

WHEN CULTURE HURTS: DISPELLING THE MYTH OF CULTURAL JUSTIFICATION FOR GENDER-BASED HUMAN RIGHTS VIOLATIONS

*Katie L. Zaunbrecher**

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* Katie L. Zaunbrecher received her J.D. in 2011 from the University of Houston Law Center. She received her B.A. in Spanish and History in 2008 from the University of Texas at Austin. Her Comment received the Weil Gotshal & Manges Award for an Outstanding Comment on a Topic of International Law. This Comment was inspired by the author’s time working with immigrant victims of gender-based violence at the Houston non-profit Aid to Victims of Domestic Abuse. The author would like to extend a special thanks to that organization for providing a truly unique learning experience and a very special vision of the lawyer’s role in society. She would also like to thank HJIL’s Editorial Board 34 for their diligence and outstanding work during the 2010-2011 year.

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I. INTRODUCTION

“In the [21st] century, the problems posed by cultural relativism, and the implications for women’s rights, will be one of the most important issues in the field of international human rights.”¹

In 1948,² all fifty-eight member states of the newly-created United Nations General Assembly adopted the Universal Declaration of Human Rights (Universal Declaration),³ the first comprehensive expression of international human rights law of its kind. Yet more than half a century later, there is little consensus on the substance, scope, and enforceability of international human rights. Nowhere is this debate more contentious, and perhaps more injurious, than on the subject of women’s rights. Rather than granting women the basic rights and privileges men have long enjoyed, regimes of many

1. The Special Rapporteur on Violence against Women, *Integration of the Human Rights of Women and the Gender Perspective*, 7, ¶ 1, delivered to the Commission on Human Rights, E/CN.3/2002/83 (Jan. 31, 2002), available at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/42e7191fae543562c1256ba7004e963c?Opendocument> [hereinafter *Human Rights of Women*].

2. Upon the conclusion of World War II in 1945, the Nuremberg trials exposed the Nazis’ flagrant dispossession and extermination of Jews and other minorities, mobilizing the world’s nations and creating a nascent, yet powerful, global human rights movement. INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 115–18 (Henry J. Steiner et al. eds., 3d ed. 2008) [hereinafter LAW, POLITICS, MORALS]; see also International Military Tribunal at Nuremberg, *Judgment at Nuremberg Tribunal*, 41 AM. J. INT’L L. 172 (1947), reprinted in LAW, POLITICS, MORALS 118–24.

3. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter Universal Declaration]; HELEN M. STACY, HUMAN RIGHTS FOR THE 21ST CENTURY: SOVEREIGNTY, CIVIL SOCIETY, CULTURE 5 (2009).

oppressive states have persisted in endorsing harmful cultural practices that endanger the health, safety, and welfare of women.⁴

Although today, the majority of recognized states have signed both the Universal Declaration and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),⁵ a number of patriarchal governments continue to engage in state-sanctioned violence and discrimination intended to prevent women from obtaining adequate education and healthcare, succeeding professionally, or actively participating in society.⁶ Adding insult to injury, those same states often dismiss accusations that these practices amount to human rights violations; rather, they classify such practices as “cultural” or “traditional,” virtually immune under international human rights law.⁷

This brazen hypocrisy has been reinforced by much of the international community’s reliance on the cultural relativist assertion that codified human rights standards should bow to traditional local practices and cultural interpretations of human dignity.⁸ The so-called “cultural defense” to human rights

4. ELSA STAMATOPOULOU, *CULTURAL RIGHTS IN INTERNATIONAL LAW: ARTICLE 27 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND BEYOND* 23–24 (2007). I do not mean to suggest that women are entitled to a *separate* body of human rights. Rather, the human rights set forth in the Universal Declaration are intended to be universally applicable to all humans, regardless of sex, creed, race, or ethnicity. The purpose of my argument is to show that within the culture of discrimination fostered by many states, women are nevertheless deprived of these rights on the basis of their sex.

5. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34A, U.N. GAOR, Supp. No. 21, U.N. Doc. A/34/180 (Sept. 3, 1981) [hereinafter CEDAW]. CEDAW is not intended to establish a separate body of human rights law that is applicable only to women; instead, CEDAW condemns depriving women of the same human rights accorded to men on the basis of their sex. It is interesting that, despite its well-established domestic policy of gender equality, the United States has so far refused to ratify CEDAW (although Congress has repeatedly considered the matter in the last decade). *Id.*

6. STACY, *supra* note 3, at 53–54.

7. Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 HUM. RTS. Q. 400, 400 (1994) [hereinafter *Relativism and Universal Rights*].

8. HUMAN RIGHTS IN THE WORLD COMMUNITY: ISSUES AND ACTION 7 (Richard Pierre Claude & Burns H. Weston eds., 2d ed. 1992) [hereinafter ISSUES AND ACTION]; see also Fernando R. Tesón, *International Human Rights and Cultural Relativism*, in ISSUES AND ACTION 42, 43 (Nonetheless, one must be careful to distinguish cultural

violations has been invoked to justify the unabashedly brutal treatment of women through practices like honor killing, genital mutilation, domestic abuse, and rape.⁹

Whatever the legitimacy of these practices within the cultures in which they occur, the international community is beginning to recognize that achieving gender equality (and consequently, eradicating these abusive customs) is crucial to maintaining international peace and security: As many have recently noted, “[i]t is not only that these problems adversely affect half of the world’s population . . . [A] deep change in women’s circumstances and possibilities produces change throughout social, economic and political life.”¹⁰

Over the last two decades, major humanitarian and financial institutions around the world have acknowledged the importance of gender equality for global economic development and the attainment of international stability.¹¹ In the early 1990s, Lawrence Summers, then Chief Economist of the World Bank, wrote: “Investment in girls’ education may well be the highest-return investment available in the developing world. The question is . . . whether countries can afford *not* to educate more girls.”¹² Likewise, the United Nations Development Programme announced that “[w]omen’s empowerment helps raise economic productivity and reduce infant mortality [and] contributes to improved health and nutrition,”¹³ and other important studies have recognized that “promoting gender equality is crucial to combat global poverty.”¹⁴

Perhaps even more significantly, in the wake of the September 11 attacks, some counterterrorism experts have noted that countries that harbor terrorists are disproportionately those that also discriminate against

relativism “from the thesis that governments, especially those of the Third World, may suppress, delay, or suspend civil and political rights”).

9. See Tesón, *supra* note 8, at 43 n.4.

10. LAW, POLITICS, MORALS, *supra* note 2, at 175.

11. NICHOLAS D. KRISTOF & SHERYL WUDUNN, *HALF THE SKY: TURNING OPPRESSION INTO OPPORTUNITY FOR WOMEN WORLDWIDE* xix–xxi (2009).

12. *Id.* at xx (emphasis added).

13. *Id.*

14. *Id.*

women.¹⁵ They hypothesize that the reason there are so many Muslim terrorists has less to do with the Quran and more to do with the lack of gender equality in Islamic countries.¹⁶ As the Pentagon has dug deeper into the origins of terrorism, it has fostered an interest in grassroots projects, particularly with regard to girls' education, as a method to more effectively fight the War on Terror.¹⁷

Given the wealth of evidence indicating the damage done by gender violence and discrimination worldwide, it is important to recognize, today more than ever, that simply labeling a degrading practice "cultural" should not make it immune to condemnation by the international community.

In order to examine the cultural defense and its dangerous effects on women more closely, I will begin by discussing the various foundations of the cultural defense and evaluating how cultural interpretations of human rights often provide a screen behind which both states and individuals are able to abuse and oppress disenfranchised groups, particularly women, despite the mandates of international human rights law. I will then outline a strategy that enables greater oversight of the domestic human rights implementation process with an emphasis on creating a safer world for women. This plan will stress integrating norms that value international women's rights into widely held cultural and religious beliefs in order to provide greater legitimacy to human rights; educating men and women on their legal rights and obligations under treaties like CEDAW and the Universal Declaration; and increasing state responsibility to international human rights obligations through accurate self-reporting.

II. DIFFERING HUMAN RIGHTS PRIORITIES ACROSS CULTURES

Despite the numerous international human rights treaties binding nearly all of the world's recognized states, many unanswered questions about the scope and definition of human

15. *Id.* at xxi.

16. *Id.*

17. *Id.*

rights remain.¹⁸ U.N. member states often have a multitude of unexpressed incentives for ratifying a human rights treaty, making it difficult to distinguish legitimate rationales from more sinister motives.¹⁹ All of this uncertainty plays into the confusion and tension among nations as they struggle to cooperatively define human rights on the international stage and to determine what is expected of them at home.²⁰

In the decades since the adoption of the Universal Declaration, it has become evident that the codification of human rights alone often fails to prevent governments from effectively thumbing their noses at their international obligations.²¹ In fact, the very arguments offered by many non-Western thinkers in favor of “collective human rights”²² over “individual human rights”²³ have at times been advanced by the governments of many developing states to rationalize political,

18. ISSUES AND ACTION, *supra* note 8, at 14, 17.

19. See *infra* Part II.A and accompanying notes.

20. ISSUES AND ACTION, *supra* note 8, at 19.

21. STACY, *supra* note 3, at 4.

22. “Collective rights” encompass the economic, social, and cultural rights codified in the International Covenant on Economic, Social and Cultural Rights (ICESCR). International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316, 993 U.N.T.S. 3 (Jan. 3, 1976) [hereinafter ICESCR]. These rights have their origin in socialism, as well as in the collectivist intellectual traditions of Africa, Asia, and Latin America; they are therefore heavily favored in those parts of the world. Admantia Pollis, *Human Rights in Liberal, Socialist and Third World Perspective*, in ISSUES AND ACTION, *supra* note 8, at 146, 155. Generally speaking, developing states tend to prioritize economic and social rights over political and civil rights, because the former are seen to be particularly relevant both to traditional socio-cultural patterns of group responsibility and the modern goal of economic growth. *Id.*

23. As codified in the International Covenant on Civil and Political Rights (ICCPR), “individual rights” include the civil and political rights derived from the Western liberal democratic tradition. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316, 999 U.N.T.S. 171 (Mar. 23, 1966) [hereinafter ICCPR]; ISSUES AND ACTION, *supra* note 8, at 14, 18. Due to the concept of human nature advanced by modern political philosophers, like Hobbes and Locke, individual rights are generally heavily prioritized over collective rights in modern Western society. Pollis, *supra* note 22, at 146. However, because the non-Western world does not share the intellectual heritage of the West, civil and political rights have little psychological meaning there, and, even as legal rights, are frequently subordinated to the primary causes of nation-building and economic development. *Id.* at 155.

ethnic, gender, religious, or cultural repression on the road toward economic and national development.²⁴

A. *Ulterior Motives for Commitment to Human Rights*

Because much of international human rights law is “soft,” devoid of any meaningful enforcement mechanism, it depends almost entirely on voluntary compliance, which in turn rests, for most governments, solely on perceived self-interest.²⁵ States often seem quite ready to formally endorse norms to support international human rights standards, while in reality having no intention of actually adhering to such standards.²⁶ As human rights continue to be politicized both at home and on the international stage, weaker states may express commitment to international human rights treaties simply to earn credit in the eyes of the rest of the world.²⁷

For better or worse, the global economy has become intertwined with international human rights law: the World Trade Organization often makes international trade regulations contingent upon compliance with human rights standards, while both the International Monetary Fund and the World Bank demand promises of satisfactory human rights practices as *quid pro quo* for receiving economic aid.²⁸ Public commitment to human rights treaties often provides weak or developing nations with their most meaningful bargaining chip with which to negotiate with more powerful states.²⁹

Perhaps due in part to the proliferation of human rights references in all areas of global governance, the cultural struggle between individual and collective rights has begun to take on a more perverse form. In addition to the cultural attractions of the

24. Elvin Hatch, *Culture and Morality: The Relativity of Values in Anthropology*, in LAW, POLITICS, MORALS, *supra* note 2, at 521, 523.

25. Richard A. Falk, *Theoretical Foundations of Human Rights*, in ISSUES AND ACTION, *supra* note 8, at 31.

26. STACY, *supra* note 3, at 9.

27. *Id.*

28. *Id.* at 27.

29. *Id.* at 9. (“Weaker states [often]. . . simply express international human rights commitment because it looks good to the rest of the world . . . Poor countries ‘trade’ state sovereignty in obeisant necessity for economic advantages from richer ones.”).

International Covenant on Economic, Social and Cultural Rights (ICESCR) for many Third World nations, the so-called “second generation” Covenant has few monitoring and enforcement mechanisms, making the cost of a public declaration of commitment relatively low.³⁰ Therefore, autocratic regimes prone to oppression may be more likely to sign onto the ICESCR for less than benevolent motives.³¹ The International Covenant on Civil and Political Rights (ICCPR), by contrast, has significantly more powerful means of enforcement, making an official endorsement of the first generation rights potentially more costly.³²

Yet, some research seems to suggest that the causal connection between international human rights treaties and domestic human rights practices may be tenuous at best: in many instances, the national status of human rights has worsened after a government signed an international human rights treaty.³³ It appears that in such cases, cultural concerns aside, some states may view signing a human rights treaty merely as a means of satisfying their international audience, believing that, having done so, they are then free to act as they wish at home.³⁴

These factors—the friction between differing cultural understandings of the bases and substance of human rights, and the inconsistency between domestic political motivations and public commitment to international treaties—continue to fuel the debate over the legitimacy of the cultural defense.³⁵

30. *Id.* at 53–54 (noting that, at least in theory, countries with better human rights practices are more likely to ratify both of the International Covenants because they have nothing to lose by subjecting their current practices to international scrutiny, while countries with oppressive regimes are more likely to sign onto the ICESCR than the ICCPR due to the more stringent enforcement mechanisms of the latter).

31. *Id.* (observing that a few states with appalling human rights practices often seem to have joined as many human rights treaties as some of the countries with the best human rights practices).

32. *Id.*

33. Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L. J. 1935, 1940 (2002).

34. *Id.* at 1941 (“Countries that take the relatively costless step of treaty ratification may thereby offset pressure for costly changes in policies.”).

35. The cultural defense is essentially a gross distortion of the cultural relativists’ argument in the debate over the universality of international human rights law. *See*

Authoritarian governments often invoke the cultural defense to legitimize and excuse state-sanctioned human rights abuses against their citizens.³⁶ But while proponents of cultural relativism may believe such governments to be working toward a more effective body of domestic human rights law, the continued insistence on interpreting human rights law according to cultural norms often provides a shield behind which governments and individuals may commit atrocities against unprotected populations.³⁷

III. DEFENDING “CULTURE” AGAINST “FOREIGN” VALUES

The tension between the universality of international human rights law and the cultural defense is essentially premised upon an all-or-nothing view of culture’s role in the interpretation of human rights.³⁸ Proponents of the cultural defense regard culture as the supreme guide to moral values.³⁹ Asserting the cultural defense is equivalent to denying the universality of international human rights law, while defending international human rights law against cultural interpretations is tantamount to affirming the transcendent validity of its norms without regard to cultural differences.⁴⁰

generally Guyora Binder, *Cultural Relativism and Cultural Imperialism in Human Rights Law*, 5 BUFF. H. RTS. L. REV. 211, 211–17 (1999) (discussing the background of the debate between cultural relativists and universalists, and its accompanying assumption that “if international human rights are not rooted in universally valid truths, they must be rooted in culturally relative opinions”).

36. *Id.*

37. *Id.*

38. *Id.* at 211.

39. Richard Falk, *Cultural Foundations for the International Protection of Human Rights*, in HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS 44, 44 (Abdullahi Ahmed An-Na’im ed., 1992) [hereinafter *Cultural Foundations*]; see also Boaventura de Sousa Santos, *Toward a Multicultural Conception of Human Rights*, in MORAL IMPERIALISM: A CRITICAL ANTHOLOGY 39, 46 (Berta Hernandez-Truyol ed., 2002) (“All cultures have conceptions of human dignity, but not all of them conceive of it as a human right” in the Western sense of the term). Today the debate over the validity of the cultural defense takes place not only in the traditional West-East framework but also in a new context, between the West and Islam. LAW, POLITICS, MORALS, *supra* note 2, at 519.

40. Binder, *supra* note 35, at 211.

A. *The Cultural Defense*

The cultural defense can be boiled down to a few basic tenets. First, local cultural traditions determine the existence and scope of human rights in a given society. Second, no universally valid legal or moral standards exist against which local human rights practices may be properly judged.⁴¹ And third, variations among cultures are exempt from legitimate criticism by outsiders, and therefore may not be bound by codified human rights instruments.⁴² In other words, what may be regarded as a human rights violation in one culture may properly be considered acceptable practice in another.⁴³ According to this reasoning, any human rights norms that purport to be universal, by definition, must overemphasize the existence of a shared humanity and underemphasize the deep cultural rifts in global human identity.⁴⁴

Implicit in the cultural defense is the charge that international human rights law is used by Western nations as a tool of modern imperialism against non-Western states.⁴⁵ African scholar and champion of the imperialism theory, Makau Mutua, argues that, while the current body of human rights law is undeniably well-meaning, “international human rights fall within the historical continuum of the European colonial project in which whites pose as the saviors of the benighted and savage non-European world.”⁴⁶ This cultural imperialism critique, therefore, suggests that what masquerades as human rights “progress” is nothing more than a subtle form of global subjugation.⁴⁷

41. Tesón, *supra* note 8, at 43. Burns H. Weston warns states against relying too much on the cultural defense: “In the real world, despite difference in cultural tradition and ideological style, there exists a rising and overriding insistence upon the equitable production and distribution of all basic values.” ISSUES AND ACTION, *supra* note 8, at 21.

42. *Relativism and Universal Rights*, *supra* note 7, at 400.

43. Tesón, *supra* note 8, at 43.

44. STACY, *supra* note 3, at 48.

45. *Id.* at 49.

46. LAW, POLITICS, MORALS, *supra* note 2, at 143 (quoting Makau Mutua, *The Complexity of Universalism in Human Rights*, in HUMAN RIGHTS WITH MODESTY 51 (András Sajó ed. 2004)).

47. STACY, *supra* note 3, at 4.

Like the mass colonization of Africa, Asia, and the Americas that carried the European enlightening agenda to conquered societies, today's international human rights movement assumes there is only one truly civilized way to live.⁴⁸ Proponents of universal human rights are seen as the equivalent of "the colonial administrator, the Bible-wielding missionary, and the merchant of free enterprise," rejecting the "cross-fertilization of cultures and instead seek[ing] the transformation of non-Western cultures by Western cultures."⁴⁹ At its strongest, the cultural imperialism criticism is akin to saying that international human rights law is an emperor without clothes.⁵⁰

Significantly, the American Anthropological Association (AAA) took a distinctly cultural relativist stance prior to the Commission on Human Rights in 1947: the AAA warned that the Universal Declaration would be "a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America."⁵¹ The AAA further argued that "what is held to be a human right in one country may be regarded as anti-social by another people."⁵²

Conversely, the argument for the universal application of human rights, regardless of varying cultural norms, was strongly supported by the findings of a UNESCO panel of philosophers asked to ponder the following question during the drafting of the Universal Declaration: "How is an agreement conceivable among men who come from the four corners of the earth and who belong not only to different cultures and

48. *Id.* at 28–29; see also Makau Mutua, *Savages, Victims and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L. J. 201, 201–10 (2001).

49. LAW, POLITICS, MORALS, *supra* note 2, at 143 (quoting Makau Mutua, *The Complexity of Universalism in Human Rights*, in HUMAN RIGHTS WITH MODESTY 51 (András Sajó ed., 2004)).

50. STACY, *supra* note 3, at 50. *But cf.* Binder, *supra* note 35, at 221 (suggesting that, rather than asking whether human rights norms are compatible with the national cultures of the developing world, we should ask instead how human rights law contributes to constructing decent, equal, and democratic societies; according to this view, the real problem with human rights law is not that it is too imperialistic, but that it is not imperialistic enough).

51. Tracy E. Higgins, *Anti-Essentialism, Relativism and Human Rights*, 19 HARV. WOMEN'S L. J. 89, 92 (1996) (quoting American Anthropological Ass'n, *Statement on Human Rights*, 49 AM. ANTHROPOLOGIST 539 (1947)).

52. *Id.*

civilizations, but to different spiritual families and antagonistic schools of thought?”⁵³ After polling Confucian, Hindu, Muslim, and European thinkers, the panel concluded that basic human rights rest on “common convictions,” even though these convictions may be “stated in terms of different philosophical principles and on the background of divergent political and economic systems.”⁵⁴

Throughout the drafting process, the AAA persisted in its support of a culturally relative body of human rights law, even in the face of the UNESCO panel’s contrary findings. The Association maintained that “standards and values are *relative to the culture* from which they derive so that any attempt to formulate postulates out of beliefs or moral codes of one culture must to that extent detract from the applicability of any Declaration of Human Rights to mankind as a whole.”⁵⁵

Yet, the Universal Declaration’s architects expected that “each local tradition would be enriched as it put the Declaration’s principles into practice and that all countries would benefit from the resulting accumulation of experiences.”⁵⁶ Despite the Charter drafters’ resolution in favor of universalism,⁵⁷ the cultural imperialism and cultural defense critiques continue to be launched by resistant states against “Western” attempts to enforce human rights treaties, particularly as they relate to women.⁵⁸

B. Combating the Cultural Defense

Notwithstanding the long lifespan of cultural relativism, international human rights law has been codified under the assumption that it is universally applicable regardless of differing cultural norms.⁵⁹ This reasoning meets the cultural

53. Mary Ann Glendon, *A World Made New*, in LAW, POLITICS, MORALS, *supra* note 2, at 139–40.

54. *Id.*

55. STAMATOPOULOU, *supra* note 4, at 21 (quoting American Anthropological Ass’n, *Statement on Human Rights*, 49 AM. ANTHROPOLOGIST 539 (1947) (emphasis added)).

56. Glendon, *supra* note 53, at 142.

57. *Id.* at 140–41.

58. See STAMATOPOULOU, *supra* note 4, at 19.

59. *Id.* at 19–22.

defense analysis with a two-pronged attack: First, there is no room in international law for cultural interpretations of human rights norms;⁶⁰ and second, while cultural diversity is a reality, differences in traditions and values do not pose an unbridgeable chasm to the universal viability of international law.⁶¹ Under this second point, culture constitutes only one factor (hardly the most dominant) affecting compliance with human rights norms.⁶²

The drafters of the Universal Declaration considered numerous arguments on both cultural relativism and universalism before finally concluding that all human rights enumerated in the document are universal, despite significant cultural differences among state signatories.⁶³ The international community reaffirmed its support of universal rights in the UNESCO Universal Declaration on Cultural Diversity, adopted in November 2001: Article 4 of that document, entitled “Human Rights as Guarantees of Cultural Diversity,” states that “no one may invoke cultural diversity in order to infringe upon human rights guaranteed by international law, nor to limit their scope.”⁶⁴ Notwithstanding the UNESCO document’s frank reaffirmation of universality, the ongoing popularity of the cultural defense, most notably among oppressive, undemocratic regimes, continues to jeopardize the legitimacy of the entire body of modern human rights law.⁶⁵

60. *See id.* at 18.

61. Roda Mushkat, *Culture and International Law: Universalism v. Relativism*, 6 SINGAPORE J. INT’L & COMP. L. 1028, 1039 (2002).

62. *Id.* at 1038. Evidence of ulterior motives aside, the number of culturally diverse states that have since signed the Declaration and its accompanying International Covenants, including those not present at the initial negotiation and drafting of the principle human rights documents, adds great force to the argument for universality. *Relativism and Universal Rights*, *supra* note 7, at 414 (“Virtually all states today have embraced—in speech if not in deed—the human rights standards enunciated in the Universal Declaration and International Human Rights Covenants.”). *But see supra* Part II.A and accompanying notes.

63. STAMATOPOULOU, *supra* note 4, at 19.

64. UNESCO Universal Declaration on Cultural Diversity, art. 4, Gen. Conf. 31st Sess., Vol. 1, Res. 25 (Nov. 3, 2001).

65. Somewhat paradoxically, the same states who raise cultural defenses against internationally codified human rights norms are often ruthless in their suppression of inconvenient local customs. *Id.*; *Relativism and Universal Rights*, *supra* note 7, at 413.

While cultural relativism poses several obvious dangers to the efficacy of international human rights law, universalism is also capable of being distorted to the detriment of human rights enforcement. Simply dismissing the cultural defense as a failure of logical reasoning or as evidence that the offending state is insufficiently advanced in its recognition of human rights threatens to establish a hierarchy of cultural practices.⁶⁶ Such a judgment runs the (almost equally dangerous) risk that the enforcing state will believe its own standards to be transcendent in comparison to the offending state, thereby undermining the legitimacy of universal human rights.⁶⁷

Still, an often unintended consequence of the cultural defense is that it can easily provide a safe haven for tyrants who justify abusive practices through longstanding cultural customs.⁶⁸ These “cultural” violations of human rights are the most resistant to U.N. pressures of “naming and shaming” because governments may easily accuse the U.N. of being culturally out of touch or invoke the allegation of cultural imperialism.⁶⁹

IV. THE RISK THE CULTURAL DEFENSE POSES TO WOMEN’S RIGHTS

“The mechanism of violence is what destroys women, controls women, diminishes women and keeps women in their so-called place.”⁷⁰

Women’s human rights have long been home to the most virulent expressions of cultural criticisms of human rights norms.⁷¹ At the international level, patriarchal states, particularly in the Middle East and Africa, have often reacted

66. Higgins, *supra* note 51, at 107–08.

67. *Id.*

68. ISSUES AND ACTION, *supra* note 8, at 7.

69. STACY, *supra* note 3, at 47.

70. Eve Ensler, *Introduction* to WRITINGS TO STOP VIOLENCE AGAINST WOMEN AND GIRLS: A MEMORY, A MONOLOGUE, A RANT AND A PRAYER xiii, xiii–xiv (Eve Ensler & Mollie Doyle eds., 2007).

71. Higgins, *supra* note 51, at 97; *see also* SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE 21–28 (2006) [hereinafter LOCAL JUSTICE] (detailing the history of the recognition of women’s human rights and the development of the cultural problem in this area).

defensively to measures aimed at securing women's rights, as though "their" women are somehow off-limits to the rest of the world.⁷² In fact, more states have expressed reservations to their ratification of CEDAW in comparison to any other international human rights instrument.⁷³ Many of these reservations severely limit a state's obligations under the treaty, but none more so than those based on conflicting cultural and religious principles.⁷⁴

A. *Cultural Complications in Protecting Women's Rights*

"This is not a tidy world of tyrannical men and victimized women, but a messier realm of oppressive social customs adhered to by men and women alike."⁷⁵

At the local level, the extent of a state's compliance with international human rights norms is affected directly by the prevailing opinions of its citizens regarding who exactly is entitled to the full range of human rights.⁷⁶ According to nearly every measure of human well-being and social status, including political participation, legal standing, access to economic resources and employment, wage differentials, education opportunities, and available health care, women fare dramatically worse than their male counterparts in all parts of the world.⁷⁷ The statistics indicating gender-based discrimination and abuse are astonishing. In China, the number of infant girls who die from malnutrition and medical neglect *every week* is as high as the number of protestors killed in the 1989 massacre at Tiananmen Square.⁷⁸ In India, girls aged one to five are 50% more likely to die than boys the same age, meaning that one female Indian child dies of discrimination

72. STAMATOPOULOU, *supra* note 4, at 23–24.

73. See LAW, POLITICS, MORALS, *supra* note 2, at 185. See generally CEDAW, *supra* note 5.

74. See LAW, POLITICS, MORALS, *supra* note 2, at 185.

75. KRISTOF & WUDUNN, *supra* note 11, at 69.

76. Abdullahi Ahmed An-Na'im, *Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives*, 3 HARV. HUM. RTS. J. 13, 51–52 (1990) [hereinafter *Human Rights in the Muslim World*].

77. LAW, POLITICS, MORALS, *supra* note 2, at 179.

78. KRISTOF & WUDUNN, *supra* note 11, at xiv.

every four minutes.⁷⁹ But perhaps the most harrowing figure of all is this: In a single decade, more girls are killed, precisely because they are girls, than people were murdered in all the genocides of the twentieth century combined.⁸⁰

Given these figures, simply reaching this underserved and often isolated population before it is too late is challenging for advocates. To further complicate matters, the very women sought to be protected under CEDAW often cite the cultural defense themselves to refuse such protection:

The situation is made more complex by the fact that women also identify with their culture and are offended by the arrogant gaze of outsiders who criticize their way of doing things . . . In minority communities and third world communities that already suffer from discrimination, this sense of identity poses major problems for women.⁸¹

Women's sense of identity is inextricably linked with membership in the larger community, and they may be unwilling to exchange their sense of belonging for "foreign" ideas of human dignity.⁸² Somewhat paradoxically, women may feel that the traditional attitudes regarding them as inferior to men and placing them in subordinate roles, despite perpetuating violent and coercive practices, are essential to their relationship with the community.⁸³

Yet another complicating factor in the universal application of CEDAW is the fact that much gender-based violence and discrimination is part of a larger cultural and economic framework in which women are systematically made vulnerable to private power with the acquiescence (whether explicit or implicit) of the state.⁸⁴ In other words, in nearly all parts of the world, violence and abuse occur within the home and escape national or international scrutiny by virtue of notions of culture and privacy:

79. *Id.* at xvi.

80. *Id.* at xvii.

81. *Human Rights of Women*, *supra* note 1, ¶ 5, at 7.

82. *See id.*

83. *See generally id.*

84. Higgins, *supra* note 51, at 100–01.

Throughout the world, there are practices in the family that are violent towards women and harmful to their health . . . These practices and many others constitute a form of domestic violence but have avoided national and international scrutiny because they are seen as cultural practices that deserve tolerance and respect. The universal standards of human rights are often denied full operation when it comes to the rights of women.⁸⁵

CEDAW, in conjunction with General Recommendation No. 19, clearly protects against gender-based violence—“violence that is directed against a woman because she is a woman or that affects women disproportionately.”⁸⁶ Nevertheless, the cultural defense is frequently used to somehow justify domestic violence, marital rape, sexual slavery, and a host of other gender-based abusive practices, both in the home and in public life.⁸⁷

While CEDAW itself does not contain an explicit prohibition against private acts of gender-based violence,⁸⁸ the Declaration on the Elimination of Violence Against Women, adopted by the U.N. General Assembly in 1993, requires states to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State *or by private actors*.”⁸⁹ Thus, the U.N. has made clear that individual actors and state governments alike share the blame for the persistence of gender inequality and female brutalization.⁹⁰ Fathers, brothers, and husbands may rule over women in the home, but governments create and sustain the conditions under which

85. *Human Rights of Women*, *supra* note 1, ¶ 1, at 7.

86. CEDAW, *supra* note 5, at General Recommendation No. 19 (11th session, 1992), ¶ 6; *see also* LAW, POLITICS, MORALS, *supra* note 2, at 202.

87. CEDAW, *supra* note 5, at General Recommendation No. 19 (11th session, 1992), ¶ 23 (“Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies . . . [and is] perpetuated by traditional attitudes.”).

88. *See* CEDAW, *supra* note 5; *see also* Kathryn Christine Arnold, *Are the Perpetrators of Honor Killings Getting Away with Murder?: Article 340 of the Jordanian Penal Code Analyzed under the Convention of the Elimination of All Forms of Discrimination Against Women*, 16 AM. U. INT’L L. REV. 1343, 1397 (2001).

89. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, Art. 4, U.N. GAOR, 48th Sess., 85th plen. mtg., at 218, U.N. Doc. E/ CN.6/W6.2/1992/L3 (1993) [hereinafter Declaration] (emphasis added).

90. *Id.*; *see also* Higgins, *supra* note 51, at 100–01.

women are politically, economically and socially victimized by failing to prosecute those who commit the violence.⁹¹

In 1989, the International Court of Justice (ICJ) determined in *Nicaragua v. United States* that illegal acts by non-state actors may be attributed to the state in a narrow set of circumstances.⁹² Of relevance here, the state may be responsible for violations of international law by a non-state actor in the first instance, where the non-state actor is acting under the control of the government, and second, where the state has failed to ensure the enjoyment of human rights by its citizens.⁹³ In other words, when violence and discrimination against women are perpetrated by individuals in accordance with an unofficial policy of impunity, the state is complicit in the violation of women's human rights. State inaction in cases of rape, abuse, and even murder, gives powerful implied consent to violence against women, and credence to the cultural defense used to justify it.⁹⁴

CEDAW General Recommendation No. 19 purports to place a burden on states to regulate private behavior in addition to official government policy. Recommendation No. 19 acts as a supplement to the overall mandates of CEDAW, providing that "[u]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence"⁹⁵ Therefore, it is hardly enough, under CEDAW or other international human rights instruments, that a state merely does no active harm itself; the state must also protect against violations by

91. See *Higgins*, *supra* note 51, at 100–01; see also Rebecca Cook, *Accountability in International Law for Violations of Women's Rights by Non-State Actors*, in *RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW* 93 (Dorinda Dallmeyer ed., 1993) (discussing the culpability under CEDAW of private actors for violence against women).

92. *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, 1986 I.C.J. 14 (June 27).

93. *Id.*

94. See *LAW, POLITICS, MORALS*, *supra* note 2, at 182–83.

95. CEDAW, *supra* note 5, at General Recommendation No. 19 (11th session, 1992), ¶ 9.

individuals, local governments, and private groups.⁹⁶

Even the most well-established cultural practices are subject to the substantive human rights limits of CEDAW, the International Covenants, and the Universal Declaration.⁹⁷ Simply labeling a violent practice “cultural” cannot thereby exempt it from the reach of human rights law. Although the ICCPR states in Article 27 that all members of a group or community are free to “enjoy their own culture,”⁹⁸ many of the so-called “cultural” practices perpetrated against women are, in reality, cruel manifestations of misogyny.⁹⁹ Calling these abusive practices “cultural” commands respect for them under this instrument and lends them unwarranted legitimacy, thereby enabling their proponents to hide behind the cultural defense and accusations of cultural imperialism.¹⁰⁰

B. A Case Study: Honor Killing as a “Cultural” Practice

CEDAW defines “discrimination against women” to include:

[A]ny distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁰¹

Of the many instances of culturally sanctioned violence and

96. JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 37 (2d ed. 2002) [hereinafter *THEORY AND PRACTICE*]; see also Arnold, *supra* note 88, at 1397–98 (discussing the measures prescribed by General Recommendation No. 19).

97. See *Relativism and Universal Rights*, *supra* note 7, at 414. To illustrate, Donnelly writes that “while slavery has been customary in numerous societies, today it is a practice that no custom can justify. Likewise, sexual, racial, ethnic, and religious discrimination have been widely practiced, but are indefensible today.” *Id.*

98. ICCPR, *supra* note 23, at art. 27.

99. Lara M. Gardner, *A Dubious Designation: How One Simple Label Legitimizes Human Rights Abuse*, 14 *INT’L LEGAL PERSP.* 16, 18 (2004). To be sure, there are many beautiful and valuable traditions around the world that add to the cultural fabric of a community and serve to include and uplift women. I deal here only with unquestionably violent, brutal, and medieval practices that tend to detract from women’s role in the community, and deprive them of their free will.

100. See *id.*

101. CEDAW, *supra* note 5, at art. 1.

discrimination against women around the world,¹⁰² the practice of honor killing¹⁰³ has been among the most shocking to its detractors, as well as one of the most heatedly defended by its proponents.¹⁰⁴ Honor crimes are a particularly interesting case of culturally grounded violence against women because they are rooted both in patriarchal assumptions about female sexuality, as well as political and religious notions of male power.¹⁰⁵ Although honor killings are not an exclusively Middle Eastern practice,¹⁰⁶ they are often touted as a quasi-religious act

102. Other highly publicized gender-based practices include female genital mutilation, female infanticide and son preference, trafficking in women and children, widow immolation, dowry deaths and acid attacks. See Isabella R. Gunning, *Arrogant Perception, World-Traveling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189 (1996) (discussing the various methods of female genital mutilations, the dangers involved, and the cultural difficulties of viewing the practice as a human rights violation); Gardner, *supra* note 99, at 18–20 (discussing the practices of female infanticide and trafficking in women and children); *Human Rights of Women*, *supra* note 1, at 9–28 (providing a thorough background, as well as current statistics, for a dozen different prominent gender-based cultural practices).

103. See generally Kenneth Lasson, *Bloodstains on a “Code of Honor”: The Murderous Marginalization of Women in the Islamic World*, 30 WOMEN’S RTS. L. REP. 407 (2009) (discussing honor killings, their history, the modern practice, and the dangers they pose to the implementation of the international human rights system); *Cousin Jailed for 14 Years for German ‘Honour Killing,’* VANCOUVER SUN, Jan. 19, 2010, <http://www.vancouversun.com/news/Cousin+jailed+years+German+honour+killing/2459975/story.html>; John Bingham, *Honour Killing: Father Convicted of Murder of Tulay Goren*, TELEGRAPH (United Kingdom), Dec. 17, 2009, available at <http://www.telegraph.co.uk/news/uknews/crime/6832862/Honour-killing-father-convicted-of-murder-of-Tulay-Goren.html>; *Dad Charged with Murdering Reluctant Bride*, CNN, July 9, 2008, available at <http://www.cnn.com/2008/CRIME/07/08/honor.killing/>.

104. Hillary Mayel, *Thousands of Women Killed for Family “Honor,”* NAT’L GEOGRAPHIC NEWS, Feb. 12, 2002, available at <http://news.nationalgeographic.com/news/pf/15061734.html>.

105. See Rushmi Ramakrishna, *Universal Rights, Non-Universal Process: Confronting Culturally Grounded Human Rights Abuses*, 30 U. PA. J. INT’L L. 1383, 1401–02 (2009). I do not mean to insinuate that Islamic culture is the only or even the worst offender with regards to gender-based violence and discrimination. In fact, Guatemala, a predominantly Christian, democratic state is notorious in the Western hemisphere for its brutal treatment of women. Karen Musalo et al., *Crimes Without Punishment: Violence Against Women in Guatemala*, 21 HASTINGS WOMEN’S L.J. 161, 163 (2010). Among a population of less than 15 million, approximately two women are brutally murdered each day, and violence against women and girls carries a shocking 98% impunity rate. *Id.*

106. *Human Rights of Women*, *supra* note 1, ¶¶ 34–35, at 14.

authorized by Islam.¹⁰⁷ However, under international human rights law, committing an honor crime is less a spiritual practice,¹⁰⁸ and more a flagrant violation of the human rights of women.

Honor crimes tend to be particularly prevalent among poor and rural Muslim populations.¹⁰⁹ However, in our increasingly globalized world, honor crimes have been documented in Brazil, Western Europe, and even the United States.¹¹⁰ The number of honor crimes appears to be on the rise, increasing proportionally to the expansion of what constitutes honor and what damages it.¹¹¹ In traditional Islamic societies, women have customarily been considered commodities, rather than human beings equal in value to their male counterparts.¹¹² A man's control over the women in his family extends not only to her body and her sexual behavior, but to her movement, her conduct, her education, and her acquaintances.¹¹³ In any one of these areas, rebellion or misconduct results in the subversion of the family's honor.¹¹⁴

In this environment, a family's most prized possession may be a woman's honor and virginity.¹¹⁵ Her sexual and romantic choices, therefore, are often delegated to male relatives, effectively stripping her of her power of individual choice.¹¹⁶ A violation of the imposed cultural limits on sexual behavior by a woman of any age, but especially in the case of a single young adult, is traditionally penalized with death.¹¹⁷ In a typical honor crime scenario, a council of male relatives convenes to decide the woman's fate, and may determine that death (or, more

107. See Lasson, *supra* note 103, at 408.

108. See generally *Human Rights in the Muslim World*, *supra* note 76, at 37–42.

109. Rachel A. Ruane, *Murder in the Name of Honor: Violence Against Women in Jordan and Pakistan*, 14 EMORY INT'L L. REV. 1523, 1527–28 (2000).

110. *Id.*

111. *Human Rights of Women*, *supra* note 1, ¶ 28, at 13.

112. *Id.* ¶ 27.

113. See *id.*

114. *Id.*

115. *Id.* ¶ 24, at 12 (“These women’s lives are circumscribed by traditions which enforce extreme seclusion and submission to men. Male relatives virtually own them and punish contraventions of their proprietorship with violence.”).

116. See *id.* ¶¶ 27–28, at 13.

117. See Ramakrishna, *supra* note 105, at 1402.

accurately, murder) is the only appropriate means of restoring the good name of the woman's family following her disgraceful act.¹¹⁸ As the U.N. Special Rapporteur on Violence Against Women elaborated in a 2002 report: "The killing is mainly carried out by under-aged males of the family to reduce the punishment. They are then treated as heroes [and] [t]he act is regarded as a rite of passage into manhood."¹¹⁹

The cultural attitudes that allow honor killings to go virtually unpunished in many Islamic states¹²⁰ are rooted in both traditional patriarchal values and the mandates of Shari'a.¹²¹ Therefore, many proponents of the practice (predictably, primarily Muslim men) argue that honor killings are justified by religious beliefs and teachings, and consequently, are somehow immune to human rights law (or any law at all, for that matter).¹²² In her report, the U.N. Special Rapporteur on Violence Against Women puts it thus:

Honour is a magic word, which can be used to cloak the most heinous of crimes. The concept of honour is especially powerful because it exists beyond reason and beyond analysis. But what masquerades as "honour" is really men's need to control women's sexuality and their freedom. These murders are not based on religious beliefs but, rather, deeply rooted cultural ones.¹²³

Whatever the validity of its cultural origins, the practice of

118. *Id.*

119. *Human Rights of Women*, *supra* note 1, ¶ 22, at 12.

120. See Tracy Wilkinson, *Taking the 'Honor' out of Killing Women*, L.A. TIMES, Jan. 9, 2007, available at <http://articles.latimes.com/2007/jan/09/world/fg-honor9?pg=2> ("In a United Nations poll conducted [in 2006], 17% of Turkish men said they approved of honor killing. Many more approved of lesser punishments, one of the most common being the slicing off of a woman's nose."); Stephanie Palo, *A Charade of Change: Qisas and Diyat Ordinance Allows Honor Killings To Go Unpunished in Pakistan*, 15 U.C. DAVIS J. INT'L L. & POL'Y 93 (2008) (detailing a country-specific case study on how honor killings work within the community, and the impunity they often enjoy from state prosecution).

121. See *Human Rights in the Muslim World*, *supra* note 76, at 37–42 (discussing the various ways in which Shari'a conflicts with international human rights norms in the area of women's rights).

122. See generally Ruane, *supra* note 109, at 1530–32.

123. *Human Rights of Women*, *supra* note 1, ¶ 27, at 13.

honor killing can hardly be justified in today's world.¹²⁴ To begin with, honor killings violate a woman's rights to life and safety, guaranteed in both the Universal Declaration and the ICCPR.¹²⁵ The ICCPR further requires that each State Party to the Covenant undertake to "respect and to ensure to *all* individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant," without distinction based on sex.¹²⁶ Article 5(a) of CEDAW makes clear that practices, like honor killings, which constitute "a cultural pattern[] . . . based on the idea of inferiority or superiority of either of the sexes or on stereotyped roles for men and women," are strictly forbidden under international law.¹²⁷

Moreover, under CEDAW, states are bound to "establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination . . ." ¹²⁸ But state indifference, deliberately discriminatory laws, and unresponsive criminal justice systems frequently prevent women from attaining safety and justice and often ensure virtual impunity for those who commit honor killings in traditional Islamic states.¹²⁹

In the Declaration on the Elimination of Violence Against Women, the U.N. General Assembly specifically rejected the cultural relativism argument and urged states not to "invoke any custom, tradition, or religious consideration to avoid their obligations" with respect to the elimination of gender-based violence.¹³⁰ It is thus clear that the basic international instruments affecting the human rights of women purport to reject the cultural defense as a means for states to avoid their obligations to women. Nonetheless, governments increasingly employ the cultural defense, coupled with accusations of cultural

124. See generally Ramakrishna, *supra* note 105, at 1405 (discussing how honor killings violate international standards regarding the human rights of women).

125. *Id.*

126. ICCPR, *supra* note 23, at art. 2.1 (emphasis added).

127. CEDAW, *supra* note 5, at art. 5(a).

128. *Id.* at art. 2(c).

129. Ruane, *supra* note 109, at 1534.

130. Declaration, *supra* note 89, at art. 4.

imperialism, to avoid responsibility for prosecuting and protecting against private acts of violence against women.¹³¹ By its implicit support of the status quo, cultural relativism has played directly into the hands of these oppressive governments.¹³²

Pakistan, in particular, is notorious for its exceptionally aggressive policy of willful blindness toward honor crimes.¹³³ Each year in Pakistan, more than 1,000 honor crimes are committed with virtual impunity.¹³⁴ By refusing to recognize domestic violence as a serious crime, and thereby allowing the battering and murder of women to continue unchecked, states that defend honor crimes as cultural and religious practices are in serious violation of their international obligations.¹³⁵ Despite the overwhelming levels of family violence in this environment, Pakistan, its law enforcement system, and its traditional social structure often insists on regarding gender-based abuse as a private family matter outside the reach of government intervention.¹³⁶ Women who attempt to report instances of rape and domestic violence encounter an uncooperative and abusive police system; domestic violence matters are almost never investigated.¹³⁷ And when investigations are made, police are often susceptible to bribes in exchange for overlooking the incident.¹³⁸

Cruelty to women by state and private actors alike is too often cloaked in the rhetoric of culture, religion, and tradition.

131. Ruane, *supra* note 109, at 1568. In their refusal to accept human rights norms as they apply to women, these states often point to the “persistence of discrimination and economic inequality in Western nations,” further calling into question “the adequacy of Western concepts of civil and political rights to ensure human well-being.” Higgins, *supra* note 51, at 93–94.

132. Hatch, *supra* note 24, at 523.

133. See Ruane, *supra* note 109, at 1534.

134. *Human Rights of Women*, *supra* note 1, ¶ 23, at 12.

135. See Tesón, *supra* note 8, at 44–45 (“Virtually nothing in the human rights conventions suggests that the respect for human rights depends upon, or can be modified by, local cultural conditions.”); see also *supra* notes 89–90 and accompanying text (regarding the ICJ’s conclusions on state responsibility for the international law violations of non-state actors).

136. Ruane, *supra* note 109, at 1534.

137. *Id.*

138. *Id.* at 1543–44.

The international community must be more vigilant of cynical manipulations of lost, dying, and even mythical cultural foundations of discriminatory practices.¹³⁹ Complaints of the irrelevance of human rights standards made by repressive regimes should be recognized for what they frequently are: noisy shields behind which governments may sanction or ignore the cultural belittling of women.

Aside from a few regulatory measures, like reporting requirements, CEDAW does not contain any other significant monitoring mechanisms and grants the United Nations no authority to enforce its provisions.¹⁴⁰ However, while the enforcement value of CEDAW is minimal at best, the Convention does articulate that gender-based violence and discrimination are never acceptable.¹⁴¹ There can be no doubt that states that continue to engage in these practices are in violation of their voluntary membership to the Convention, regardless of the cultural justifications they provide for doing so.

V. RECONCILING CULTURE AND WOMEN'S RIGHTS

“[A]n obligation in international law exists to respect the cultural identities of peoples and their local traditions and customs. . . . However, to say that cultural identities should be respected does not mean that international human rights law lacks a substantive core.”¹⁴²

As previously noted, CEDAW's enforcement provisions are simply too weak to effectively address the everyday humiliation and discrimination women are subjected to by their governing authorities and male acquaintances in all parts of the world.¹⁴³ Additionally, while CEDAW is a revolutionary document, it has a number of flaws that make the full-scale protection of women

139. *Relativism and Universal Rights*, *supra* note 7, at 411 (“In the Third World today, . . . the traditional culture advanced to justify cultural relativism far too often no longer exists.”).

140. Christina A. Madek, *Killing Dishonor: Effective Eradication of Honor Killings*, 29 SUFFOLK TRANSNAT'L L. REV. 53, 59 (2005).

141. Ruane, *supra* note 109, at 1565.

142. Tesón, *supra* note 8, at 43–44.

143. Ruane, *supra* note 109, at 1565.

intended by its drafters more of an aspiration than a reality.¹⁴⁴

First, despite its broad language, CEDAW provides only limited hope to female victims of cultural violence. Its narrow scope and definition of equality, combined with its weak enforcement provisions contribute to its general impotence in the eyes of many international human rights scholars.¹⁴⁵ Second, CEDAW only requires that states exercise “due diligence” in carrying out treaty provisions—an unquestionably vague and undemanding standard.¹⁴⁶ States are merely required to implement measures deemed by the drafters as “reasonably achievable.”¹⁴⁷ These measures include: developing appropriate penal legislation; developing national plans of action to eliminate violence against women; providing social services for women victims of violence in light of available resources; and taking measures to ensure public officials entrusted with implementing the laws have adequate training to sensitize them to the needs of women.¹⁴⁸ Given the extreme flexibility of these guidelines, CEDAW’s effectiveness depends almost entirely on states’ voluntary compliance and accurate self-reporting,¹⁴⁹ and, to an equal degree, on the support of non-governmental organizations (NGOs) located in member states.

Additionally, unless women’s human rights norms are accorded increased cultural legitimacy, many states will continue to fail in their obligations toward women. In order to confront the deficiencies of “soft” human rights law, states must be willing and able to truthfully report on the condition of women within their borders, and local NGOs must take a leading role in the education and assimilation of culture into the human rights process.

A. *Integrating Cultural Standards and Human Rights Norms*

Human rights scholars are gradually discarding the old

144. *See id.* at 1565–66.

145. *Id.*

146. *Id.*

147. *Id.*

148. *See Declaration, supra* note 89, at art. 4(a)–(q).

149. Arnold, *supra* note 88, at 1390.

debate between cultural relativists and universalists, recognizing that while international human rights norms must be universal, the process for implementing them cannot yet be.¹⁵⁰ Indeed, certain conditions, such as the country's motives for joining international organizations, the intellectual history of human rights in the state or region, the prevalence of culturally-grounded human rights abuse, the political structure of the state, and the economic, social, and political stability of the region, will all inevitably affect the local application of human rights norms.¹⁵¹

This is a particularly important observation, given that the lack or insufficiency of cultural legitimacy of human rights standards is one of the most significant causes of treaty violations.¹⁵² Because human rights ideas, particularly those concerning women, are embedded in cultural assumptions about the nature of the individual, the community, and government responsibility, they often do not translate well from one setting to another. If universal human rights norms, like those embodied in CEDAW, are to have a significant impact on the everyday lives of women, they must become integrated into the cultural conscience of citizens and governments.¹⁵³ Rather than viewing culture as a hindrance to the implementation of women's human rights, culture should be part of the solution.¹⁵⁴ Toward that end, NGOs and community leaders should work locally to integrate human rights norms into cultural practices.

As a general rule, people are more willing to observe normative propositions when they believe them to be sanctioned

150. Ramakrishna, *supra* note 105, at 1387.

151. *Id.* at 1388.

152. Abdullahi Ahmed An-Na'im, *Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment*, in HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVES: A QUEST FOR CONSENSUS 19 (Abdullahi Ahmed An-Na'im, ed. 1992) [hereinafter *Cross-Cultural Approach*].

153. SALLY ENGLE MERRY, *Human Rights and Gender Violence: Culture and Transnationalism*, in LAW, POLITICS, MORALS, *supra* note 2, at 524 (2006) [hereinafter *Culture and Transnationalism*]. Merry further warns against conceptualizing the global-local divide in human rights law as "the opposition between rights and culture, or even civilization and culture." *Id.* at 525.

154. *Id.*

by their own cultural traditions.¹⁵⁵ Those who attempt to use the cultural defense to justify the ongoing abuse of women would maintain culture in a frozen state, as a museum piece. Rather, the goal should be to help women evolve their culture from within.¹⁵⁶ It must be understood that cultural identity and women's rights are not mutually exclusive.¹⁵⁷ Only by conceiving of equality and sexuality in a manner that makes sense within specific religious and cultural contexts will women's rights activists be able to change or eliminate abusive cultural practices.¹⁵⁸ While suggestions or orders that local customs be abandoned in favor of external norms are likely to generate anger and resistance, contextually appropriate and culturally driven efforts may succeed.¹⁵⁹

To be sure, cultural integration is likely to be fraught with difficulty. To have local impact, human rights ideas need to be defined in terms of local values, but in order to receive funding, a wider audience, and international legitimacy, they must also be framed in terms of transnational principles.¹⁶⁰ Therefore, the key is to take women's human rights standards that are recognized internationally and widely accepted in the international community, and integrate them into the local conscience through meaningful reinterpretive exchange.

Professor Abdullahi Ahmed An-Na'im gives an excellent example of how this cultural integration approach could work in Muslim societies that base discrimination against women on Shari'a.¹⁶¹ The extreme importance of Islamic legitimacy in Muslim cultures suggests that women's advocacy groups should claim the Islamic platform for themselves, rather than conceding it entirely to fundamentalist forces.

The concept of universal, fundamental human rights was

155. See *Cross-Cultural Approach*, *supra* note 152, at 20.

156. Hatch, *supra* note 24, at 523; *Cultural Foundations*, *supra* note 39, at 49.

157. Ruane, *supra* note 109, at 1569.

158. *Cultural Foundations*, *supra* note 39, at 45–46.

159. Ruane, *supra* note 109, at 1569; ISSUES AND ACTION, *supra* note 8, at 7 (“Efforts to paper over differences from society to society with rhetoric about universal human rights are bound to generate skepticism and frustration.”).

160. LOCAL JUSTICE, *supra* note 71, at 5.

161. See *Human Rights in the Muslim World*, *supra* note 76, at 46–50.

utterly foreign to Islamic jurisprudence and social philosophy until the formation of the Universal Declaration in the late 1940s.¹⁶² Instead, Shari'a grants rights based on faith and gender qualifications, and as such, there is a basic disconnect between Shari'a as it is practiced in many Muslim states and international human rights norms as they are understood in Geneva.¹⁶³

Nevertheless, Islam does not pose an entirely insurmountable challenge to the implementation of women's rights. According to An'Naim, the current widely-held perspectives on Shari'a are not necessarily the only proper readings of Islamic mandates.¹⁶⁴ The essential premise of modern human rights law is that all human beings are equal in worth and dignity, regardless of gender, religion, or race; this position can be substantiated by the Quran and other important Islamic sources.¹⁶⁵ For example, several verses of the Quran hint at equality without distinction as to race, color, or gender.¹⁶⁶ Using those texts and encouraging leaders and individuals alike to set aside archaic and dated interpretations of Shari'a, advocacy groups may be able to provide Islamic legitimacy for the full range of women's human rights.

Through advocates' efforts to highlight the dynamic and flexible nature of Islam, the Muslim community may be stripped of the widely believed falsehood that the only tolerable view of Islam is one that precludes gender equality.¹⁶⁷ As women's advocacy organizations struggle to change perceptions about women through this reinterpreted exercise, developing states will be more likely to honor those human rights standards they believe have cultural legitimacy.

It must be clear, however, to those on both sides of the struggle, that the promotion of human rights for women is not mutually exclusive to the preservation of cultural identity and

162. *Id.* at 22.

163. *Id.* ("[M]any aspects of Shari'a discriminate against women and violate their fundamental human rights.").

164. *Id.* at 51.

165. *Id.* at 47.

166. *Id.*

167. Ruane, *supra* note 109, at 1569.

tradition.¹⁶⁸ Significant political and social differences, as well as disparities in levels of economic development, will bear heavily on how receptive a community is to this kind of cross-cultural discourse.¹⁶⁹ Engaging individuals in the cultural integration of human rights may require a certain degree of political liberty, stability, and social maturity that many states currently lack.¹⁷⁰ Additionally, providing cultural legitimacy to international human rights standards for women is likely to be a rather lengthy process, one that may take a generation or more. Therefore, it is imperative that local social service groups and NGOs begin these efforts immediately, both in searching for an effective method of integration and in earning the trust of the community—including men and women, individuals and governments alike.

B. Educating Women and Men of Women's Rights

In conjunction with the assimilation of international human rights norms and cultural standards, education is critical to improving the condition of women around the world. States that wish to continue repressing women and other powerless groups generally depend on those individuals remaining uninformed about their legal rights under international law.¹⁷¹ As entities,

168. *Id.*

169. *Cross-Cultural Approach*, *supra* note 152, at 39. This is not to suggest, as many human rights scholars posit, that economic development and democracy are a recipe for some kind of human rights panacea: Economic reform and development are not “an automatic route to the relative advancement of women within society. Economic globalization and restructuring . . . may in fact worsen their situation . . . [M]arket-oriented strategies may involve serious reductions of welfare . . . that particularly affect women.” *LAW, POLITICS, MORALS*, *supra* note 2, at 180. *But cf. Cultural Foundations*, *supra* note 39, at 48 (“[D]emocratization is both a vital precondition and a crucial ingredient of human rights protection.”). On the other hand, peace and stability probably play a major role in eradicating some of the cruelest violations of women’s rights: “[F]actors such as the progressive brutalization of society due to conflict and war, increased access to heavy weapons, economic decline and social frustration may have causal links to increased violence against women.” *Human Rights of Women*, *supra* note 1, ¶ 25, at 12.

170. *Cross-Cultural Approach*, *supra* note 152, at 39.

171. *See* Glendon, *supra* note 53, at 140 (“When leaders of authoritarian governments claim that [international human rights treaties are] aimed at imposing ‘foreign’ values, their real concern is often domestic: the pressure for freedom building among their own citizens.”).

states and governments are not liberalized and socialized; rather, the states' *citizens* become liberalized and force the government to alter its practices.¹⁷² While the immediate priority to be achieved is the vindication of women's rights, those rights must be secured within a lasting legal and social framework that allows women to be full participants in society. It is therefore crucial that women's advocates educate local women of their rights to equality and safety, as well as inform young men of their obligations to respect the rights of others.

In her 2002 report to the Commission on Human Rights, the Special Rapporteur on Violence Against Women singled out one particularly successful NGO in Tajikistan that undertook a number of educational community projects including role-playing, question-and-answer sessions, small group work, illustrated posters, and open-ended stories that focused on various social issues such as reproductive health, human rights, gender relations, and domestic violence.¹⁷³ This organization also conducted community outreach programs that trained local religious leaders, medical and police personnel, and schoolteachers in confronting gender-based violence and discrimination, as well as provided basic gynecological services.¹⁷⁴

Likewise, educational and domestic violence shelter programs in Turkey are beginning to produce significant progress in the empowerment of the women they work with.¹⁷⁵ Women are moving from a "resignation to violence as part of their hard lives to a timid but growing willingness to challenge the status quo."¹⁷⁶ Perhaps even more impressive, women's advocacy groups in Turkey are increasingly receiving calls from men alerting them to possible incidents of domestic violence.¹⁷⁷ Such a change in women's attitudes toward their own dignity means that while abuse, discrimination, and violence may not be eradicated in the foreseeable future, it will, at the very least,

172. STACY, *supra* note 3, at 124.

173. *Human Rights of Women*, *supra* note 1, ¶ 116, at 32.

174. *Id.*

175. Wilkinson, *supra* note 120.

176. *Id.*

177. *Id.*

become more difficult for public officials to ignore.¹⁷⁸

These combined health and education strategies are vital to improving women's status within both the community and the home.¹⁷⁹ Such programs, like those mentioned in Tajikistan and Turkey, may provide the most reliable means to long-term change and development of community norms.¹⁸⁰ Therefore, a great deal of emphasis, both in the U.N. and other regional or specialized humanitarian bodies, should be placed on supporting, monitoring, and financing local women's groups in these efforts, with the ongoing goal of eradicating abusive gender-based practices.¹⁸¹ As the U.N. Special Rapporteur on Violence Against Women noted, "the involvement of local women's groups and civil society in the movement to eradicate harmful practices is the only guarantee that the practice will not re-emerge in the future."¹⁸²

Simply making gender-based violence and discrimination public may go a long way toward shaming a society into mobilization: Recently in India, the rising middle class was so outraged to learn of the sexual assault of a young teenage girl by a high-ranking public official—and the impunity with which he acted—that it adopted the cause as representative of all that is wrong with the national criminal justice system.¹⁸³ After years of waging battle in the courts, lobbying national politicians, and preaching the story on every news outlet in India, middle class activists have convinced the government to change its criminal procedures in response to the case.¹⁸⁴ Now officers will be required to file charges based on the victim's statement alone in cases involving sexual crimes, a measure aimed at making it harder for perpetrators to evade investigation.¹⁸⁵ India is also

178. *Id.*

179. *Human Rights of Women*, *supra* note 1, ¶ 113, at 31.

180. *Id.*

181. *Id.*

182. *Id.*

183. Lydia Polgreen, *Abuse Case Rouses India's Middle Class*, N.Y. TIMES, Mar. 2, 2010, *available at* <http://www.nytimes.com/2010/03/03/world/asia/03india.html?emc=eta1>.

184. *Id.*

185. *Id.*

considering the creation of so-called “fast-track” courts to deal more immediately with such gender-based crimes.¹⁸⁶

Unless women are aware of the carefully constructed protections that international law has provided them, they are personally, as well as institutionally, rendered powerless in oppressive states. However, in addition to merely informing them of their rights to equality and safety, women must be given the leadership tools with which to direct their own movement.¹⁸⁷ If universal standards concerning women’s rights are ever to resonate in diverse societies around the world, women must spearhead the transformation and devise strategy for change.¹⁸⁸ Beginning with education, women’s informed involvement in reinterpretation exercises is essential to human rights success.¹⁸⁹

In traditional patriarchal societies, raising awareness about violence against women by teaching boys and men to view women as valuable partners in the development of society is just as important as taking legal steps to protect women’s human rights.¹⁹⁰ Educating young boys about respecting their mothers, sisters, and future wives in non-violent, non-discriminatory ways will go a long way toward opening up discourse on cultural integration and reinterpretation.

One potentially helpful starting point for educating men and women about gender equality under international law is to engage them in setting forth an enumerated list of gender-based practices that strike observers as “intolerable.”¹⁹¹ Moreover, by

186. *Id.*

187. *See Human Rights of Women, supra* note 1, ¶ 10, at 9.

188. *Id.*

189. *Id.* ¶ 113, at 113.

190. Ruane, *supra* note 109, at 1571.

191. *Cultural Foundations, supra* note 39, at 49–50. Cooperatively discussing and defining “intolerable” practices could also be a helpful exercise at the international level: “[T]ransnational actors, and even some national elites, are often uninterested in local social practices or too busy to understand them in their complicated contexts . . . National and local actors often feel frustrated at the lack of attention to their individual situations.” *LOCAL JUSTICE, supra* note 71, at 3. International policy makers, like local activists, must be willing to educate themselves on different concepts of cultural violence in order to understand what is truly “intolerable” and how to effectively combat harmful traditional practices.

attempting to compromise on the local definition of “quality of life” through assessment of universal norms, like human dignity, bodily integrity, basic political rights, and economic opportunities, men and women may enter into a cooperative discourse about change.¹⁹²

While males and females may be unable to reach complete agreement on what constitutes an “intolerable” practice or “human dignity,” such exercises may form the basis for a progressive, educational discussion about incorporating human rights law into cultural perceptions. These discussions will also be immensely helpful to activists seeking ways to culturally legitimize women’s rights. Ultimately, this dialogue is aimed at redrawing the boundaries between discipline and abuse, inclusion and discrimination, which lie at the heart of the human rights project concerning violence and discrimination against women.¹⁹³ Through reinterpretation, education, health services, and cross-gender cultural dialogue, activists should seek to redefine both sexes’ conceptions of violence and discrimination.

C. More Accurate State Reporting (With the Help of NGOs)

CEDAW represents significant advances toward full recognition of women’s human rights,¹⁹⁴ but its effectiveness depends almost entirely on accurate self-reporting.¹⁹⁵ Many states that have committed to CEDAW either fail to submit truthful reports on the condition of women in their countries or simply refuse to present a report altogether.¹⁹⁶

In many instances, the failure to report honestly and

192. STACY, *supra* note 3, at 35.

193. LOCAL JUSTICE, *supra* note 71, at 25 (“Most societies draw a boundary between *acceptable* forms of violence against women, defined as discipline, and *unacceptable* forms, defined as abuse.” (emphasis added)).

194. *See* Declaration, *supra* note 89, at art. 4(a)–(q). *But cf.* Ruane, *supra* note 109, at 1565.

195. Arnold, *supra* note 88, at 1390.

196. *Id.* *But cf.* U.N. Committee on the Elimination of Discrimination Against Women, *Initial Report of Guatemala*, CEDAW/C/Gua/1–2 (Apr. 2, 1991), *reprinted in* LAW, POLITICS, MORALS, *supra* note 2, at 176, 176–79 (painting an unusually graphic and complete picture of women’s social status in family and society, despite Guatemala’s notorious reputation for violence and discrimination against women).

responsibly can be traced back to the same reasons for which many states sign onto human rights treaties in the first place: They feel that by pledging a public commitment to a cause like securing and protecting women's rights, they can deflect international attention away from their own deplorable human rights practices.¹⁹⁷ This is especially disastrous with a treaty containing so few enforcement mechanisms, like CEDAW.¹⁹⁸ When states sign a treaty with the intention to ignore its mandates, there is frustratingly little its fellow states parties can do about it.¹⁹⁹

To address this problem, local NGOs should serve as more vocal advocates for women in the international community. Advocacy organizations are well placed to identify rights for women associated with basic human interests that are neither parochial (the risk with national policies) nor overreaching (the risk with international governing institutions). NGOs have the benefit of experiencing firsthand a country's treatment of women and identifying specific areas of women's rights in which a particular state is especially lacking.²⁰⁰ Additionally, by engaging in educational and cultural integration exercises with local men and women, local advocates will have a wealth of knowledge concerning how human rights operate locally in certain cultures and which cultural practices need to be most

197. *See supra* Part II.A.

198. *See supra* notes 140–41 and accompanying text.

199. The Working Group on Ratification of the U.N. Convention on the Elimination of All Forms of Discrimination Against Women, HUMAN RIGHTS FOR ALL 7, 18 (Leila Rassekh Milani ed., 2001), available at http://www.endabuse.org/userfiles/file/Maternal_Health/cedaw.pdf.

200. The contributions of NGOs were particularly important during the 1993 World Conference on Human Rights, at which state representatives met to address the Cultural Relativism debate. *See* STAMATOPOULOU, *supra* note 4, at 19. Arguments in favor of universality made by NGOs from the regions where governments were taking a cultural relativist stance were crucial during the negotiation process. *Id.* *See generally* World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, art. I, ¶ 5, U.N. Doc. A/CONF.157/23 (July 12, 1993) available at <http://>

[www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/A.CONF.157.23.En?OpenDocument) (stating that all human rights are universal, and that while cultural, religious, and historical differences must be born in mind, it is the duty of states to promote and protect all human rights).

urgently addressed.²⁰¹

Increased cooperation between local women's advocacy groups and the U.N. Committee on the Elimination of Discrimination Against Women will serve to fill in the holes in states' own reports on gender equality. By compiling data for the Committee's use pertaining to state sanctioned violence and discrimination against women, NGOs can help to increase Committee awareness about who among them is fulfilling their obligations, and who is failing. A more complete and truthful understanding of country-specific practices will help not only to remove the façade of state deception but also to discredit the cultural defense at the international level.

VI. CONCLUSION

Of all the challenges women face in the pursuit of gender equality, the cultural defense must be one of the greatest. Not only does it allow states to shirk their international obligations by hiding behind accusations of cultural imperialism,²⁰² the cultural defense also provides individuals with justification for perpetuating abusive practices, irrespective of state action.²⁰³ In order to confront gender inequality head-on, the international community must be willing to dismiss the cultural defense put forth by oppressive, patriarchal, and discriminatory regimes.

Accomplishing this will require a high degree of participation and cooperation from local NGOs. They alone have the power to neutrally and truthfully inform the international community of the actual condition of women's rights in member states. Furthermore, advocacy groups should engage in educational exercises with local populations to inform both men and women of their state's obligations to ensure gender equality and protect women from violence. Finally, NGOs are ideally placed to initiate cross-cultural dialogues concerning the integration of international human rights norms into cultural belief systems. Such discussions will help to create cultural legitimacy for otherwise "foreign" human rights laws.

201. *See supra* Part V.A.

202. *Id.*

203. *Id.*

Lending cultural legitimacy to women's rights and increasing state responsibility for gender inequality will clear some of the most daunting hurdles to discrediting the cultural defense. Nevertheless, the process is sure to take time. Women must play an active role in securing their own safety and respect. Until women themselves believe they are deserving of equality and well-being, both in the public and private spheres, it will be difficult at best to convince governments and male individuals to fulfill their international responsibilities under CEDAW and similar human rights instruments.