The Human Rights of Women

Women's Human Rights Net

WHRnet.org

Reader No. 1, November 2004

Human rights standards evolve over time. In the *Universal Declaration on Human Rights*, for example, men were the implicit standard. The recognition of women and their needs within human rights frameworks took years of struggle and advocacy. Today, women's rights and gender equality are protected in several international and regional treaties, acknowledging that women's rights are indeed human rights — human rights subject to specific challenges, biases and threats. But how, if at all, has this rights discourse informed and improved our activism, practice, and lived realities?

Despite advances in the understanding and articulation of international human rights, equality is yet to be realized. In fact, the continued proliferation of conservative and fundamentalist economic, social, cultural and political forces threatens to retract women's human rights now as much as ever. Rights-based frameworks are criticized for being too complex, alienating for grassroots organizers, and, most damningly, ineffective. Yet our efforts for women's rights persist. We continue to commit energy and resources to processes such as Beijing and Cairo + 10. We struggle to ensure that women's rights are considered and secured in the Millennium Development Goals (MDGs) process and we use the mechanisms of the United Nations treaty bodies. But to what end?

The practical limitations and challenges of using international law and human rights mechanisms are real. However, these frameworks are important — even vital. Conceptually, they guide activists, advocates and governments alike towards progressively more inclusive goals and ideals of equality and social justice. The value of human rights therefore is in more than their articulation or our awareness of them. It is in how we, as development practitioners and human rights advocates, creatively and purposefully manipulate, interpret and apply them to meet our current contextual challenges and to inform our strategic actions.

The ideas expressed in this publication challenge us to think differently about international human rights frameworks and the current state of women's human rights. They suggest that the value of a rights analysis is in the interpretation we bring to it. Dr. Marilyn Waring asks us to revisit our understanding of women's unpaid work and servitude. Donna Sullivan exposes the role of marriage in the ongoing exploitation of women in the family and turns the U.S. marriage debate on its head by revealing the diverse impacts of George W. Bush's narrow definition of marriage. Through her analysis of the International Criminal Court, Ana Elena Obando dispels the myth that international law has little local or national relevance. And, finally, Eman Ahmed's interrogation of Farhat Hashmi's rise to popularity in Pakistan impels us to broaden our analyses of, and strategies for, challenging religio-political fundamentalist forces.

While different in approach and analysis, these four contributions reflect the critical, creative and dynamic ways in which international human rights frameworks can be used and interpreted. In a WHRNet interview, Brigid Inder describes her work with the ICC as ensuring "laws are implemented in the most expansive way possible." This publication challenges us to use international law, and human rights treaties and frameworks to inform our advocacy and discourse in the most expansive way possible — so that we can better understand, advocate for and ensure women's human rights globally.

In solidarity,

Tania Principe
Editor

This publication is a series of excerpts from more detailed and extensive analyses found on whrnet.org. For the full texts, please visit www.whrnet.org. This publication was created to place these important contributions into the hands of researchers, activists, funders and practitioners who might have limited Internet access.

Human Rights and Unpaid Care Giving

Dr. Marilyn Waring

1. No one shall be held in slavery; slavery and slave trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour… (c) the term forced or compulsory labour shall not include: iii) any services exacted in cases of emergency or calamity threatening the life or well-being of the community; [or] iv) any work or service which forms part of normal civil obligations.

- *International Covenant on Civil and Political Rights*, 1966 (entered into force 1976), Article 8.

What is Servitude?

According to the Oxford English Dictionary the word "servitude" is defined as: "the condition of being a slave or serf, or of being the property of another person, absence of personal freedom".[1] This phrase "absence of personal freedom" is one we will return to later. The definition from the International Covenant on Civil and Political Rights (ICCPR), noted above, recognizes that servitude usually carries the additional notion of subjection to the necessity of excessive labour. In an earlier version of the Oxford Dictionary definition, "servitude", was also considered "the condition of being a servant, service, especially domestic service". Interestingly this interpretation is now commonly considered obsolete or antiquated. For example, there has never been a complaint with respect to the term "servitude" at the United Nations (UN), nor has this been the subject of significant commentary from any UN Rapporteur.

About the drafting of the *ICCPR*, Andrew Clapham notes that:

> In discussing paragraph 2, it was pointed out that 'slavery', which implied the destruction of the judicial personality, was a relatively limited and technical notion, whereas 'servitude' was a more general idea conveying all possible forms of man's domination over man [sic]. While slavery was the best known and the worst form of bondage, other forms existed in modern society which tended to reduce the dignity of man.[2]

Similarly, Richard Lillich believes that there is no doubt that customary international law now prohibits slavery and servitude, and that prohibition against those practices now constitutes *jus cogens*.[i] In respect of Article 8.3(c), "normal civil obligations", he comments: "what is meant here is primarily the obligation of citizens to undertake joint efforts in the common interest on a local level, such as taking part in fire brigades or similar measures against other calamities. It cannot be translated into a general subjection of direct labour for economic purposes."[3] Lillich translates "civil" to the sense of community, not household, and his example of the fire brigade certainly suggests that practices *requiring* eight or more hours per day of the same unpaid work everyday is rather more than a "normal civil obligation."

While there is no question that there are men that work full time unpaid in households, in particular as caregivers, the overwhelming number of workers in this category are women. Yet in UN reports, the linkages between women and Article 8 are rare indeed. In 1982, a report on slavery to the Commission of Human Rights indicated that women were "among the victims" of institutions such as slavery.[4] A Special Rapporteur noted "new forms of servitude and gross exploitation" and recommended that "at a proper time the UN might find it convenient to consider a consolidated convention aimed at eradicating all forms of servile status." The revision of this report contained a whole section on "Slavery—like practices involving women."[5] This is the only substantial mention in such documents.

Yet so often the relevance of human rights and workers' rights frameworks are contingent upon unpaid work being categorized as *work*. It is perfectly obvious, despite the rhetoric of the United Nations System of National Accounts (UNSNA), that unpaid workers are not at leisure, economically inactive or unproductive. Neither are they unemployed. That seems to leave two options: either these workers work, or they are in servitude. If their unpaid production, reproduction and service provision is recognized as work, a number of articles in the *International Covenant on Economic, Social and Cultural Rights* (*ICESCR*) are relevant.

Where the *ICESCR* speaks of 'work', the ILO is preoccupied with "employment" and "occupation" with exclusionary definitions. For example, the 1958 ILO *Convention on Discrimination in Employment and Occupation* defines the terms "employment" and "occupation" to include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment, but does not include

the bulk of women's work on the planet. While such conventions clearly exclude unpaid household production, reproduction and services from their consideration, it is impossible to sustain any argument which limits the meaning of 'work' to the narrow conceptions of employment and occupation used by the ILO.

In the non-recognition of unpaid work as a human rights violation, *CEDAW* is of major importance. The *Limburg Principles* have established a justification for reading *CEDAW* in conjunction with the *ICESCR*.

Article 2 of the *CEDAW* establishes the full ambit of government responsibilities: "States Parties ... agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principal of the equality of men and women in their national constitutions or other appropriate legislation ... (b) To adopt appropriate legislative and other measures, ... prohibiting all discrimination against women; (c) To establish legal protection of the rights of women ...; (d) To refrain from engaging in any act or practice (public authorities and institutions included) of discrimination against women; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women ..."

Article 11 of the *CEDAW* reads that "State policies shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure on a basis of equality of men and women, the same rights, (including) in particular… (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service ... (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value as well as equality of treatment in the evaluation of the quality of work; (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age, and the other incapacity to work, as well as the right to paid leave ..." These principles are especially extended to rural women in Article 14.1.

The work of unpaid workers

If a woman or man is relieving an institution of the full time responsibility of the care and attention of somebody, is s/he an enterprise[ii]? Are they an enterprise when the person in care is not a family member, but not an enterprise when the person being cared for is a close relative? If the full time caregiver was not working, the service would have to be performed in an enterprise. There is no other place for it to be done.

In the Africa region in particular, the pandemic of HIV/AIDS is resulting in an increased burden of care giving on women, especially young and older women. Sisonke Msimang notes the devastating and cyclical nature of the denial of these rights on the quality of life of women:

> As older women are increasingly called upon to care for children, and as life expectancy shrinks to the 40s and 50s, we face the prospect in Africa of a generation without grandparents, and an upcoming orphan and vulnerable children crisis that will effectively leave kids to take care of kids. As the orphan crisis deepens, child abuse is on the rise. Girls without families to protect them are engaging in survival sex to feed themselves and their siblings, and we are told that communities will 'cope.'[6]

Moreover, Dr. Noleen Heyzer points out that "it takes 24 buckets of water a day to care for a person living with HIV/AIDS. To clean sheets fouled by diarrhea and vomit, to prepare water for bathing - sometimes several times a day - to wash dishes and prepare food. All of us know what this means for women who must walk miles and still do all the other chores that have always needed doing."[7]

The cases of these unpaid women caregivers raise many questions for the denial of caregivers' fundamental rights. What of the family member who cares for someone full-time without compensation, holiday or rest? Could a parent stop 'work' to care for a child accident victim or a terminally ill parent?[8] What of grandparents who are full-time caregivers to their grandchildren? Do we think their freedom to function effectively might be compromised? Are children who work long hours in unpaid work (for example, orphaned children who care for siblings) losing out on access and opportunities—to education, to leisure and enjoyment of life?[9] Unpaid care giving of the sick is a critical part of the health care system. And it can compromise the well being of the caregiver, who is then further penalised by the system in terms of loss of earnings or no recognition at all.

In terms of a rights-based approach to those in the unpaid workforce, and for example for those in the unpaid, underpaid or differently paid full-time care giving role, we have to ask: to what extent does the discrimination and different treatment of family members in long-term care giving compromise or inhibit their capacity to participate effectively in political or community life, to attain the highest possible standard of physical and mental health, and to exercise their right to opportunities of lifelong education? It is clear that the vast majority of those who are subject to this discriminatory treatment are women.

A care giver is recruited to provide care. This is 'work' in the formal sense. Legislative measures and acts which regulate employment must comply with the international human rights obligations mentioned above. While governments argue in favour of their current positions and entitlements for these workers, it is difficult to establish just what rights and well being is available for those doing the care. The non-recognition of these workers is a loss of opportunity for the enjoyment of rights, especially for women.

endnotes

[i] Jus cogens is a Latin term meaning "compelling law." This "higher law" is applicable to all countries. The prohibitions on genocide and the slave trade, for example, are considered jus cogens and therefore must not be violated by any country whether or not they have specifically signed on to a convention containing the prohibitions. http://www.legal-explanations.com/definitions/jus-cogens.htm

[ii] Editor's note: The use of enterprise is important here because it establishes how women's unpaid care giving could otherwise be recognized and legislated if women's work was considered in economic terms.

Sources

[1] Oxford English Dictionary, Volume 15, 2nd Edition.
[2] Andrew Clapham, *Human Rights in the Private Sphere*. (Clarendon Press: Oxford, 1993) 97.
[3] Richard Lillich, "Civil Rights" in *Human Rights and International Law: Legal and Policy Issues*. Ed. Theodor Meron (Clarendon Press: Oxford, 1984) 125-126.
[4] Para 31. Updating of the Report on Slavery submitted to the Sub-Commission in 1966; Report by Mr. Benjamin Whitaker, Special Rapporteur. Commission on Human Rights, E/CN.4/Sub.2/1982/20/Add.1/7July 1982.
[5] Ibid., para 72 and 73
[6] Sisonke Msimang, AIDS and Feminism, 2002 AWID Forum Plenary, see full text at http://www.awid.org/forum/plenaries/AIDS_and_Feminism.html
[7] Ibid.
[8] The Federal Government of Canada has introduced a compassionate leave policy allowing paid workers with at least 600 hours and a doctor's certificate to prove their relative is dying, with a six months leave for that person on partial salary. http://www.fin.gc.ca/budget03/brief/briefe.htm
[9] According to UNICEF, children are being pulled out of school to care for their AIDS-stricken families. In Zimbabwe 70 per cent of these are girls. Out of school a girl's vulnerability is compounded as she is cut off from information and skills, and doesn't learn to fend for herself, economically or socially. http://www.unicef.org/aids/index_hivaids_girls_women.html

Marriage and its Meanings

Donna J. Sullivan

"Religion in America takes no direct part in the government of society, but it must be regarded as the first of their political institutions."

Alexis de Tocqueville, 1831

"Our nation must defend the sanctity of marriage."

U.S. President George W. Bush, 2004

The U.S. Marriage Wars

In January 2004, U.S. President George W. Bush announced that he would reinforce government programs to promote marriage, especially among low-income couples, by increasing funding for pro-marriage programs from 6 million in 2003 to USD 1.5 billion over the next 5 years. The announcement was widely viewed as a holding measure in response to calls by conservative Christian groups for a constitutional amendment prohibiting same-sex marriage, following a November decision by the highest court in Massachusetts that upheld the right of lesbian and gay couples to marry under that state's constitution.

In his January State of the Union speech, Bush also argued that some judges "have begun redefining marriage by court order, without regard for the will of the people and their elected representatives. If judges insist on forcing their arbitrary will upon the people, the only alternative left to the people would be the constitutional process. Our nation must defend the sanctity of marriage."[1] Bush's marriage promotion initiative was clearly tied to demands by the religious right to 'protect' the institution of traditional marriage from 'erosion' by same-sex marriage. But it also provides a vehicle for channeling public funds to conservative, primarily religious, organizations and expanding their influence in government policy-making, as well as local community affairs.

Within days of Bush's comments, the Massachusetts Supreme Court clarified its original opinion and held that civil unions are not an acceptable alternative to full-fledged marriage. The Court noted that the state constitution would not acknowledge 'separate but equal' solutions to claims for equality. Bush soon condemned the opinion as the appropriation of political decision-making processes by activist judges.

At the federal level, legislation adopted in 1996 during the Clinton Administration prohibits federal recognition of gay marriages. Titled the *Defense of Marriage Act*, the legislation also releases states from any obligation to recognize same-sex marriages performed in other states where they might be legal. On February 24, Bush called for an amendment to the Federal Constitution that would ban same-sex marriages, arguing that an 'activist' judiciary and rebellious city officials had left no alternative. Legal observers and human rights activists concur that the amendment process, designed to be a difficult one, faces significant political obstacles. An amendment would have to be passed first in both houses of Congress by a two-thirds majority and then in three-fourths of state legislatures (38 of the 50 states). The current Congressional draft amendment would ban same-sex marriage but permit states to recognize same-sex civil unions. Republicans appear far short of the two-thirds majority required for Congressional approval. Public opinion polls suggest that while opposition to same-sex marriage is widespread (at more than 50% of those surveyed in all polls); opinion on a constitutional amendment is more evenly divided, reflecting a reluctance to enshrine status-based discrimination in the federal constitution.

In this debate, traditional gender roles in the family, government institutionalization of heterosexual privilege, and the role of religion in U.S. public life are being contested. For social conservatives and the religious right, contesting the meaning of marriage is both a strategic choice for re-defining economic and social policy and the function of religion within public institutions, *and* an effort to have specific religious beliefs adopted by U.S. society as a whole. For the mainstream lesbian and gay movement, contesting the meaning of marriage is both a strategic choice for securing civil rights *and* an effort to take on a normative cultural, political and legal identity within U.S. society.

The battle over same-sex marriage and the Bush marriage promotion program represent strategic deployments of marriage as an institution and an ideological construct. But the marriage wars arise from deeper currents of change in the role of religion in the U.S. public policy and the privatization of public services, as well as ongoing re-configurations of gender roles. In addition, the meanings of marriage are shifting within some religious communities, in response to which same-sex couples have sought and achieved varying degrees of recognition of their committed relationships as spiritually valid unions.

Bush and His Allies at Work: Promoting Marriage, The Privatization of Public Services and Sectarian 'Partnerships' With Government

The Bush Administration has cast marriage promotion programs as a means of restoring traditional gendered marriage to its central place in an idealized social and political order, within which a specifically Christian model of marriage serves as the incubator of public morality and citizenship values. As feminist historian Nancy Cott has documented, "a particular form of marriage — monogamy based on a Christian model, with the husband as the primary provider — has been embedded and supported in the national political framework of the United States."[2] In this context the right *not* to marry emerges as an indispensable aspect of the right to marry.

But the marriage promotion programs also advance the Administration's privatization objectives, shifting attention away from the government's failure to generate employment and provide social services onto the responsibility of couples within traditional marriages to meet their own economic and social welfare needs. The marriage promotion programs seek to restore the old economic architecture of marriage, with the husband as an independent provider and the wife as a labor and reproduction resource for the household – serving and caring for the needs of her husband and dependent children or other relatives. As Duggan observes:

> [M]arried-couple households might 'relieve' the state of the expense of helping to support single-parent households, and of the cost of a wide range of social services, from childcare and disability services to home nursing. Marriage thus becomes a privatization scheme: individual married-couple-led households give women and children access to higher men's wages, and also 'privately' provide many services once offered through social welfare agencies.[3]

The introduction of marriage promotion and abstinence-only programs into welfare funding is, in part, the outcome of focused efforts by conservative foundations, which have conceptualized and financed the public presentation of right-wing views on marriage for the past 10 years. By dedicating resources to the promotion of neoconservative views in mainstream academia, think tanks and media – and to the proliferation and growth of conservative think tanks – these funders have generated a stream of reports, articles, books, radio and television interviews, speaking engagements and newspaper commentaries that set forth social policy rationales for conservative Christian views on sexuality and marriage.[4]

The Independence of the Judiciary Under Attack

The U.S. Constitution establishes the formal separation of church and state. It is often cited as the framework for a secular state which permits but does not participate in, or privilege, the expression of religious belief. However, this boundary between religious authority and the state has proven permeable. In practice, the relationship between religious institutions and state authority, and the level of religious influence on public policy in the U.S. hinges on the willingness of the judiciary to restrain specific government action that promotes religion or infringes the expression of minority religious beliefs.

The courts have exercised varying degrees of rigor in protecting against government promotion of religion. The law is at present a patchwork characterized by unclear standards, particularly as regards state regulation of religious institutions and extent to which they are subject to the same requirements as secular organizations. For example, 'charitable choice' provisions in state and federal law have been interpreted to allow government-funded Catholic hospitals to deny services to which they object – contraceptive or abortion services – even where they are the only hospitals in the area serving low-income citizens, and where a pregnant woman's life or health is in danger. Religiously-based views have figured in a range of decisions restricting rights related to sexuality, including the 1986 U.S. Supreme Court decision upholding the criminalization of private consensual sex between adults of the same sex.[5] And historically the courts have for the most part reserved protection against government interference with religious practices to Christianity, the dominant religion.

"This is not just about sodomy and sexuality and sexual freedom. There is not exactly a lot of religious freedom going around for religious people who are not Christian, nor for Christians who are differently Christian - never mind for people who are not religious at all. What religious freedom in the U.S. context currently means is the freedom to act Protestant, even when you're not...."

Ann Pelligrini, Associate Professor of Religious Studies and Performance Studies at New York University, WHRNet Perspective, April 2004

Nonetheless, the judiciary remains the most reliable defender of the separation of secular and religious authority in the U.S. in the current climate of public support for direct religious influence in public policy. In a recent decision, for example the California State Supreme Court held that Catholic Charities, an official part of the Catholic Church, cannot refuse medical insurance coverage for birth control under the drug benefits plan it offers to employees, notwithstanding its religious objections to contraception.[6]

In July 2003, the U.S. Supreme Court reversed its prior decision on sodomy laws. In *Lawrence v. Texas* it held that laws criminalizing consensual sexual intimacy by same-sex couples, but not identical behavior by different-sex couples, violate the right to privacy. Moreover, in the Massachusetts Supreme Court decision recognizing same-sex marriage, the Court rejected the argument that such laws can be justified as the expression of sincerely held religious views, concluding that those who hold such beliefs may not "use the power of the State to enforce these views on the whole society through operation of the criminal law." And the Massachusetts Supreme Court decision has antecedents: in 2000 the Vermont Supreme Court required the state to "extend to same-sex couples the common benefits and protections that flow from marriage under Vermont law"[7] and in 1993 the Hawaii Supreme Court held that the prohibition of same-sex marriage appeared to be unconstitutional. [8]

Bush's characterization of the Massachusetts decision as the preying of rogue judges aroused a long-standing conservative rallying cry against the courts as usurpers of the democratic process. Similar attacks have been launched against the judiciary for upholding reproductive rights. In the 1950s, 60s and 70s the same charge was leveled against U.S. federal courts for striking down the legal apparatus of racial segregation. Bush and the religious right have sought to re-frame the question of same-sex marriage as a question of democratic process, arguing that the courts have overridden the will of the people.[9]

By questioning the legitimacy of the courts' authority to decide what rights are protected by federal and state constitutions, the Bush Administration hopes to draw attention away from the reality of this social change. Attacks on the judiciary also aim to prevent rights talk from taking root in public consciousness. The apocalyptic tone of these attacks reflects a religious narrative in which the processes of social change are a war between Good and Evil: Sandy Rios, president of the neoconservative group Concerned Women for America, said "if the court is allowed to get away with these decisions with no accountability, it is the beginning of the crumbling of our democracy."[10]

Although these demonstrate that public opinion can be

mobilized by a distrust of the judiciary, they also present a fundamental challenge to human rights and democratic institutions. A primary function of courts in a democratic society is to uphold human rights even in the face of widespread public opposition. As the Massachusetts Supreme Court stated: "[t]hat there may remain personal residual prejudice(s) against same-sex couples is a proposition all too familiar to other disadvantaged groups." Moreover, it insists "that such prejudice exists is not a reason to insist on less than the constitution requires."[11] When the U.S. Supreme Court struck down all laws banning interracial marriage in 1967, 16 states prohibited interracial marriage.[12] Disapproval of interracial relationships was long justified as divinely ordained and 1968 public opinion polls indicated that 72% of Americans disapproved of interracial marriages. Another poll in 1991 found that 42% of Americans continued to disapprove of such marriages.

Attacks on the courts for upholding non-majoritarian rights are one of several assaults on the independence of the judiciary. The integrity of the judicial process is seriously threatened by the sweeping changes instituted by post-September 11 legislative and administrative measures. U.S. courts have historically tended to defer to government's use of national security rationales for denying human rights. The extent to which the courts will yield their institutional responsibility to uphold the rule of law before the juggernaut of national security will be decided in several pending cases related to the so-called 'war on terror.'

As the Bush Administration attempts to determine the role of religion in a reconfigured Iraqi legal system, the domestic reality verges farther and farther from the constitutional vision of a state which does not allocate rights on the basis of religious views. Efforts to undermine the institutional role of the courts and the expansion of religious influence in U.S. public policy underscore the lesson women have learned in other contexts – the struggle for the rule of law is an open-ended process.

The Multiple Meanings of Marriage

When Bush announced his support for a constitutional amendment prohibiting same-sex marriage, he characterized marriage as the "most fundamental institution of civilization" and asserted that "[t]he union of a man and woman is the most enduring human institution, honored and encouraged in all cultures and by every religious faith."[13] This ahistorical and culturally shortsighted comment exemplifies the use of marriage – and claims about its meaning – as a vehicle for conservative Christian political objectives.

In fact, as Nancy Cott explains: "what we [in the U.S.] think of as the 'traditional' form of marriage did not come into shape at the beginning of the Christian era, but rather between the 16th-18th centuries. It was only then that marriage derived from Christian assumptions about consent and faithful monogamy, but authorized and controlled by civil authorities instead of by the church, became the norm."[14] The Christian doctrine in which U.S. marriage law is rooted held marriage to be exclusive and permanent, and sought to restrict expressions of sexual desire to marital relations. Historian James Brundage suggests that "virtually all restrictions that now apply to sexual behavior in western societies stem from moral convictions enshrined in the medieval canonical jurisprudence" of the Catholic Church.[15] Christian beliefs about marriage were embodied in English common law, from which they were transposed into the legal systems of the U.S.

Christian doctrine on marriage and sexuality was instituted in U.S. law despite the constitutional mandate for separation of church and state. The constitutional guarantee of religious freedom similarly failed to protect against the imposition of Christian beliefs about marriage onto other religions traditions. The U.S. forced Native Americans to abandon their traditions of multiple marriages and required Mormons in Utah to abolish polygamy as a condition of the state's admission to the federal union. In the 19th century, U.S. missionaries working abroad similarly sought to replace existing marriage practices with Christian monogamy.

Bush's remarks on the historical pedigree of traditional marriage may represent an attempt to rally social conservatives from other religious traditions against same-sex marriage, but his is a culturally specific vision. Increasing religious diversity in the U.S. poses a challenge for Christian conservatives who seek to promote their beliefs through public policy. Tactical alliances on particular issues like same-sex marriage may be possible. But many Christian conservatives call on law and policy-makers to affirm that the U.S. is a Christian nation. The reality of these theocratic tendencies and the high level of hostility and racism toward Muslims in particular, may limit the success of efforts to build alliances among conservatives in different religious traditions.

The religious values underpinning U.S. marriage laws co-exist with secularist principles. U.S. law adopted the English, specifically Protestant Christian, view of marriage as a civil matter rather than a sacrament.

Marriage is a public institution historically regulated by state officials. Civil marriage creates status-based protections, benefits and obligations including economic, family, property and immigration rights. It remains distinct from religious marriage, although secular and religious ceremonies overlap in practice. The state recognizes the civil validity of marriages performed by religious authorities, as long as those ceremonies meet civil law requirements (such as minimum age and consanguinity). However, the rules of civil marriage and religious marriage diverge in instances. Religious requirements may be more restrictive than those of the state – rejecting interfaith marriages or remarriages after divorce – while some are more permissive – recognizing same-sex unions.

Pro-marriage activists in the lesbian and gay community have emphasized the civil rights consequences of marriage. The advocacy organization Freedom to Marry, for example, refers to marriage as "the legal gateway to protections, responsibilities, and benefits, most of which cannot be replicated in any other way" and notes that exclusion from marriage reinforces the "legal and cultural second-class status" of all lesbians and gay men.[16] Legal arguments for same-sex marriage characterize the exclusion as status-based discrimination similar to the criminalization of interracial marriage and contradictory to equality guarantees.

Advocates typically link such equality claims to an assimilationist paradigm, in which same-sex couples can be absorbed into normative family structures. The message is "lesbians and gay men are not, *and do not want to be*, different." Organizations active in the pro-marriage campaign, such as Freedom to Marry, Lambda Legal Defense, the Human Rights Campaign, and individual supporters all echo this theme. As the Reverend Dr. Troy D. Perry, founder of Metropolitan Community Churches, explained: "[i]n many ways, my partner Phillip and I are no different from heterosexual couples in our neighborhood. We work our jobs. We pay our taxes. We take part in civic organizations. We attend church on Sunday. We've demonstrated our love and commitment over two decades – much longer than many heterosexual marriages survive."[17]

Support for the marriage campaign is by no means universal in LGBT communities. Critics see same-sex marriage as reinforcing rather than transforming heterosexual norms. According to Judith Butler, "many gay people are uncomfortable with all this, because they feel their sense of an alternative movement is dying. Sexual politics was supposed to be about finding alternatives to marriage."[18] In the face of venomous opposition to same-sex marriage, many LGBT activists feel compelled to back the drive for same-sex marriage as a pivotal civil right. Critical debate about alternative models of state recognition for multiple forms of partnership and family is limited mostly to feminist academic and policy circles and leftist-progressive public intellectuals.

The increase in public tolerance of lesbians and gay men whose public identities closely resemble heterosexual norms may have spurred the pro-marriage movement, since it improves the chances of success for a goal that was clearly unattainable ten years ago. But apart from political opportunity and the legal and social benefits related to marriage, what other motivations are at work in the current movement for same-sex marriage? After all, marriage carries multiple meanings, at the level of individual experience as well as in its collective social, religious, economic and political dimensions. Many activists and same-sex couples who were married in San Francisco and elsewhere have stressed the significance of marriage as an expression of love and commitment. Hartog raises the possibility that the legal changes which have made marriage a more egalitarian institution have made it more desirable to lesbians and gay men.[19]

The mirror image of this possibility is that, as Hartog also suggests:

> There is an important genealogical continuity between those who opposed divorce liberalization, those who opposed varieties of rule changes that enabled wives to claim relative equality with their husbands… and those who today lead the charge against gay marriage.[20]

For some same-sex couples, religious belief plays an important part in their quest to have their relationships recognized as marriages. Within religious communities, lesbians and gay men have been contesting the meaning of marriage for more than a decade. A number of religious communities now recognize same-sex unions, including the Reform and Reconstructionist branches of Judaism, the Unitarian Universalists, Disciples of Christ, United Church of Christ, and the Metropolitan Community Churches. The Episcopal Church has not formally approved same-sex unions but allows individual dioceses to perform them, and the Presbyterian Church permits holy union ceremonies as long as they are not termed marriages.

Religious conviction clearly motivates same-sex couples

who marry, or seek to marry within religious communities. This desire to engage religious beliefs on their own terms raises questions about how human rights activists who are strict secularists relate to the religious meanings of marriage. Feminist and LGBT activists should move beyond broad-brush condemnation of the role of religion in public life to think about religion in new ways.[21]

* The views expressed here are those of the authors and do not necessarily represent the opinion of AWID or WHRNet.

endnotes

1. The texts of Bush's State of the Union address and other remarks quoted in this overview are available at http://www.whitehouse.gov.
2. Testimony of Nancy F. Cott, Jonathan Trumbull Professor of American History, Harvard University In Support of H.3677 (Civil Marriage); H.1149, S.935, and S.1045 (Civil Unions) October 23, 2003, http://www.glad.org/GLAD_Cases/Nancy_Cott_testimony.PDF.
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6. Catholic Charities of Sacramento Inc. v. Superior Court of Sacramento County, Case S099822.
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12. Loving v. Virginia.
13. http://www.nytimes.com/2004/02/24/politics/24TEXT-BUSH.html.
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The International Criminal Court: An Opportunity for Women

Ana Elena Obando

On July 17, 1998 the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court (ICC) approved the ICC Statute. The Court is the first permanent international criminal tribunal to establish individual criminal liability for the commission of international crimes such as genocide, war crimes and crimes against humanity. Years of struggle led to the construction of the ICC, one of this century's most relevant institutions.

The ICC Statute, commonly referred to as the Rome Statute (Rome being where it was signed) is a legally binding instrument for State parties. It contains legal, policy and symbolic opportunities that may advance women's human rights.

On June 23 of this year, the Office of the Prosecutor, headed by Dr. Luis Moreno Ocampo, announced the beginning of formal investigations by the ICC into the situation in the Democratic Republic of Congo (DRC). The Office of the Prosecutor will investigate crimes under the jurisdiction of the ICC committed in DRC territory since July 1, 2002 (the date the Rome Statute entered into force). The reports brought to the Court focus in large part on the rape, torture, forced displacement and illegal recruitment of child soldiers in the DRC. The armed conflict between rival groups has resulted in the death of at least 6 million civilians since the 1990s. Most of these deaths resulted from the mass assassinations and summary executions initiated in 2002. After new outbreaks in violence in May of this year, a further thirty-one thousand people have abandoned their homes to find refuge in Burundi. [1]

In this case, using the Rome Statute, crimes against women must be treated and prosecuted to the fullest extent of the law. This is precedent-setting ICC investigation and it will inform the weight given to rape and sexual violence in war situations in the future.

Why does the ICC matter?

The creation and implementation of the International Criminal Court is a great legal-political step in the international community's efforts to end global impunity. It provides an opportunity to guide national legal systems towards a gendered justice and respect for human rights. This legal instrument codifies the investigation and prosecution of gender crimes against

women; it establishes the right of victims to protection and participation in some stages of the process; and it recognizes their right to restitution, compensation and rehabilitation. Perhaps most importantly, the Rome Statute creates a new paradigm of justice within international law that symbolizes the construction of peace, rather than the sanction of war.
For their own convenience, many states have not ratified the ICC. The United States, for example, went so far as to threaten to withdraw military assistance from states that ratified the ICC without signing a bilateral agreement (with the U.S.) not to extradite American citizens before the Court.[2] To counter the political and economic power of countries that have not ratified the Rome Statute, therefore, states must incorporate the international criminal law norms into national legal systems.

Our legislatures' failure to adopt these standards threatens the principle of complementarity[3] and leaves us in the hands of an often sexist national justice. A key strategy for influencing national law on these issues therefore includes lobbying for domestic measures that incorporate the progressive recognition of, participation in and protection in proceedings for victims of the ICC, as well as the sexual and gender crimes as outlined by the Rome Statute.

"If governments have ratified the ICC, then women's organisations can work on national implementation of the ICC. There are many possibilities if we take a lateral approach to the relevance and meaning of the ICC for national justice and human rights movements. Obviously national implementation relates directly to relevant domestic legislation for the crimes annunciated in the Statute—genocide, crimes against humanity, and war crimes.

But implementation is also an opportunity to remind our governments of their responsibility in not only responding to violence against women once it has occurred, but their responsibility to prevent violence against women whether in wartime or peace."

Brigid Inder, Executive Director, Women's Initiatives for Gender Justice ,WHRNet Interview, August 2004

Sexual and Gender Crimes

On July 17, 1998 the Rome Statute made great strides in codifying rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and other forms of sexual violence that are breaches of the Geneva Conventions as war crimes (Article 8). These crimes and sexual abuses were also finally recognized as crimes against humanity in the Statute (Article 7). Sexual and gender violence therefore are now treated as equally criminal and serious as homicide, torture, inhumane treatment, mutilation, slavery, etc.

As a result, the Statute is redefining how the law interprets 'new' sex crimes against women.[4] For example, many of the crimes listed under the Rome Statue were not specifically recognized by the Military Tribunals of Nuremburg and Tokyo in 1945-6.[5] Law No. 10 of the Local Council, which regulated the trials of low-level Nazis, recognized rape as a crime against humanity. No one, however, was tried for rape. The Tokyo Tribunal did use evidence of rape to support other charges of war crimes and crimes against humanity since rape, in one charge, was recognized as a serious violation of the laws and applicable customs in international armed conflicts.[6]

In the statutes for the international criminal tribunals for the former Yugoslavia and Rwanda (1993 and 1995), rape was considered as more significant than a serious crime[7] or a violation of the laws or customs of war. Instead it was recognized as a crime against humanity.[8]

Through these tribunals' case law however, as a result of pressure from the women's human rights movement and women judges and prosecutors conscious of gender, rape and other forms of sexual and gender-based violence have been legally recognized among the most serious and major of crimes (Bedont and Hall-Martínez, 1999). This was established in the 1998 Akayesu case (Rwanda) where the rape and sexual mutilation of Tutsi women was considered a form of genocide and, where rape was defined as "a physical invasion of a sexual nature, committed under coercive circumstances".[9]

In fact, the Trial Chamber of the Akayesu case found that when rape was used as a method to destroy, or cause physical and mental damage to a group or members of group, it constituted genocide. Likewise, it decided that rape can be used as a method of birth prevention within the said group. For example, where ethnicity is determined by the father, raping women with the

intention to impregnate prevents women from giving birth to a baby that shares their ethnicity.[10]

Taking Note of Case Law

The interpretations of sexual violence used in international law are essential to global women's human rights activism. Case law of the Tribunal of the former Yugoslavia has had national implications for legal bodies, such as its judiciary. The case known as Foca[11] established that "the forms of forced sexual penetration perpetrated on women with the purpose of interrogating, punishing or exercising coercion constitute torture, and sexual access to women, exercised as the right of property, constitutes a form of slavery under crimes against humanity."[12] Following this line of jurisprudence, this same tribunal found Kunarac, Kovac and Vukovic guilty of torture and rape, which were recognized as crimes against the laws and applicable customs of international armed conflicts, and torture. Rape and slavery were categorized as crimes against humanity.

In the case known as Kunarac, the Appeals Chamber confirmed the judgment of the Trial Chamber.[13] The Trial Chamber had considered the principle issue in this case to be the exercise of slavery through the sexual exploitation of women and girls. Extreme and repeated acts of sexual violence were the most obvious exercise of the military power and/or ownership.[14] According to the Trial Chamber, to define a form of slavery, the factors or indications of slavery must be taken into account, such as: "control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour".[15]

As for the sexual nature of slavery, the ICC Statute states that the perpetrator, in addition to exercising the right to property over one or more persons, must also have violated the person or persons in one or more acts of a sexual nature. The Chamber found that clear lack of consent for sexual activity could be proven in the absence of evidence of force was used. A strict requirement of force or threat of force in rape cases could allow perpetrators to evade their responsibility for sexual crimes committed without physical force but under coercive circumstances, for example, rape in detention. Similarly, in some domestic rape cases, it is not necessary to use weapons or physical force to demonstrate force as required to prove the crime. For example, a threat could serve as an indicator of force insomuch as there is reasonable possibility that the perpetrator will act on that threat.[16]

The Appeals Chamber also concluded that:

> The *actus reus* of the crime of rape in international law is constituted by: sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.[17]

The Court Statute incorporated many of these elements into its definition of rape. It used the broader term "invasion" as opposed to "penetration".[18] Invasion includes not only the penetration of a sexual organ, but also any type of sexual abuse carried out with objects or various parts of the body. The broadness of this definition is crucial for advocacy with respect to much Latin American legislation where rape is still defined as "carnal access," reducing it to vaginal penetration with the male sexual organ.

Rape as an Act of Torture

The Appeals Chamber considered that torture "is constituted by an act or an omission giving rise to 'severe pain or suffering, whether physical or mental.' There are no other specific requirements. This allows for a more exhaustive classification and enumeration of acts recognized as torture. Existing case-law has not determined the absolute degree of pain required for an act to amount to torture."[19] The Trial Chamber went further and took suffering as fact without a medical certificate; thereby establishing that sexual violence created serious pain and suffering, whether physical or mental. That is, once rape is proven, also proven is torture, because rape necessarily contains that pain and suffering. In this way the Chamber justified the characterization of rape as an act of torture.[20]

The definition of torture as a war crime or crime against humanity in the Rome Statute differs from that in the *Convention against Torture and Other Cruel, Inhumane or*

Degrading Treatment or Punishment (CAT), as it does not require that the torture be committed for a particular reason, such as to obtain a confession, or that it be committed by an official. Rather, torture can be committed by non-state perpetrators, a phenomenon that disproportionately affects women. This interpretation could provide an opening in national courts through asserting that other types of violent acts committed against women, like domestic violence or incest, also constitute torture.

This case law and the judicial implementation of the Court Statute have useful implications for our legal systems, substantively and procedurally. The Kunarac case not only clarifies legal concepts such as consent, force or threat of force, various forms of control, it also serves as an example that interpretation can be broadened regarding sexual and gender violence against women. These can be valuable should they be incorporated into each of our respective domestic legal systems. Adopting definitions that reflect the highest standards of international law, whether from the ICC Statute or from other international instruments, as well as the use of the ICC itself may prove strategic for strengthening and modernizing state criminal legislation. Efforts in this direction might be especially effective for states that have signed the Rome Statute.

The Statute also provides for a Victims and Witnesses Unit within the Registrar of the Court to advise and assist the Prosecutor and the Court on adequate measures of protection and security, above all when witnesses may be in danger as a result of their testimony. Moreover, it is salient that the Unit must include experts in sexual violence trauma on staff.

To guarantee the prosecution of sexual crimes and victims' protection and participation, the Statute provides for a balanced representation of judges, including both men and women, and jurists specializing in violence against women and children (art. 36). Moreover, the ICC has seven female judges from different regions. The Prosecutor has the power to name special advisors on issues like sexual violence, gender-based violence and violence against children, and the Registrar has the option to hire special personnel to attend to victims of trauma due to sexual violence. Not only is sexual violence being seriously investigated, but victims are being treated accordingly, based on their individual needs, which is rare at the national level.

The Promise of the ICC

For the Rome Statute to be transformative, State Parties that have ratified it must adopt national legislative measures in full cooperation with the Court. The benefits of national implementation are two-fold: for State Parties to cooperate with the actions of the Court, and for local jurisdiction to be exercised over crimes for which the Court has complementary jurisdiction. In the first case, given that the Court does not have a police force or prisons, it relies on national bodies for law enforcement services and facilities, making it necessary that each state adopts legislation that criminalizes any efforts to impede the ICC's administration of justice, whether through obtaining evidence, executing search warrants, searching and seizing, arresting and surrendering of persons, immunities for officials of the ICC, and dispositions on sentences and their enforcement.

Secondly, given the complementary character of the ICC, states will have the primary responsibility to investigate and judge the alleged crimes defined as laid out in the Rome Statute. On implementing complementarity, State Parties legislate on command responsibility, individual criminal liability, execution of sentences, immunities, and define in their domestic legislation under the ICC's complementary jurisdiction.

The ICC has the potential to contribute to the creation of a state of transformative law that provides justice to the thousands of victims of crimes committed globally. Potentially, it can foster dialogue, tolerance, solidarity and the development of a culture of peace and respect for human rights. The responsibility of its implementation rests with each and everyone one of us.

endnotes

[1] http://www.hrw.org For more information see http://www.iccnow.org

[2] For more information on the progress of ratifications, activities related to the Criminal Court, visit the Coalition for the International Criminal Court web site: http://www.iccnow.org

[3] In accordance with the principle, State Parties have the primary obligation to try these crimes. The ICC will exercise its jurisdiction over crimes of genocide, crimes against humanity and war crimes when the competent State Parties cannot or do not try these crimes in accordance with Article 17.

[4] According to Human Rights Watch in "Making The International Criminal Court Work, A Handbook for implementing the Rome Statute", September 2001, Vol. 13, No. 4(G), "Although none of these acts are 'new' crimes, the Rome Statute is the first treaty to contain such an extensive list of crimes of sexual violence. For example, article 4(e) of the Statute of the ICTR prohibits 'rape, enforced prostitution, and any form of indecent assault.' [These crimes] are prohibited under Geneva Convention IV article 27, and Protocol I, article 76(1), but are not expressly listed as grave breaches. Article 32 of the IV Geneva Convention prohibits any 'measure of brutality whether applied by civilian or military agents.' Protocol II, article 4(2)(e), prohibits 'outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault.' Article 4(2)(f) prohibits 'slavery and the slave trade in all their forms.' Rape was prosecuted as a war crime by the International Military Tribunal for the Far East in the Tokyo trials."

endnotes

[5] Jurisdiction in the Nuremberg and Tokyo Military Tribunals included physical persons as subjects of international criminal liability and not states, regardless whether they planned, instigated, ordered or executed any of the crimes under the competence of either tribunal.
[6] See the article written by Jennifer Green et al., "Affecting the Rules for the Prosecution of Rape and other Gender-based Violence before the International Tribunal for Former Yugoslavia: A Feminist Proposal and Critique, Hastings Women´s Law Journal, University of California, Volume 5, N.2, Summer 1994.
[7] In keeping with the Geneva Convention, under Article 147 of IV Geneva Convention, the doctrine and case law that form part of customary international law have interpreted rape as torture or as the deliberate infliction of great suffering that seriously threatens physical integrity and health.
[8] Statute of the Tribunal of Yugoslavia, art. 5 (g); Statute of the Tribunal of Rwanda, art. 2 (g).
[9] Prosecutor v. Akayesu, Case ICTR-96-4-T, Resolution, 2 Sept 1998, para. 597. This definition of the elements of rape was adopted by the Trial Chamber of the ICTY in Prosecutor v. Delalic et al., Case IT-96-21-T, Resolution, 16 Nov. 1998, paras. 478-9. This was also the true of the 1998 Celibici 32 Case (Yugoslavia) where rape was prosecuted as an act of torture and other inhumane acts. (Original citation in Spanish)
[10] Amnesty International, "The International Criminal Court", Fact sheet 7, Ensuring Justice for Women, 4-08-00.
[11] From April 1992 to February 1993, in the armed conflict between the Bosnian-Serbs and the Muslim Bosnians in the area of Foca, non-Serbian civilians were murdered, raped and abused as a direct result of the conflict. The three accused soldiers took active part in this systematic attack. One of the targets of the ethnic cleansing campaign against the non-Serbian population was Muslim women, who were detained and abused in multiple ways and repeatedly raped.
[12] Viseur-Seller, Patricia, Gender-Based Persecution, United Nations, Expert Group Meeting on Gender-based Persecution, Toronto, Canada, 9-12 November, 1997, EGM/GBP/1977/EP.3, November 6, 1997.
[13] These considerations can be found on the United Nations web site, International Tribunals section. Each one has an assigned paragraph to which I refer in each note, but all are from Trial Chamber II, 22/2/01, IT-96-23, Press Release N. 566 and Appeals Chamber, 12/6/02, IT-96-23/1, Press Release. N. 679.
[14] *Ibid.* Para. 554, Trial Chamber.
[15] *Ibid.* Para. 119, Appeals Chamber judgment.
[16] *Ibid.* Para. 129, Trial Chamber judgment.
[17] *Ibid.* Para. 127, Appeals Chamber judgment.
[18] International Criminal Court Statute, A/CONF.183/9, July 17, 1998, Rome, Italy. See sexual crimes in Article 7(g), Article 8 (b) (xxii), 8(e) (vi) of the Statute.
[19] Appeals Chamber, 12/6/02, IT-96-23/1, Press Release. N. 679. Para. 149, Appeals Chamber judgment.
[20] Trial Chamber II, 22/2/01, IT-96-23, Press Release N. 566. Para. 205, Trial Chamber judgment.

Not the only way: Dr. Hashmi's hold on Pakistani women

Eman Ahmed

The 'Farhat Hashmi phenomenon', as the Pakistani press have dubbed it, is an intriguing social movement. Farhat Hashmi is a religious teacher increasing in popularity amongst educated, urban, upper-middle class and upper class women. True, there are other fundamentalist women religious leaders in Pakistan and around the globe. But Farhat Hashmi is not a politician, and her aspiration is not political power. Her agenda is as subversive as the feminists: to bring about social change.

Set-up in 1994, Al Huda International is an Islamic institute that aims to promote "purely Islamic values and thinking."[1] Headed by Dr. Hashmi, a PhD from the University of Glasgow, the institute (which roughly translated means 'The Way') offers various courses, among others, in Quranic interpretation, Islamic jurisprudence, and Arabic grammar through correspondence, evening courses for working women, and summer courses for school children. The Institute also has a marriage bureau, and is involved in social welfare activities, namely providing religious education in the rural areas. The Institute is fast-growing with eight branches worldwide, including one in the US and UK.[2] In 2002 in Karachi, 1,200 women signed up for the year long course on Quranic interpretation; a lecture of Farhat Hashmi's can draw a crowd of 10,000 women.[3]

At first glance, Dr. Hashmi is a refreshing change as she encourages women to read and understand the Quran for themselves. She challenges the ulema's[4] interpretation of Islam for women: "I am not prepared to take dictation from the ulema and teach their version of Islam." A threat to the male dominated realm of religious discourse, and her institute's power to divert funds away from other religious parties, have Dr. Hashmi less than popular in the mullah community. Enraged they have labeled her a 'plant of the Jewish lobby to influence the women of high society in Pakistan.' In a country where women's rights are curtailed in the name of 'religion', Farhat Hashmi is a woman well versed in the Quran and has the potential to beat the maulvis[5] at their own game.

A woman, a scholar and an ally?

Dr. Hashmi is a woman and an expert in the Quran, but is she using this to benefit women's lives? She is quoted to have said that women should let their husbands marry a second time so "some other sister can also benefit."[6] She is covered from head to toe and encourages her students to do likewise. While being covered is not mandatory for attending her classes, according to Hashmi, women adopt this dress once they have read the Quran: "They find that this clothing protects them from the evil eye, and women are required to cover all beauty under the teachings of Islam."[7] Her brand of Islam is as retrogressive as the mullahs. Still, because she is educated, speaks out against the religious right and is a woman, women find her teachings more acceptable and legitimate.

Religion may indeed be the opiate of the masses but in this case the masses are not the target of Hashmi's conversions. The majority of her students is 'westernized', English

speaking, educated and have traditionally been the torch bearers of the women's movement. "If I had started with the under-privileged my message would have been restricted only to them; they would not have been able to influence other sections of society." "…I come from an urban and academic background, so it makes more sense for me to convey my message to people from a similar background..." [8]

Acutely aware of the background, education, and western exposure of her students, Hashmi communicates in English and Urdu and uses the tools of modernity to transfer her message. At the institute, and through the its on-line shopping feature, hijabs, Quranic translations by Hashmi, lectures in print and on audio cassettes, CDs, and DVDs are available for sale. The website features downloadable Hashmi lectures, Al-Huda student chat sessions, and on-line religious education classes. On her television show she sits in front of a computer clicking away at the mouse while answering questions from an all female audience.

"I… find the very generalized use of the term 'fundamentalism' unhelpful because it is used as a catch-all for all kinds of groups and situations that may be quite different one from the other. This obliterates historical and/or contemporary specificities within countries, communities or regions that give rise to such groups and forces, erroneously suggesting there is only one specific problem that needs to be addressed and that too through a singular strategy."

Farida Shaheed, Sociologist and activist, Shirkat Gah - Women's Resource Centre, Pakistan and the Women Living Under Muslim Laws (WLUML) International Solidarity Network, WHRNet Interview, November 2003

Some say that Farhat Hashmi is a passing fad—the women who attend her classes are socialites bored of coffee parties. Others say the renewed interest in religion and her rising popularity is 'a cleansing issue' or an attempt by the corrupt elite to redeem themselves through religion. Hashmi says people often turn to religion in despair:

> The expectations of Pakistanis have not been fulfilled in our 50-odd years of independence… There is a feeling of betrayal and despair. Even political Islam has not been able to address people's grievances...There is a search for direction, for guidance.[9]

In reality, the Farhat Hashmi phenomenon is directly related to the rise of fundamentalism within Pakistan, the resistance to it by the women's movement and in the process an abdication, by the feminists, of religious discourse.

The rise of politico-religious fundamentalism in Pakistan is due, in part, to the ripe global geo-political climate — and in part, to the export of a Saudi/Wahabi strand of Islam which has claimed its primacy as the official Islam. During the late seventies a number of Muslim countries were in the midst of political turmoil. In Iran a secular monarchy was overthrown by Shia religious clerics; Saddam Hussain seized power in Iraq; Afghanistan was invaded by the Soviet Union; in Pakistan the military dictator Zia-ul-Haq started his process of Islamization; and in Saudi Arabia, outrage over the royal family's decadence prompted a violent occupation of the Kaaba by Sunni religious extremists. Moreover, the success of the Iranian revolution and the revolutionaries call to do away with all monarchies, labeling them un-Islamic, presented a severe subversive threat to the House of Saud. In an effort to appease the religious conservatives at home and to counter the threat of Shia Islam and the Iranian revolution, Wahabi clerics were given more influence within the kingdom and authorized and supported by the monarchy to spread their hard-line brand of Islam abroad. The 'Muslim World' became the battle ground for a proxy war between Shia and Wahabi Islam.

Against this backdrop, Saudi money and religious ideology made its presence felt in Pakistan. The proliferation of religious seminaries funded by quasi-Saudi governmental organizations, coupled with Zia's Islamization drive, established Wahabi Islam as the official/high Islam. Under Zia-ul-Haq, a series of rigid and gender-biased 'Islamic' laws were instituted—Zina Ordinance, a part of the Hudood Ordinance, Qisas and Diyat Laws—that eroded women's legal rights, curtailed their freedom of movement, and banished them from the public space by making it difficult for them to participate in activities outside their house. For example, in an effort to fight 'obscenity', directives were issued by the Zia government requiring all female government employees, teachers, and students to dress in an Islamic manner and cover themselves with a chador. Not only did the government enforce policies curtailing women's rights, it

encouraged non-state entities to ensure these policies were followed. There were numerous reports of women being beaten in public because they had not covered their heads; and women being stripped naked and publicly paraded in order to be 'taught a lesson'. Ironically, it was Zia's Islamization process that galvanized the women's movement and caused it to gain momentum in the 1980s. With the formation of the Women's Action Forum in 1981, an umbrella organization that brought together various activists and groups, the women's movement became confident, forceful, and vocal in its protest against Zia-ul-Haq and his policies. Since the policies being protested were said to be Islamic and the ideology of the women's movement was secular, the women's movement was seen as anti-religion, and by extension, anti-Islam. This perception was, and is, further strengthened by the conscious approach adopted by the women's movement to base its resistance on the principles of human rights, rather than within religious frameworks.

Between the maulvis' retrogressive and patriarchal brand of Islam and the women's movements' reluctance to enter into a religious discourse, Pakistani women keen on engaging with religion in a progressive manner are alienated. Moreover, the general demonizing of Islam by the western media, after the end of the cold war, in an effort to find a new 'other', the faith-based massacre of Muslims during the third Balkan war and the failure of the international community to respond, prompted a renewed awareness of religion and in some cases has radicalized the middle and upper classes.

More and more women (and men) worldwide are looking to learn about, understand, and engage with religion. In a post- 9/11 world, religion is no longer only personal. My experience suggests that limiting its space within the women's movement, and the larger human rights struggle, alienates potential supporters of the movement and contributes to the popularity of the likes of Farhat Hashmi. And while most involved in the women's movement are not theologians, and are not equipped to enter into a religious dialogue, we can increase our efforts to support and work with liberal, female Islamic theologians who are feminist. Just as the secular ideology of the women's movement is not an attack on religion, a willingness to work within a religious framework does not undermine the principles of women's human rights. This is not an either/or situation. To be inclusive and expansive, human rights must work with religion. Indeed, especially as the war is being waged on many fronts.

endnotes

[1] Al-Huda International. AL-Huda At A Glance. As viewed on September 13, 2004. <http://www.alhudapk.com//home/about-us/>
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[3] Ali, Sahar. "Pakistan women socialites embrace Islam". BBC News. As viewed on September 11, 2004.<http://news.bbc.co.uk/2/hisouth_asia3211131.stm>
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[5] Maulvi is the vernacular for Imam, or a similar Islamic religious leader.
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*** About AWID...**

The Association for Women's Rights in Development is an international membership organization connecting, informing and mobilizing people and organizations committed to achieving gender equality, sustainable development and women's human rights. A dynamic network of women and men, AWID members are researchers, academics, students, educators, activists, business people, policy-makers, development practitioners, funders and others, half of whom are located in the global South and Eastern Europe.

AWID's goal is to cause policy, institutional and individual change that will improve the lives of women and girls everywhere. Since 1982, AWID has been doing this by facilitating on-going debates on fundamental and provocative issues as well as by building the individual and organizational capacities of those working for women's empowerment.

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About WHRnet.org

Founded in 1997, WHRnet provides reliable, comprehensive, and timely information and analyses on women's human rights in English, Spanish and French. WHRNet updates readers on women's human rights issues and policy developments globally, and provides information and analyses that support advocacy actions. A team of regionally-based content specialists provide regular News, Interviews, Perspectives, Alert and Campaign information, and Web highlights.

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