Rhetoric or Rights?: When Culture and Religion
Bar Girls' Right to Education

Elizabeth Chamblee Burch
RHETORIC OR RIGHTS?: WHEN CULTURE AND RELIGION BAR GIRLS’ RIGHT TO EDUCATION

L. ELIZABETH CHAMBLEE

“No culture today is pure.”¹

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I. INTRODUCTION

Women account for almost two-thirds of the world’s illiterates.² In the year 2000, the World Education Forum met in Dakar, Senegal and set goals to (1) eliminate gender disparities in primary and secondary education by 2005, and (2) achieve gender equality in education by 2015.³ Two months before 2004, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) reported that sixty percent of the 128 countries that attended the Dakar Conference would not meet these goals.⁴ The report attributed the failure to sharp discrimination against girls in social and cultural practices.⁵

The report failed to mention that social and cultural practices persist in many countries with high disparities because of the practices’ firm entrenchment in the Islamic religion. Islam is the dominant religion in the majority of countries with the highest levels of gender disparity in education in favor of boys.⁶ The report identified the causes of gender disparity as labor market inequalities, enduring stereotypes, cultural preference for sons, early marriage, early pregnancy, domestic labors, and HIV/AIDS.⁷ Although the report attributed disparity to social norms and traditional practices, it failed to acknowledge that these norms and practices are symptoms and manifestations of the same source: Islamic fundamentalists.

Because religion and culture cause the disparity, the United Nations’ organizations and many human rights groups opt to approach the situation with either carefully worded rhetoric or

³ Id. at 5.
⁴ Id. at 9.
⁵ Id. at 6.
⁶ See infra note 115. Some countries have a gender disparity in favor of girls. Among others, these include Bahrain, Bangladesh, Belize, Botswana, Colombia, Costa Rica, Denmark, Finland, Iceland, Malaysia, Mexico, Namibia, New Zealand, Nicaragua, Panama, Philippines, Qatar, Russian Federation, Serbia, Spain, Suriname, Sweden, Trinidad, Tunisia, and Venezuela. UNESCO SUMMARY REPORT, supra note 2, at 8. A discussion of disparity in favor of boys is beyond the scope of this Article.
⁷ UNESCO SUMMARY REPORT, supra note 2, at 12-14.
silence. These organizations implicitly consent to the cultural relativist position on human rights by remaining silent as well as by focusing their efforts on reporting violations committed against Islamic fundamentalists. As the founder of a dissonant female Muslim group noted, cultural relativism is “the big threat,” and “everything can be tolerated in the name of culture.”

Only when fundamentalist groups seize power, as occurred with the Taliban in Afghanistan, do the United Nations and human rights groups report on violations committed by fundamentalists.

Deference to fundamentalists ignores the voices of dissention from Muslim female groups and prevents an effective campaign that identifies and targets religion as the root cause for educational disparity. For girls to realize their right to education, the international

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9 As one Muslim author noted, although cultural identity is important:

[Identity need not be seen in unique terms. It is a non-unique characteristic. It is a non-fragile characteristic. In fact, interaction happens to be enriching, rather than impoverishing. Along with the separateness of identity, we have to consider also the strength that is involved in tolerance. It is not a sign of weakness to have a sense of identity and yet to recognize other people’s identity in non-hostile terms.


10 Human rights organizations often target violations committed against fundamentalists such as arbitrary arrest, illegal detention, torture and the lack of fair trials. Although these are critical problems, exclusively focusing on these ends combats the symptoms, not the problem. By balancing the focus on both the symptoms and the problem, human rights organizations may effectively fight a host of human rights violations.


12 One author noted that after the Taliban took control of Afghanistan, it was a “human rights disaster.” Alicia Galea, Note, No Freedom for Afghan Women: The Taliban Hides Behind Religion to Control its People, 78 U. DET. MERCY L. REV. 341, 341 (2001); see also Janet Afray, The War Against Feminism in the Name of the Almighty: Making Sense of Gender and Muslim Fundamentalism, in WOMEN LIVING UNDER MUSLIM LAWS DOSSIER 21, at 7, 11 (Harsh Kapoor ed., 1998); Shannon A. Middleton, Note, Women’s Rights Unveiled: Taliban’s Treatment of Women in Afghanistan, 11 IND. INT’L & COMP. L. REV. 421 (2001). In the 1990’s, the United Nations and UNESCO worked diligently to rebuild the education system in Afghanistan. As part of their work, these organizations developed new story lines and educational messages to be transmitted through broadcasts. SAIF R. SAMADY, EDUCATION AND AFGHAN SOCIETY IN THE TWENTIETH CENTURY 77-78 (2001).

13 WLUM Plan of Action, supra note 9.
community must recognize and legitimize the voices of opposition, confront despotism in religion, encourage the eradication of biased gender roles regardless of their origin, and invest in innovative human rights education.\textsuperscript{14}

This Article examines the state’s obligations to provide education and the dynamic among religion, culture, and education. Since previous legal scholarship provides little detail about education as a human right, Part II begins by outlining the historical progression and provisions within international treaties that confer the right to education. It also discusses treaty reservations for provisions that conflict with Islamic Shari’a made by a number of the countries with high gender disparities. Part II concludes by acknowledging the crucial role that United Nations organizations perform in monitoring the right to education. Part III continues to develop this framework on the right to education by detailing the state’s obligation to make education available, accessible, acceptable, and adaptable.

Part IV shifts from providing a general background to the ways in which gender bias in religion and culture cause the gender gap in educational enrollment. This part focuses on the Islamic religion since the majority of the countries with the highest levels of gender disparity in favor of boys are predominately Islamic. After identifying the fundamentalist interpretation of the Islamic religion as the root cause of educational disparity, part IV also examines several specific Islamic manifestations in law, custom, and culture, including the practice of requiring women to wear the veil, the increased risk of HIV/AIDS due to polygamy, the problems with child marriages, and the labor market inequities of limited employment opportunities.

Part V proposes that human rights organizations use the modernist interpretation of the Qur’an and innovative human rights education to deconstruct the inequities that obstruct girls’

\textsuperscript{14}See generally SAID, supra note 1, at 166; KATARINA TOMASEVSKI, RIGHT TO EDUCATION PRIMERS NO. 1: REMOVING OBSTACLES IN THE WAY OF THE RIGHT TO EDUCATION 33 (2001), available at http://www.right-to-education.org/content/primers/rte_01.pdf (last visited Nov. 8, 2003),
right to education. By beginning with Feminist exegesis of the Bible as one example of how theologians have reinterpreted gender constructs in religion, part A envisions a similar path for the Qur’an. Finally, part B applauds the grassroots work of dissonant female Muslim groups such as Sisters in Islam and Women Living Under Muslim Laws that embrace and disseminate alternative paradigms of the Muslim woman. It urges the United Nations and human rights organizations to recognize and legitimize these dissonant groups and their religious interpretations and to begin a campaign against educational disparity that acknowledges religion as the root of the problem. Since education functions as a gateway right, educating girls empowers them to further combat patriarchal views and gendered stereotypes within the broader community.

II. THE INTERNATIONAL RIGHT TO EDUCATION AND NONDISCRIMINATION

As an economic, social, and cultural right, the right to education is unique. In many respects, the right to education is also a civil and political right since people cannot fully realize their freedoms without education. The requirement that governments provide education to their citizens stems from the state’s treaty obligations. The concept of a right to education originated as an aspiration in the Declaration of Human Rights. Following the Declaration, the UNESCO Convention against Discrimination first included the right to education in a binding treaty. The International Covenant on Economic, Social, and Cultural Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against

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16 Id.
Women then further expanded, explained, and developed the right. This section begins by discussing the development of these treaties, then recognizes the numerous treaty reservations for Islamic Shari’a, and concludes by acknowledging the vital role of the United Nations and human rights organizations who work to monitor and ensure the right to education.

A. International Instruments Providing for the Right to Education

The right to education is a relatively new concept. Unlike other civil liberties included in instruments such as the 1689 English Bill of Rights or the 1776 American Declaration of Independence, the right to education did not emerge until after World War II. Adopted in 1948, the Universal Declaration of Human Rights provided the first international recognition of the right to education and stated, “everyone has the right to education.” The United Nations


19 HODGSON, supra note 17, at 7-8. Prior to the Enlightenment, the church and parents provided education. The public’s conception of right to education began to change when eminent philosophers such as John Locke, Jean-Jacques Rousseau and English jurists like Sir William Blackstone began to write about education as a natural right that was superior to positive law. Id. Although the need for education became more clearly pronounced with these writings, the responsibility for education still rested with the parents. The emergence of socialism and liberalism, the writings of Marx and Engels, and the rise of laissez-faire encouraged the view of the state as a benevolent provider and sparked a shift in educational duties from the parents to the state. Id. at 9.

20 In pertinent part, the Declaration states:

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations,
intended the Declaration to be the first part of a three-step process that would culminate in a binding treaty.\textsuperscript{21} The second and third steps, to follow the Declaration with a treaty and to implement the treaty, never materialized.\textsuperscript{22} Although, as a recommendation without formal authority, the Declaration of Human Rights did not legally bind nations, it furnished the impetus for a treaty that did.\textsuperscript{23}

The United Nations Educational, Scientific, and Cultural Organization (UNESCO) Convention against Discrimination in Education,\textsuperscript{24} adopted in 1960, is the oldest global treaty guaranteeing the right to free and compulsory education.\textsuperscript{25} In it, the state parties agreed to “formulate, develop and apply a national policy which . . . will tend to promote equality of opportunity and of treatment . . . .”\textsuperscript{26}

Like the Declaration of Human Rights, the Convention recognized the parents’ right to choose freely their children’s educational institution; however, it also allows parents to ensure racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Universal Declaration of Human Rights, G.A. Res. 217 A, (31) GAOR Res. 71, U.N. DOC A/810, at Art. 26 (1948). Several minority treaties recognized the right to education prior to the Declaration. Hodgson, supra note 17, at 10. These treaties followed World War I and sought to protect the religious, linguistic, and educational rights of certain minorities. For example, Article 8 of the Treaty Between the Principal Allied and Associated Powers and Poland, signed on June 28, 1919, stated that Polish nationals “shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and exercise their religion freely therein.” Id.


\textsuperscript{25} Tomasevski, supra note 21, at 52.

\textsuperscript{26} Convention against Discrimination in Education, supra note 24.
the religious and moral education of their children. In addition, and possibly in contrast with the parents’ convictions, Convention parties agreed to eliminate discriminatory educational practices and to “ensure that the standards of education are equivalent in all public education institutions of the same level, and that conditions relating to the equality of education are also equivalent.”

The Convention expanded the right to education by encouraging nations to prescribe comprehensive national standards for public education. The drafters hoped that these national standards and policies would promote educational equality of both opportunity and treatment.

In connection with this Convention, UNESCO organized a series of regional conferences on educational planning to encourage member states to elaborate on and implement particular educational policies. These policies promised equality of opportunity and treatment in education. The Executive Board of UNESCO, in 1978, adopted a complex procedure to receive complaints and address violations of the right to education. UNESCO continues to monitor the implementation of the Convention’s standards and recommends that member states include certain policies in their national laws.

After the Convention, in 1966, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) also included the right to education. The ICESCR set forth detailed formulations cataloging the right. It requires parties to provide education “without

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27 Id.
28 See id. at § (b).
29 HODGSON, supra note 17, at 28.
30 Id.
31 Id.
32 Id.
33 International Covenant on Economic, Social and Cultural Rights, opened for Signature Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]. The ICESCR currently has sixty-four signatories and 148 parties. Id. The ICESCR also provides women the right to work and the power to enter into marriage with the free consent of both spouses.
34 Id. at 8.
discrimination of any kind.”\textsuperscript{35} Article 13 generally states that education should contribute to the full development of the child’s personality, and develops specific requirements for various levels of education.\textsuperscript{36} Article 14 then requires each state party that does not provide free primary schooling “to work out and adopt a detailed plan of action for the progressive implementation . . . of compulsory primary education free of charge for all” within two years.\textsuperscript{37}

The all-inclusive language within the Declaration of Human Rights, the UNESCO Convention against Discrimination in Education, and the ICESCR laid the groundwork for developing the two international documents that most significantly affect girls’ right to education: (1) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 and entered into force in 1981,\textsuperscript{38} and (2) the Convention on the

\textsuperscript{35} Id. at art. 2(2), at 5.
\textsuperscript{36} Article 13 states:

(a) Primary education shall be compulsory and available free to all.
(b) Secondary education, including technical and vocational education, shall be made generally available and accessible to all by every appropriate means, in particular by the progressive introduction of free education.
(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, in particular by the progressive introduction of free education.
(d) Fundamental education shall be intensified for those persons who have not received or completed the whole period of their primary education.
(e) Systems of schools shall be established and the material condition of teaching staff shall be continuously improved.
(f) The liberty of parents or guardians to choose for their children schools other than those established by the public authorities which conform to minimum educational standards shall be respected.

\textsuperscript{37} Id. at art. 14, at 9.

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of
Rights of the Child (CRC), adopted in 1989 and entered into force in 1990.\(^{39}\) The CRC reiterates many of the components of the right to education previously enunciated in other treaties; however, it also requires that state parties supply all children with the same conditions for career and vocational guidance, curricula, exams, teachers, and equipment.\(^{40}\) States must also “[t]ake measures to encourage regular attendance at schools” and reduce female dropout rates.\(^{41}\)


\(^{40}\) CRC *supra* note 39, at art. 28(d). The key provision on education, Article 28, states:

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
   (a) Make primary education compulsory and available free to all;
   (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
   (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

\(^{41}\) Id.
Both the CRC and CEDAW contain civil and political rights; however, CEDAW contains a provision that bans child marriages which the CRC fails to address.\textsuperscript{42} CEDAW also contains detailed provisions on the development of educational programs for female dropouts.\textsuperscript{43} In addition, CEDAW considers children’s rights “paramount,”\textsuperscript{44} whereas the CRC asks state parties to consider only the “best interests of the child.”\textsuperscript{45}

\textbf{B. Islamic Countries’ Ratification & Reservations to Treaties}

Many of the countries with the highest gender disparities in education signed CEDAW and the CRC subject to reservations for all articles that conflict with Islamic Shari’a.\textsuperscript{46} Islamic

\begin{itemize}
  \item [(d)] Make educational and vocational information and guidance available and accessible to all children;
  \item [(e)] Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
\end{itemize}

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a matter consistent with the child’s human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance in illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

\textit{Id.}  
\textsuperscript{41} Id. at art. 28(d), (e).
\textsuperscript{42} Id. at art. 10(f); see also Ladan Askari, \textit{Girls’ Rights under International Law: An Argument for Establishing Gender Equality as a Jus Cogens}, 8 S. CAL. REV. L. & WOMEN’S STUD. 3, 9 (1998). CEDAW calls for a minimum age for marriage and a compulsory marriage registration system. CEDAW, \textit{supra} note 38, at art. 16(2).
\textsuperscript{43} CEDAW, \textit{supra} note 38, at art. 10(f).
\textsuperscript{44} Id. at art. 15(b); see also Kirsten M. Backstrom, \textit{The International Human Rights of the Child: Do They Protect the Female Child?}, 30 GEO. WASH. J. INT’L L. & ECON. 541, 573 (1997).
\textsuperscript{45} CRC \textit{supra} note 39, at art. 3(1).
\textsuperscript{46} Treaty Ratification by the Countries with the Highest Gender Disparities

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage of Muslims</th>
<th>UNESCO Convention</th>
<th>ICESCR</th>
<th>CEDAW</th>
<th>CRC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burkina Faso</td>
<td>50%</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>(Africa)</td>
<td>40% (indigenous beliefs)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chad (Northern</td>
<td>51%</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Africa)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Comoros (Africa)</td>
<td>98%</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Djibouti (Africa)</td>
<td>94%</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>YES*</td>
</tr>
<tr>
<td>Egypt</td>
<td>94%</td>
<td>YES</td>
<td>YES</td>
<td>YES*</td>
<td>YES</td>
</tr>
</tbody>
</table>
law, commonly known as Shari’a or Shariah (depending on the region) purports to regulate both public and private aspects of Muslims lives. As interpreted by Islamic fundamentalists, Shari’a requires wives to submit to their husbands,\(^{47}\) insists that women wear a veil if they must leave the house,\(^{48}\) permits men to have multiple permanent and temporary wives,\(^{49}\) encourages girls to marry at an early age to ensure virginity,\(^{50}\) and severely restricts employment opportunities for women.\(^{51}\)

Some commentators may argue that by even signing these conventions and treaties Islamic countries made a significant step in the right direction. However, in light of the prevalence of Islamic fundamentalists’ practices,\(^{52}\) these reservations contradict the object and

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage</th>
<th>Signatory</th>
<th>Ratify Convention</th>
<th>Ratify CRC</th>
<th>Ratify ICCPR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eritrea (Africa)</td>
<td>80%*</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Ethiopia (Africa)</td>
<td>45%</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Guinea</td>
<td>85%</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Guinea-Bissau</td>
<td>45% indigenous belief 50%</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Iraq</td>
<td>97%</td>
<td>YES</td>
<td>YES</td>
<td>YES*</td>
<td>YES*</td>
</tr>
<tr>
<td>Mali (Africa)</td>
<td>90%</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Mauritania (Arab)</td>
<td>100%</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
<td>YES*</td>
</tr>
<tr>
<td>Morocco</td>
<td>98.7%</td>
<td>YES</td>
<td>YES</td>
<td>YES*</td>
<td>YES*</td>
</tr>
<tr>
<td>Niger (Africa)</td>
<td>80%</td>
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<td>YES</td>
<td>YES*</td>
<td>YES</td>
</tr>
<tr>
<td>Pakistan</td>
<td>97%</td>
<td>NO</td>
<td>NO</td>
<td>YES*</td>
<td>YES</td>
</tr>
<tr>
<td>Sudan (Arab)</td>
<td>70%</td>
<td>NO</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>Syrian Arab</td>
<td>74%</td>
<td>NO</td>
<td>YES</td>
<td>YES*</td>
<td>YES*</td>
</tr>
<tr>
<td>Republic(Arab)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yemen (Arab)</td>
<td>99%</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
</tbody>
</table>

* treaties signed subject to reservations for religious practices.


\(^{47}\) See infra Part IV.A.1.
\(^{48}\) See infra Part IV.A.2.
\(^{49}\) See infra Part IV.A.3.
\(^{50}\) See infra Part IV.B.1.
\(^{51}\) See infra Part IV.B.2.
\(^{52}\) For the general distinction between different Muslim philosophies, see infra Part IV.A.
purpose of these treaties. Allowing these countries to sign CEDAW and the CRC with reservations for Islamic Shari’a permits them to escape international scrutiny while continuing to discriminate against women. Given the dominance of the Islamic religion over every aspect of Muslim lives, Islamic governments may find it difficult to honor their human rights commitments, even if they intended to do so, when fundamentalists allege that these obligations conflict with Shari’a. Indeed, to many Muslims, “Shari’a is the sole valid interpretation of Islam, and as such ought to prevail over any human law or policy.”

Countries with large Muslim populations and high educational disparities that ratified CEDAW and the CRC, but entered reservations to one or both conventions on the basis of Islamic Shari’a include Pakistan, Iraq, Morocco, Mauritania, Djibouti, Egypt, Niger, and the Syrian Arab Republic. Although these countries did not make specific reservations to the right to education, the reservations for Islamic Shari’a directly affect the female child’s education by socializing her in a culture and religion based on inequality.

Pakistan ratified CEDAW on March 12, 1996, but noted that “[t]he accession by [the] Government of the Islamic Republic of Pakistan to [CEDAW] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.” Article 25(2) of the 1973 version of the Pakistani Constitution prohibited discrimination solely on the basis of gender. Yet, in practice,

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53 If reservations contradict the object and purpose of a treaty then the treaty, with respect to that country, is null and void in international law. For specific contradictions, see infra Part IV.
54 For a more detailed description of Shari’a and how it affects women’s rights, see infra Part IV.A.
56 Id.
58 CONSTITUTIONS OF COUNTRIES OF THE WORLD: PAKISTAN, at Art. 25(2) (Blaustein & Flanz eds., 1986). Article 22 provides that people attending educational institutions do not have to attend religious ceremonies if the ceremony relates to a religion other than “his” own. Id. at Art. 22.
political parties and even women’s organizations cannot disregard or minimize the influence of the Islamic religion. As one Muslim scholar noted:

one must not underestimate the power of the proponents of Shari’a in Pakistan or any other Muslim country . . . . Numerous studies show that a variety of economic and social factors contribute to the current status and rights of women in the Muslim world . . . . But these studies also emphasize . . . the Islamic dimensions of these same factors.59

Even before it signed CEDAW, Pakistan ratified the CRC on November 12, 1990.60 On February 6, 1995, Pakistan, Djibouti, Indonesia, and the Syrian Arab Republic entered objections to the CRC for any article or provision that contradicted Islamic Shari’a.61 However, on July 23, 1997, Pakistan withdrew its reservation and instead stated that “[t]he Convention shall be interpreted in the light of the principles of Islamic laws and values.”62

Iraq ratified CEDAW on August 13, 1986, and the CRC on June 15, 1994.63 In its reservation to CEDAW, Iraq objected to Article 2, paragraphs (f) and (g),64 which would require it to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women,”65 and to “repeal all national penal provisions which constitute discrimination against women.”66 In addition to several other reservations, Iraq entered a reservation to Article 16, relating to the

59 An-Na’im, supra note 55, at 45.
62 Id. (emphasis in original).
65 CEDAW, supra note 38, at art. 2(f).
66 Id. at art. 2(g).
elimination of discrimination in marriage and family relations.\textsuperscript{67} Iraq stated that this reservation “shall be without prejudice to the provisions of the Islamic Shariah . . . .”\textsuperscript{68} In addition to its CEDAW reservations, Iraq objected to Article 14 of the CRC,\textsuperscript{69} which requires states to respect the child’s right to freedom of thought, conscience, and religion.\textsuperscript{70} According to Iraq, allowing a child to change his or her religion “runs counter to the provisions of the Islamic Shariah.”\textsuperscript{71} Iraq did ratify the UNESCO Convention against Discrimination in Education and the ICESCR without reservations for Shari’a.\textsuperscript{72}

Like Iraq, Morocco entered lengthy reservations to both CEDAW and the CRC. Morocco attributed each of its reservations to a conflict between the treaty’s articles and the provisions of Islamic Shari’a.\textsuperscript{73} Again, similar to Iraq, Morocco’s objection to the CRC related to Article 14, which affords children the right to freedom of religion.\textsuperscript{74} Morocco stated simply, “Islam is the State religion.”\textsuperscript{75} Morocco ratified both the UNESCO Convention against Discrimination in Education and the ICESCR without making any relevant reservations.\textsuperscript{76}

\begin{itemize}
\item \textsuperscript{67} International Obligations and Access to Remedies, Universal Treaties-United Nations, n. 40, \textit{at} http://www.right-to-education.org/content/rights_and_remedies/index.html (last visited Nov. 12, 2003).
\item \textsuperscript{68} Id.
\item \textsuperscript{69} Id. at n.41.
\item \textsuperscript{70} CRC \textit{supra} note 39, at art. 14(1).
\item \textsuperscript{71} International Obligations and Access to Remedies, Universal Treaties-United Nations, n.41, \textit{at} http://www.right-to-education.org/content/rights_and_remedies/index.html (last visited Nov. 12, 2003).
\item \textsuperscript{73} International Obligations and Access to Remedies, Universal Treaties-United Nations, n.66, \textit{at} http://www.right-to-education.org/content/rights_and_remedies/index.html (last visited Nov. 12, 2003).
\item \textsuperscript{74} Id. at n.67.
\item \textsuperscript{75} Id. Fatima Mernissi observed that in Morocco, a commission of ten men selected by religious authorities reworked the Personal Status Code to state, “[e]very human being is responsible for providing for his needs (nafaqa) through his own means, with the exception of wives, whose husbands provide for their needs.” \textsc{Fatima Mernissi, Beyond the Veil: Male-Female Dynamics in Modern Muslim Society} 148 (1987). She further noted that Moroccan society has not pushed for social reform in gender relations, which forces one to wonder how seriously Morocco takes its international obligations. \textit{See} id. at 151.
\item \textsuperscript{76} \textit{See} International Obligations and Access to Remedies, Universal Treaties-United Nations, \textit{at} http://www.right-to-education.org/content/rights_and_remedies/index.html (last visited Nov. 12, 2003).
\end{itemize}
Mauritania, Djibouti, and the Syrian Arab Republic all made general reservations to the CRC for any articles or provisions that might contradict the beliefs and values of Islam.\textsuperscript{77} Mauritania entered reservations to CEDAW for any part that contradicted Islamic Shari’a.\textsuperscript{78} Djibouti adopted CEDAW without any reservations and the Syrian Arab Republic recently adopted CEDAW on March 28, 2003 with reservations for conflicts with Shari’a.\textsuperscript{79} The Syrian Arab Republic did, however, adopt the ICESCR without religious reservations.\textsuperscript{80}

Egypt and Niger objected to provisions in CEDAW, but not in the CRC. Egypt expressed a reservation to Article 16 of CEDAW, which requires the state to treat men and women equally in marriage and family relations, because it conflicted with the “sacrosanct nature” of the provisions of Shari’a.\textsuperscript{81} Niger also objected to Article 16 as well as to Article 2, abolishing discriminatory customs and practices, Article 5, modifying social and cultural patterns of conduct, and Article 15, establishing a woman’s right to choose her own residence.\textsuperscript{82} Niger

\textsuperscript{77} Id. at n.27, 63, 85.
\textsuperscript{79} Id.
\textsuperscript{81} Id. at n.28. Abdullahi An-Na’im observed:

\begin{quote}
In light of the clear language of the reservation, it can neither be said that Egypt does not feel bound by Shari’a nor that it has developed an alternative view of Shari’a. Paradoxically, Egypt has undertaken other international obligations under the same Convention which are clearly inconsistent with Shari’a . . . . The explanation for this apparent inconsistency in Egypt’s position seems to be due to the fact that while Shari’a is the law of personal status for Muslims in Egypt, which would make the country’s obligation under Article 16 inconsistent with an unalterable aspect of its current law, other aspects of Egyptian law are not currently based on Shari’a . . . . Such is the probable impact of Shari’a on the international standards as applied to the Muslim world, unless a fundamental reformulation of the relevant rules of Shari’a is undertaken.
\end{quote}


indicated that many of its objections related to existing practices and that society must modify customs over time because they could not change through an act of authority.\textsuperscript{83} Yemen, Chad, Ethiopia, Guinea-Bissau, Eritrea, and Mali fully adopted, without reservation, the CRC and CEDAW even though they are predominately Muslim countries.\textsuperscript{84} Sudan fully adopted the CRC, but has not yet adopted CEDAW.\textsuperscript{85} Mali is the only country out of those mentioned in this section that adopted CEDAW’s optional protocol that gives its citizens a private right to enforce the rights conferred in CEDAW.\textsuperscript{86}

Other state parties to CEDAW protested that religious and customary reservations for Islamic Shari’a violated human rights law, which only allows parties to make reservations if they do not undermine the object and purpose of the treaty. Yet, the countries that protested were silenced by accusations of cultural imperialism and religious intolerance.\textsuperscript{87} Although the United Nations asked the Islamic countries to withdraw their reservations, the only changes made thus far have been semantic.\textsuperscript{88} Even though the reservations probably are invalid under international law, no satisfactory mechanisms exist to adequately challenge these reservations.\textsuperscript{89} By allowing

\textsuperscript{83} Id.
\textsuperscript{84} Id.
\textsuperscript{85} Id.
the reservations to stand and by failing to confront religious practices that cause gender disparity in education, the United Nations’ organizations implicitly consent to the cultural relativist position on human rights. This deference to Islamic fundamentalists ignores the dissonent of many female groups within Islamic communities who oppose the reservations and contest the interpretations of the Islamic religion offered by outspoken fundamentalist leaders. Unless human rights leaders and United Nations organizations effectively address the source of the abuses, substantive human rights guarantees will remain “paper promises.”

C. United Nations Organizations, Commissions, and Committees Devoted to Education

The United Nations designed several instruments to help monitor and ensure the right to education. Although these organizations willingly identify the manifestations of Islamic fundamentalism and work diligently to rectify these symptoms, they are unwilling or politically unable to target the source. If these groups followed the path taken by or united with dissonant Muslim groups in Islamic communities to confront religious obstacles, their joint expertise could mount a powerful campaign to eliminate gender disparity in education and inequality in society.

The United Nations established a number of organizations to improve education as early as the 1940’s. In 1946, even before the Universal Declaration of Human Rights, the United Nations Economic and Social Council (ECOSOC) recommended that the United Nations establish a United Nations International Children’s Emergency Fund (UNICEF). UNICEF

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90 Mayer, supra note 9, at 21-32.
92 TOMASEVSKI, supra note 21, at 36.
93 For more about the dissonant female Muslim groups, see infra Part V.B.1.
94 UNITED NATIONS, UNITED NATIONS ACTION IN THE FIELD OF HUMAN RIGHTS 209 (1980).
originally aimed to assist children affected by war, drought, and famine.\textsuperscript{95} The United Nations later expanded UNICEF’s duties to include increasing the availability of education and vocational training.\textsuperscript{96}

In 1994, the Canadian International Development Agency (CIDA) partnered with UNICEF to provide ten million dollars in support of education to sub-Saharan Africa, the Middle East, and North Africa.\textsuperscript{97} The CIDA funding focused on three goals: (1) ensuring that girls’ received equal access to quality primary education to facilitate equal participation in their respective communities and societies, (2) developing a long-term strategic plan for advancing girls’ education, and (3) implementing UNICEF’s Global Girls’ Education Program.\textsuperscript{98}

In addition to CIDA’s girls programs, the ECOSOC established the Commission on the Status of Women that monitors and encourages the implementation of women’s rights.\textsuperscript{99} This Commission prioritizes women’s rights in the political, economic, civil, social, and educational fields and works to improve the status of women in education, science, and culture.\textsuperscript{100} The Commission unites with UNESCO to ensure that girls have equal access to primary, secondary, and higher education as well as access to vocational education.\textsuperscript{101}

\begin{flushleft}
\textsuperscript{95} Id.
\textsuperscript{96} Id. Although the United Nations originally created UNICEF to help children harmed by World War II, it changed its focus in 1961 to encompass child welfare, family planning, education, and vocational training. Id.
\textsuperscript{97} UNICEF, FINAL CONSOLIDATED REPORT TO THE CANADIAN INTERNATIONAL DEVELOPMENT AGENCY (CIDA) TO GOVERNMENT OF CANADA ON CIDA PHASE I SUPPORT TO THE UNICEF GIRLS’ EDUCATION PROGRAMME IN AFRICA (1999).
\textsuperscript{99} UNITED NATIONS, supra note 94, at 146.
\textsuperscript{100} Id.
\textsuperscript{101} Id. UNESCO is one of the major organizations involve in education. It started in when the French government, in 1945, suggested the United Nations set up an international organization on cultural cooperation. Consequently, its headquarters remain in Paris. Article 1(1) of UNESCO’s Constitution states that its purpose is:
\end{flushleft}

to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world without distinction of race, sex or religion, by the Charter of the United Nations.
Additional agencies supporting girls’ education include the United Nations Food and Population Agency (UNFPA), the United States Agency for International Development (USAID), the World Bank, and the United Nations Development Program (UNDP). UNFPA recognizes the need to improve basic levels of education as “an important prerequisite to sustainable development and as a factor in the development of well-being through its links with demographic as well as economic and social factors.”\textsuperscript{102} USAID and the World Bank provide financial support to target the opportunity and fiscal costs of girls’ education.\textsuperscript{103} To reduce gender disparity in education, USAID identified the need to promote girls’ education as a social norm.\textsuperscript{104}

Attempts to forge consensus at the international level began with these commissions and organizations and culminated with the Global Meeting of the International Consultative Forum on Education for All.\textsuperscript{105} The most recent meeting took place in Dakar, Senegal on April 26, 2000. The Dakar Conference affirmed that all people have “the human right to benefit from an education that will meet their basic learning needs,”\textsuperscript{106} and that “[e]ducation is a fundamental human right.”\textsuperscript{107} The Conference included, as one of its six primary goals, “eliminating gender disparities in primary and secondary education by 2005, and achieving gender equality in education by 2015, with a focus on ensuring girls’ full and equal access to and achievement in

\textsuperscript{102} UNESCO, \textit{supra} note 98, at 14.
\textsuperscript{103} See \textit{id.} at 15.
\textsuperscript{104} \textit{id.} The UNDP also invested several hundred million dollars toward basic education as part of its mandate to eradicate poverty. \textit{id.} at 14.
\textsuperscript{105} This meeting is frequently referred to as the Dakar Conference or the World Education Forum.
\textsuperscript{107} \textit{id.} at ¶ 6.
basic education of good quality.”

To achieve this goal, the governments, organizations, agencies, and associations represented at the Dakar Conference pledged to “implement integrated strategies for gender equality in education [that] recognize[d] the need for changes in attitudes, values and practices.”

The most recent progress report anticipated that more than sixty percent of the 128 countries in attendance at the Dakar Conference would miss the goal of achieving gender parity by 2005. It predicted that twenty-two countries would not meet the 2005 goal, but noted that these countries remained on track to reach parity at both the elementary and secondary school levels by 2015. The report further expected that more than forty percent of the countries would not reach parity even by 2015. This same report noted, “girls are least likely to go to school in societies where women are restricted to the home and [where] ‘discrimination against daughters from the early years of life’ persists.”

Although many, if not all, of the organizations that promote gender equality in education recognize the social, cultural, and religious dimension of the disparity in education, none of them openly recognizes that the majority of countries with high disparities contain a large Muslim population. Human rights reports by the divisions of the United Nations attribute the gender disparities, Muslim Populations and Literacy Rates

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108 Id. at ¶ 7(v).
109 Id. at ¶ 8(vi).
110 UNESCO SUMMARY REPORT, supra note 2, at 10.
111 Id.
112 Id.
113 Id.
115 When “parity” is set at 1.0, a gender disparity is any number less than one. UNESCO considers any number below .80 a high disparity on the gender parity index (GPI); .80 to .99 is considered a moderate disparity. Literacy rates refer to the percentage of the population over age fifteen that can read and write.
disparity to religious and cultural causes, but neglect to substantively address or confront these causes for fear of being labeled culturally imperialistic or religiously intolerant.\textsuperscript{116} By uniting with dissonant Muslim groups and confronting religion, these international organizations could target the cause of educational gender disparity in a culturally legitimate way and might increase the chances of meeting the Dakar goals.

\begin{table}
\begin{tabular}{|l|c|c|c|c|c|}
\hline
Country & \begin{tabular}{c}Disparities in \end{tabular} & \begin{tabular}{c}Disparities in \end{tabular} & \begin{tabular}{c}Percentage of \end{tabular} & \begin{tabular}{c}Literacy Rate \end{tabular} & \begin{tabular}{c}Literacy \end{tabular} \\
 & Primary School & Primary School & Muslims & of Females & Rate of Males \\
 & Gross Enrollment & Gross Enrollment & & & \\
\hline
Burkina Faso (Africa) & .64 & .73 & 50\% & 16.6\% & 36.9\% \\
Chad (Northern Africa) & .28 & .75 & 51\% & 39.3\% & 56\% \\
Comoros (Africa) & .82 & .86 & 98\% & 49.3\% & 63.6\% \\
Djibouti (Africa) & .72* & .76 & 94\% & 58.4\% & 78\% \\
Egypt & .94 & .97 & 94\% & 46.9\% & 68.3\% \\
Eritrea (Africa) & .70 & .84 & 80\%* & 47.6\% & 69.9\% \\
Ethiopia (Africa) & .68 & .78 & 45\% & 35.1\% & 50.3\% \\
Guinea & .36* & .85 & 45\% indigenous belief 50\% & 21.9\% & 49.9\% \\
Guinea-Bissau (Africa) & .54 & .85 & 45\% indigenous belief 50\% & 27.4\% & 58.1\% \\
Iraq & .62 & .89 & 97\% & 24.4\% & 55.9\% \\
Mali (Africa) & .52* & .76 & 90\% & 39.6\% & 53.5\% \\
Mauritania (Arab) & .72 & .96 & 100\% & 37.9\% & 51.8\% \\
Morocco & .80 & .97 & 98.7\% & 39.4\% & 64.1\% \\
Niger (Africa) & .65 & .71 & 80\% & 9.7\% & 25.8\% \\
Pakistan & .70 & .74 & 97\% & 30.6\% & 59.8\% \\
Sudan (Arab) & .96* & .82 & 70\% & 50.5\% & 71.8\% \\
Syria (Arab) & .89 & .97 & 74\% & 64\% & 89.7\% \\
Yemen (Arab) & .37* & .76 & 99\% & 30\% & 70.5\% \\
\hline
\end{tabular}
\end{table}

*Data refer to school year 1998-1999

Data from 1999-2000 are from UNESCO, \textsc{Education For All: Is the World on Track?} 76 (2002) [hereinafter \textsc{Education for All}]. Data from 2000-2001 are from UNESCO, \textsc{Gender and Education: The Leap to Equality} 48 (2003), available at http://portal.unesco.org/education/ev.php?URL_ID=23023&URL_DO=DO_TOPIC&URL_SECTION=201 (last visited Nov. 8, 2003) [hereinafter \textsc{Gender and Education}]. Data on the percentage of Muslims in the country’s population as well as the literacy rates for males and females are from Central Intelligence Agency. \textsc{Central Intelligence Agency}, \textit{supra} note 46.

Based on the current rate of change, the time needed to achieve 95\% female youth literacy will take 74 years in Iraq, 45 years in Niger, 38 years in Mauritania, and 24 years in Pakistan. \textsc{UNIFEM, Progress of the World’s Women: Gender Equality and the Millennium Development Goals} 2002, at 29 (2002).

\textsuperscript{116} See Mayer, \textit{supra} note 87, at 271.
III. CORE CONTENT OF THE RIGHT TO EDUCATION: STATE OBLIGATIONS

To understand how religious and cultural barriers obstruct girls’ education, it is first necessary to define, in practical terms, the minimal standards of education that should exist worldwide. Although treaties and declarations create a right to education,117 no right can exist without corresponding governmental obligations. Because generally worded treaty provisions furnish little practical guidance for governments,118 the United Nations used treaty provisions to structure the right to education into a “4-A” scheme.119 Consequently, governments who are parties to the ICESCR, CRC, and CEDAW120 must make education available, accessible, acceptable, and adaptable.121

A. Availability

Making education available encompasses two distinct governmental obligations. First, as a civil and political right, the right to education requires the government to establish schools.122

117 A number of rationales also support the right to education. From a public interest and a social utilitarian perspective, education provides a means to train children to become useful society members and effectively participate in democracy and freedom. Hodgson, supra note 17, at 18. The Universal Declaration of Human Rights and the Declaration of the Rights of the Child stress the importance of education as a prerequisite to individual dignity and individual development. Id. at 19. As a “welfare right” that one cannot provide to himself or herself, the function of education is to help individuals develop basic literacy skills that enable them to function within their societies. Id. at 19-20.


119 The ICESCR forms the main premises for these components, however these concepts run throughout the CRC and CEDAW as well.

120 The United Nations does not specifically refer to CEDAW as a premise for these rights; however, the provisions in CEDAW closely resemble those of the ICESCR and CRC. Consequently, it is likely that this scheme could be used in CEDAW.


122 Tomasevski, supra note 21, at 51.
Second, as a social, economic, and cultural right, the government must make free and compulsory education available to all school-age children.\textsuperscript{123} In essence, this component requires a sufficient quantity of educational institutions.\textsuperscript{124} What those institutions need for daily functioning depends on the developmental context within which they operate.\textsuperscript{125} All educational facilities need protection from the elements, sanitation facilities for both girls and boys, safe drinking water, trained teachers with domestically competitive salaries, and teaching materials.\textsuperscript{126}

Governments fail to make education available when, for example, they completely close universities and secondary schools. The African Commission on Human and Peoples’ Rights, a regional court, found that the two-year-long closure of universities and secondary schools in Zaire violated Article 16 of the African Charter on Human and Peoples’ Rights, which guarantees the right to education.\textsuperscript{127}

In addition to opening and operating public schools, states may permit the establishment of private schools. However, the European Commission on Human Rights held that the

\textsuperscript{123} Id. For information on how educational rights have been treated in occupied territories, see Jorene Soto, Note, The Application of Education Rights in the Occupied Territories, 13 FLA. J. INT’L L. 211 (2001). For a view that elderly citizens are also entitled to the right to education, see Diego Rodriguez-Pinzon & Claudia Martin, The International Human Rights Status of Elderly Persons, 18 AM. U. INT’L L. REV. 915, 972 (2003).


\textsuperscript{125} ICESCR General Comment 13, supra note 121, at ¶ 6(a). Certain institutions will also need libraries, computer facilities, and technology. Id.

\textsuperscript{126} Id. Even in schools that lack basic material items such as buildings, water, desks, chairs, and books, no learning could take place without a teacher. Progress Report, supra note 124, at ¶ 42. If states begin to refer to teachers as part of the production of education rather than as humans, then the protection of human rights for teachers may disappear. Id. at ¶ 44. Teachers’ human rights may be more difficult to enforce since they are considered civil/public servants which denies them the right to strike. Id.

government must regulate and supervise private schools to ensure that the education offered conforms to governmental standards. The governmental supervision and regulation ensures a minimal, uniform standard of quality. Most governments have established some form of accreditation or licensing process that allows them to monitor the curriculum and guarantee that the programs fit a basic definition of education.

B. Accessibility

In addition to its duty to monitor private schools, the state must make public schools accessible to all children. Adequate access to education varies according to the level of education. In the compulsory age range, for example, the government must provide access to education for all children; however, access to education varies at the secondary and higher levels. Although human rights treaties explicitly require governments to provide free primary school education, states may charge tuition for higher levels.

Treaty provisions clearly require compulsory education. Yet, an estimated 104 million children of primary school age had not enrolled in school at the turn of the millennium.

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129 The problem of quality arose in India where students from an unrecognized educational institution secured a court order from a lower court that allowed them to take an exam. TOMASEVSKI, supra note 118, at 18. Of 129 students, only one passed. Id. The Supreme Court of India, in 1992, admonished the lower court and emphasized the need to ensure that schools conform to established educational standards. State v. Maharashtra v. Vikas Sabebrao Roundale, 4 S.C.R. 435, ¶ 2-3, 12 (India 1992). The Court noted, “[t]he ill-equipped and ill-housed institutions and sub-standard staff therein are counter-productive and detrimental to inculcating spirit of inquiry and excellence in the students. The disregard of statutory compliance would amount to letting loose of innocent and unwary children.” Id. at ¶ 12.
130 TOMASEVSKI, supra note 118, at 18. In some instances, governments abused this regulatory power by withholding certification. Id. at 19. Consequently, countries should strive to balance the need for ensuring quality institutions against the abuse of power.
131 Id. at 51.
132 Id.; Progress Report, supra note 124, at ¶ 46.
133 UNESCO Summary Report, supra note 2, at 8.
Although most countries passed national legislation mandating that children attend primary school, as of the year 2000, nine percent of independent governments had not done so.\textsuperscript{134}

In making education accessible, states must incorporate the three overlapping dimensions of accessibility: economic accessibility, physical accessibility, and non-discrimination.\textsuperscript{135} Economically, states must provide free primary education and “progressively introduce free secondary and higher education.”\textsuperscript{136} Physical accessibility requires states to place educational institutions within “safe physical reach,” either by a reasonably convenient geographic location or through modern technology such as a distance learning program.\textsuperscript{137}

1. Accessibility in Law and in Fact: The Non-discrimination Dimension

The non-discrimination dimension, enshrined in Article 2(2) of the ICESCR, mandates that education must be accessible to all, not just in law, but also in fact.\textsuperscript{138} To define and combat discrimination, commentary to the ICESCR interpreted the prohibition against discrimination in

\textsuperscript{134} \textit{Education for All}, supra note 115, at 53.

\textsuperscript{135} \textit{ICESCR General Comment 13}, supra note 121, at ¶ 6(b).

\textsuperscript{136} Id.

\textsuperscript{137} Id.

light of the UNESCO Convention against Discrimination in Education, relevant provisions of CEDAW, the International Convention on the Elimination of All Forms of Racial Discrimination, the CRC, and the International Labor Organization Indigenous and Tribunal Peoples Convention.\textsuperscript{139} The comment concluded that states could adopt temporary special measures to bring about de facto equality for men and women so long as (1) the measures did not lead to unequal or separate standards for different groups or (2) continue after achievement of the desired objectives.\textsuperscript{140}

General Comment No. 1 to the CRC recognized that the child’s social environment may contribute to and encourage discrimination.\textsuperscript{141} In discussing the significance of Article 29(1), the comment noted that discrimination in any form, overt or hidden, “offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities.”\textsuperscript{142} The commentators used gender discrimination as an example. They indicated that even when the state provides girls with access to education, discrimination can occur when the curriculum “is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls’ participation.”\textsuperscript{143} All practices of discrimination, of any variety, violate the requirement in

\begin{footnotesize}
\begin{enumerate}
\item ICESCR General Comment 13, supra note 121, at ¶ 31.
\item Id. at ¶ 32.
\item Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, General Comment Adopted by the Committee on the Rights of the Child, U.N. Doc. HR1/GEN/Rev.5, at 257 ¶ 10 (2001) (commenting on the aims of education enunciated in Article 29(1)) [hereinafter CRC Comment]. In most countries with high gender disparities, gender inequality in education and participation is firmly rooted in societal inequalities. GENDER AND EDUCATION, supra note 115, at 266. Religion and culture heavily impact societal customs. Social customs and norms invariably shape people’s behavior and dictate acceptable roles for women in the family and community. Id. In many instances, these norms are so intricately connected to and embedded in religion that political leaders cite religion as a prima facie rationale for continuing to promote the norm of inequality. Id.; see infra Part IV.A.2.
\item CRC Comment, supra note 141, at ¶ 10 (commenting on the aims of education enunciated in Article 29(1)).
\item Id.
\end{enumerate}
\end{footnotesize}
Article 29(1)(a) of the CRC that obligates states to direct education to the fullest potential development of the child’s personality, talents, intellectual, and physical abilities.\textsuperscript{144} Despite these protections, in eleven countries, girls have a twenty percent less chance of ever starting school than boys.\textsuperscript{145}

2. The State’s Role in Undermining De Facto Discrimination

To address gender disparity in education, states need to establish an environment conducive to girls’ education through legislation and policy reforms; redistribute educational “costs,” both opportunity costs and financial costs; and mitigate the cultural and economic effects on families of females who pursue education.\textsuperscript{146} To promote gender equality and parity in education, states must target their efforts not only toward education itself, but also toward society’s cultural and institutional framework.\textsuperscript{147}

Accordingly, states should take measures to reduce the opportunity costs and financial costs of sending female children to school. When the benefits of schooling for boys far outweigh those for girls, economically disadvantaged parents will typically choose to send the male to school.\textsuperscript{148} In doing so, the parents would have chosen the logical option in many cultures since the male often has more employment prospects and could provide more to his parents in their old age.\textsuperscript{149} To increase the educational and occupational prospects for women, states must enact national legislation that encourages equal employment opportunities and wages for women. As

\textsuperscript{144} Id.
\textsuperscript{145} UNESCO SUMMARY REPORT, supra note 2, at 8.
\textsuperscript{146} GENDER AND EDUCATION, supra note 115, at 267.
\textsuperscript{147} Although treaties do not require it, states with high gender disparities and inadequate educational resources should consider inviting non-governmental organizations (NGO’s) to help them implement educational reforms. NGO’s conduct innovative educational experiments that focus on increasing female enrollment and decreasing gender parity. Id. at 268. By partnering with NGO’s, states can compliment their own efforts with the experience of organizations that may have faced and overcome similar inequalities in other countries.
\textsuperscript{148} Id.
\textsuperscript{149} See infra Part IV.B.2.
UNESCO noted, “[e]qualizing the benefits that arise from schooling is a more fundamental process, founded upon achieving a society and labour market free from discrimination such that the opportunities and advantages faced by children at given levels of education and achievement are broadly equal.”

The ICESCR requires states to reduce and eliminate fees until education is free from both direct and indirect costs. To redistribute financial costs, states should make primary education truly free by eliminating hidden costs for books, equipment, and participation in sports. Requiring children to attend school and incur costs when their parents cannot afford it “makes compulsory education illusory.” Of the countries at risk of not achieving gender parity in primary schooling by 2005, twenty-six still charge primary school fees. UNESCO observed that removing these fees “would probably be the single most effective means of raising primary school enrollments and reducing gender disparities in the short term.” Indeed, parents in 234 rural villages in India cited “unaffordability” as the most important factor that kept their children out of school. There, the cost of educating one child equaled forty days wages for an agricultural laborer. Ironically, the critique of school fees had the unanticipated effect of diminishing the availability of information about them.

In a sense, these fees represent a type of regressive taxation. As noted by the Special Rapporteur on the Right to Education, when governments try to justify school fees, the

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150 GENDER AND EDUCATION, supra note 115, at 268.
151 ICESCR General Comment 11, supra note 11, at ¶ 7.
152 GENDER AND EDUCATION, supra note 115, at 268; see also Progress Report, supra note 124, at ¶ 49.
153 Progress Report, supra note 124, at ¶ 50.
154 GENDER AND EDUCATION, supra note 115, at 267-68.
155 Id. at 268.
157 Id.
158 Progress Report, supra note 124, at ¶ 48.
159 Id. at ¶ 52.
Justification often reflects the government’s inability or unwillingness to generate adequate revenue through general taxation. While a family with a six-figure income can easily pay a four-dollar fee, it places a severe burden on parents who make three figures or less. Before the Tanzanian government removed its school fees, the cost to send one child to primary school for a year cost approximately half of an impoverished rural family’s annual income. Even now, secondary school tuition fees in Tanzania cost families the equivalent of three months salary at minimum wage.

C. Acceptability

Even if parents can afford to send their children to school, they may decide not to if they do not consider the school’s educational practices acceptable. Acceptability refers to the quality of education. To ensure quality, governments must guarantee minimum standards of health and safety, enforce professional requirements for teachers, prioritize the language of instruction for minorities, and prohibit corporal punishment.

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160 Id. Professor Tomasevski is cited frequently throughout this Article. In addition to her position as Special Rapporteur on the right to education, she is a Professor of International Law and International Relations at Lund University and an external lecturer at the Centre for African Studies of Copenhagen University. She graduated from the University of Zagreb and Harvard Law School. She has published several books. See Tomasevski, supra note 21; Katarina Tomasevski, Responding to Human Rights Violations (2000); Katarina Tomasevski, Women & Human Rights (1993).

161 When considered in light of the additional opportunity costs the family faces by sending the child to school, the hardship is particularly noticeable. Progress Report, supra note 124, at ¶ 52. The most economically disadvantaged households in Nepal spend more than forty percent of their income to send one child to primary school. Global Campaign for Education, supra note 156, at 22. In the mushar community in south-east Nepal, for example, children start working at an early age and large families sometimes have to choose between sending either their boys or their girls to school. Pahulmani, an eight-year-old girl living in this community, is one of nine children in a family of squatters who work as agricultural laborers. She stated, “[m]y father has been trying to find the money to buy my school books,” but her parents would rather send their sons to school. When asked how the family will pay for their second son’s education, the mother stated, “I will try by all means, after all—he is a son.” Id.

162 Global Campaign for Education, supra note 156, at 22.


164 Tomasevski, supra note 21, at 51.
The notion of acceptability also includes the form and substance of education. Thus, acceptability encompasses parental choice of education for their children (with human rights correctives), language of instruction, freedom from censorship, recognition of children as the subject of rights, acceptable teaching methods, and minimal education standards approved by the state. Consequently, the government must regulate and supervise schools to ensure minimal standards and respect for diversity. Article 29 of the CRC insists that states implement a holistic approach to education that reflects a balance between promoting physical, mental, spiritual, and emotional aspects of education as well as the intellectual, social, and practical dimensions.

Despite this holistic approach, which should include acceptable school disciplinary procedures, many states, including Liberia, Mali, Nigeria, Swaziland, Tanzania, Togo, Uganda, and Zambia, consider pregnancy a disciplinary offense. Pregnancy merits expulsion from school and may prohibit girls from continuing their education. These countries view strict punishment as a way to uphold a moral norm prohibiting teenage sex. Although schools sometimes reprimand boys as well, neither the school nor the state punishes the adult men who often cause these pregnancies. As noted by the Special Rapporteur on the Right to Education,

165 TOMASEVSKI, supra note 118, at 12.
166 Id.
167 Id.
168 Id.
169 ICESCR General Comment 13, supra note 121, at ¶ 6(c).
170 TOMASEVSKI, supra note 118, at 14-15.
171 CRC Comment, supra note 141, at 258, ¶ 12 (2001) (commenting on the aims of education enunciated in Article 29(1)).
172 GLOBAL CAMPAIGN FOR EDUCATION, supra note 156, at 38.
173 Progress Report, supra note 124, at ¶ 56-57; see generally UNESCO, supra note 98, at 15.
174 Progress Report, supra note 124, at ¶ 57.
175 Adult men are responsible for more than seventy percent of teenage pregnancies in Botswana. Progress Report, supra note 124, at ¶ 59 (citing E.L.M. BAYONA AND I. KANDJI-MURANGI, BOTSWANA’S PREGNANCY RELATED EDUCATIONAL POLICIES AND THEIR IMPLICATIONS ON EX-PREGNANT GIRLS’ EDUCATION AND PRODUCTIVITY, RESEARCH PRIORITIES FOR THE EDUCATION OF GIRLS AND WOMEN IN AFRICA, ABRIDGED RESEARCH REPORT NO. 16, at viii (Academy Science Publishers, Nairobi (undated))).
the “frequent clash between societal norms which pressurize girls into early pregnancy and legal norms which aim to keep them in school makes this phenomenon difficult to tackle.”\textsuperscript{176}

Despite this difficulty, several countries, including Bolivia, Botswana,\textsuperscript{177} Chile, Cote d’Ivoire, Guinea, Kenya, and Malawi, have taken steps to eliminate pregnancy as a barrier to education.\textsuperscript{178} For example, in 1993, Malawi introduced a new policy on pregnancy that allowed girls to return to school after having the baby.\textsuperscript{179} Although the campaign met with negative attitudes, the state, with the help of USAID, combated these attitudes by (1) revising the curriculum and its textbooks to remove gender bias, (2) training teachers and school personnel, and (3) conducting focus groups.\textsuperscript{180} The policy met with limited success. Not all schools supported the policy and some continued to exclude young mothers as a deterrent to other girls.\textsuperscript{181}

Other states have implemented measures prompted by judicial decisions to provide some protection for pregnant girls. The Supreme Court of Colombia held that the school had to alter

\textsuperscript{176} Progress Report, supra note 124, at ¶ 57.
\textsuperscript{177} Botswana implemented specific rules and led the way towards allowing girls to continue with their education after becoming pregnant. Tomasevski, supra note 21, at 166. Botswana examined both the harsh rules and recognized the unfairness in the practices:

Rule: No pregnant girl can write an examination in any school. Practice: Affected girls find this rule extremely punitive. If they have prepared for an examination before becoming pregnant (or knowing that they were pregnant), they have to wait two years until they are allowed to take that examination . . . .

Rule: The girl-mother has to furnish her own identity card and the birth certificate of her baby for re-admission. Practice: The process of getting a birth certification is so long and cumbersome that this would delay re-admission even further, while those without identity papers may take even longer to obtain them.

\textsuperscript{178} Global Campaign for Education, supra note 156, at 38. Some countries are signatories to the Maternity Protection Convention which broadly defines “woman” to include “child.” International Labour Organization: Maternity Protection Convention, 2000, and Maternity Protection Recommendation, 2000, June 15, 2000, art. 1, 40 I.L.M. 2, available at http://www.ilo.org. Even with a broad definition, the Convention limits its scope to the workforce and would certainly apply to female teachers but probably not students. Id. Many schools expel pregnant teachers, particularly if they are not married. Tomasevski, supra note 21, at 165.
\textsuperscript{179} Education for All, supra note 115, at 145.
\textsuperscript{180} Id.
\textsuperscript{181} Id.
regulations requiring the suspension of pregnant girls.\textsuperscript{182} Instead of rerouting girls into tutorials, the school should allow girls to resume their regular classes.\textsuperscript{183} Although the suspension from school did not imply a total loss of the right to education, the court found it “stigmatizing and discriminatory in comparison with other pupils.”\textsuperscript{184} Consequently, it held that when the school converted pregnancy into punishment, it “violate[d] fundamental rights to equality, privacy, free development of personality and . . . education.”\textsuperscript{185}

\textit{D. Adaptability}

Just as notions of discipline and punishment should remain flexible to prohibit discriminatory practices, the CRC requires schools to adapt to the best interests of the child.\textsuperscript{186} Education should be flexible enough to change with the needs of progressive societies and to respond to students needs within, and perhaps in spite of, their cultural settings.\textsuperscript{187} Adaptability requires governments to recognize and provide education to children with disabilities as well as working children, refugees, or children deprived of their liberty.\textsuperscript{188} This component obligates

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\textsuperscript{183} \textit{Id.}
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\textsuperscript{184} \textit{Id.} The entire quoted portion originally read:
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aunque la ‘desescolarización’ no implica la pérdida absoluta del derecho a la educación, sí implica su prestación conforme a una condición que tiende a estigmatizar a la alumna embarazada y a discriminarla frente a los restantes estudiantes en la recepción de los beneficio derivados del [derecho a la educación] . . . . erigir - por vía reglamentaria - el embarazo de una estudiante en causal de sanción, viola los derechos fundamentales a la igualdad, a la intimidad, al libre desarrollo de la personalidad y a la educación.
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\textsuperscript{185} \textit{Id.}
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\textsuperscript{186} TOMASEVSKI, \textit{supra} note 21, at 52.
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\textsuperscript{187} \textit{ICESCR General Comment 13, supra} note 121, at ¶ 6(d).
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\textsuperscript{188} TOMASEVSKI, \textit{supra} note 118, at 13-14.
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governments and schools to respect and safeguard human rights within education and, as a corollary, to use education to promote human rights.\textsuperscript{189}

Adaptability also implicates the other side of the cost equation of school fees: the opportunity cost of attending school. In countries with underdeveloped markets, children often face family pressure to work.\textsuperscript{190} Schools need to adapt to accommodate these pressures particularly when the child’s only alternative is to dropout of school. On balance however, governments also must prohibit at least some forms of child labor. The CRC attempts to protect children from “economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education.”\textsuperscript{191} Yet, without national legislation banning at least the most severe forms of child labor, this provision provides little protection.\textsuperscript{192}

The International Labor Organization (ILO) protects children by (1) defining a child as a person up to age eighteen, (2) reasserting states’ obligations to ensure access to free primary school education, and (3) mandating vocational training for children taken from the labor force.\textsuperscript{193} However, the ILO also recognizes that certain children need to work to survive.\textsuperscript{194} Consequently, it attempted to adapt to the educational needs of these children through “learn and earn” programs.\textsuperscript{195}

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\textsuperscript{189} TOMASEVSKI, \textit{supra} note 21, at 52; see also infra Part V.B.2. \\
\textsuperscript{190} GENDER AND EDUCATION, \textit{supra} note 115, at 269. \\
\textsuperscript{191} CRC \textit{supra} note 39, at art. 32(1). \\
\textsuperscript{192} GENDER AND EDUCATION, \textit{supra} note 115, at 269. \\
\textsuperscript{194} \textit{Id.} ILO Convention No. 10 prohibited education that prejudiced school attendance for children under fourteen-years-old. ILO Convention No. 138 raised the minimum age for employment to fifteen-years-old. \\
\textsuperscript{195} Progress Report, \textit{supra} note 124, at ¶ 64 (citing ILO-IPEC, \textit{Action against Child Labour: The Role of Education} 10 (1999)). The ILO functions as a specialized agency of the United Nations and was created to help improve labor conditions. HODGSON, \textit{supra} note 17, at 29. The Committee of Experts on the Application of I.L.O. Conventions and Recommendations monitors compliance with the ILO, but their recommendations do not create enforceable duties. \textit{Id.}
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The Supreme Court of India found the ILO’s “learn and earn” approach acceptable for children under fourteen-years-old in non-hazardous employment so long as the children worked no more than six hours a day with at least two hours of education at the employer’s expense.\footnote{Mehta v. State of Tamil Nadu, (1996) 6 SCC 756 (Sup. Ct. of India Dec. 10, 1996).} The Court recommended that only adults perform tasks in hazardous working conditions.\footnote{Id.} If this created an impossible financial burden on the family, the Court suggested that the state provide the family with a minimum income that would allow them to send the child to school.\footnote{Id.}

Some states do attempt to alleviate the financial burdens of sending children to school with state-funded subsidies.\footnote{Progress Report, supra note 124, at ¶ 55.} Subsidies aim to eliminate direct costs as well as opportunity costs of education. They reflect the notion that all such education costs should be proportional to a family’s ability to pay.\footnote{Id.} To break the cycle of economic barriers, governments need to implement measures that will allow girls to reap the monetary benefits of their education through increased employment opportunities and wages.\footnote{GENDER AND EDUCATION, supra note 115, at 270.} After providing for equal wages, successful measures must take the form of social mobilization rather than legislation.\footnote{Id.}

\textbf{IV. RELIGIOUS/SOCIAL/CULTURAL OBSTACLES TO GENDER EQUALITY IN EDUCATION}

Although a number of factors contribute to gender inequality and disparity in education, the primary and most complex factor is that of social inertia. The society in which girls live dictates whether education is available in both law and fact. A number of dynamics influence societal norms. Norms do not change solely through monetary donations or new school buildings. The key dynamics--religion and culture--are freedoms ardently protected and often institutionalized by national governments. For most Muslims, the Islamic religion mandates
cultural values, prescribes perceptions, and dictates conduct. Consequently, to change conduct, Muslims must reconstruct religious interpretations and practices.

To date, the United Nations and human rights organizations have kept a cautious distance from Islamic religious and cultural matters by mentioning the problems, but refusing to address them with anything more than care and study. Human rights groups concentrate their efforts and reports on violations such as arbitrary arrest, illegal detention, torture, and the lack of fair trials. In these reports, human rights groups as well as the agencies of the United Nations, perhaps unintentionally, create de facto support for fundamentalists by representing them as victims of oppression rather than as oppressors. Fundamentalists tout these reports to gain legitimacy and garner political support. Not until fundamentalist groups seize power, as the Taliban did in Afghanistan, do United Nations and human rights organizations report on violations committed by fundamentalists.

In addition to this silent omission, as previously mentioned, the United Nations allowed many Islamic countries to make reservations for Islamic Shari‘a to key treaty provisions. This quiet acquiescence to overt discrimination in practice against women and girls fails to confront the source of educational disparity. Until the United Nations and human rights groups acknowledge religion and culture as a root cause of gender disparity in education, the Dakar Conference participants have little hope of achieving their goals to eliminate gender disparities and achieve gender equality.

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203 See CLIFFORD GEERTZ, ISLAM OBSERVED 68 (1968).
204 These are, most certainly, important efforts and ending these practices will help build a just, democratic society for both men and women. The criticism is not on these goals per se, it is on the imbalance of these goals as the sole focus for human rights groups. See WLUMI Plan of Action, supra note 9.
205 Id.
206 See supra note 12.
207 See supra Part II.B.
A. The Islamic Religion and the Direct Requirements of the Qur'an

International human rights law does not guarantee freedom from religion. When faced with a complaint alleging that “compulsory instruction for atheists in the history of religion and ethics” constituted a human rights violation, the Human Rights Committee found no violation. The Committee explained that when schools included the history of religion and ethics in a neutral and objective way that respected the convictions of parents who did not believe in any religion, no human rights violation occurred. The more difficult question, however, is what happens, and what should happen, when religious norms dictate the administration of education in a biased and subjective way that inhibits girls, legally or factually, from enjoying the benefits of education.

Since the Islamic religion is the predominate religion in most of the states with the largest gender gaps in primary school enrollment, this section focuses exclusively on Islam. Yet, the Muslim world is not homogeneous. Participants in the inner-Islamic debate fall into three

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208 TOMASEVSKI, supra note 21, at 148 (citing Erkki Hartikainen v. Finland, Communication 40/1978 (Human Rights Committee Apr. 9, 1981)).
209 Id.
210 See supra note 115.
211 The Islamic religion is certainly not the only religion that contributes to gender disparity in education.
212 Farida Shaheed, Controlled or Autonomous: Identity and the Experience of the Network, Women Living Under Muslim Laws, Occasional Paper 5, at 2, July, 1994, at http://www.wluml.org/english/publi... (on file with author). Shaheed notes that “the diversity of Muslim societies and the differing realities of women within them have produced a plethora of feminist responses in the political arena that range from the exclusively secular to the exclusively theological, with many permutations in between.” Id. Because of the variations in practice within the Muslim world, formulations and conceptions of women may vary dramatically across national, ethnic, or economic boundaries. Donna J. Sullivan, Gender Equality and Religious Freedom: Toward a Framework for Conflict Resolution, 24 N.Y.U. J. INT’L L. & POL. 795, 804 (1992). The practices mentioned in the following sections may not apply to a number of Muslims. Many countries, made up entirely of Muslims have achieved gender parity, however the focus here will be on the practices of those countries that have not. Muslims take a variety of approaches to their individual practice of religion. See Kathleen A. Portuan Miller, The Other Side of the Coin: A Look at Islamic Law as Compared to Anglo-American Law--Do Muslim Women Really Have Fewer Rights than American Women?, 16 N.Y. Int’l L. Rev. 65, 144-45 (2003). According to Miller, states who practice extreme forms of Islam include Saudi Arabia, which practices Wahabism (akin to the far right fundamentalist Christians), Afghanistan (during the Taliban’s rule), the United Arab Emirates, and countries that practice “honor killing” such as India, Pakistan, and “some Arab countries.” Id.
broad categories: modernists, conservatist or traditionalists, and fundamentalists. Modernists require both *ijtihad*, individual interpretation of the scripture, and legal reform to stress women’s Islamic right to full human dignity and sociopolitical equality with men. Conservatives or traditionalists emphasize the need to preserve the stability of tradition and perceive modernity as a form of Westernization and cultural contamination. Fundamentalists hail themselves as the conscience of the true Islamic way of life, insist on the literal interpretation of scripture, and view women as soldiers for a holy war in which they must fight to preserve the traditional Islamic values of conduct, domesticity, and dress.

The recent conservative wave and resurgence of fundamentalist philosophy is aptly characterized as a defense mechanism against the profound changes in sex roles and sexual identity caused by women’s education. Women’s education disrupts the traditional sexual identity in Muslim culture, which centers on virginity and childbearing. Fundamentalist allegations that education for women destroys the traditional boundaries and definitions of sex

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213 Barbara Freyer Stowasser, Women in the Qur’an, Traditions, and Interpretations 5-6 (1994).
214 Id. at 6.
216 Stowasser, supra note 213, at 6-7, 38. Fundamentalists believe that religion, morality, and culture stand or fall with the woman. Id. at 7. For additional views and interpretations of fundamentalism, see Afary, supra note 12, at 7; Lynn P. Friedman, The Challenge of Fundamentalisms, Reproductive Health Matters, Nov., 1996, at 55, 56-57. One author noted, “[w]omen, their roles, and above all their control, are at the heart of the fundamentalist agenda. That they should conform to the strict confines of womanhood within the fundamentalist religious code is a precondition for maintaining and reproducing the fundamentalist version of society.” Gita Sahgal & Nira Yuval-Davis, Introduction: Fundamentalism, Multiculturalism and Women in Britain, in Refusing Holy Orders: Women and Fundamentalism in Britain 7 (Gita Sahgal & Nira Yuval-Davis eds., 1992).
217 Mernissi, supra note 75, at xxvi. Controlling a woman’s sexuality remains one of the most powerful tools of a patriarchy in Muslim societies. For a series of essays that demonstrate that sexual oppression stems from a combination of political, social, and economic inequalities, see Women Living Under Muslim Laws, Women and Sexuality in Muslim Societies (2000).
218 Mernissi, supra note 75, at xxvi.
roles and dissolves women’s traditional functions are entirely true. Because knowledge empowers women, the attempt to deny educational opportunities to women reflects the fundamentalists’ struggle to defend and preserve their interpretation of Islam.

1. Islamic Law

Islamic religious law professes to regulate every aspect of its follower’s public and private lives. As such, Shari’a plays an integral part in the socialization of Muslim women and children in Islamic countries. The tenets of Islam overwhelmingly shape the institutions, customs, and laws of these countries.

Regardless of the institutionalization of Islam in public governance, Shari’a extensively influences the status and rights of Muslim women. Unlike secular laws, which society can contest through the political process, some Muslims view Islamic laws as divinely ordained and thus fixed and immutable. Consequently, religious laws affect even Muslim women living in secularized states. Regardless of formal laws, private Islamic customs profoundly shape the educational opportunities, possibilities, and lives of Muslim women. The foundation for the pervasive nature of Islam is the Qur’an.

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219 Id. at xxviii.
220 An-Na‘im, supra note 55, at 13-14.
221 Id. at 20.
222 Id.
223 Id. at 14.
224 Sunder, supra note 11, at 1436. However, as one female Muslim author noted, “laws are not immutable but shaped by socioeconomic and political developments and involve a constantly changing selection of customs, traditions, religious codes, and external sources (e.g. colonial codes).” Shaheed, supra note 212, at 3. The group Women Living Under Muslim Laws noted that cultural identities would affect women who live in secular states because private “Muslim” customs profoundly influence women’s lives. Sunder, supra note 11, at 1436.
225 WOMEN LIVING UNDER MUSLIM LAWS, LAWS, INITIATIVES IN THE MUSLIM WORLD 9 (1995). Muslim women living in Britain face many of the same pressures as women living in Islamic countries. See Sahgal & Yuval-Davis, supra note 216, at 7; Gita Sahgal, Secular Spaces; The Experience of Asian Women Organizing, in REFUSING HOLY ORDERS; WOMEN AND FUNDAMENTALISM IN BRITAIN, supra note 216, at 167.
226 Shaheed, supra note 212, at 3. Shaheed observed that:
One of the overarching principles in the Shari’a influence is the notion of *qawama*,\(^{227}\) which originated from verse 4:34 of the Qur’an: “Men have *qawama* [guardianship and authority] over women because of the advantage they [men] have over them [women] and because they [men] spend their property in supporting them [women].”\(^{228}\) As interpreted by Islamic fundamentalists, this verse “justifies” the subjugation and marginalization of women as well as male dominance.\(^{229}\) Since fundamentalists occupy positions of authority in a number of Islamic governments, these leaders use this verse as grounds for not only allowing, but protecting a gender hierarchy.

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Fe**w Muslim countries have passed laws to debar women from specific occupations, to limit their physical mobility, to restrict their political participation, or to prescribe a particular dress code, yet in all these aspects women’s lives are circumscribed by internalized social codes. While it is clear that the law may allow these rules to exist by omission, in some areas informal, internalized “laws” may be in conflict with statute law.

Id.\(^{227}\)

Muslim modernists have argued that the notion of *qawama* or *qawwamun* refers to a duty and not leadership or control:

Farida Bennani argues that *qawwamun* refers to a duty, and not leadership or control. She argues that qawwamun is derived from the root *qwm* which means “to stand up,” “to take care of,” or “to guard.” Therefore, a husband is a servant to his family and not the leader of his family. Wadud-Muhsin and Sayyid Qutb argue that qiwmah is the responsibility of a man during the time his wife bears a child. Wadud-Muhsin argues that a woman deserves *qiwmah* in a mutually dependent relationship where she chooses to take on child-bearing as her primary responsibility. She deserves physical protection and material sustenance; otherwise, “it would be a serious oppression against the women.” The Verse therefore refers to the responsibilities where marital partners decide to undertake different roles within the marriage.


\(^{229}\) When a woman marries, she must strictly adhere to her husband’s commands and controls. Azizah al-Hibri, *Islam, Law, and Custom: Redefining Muslim Women’s Rights*, in *3 Women and International Human Rights Law* 367, 374-75 (Kelly D. Aiskin & Dorean M. Koening eds., 2001). She must also make herself sexually available to her husband. There is no such thing as marital rape in Islamic states.
Another key principle of Shari’a called *al-hijab*, or the veil, further inhibits women’s rights. Interpretations of verses 24:31, 33:33, 33:53, and 33:59 of the Qur’an direct women to stay home except in cases of emergency. When permitted to leave the house, they must wear a veil and cover their bodies. Saudi Arabia values the veil so highly that it allowed

> The *hijab* is manna from heaven for politicians facing crises. It is not just a scrap of cloth; it is a division of labour. It sends women back to the kitchen. 

> Any Muslim state can reduce its level of unemployment by half just by appealing to the shari’a, in its meaning as despotic caliphal traditions. This is why it is important to avoid reducing fundamentalism to a handful of agitators who stage demonstrations in the streets. It must be situated within its regional and world economic context by linking it to the question of oil wealth and the New World Order that the Westerners propose to us.


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230 Fundamentalists aggressively promote the notion of an “Islamic” dress code for women. The group, Women Living Under Muslim Laws emphasizes that this dress code does not have a basis in tradition. WLUML Plan of Action, * supra* note 9, at 8. As one author noted:

> And say to the believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments except what (must ordinarily) appear thereof; that they should draw their veil over their bosoms and not display their beauty except to their husbands, their fathers, their sons, their husbands sons, their brothers or their brother’s sons, or their sister’s sons or their women, or small children who have not sense of shame of sex, and that they should not strike their feet in order to draw attention to their hidden ornaments. And O ye Believers! Turn ye all together toward God, that ye may attain Bliss.

HOLY QUR’AN, * supra* note 228, at 904-05.

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231 This verse states:

> [O Consorts of the Prophet . . .] And stay quietly in your houses, and make not a dazzling display, like that of the former Times of Ignorance; and establish regular prayer, and give regular charity; and obey God and His Apostle. And God only wishes to remove all abomination from you, ye Members of the Family, and to make you pure and spotless.

Id. at 1115-16

233 This verse states, “[O ye who believe . . .] And when ye ask (his ladies) [the Prophet’s wives] for anything ye want, ask them from before [behind] a screen: that makes for greater purity for your hearts and for theirs.” Id. at 1125-26.

234 This verse states, “O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad): that is most convenient, that they should be known (as such) and not molested. And God is Oft-Forgiving, Most Merciful.” Id. at 1125-26.

fourteen unveiled girls to burn to death in their all-girls public school.\textsuperscript{236} Saudi religious police, known as mutawwa’un, prevented the girls from escaping because they were not properly veiled and, as such, could not come in physical contact with the civil defense forces trying to rescue them.\textsuperscript{237} Although some of the girls initially escaped, the religious authorities beat them until they returned into the burning building to retrieve their veils.\textsuperscript{238} Once inside, the religious police locked the doors from the outside.\textsuperscript{239}

2. The Veiled Threat to Education

Other countries use the veil to keep Muslim girls and teachers out of school rather than inside school. As a backdoor means to deprive girls of education, some predominately Muslim countries refuse to allow girls to wear veils, or headscarves, in school. For example, although Turkey’s population is almost one hundred percent Muslim,\textsuperscript{240} in 1998, its Constitutional Court held that girls could not wear headscarves in schools since they “might adversely affect the

wear the veil, see Samira Ali Gutoc, \textit{Me and My Hijab: Reflections on the Veil}, Sept. 2003, at http://www.whrnet.org/docs/perspective-gutoc-0309.html (last visited Dec. 13, 2003). Some women choose to join the fundamentalist movement and don the veil because it allows them an alternative form of power:

By donning the veil, young-lower-middle class women may lose many individual freedoms, but they gain access to public spaces, to employment, and can become valued and powerful members of political organizations that propagate the militant Islamist ideology. When a young girl adopts the \textit{hijab} she becomes physically restrained in certain ways . . . . But she may face a lesser degree of sexual harassment. She may gain the right from her traditional family to finish high school and even attend the university, to seek outside professional employment, to socialize with her peers in mass organizations that promote the Islamist ideology, and even choose her own husband in these gatherings rather than submit to an arranged marriage. Those women who become active members of militant Islamist groups also gain power over more secular women.

\textsuperscript{236} \textsc{Tomasevski}, supra note 21, at 160 (citing A. Gresh, \textit{Balbutiments de l’opinion publique en Arabie saoudite}, \textsc{Le Monde Diplomatique}, May 2002). The ministry of education took over girls’ education in Saudi Arabia after this tragedy.


\textsuperscript{238} Id.

\textsuperscript{239} Id.

\textsuperscript{240} CENTRAL INTELLIGENCE AGENCY, supra note 46. Turkey’s Muslim population constitutes 99.8% of its total population.
public security and unity of the nation because the headscarf or turban shows who belongs to which religion.”

This policy excluded and affected over 30,000 female students and teachers. Turkey then imprisoned one of its former Ministers of Education for claiming that this resulted in the exclusion of female students and teachers since Islamic law required them to wear headscarves.

The International Labor Organization (ILO) associated the prohibition on veils as denying women equal access to education and requested that governments ensure that the prohibition did not adversely affect the rights of Muslim women. In its statement, the ILO noted that the discriminatory effect of the ban “took on particular significance when viewed in the light of information supplied by the Government indicating that women’s level of education is very low in Turkey (one out of every two women jobseekers has only a primary school education), as is their level of participation in the workforce.”

The Netherlands, France, and Switzerland joined Turkey in this debate over the veil. The Equal Treatment Commission in the Netherlands held that schools must allow Muslim girls to wear clothing adapted to their religious convictions when participating in physical exercise. In France, the Conseil d’État, held that girls may wear recognizable religious symbols so long as the symbols allow the girls only to exercise their freedom of expression and manifest their religious beliefs. However, this freedom did not “permit the learners to display religious symbols which, . . . individually or collectively, or to their ostentatious or demonstrative

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241 TOMASEVSKI, supra note 21, at 167.
242 Id.
243 Id.
244 Id.
245 Id.
character, constitute an exercise of pressure, provocation, proselytizing or propaganda. The Swiss Federal Court in Switzerland refused to allow a Muslim teacher to wear her veil because teachers needed to be religiously neutral and it feared that religious symbols would cause disputes between religious groups.

3. The Increased Risk of HIV/AIDS from Polygamy

Women’s obligation under the Qur’an to wear the veil outwardly portrays only one manifestation of a broad picture of inequality within the Islamic religion. The hierarchical system of male dominance appears in a number of everyday policies and attitudes. The man may divorce his wife at will and marry multiple women. The practice of polygamy proves one of the most dangerous and life threatening practices to women because of the increased risk of HIV/AIDS and the lack of sex education.

In Islamic family law, the Qur’an allows men to marry up to four wives. The men may exercise total control over the women while married. This right of control allows the men to

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248 Id.
249 Id. (citing X v. Etat du Canton de Geneve, Arret du Tribunal Federal, 123 1 296 (Nov. 12, 1997)).
250 A man may dissolve his marriage by pronouncing that he has dissolved marriage, whereas Islamic law limits the ability of a wife to divorce her husband. JOHN L. ESPOSITO, WOMEN IN MUSLIM FAMILY LAW 30-33 (1982). The notion of pronouncing divorce is called talaq-i-tafwid. Female Muslim activists propose that women also have a contractual right to talaq-i-tafwid. See TALAQ-I-TAFWID: THE MUSLIM WOMAN’S CONTRACTUAL ACCESS TO DIVORCE: AN INFORMATION KIT (Lucy Carroll & Harsh Kapoor eds., 1996); SHA BANO AND THE MUSLIM WOMEN ACT A DECADE ON: THE RIGHT OF THE DIVORCED MUSLIM WOMAN TO MATAA (Lucy Carroll ed., 1998); see also Lucy Carroll, Muslim Women and ‘Islamic Divorce’ in England, in WOMEN LIVING UNDER MUSLIM LAWS DOSSIER 19, at 51 (Marie-Aimée Hélie-Lucas & Harsh Kapoor eds., 1997); Maznah Mohamad, Islam, the Secular State and Muslim Women in Malaysia, in WOMEN LIVING UNDER MUSLIM LAWS DOSSIER 5/6, at 13, 17 (1989), available at http://www.wluml.org/english/pubsfulltxt.shtml?cmd[87]=i-87-47c3025969a0aa2340aba0482e1cd2d0&cmd[190]=i-190-47c3025969a0aa2340aba0482e1cd2d0 (last visited Dec. 18, 2003) (on file with author).
251 Polygamy originates from verse 4:3 of the Qur’an. See HOLY QUR’AN, supra note 228, at 179; see also ISLAMIC FAMILY LAW 60 (Chibli Mallat & Jane Connors eds., 1990). This verse may be reinterpreted in light of different principles. See Eissa, supra note 215, at 28-29.
252 The husband’s authority to discipline his wife comes from verse 4:34 of the Qur’an. See HOLY QUR’AN, supra note 228, at 190-91. Muslim women have begun to challenge these notions. See WOMEN LIVING UNDER MUSLIM LAWS, KNOWING OUR RIGHTS: WOMEN, FAMILY, LAWS AND CUSTOMS IN THE MUSLIM WORLD (2003).
punish their wives for disobedience as they think necessary.\textsuperscript{253} Muslim women must obey their husbands.\textsuperscript{254} In some Islamic countries, a man also may take as many temporary wives as he wishes.\textsuperscript{255} This type of temporary marriage, \textit{mut’a} (or \textit{sigheh} in Persian vernacular), resembles a kind of contract that stays in force for a specific period of time that can range from hours to years.\textsuperscript{256} Even though children born out of these temporary unions are legally protected, they are socially stigmatized.\textsuperscript{257} Until recently, only some Shi’a communities practiced temporary marriages, however, fundamentalist ideologies exported the practice into other parts of the Muslim world.\textsuperscript{258} Islamic law forbids Muslim women from engaging in more than one contract of temporary marriage at once and instructs them to observe a period of sexual abstinence for forty-five days after the end of the temporary marriage.\textsuperscript{259}

These practices exponentially increase the risk of HIV/AIDS infection for women as both permanent and temporary wives to polygamous men. As incidents of the AIDS virus increase, the demand for younger female sex partners has escalated.\textsuperscript{260} Arab and African countries have both the highest disparity in favor of boys in education and the highest percentage of HIV positive females.\textsuperscript{261} These same regions exhibit the lowest levels of achievement in gender equality and women’s empowerment.\textsuperscript{262}

\begin{footnotesize}
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\item \textsuperscript{253} \textit{Holy Qur’an}, supra note 228, at 190-91; see also \textit{Islamic Family Law}, supra note 251, at 61.
\item \textsuperscript{254} \textit{Islamic Family Law}, supra note 251, at 61 (“A contract of marriage . . . obliges a woman to be obedient to her husband. In an Islamic marriage obedience, tamkin, not merely a culturally accepted behavior for women. It is rather a binding legal obligation.”)
\item \textsuperscript{255} Egypt and Iran are among these countries. \textit{Id.} at 60; \textit{An-Na'im}, supra note 55, at 41.
\item \textsuperscript{256} \textit{Islamic Family Law}, supra note 251, at 60; \textit{An-Na'im}, supra note 55, at 41.
\item \textsuperscript{257} \textit{Islamic Family Law}, supra note 251, at 60.
\item \textsuperscript{258} \textit{WLUML Plan of Action}, supra note 9, at 8.
\item \textsuperscript{259} \textit{Islamic Family Law}, supra note 251, at 60.
\item \textsuperscript{260} Cynthia P. Cohen, \textit{The United Nations Convention on the Rights of the Child: A Feminist Landmark}, 3 \textit{WM & MARY J. WOMEN & L.} 29, 44 (1997). As early as 1988, sixteen percent of the patients treated for sexually transmitted diseases in Nigeria were under five years old. \textit{Id.}
\item \textsuperscript{261} See \textit{Gender and Education}, supra note 115, at 48; \textit{UNIFEM}, supra note 115, at 50.
\item \textsuperscript{262} \textit{UNIFEM}, supra note 115, at 48. For a guide on how Muslim women can participate in the political context and work to empower women, see \textit{Homa Hoodfar \& Nelofar Pazira, Building Civil Societies: A Guide for Social and Political Action} (2000).
\end{itemize}
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In short, education is “a social vaccine” to HIV.\textsuperscript{263} The incidence of HIV declines markedly among educated females.\textsuperscript{264} School provides a primary method for disseminating information about HIV/AIDS, but the gender gap in education prevents many girls from learning this vital information.\textsuperscript{265} By making school culturally and religiously inaccessible to girls, these countries continue to perpetuate the HIV/AIDS pandemic.\textsuperscript{266} Even in school, girls may not be included in education and training on HIV/AIDS prevention because of discriminatory and stereotyped gender roles regarding sexuality.\textsuperscript{267}

Despite the systematic denial of HIV/AIDS education, the vocabulary needed for sex education exists in the classic Islamic tradition.\textsuperscript{268} As one pioneer for sex education in Palestinian universities and schools noted, “[w]hat has been most fascinating is that I have found most of my vocabulary readily available in the classical Islamic tradition. It’s been there all along, buried under mounds of regressive prohibitions that actually misrepresent Islam for contemporary use.”\textsuperscript{269}

The United Nations Secretary-General recognized the link between the denial of girls’ education and the need for girls to learn how to protect themselves from AIDS. He stated, “[p]revented from going to school, [girls] are denied information about how to protect themselves against the virus. Without the benefit of an education, they risk being forced into

\textsuperscript{263} UNESCO SUMMARY REPORT, supra note 2, at 13.

\textsuperscript{264} Id.


\textsuperscript{266} See UNIFEM, supra note 265, at 4.

\textsuperscript{267} UNIFEM, supra note 265, at 4. Even if the child attends school, since schools typically ask parental permission before allowing children to participate in sex education programs, parents may not allow their children to participate. Barbara B. Woodhouse, Symposium, Speaking Truth to Power: Challenging “The Power of Parents to Control the Education of Their Own,” 11 CORNELL J.L. & PUB. POL’Y 481, 490 (2002). Even in the United States, only eighteen states mandate sex education classes. Id. at 492.

\textsuperscript{268} See EDWARD W. SAID, On Visiting Wadie, in THE END OF THE PEACE PROCESS: OSLO AND AFTER, supra note 1, at 94.

\textsuperscript{269} Id.
early sexual relations, and thereby becoming infected. Thus, they pay many times over the
deadly price of not going to school.”270 The resulting debate is somewhat circular. Many girls do
not attend school because of religious and cultural socialization; their resulting ignorance about
HIV combined with the increased risk of polygamy makes them more susceptible to the virus.
Yet, because the root of the problem is a religious and cultural one, international organizations
tend to handle the problem with care and sensitivity or silence rather than confrontation.

In a very real sense, the unfolding debate over the right to receive education about the
risks of HIV resembles the debate over female genital mutilation (FGM).271 Because FGM
involved cultural and religious rights, the United Nations studied the issue “with care and
sensitivity” for more than thirty years before taking action.272 Even the World Health
Organization treated FGM as a social and cultural matter, and thus not within its area of
care.273 One United Nations report discussing a study of FGM noted, “the study raises a
number of challenging questions especially related to cultural self-determination and the right of
the individual; this is an area which merits further study.”274 These challenging questions
centered on the incompatibility of a cultural and religious practice with human rights.

International human rights law developed in the Western context where society routinely
separates church and state.275 In contrast, Islamic law purports to regulate all aspects of both

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271 FGM originated in ancient Egypt, and even though it has no basis in the Islamic religion, fundamentalists in South and South East Asia claim that FGM is an Islamic requirement. WLUMIL Plan of Action, supra note 9, at 8.
272 See Kay Boulware-Miller, Female Circumcision: Challenges to the Practice as a Human Rights Violation, 8 HARV. WOMEN’S L. J. 155, 164 (1985).
273 Id.
275 TOMASEVSKI, supra note 21, at 148.
public and private life.\textsuperscript{276} Because the state did not enforce FGM,\textsuperscript{277} to eradicate it, the opposition had to convince governments to regulate the conduct of private actors.\textsuperscript{278} Yet, in relation to HIV/AIDS, the states themselves have an obligation to provide girls with equal education in both law and fact.\textsuperscript{279} Consequently, it seems that international organizations, such as the United Nations, would provoke noncompliant states, through the practice of naming and shaming, into compliance with their treaty obligations.\textsuperscript{280} Although reports from the United Nations repeatedly acknowledge the religious and cultural dynamic, thus far, the United Nations has taken the same approach to the lack of HIV/AIDS education in Islamic countries as it did with FGM: that of care and inaction.\textsuperscript{281}

Most of the states that allow polygamy and have a high disparity between gender enrollment at the primary school level signed the CRC and CEDAW.\textsuperscript{282} Although the CRC does not specifically address HIV/AIDS, it mandates that states consider the best interest of the child,\textsuperscript{283} provides an inherent right to life,\textsuperscript{284} recognizes the child’s right to enjoy the highest attainable standard of health,\textsuperscript{285} and requires state parties to take all effective and appropriate measures to abolish traditional practices prejudicial to the health of children.\textsuperscript{286} Consequently,

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\item \textsuperscript{276} An-Na’im, supra note 55, at 13-14.
\item \textsuperscript{277} STEINER & ALSTON, supra note 87, at 424.
\item \textsuperscript{278} Id.
\item \textsuperscript{279} See supra Part II.A.1, III.B.
\item \textsuperscript{280} Yet, as shown in Part IV.A.2, a number of states made reservations to these treaties for provisions in conflict with Islamic Shari’a. Consequently, the provisions cannot be enforced.
\item \textsuperscript{282} See supra note 210; supra Part II.B.
\item \textsuperscript{283} CRC supra note 39, at art. 3.
\item \textsuperscript{284} Id. at art. 6.
\item \textsuperscript{285} Id. at art. 24(1).
\item \textsuperscript{286} Id. at art. 24(3).
\end{itemize}
\end{footnotesize}
the framework exists within the CRC to argue that states must educate all children, girls and boys, about the dangers of HIV/AIDS.\footnote{287}{See Jason R. Hight, \textit{Sex and AIDS Education in the United States: Implications of the UN Convention on the Rights of the Child}, 30 \textit{CAP. U.L. REV.} 679, 687 (2002).}

CEDAW, in Article 10, provides that the signatory states must take all necessary measures to eliminate discrimination in education, and must ensure that women have access to educational information that will help secure the health and well-being of families.\footnote{288}{CEDAW, \textit{supra} note 38, at art. 10(h).} In the General Recommendations regarding health, the CEDAW Committee specifically mentioned the HIV/AIDS situation.\footnote{289}{UNIFEM, \textit{supra} note 265, at 6.} It recommended that states remove all barriers to women’s access to health education and allocate resources to a curriculum targeted toward preventing sexually transmitted diseases including HIV.\footnote{290}{\textit{Id.}} The recommendations also directed states to increase public awareness concerning the risk of HIV infection and AIDS, particularly for women and children.\footnote{291}{\textit{Id.}}

Article 5 of CEDAW addresses the link between culture and the practices of governments with regard to women. It requires parties to its convention to:

\begin{quote}
\begin{center}
\textit{take all appropriate measures \textit{[t]}o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the ideal of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.}\footnote{292}{\textit{Id.}}
\end{center}
\end{quote}

Accordingly, state parties must take steps, in the context of education, to eliminate any stereotyped concept of the roles for men and women at all levels and in all forms of education.\footnote{293}{UNIFEM, \textit{supra} note 265, at 6.} CEDAW clearly obligates parties to eliminate prejudices, to make education equally accessible to women, and to provide women with health education about HIV/AIDS. Yet, even though
almost all of the predominately Islamic countries with gender gaps in education have signed CEDAW, the international community cannot enforce these commitments because it allowed many of the states to sign subject to reservations for conflicts with Islamic Shari’a. Even for the states that signed without reservations, the United Nations largely tends to make an exception for situations viewed as cultural or religious matters.

B. Social and Cultural Manifestations of Islam-Traditional Values and Practices

As many of the treaty reservations indicate, religious norms may dictate, or at least be inextricably tied to, cultural and social norms. The fundamentalist interpretation of the Islamic religion constructs, mandates, and maintains a gender hierarchy between men and women. This hierarchy exists in every facet of Muslim lives from family and domestic laws to cultural practice and societal norms. Although a number of fundamentalist values obscure girls’ right to education, these values form two primary barriers in Muslim society: the practice of early marriage and the limitations on employment.

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294 For a list of the predominately Islamic countries that have signed CEDAW, see supra note 46. For information regarding treaty ratification, see http://www.right-to-education.org/content/rights_and_rem edies/index.html (last visited Nov. 12, 2003).

295 See supra Part II.B. Some Muslim leaders are discussing the HIV/AIDS crisis. A number of religious zealots, however, have disrupted their discussions. Shanon Shah, When the Music Stops: Extremists Disrupt Muslim HIV/AIDS Conference, MUSLIM WAKE UP!, June 2, 2003, at http://www.muslimwakeup.com/mainarchive/000089.html (last visited Nov. 18, 2003). During the Second International Muslim Leaders Consultation on HIV/AIDS, held in Kuala Lumpur from May 19-23, 2003, a group of extremists verbally terrorized the female presenters. Id. Before the verbal attack, Dr. Wadud blamed the Muslims in positions of authority who, when faced with the need to prevent HIV/AIDS repeat the Qur’an, “La taq rabu ‘z-zina” (do not approach adultery). Id. She recognized that these religious phrases did nothing to comfort the women who contracted the virus from their husbands and challenged Muslims to produce a more effective theological response to the HIV/AIDS crisis. Id.

296 See supra note 46.

297 Gender bias, however, is not exclusive to the Islamic culture and exists in many forms throughout the world. In countries such as the Republic of Korea, India, and China, gender discrimination begins before female children are even born. Cohen, supra note 260, at 41. These countries use ultrasound techniques to determine the sex of the fetus and conduct selective abortions of females. Id.
1. Early Marriage

Although international strategies optimistically assume the right to education, when this right clashes with cultural constructs that relegate girls to early marriages, the right is effectively denied. Many families view marriage as a higher priority for their daughters than education. The priority of marriage often translates into marrying at a young age. Although education has the effect of postponing marriage, this effect is discernible only after a girl enters secondary education. UNICEF recognized early marriage as a barrier to girls’ primary school education in Chad, Eritrea, Nigeria, Tanzania, and Yemen. The median age of marriage in Mali

| Women Aged 20-24 Married Before They Were 20 Years Old By Years of Schooling |
|----------------------------------|-------------------|-------------------|
| Country                          | Less than 7 years of Schooling (%) | More than 7 years of Schooling (%) |
| Botswana (Africa)                 | 26                     | 15                     |
| Egypt (Middle East)               | 69                     | 21                     |
| Mali (Africa)                     | 93                     | 79                     |
| Morocco (Middle East)             | 38                     | 11                     |
| Niger (Africa)                    | 92                     | 28                     |
| Pakistan                          | 57                     | 19                     |
| Tanzania (Africa)                 | 80                     | 54                     |
| Togo (Africa)                     | 71                     | 28                     |
| Uganda (Africa)                   | 79                     | 55                     |
| Yemen (Middle East)               | 68                     | 26                     |

See Tomasevski, supra note 14, at 33.
GLOBAL Campaign for Education, supra note 156, at 21.
The table below illustrates the link between early marriage and education, and demonstrates that secondary education, not primary education, has a clear effect on postponing marriage.


S. Singh & R. Samara, Early Marriage among Women in Developing Countries, 22 INTL. FAM. PLAN. PERSP. 4, at 153 (1996). No data was available for countries previously mentioned in this article and not listed in this table.
is sixteen years old, and is as low as fifteen in Ethiopia.\textsuperscript{306} Mauritania has no legal minimum age for consent to marriage.\textsuperscript{307}

Once a girl turns six-years-old many families already expect her to take on adult household duties such as caring for siblings, cooking, and cleaning.\textsuperscript{308} Even in countries where families do not hold these expectations, marriage grants girls instant adult status and forces them to take on domestic and childrearing responsibilities.\textsuperscript{309} Many Islamic societies view domestic responsibilities as the best education for girls and consider formal schooling a waste of time.\textsuperscript{310}

Once married, a girl has a duty under Shari’a to become a good housewife, wife, and mother since her husband technically owns her.\textsuperscript{311} According to Saudi Arabian Sheikh Abdul-Aziz al-Aqil, “the Muslim woman is a precious jewel whom only her rightful owner can possess, for he has paid dearly for that.”\textsuperscript{312} Saudi Arabia’s laws and regulations do not define a minimum age for marriage since “Islamic law regulates this matter in a manner that ensures happiness for both spouses and prevents the countless social dangers inherent in delaying the age of

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\item[306] MELCHIORRE, supra note 301, at 115.
\item[307] MELCHIORRE, supra note 301, at 76.
\item[308] Cohen, supra note 260, at 42.
\item[310] Cohen, supra note 260, at 54-55.
\item[311] See TOMASEVSKI, supra note 21, at 167.
\item[312] Id. (quoting D. Hirst, Educated for a Life of Enforced Indolence, Guardian Weekly, Aug. 19, 1999); GLOBAL CAMPAIGN FOR EDUCATION, supra note 156, at 21. One fifteen-year-old Muslim girl noted, “If I am lucky I might get married to a man who will let me use my education and get a good job.” Saeeda Khanum, Education and the Muslim Girl, in REFUSING HOLY ORDERS: WOMEN AND FUNDAMENTALISM IN BRITAIN, supra note 216, at 129, 132.
\end{enumerate}
\end{footnotesize}
marriage.”313 Under Islamic law, doubts about a girl’s chastity increase with each year past puberty.314 Consequently, in countries such as India, the girl’s parents’ dowry payments increase with each year after the girl’s first period.315 Groom’s families demand less dowry for younger brides.316

The cultural and religious tradition of treating women as property and pressuring early marriage is not exclusive to Muslim countries. It impedes girls’ education regardless of the country. When girls do not marry early and opt to continue their education, society often penalizes parents by increasing the dowry they must pay or by decreasing the bride price they would usually receive.317

For example, in Uganda, the bride-price of a Karimojong girl decreases if the girl underwent formal schooling.318 Uneducated girls receive a bride-price of approximately 100-120 heads of cattle; educated girls receive the price of approximately 5-10 cows.319 Education reportedly turns girls into prostitutes so they lose their culturally treasured virginity.320

In Nepal, parents must pay an increased dowry to the bridegroom’s family if the girl attends school.321 Forty percent of girls in Nepal are married by age fifteen.322 One Nepali mother

313 MELCHIORRE, supra note 301, at 96. Sudan uses similar provisions and allows a guardian to give consent for a “mature” woman. Ten-year-old girls must receive the consent of a judge who bases the decision on the “considerations of advantage and good reason, provided that the husband is suitable and the dowry equals that of the girl’s peers.” Id. at 101.
316 A dowry refers to the amount of money or wealth that a bride’s parents must pay to the future groom’s family. Backstrom, supra note 44, at 551.
317 TOMASEVSKI, supra note 14, at 33.
318 See id. at 34. For more information about customs and women’s rights in Uganda, see Catherine Harries, Daughters of Our Peoples: International Feminism Meets Ugandan Law and Custom, 25 COLUM. HUM. RTS. L. REV. 493 (1994).
319 TOMASEVSKI, supra note 21, at 160.
320 Id. at 167.
321 Id. at 34.
322 GLOBAL CAMPAIGN FOR EDUCATION, supra note 156, at 21.
remarked, “[i]n my zeal to educate my daughter I have brought devastation to my family because now I’ll have to sell off all my land to pay the lilak for her wedding. If only I married her off before sending her to school.”  

 Few legal grounds exist for urging governments to prohibit child marriages since the same treaty that provides the right to education, the CRC, also requires respect for religious and cultural practices. Although allowing early marriages frequently violates the girls’ right to education in fact, prohibiting the child from marrying until a certain age may violate the Muslim child’s freedom of religion as provided in Article 2(1) of the CRC. Asking state parties to direct the child’s education toward developing a respect for “his or her own cultural identity” and “the national values of the country in which the child is living” undermines the CRC’s strong educational provisions. The CRC does not contemplate that the country’s national values and the girl’s cultural values may cause the abuse of girls’ educational rights.

CEDAW contains a specific provision, Article 16(2), which prohibits the practice of early marriages and declares that child marriages shall have no legal effect. However, as previously mentioned, a number of Islamic countries made specific reservations to not only Article 16, but also to any provision in CEDAW that conflicts with Islamic law. With these reservations, countries can assert a tenable legal position of noncompliance based on an Islamic custom of early marriage.

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323 TOMASEVSKI, supra note 14, at 34.
324 See CRC supra note 39.
325 CRC supra note 39, at art. 29(1)(c). In Article 29, state parties agree to direct the child’s education to “[t]he development of respect for the child’s parents, this or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.” Id. at art. 29(c).
326 CEDAW, supra note 38. CEDAW, however, fails to prescribe a minimum age.
327 See Part IV.A.2.
A number of states already enacted national legislation formally prohibiting early marriages; however, families frequently ignore these legal formalities in favor of custom and tradition. For families with little economic resources, early marriages may alleviate financial burdens. Parents often prefer to save money for their daughter’s dowry than for her education. Early marriage mutually benefits both the bride and groom’s parents: it relieves the girl’s parents of the costs of continuing to raise a girl and provides the groom’s family with what may amount to an unpaid servant and perhaps a dowry. In this sense, economic justifications reinforce cultural and religious ones. In Mali, parents regard girls’ education as a “lost investment” since the future husband’s family reaps the returns.

2. Labor Market Inequities: What Can Girls Do with an Education?

The economic disincentive resurfaces when educated girls have few employment opportunities. Parental attitudes towards educating their daughters quickly change when the private returns for girls’ education increase. However, since girls have limited employment options in most countries with high gender disparities in education, the cycle is self-perpetuating.
Girls’ right to education is fundamentally linked to the rights that they can exercise and gain through education.\textsuperscript{336} An Arab news magazine posed the rhetorical question, “[i]s there any logical justification for spending huge amounts of money on women’s education when thousands of female graduates face the prospect of either remaining at home or entering a single profession, girls’ education, which is already overcrowded?”\textsuperscript{337} Likewise, parents ask, “[s]ince girls cannot get jobs if they have only primary education . . . why pay for them to sit six years in a classroom when they could be at home working?”\textsuperscript{338}

Since CEDAW focuses on gender discrimination, it seems that, in its article addressing the right to education, it would emphasize the need for education that prepares girls for equal employment. Although CEDAW mentions “girls” only in its article on education,\textsuperscript{339} the chapeau to this article asks state parties simply to “take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education . . . .”\textsuperscript{340} Consequently, CEDAW limits its focus to correcting the inequality between adults rather than expanding its focus to target the root of inequality and ensure that girls receive the necessary education to prepare them to compete equally for employment.\textsuperscript{341}

The CRC obligates state parties to direct education toward “[t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential,”\textsuperscript{342} which,

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\textsuperscript{336} TOMASEVSKI, supra note 14, at 33. For a historical-based assessment of the Muslim woman in the British labor market, see Avtar Brah, ‘Race’ and ‘Culture’ in the Gendering of Labour Markets: Young South Asian Muslim women and the British Labour Market, in WOMEN LIVING UNDER MUSLIM LAWS DOSSIER 23/24, supra note 8, at 5.
\textsuperscript{339} CEDAW, supra note 38, at art. 10(f).
\textsuperscript{340} Id. at art. 10.
\textsuperscript{341} Cohen, supra note 260, at 39.
\textsuperscript{342} CRC supra note 39, at art. 29(1)(a).
\end{flushleft}
without religious and cultural changes, encourages girls to develop abilities for inaccessible jobs. Because the CRC also provides, in the same article, that children should develop respect for the national values of the country in which they lives and their own cultural identity, the CRC ultimately affords girls the opportunity to live as highly educated second-class citizens.

V. TOWARD REMOVING BARRIERS TO EDUCATION THROUGH THE CULTURAL AND RELIGIOUS LEGITIMIZATION OF GENDER

Too often, the clash between rights results in the continuous subrogation of the “new” or unrealized right. Contemporary religious and cultural fundamentalists take advantage of the United Nations’ tradition of deferring to religious practices to retain patriarchal institutions and prevent girls from realizing their right to education. When states use cultural and religious justifications to substantiate discriminatory practices, reforms cannot afford to treat religion and culture with only care and study. Instead, human rights groups need to recognize religion and culture as the cause for the denial of educational rights and confront them as such. For cultural and religious ideas to change, the impetus for change must begin with an understanding of how Muslims create Islamic culture and, consequently, how they can reinvent it.

A. Legitimacy within the Religious Context: Textually Reinterpreting the Qur’an

First, to be seen as culturally legitimate within the Islamic community, reform requires a reinterpretation of Shari’a. Even if Islamic governments wish to honor their international human rights obligations, if they implement rights in a way that their country perceives as

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343 Id. at art. 29(1)(c).
344 For information on outreach strategies, see MUSLIM WOMEN’S RESEARCH & ACTION FORUM & WOMEN LIVING UNDER MUSLIM LAWS, REACHING OUT, CHANGING OUR LIVES, OUTREACH STRATEGIES AND WOMEN LIVING UNDER MUSLIM LAWS (1999).
345 See EDWARD W. SAID, The Uses of Culture, in THE END OF THE PEACE PROCESS: OSLO AND AFTER, supra note 1, at 143.
346 An-Na’im, supra note 55, at 15.
incompatible with Shari’a.\footnote{Id. at 21.} then they risk challenges of illegitimacy and overthrow by Islamic fundamentalists.\footnote{Id. at 30 (noting that Islamic activism can pose a great threat to governmental regimes).} As such, to implement girls’ right to education in Islamic countries, human rights advocates must work within the Islamic construct to challenge and reinterpret the primary justification for gender discrimination: the Qur’an.\footnote{See generally Abdullahi Ahmed An-Na’im, Problems of Universal Cultural Legitimacy for Human Rights, in HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES (Abdullahi Ahmed An-Na’im, & Francis Mading Deng, eds. 1990); Abdullahi Ahmed An-Na’im, Religious Minorities under Islamic Law and the Limits of Cultural Relativism, 9 HUM. R. Q. 1 (1987); RIFFAT HASSAN, RIFFAT HASSAN: SELECTED ARTICLES (1994) (providing interviews and articles from Riffat Hassan, a progressive theologian and academic specialized in Islamic sciences, who defends a human, democratic, and feminist interpretation of Islam and the Qur’an); WOMEN LIVING UNDER MUSLIM LAWS, FOR OURSELVES: WOMEN READING THE QUR’AN (1998); WOMEN LIVING UNDER MUSLIM LAWS, WOMEN IN THE QURAN: QUR’ANIC INTERPRETATION BY WOMEN MEETING: INFORMATION (1998).} Islamic modernists reinterpreted the Qur’an in light of contemporary social, economic, and political circumstances.\footnote{See An-Na’im, supra note 55, at 47. For a complete reinterpretation of the Qur’an, see A. AN-NA’IM, TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS AND INTERNATIONAL LAW (1990); see also An-Na’im, supra note 81, at 491; Abdullahi Ahmed An-Na’im, Islamic Law, International Relations and Human Rights: Challenge and Response, 20 CORNELL INT’L L. J. 17 (1987).} The traditional Shari’a jurists informed their own contextual understanding of the Qur’an in the same way.\footnote{An-Na’im, supra note 55, at 47.} Just as the founding jurists of Shari’a understood the Qur’an and Sunna to confirm existing social attitudes and institutions by emphasizing certain texts that reinforced those values, these same texts can be understood in light of the modern human rights movement. Islamic modernists accentuate verses that substantiate the fundamental human rights position that humans are equal in worth and dignity.\footnote{Id.} Islamic communities may recognize this reinterpretation as culturally legitimate if it resonates with the Qur’an and Sunna as a whole.\footnote{Id.}
1. Reinterpreting the Bible

Although quite distinct from the texts of the Qur’an and Sunna, the Bible contains similar passages that Christian fundamentalists interpret to justify gender inequality. An examination of how the more liberal segment of Christianity reinterpreted these passages demonstrates one method of challenging the religious justifications for inequality. The Christian religion went through a similar period of “reinterpretation,” in which translators, at the urging of feminists, recognized multiple interpretations of the Bible and emphasized verses portraying gender equality. 

Like the Qur’an, the Bible contains language and passages that certain sectors of Christianity relied upon (and often still do) to place women in a subordinate position. For example, when taken out of context, Ephesians 5:22-24 simply reads, “[w]ives, submit to your 


Man enjoys the great advantage of having a god endorse the code he writes; and since man exercises a sovereign authority over women, it is especially fortunate that this authority has been vested in him by the Supreme Being. For the Jews, Mohammedans, and Christians, among others, man is master of divine right; the fear of God, therefore will repress any impulse towards revolt in the downtrodden female.


Just as these feminists challenged the Bible, Muslim feminists challenge the Qur’an and fundamentalism. See ANISSA HELIE, FEMINISM IN THE MUSLIM WORLD LEADERSHIP INSTITUTES (2000); Afray, supra note 12, at 14. These women hold debates and residential institutes that focus on global solidarity networking, diversity, and commonalities within the Muslim world, and feminist organizing for human rights education in Muslim countries and communities.

355 Elizabeth Cady Stanton published the Women’s Bible and sought to begin a public discourse about more than women’s suffrage. Kathi L. Kern, Rereading Eve: Elizabeth Cady Stanton and the Women’s Bible, 1885-1896, 19 WOMEN’S STUD., 371-83 (1991). A number of authors focus on the need to recreate community to promote a community that respects women as much as it does men. See, e.g., Theodore Y. Blumoff, Genesis, Gender and Community, 9 S. CAL. REV. L. & WOMEN’S STUD., 5, 30 (1999).

356 Some Christians exploit Eve’s extraction from Adam’s rib and the need for Adam to find a “helper,” to justify subjugating women in the eyes of God. The text of Genesis does not require this interpretation. Blumoff, supra note 355, at 21-22; see also Riffat Hassan, Equal Before Allah?: Woman-man equality in the Islamic Tradition, in WOMEN LIVING UNDER MUSLIM LAWS DOSSIER 5/6, supra note 250, at 27 (interpreting a similar verse in the Qur’an).
husbands as to the Lord. For the husband is the head of the wife as Christ is the head of the church, Now as the church submits to Christ, so also wives should submit to their husbands in everything. When Christian fundamentalists stress only this passage, they take it out of context in a manner called proof-texting. The New International Version (NIV) of the Bible shifts toward a more gender appropriate reading and interprets “wives submit” in Ephesians 5:22 as:

An aspect of the mutual submission taught in v. 21, To submit meant to yield one’s own rights. If the relationship called for it, as in the military, the term could connote obedience, but that meaning is not called for here. In fact, the word “obey” does not appear in Scripture with respect to wives . . . . This reading further stresses that submission is not a one-sided act, but a reciprocal one in which husbands and wives should devote themselves to each other.

Similarly, with respect to veils, in First Corinthians 11:5-10 the Bible states:

And every woman who prays or prophesies with her head uncovered dishonors her head – it is just as though her head were shaved. If a woman does not cover her head, she should have her hair cut off; and if it is a disgrace for a woman to have her hair cut or shaved off, she should cover her head. A man ought not to cover his head, since he is the image and glory of God; but the woman is the glory of man. For man did not come from woman, but woman from man; neither was man created for woman, but woman for man.

The notes of the NIV Bible provide multiple translations and interpretations for this passage. One interpretation suggests that that the reader should not understand the verse as a mandate for current day marriages, but as a reflection of the marital relationship in Corinth during Biblical

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357 Ephesians 5:22-24, at 2333 (NIV Study Bible 1995).
358 Telephone Interview with Reverend David A. Torrey, Senior Pastor of Batesburg-Leesville Presbyterian Church, U.S.A. (Nov. 20, 2003).
360 Id. at 5:25.
361 1 Corinthians 11:5-10, at 2268 (NIV Study Bible 1995).
times. To stress equality as well as mutual dependence between men and women, the notes to this interpretation direct the reader to 1 Corinthians 11:11-12, which states “[i]n the Lord, however, woman is not independent of man, nor is man independent of woman.” This passage emphasizes equality as well as mutual dependence between women and men.

In the preface to the NIV version, the Committee on Bible Translation noted that “[a]s in other ancient documents, the precise meaning of the biblical texts is sometimes uncertain.” When uncertain about the text, the Committee enclosed alternative meanings in brackets. In closing, the Committee indicated, “[l]ike all translations of the Bible, made as they are by imperfect man, this one undoubtedly falls short of its goals.” Like the Committee on Bible Translation, human rights organizations and Muslims should challenge fundamentalist interpretations, rethink stereotyped translations, and disseminate a modern reinterpretation of the Qur’an.

2. Reinterpreting the Qur’an

Although fundamentalists emphasize gendered interpretations of the Qur’an, the basis for a number of interpretations no longer exists. The general principle of *qawama*, which allows men to exercise authority over women, historically stems from the notion that (1) men are physically stronger than women, and (2) men should financially support women. Yet, as societies progress, the rule of law prevails over physical strength and more women have

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362 *Id.* at 11:11-12.
363 *Id.*
364 *THE BIBLE*, xii (NIV Study Bible 1995).
365 *Id.* at xiii.
366 *Id.*
367 Based on verse 4:34 of the Qur’an, which states, “[m]en have *qawama* [guardianship and authority] over women because of the advantage they [men] have over them [women] and because they [men] spend their property in supporting them [women].” *HOLY QUR’AN*, supra note 228, at 190-91; *see supra* note 228.
achieved economic independence. Consequently, neither historic justification remains
tenable. By shifting the focus from archaic interpretations to inclusive religious
interpretations, human rights organizations can legitimize and implement human rights,
including the right to education, for Muslim women.

For example, the Qur’an substantiates the position that all people are equal regardless of
their gender or race by referring to the honor and dignity of “humankind” and “children of
Adam.” Other verses impart freedom of choice and non-compulsion in religious beliefs. The
founding jurists de-emphasized and buried these passages by focusing on texts that they
interpreted to permit coercion and subjugation. Emphasizing verses that permit religious
freedom rather than coercion minimizes discrimination against non-Muslims and provides
equality regardless of one’s personal religious beliefs.

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369 An-Na’im, supra note 55, at 47.
370 Id. The notion of obedience to men may also be reinterpreted. Eissa, supra note 215, at 32-35.
372 An-Na’im, supra note 55, at 47. An-Na’im notes that verse 17:70 speaks of how God ‘honoured the
children of Adam.’ Id. at n.149. The Arabic term “baniy Adam” can and should be interpreted to mean both male and female children. Id. Verse 49:13 of the Qur’an may read as follows:

O, humankind, We [God] have created you into male and female, and made you
into peoples and tribes so that you may be acquainted [and cooperate] with each
other; the most favored by God among you are those who are righteous and
pious.

Id.

373 Verse 2:256 of the Qur’an provides, “[l]et there be no compulsion in religion: Truth stands out clear
from error . . . .” HOLY QUR’AN, supra note 228, at 103. Similarly, in verse 49:13 God instructs the Prophet, “[s]ay, the Truth is from your Lord. Let him who will, believe, and let him who will, reject [it] . . . .” HOLY QUR’AN, supra note 228, at 738.
374 An-Na’im, supra note 55, at 48. For example, jurists emphasized verse 4:34, which provides the notion
that men are superior to women (qawama) instead of verse 9:71 which states:

And the believers, men and women, are protecting friends of one another; they
enjoin the right and forbid the wrong, and they establish worship and they pay
the poor-due, and they obey Allah and his messenger. As for these God will
have mercy on them. Lo! God is Mighty, Wise.

Eissa, supra note 215, at 42.
375 An-Na’im, supra note 55, at 48.
To challenge the historical interpretations of Shari’a, Muslims and human rights groups may look to the principle of *ijtihad*, which allows independent juristic reasoning in situations not covered by the Qur’an and Sunna. Traditional notions of *ijtihad* forbid its use in matters clearly governed by the categorical texts of the Qur’an and/or Sunna, or in settled matters because it substitutes juristic reasoning in place of fundamental sources. Consequently, modernists recommend expanding the scope of *ijtihad* so that contemporary Muslim jurists could reinterpret settled rules through *ijma*, and substitute previously enacted texts of the Qur’an and Sunna with new interpretations of the primary texts. Because the new rules would be based on interpretations of traditional sources, the Qur’an and Sunna, modernists contend that the change is not as radical as it seems. Instead, the change represents a systematic and well-timed response to evolving circumstances. For Muslims to accept these ideas, the new interpretations must be timely as well as broadly disseminated and discussed in Islamic countries.

In the 1990’s, one prominent modernist noted that the “proposal is timely because Muslims throughout the world are sensitive to charges that their religious law and cultural traditions permit and legitimize human rights violations; hence the efforts of contemporary Muslim authors to dispel such allegations.” If the change was “timely” in the 1990’s, it is imperative in the wake of broad-based allegations and attacks from Western countries. These allegations and the events after September 11, 2001 have prompted Muslim leaders to address and defend the Islamic religion.

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376 Id.; Eissa, supra note 215, at 8.
377 An-Na‘im, supra note 55, at 48-49.
378 Id. at 49; Eissa, supra note 215, at 15.
379 An-Na‘im, supra note 55, at 49.
380 Id.
381 Id.
382 Id. at 49-50. An-Na‘im anticipates that his ideas will also meet with resistance from the “vested interests of powerful forces in the Muslim world and may upset male-dominated traditional political and social institutions.” Id. at 50.
B. Using Human Rights Education to Combat Discrimination in Education

Even though the modernist reinterpretation of the Qur’an remains timely, to achieve legitimacy and acceptance, it must also be broadly disseminated within and discussed by Islamic communities. Dissemination of the modernist interpretation needs to take place internationally; however, United Nations’ organizations have not been willing to act as the conduit. Although United Nations’ organizations and most human rights groups criticize the symptoms of Islamic fundamentalism, they refuse to identify religion as the cause. Rather than focusing on ways to promote humanity and equality within cultures, the United Nations emphasizes “cultural diversity,” which it says, “basically means having to recognize and promote cultural pluralism in the broadest sense of the term.”

The preface to a booklet on the Universal Declaration on Cultural Diversity lapses into personal reminiscences in which the author envisions cultural diversity, “more as a prism through which we are invited to reflect upon the infinite space stretching from the concept of pluralism—fraught with potential divisions—to that of variety; for everything is contained in everything else and vice versa.”

This example provides only a glimpse into the passive position taken by the United Nations. When the United Nations defers to the arguments of fundamentalist religious leaders and ignores the female dissenters within Islamic communities, it “improperly defer[s] to traditionalists and so-called cultural leaders’ interpretations of private laws without taking proper account of modernizing views.”

Recognizing the voices and claims of Muslim dissenters

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384 Id.
385 It is important to note that this Article is not discounting the need to learn about and respect cultural diversity. Nor does it advocate direct intervention to override and subvert the values and norms of other cultures; indeed this would violate a number of other human rights. What it does advocate is that the United Nations and other human rights organizations terminate their passive approach of recognizing only the fundamentalist Islamic leaders, and validate the dissonant Muslim voices that propose a future for both human rights and the Islamic religion.
386 Sunder, supra note 11, at 1427.
through the course of human rights education would make it more difficult for fundamentalist
groups to legally impose religious conformity, repress autonomy, and promote gender
discrimination. Only by acknowledging and addressing the root cause of gender disparity in
education can human rights organizations ensure that education is accessible to girls in both law
and fact.

1. Muslim Women’s Organizations: Embracing the Modernist Interpretation of Islam

On a grassroots level, many Muslim women already discuss the problems with
formalistic interpretations, fundamentalists, and patriarchs. Women from around the world use
computers, fax machines, and the Internet to share information and establish support networks.
Two groups in particular have embraced the move away from Islamic fundamentalists and work
toward gender equality and human rights: (1) Sisters in Islam (SIS), which created a number of
booklets that reinterpret the Qur’an, and (2) Women Living Under Muslim Laws (WLUML),
which provides a network to break Muslim women’s isolation and strives to link and support all
women whose lives may be affected by Muslim laws.

The non-governmental organization SIS, formed in 1988 by a group of Muslim
professional women, works to promote the rights of Muslim women within the framework of
Islam. SIS reinterprets the Qur’an based on the principles of “equality, justice and freedom
enjoined by the Qur’an as made evident during [their] study of the holy text.” The group
attributes the use of the Islamic religion to justify women’s subordination to the men who “have
had exclusive control over the interpretation of the text of the Qur’an.” As its key objectives,

387 See generally Sunder, supra note 11, at 1467.
389 Sisters in Islam, Missions & Objectives, at
390 Id.
SIS aims “[t]o eliminate injustice and discrimination against women by changing practices and values that regard women as inferior to men,” and “[t]o create public awareness, and reform laws and policies, on issues of equality, justice, freedom, dignity and democracy in Islam.”

To work toward fulfilling these objectives, SIS publishes a number of question and answer booklets. These booklets begin by addressing and confronting the fundamentalist interpretations of the Qur’an then promote women’s rights through answers based on alternative interpretations. SIS bases the booklets on questions that form the title of the series, such as *Are Muslim Men Allowed to Beat Their Wives?* and *Are Women & Men Equal Before Allah?*. Others focus on certain issues such as *Islam and Family Planning* and *Islam and Polygamy*. In addition to its publications, SIS hosts public lectures on topics such as “Human Rights, Religion & Secularism,” “Political Islam & the Challenge of Democracy,” and “Islam, Quran, and the Female Voice.” SIS also conducts press conferences, study sessions on Quranic hermeneutics, workshops, and training events.

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391 Id.
Similar to SIS, WLUMIL exists to break Muslim women’s isolation and facilitate access to information and to one another.\textsuperscript{401} The founders of WLUMIL, which began in 1984, premised the organization on the knowledge that “people's lives in general, but women's particularly, are shaped, conditioned, or governed by practices, customs, and laws synthesized into one cohesive whole in which no distinction is made between laws actually derived from Islamic doctrine and those borrowed from outside.”\textsuperscript{402} WLUMIL encourages women affected by Muslim laws to analyze and reformulate their identity in addition to assuming greater control of their lives.\textsuperscript{403}

As a primary challenge, WLUMIL works to counter the continuing rise of fundamentalism, which it defines as the use of religion to gain and mobilize political power.\textsuperscript{404} The group noted that human rights groups, development agencies, and the media contribute to the rise of fundamentalism, perhaps unintentionally.\textsuperscript{405} First, human rights organizations legitimize fundamentalist groups by focusing on human rights violations against them, such as arbitrary arrest and illegal detention.\textsuperscript{406} Although WLUMIL supports these efforts, it recognizes that “the extreme imbalance between the representation of violations committed by the state and by fundamentalists in recent human rights reports creates de facto support for fundamentalists, as it helps represent them only as victims of oppression rather than as oppressors.”\textsuperscript{407}

Since many Islamic states do not provide adequate education, WLUMIL observed that fundamentalist groups “have moved in to fill the vacuum created by the absence of state

\textsuperscript{402} Shaheed, supra note 212, at 3.
\textsuperscript{403} Id. at 6.
\textsuperscript{404} WLUMIL Plan of Action, supra note 9, at 4.
\textsuperscript{405} Id.
\textsuperscript{406} Id.
\textsuperscript{407} Id. For a fundamentalist reaction to these types of action plans, see From Ethnic Fundamentalism to Religious Fundamentalism, in WOMEN LIVING UNDER MUSLIM LAWS, DOSSIER 14/15, supra note 11, at 53.
services." Fundamentalists then use their educational facilities to gain religious adherents and to advocate that only one true Muslim identity exists. To contest fundamentalism at all levels by demonstrating the legitimacy of alternative interpretations of Islam, WLUMI conducts outreach programs in addition to disseminating resources and publications. It also provides internships and networks with other groups engaged in similar activities around the world. WLUMI counters the fundamentalist idea that feminism and human rights are incompatible with Islam by emphasizing the support for both human rights in general and women’s rights in particular within the Muslim community.

WLUMI seeks to connect with existing human rights organizations, yet challenges the traditional human rights strategies that refuse to confront despotism in religion and culture. The organization realizes that religion functions as an intricate part of the Muslim identity and works within the religious construct to dismantle fundamentalist ideas as contingent and political. For women to claim their right to education, the content of religion and culture must change. As such, women also must claim their right to participate in shaping the religious community and to form a more democratic culture. Although recognized primarily for their reforms within religion, WLUMI understands that different strategies work in different regions, and pursues Islamic based approaches as well as traditional, secular human rights methods.

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408 WLUMI Plan of Action, supra note 9, at 8.
409 Id.; see also Salma Sobhan, Opening the Windows of the Mind, in FATWAS AGAINST WOMEN IN BANGLADESH, at 127 (Marie-Aimee Helie Lucas & Harsh Kapoor eds., 1996).
410 WLUMI Plan of Action, supra note 9, at 11-12.
411 Id.
412 See generally Shaheed, supra note 212, at 5.
413 Id. at 8.
414 Sunder, supra note 11, at 1443.
415 Id. Many women in the network also hold secular, universal views of women’s rights. Id.
416 See id.
417 Id.
The United Nations organizations represented at the Dakar Conference should unite with groups like WLUM and SIS to expand their efforts to eliminate educational gender disparity into the religious and cultural sphere. Only by acknowledging and targeting the symbiotic relationship between Islamic fundamentalism and disparity in education can these groups effectively combat disparity. Secularization alone will not eliminate educational disparity.\footnote{See Deniz Kandiyoti, Islam: What are the Missing Terms?, in WOMEN LIVING UNDER MUSLIM LAWS DOSSIER 5/6, supra note 250, at 5; Milstead, supra note 371, at 33; Mohamad, supra note 250, at 13; Afshaneh Najmbadi, (Un)veiling Feminism, in WOMEN LIVING UNDER MUSLIM LAWS DOSSIER 23/24, supra note 8, at 121.}

Because Islamic fundamentalism challenges the basic premise of secularization in public life, efforts to implement change must (1) directly confront fundamentalism by reformulating Islamic Shari’a and (2) encourage women to critique, contest, and reinterpret culture and religion.\footnote{See An-Na’im, supra note 81, at 499-501.}

Only by altering the inequalities of the environment in which education takes place, or does not take place, will United Nations organizations successfully eliminate gender inequality in education.

2. Human Rights Education

One of the primary ways to implement efforts for change is through innovative human rights education. Yet, in some countries, human rights education may first need to occur outside of the classroom before educators can implement it in schools. Schools run by Islamic governments or fundamentalists themselves often perceive education as an opportunity for indoctrination. Until community-based changes begin to deconstruct the fundamentalist interpretation, some schools may remain hostile to education that threatens their current curriculum.

In Saudi Arabia, for example, “education aims at the implantation of the Islamic creed in new generations and the development of [the students’] skills so as to enable them to contribute
to the building of their society.” The general objectives to execute this aim include (1) “to have [sic] student understand Islam in a correct and comprehensive manner, (2) “to plant and spread the Islamic creed,” (3) “to furnish [sic] student with the values, teachings and ideals of Islam,” and (4) to promote “the spirit of loyalty to Islamic law by denouncing any theory or system that conflicts with this law and by honest conformity with the general provisions of this law.” Consequently, human rights education promoting modern views of women and the Qur’an may need to begin outside the traditional school setting.

Ideally, human rights education should take place at two levels: (1) in the community and (2) in schools. It should promote equality and encourage students of all ages to think for themselves. To begin deconstructing fundamentalist ideas about Islam and encouraging children and adults to view women and girls as equals within the community, human rights organizations should either unite with organizations such as WLUML and SIS to access and expand preexisting groups or follow the models used by SIS and WLUML. By conducting workshops, seminars, discussion groups, and leadership conferences in addition to creating networks and continuing on-going education efforts, United Nations organizations might be more effective in eliminating disparity.

Human rights education should aim to “facilitate the active involvement of the participants in the social change process” as part of a “broader effort aimed at building social movements and transforming society through structural change.” Educators can create a cultural awareness and implement these larger goals by encouraging the participants to identify

421 Id. (citing a National Report prepared by the Ministry of Education for Saudi Arabia).
422 Carlos J. Chipoco, Human Rights Education in Peru: In Search of New Perspectives, 60 Revista Jurídica U.P.R. 91, 121 (quoting Fink, Popular Education as a Vehicle for Empowering Women in Latin America 3 (1989) (paper prepared for Latin American Studies Association Conference)).
the Islamic roles of women and men as well as how the law defines these roles.\footnote{\textit{Id.}} In addition, rights-based education outside of school should teach women to read so that they can develop the skills to understand the Qur’an and transform the fundamentalist religious norms embodied in their culture.\footnote{See Margaret Schuler & Sakuntala Kadirgamar-Rajasingham, \textit{Legal Literacy: A Tool for Women’s Empowerment}, \textit{in} \textsc{Legal Literacy: A Tool for Women’s Empowerment} 49 (Margaret Schuler & Sakuntala Kadirgamar-Rajasingham eds., 1992).} Education at all levels, inside and outside of schools, should include information about HIV/AIDS.\footnote{\textit{Id.}} This two-tiered approach to human rights education uses participatory techniques to assist women and girls in gaining the self-confidence and support needed to overcome inequality in society.\footnote{\textit{Education on HIV/AIDS should promote the human rights of women and equality within the family; combat sexual exploitation of girls; empower women to negotiate safer sex including condom use; address myths, misconceptions, and fears about condoms; and incorporate gender issues into HIV/AIDS education. UNIFEM, UNAIDS & UNFPA, \textit{Women: Meeting the Challenges of HIV/AIDS} 6-7 (2002), at http://www.genderandaids.org (on file with author).} To promote widespread cultural and religious change, educational programs should be available to women, men, religious leaders, and entire communities.

As the second step to this two-tiered approach that begins in the community, schools should envelop human rights education into curricula and textbooks. Educators should revise textbooks and curricula to negate stereotyped notions of gender roles and promote equal conceptions of men and women. Surveys conducted on women’s portrayal in textbooks revealed that authors mention women ten times less often than men,\footnote{Janet M. Sawaya, \textit{Rights Education as a Means of Economic Empowerment for Women in Sub-Saharan Africa}, \textit{2 Geo. J. on Fighting Poverty} 329, 330 (1995).} focus on sons rather than daughters,\footnote{TOMASEVSKI, \textit{supra} note 21, at 169 (citing T. Valdes & E. Gomariz, \textit{Latin American Women: Compared Figures}, Instituto de la Mujer and FLASCO (Facultad Latinoamericana de Ciencias Sociales), Sanntiago de Chile 105 (1995))} and depict women doing domestic chores.\footnote{\textit{Id.} (citing summarized results of the research project entitled Portrayal of Women in Croatian Textbooks, carried out by a team led by Branislava Baranovic of the Institute for Social Research).} For example, one primary school textbook described a girl on her day off:
Today is Saturday.
You don’t go to school on Saturday.
You will work here, at home.
First, you will wash your school uniform.
After that, fetch the water.
Then you clean the compound.
After we have finished eating, you will wash the dishes.
Then you will go to the shop to buy sugar and rice.\textsuperscript{430}

Schools should replace these gender-stereotyped lessons with ones that promote progressive views on gender such as this poem:

\textit{Father Serving Tea, Mother Reading Newspapers}

\begin{quote}
It’s Sunday, it’s Sunday
Holiday and fun day.
No mad rush to get to school
No timetable and strict rule.
Mother’s home and so is father
All of us are here together.
Father’s like a busy bee
Making us hot cups of tea.
Mother sits and reads the news.
Now and then she gives her views.
It’s Sunday, it’s Sunday
Holiday and fun day.\textsuperscript{431}
\end{quote}

Replacing gendered learning materials with ones that help deconstruct fundamentalist stereotypes will allow a new generation to begin their lives as equals.

Using innovative human rights education to eradicate gender disparity in education fits squarely within the goals of the United Nations’ Decade for Human Rights Education. The United Nations organizations, including UNESCO, UNICEF, UNIFEM, and UNDP, conduct workshops and conferences to tailor human rights education to the basic needs of the “final

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\textsuperscript{429} Id.
\textsuperscript{431} TOMESEVSKI, \textit{supra} note 21, at 169 (citing \textit{PROMOTING CHANGE: NEW FORMS OF FAMILY LIFE} (verse taken from \textit{Dhamak-Dham}, a book of alternative children’s rhymes in Hindi)).
\end{flushright}
UNESCO disseminated the Universal Declaration of Human Rights in schools, dispersed guidelines for national plans of action for human rights education, and conducted a global survey on human rights education materials. Consequently, these organizations could translate the strategies and lessons from the Decade for Human Rights Education into human rights education targeted to enable Muslim women to challenge their position in society based on their own understanding of the Qur’an.

By changing Muslim women’s position in society and encouraging them to take active political roles, women and modernists can begin the process of reforming a state’s statutory inequities and promote national legislation that translates treaty provisions into national rights. Enabling legislation of the treaty provisions needs to extend beyond the narrow requirement of compulsory primary education to include legal measures that protect fundamental freedoms for women. States should implement national legislation to protect equal property rights and, in the case of many Islamic countries, reform family law. Without specific legislation ensuring equality in property and family law, the impact of customs and social norms will continue to decide key aspects of property distribution, divorce, custody rights, and inheritance rights.

This fundamental shift in law, custom, and society must begin through human rights education that promotes equal educational opportunities for girls. As one teacher in a Muslim girls’ school noted, “[b]y teaching the girls about Islam we are giving them tools with which to challenge and fight for their rights . . . . In religious studies, we teach the girls to question and

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433 Id.
434 Id.
435 Id. For more information on Islamic family law, see NOEL J. COULSON, CONFLICTS AND TENSIONS IN ISLAMIC JURISPRUDENCE (1969); ROBERT H. EISENMAN, ISLAMIC LAW IN PALESTINE AND ISRAEL (1978); ESPOSITO, supra note 250; WOMEN IN MUSLIM FAMILY LAW (1982); ISLAMIC FAMILY LAW, supra note 251; JAMAL J. NASIR, THE STATUS OF WOMEN UNDER ISLAMIC LAW AND UNDER MODERN ISLAMIC LEGISLATION (1990); DAVID PEARL, A TEXTBOOK ON MUSLIM LAW (1979).
436 GENDER AND EDUCATION, supra note 115, at 267.
analyze and follow the commandments of God.” With education, girls begin to see past the preconceived notions of what their lives “should” be and see education as empowerment. One Muslim girl observed, “If we don’t get qualifications, then the only alternative is marriage.” Yet, many girls never have educational opportunities.

VI. CONCLUSION

When available in fact, education functions as a means to realize, enhance, and enjoy a host of individual rights and freedoms, but when denied or violated, it deprives girls of equality and life-saving information. The United Nations organizations and human rights groups must acknowledge the fundamentalist interpretation of the Islamic religion as the source of gender disparity in primary school enrollment before they can effectively eliminate disparity. By recognizing religion’s role in creating and maintaining educational disparity, United Nations organizations, in addition to dissonant Muslim groups, can target environmental, cultural, and religious obstacles through innovative human rights education.

As a gateway right, education is a prerequisite to individual dignity and individual development. It potentially provides a means to train children to become useful society members and to participate effectively in democracy and freedom. Once rights-based education empowers women to reinterpret the Qur’an and reassess their role in society, these women could become key participants in a broader movement that combats the host of symptoms and the source of disparity in education. At its best, education serves as a medium to eliminate inequality. At its worst, education becomes a powerful tool to promote inequality and prejudice. When the state

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437 Khanum, supra note 312, at 130-31.
438 Id. at 133. Yet, when another girl spoke of engaging in as many activities as possible before getting married because her in-laws were “sexist,” she noted, “[m]y parents choice is my choice. My freedom is in my mind.” Id.
439 See TOMASEVSKI, supra note 118, at 10.
does not provide education, it creates the opportunity for Islamic fundamentalists to entrench their ideals in the minds of children. Yet, if the Dakar Conference conferees and United Nations organizations identify, challenge, and overcome religion as an obstacle, then all children will have an equal opportunity to participate in education as well as a more equal society.