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UN WOMEN: JUMPING THE HURDLES TO OVERCOMING GENDER INEQUALITY, OR FALLING SHORT OF EXPECTATIONS?

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INTRODUCTION

The phenomenon of the feminization of poverty has been used to describe the propensity of women to fall into poverty at a disproportionate rate when compared to men.¹ For the purposes of this Note, poverty should be understood to represent “a broad multidimensional concept that goes beyond income poverty. . . . [and] encompasses deprivations in diverse areas of human capability as well as vulnerability, voicelessness, and powerlessness.”² This concept is closely linked to a number of important social determinants, like economic impoverishment and gender inequality. The same social determinants that contribute to the feminization of poverty are also linked to the feminization of HIV/AIDS, especially in developing countries. Unfortunately, efforts to address these feminization issues have failed to eradicate these problems. A number of international treaties have been developed to lay out a normative framework that should be implemented to help eliminate the underlying causes of these both of these feminization phenomena. Unfortunately, the implementation of these international frameworks has been lacking due to the inherent weaknesses of the women-oriented groups in the United Nations (“UN”).³ It may be asserted that this failure results not only from flaws in the UN system, but also from an adherence to “gender boilerplate” language that establishes a framework to address such issues, but provides no means of implementation. David Fidler, a professor of international law, has explained this “gender boilerplate” analysis, in which:

- (1) they describe empirical data showing that a health problem significantly, and sometimes disproportionately, affects women;
- (2) they

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¹ See Athena Mutua, *Why Retire the Feminization of Poverty Construct?*, 78 DENV. U. L. REV. 1179, 1181 (2000-2001).

² Rudolf V. Van Puymbroeck, *Beyond Sex: Legal Reform for HIV/AIDS and Poverty Reduction*, 15 GEO. J. POVERTY L. & POL’Y 781, 783 (2008).

³ See NGLS ROUNDUP, STRENGTHENING THE UN GENDER ARCHITECTURE: NEW MOMENTUM BEHIND GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN 5 (2010), http://www.un-ngls.org/IMG/pdf_ROUNDUP.2.pdf.

analyze this data in ways that connect it to political, economic, cultural, or medical problems women face; (3) they apply existing norms or standards that support betterment of women's health; and (4) they propose recommendations, principles, or guidance for improving the health of women.⁴

Past efforts to reform women's health have conformed to this above-stated approach and have yielded few results. The inherent problem accompanying the gender boilerplate is that states and organizations rarely act on the contents of the boilerplate. However, a new UN agency—UN Women—has been formed and has the potential to actually implement what is actually proposed in the gender boilerplate.⁵ This new entity, which is the result of the combination of four other women-oriented UN agencies, has a higher rank within the UN system and much larger budget than the previous women-focused agencies.⁶ UN Women serves as a potential means through which these social determinants may be ameliorated. Although UN Women represents an improvement for the cause of women in organizational terms, it will not necessarily improve the UN's ability to alleviate the suffering of the world's women due to the underlying social determinants that reflect inherent cultural beliefs of gender inequality.

This Note will begin in Part I by discussing the general concept of the feminization of poverty, as well as its causes. From this starting point, the feminization of HIV/AIDS will be discussed in Part II, in the context of its connection to the feminization of poverty and the social determinants of health. Part III includes a brief introduction of the normative frameworks for the advancement of women's rights and an analysis of why these frameworks are somewhat flawed. Following this point, Paper IV introduces the reader to the UN organizations that have formed to advance the norms laid out in those instruments and how these organizations have experienced issues in effectuating any major change. In Part V the promising new entity, UN Women, is introduced and analyzed to determine whether it will be able to make any noteworthy progress in the advancement of women's rights. Part VI of this work will close by examining the inherent gender inequalities that exist to exacerbate the feminization problems and an elaboration of what UN Women will be able to do to alleviate these global problems. Since Argentina's history, cultural ideologies, and legal history tend to correspond with a great deal of the subject matter discussed in this Note, it is offered as a case study throughout the work.

⁴ David Fidler, *Gender Paradox, Gender Politics: Establishing and Implementing Global Standards for the Promotion and Protection of Women's Health*, 22 EMORY INT'L L. REV. 147, 148 (2008).

⁵ See Joe DeCapua, *New UN Agency Needs Strong Leader, Committed Funding*, July 7, 2010, available at <http://www.VOANews.com>.

⁶ See NGLS ROUNDUP, *supra* note 3, at 1-8.

I. THE FEMINIZATION OF POVERTY

Diane Pearce originally coined the phrase “feminization of poverty” in the 1970s to describe the situation in which women in the United States appeared to be falling disproportionately into poverty when compared to men.⁷ Pearce’s assertions sparked subsequent research into this phenomenon to determine whether its effects existed on a global level.⁸ Today, there remains a general consensus that, on a global terrain, women experience a higher incidence of poverty than men, meaning women are more vulnerable to fall into poverty than men.⁹ This vulnerability may be attributed to a number of social determinants that reflect the “structural and socio-cultural factors [that] influence the feminization of poverty and contribute to its expansion.”¹⁰ According to the World Health Organization (“WHO”), social determinants of health are “the conditions in which people are born, grow, live, work, and age . . . [that] are mostly responsible for health inequities.”¹¹ Commonly recognized social determinants regarding the feminization of poverty include the economically poor state of the country in which one resides,¹² as well as gender inequalities that are embedded in one’s culture.¹³

Gender inequality spans a variety of areas including a woman’s status within the household, educational sector, and labor force.¹⁴ This trend “mainly affects women in developing countries, especially those living in rural areas”¹⁵; therefore, the bulk of the analysis of this phenomenon will center on the situation of women living in developing countries.

A. Women in Developing Countries Are More Susceptible to Economic Disadvantages

The economic environment in which women are placed has a powerful effect on their potential susceptibility to fall into poverty.¹⁶ By living in a developing country, individuals are already placed at an economic disadvantage, simply because their government often lacks the necessary financial resources to support its citizens.¹⁷ Frequently, women bear the brunt of the government-initiated

⁷ Mutua, *supra* note 1, at 1179.

⁸ *Id.*

⁹ *See id.* at 1188.

¹⁰ Cristina Muñoz, *The Feminization of Poverty in Developing Countries*, 5 BROWN J. WORLD AFF. 283, 283 (1998).

¹¹ *Social Determinants of Health*, WORLD HEALTH ORGANIZATION, 2010, http://www.who.int/social_determinants/en/.

¹² *See* Muñoz, *supra* note 10, at 283.

¹³ *See* Mutua, *supra* note 1, at 1191.

¹⁴ *See* J.M. Spectar, *The Hydra Hath but One Head: The Socio-Cultural Dimensions of the AIDS Epidemic & Women’s Right to Health*, 21 B.C. THIRD WORLD L.J. 1, 1 (2001).

¹⁵ Muñoz, *supra* note 10, at 283.

¹⁶ *See id.*

¹⁷ *Social Determinants of Health*, WORLD HEALTH ORGANIZATION: HEALTH IN ASIA AND THE PACIFIC 7, 9, available at <http://www.wpro.who.int/NR/rdonlyres/07833FE9-0D55-40E2-A776->

cutback efforts because economic reform tends to impact industries that employ a large number of women.¹⁸ For example, in the 1980s, Latin America and other developing global regions experienced an economic crisis in which they were unable to repay foreign debts.¹⁹ In order to counter this dilemma, countries implemented structural adjustment and stabilization policies (“SAPs”).²⁰ However, SAPs only “exacerbated conditions of poverty,”²¹ and “generally affected women more deeply than men.”²² Adjustment policies often involve privatization and price deregulation.²³ Such reform measures have a clear and direct impact on a woman’s earning capacity.²⁴ Since unemployment rates rose during these periods, women, who already had little access to work, had even fewer income options.²⁵ Adding to these tangible economic issues is the fact that the poor economic situation of women is closely intertwined with beliefs of inherent differences between men and women that often result in a sense of entitlement for men and sentiments of female inferiority.²⁶

B. Women in Developing Countries Are Subject to Discriminatory Social Practices

The underlying issue of gender inequality is embodied in a number of discriminatory policies adopted and in actions taken toward women. It has been established that “gender inequalities in the distribution of income, . . . command over property or control over earned income, as well as gender biases in [the] labour markets and [the] social exclusion that women experience in a variety of economic and political institutions”²⁷ all work together to place women at a social and economic disadvantage to men. On the most basic level, females in many developing countries are considered less “valuable” than their male counterparts at the family and household-level.²⁸ This reverence of male relatives creates a situation where women have little input regarding their own future, and remain dependent “on husbands . . . for mobility and the ability to access services.”²⁹ These women often lack the ability to control how their income will be spent.³⁰ Even in situations in which women take on more responsibilities—both in the labor

E8444430F00F/0/07_Chapter2Socialdeterminantsofhealth.pdf.

¹⁸ See Muñoz, *supra* note 10, at 283.

¹⁹ See Bharati Sadasivam, *The Impact of Structural Adjustment on Women: A Governance and Human Rights Agenda*, 19 HUM. RTS. Q. 630, 638 (1997).

²⁰ See *id.* at 630.

²¹ *Id.*

²² See Muñoz, *supra* note 10, at 283.

²³ Sadasivam, *supra* note 19, at 637.

²⁴ *Id.* at 638.

²⁵ Muñoz, *supra* note 10, at 283.

²⁶ *Id.* at 284.

²⁷ Mutua, *supra* note 1, at 1191.

²⁸ See Muñoz, *supra* note 10, at 285 (citing Nilufer Cagatay, *Gender and Poverty*, in WORKING PAPER SERIES 5, SOCIAL DEVELOPMENT & POVERTY ELIMINATION DIVISION, UNDP at 2 (1998)).

²⁹ *Social Determinants of Health*, *supra* note 17, at 22.

³⁰ *Id.*

force and domestically—they still “lack basic assets, such as control or co-ownership of land and housing,”³¹ because “[t]itle-holding [has] traditionally been restricted to men.”³² In situations in which poverty and inflation are present, “men tend to maintain their social and personal expenditures, while women are expected to make ends meet with fewer resources, by working longer hours within and outside the home.”³³ It is important to note that this degradation of women within the family and home sphere is nothing more than a reflection of larger societal and cultural beliefs that give women a lower status in society as whole.

C. Women in Developing Countries Face Unequal Educational Opportunities

The issues accompanying gender inequality resonate in the highly important realm of education. It has been asserted that “[e]ducation is one of the chief means to increasing human capacity”³⁴ Yet, statistically, women have less access to this powerful instrument of self-improvement, seeing as “[t]he majority of the world’s illiterates are women, and male enrollment exceeds female enrollment, even in elementary schools.”³⁵ Girls and women are impeded in their educational careers by this cultural reverence of males. In the vast majority of developing countries, “parents choose to invest in the education of their sons”³⁶ because women normally marry and move out, while men hold close ties with their parents, due to their cultural filial obligations. Additionally, archaic fears of female autonomy have held parents back from supporting their daughters’ educational pursuits.³⁷

D. Women in Developing Countries Are Disadvantaged in the Labor Force

One should note that even in situations in which girls are able to gain access to education, deeply embedded gender inequalities inhibit an educated woman’s chances at getting a job.³⁸ Although “[e]ducation reduces poverty through increased employment . . . ,”³⁹ statistics illustrate that gender inequalities limit even a well-educated woman’s income capacity. The UN Economic Commission for Latin America reported that “of every ten women with professional or technical backgrounds, only four find jobs in the informal sector, while very few obtain jobs with potential for advancement.”⁴⁰ Additionally, even when women and men

³¹ Kathleen Staudt, *The Feminization of Poverty: Global Perspectives*, 5 BROWN J. WORLD AFF. 215, 217 (1998).

³² *Id.* at 219.

³³ Sadasivam, *supra* note 19, at 639.

³⁴ Staudt, *supra* note 31, at 220.

³⁵ *Id.* at 217.

³⁶ Muñoz, *supra* note 10, at 285.

³⁷ *Id.* at 285.

³⁸ Muñoz, *supra* note 10, at 286.

³⁹ *Social Determinants of Health*, *supra* note 17, at 13.

⁴⁰ Muñoz, *supra* note 10, at 286.

occupy jobs with comparable educational requirements, women only earn about sixty-percent of their male counterparts' wages.⁴¹ Such statistics may be explained by examining the influence of gender stereotypes in the employment realm.

In the labor force itself, women are placed at a disadvantage to men. Women "are disproportionately stuck in low value jobs and earn only 50 to 80 percent of men's wages."⁴² The gender perspective, which seeks to identify the various economic forces that drive the feminization of poverty, "considers the unique employment experiences and characteristics of the labor market that impact women directly."⁴³ These unique experiences and characteristics include a woman's multifaceted role as a caregiver and wage earner, and incidents of sex segregation in the labor market.⁴⁴ Various geographical regions throughout the world have seen a rise in female-headed households. This term refers to cases in which women find themselves in a "dual role as primary wage earner and primary caregiver."⁴⁵ This increase in female-headed households is likely a result of a rise in non-marriage among women and an increase in divorce rates, since a disproportionate number of women assume the role of primary caregiver following divorce.⁴⁶ This occurrence is evidenced by the fact that over twenty-percent of all households in Latin America are headed by women.⁴⁷

In areas in which the number of female-headed households is rising, women must support their families both financially and emotionally.⁴⁸ These women must sporadically participate in the workforce and take on part-time positions.⁴⁹ This course of action places women in a situation in which they lose their chances to gain experience and seniority at the workplace, limiting their ability to advance to higher paying positions.⁵⁰ In addition to occupying a dual role, women must also confront gender discrimination and segregation within the labor force, as evidenced by the fact that men tend to occupy higher paying, and more respected position than women.⁵¹

Women face an even greater challenge due to the fact that men hold the most authority in the realm of politics and public affairs.⁵² This lack of woman-led participation within decision-making bodies has resulted in "legal bodies that

⁴¹ Megan Thibos et al., *The Feminization of Poverty*, 1, 4 (2007), available at <http://www.ywcadallas.org/documents/advocacy/FeminizationofPoverty.pdf>.

⁴² Staudt, *supra* note 31, at 217.

⁴³ Thibos, *supra* note 41, at 3.

⁴⁴ *Id.* at 4.

⁴⁵ *Id.* at 3.

⁴⁶ *Id.* at 1-2.

⁴⁷ Gaby Ore Aguilar, *WOMEN'S HEALTH JOURNAL*, (July-Dec. 2007), available at http://findarticles.com/p/articles/mi_m0MDX/is_3-4_007/ai_n25470547/.

⁴⁸ Thibos, *supra* note 41, at 3.

⁴⁹ *Id.* at 3-4.

⁵⁰ *Id.* at 4.

⁵¹ *Id.* at 5.

⁵² Staudt *supra* note 31, at 215.

ignore the necessities and present situation of women; and policies . . . that fail to take into account issues of gender”⁵³ These conditions have led to codification of laws that favor men, which result in women being afforded less opportunities and legal protection than men.

II. THE FEMINIZATION OF HIV/AIDS

Many of the same social determinants that contribute to the formation and continuation of the feminization of poverty, also play a prominent role in the perpetuation of female vulnerability and susceptibility to contracting HIV/AIDS.⁵⁴ Since there is an “inextricable relationship between AIDS and certain social practices”,⁵⁵ it may be determined that the feminization of poverty is closely linked to the feminization of HIV/AIDS. This section analyzes how the cultural practices that exist in developing countries contribute to the spread of HIV/AIDS, and how the number of infected women is raising rapidly. These social practices, which tend to ignore women’s rights⁵⁶ account for the reason that, statistically, women are becoming infected with the disease at a faster pace than men “and the total number of infected women is rapidly approaching that of men.”⁵⁷ On a global level, “women already account for 48% of infected adults.”⁵⁸

This phenomenon may be explained simply in terms of inherent biological differences between men and women. Biologically, women are more susceptible to contracting the virus and its transmission through sexual intercourse is four times more effective from men to women than from women to men.⁵⁹ This susceptibility is partly explained by the fact that the female reproduction tract is more vulnerable to infection.⁶⁰ Moreover, girls are particularly susceptible to HIV infection because their genital tract is not fully developed.⁶¹ However, one should note that this preexisting “vulnerability to AIDS is exacerbated by the lack of respect for women’s human rights.”⁶² The high occurrence of HIV/AIDS in women “reflect[s] social, economic, and cultural conditions . . . that are embedded in society”⁶³ These conditions involve the same determinants that contribute to the feminization of poverty: an economically poor state and culturally and socially established gender inequalities.

⁵³ Muñoz, *supra* note 10, at 286.

⁵⁴ Spectar, *supra* note 14, 3-12.

⁵⁵ *Id.* at 1.

⁵⁶ *Id.* at 1-2.

⁵⁷ *Id.*

⁵⁸ *Social Determinants of Health, supra* note 17, at 23.

⁵⁹ Spectar, *supra* note 14, at 3.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 4.

⁶³ Van Puymbroeck, *supra* note 2, at 788.

A. Developing Countries Lack Appropriate Resources to Treat HIV/AIDS

Generally, developing countries lack the appropriate resources to treat HIV/AIDS-infected individuals. In such areas, there is a collective shortage of both HIV counseling for infected individuals, as well as a scarcity of testing facilities and condoms.⁶⁴ The lack of healthcare resources within developing countries also puts HIV/AIDS-infected women in a position in which their health may be worsened. One major ailment that is associated with HIV/AIDS is cervical cancer; however, most developing countries do not possess the facilities for the treatment and detection of cervical cancer.⁶⁵ Additionally, these “[p]oor communities usually do not have the political power needed to get better services,”⁶⁶ and “the tension between high prices of patented pharmaceuticals and affordability of antiretroviral treatment for AIDS patients”⁶⁷ is a formidable obstacle to the attainment of necessary resources for treatment. Beyond the general lack of access to healthcare within one’s country, the deeply embedded notions of gender inequality plays a major role in feminization of HIV/AIDS.

B. Discriminatory Social Practices Contribute to the Susceptibility and Poor Treatment of Women with HIV/AIDS

Gender inequality serves as a strong determinant to women’s health. The disempowerment suffered by women in developing countries makes them susceptible to sexual abuse and coercion, which increases their exposure to HIV.⁶⁸ Given the fact that many of these women are already financially impoverished and desperate to make money—as discussed above in Part I—they are vulnerable to the sexual advances of older or richer men.⁶⁹ These men may buy sexual favors by providing gifts such as money for school fees.⁷⁰ In addition to economic needs, social standards establish that men have a right to engage in domestic violence.⁷¹ Atrocities, such as “[m]arital rape and intimate partner abuse have deep roots in social norms that condone power inequality between men and women,”⁷² and undoubtedly “[contribute] to women’s vulnerability to HIV.”⁷³ Women who are subject to such abuse clearly have no choice in engaging in sexual intercourse, let alone safe sexual intercourse. Even in situations in which women are not subject to sexual violence, their inferior position to men makes it so they are “often unable to

⁶⁴ Spectar, *supra* note 14, at 4.

⁶⁵ *Id.* at 11.

⁶⁶ *Social Determinants of Health*, *supra* note 17, at 9.

⁶⁷ Van Puymbroeck, *supra* note 2, at 813.

⁶⁸ Spectar, *supra* note 14, at 4.

⁶⁹ *Id.* at 5-6.

⁷⁰ *Id.* at 5-6.

⁷¹ *Id.* at 7.

⁷² Van Puymbroeck, *supra* note 2, at 806.

⁷³ *Id.* at 805-06.

negotiate condom use”⁷⁴ Additionally, girls may be sold into marriages, in which they have no input regarding the manner in which they will practice their sexual endeavors with their partners.⁷⁵

This inferior social status, coupled with the pre-existing stigmatization of AIDS, makes it nearly impossible for HIV-infected women to counter the subsequent discrimination that they will face from other members of society, including healthcare professionals.⁷⁶ Studies have shown that, “[i]n many societies, while HIV-infected men expect and receive care, infected women are ‘frequently stigmatized, rejected and expelled by their communities and families.’”⁷⁷ In such situations, women are often blamed for contracting the disease, while men are viewed as being victimized. Due to this inevitable discrimination, women who suspect that they might be infected often avoid getting tested and are reluctant to take cautionary measures out of the fear of revealing infection.⁷⁸ Such fears only add to the number of incidences of HIV/AIDS.

C. The Marginalization of Women in Education, Employment and Politics Are Additional Contributors to the Feminization of HIV/AIDS

Beyond discriminatory social practices, the marginalization of women within the educational system, labor force and even political sphere demonstrates further reason as to why the feminization of HIV/AIDS is taking place. Studies demonstrate that the “number of [HIV/AIDS]-infected girls and women tends to decrease progressively as the level of education rises.”⁷⁹ These results may be explained by the fact that individuals with little or no education or literacy skills “have less access to sources of information about HIV/AIDS and the means of preventions.”⁸⁰ Even in situations where females do have access to education, overarching religious beliefs and social standards limit the distribution of information regarding HIV/AIDS, because the topic is rendered taboo.⁸¹ Without access to information, it is hard to expect women and girls to be able to take any preventive measures to protect themselves from contracting the disease.

The disadvantageous situation of women in the labor force also acts as a contributing factor in the feminization of HIV/AIDS. Women, who have fewer opportunities to advance in the labor force—as discussed above in Part I—must seek additional sources of income, and often do so by turning to prostitution.⁸² As one’s number of sexual partners increase, so does one’s likelihood of contracting

⁷⁴ Spector, *supra* note 14, at 7.

⁷⁵ Van Puymbroeck, *supra* note 2, at 788.

⁷⁶ Spector, *supra* note 14, at 4.

⁷⁷ *Id.* at 9.

⁷⁸ *Id.* at 9.

⁷⁹ *Id.* at 12.

⁸⁰ Van Puymbroeck, *supra* note 2, at 788.

⁸¹ Spector, *supra* note 14, at 4.

⁸² *Global Health Council – Field Note* (2010), <http://globalhealth.org/reports/report.php3?id=269>.

HIV/AIDS.⁸³ Additionally, HIV/AIDS-infected women are further hindered from advancing to higher employment positions because the “[i]llness brings increasingly frequent absences from work.”⁸⁴

Lastly, the underrepresentation of women within the political realm has also exacerbated the feminization of HIV/AIDS because women frequently do not have a voice in proposing and implementing policies that directly impact them. Various governments have adopted pro-natalist policies, which are based in the ideology of the promotion of child bearing and rearing.⁸⁵ Therefore, these sorts of governments “ban or severely restrict the availability of contraception, information about contraceptives, and other reproductive health services.”⁸⁶ Such policies further impede a woman’s already limited ability to use contraceptives in their sexual activities. With few women occupying political positions, it is hard to imagine how any measure of change regarding these policies will be put into force. This under-representation of women also results in an overall “silence about the suffering of women,”⁸⁷ as political leaders fail to openly discuss the pandemic and break “the stigma, shame, and vulnerability suffered by women and girls around the world . . .”⁸⁸ Legislative bodies have done little to implement strong laws that target violence against women, and such issues are placed on the backburner in cultures that focus on men. Due to this overall lack of political support, women are apprehensive to report rape or other forms of violence.⁸⁹

III. THE CONNECTION BETWEEN THE FEMINIZATION OF POVERTY AND HIV/AIDS IN ARGENTINA

Argentina serves as “a good example of the relationship between an increase in poverty and in HIV/AIDS.”⁹⁰ In 2002 the country experienced an economic crisis in which it defaulted on its international loans.⁹¹ By May of 2002, 51.4% of the Argentine population lived below the poverty line.⁹² The economic catastrophe was closely linked with a subsequent decline in both the quality and availability of healthcare. This massive impoverishment took a particularly heavy toll on Argentine women, considering there were 2.7 million households headed by

⁸³ Spectar, *supra* note 14, at 4.

⁸⁴ Van Puymbroeck, *supra* note 2, at 786.

⁸⁵ *Pronatalist Policies and Customs*, LET THE SUN WORK (2006-2010), <http://www.divorceinfo.com/letthesunwork/challenge/pronatalist.htm>.

⁸⁶ Spectar, *supra* note 14, at 10.

⁸⁷ *Id.* at 18.

⁸⁸ *Id.* at 27.

⁸⁹ *Id.* at 7.

⁹⁰ *Global Health Council – Field Note*, *supra* note 82.

⁹¹ Mabel Bianco, *Women, Poverty, Human Rights and HIV/AIDS: Argentina*, FREELIBRARY.COM, Jan. 1, 2003, [http://www.thefreelibrary.com/Women%2c+poverty%2c+human+rights+and+HIV%2fAIDS%3a+Argentina+\(National...-a0105915328](http://www.thefreelibrary.com/Women%2c+poverty%2c+human+rights+and+HIV%2fAIDS%3a+Argentina+(National...-a0105915328).

⁹² *Id.*

women in Argentina, which translates into 28.8% of Argentine households being headed by women.⁹³ Although this number would indicate that the majority of homes are still headed by men, Argentine women have attested to the fact that this statistic is not representative of poor neighborhood in which “women are always the heads of households because many men leave, they get bored, and [the women] are left with the kids and to struggle on as best [they] can.”⁹⁴

From these numbers, one may draw the conclusion that poor Argentine women are disproportionately affected in times of crisis. The rampant poverty experienced by the majority of the population generated instances of domestic violence against women.⁹⁵

Since the Argentine Peso suffered from devaluation, costs of medical supplies increased, forcing the government to eliminate a number of health care services, making it so “[c]heck-ups and preventive care are now luxuries”⁹⁶ As a result of this devaluation of currency, the Argentina Ministry of Health continues to experience shortages in supplies.⁹⁷ Therefore, Argentine women’s pre-existing susceptibility to HIV/AIDS has only been worsened due to a lack of accessible treatment.⁹⁸ Consequently, access to healthcare has become more like a lottery, and there is “a lack of oversight and accountability for carrying out existing laws and policies as the main problems in the persistent denial of proper care.”⁹⁹ Violations are rarely investigated or penalized.¹⁰⁰ The *machismo* mentality—the concept that men are meant to be in charge and the head of the household¹⁰¹—is culturally embedded in the Latin American world. The *machismo* attitude is still prevalent in Argentina and has left women to bear the brunt of the healthcare shortage.¹⁰² The *machismo* way of life helps to promote and perpetuate disparities of power, increasing the vulnerability of young women to HIV.¹⁰³

One woman to every 3.2 men is infected with the virus and unprotected sex is the cause of HIV transmission in forty-five-percent of all cases in Argentina.¹⁰⁴

⁹³ Olga Viglicca, *From the Feminization of Poverty to Women’s Political Leadership*, ENVIO.ORG, Dec. 2006, <http://www.envio.org.ni/articulo/1626>.

⁹⁴ *Id.*

⁹⁵ The increased instances of such violence may be observed through news coverage and reports kept by health and legal services, even though there is no statistical data to support this assertion. See Bianco, *supra* note 91.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Argentina: Guarantee Women’s Access to Health Care: Slack Implementation and Lack of Oversight Causes Suffering and Death*, HRW.ORG, Aug. 10, 2010, <http://www.hrw.org/en/news/2010/08/10/argentina-guarantee-women-s-access-health-care>.

¹⁰⁰ *Id.*

¹⁰¹ Ricardo A. Lopez, *The Other Side of Machismo*, LATINO OPINION, Apr. 9, 2009, <http://www.latinopinion.com/category/cultural-traits/machismo/>.

¹⁰² Viglicca, *supra* note 93.

¹⁰³ *Id.*

¹⁰⁴ Marcela Valente, *Health-Argentina: AIDS Threat Looms over Impoverished Young Women*, IPSNEWS.NET, Dec. 16, 2009, <http://ipsnews.net/print.asp?idnews=14617>.

The rate at which women are becoming infected continues to rise, due to the fact that the male-centric culture makes it so that women and girls “often cannot make independent decisions about their health, and many face unwanted or unhealthy pregnancies as a result.”¹⁰⁵ Furthermore, women are still less educated than men, leaving them with limited access to information regarding the contraction and spread of the disease.¹⁰⁶

Taking into consideration the feminization of both poverty and HIV/AIDS, it is important to note that woman’s “right to health cannot be meaningfully actualized when governments fail to eradicate oppressive social or cultural practices that jeopardize the health of women.”¹⁰⁷ Since “[t]he AIDS pandemic poses severe challenges to the international human rights of women and young girls in developing countries,”¹⁰⁸ the issue of a woman’s right to health has been the topic of various international initiatives. Part IV explores these initiatives and discusses the normative frameworks that have been developed for the advancement of women’s rights.

IV. THE FORMULATION OF THE NORMS FOR THE ADVANCEMENT OF WOMEN’S RIGHTS

The formulation of norms regarding the advancement of women’s health has resulted from a combination of empirical evidence and human rights principles.¹⁰⁹ The empirical evidence at hand refers to how the previously mentioned social determinants of health affect women’s health. It is clear from the above-stated analysis of the feminization problems that social determinants have a detrimental and notable impact on women’s health globally. Human rights principles entail “the rules and norms found mainly in the international law of human rights.”¹¹⁰ Two of the most influential examples of the human rights principles that have been developed in light of the empirical evidence related to the feminization problems are the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”) and the Convention on the Elimination of Discrimination against Women (“CEDAW”). These two international treaties embody the notion that “[h]ealth and human rights are closely linked”¹¹¹ and establish normative frameworks for the advancement of women’s health. These legally binding treaties were designed to protect and codify human rights, including the right to health.¹¹²

¹⁰⁵ *Argentina: Guarantee Women’s Access to Health Care: Slack Implementation and Lack of Oversight Causes Suffering and Death*, *supra* note 99.

¹⁰⁶ Bianco, *supra* note 91.

¹⁰⁷ Spectar, *supra* note 14, at 16-17.

¹⁰⁸ *Id.* at 3.

¹⁰⁹ Fidler, *supra* note 4, at 149.

¹¹⁰ *Id.*

¹¹¹ *Social Determinants of Health*, *supra* note 17, at 24.

¹¹² Margaux J. Hall, *Using International Law to Promote Millennium Health Targets: A Role for the CEDAW Optional Protocol in Reducing Maternal Mortality*, 28 WIS. INT’L L.J. 74, 74 (2010).

CEDAW and ICESCR “provide a legal and normative framework for States’ public health decisions, and they hold governments accountable to an international forum for their choices.”¹¹³ Although inspirational, both ICESCR and CEDAW are subject to criticism in their execution.

A. The International Covenant on Economic, Social, and Cultural Rights

ICESCR is an international treaty that the UN General Assembly adopted in 1966 and then entered into force in 1976.¹¹⁴ The treaty was drafted to ensure various human rights by calling state parties to work toward establishing and protecting the economic, social, and cultural rights of their citizens.¹¹⁵ The guarantee of such rights comes in a variety of forms that seek to eliminate issues of gender inequality, including labor rights, which call for the “equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.”¹¹⁶ Additionally, the treaty protects one’s right to enter into marriage by one’s own free will,¹¹⁷ the assurance of maternity leave and benefits for women,¹¹⁸ and the promise of the fulfillment of right to education for all.¹¹⁹ Furthermore, the covenant calls for

the State parties [to] recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, which includes the specific obligation to take steps for the prevention, treatment and control of epidemic, endemic and other diseases, and that this right must be enjoyed without discrimination of any kind as to sex and on an equal basis between men and women.¹²⁰

These human rights guarantees relate to the feminization issues insofar as the denial of these rights have contributed to the formation of the social determinants that exacerbate these problems. The treaty established a reporting system that was designed to monitor how parties implement the norms to guarantee these rights.¹²¹ Under this system, parties must submit their first report within two years of ratification of the treaty, while subsequent reports are due every five years. This report must document the measures that the member states have taken to promote the rights recognized by the treaty, as well as the progress they have made toward

¹¹³ *Id.*

¹¹⁴ Melik Özden, *The Case for Protocol to the ICESCR!*, 1, 4, available at <http://www.cetim.ch/en/documents/bro3-pidesc-A4-an.pdf>.

¹¹⁵ *Id.*

¹¹⁶ INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, art. 7(a)(i), U.N. DOC. ICESCR (Jan. 3, 1976), available at <http://www2.ohchr.org/english/law/cescr.htm>.

¹¹⁷ *See id.* at art. 10(1).

¹¹⁸ *See id.* at art. 10(2).

¹¹⁹ *See id.* at art. 13.

¹²⁰ Van Puymbroeck, *supra* note 2, at 804. (citations omitted)

¹²¹ Özden, *supra* note 114, at 4.

the observance of these rights.¹²² A monitoring committee, the Committee on Economic, Social, and Cultural Rights (“CESCR”), consists of a group of human rights experts and is charged with the task of reviewing of parties’ reports and issuing recommendations regarding state progress.¹²³

Much of the criticism surrounding ICESCR focuses on issues regarding the implementation of its provisions.¹²⁴ Although depending on how ICESCR is adopted and incorporated into the national law of a participating state, it may have “the force of law and can be invoked in the courts of [the ratifying parties] once it has been approved by the legislature,”¹²⁵ parties tend to fail to follow it in practice. Implementation has been hindered by accusations that ICESCR is too vague in its description and establishment of the economic, social, and cultural rights (“ESCR”) that it is designed to protect. Critics have asserted that the “ESCR are too vague to be enforceable, and are mere aspirations or policy goals.”¹²⁶ Therefore, critics maintain that the ESCR are not justiciable, meaning they cannot be adjudicated by court or tribunal.¹²⁷ Many continue to support the view “that matters involving the allocation of resources and/or public policy questions should be left to the political authorities rather than the courts and UN Treaty bodies.”¹²⁸

In the past, the ICESCR has been criticized for its failure to adopt an optional protocol.¹²⁹ The Optional Protocol to the ICESCR (“OP-ICESCR”) is an additional treaty that state parties to the parent treaty may sign onto. Such a protocol opened for signature in September 2009,¹³⁰ and will enter into force once it has been ratified by ten states parties.¹³¹ This particular optional protocol addresses procedural, rather than substantive, aspects of the ICESCR.¹³² The OP-ICESCR establishes a committee to which individuals or groups may submit a complaint to regarding violations of their ESCR under the treaty.¹³³ Since the Covenant’s reporting system limits it from hearing individual complaints, if the OP-ICESCR is not put into effect, individuals will have no recourse in an

¹²² INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *supra* note 116, at art. 16(1).

¹²³ *International Service for Human Rights*, ISHR.CH, Sept. 2, 2010, <http://www.ishr.ch/committee-on-economic-social-and-cultural-rights>.

¹²⁴ *Id.*

¹²⁵ Özden, *supra* note 114, at 4.

¹²⁶ *NEW: Optional Protocol to the ICESCR*, RIGHT-TO-EDUCATION.ORG, 2008, <http://www.right-to-education.org/fr/node/571>.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Sadasivam, *supra* note 19, at 656.

¹³⁰ Hall, *supra* note 112, at 77 n. 13.

¹³¹ *OP-ICESCR Signature Ceremony*, ESCR-NET.ORG, 2009, http://www.escr-net.org/events/events_show.htm?doc_id=899359.

¹³² *Improving Supervision of the ICESCR: An Optional Protocol*, ESCR-NET.ORG, 2009, http://www.escr-net.org/resources_more/resources_more_show.htm?doc_id=425247.

¹³³ *Id.*

international forum for ESCR violations.¹³⁴ Therefore, citizens who reside within states that are parties to the ICESCR may seek recourse in the international field by petitioning the Committee after having exhausted their domestic remedies.

States have developed concerns regarding the ratification of the OP-ICESCR. Member states are hesitant to adopt the optional protocol out of the fear of having to adopt additional obligations and responsibilities.¹³⁵ However, this worry stems from a misconception. The OP-ICESCR develops a revamped supervision system that ensures that states are fulfilling their preexisting obligations under the covenant.¹³⁶ Furthermore, there is concern that the OP-ICESCR complaint procedure would be in conflict with already existing complaint procedures in that it duplicates the work of other committees, like CEDAW and the Human Rights Committee.¹³⁷ However, duplication is prohibited by the different complaint mechanisms by examination clauses, which prevent a particular body from examining cases that are already being investigated by another entity.¹³⁸

B. The Convention on the Elimination of Discrimination Against Women

CEDAW came into effect in 1981 and provides for full and equitable access to health care.¹³⁹ Additionally, at the time it came into effect, CEDAW was the only human rights treaty that addressed the issue of family planning.¹⁴⁰ CEDAW contains a number of provisions that are integral in the protection of women's health and well-being.¹⁴¹ The Convention establishes that everyone has an equal claim to the right of protection of health and that all women shall be granted access to adequate health care facilities.¹⁴² Furthermore, CEDAW also contains an Optional Protocol, which, like the proposed OP-ICESCR, provides individuals or groups, who have exhausted their domestic remedies, with a mechanism by which they may submit complaints regarding violations of women's rights under the treaty directly to a Committee established to hear such complaints.¹⁴³ Despite its promising nature, the Optional Protocol is criticized because parties must ratify the protocol separately, "and if they do not, they can avoid the Committee's jurisdiction over individual or group communications and formal inquiries."¹⁴⁴

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Improving Supervision of the ICESCR: An Optional Protocol*, *supra* note 132.

¹³⁸ *Id.*

¹³⁹ Van Puymbroeck, *supra* note 2, at 804-05.

¹⁴⁰ CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, U.N. DOC. CEDAW, (Dec. 18, 1979), *available* at <http://www.un.org/womenwatch/daw/cedaw/text.econvention.htm>.

¹⁴¹ Spectar, *supra* note 14, at 14.

¹⁴² *Id.*

¹⁴³ Hall, *supra* note 112, at 89.

¹⁴⁴ *Id.* at 90.

Like ICESCR, CEDAW requires that parties submit reports on their progress, which must be done every four years.¹⁴⁵ The Convention has influenced governments in implementation efforts,¹⁴⁶ and as the reporting process has continued, “certain States parties have amended, added, or removed laws and policies to comply with the Convention.”¹⁴⁷ Colombia serves as an example of CEDAW’s influence in that the Constitutional Court overturned the country-wide ban on abortions and established that women are legally permitted to get abortions under certain circumstances. The court credited CEDAW, among other conventions, in its decision that reproductive rights should be recognized as human rights.¹⁴⁸ Additionally, a number of countries, including Argentina and Mexico, have responded to CEDAW by “creat[ing] programs that provide indigenous and migrant women with health care services.”¹⁴⁹ CEDAW is recognized for establishing a formal relationship with non-governmental organizations (“NGOs”) and its own internal reforms, which include increasing the number of times it meets annually.¹⁵⁰

C. Criticism and Shortcomings of ICESCR and CEDAW

Both ICESCR and CEDAW have been subject to criticism by virtue of their status as UN treaties, which “lack a rigorous enforcement regime.”¹⁵¹ Generally, a treaty’s monitoring system requires that parties compose and submit reports about how their laws and policies conform to the treaty requirements.¹⁵² The treaty body then holds a meeting with the state representatives regarding the report and then compiles concluding observations on the report.¹⁵³ This process is heavily dependent on whether the treaty body has sufficient time to review the reports and the body’s ability to follow-up on inadequate reports.¹⁵⁴ The CEDAW Committee continues to experience problems with the implementation of this system considering there are a significant number of outstanding and overdue reports.¹⁵⁵ Additionally, the CEDAW Committee itself is slow to review already submitted reporting, resulting in backlog of reports awaiting consideration.¹⁵⁶ In order to

¹⁴⁵ CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, *supra* note 140.

¹⁴⁶ Anne F. Bayefsky, *CEDAW: Threat to, or Enhancement of, Human Rights?*, 94 AM. SOC’Y INT’L L. PROC. 197, 198 (2000).

¹⁴⁷ Hall, *supra* note 112, at 87.

¹⁴⁸ *CEDAW Success Stories*, UNIFEM.ORG, http://www.unifem.org/cedaw30/success_stories/.

¹⁴⁹ Hall, *supra* note 112, at 88.

¹⁵⁰ *Id.* at 99.

¹⁵¹ *Id.* at 86.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Hall, *supra* note 112, at 87.

¹⁵⁶ *Id.*

combat these problems, the CEDAW Committee has encouraged states to combine their outstanding reports into one document.¹⁵⁷

CEDAW is condemned by a number of critics for leaving avenues by which parties may avoid or limit their obligations.¹⁵⁸ One manner in which they may do this is by adopting reservations, which call for the exclusion or modification of the legal weight of specific provisions.¹⁵⁹ It is important to note, however, that “reservations should not alter [the] object and purpose [of the treaty].”¹⁶⁰ A great deal of reservations relate to Article 16, which ensures an equal right to enter into and end a marriage, and the same personal rights for husbands and wives like choosing a family name, a profession, and an occupation.¹⁶¹ To allow states to oppose this provision is to allow for the promulgation of one of the major social determinants that lead to the feminization of both poverty and HIV/AIDS. Such reservations clearly goes against CEDAW’s “object and purpose[:]. . . . 1) to create legally binding standards for women’s civil, political, economic, social, and cultural rights; 2) to establish these rights based on the principles of equality and non-discrimination; and 3) to provide supervisory machinery (in the form of the CEDAW Committee) for the obligations undertaken.”¹⁶²

Although ICESCR and CEDAW represent a significant step in the attainment of gender equality, they have been weakly enforced due to flaws in reporting and optional protocol systems. Furthermore, the option to adopt reservations to certain articles within each of these treaties has given many of the provisions less credence. In addition to these flaws that were discussed through Part IV, Part V will illustrate the assertion that a great deal of the failures surrounding the execution of ICESCR and CEDAW stem from the manner in which organizational bodies implement and promote the norms that these treaties set forth.

V. PAST ATTEMPTS AT INCORPORATION AND IMPLEMENTATION OF THE NORMATIVE FRAMEWORKS

A. Implementation and Incorporation of Women Rights Norms Generally

Once norms regarding women’s rights and health have been formulated, they must be incorporated into state policy and law.¹⁶³ A commonplace manner in which incorporation takes place is through gender mainstreaming. Gender mainstreaming may be understood as the process of “ensuring that gender

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 85.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Article 16 – Reservation to CEDAW – According to Shariah*, http://www.suhakam.org.my/c/document_library/get_file?p_l_id=10127&folderId=24513&name=DLFE-304.pdf.

¹⁶² Hall, *supra* note 112, at 85.

¹⁶³ Fidler, *supra* note 4, at 151.

perspectives and attention to the goal of gender equality are central to all activities[, including] policy development, . . . legislation, resource allocation and planning,[and] implementation and monitoring of programmes and projects.”¹⁶⁴ Unfortunately, the four UN agencies, which have since been consolidated into UN Women,¹⁶⁵ that were previously charged with the task of effectuating the women’s rights norms established by ICESCR and CEDAW [the Office of the Special Adviser to the Secretary-General on Gender Issues (“OSAGI”), the UN Development Fund for Women (“UNIFEM”), the Division for the Advancement of Women (“DAW”), and the International Research and Training Institute for the Advancement of Women (“INSTRAW”)] have been incapable of successfully promoting this effort.¹⁶⁶ It may be asserted that gender mainstreaming, as attempted by these four organizations, has failed due to the fact that these entities are inherently flawed insofar as each group has “a limited mandate, a very small budget and staff, and no one at a high level (a USG) to lead and coordinate the gender work among them, and in collaboration with other UN agencies pursuing gender mainstreaming.”¹⁶⁷

OSAGI focused on the promotion of gender mainstreaming, while also facilitating and advising the whole of the UN regarding gender analysis.¹⁶⁸ UNIFEM maintained a relatively active field presence through maintaining relations with women’s organizations and governments, while working with countries to formulate and implement laws and policies to eliminate gender-based discrimination, while also providing financial and technical support to programs that promote gender equality.¹⁶⁹ DAW worked to build partnerships with governments, other UN agencies, civil society, and NGOs in order to encourage collaboration in the realization of its goals of the advancement of the implementation of CEDAW and the promotion of gender mainstreaming both within and outside of the UN system.¹⁷⁰ Lastly, INSTRAW focused its attention on attaining gender equality and women’s empowerment through conducting research, training, and acting as a source of knowledge in conjunction with governments, the UN, civil society, and academia.¹⁷¹

The incorporation of ICESCR and CEDAW into state policy and law has been severely hampered by an overall lack of resources, with the issue of funding presenting a major obstacle. For instance, UNIFEM, the largest of the women’s

¹⁶⁴ *Gender Mainstreaming*, UN.ORG, 2010, <http://www.un.org/womenwatch/osagi/gendermainstreaming.htm>.

¹⁶⁵ NGLS ROUNDUP, *supra* note 3, at 1.

¹⁶⁶ *Id.* at 8.

¹⁶⁷ *Id.* at 5.

¹⁶⁸ *Id.* at 8.

¹⁶⁹ *Id.*

¹⁷⁰ *About the Division*, UN.ORG, 2000-2009, <http://www.un.org/womenwatch/daw/daw/indexnew.html>.

¹⁷¹ NGLS ROUNDUP, *supra* note 3, at 8.

organizations, has suffered as a result of insufficient human and financial resources.¹⁷² UNIFEM has become less dependent on core funds and more reliant on the donations, which are significantly less reliable and pose a threat to the organizations resource base.¹⁷³ This funding obstacle has limited UNIFEM's ability to exhibit a strong field presence, making it difficult for the organization to become fully engaged in effectuating change on the ground.¹⁷⁴

Incorporation efforts by these organizations have been further hindered by their relatively low rank within the UN system's hierarchy of organizational bodies. For example, OSAGI, UNIFEM, DAW, and INSTRAW are not headed by leaders with any particular clout within the UN hierarchy.¹⁷⁵ Generally, an Under-Secretary-General ("USG") is appointed to a leadership position within the UN by the Secretary General.¹⁷⁶ These leaders are responsible for overseeing the operations of various UN bodies and must report findings to the Secretary General.¹⁷⁷ Additionally, these individuals may also be members of all UN senior decision-making bodies.¹⁷⁸ It is said that these individuals have the "clout to lobby for money, make decisions and plan wide-ranging [programs]."¹⁷⁹ The problem is that OSAGI, UNIFEM, DAW, or INSTRAW do not have leaders that occupy such a rank; therefore, there remains to be a "women's rights and gender equality agenda at the highest levels of leadership, both at Headquarters and in the field."¹⁸⁰ Lacking strong leadership, these four organizations have been unable to work together efficiently toward their shared goals. This division promotes both fragmentation and duplication in addressing issues and advancing goals.

Finally, for these norms to have any impact, they must be implemented in the policies and laws of a state. Implementation entails "putting the incorporated standard into actual practice in the lives of people in society."¹⁸¹ The implementation of these norms has proved to even less successful than their incorporation. Women's rights advocates are in general agreement that the normative frameworks for gender equality and women's rights have advanced in a number of regions, as well as within the UN system; however, "the lack of implementation and accountability repeatedly undermines these commitments."¹⁸²

¹⁷² *Id.* at 5.

¹⁷³ *Evaluation of the UNIFEM Multi-Year Funding Framework (MYFF) System*, July 31, 2007, 1, 3-4, www.undp.org/execution/word/UNIFEM-SP-annex5.doc.

¹⁷⁴ *Id.*

¹⁷⁵ NGLS ROUNDUP, *supra* note 3, at 5.

¹⁷⁶ *The Role of the UN Secretary-General*, CFR.ORG, 2011, http://www.cfr.org/un/role-un-secretary-general/p12348?cid=rss-backgrounders-the_role_of_the_un_secretary_g-091610.

¹⁷⁷ *Id.*

¹⁷⁸ *Frequently Asked Questions*, UNWOMEN.ORG, 2011, <http://www.unwomen.org/about-us/faq/>.

¹⁷⁹ NGLS ROUNDUP, *supra* note 3, at 1.

¹⁸⁰ *Id.* at 5.

¹⁸¹ Fidler, *supra* note 4, at 151.

¹⁸² *Gender Equality Architecture and UN Reforms*, 1, 3 (July 17, 2006), <http://www.cwgl.rutgers.edu/globalcenter/policy/unadvocacy/Gender%20Equality%20Architecture%20>

Implementation faces several key challenges including a preference for technological responses to health issues, “such as anti-retrovirals, sanitation systems, vaccines, and maternal hospitals,”¹⁸³ rather than change that focuses on altering inherent social, political, and economic problems and resistance to reform from political and religious groups.¹⁸⁴ This preference creates an environment that makes discussion regarding altering the underlying problems difficult. Such obstacles have made it difficult to identify “potentially effective strategies [for new forms of implementation] . . . especially with respect to improving women’s health in developing and least developed countries.”¹⁸⁵

B. The Difficulties of Incorporation and Implementation in Argentina

Although there is evidence that Argentina has incorporated the norms surrounding women’s health into its laws and politics, it has failed on a number of occasions to ensure the proper implementation of these norms.¹⁸⁶ Despite the fact that Argentina was the first Latin American country to adopt a quota for female participation in Congress,¹⁸⁷ laws that are aimed at the promotion of gender equality or the protection of women’s rights fail to fully address the underlying social determinants that contribute to the feminization problems.¹⁸⁸

Argentina’s legal system has outlawed rape—including marital rape—but still requires evidence that either comes in the form of a physical injury or witness testimony.¹⁸⁹ It was reported that ninety-percent of rape or sexual assault cases brought forth in 2008 resulted in acquittal.¹⁹⁰ This low level of convictions is likely the result of the burdensome evidentiary standard. Additionally, although domestic violence is prohibited throughout the country, it is only considered a misdemeanor and tried in civil, not criminal, courts.¹⁹¹ However, this approach is altered if the violence entails sexual abuse, in which case the act is criminalized and may result in a twenty-year imprisonment.¹⁹² Furthermore, the state has only prohibited the promotion or facilitation of individuals into prostitution as illegal, rather than outlawing the act of prostitution itself.¹⁹³

and%20UN%20Reforms%20July%202006.pdf.

¹⁸³ Fidler, *supra* note 4, at 155.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 152.

¹⁸⁶ 2008 Human Rights Reports: Argentina, STATE.GOV, Feb. 25, 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/wha/119145.htm>.

¹⁸⁷ Elisa María Carrio, *Argentina: A New Look at the Challenges of Women’s Participation in the Legislature*, 164, <http://www.idea.int/publications/wip2/upload/Argentina.pdf>.

¹⁸⁸ 2008 Human Rights Reports: Argentina, *supra* note 186.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ 2008 Human Rights Reports: Argentina, *supra* note 186.

These examples illustrates that Argentina has taken on a half-hearted effort to properly incorporate gender norms into its policies and laws. These efforts are ineffective because they only address part of the underlying social determinant issue. Rape crimes should be easier to prosecute, domestic violence in any form should be criminalized, and prostitution should be completely outlawed. Without proper incorporation, implementation ultimately fails because these standards cannot have a full effect on the actual practice of the members of Argentina's society. Even laws that have been incorporated, such as the requirement of equal wages between men and women, have not been properly implemented, as evidenced by the fact that men continue to earn twenty-one-percent more than women for equivalent part-time and five-percent more for full-time work.¹⁹⁴ This failure to enforce the law may be attributed to the societal adherence to the *machismo* attitude and the general refusal to overcome gender bias that exists in many developing countries.¹⁹⁵

VI. ANTICIPATION OF CHANGE: THE FORMATION OF UN WOMEN

A. UN Women's Goals and Organizational Structure

Noting how inherent flaws in the previous UN system had hampered the advancement of women's rights, various women's groups and civil society organizations have lobbied for reform. In particular, the Gender Equality Architecture Reform ("GEAR")¹⁹⁶ group "stressed the need for it to have extensive field presences and a strong policy and programmatic mandate; to create civil society advisory bodies at all levels and include civil society participation in its Executive Board."¹⁹⁷ As a result of two years of negotiations, the UN General Assembly adopted Resolution A/63/311.¹⁹⁸ This resolution espouses a system-wide coherence approach that calls for the consolidation of OSAGI, DAW, UNIFEM, and INSTRAW into a single entity: UN Women.¹⁹⁹

Following Resolution A/63/311, the Secretary General submitted another resolution: "Comprehensive proposal for the composite entity for gender equality and the empowerment of women" ("A/64/588"). Under this resolution, UN Women has two key roles. One is to "support inter-governmental bodies such as the Commission on the Status of Women in their formulation of policies, global

¹⁹⁴ *Id.*

¹⁹⁵ See generally *Global Health Council – Field Note*, *supra* note 82.

¹⁹⁶ The GEAR Campaign is comprised of a network of over 300 women's human rights and social justice groups that advocated for a change in the previous UN women's rights approach. See *Strengthening the UN Gender Architecture*, *supra* note 3, at 4.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 2.

¹⁹⁹ *About UN Women*, 1-2 (2010), available at http://www.unwomen.org/wp-content/uploads/2010/06/UNWomen_AboutUs_201007.pdf.

standards and norms,²⁰⁰ and will help Member states implement these standards”²⁰¹ In order to achieve these ends, the organization must be prepared to “provide suitable technical and financial support to those countries that request it, as well as forging effective partnerships with civil society.”²⁰² This resolution also lays out UN Women’s mission statement, functions, structure and organizational arrangements. According to A/64/588, the entity has eight primary functions:

1. Support UN bodies that express commitments to gender equality;
2. Assist national efforts to endorse gender equality and women’s empowerment through country-driven initiatives;
3. Assume global, regional and national advocacy efforts for gender equality and women’s empowerment issue as to ensure that under-recognized and under-resourced issues receive national, regional, and global attention;
4. Promote gender mainstreaming among the various UN bodies;
5. Support states in the reporting process regarding their progress on the implementation of various resolutions regarding women’s rights, including CEDAW;
6. Lead research efforts and act as a center of knowledge on gender equality;
7. Strengthen accountability of the UN system for violations of gender equality efforts; and
8. Monitor and report on compliance with its mandates.²⁰³

It has been asserted that UN Women does not “really differ from what we’ve had in the past[, but it] has more potential.”²⁰⁴

Although UN Women appears to espouse a mandate that is similar to those of OSAGI, DAW, UNIFEM, and INSTRAW, it is at an advantage due to its fairly high rank within the UN system. UN Women is in a strategically advantageous position to advance its policies and combat potential funding issues. UN Women will be an independent operational entity—a Subsidiary Body to the General Assembly—meaning it will be given a higher rank within the UN hierarchy.²⁰⁵ These bodies are under the authority of the Secretary-General and are responsible for reporting to the General Assembly through the Economic and Social Council (“ECOSOC”).²⁰⁶

²⁰⁰ Erika Lorenzana Del Villar, *UN Establishes Entity for Gender Equality and the Empowerment of Women*, Aug. 4, 2010, available at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTGENDER/0,,contentMDK:22678941~menuPK:336874~pagePK:64020865~piPK:149114~theSitePK:336868,00.html>.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ G.A. Res. 64/588, ¶ 6, U.N. DOC. A/RES/64/588 (Jan. 6, 2010).

²⁰⁴ DeCapua, *supra* note 5.

²⁰⁵ *Strengthening the UN Gender Architecture*, *supra* note 3, at 2.

²⁰⁶ *Id.*

ECOSOC is an organ through which the UN agencies coordinate their economic and social work.²⁰⁷ Other high level agencies do in fact include gender equality within their mandate; however, it only occupies part of their mandate and is often placed on low priority.²⁰⁸ In order to combat this past disparity in power and prioritization of women's right within the UN system, UN Women will have a seat at high-level decision making tables.²⁰⁹

This entity's status is further elevated by the fact that UN Women will be led by a USG.²¹⁰ Advocates of the new entity have asserted that it should be pioneered by a USG who possesses a strong background in gender equality issues.²¹¹ Michelle Bachelet, the former president of Chile, who was recently appointed to direct this new entity, appears to fit this description.²¹² There was some discord amongst member states regarding the designation of a Chilean.²¹³ Seeing as Chile is now a middle-income country that has a strong economy, poorer states from the global South were disappointed with the choice of a Chilean and had anticipated a leader that would closely embody their economic plight.²¹⁴ Additionally, African states lobbied heavily for an African representative and were dissatisfied with the appointment of Bachelet.²¹⁵ Despite this criticism, Bachelet asserts that nationality should not be an issue because "[t]he problems women face, and the hopes they have, are universal."²¹⁶ Additionally, Bachelet appears to be a worthy appointee, given her strong background as a political leader and past experience as an epidemiologist and HIV/AIDS expert for the Chilean government's health services.²¹⁷ Bachelet's experience places her in a position to recognize the need for governments to provide protections to their citizens, calling for respect for human rights, which "must encompass gender and also health, education, culture and even sports."²¹⁸ It is important to note that the "[e]ffectiveness of [UN Women] . . . is contingent not only on its own vision and capacity but also on the strengthened commitment . . . of existing agencies in the whole United Nations

²⁰⁷ *About ECOSOC*, ECOSOC (2011), <http://www.un.org/en/ecosoc/about/index.shtml>.

²⁰⁸ *Gender Equality Architecture and UN Reforms*, 1, 3 (July 17, 2006), <http://www.cwgl.rutgers.edu/globalcenter/policy/unadvocacy/Gender%20Equality%20Architecture%20and%20UN%20Reforms%20July%202006.pdf>.

²⁰⁹ *Id.*

²¹⁰ *Strengthening the UN Gender Architecture*, *supra* note 3, at 5.

²¹¹ *Id.* at 4.

²¹² Barbara Crosette, *Michelle Bachelet, New Head of UN Women: Where There Is Poverty, "The State Cannot Be Neutral"* (Sept. 27, 2010), available at <http://www.thenation.com/article/155028/michelle-bachelet-new-head-un-women-where-there-poverty-state-cannot-be-neutral>.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Crosette, *supra* note 212.

²¹⁸ *Id.*

system toward gender equality goals.”²¹⁹ Therefore, it is important that UN Women will have the ability to form partnerships with the other UN bodies to effectuate change.

This elevated status increases the organization’s reach, so that its “operational and normative responsibilities [extend to the] global, regional, and national levels.”²²⁰ The new entity’s high rank will allow it to “sharpen the focus and impact of the gender equality activities of the entire United Nations system.”²²¹ This goal will be achieved on a global level through the entity’s work with the high-level decision making body of the Chief Executives Board.²²² The Board is comprised of several leaders from UN member states and its primary purpose is to oversee UN Women and approve budgets.²²³ Unfortunately, the Board has been criticized in its practical implementation for its admission of leaders from countries that have traditionally thwarted efforts to advance women’s rights.²²⁴ This issue is discussed in greater detail in Part VI of this Note.²²⁵ On a regional level, UN Women can harness such cooperation via the regional directors team, which is comprised of a “team of technical specialists” that work with “gender equality specialists in other United Nations organizations . . . to ensure that demand for technical expertise from national partners and regional organizations is met in a timely and effective manner.”²²⁶ Finally, this objective will be achieved on a country level through the Resident Coordinator system.²²⁷ “The Resident Coordinator system encompasses all organizations of the United Nations system dealing with operational activities for development . . . [and] aims to bring together the different UN agencies to improve the efficiency and effectiveness of operational activities at the country level.”²²⁸ The Resident Coordinators work closely with national governments and lead UN country teams in an effort to advance UN development plans.²²⁹ Coordinating with these different teams will help “ensure clarity of roles and responsibilities and support for a more coherent and scaled up response.”²³⁰

²¹⁹ *Gender Equality Architecture and UN Reforms*, *supra* note 208, at 5.

²²⁰ *Strengthening the UN Gender Architecture*, *supra* note 3, at 2.

²²¹ *Establishment of a New Composite Entity for Gender Equality and Women’s Empowerment*, Mar. 9, 2010, <http://un.org/News/Press/docs/2010/dsgsm493.doc.htm>.

²²² *Gender Equality Architecture and UN Reforms*, *supra* note 208, at 7.

²²³ Joanna Slater, *Iran Thwarted in Bid to Join UN Women Board*, THEGLOBEANDMAIL.COM (Nov. 2010), <http://www.theglobeandmail.com/news/world/iran-blocked-from-un-board-on-womens-rights/article1793523/>.

²²⁴ *Id.*

²²⁵ *See infra* Part VI.

²²⁶ G.A. Res. 64/588, *supra* note 203, at ¶ 10.

²²⁷ *Establishment of a New Composite Entity for Gender Equality and Women’s Empowerment*, *supra* note 221.

²²⁸ *Resident Coordinator System*, UNDG (Oct. 8, 2009), <http://www.undg.org/index.cfm?P=5>.

²²⁹ *Id.*

²³⁰ *Establishment of a New Composite Entity for Gender Equality and Women’s Empowerment*, *supra* note 221.

UN Women's status allows it to engage in a system-wide monitoring system, which assists in tracking the entity's effectiveness and whether member states are truly adopting its mandate.²³¹ The entity will be responsible for monitoring system-wide progress by way of a reporting system.²³² There does not appear to be any major change in this entity's reporting system as compared to that of the other four UN women's rights entities. The member states are still responsible for collecting data and compiling reports regarding their progress.²³³ However, this new entity will assist countries in establishing their capacity in this area and each country will be charged with the duty of determining what sort of support UN Women will provide in that country.²³⁴

Since UN Women will be a full member of United Nations Development Group ("UNDG"),²³⁵ it may enforce accountability following the UNDG management and accountability system.²³⁶ The UNDG was created by the Secretary General in 1997 and the group unites thirty-two UN funds and agencies in order to improve the effectiveness of UN development on the country level.²³⁷ This group aims to coordinate the various efforts to coordinate UN development activities, while also assuring that development projects are conducted in compliance with mandates from the UN governing bodies, like the General Assembly.²³⁸ The UNDG developed a management and accountability system.²³⁹ Under this system, members at different levels of UNDG system are held accountable by other members of the system. In the case at hand, the UN Women in-country representative—the individual charged with the task of ensuring the enforcement of UN Women's mandates—will be directly accountable to the entity, while having a "collegial accountability to the resident coordinator and the United Nations country team for providing the leadership and support necessary for a coherent and efficient United Nations response to national needs in the area of gender equality."²⁴⁰

²³¹ Del Villar, *supra* note 200.

²³² *Id.*

²³³ *Establishment of a New Composite Entity for Gender Equality and Women's Empowerment*, *supra* note 221.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ G.A. Res. 64/588, *supra* note 203, at ¶ 9(f).

²³⁷ *About the UNDG*, UNDG (2010), <http://www.undg.org/index.cfm?P=2>.

²³⁸ *Id.*

²³⁹ UNDG, MANAGING AND ACCOUNTABILITY SYSTEM FOR THE UN DEVELOPMENT SYSTEM AND RESIDENT COORDINATOR SYSTEM INCLUDING THE "FUNCTIONAL FIREWALL" FOR THE RC SYSTEM 1 (2008). <http://www.undg.org/docs/9424/Management-and-Accountability-system.pdf>.

²⁴⁰ G.A. Res. 64/588, *supra* note 203, at ¶ 9(f).

B. UN Women's Innovative Funding

UN Women's funding plan serves as another source of UN Women's increased potential.²⁴¹ The successful implementation of the functions outlined in A/64/588 depends on UN Women having access to both adequate human and financial resources.²⁴² UN Women's starting resources will result from the consolidation of OSAGI, DAW, UNIFEM, and INSTRAW, which will give UN Women 401 staff members and a combined budget of \$225 million.²⁴³ In addition to this starting point, UN Women will have two major sources of funding. UN Women's regular UN budget will fund for its normative work,²⁴⁴ while voluntary contributions will support the entity's operational activities.²⁴⁵ It is important to note that under this plan "around 3% of funds [will come] from assessed contributions, and 97% funding from voluntary funding."²⁴⁶ Operational activities will be funded entirely by voluntary contributions.²⁴⁷ This funding will have to account for the entity's ability to perform its core functions at a country level, while also providing additional funding that is needed to address the critical gaps that exist within each country.²⁴⁸

The organization is hopeful that it will be able to attain the required financial support, because this long awaited UN entity "is expected to generate considerable excitement, leading to significant mobilization of voluntary funding from Governments, civil society and the private sector."²⁴⁹ State members have agreed on a pledge \$500 million to UN Women's voluntary budget.²⁵⁰ This amount constitutes approximately double the combined amount of funding available to the other previous women-oriented UN agencies.²⁵¹ One may argue that the generous prospective donations that will account for vast majority of UN Women's funding serve as a clear statement that different groups and states across the world perceive UN Women to be a powerful vehicle for change. However, placing such a strong emphasis on voluntary contributions may prove to be detrimental for UN Women, and the entity may find itself in a similar situation to that of UNIFEM.²⁵² UN

²⁴¹ See *Strengthening the UN Gender Architecture*, *supra* note 3, at 4.

²⁴² G.A. Res. 64/588, *supra* note 203, at ¶13.

²⁴³ *Details of New UN Gender Entity Proposed*, WORLD AIDS CAMPAIGN, May 2, 2010, available at <http://www.worldaidscampaign.org/en/Constituencies/Women/Announcements/Details-of-New-UN-Gender-Entity-Proposed>.

²⁴⁴ *Id.*

²⁴⁵ Del Villar, *supra* note 200.

²⁴⁶ *Establishment of a New Composite Entity for Gender Equality and Women's Empowerment*, *supra* note 221.

²⁴⁷ G.A. Res. 64/588, *supra* note 203, at ¶46.

²⁴⁸ *Id.*

²⁴⁹ *Id.* at ¶ 49.

²⁵⁰ DeCapua, *supra* note 5.

²⁵¹ *Id.*

²⁵² See *Evaluation of the UNIFEM Multi-Year Funding Framework (MYFF) System*, *supra* note 173, at 3-4.

Women runs the risk of having to limit the scope of its activities due its dependence on voluntary contributions, which are unreliable in nature.²⁵³

It is a risky move for UN Women to place such a heavy emphasis on donations given the current economic crisis that much of the world is facing. Given the poor global economic environment, UN Women appears to be coming into existence at an inopportune time. On the other hand, other successful and influential UN agencies, like United Nations Development Programme (“UNDP”), United Nations Children’s Fund (“UNICEF”), United Nations Population Fund (“UNFPA”), and United Nations World Food Programme (“WFP”), have been fully funded by voluntary contributions.²⁵⁴

UN Women anticipates that the UN regular budget will provide approximately \$7 million for the entity in 2010 to fund normative functions and the USG office.²⁵⁵ The organization will have the option of adjusting its budget according to its needs after the UN’s review of the entity is conducted in three years.²⁵⁶ In addition to having a source of predictable funding, UN Women will establish managerial mechanisms to ensure the effective use of its resources.²⁵⁷ The entity will allot its on-ground involvement according to a number of country-specific factors, like government requests for assistance.²⁵⁸ This plan will result in “[a] range of in-country presences . . . from small operations in some countries to much larger operations in countries with greater need.”²⁵⁹ The entity will increase its field presence in phases, using the current UNIFEM presence in eighty countries as a starting point.²⁶⁰ Then, UN Women will deploy teams in the six UN regional operational support centers to provide core services to the countries in which it is not physically present.²⁶¹

VII. DIFFERING PERSPECTIVES: WILL UN WOMEN SUCCEED IN ERADICATING THE FEMINIZATION OF POVERTY AND HIV/AIDS?

The development of UN Women has produced a great deal of enthusiasm and hope among women’s rights activists; however, a number of individuals are reluctant to believe that the new composite entity will bring anything new to the table.²⁶² The advocates and the critics embody two divergent positions regarding UN Women’s ability to break free from the gender boilerplate in order to bring

²⁵³ *Id.*

²⁵⁴ *Establishment of a New Composite Entity for Gender Equality and Women’s Empowerment*, *supra* note 221.

²⁵⁵ G.A. Res. 64/588, *supra* note 203, at ¶ 40.

²⁵⁶ *Id.* at ¶ 42.

²⁵⁷ *Id.* at ¶ 11(k).

²⁵⁸ *Id.*

²⁵⁹ *Id.* at ¶ 14.

²⁶⁰ G.A. Res. 64/588, *supra* note 203, at ¶ 15.

²⁶¹ *Id.*

²⁶² DeCapua, *supra* note 5.

about any major change regarding the advancement of women's health.²⁶³ An analysis of UN Women should focus on its ability to formulate new norms and incorporate and implement norms.

A. UN Women and the Formulation of Norms

One of UN Women's enumerated goals that is expressed in Resolution 64/588 focuses on supporting groups that are committed to gender equality.²⁶⁴ This goal encompasses providing support to inter-governmental bodies in their development of standards, norms, and policies.²⁶⁵ Critics may question whether UN Women is as innovative as anticipated, given that it essentially offers no new standards and is dependent on other entities to perform this task. However, CEDAW, INSTRAW, and the multitude of other instruments that have established a normative framework for this issue have extensively addressed a wide-range of women's rights issues.²⁶⁶ Therefore, it may be argued that any further development of norms would be duplicative. Advocates of the new entity would assert that failures to alleviate the feminization problems did not stem from a lack of norms, but rather a failure to properly incorporate and implement already existing standards. This failure is arguably the result of a fragmentation in the coordination between women's rights agencies—both within and without the UN system. The new entity has the potential to bring a new sense of cohesion among the UN entities, as well as between the UN and other actors. This coordination will help improve the incorporation and implementation of the previously-established norms.

B. UN Women's Role in the Incorporation and Implementation of Norms

As previously addressed, the preexisting norms set forth by ICESCR, CEDAW, and similar instruments have not sufficiently covered the broad range of issues that affect women in developing countries. More specifically, as evidenced by Argentina, attempts to incorporate and implement these norms have not appropriately addressed the primary social determinants of economic impoverishment of the state and deeply embedded gender prejudices. Without remedying these underlying issues, any progress made to develop norms will simply fail. Therefore, UN Women would have to be able to combat a number of local and cultural phenomena in order to effect any major change regarding these feminization problems.

Although UN Women does not appear to be equipped with the tools necessary to eradicate all of the social determinants that contribute to the

²⁶³ *Id.*

²⁶⁴ G.A. Res. 64/588, *supra* note 203, at ¶ 6(a).

²⁶⁵ *About UN Women*, *supra* note 199.

²⁶⁶ Hall, *supra* note 112, at 90.

feminization problems, it may be able to take specific approaches that will alleviate some of the problems. For instance, the consolidation of UNIFEM, INSTRAW, OSAGI, and DAW increased potential to address the issues surrounding the social determinant of economic impoverishment. As previously discussed, some of the contributing factors to the feminization of HIV/AIDS include state-based poverty—in that countries cannot fund counseling programs and lack the funds to access high priced antiretrovirals—and gender-based prejudices—in that women are often less educated than men and consequently lack access to information regarding HIV/AIDS. As a result of its structural cohesion, UN Women has a larger pool of funding and an on-ground field presence in countries in which UNIFEM²⁶⁷ was involved.

This combination of advantages may allow UN Women to assist countries in the development of better healthcare facilities and counseling programs for those individuals, particularly women, who lack the necessary information regarding the nature of the disease. Additionally, the organization may be able to put some funding toward the attainment of antiretroviral drugs. The development of such programs would offer women an alternative avenue by which they may obtain treatment, which may curb the gender discrimination HIV/AIDS-infected women suffer from the healthcare professionals. Nevertheless, this approach would not eliminate the underlying gender prejudices that drive such professionals to deny treatment. It should be noted that this scenario is nothing more than speculation and critics would purport that the current \$500 million voluntary budget would not be sufficient to achieve such an inspirational goal. Even if UN Women were able to effectuate some, if not all, of these efforts in a given country, it is hard to believe that it would be able to do so in every country.

The agency is also empowered to respond to requests for assistance from member states.²⁶⁸ In response, UN Women may provide such countries with financial assistance and technical support, while also working with countries to identify the national issues that are impeding the implementation of norms, and issue a coherent UN response that details ways to deal with such challenges.²⁶⁹ Such power offers the chance of increasing gender mainstreaming²⁷⁰ to bring to light the issue of gender discrimination and its effects on women's quality of life and health.

A key issue is that UN Women's capacity is limited to responding to requests. Therefore, it is unlikely that the countries who implement discriminatory practices would ever *request* UN Women's support. Since it is unlikely that any major change will happen in countries that are resistant to gender equality efforts, it is equally unlikely that UN Women has the ability to dislodge gender prejudices

²⁶⁷ See *supra* Part V.A.

²⁶⁸ See G.A. Res. 64/588, *supra* note 203, at ¶ 15.

²⁶⁹ See *generally id.*

²⁷⁰ See *supra* Part V.A.

that exist in such countries. Ultimately, the social determinant of gender inequality will remain in effect in countries in which reform is the most necessary. As previously discussed, the current budget is likely to be insufficient to achieve this end. Furthermore, critics may assert that even if said countries were to ask for aid, it is questionable whether UN Women have sufficient financial and human resources to assist them. Additionally, since funding sources come from voluntary contributions, it is difficult to assess whether UN Women will have the necessary resources to respond consistently.

In situations in which countries and regional committees do request aid, UN Women, as a full member of the UN system, will have the ability to collaborate its efforts with other UN agencies in order to take advantage of each agency's particular expertise. UN Women has the ability to provide policy advice to requesting states due to its involvement with UN country teams. The UN Country Team ("UNCT") consists of representatives from different UN funds, programs, and agencies that are accredited to different countries. Members of the UNCT work to promote cooperation between the different UN agencies on the country-level. Such involvement on the part of UN Women may help bridge the gaps between norm development and the incorporation and implementation of norms. Additionally, the entity can respond to region-specific challenges by drawing on all of the UN's resources. These powers may allow UN Women to influence political leaders and civil society members to advocate change in current gender-discriminatory laws.

In order to fully combat the social determinants that contribute to the feminization problems, these laws would have to incorporate gender norms that address the issues of sexual and domestic abuse, the need for increased representation of women in political systems, and the lack of access to contraceptives. Again, the effectiveness of such laws would depend largely on a society's willingness to follow such laws and break from deeply ingrained gender prejudices. Additionally, it is difficult to determine whether UN agencies will really work in collaboration with UN Women in the manner anticipated. Critics may argue that the development of UN Women will actually encourage other agencies to pay less attention to women's issues, based on the mentality that UN Women was developed to address such problems.

Furthermore, advocates have asserted that this new level of country involvement will grant UN Women the ability to monitor mass media, which would subsequently increase awareness of the negative consequences that gender stereotypes have on women.²⁷¹ Such messages could hopefully influence members of society to effectuate change.²⁷² Although this approach may be effective on younger generations, it most likely will be unable to dislodge decades of prejudices

²⁷¹ See *Strengthening the UN Gender Architecture*, *supra* note 3, at 8.

²⁷² *Id.*

in the older generations. Therefore, it may be argued that the process of displacing gender inequality in developing countries will be a slow, but potentially effective one.

Critics may also assert that an entity such as UN Women is not necessary in the implementation of such changes that stray from the *machismo* attitude²⁷³ that has hampered advancement of women's rights in a number of developing countries.²⁷⁴ Bachelet's own experience in Chile demonstrates the potential to revolutionize a society's way of life without a powerful women-oriented UN body. Specifically, Bachelet

was praised for turning the Chilean government from machismo to maternal by legalizing alimony penalties to divorced women, tripling the number of free child care centers for low-income families, allowing breast-feeding at work, opening domestic violence shelters for women and children around the country, and admitting the first women into the Chilean Naval Academy. She placed equal numbers of women and men in top government jobs, including the cabinet.²⁷⁵

Bachelet was able to do all of this without UN recommendations or a panel of UN experts working together to identify the underlying problems relating to gender-inequality. Advocates may counter this assertion by contending that other countries lack the political leadership and resources that existed in Chile that enabled such high levels of reform. Therefore, these countries need UN Women to intervene and advocate for political reform that entails heightened involvement of individuals concerned with the elimination of gender discrimination.

However, progress toward the elimination the feminization problems may be hindered by flaws that exist within the entity itself. The UN Women's Executive Board is riddled with countries who fail to appreciate women's rights. Although Iran—a country well-known for its violations of women's rights—was denied a seat on the Executive Board,²⁷⁶ other countries that have persistently ignored women's rights secured their positions on the Board. For instance, the Democratic Republic of Congo, which is known for the persistent occurrence of mass rapes, and Saudi Arabia, which prohibits women from driving, have been assured seats on UN Women's Executive Board.²⁷⁷

As a primary issue, critics may question the validity of the underlying election system that grants such countries a membership position. The Board is comprised of forty-one seats, with six reserved for top donors and thirty-five

²⁷³ See *supra* Part III.

²⁷⁴ See Leah Meadows, *U.N. Women: The Powerful Potential to Change the Global Development Landscape for Women and Girls*, FOREIGNPOLICYDIGEST.COM, Oct. 30, 2010, <http://foreignpolicydigest.org/wordpress/2010/10/30/un-women-the-powerful-potential-to-change-the-global-development-landscape-for-women-and-girls/>.

²⁷⁵ *Id.*

²⁷⁶ Slater, *supra* note 223.

²⁷⁷ *Id.*

divided among different global regions.²⁷⁸ The fifty-four countries who sit on ECOSOC hold elections to determine which countries are made members of the Board.²⁷⁹ For instance, Saudi Arabia attained its position when it ran unopposed for one of the donor seats.²⁸⁰ It may be argued that certain countries may simply “buy” their way onto the Board by donating a certain amount of money to the entity. Conversely, advocates may argue that the election system does in fact work to lock out countries that espouse ideologies contrary to those present within the UN Women mandate. In order to support this assertion, advocates may point to the example of Iran. It has been conceded that “[u]ntil very recently, Iran’s presence on the governing body of UN Women appeared inevitable”²⁸¹; however, the voting nations were able to band together in order to oppose Iran’s candidacy. In order to effectuate this effort, the United States and assisting countries held discussion with other voters in which they expressed their disapproval and also found rival candidates.²⁸² Ultimately, this effort proved successful and Iran lost to the small Asian country of Timor-Leste.²⁸³

In addition to the disagreement regarding the effectiveness of the election system itself, another point of contention focuses the effects of the inclusion of these countries on the Board. Critics argue that the inclusion of these states thwarts the entity’s ultimate goals because its success “depend[s] upon the willingness of its board members to assist UN member states in securing the rights of women and promoting their advancement in the world.”²⁸⁴ It is unlikely that these states that have consistently treated women as inferior beings will make any efforts to “promot[e] their advancement in the world.”²⁸⁵ Furthermore, the inclusion of these states may also spark skepticism among donor countries who would view the agency as somewhat compromised.²⁸⁶ Advocates have countered this position by asserting that the inclusion of such countries brings a diversity perspective to the organization.²⁸⁷ Additionally, advocates have argued that since the Board’s primary purpose is to “oversee the agency and approve budgets rather than to set policy priorities,”²⁸⁸ member states will have little influence on the actual

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ Slater, *supra* note 223.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ Elizabeth Samson, *Will UN Women Succeed?*, FOREIGNPOLICYBLOGS.COM, Nov. 18, 2010, <http://women.foreignpolicyblogs.com/2010/11/18/will-un-women-succeed/>.

²⁸⁵ *Id.*

²⁸⁶ *GENDER: New UN Agency for Women – First Battle Won*, IRINNEWS.ORG, July 16, 2010, <http://www.irinnews.org/Report.aspx?ReportId=89857>.

²⁸⁷ Gissou Nia, *Iran on U.N. Women’s Agency is a Travesty*, CNN.COM, Nov. 9, 2010, <http://www.cnn.com/2010/OPINION/11/09/nia.iran.womens.rights/index.html>.

²⁸⁸ Slater, *supra* note 223.

operations of UN Women. However, this argument fails to take into account that the entity will still need money in order to effectuate any policies.

C. UN Women and Argentina

The issues of incorporation and implementation are particularly relevant to the situation in Argentina. The increased funding available to UN Women may allow the entity to assist Argentina in its ability to acquire medical supplies, which has been hindered since the economic crisis that the country experienced at the beginning of the century. Despite UN Women's ability to assist in policy formation, it is unclear how the entity will be able to eradicate the underlying gender prejudices that have limited women's access to healthcare. It is difficult to see how policy formation will overcome these cultural beliefs and practices deeply embedded in Argentine society. Additionally, Argentina will have to request aid from UN Women in order to receive it. Therefore, if Argentina does not want to alter its laws that fail to properly address the social determinants of health, UN Women will be not have any influential power in this area. However, advocates may assert that Argentina is likely request UN Women's assistance because over thirty percent of its legislature is comprised of women²⁸⁹ and its president, Cristina Fernández, has been in power since 2007.²⁹⁰

Although one may presume that female political leaders would want to implement change, Argentina has consistently developed laws that fail to fully alleviate the influence of the social determinants of health.²⁹¹ Furthermore, women are still the minority in the legislature. Therefore, assuming all of these women want to advocate for change, they will have to influence a portion of their male counterparts to do the same. This effort would require a break from the *machismo* attitude that occupies much of the Argentine culture. If Argentina is to request UN Women's assistance to alleviate its gender inequality problems, it is likely that the entity will work with other UN agencies to address issues and attempt to develop the best possible plan of attack. Unfortunately, UN Women does not appear to have any concrete approaches to actually eliminate culturally embedded gender prejudices; therefore, it is unclear whether any major change in Argentina will occur without the eradication of such prejudices. However, Argentine citizens do appear willing to break from these archaic traditions, given the fact that laws—albeit weak ones—have been enacted to promote the status of and respect for women.²⁹²

²⁸⁹ Carrio, *supra* note 187, at 166.

²⁹⁰ Argentina Elects First Woman President, GUARDIAN.CO.UK, Oct. 29, 2007, <http://guardian.co.uk/world/2007/oct/29/argentina.rorycarroll>.

²⁹¹ 2008 Human Rights Reports: Argentina, *supra* note 186.

²⁹² *Id.*

CONCLUSION

The feminization problems are a reflection of the underlying social determinants of economic impoverishment and culturally embedded gender prejudices. The preexisting norms set forth by ICESCR, CEDAW, and similar instruments sufficiently cover the broad range of issues that affect women. Despite the development of these instruments, a number of countries, including Argentina, have systematically failed to develop and enforce laws that properly address these social determinants. Therefore, UN Women does not necessarily need to develop new norms in order to help eradicate these problems, but must assist in the incorporation and implementation of the already existing norms.

Unfortunately, the potential funding issues serve as a potential obstacle to achieving this goal. However, this funding problem may be resolved within a few years, after the UN conducts its three-year review of the entity and its functions. Additionally, inherent flaws in the entity's functions and composition may inhibit its effectiveness. In general, UN Women has a great deal of potential to implement action regarding the contents of the gender boilerplate, but it will be unable to help stop the feminization of both poverty and HIV/AIDS without first remedying the underlying issues of poverty and gender inequality. It appears that in the early stages of UN Women's development, only time can tell whether this entity will be up for the challenge.