating that incentives are inherently coercive).

<sup>143</sup> See Aird, *supra* note 10, at 113, n.14 (observing that the United Nations Population Fund has worded its principles in such a way as to absolve itself from having to decide whether programs are coercive and instead allows each country to itself determine whether its programs are coercive). Other writers and organizations also believe that the definition of coercion differs according to the country and culture. See *id.* at 115, n.20 (stating that the Population Crisis Committee believes that China's program is non-coercive in the context of a "highly organized societ[y]" but would be considered differently in other cultures).

<sup>144</sup> See Report of ICPD, *supra* note 39, at n.27 (providing a statement from the Holy See that the Cairo Programme is notable for its affirmations against all forms of coercion in population policies); *id.* ¶ 5.5 (stating that reproductive health-care programs should provide the widest range of services without any form of coercion); *id.* principle 8 (stating that governments should take effective action to eliminate all forms of coercion and discrimination in policies and practices).

<sup>145</sup> See *id.* ¶ 7.3 (providing the goals for reproductive rights).

<sup>146</sup> See *id.* (failing to define coercion).

<sup>147</sup> See Abrams, *supra* note 24, at 25 (stating that interference by government is antithetical to communally oriented societies).

<sup>148</sup> See Report of ICPD, *supra* note 39, ¶ 7.3 (stating that while exercising their rights, individuals and families should take into account the needs of their living and future children and their responsibilities towards the community, and that government population programs should have as their basis the promotion of the responsible exercise of those rights).

<sup>149</sup> See Lee, *supra* note 77, at 335, citing Luke T. Lee, *Compulsory Sterilization and Human Rights*, 3 *POPULI2*, 4 (1976) (observing that analysts who view coercion as antithetical to human rights believe that the ends can never justify the means).

<sup>150</sup> See *supra* notes 121-129 and accompanying text (discussing human rights in the private sphere).

<sup>151</sup> See Lee, *supra* note 77, at 334-35 (observing that coercion may be an integral part of a legal order that makes specified behavior compulsory for the benefit of all).

<sup>152</sup> See UDHR, *supra* note 13, art. 26(1) (stating that "[e]ducation shall be free, at least in the elementary and fundamental stages, . . . that elementary education shall be compulsory, . . . and that higher education shall . . . be equally accessible to all on the basis of merit").

<sup>153</sup> Cf. Lee, *supra* note 77, at 335 (providing examples of authorities that justify coercive measures in certain situations). The Bible provides one example of an "eye for eye, tooth for tooth." *Id.*, citing Leviticus, 24:20; Deuteronomy, 19:21; Matthew, 5:38-39. The United Nations Charter upholds the "inherent right of individual or collective self-defence." *Id.*, citing U.N. Charter, art. 51. The Universal Declaration of Human Rights states that "[e]lementary education shall be compulsory." *Id.*, citing UDHR, *supra* note 13, art. 26(1).

<sup>154</sup> See *supra* note 23 and accompanying text (stating that the global birth rate has been declining but that the decrease in mortality causes the population growth to continue).

<sup>155</sup> See Ehrlich et al., *supra* note 11, at 28 (providing the example that the United States needs to take further steps and that by continuing its current consumption levels, the United States seduces other countries into higher consumption as well).

<sup>156</sup> See Abrams, *supra* note 40 (stating that a United Nations study concludes that there is extensive empirical evidence on direct and indirect correlation between fertility and education of women).

<sup>157</sup> See Aird, *supra* note 10 and accompanying text (discussing China's coercive programs).

<sup>158</sup> See Hartmann, *supra* note 26, at 167 (stating that international population agencies are pleased that China's programs have decreased population growth so quickly but do not want to openly endorse coercion).

<sup>159</sup> See *id.*

<sup>160</sup> See *supra* notes 64-69 and accompanying text (discussing the wording of the treaties that call for empowerment of women in reproductive decisions).

<sup>161</sup> See *supra* notes 60-62 and accompanying text (discussing the lack of enforcement power in international treaties).

<sup>162</sup> See *supra* note 61 and accompanying text (providing the language of the ICPD that allows countries to avoid implementing the provisions).

<sup>163</sup> See *supra* note 13 and accompanying text (providing examples of the treaties that call for equality between women and men).

<sup>164</sup> See *supra* notes 88-90 and accompanying text (providing the statements in the Cairo Programme that give families the right to decide the number of children).

<sup>165</sup> See *supra* notes 96-103 and accompanying text (stating that decisions as to the number and spacing of children come from the male partner within the patriarchal system, reinforced by culture, religion, and the state).

<sup>166</sup> Declaration on Social Progress and Development, *supra* note 12, art. 4; CEDAW, *supra* note 5, art. 16; UDHR, *supra* note 13, art. 4.

<sup>167</sup> Declaration on Social Progress and Development, *supra* note 12, art. 4; UDHR, *supra* note 13, art. 4.

<sup>168</sup> See *supra* notes 96-103 and accompanying text (stating that decisions as to the number and spacing of children come from the male partner within the patriarchal system).



<sup>169</sup> Declaration on Social Progress and Development, *supra* note 12, art. 4; CEDAW, *supra* note 5, art. 16; UDHR, *supra* note 13, art. 4.

<sup>170</sup> See *supra* note 79 and accompanying text (observing that in every place in which women have had the choice, they have chosen to have fewer children).

<sup>171</sup> See *id.*

<sup>172</sup> See *supra* note 13 and accompanying text (providing examples of the treaties that call for equality between women and men).

<sup>173</sup> See *supra* notes 96-103 and accompanying text (discussing the patriarchal system).

<sup>174</sup> See Abrams, *supra* note 24, at 12 (stating that when the pregnancy decision is coerced, higher fertility rates tend to occur).

<sup>175</sup> See Lee, *supra* note 77, at 334-35 (providing the example that the "right" to education usually includes a coercive element to ensure that children attend school).

<sup>176</sup> See CEDAW, *supra* note 5, art. 4 (adding that these temporary measures should be discontinued when the objectives of equality have been achieved).

<sup>177</sup> See *supra* note 79 and accompanying text (stating that in every place in which women have had the choice, they have chosen to have fewer children).

<sup>178</sup> See *supra* notes 60-62 and accompanying text (discussing the lack of enforcement power in international treaties).

<sup>179</sup> See *supra* notes 97-103 and accompanying text (discussing the problems caused by patriarchal systems).