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WOMEN'S RIGHTS AND CHILDREN'S RIGHTS: A PARTNERSHIP WITH BENEFITS FOR BOTH

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The development of the modern international human rights movement has led to not only a great expansion in the number and scope of individual rights recognized but also to a growing awareness of the particular hardships encountered by specific population groups.¹ As a result, previously marginalized populations – including women, children, refugees, indigenous peoples, ethnic minorities and others – are now considered at least to some extent by most governments around the world. While the concepts of women's rights and children's rights pre-date the modern international human rights movement,² the human rights movement has helped draw attention to the particular plight of women and children suffering human rights abuses around the globe. In recent years, human rights advocates and scholars have often approached women's rights and children's rights as separate and distinct issues.³ The rationale for treating

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¹ The modern international human rights movement is generally considered to date from the end of the Second World War and the drafting, and ultimately the adoption in 1948, of the Universal Declaration of Human Rights. On the expansion of the number and scope of individual rights recognized, see LOUIS HENKIN, *Human Rights Standards and Their Generations*, in INTERNATIONAL LAW: POLITICS, VALUES AND FUNCTIONS 227-48 (1990).

² Women's rights movements, such as voting rights movements, date back at least to the 19th Century. See, e.g., Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism and the Family*, 115 HARV. L. REV. 974, 968-76 (2002). On the history of children's rights, see Jonathan Todres, *Emerging Limitations on the Rights of the Child: The U.N. Convention on the Rights of the Child and Its Early Case Law*, 30 COLUM. HUM. RTS. L. REV. 159, 161-162 (1998) (noting that the first Declaration of the Rights of the Child, known as the Declaration of Geneva, was adopted by the League of Nations in 1924, and that other documents relating to specific rights of the child pre-date that Declaration). See also PHILIP E. VEERMAN, *THE RIGHTS OF THE CHILD AND THE CHANGING IMAGE OF CHILDHOOD* (1992) (recounting the work of child rights pioneers around the turn of the twentieth century).

³ The clearest example of this is the promulgation of separate human rights treaties for each group – the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child – aimed at addressing the specific needs of

each group separately is certainly reasonable, as each group differs from the other in important ways and, accordingly, faces special issues and threats of human rights violations that the other may not. Moreover, from the perspective of women's rights advocates, concerns exist that to speak of "women and children" as one group is to relegate women to the role of caretaker of the children and homemaker, a view that inhibits the full realization of women's rights.⁴ Child rights activists, on the other hand, have wanted to move children to the forefront in order to ensure the recognition of children as holders of rights on par with any other individuals. This reasoning may lead some human rights advocates to conclude that the rights of women and children are most effectively addressed separately.

There are valuable elements of this separation. It has led to two distinct international human rights treaties – the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979,⁵ and the Convention on the Rights of the Child (CRC), adopted in 1989.⁶ Having separate human rights conventions enables human rights law to address the respective special circumstances facing women and children. For example, CEDAW focuses primarily on eliminating discrimination against women and ensuring equality between women and men.⁷ On the other hand, the CRC, which contains a comprehensive set of rights, includes rights that address issues unique to the needs of children, such as the child's relationship with his or her parents, foster care and adoption, as well as kidnapping and the illicit transfer of children.⁸

women and children respectively. See Cynthia Price Cohen, *The United Nations Convention on the Rights of the Child: A Feminist Landmark*, 3 WM. & MARY J. WOMEN & L. 29, 69 (1997) [hereinafter Cohen, *Feminist Landmark*] (noting that "NGOs that specialize in either children's rights or women's rights tend not to know one another and to be unfamiliar with the other support group's treaty").

⁴ See Cohen, *Feminist Landmark*, *supra* note 3, at 70-71 (reporting that in 1996, at meetings organized by the International League for Human Rights and UNICEF aimed at exploring common ground between women's rights advocates and child rights advocates, the women's NGOs expressed concern over the CRC that it may relegate women to a child-bearing role); see also Linda A. Malone, *Protecting the Least Respect: The Girl Child and the Gender Bias of the Vienna Convention's Adoption and Reservation Regime*, 3 WM. & MARY J. WOMEN & L. 1, 6 (1997) (noting that "advocacy for the Children's Convention by women's rights advocates has been tempered by concern that linkage of children's rights with women's rights is a regression to a time in industrialized countries when the two groups were linked to control women in a patriarchal society").

⁵ See generally Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, 34 U.N. GAOR, Supp. (No. 46), at 193, U.N. Doc. A/34/46, *entered into force*, Sept. 3, 1981 [hereinafter CEDAW].

⁶ See generally Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/Res/44/25 (1989), *entered into force*, 1990 [hereinafter CRC].

⁷ See, e.g., CEDAW, *supra* note 5, at art. 2.

⁸ See CRC, *supra* note 6, at arts. 9 (regarding separation of the child from his or her parents); 11 (regarding combating illicit transfer and non-return of children); 20 (regarding care for children temporarily deprived of their family environment); 21 (regarding adoption and inter-country adoption).

While addressing women's rights and children's rights separately offers benefits to each group, it is also important to acknowledge the interconnectedness of these rights. Unfortunately, many NGOs that specialize in either children's or women's rights are unfamiliar with the other group's treaty and enforcement mechanisms.⁹ This article explores the connections between women's rights and children's rights and suggests ways in which they can complement each other thereby furthering the rights of both groups. In Part I, I begin by examining the special case of girls' rights, which is the point at which women's rights and children's rights most clearly overlap. Part II discusses the ways in which women's rights can offer benefits for children and, in turn, how the enforcement of children's rights can support the rights of women. Finally, in Part III, I offer a case study – child prostitution in Thailand – to demonstrate how a more holistic approach to women's rights and children's rights can benefit all individuals.

I. HUMAN RIGHTS VIOLATIONS AGAINST GIRLS – A SPECIAL CASE

Tragically, human rights abuses of girls devastate the lives of millions of young women around the globe.¹⁰ Girls are often victims of trafficking, sexual exploitation, abusive labor practices, sexual assault and rape, domestic violence, discrimination and countless other abuses and violations of their basic human rights.

While they are not the only ones to suffer human rights abuses, girls are particularly susceptible to human rights violations, as they are vulnerable to abuses that afflict children as well as abuses that target women. In general, children are more vulnerable to human rights abuses than adults, and girls suffer accordingly. Both political obstacles, such as not having the right to vote, and developmental issues, such as the more limited verbal skills of younger children, make children more susceptible to exploitation and also leave them less capable of drawing attention to violations of their rights once they occur.¹¹ Moreover, the views of children are generally accorded less weight than those of adults, whether because of maturity levels or cultural norms that hold elder individuals in greater esteem. As a result of such political, developmental and cultural obstacles, children are at greater risk of becoming victims of violence and exploitation. Accordingly, they may be targeted for trafficking for purposes of sexual exploitation or child labor; victimized during armed conflicts (*e.g.*, forced into fighting at a young age,

⁹ See Cohen, *Feminist Landmark*, *supra* note 3, at 69 (noting that, “NGOs that specialize in either children's rights or women's rights tend not to know one another and to be unfamiliar with the other support group's treaty”).

¹⁰ As the CRC defines “child” as “every human being below the age of eighteen years,” for purposes of this paper, use of the term “girl” refers to every female child below the age of eighteen years. See CRC, *supra* note 6, at art. 1.

¹¹ See Jonathan Todres, *The Challenge of Creating “A World Fit for Children,”* 10 HUM. RTS. BRIEF 18 (Fall 2002).

forcibly raped or sexually assaulted by armed combatants); subjected to food shortages and interruptions in their education as a result of being trapped in war zones; or forced to become refugees and flee their homes in order to survive.¹²

In addition to the vulnerabilities that come with being children, girls suffer as a result of prejudicial practices that violate the rights of women. These practices include abuses such as domestic violence, incest, rape, trafficking and forced prostitution, child marriages, dowry-related violence, and female genital mutilation.¹³ Prejudicial practices against women and girls, particularly in developing countries, are often rooted in traditional cultural views of male-dominance. In recent years, these views have been reinforced in part by Western stereotypes and exploitation of women through the commodification of women as sex objects in advertising and other media.¹⁴ As one author states, “[w]omen in most Third World societies have inherited the worst of both worlds. The concept in traditional feudal society of woman as the property of her husband, subject to male authority in the family, is today made worse by the commercial exploitation of women in our consumer society.”¹⁵

This combination of being subjected to the prejudices against women inherent in traditional practices of patriarchal societies and being vulnerable as children makes girls an easy target for abuse and exploitation. The result is a cruel and devastating effect on the lives of millions of girls. For example, in Russia, research on sexual abuse of children revealed that large numbers of children are being subjected to unwanted sexual conduct, but that girls are more than twice as likely to be subjected to such human rights violations.¹⁶ In situations of armed conflict, women and girls are often targeted for rape and sexual assault. The United Nations seminal study on the impact of armed conflict on children reported that:

Rape poses a continual threat to women and girls during armed conflict, as do other forms of gender-based violence including prostitution, sexual humiliation and mutilation, trafficking and

¹² *Id.*

¹³ See, e.g., Sunila Abeysekera, *Maximizing the Achievement of Women's Human Rights in Conflict-Transformation: The Case of Sri Lanka*, 41, COLUM. J. TRANSNAT'L L. 523, 529 (2003).

¹⁴ American and European movies, television programs, print media and accompanying advertisements are filled with images of scantily clad women and suggestive messages. “Sex sells” is a common explanation. When these images are exported to developing countries around the world, they convey a skewed image of Western women (which may be the only exposure many men have to Western women) and also serve to reinforce traditional patriarchal views as applied to local women.

¹⁵ Evelyn Hong, *Women as Consumers and Producers in the World Market*, Third World Resurgence No. 61/62, available at <http://www.twinside.org.sg/tile/consu-cn.htm> (last visited Feb. 17, 2004).

¹⁶ UNICEF, *Domestic Violence*, 6 INNOCENTI DIGEST 5 (2000) (analyzing study in Russia reporting that, of children ages 14-17, twenty-five percent of girls reported unwanted sexual conduct and eleven percent of boys reported the same).

domestic violence. While abuses such as murder and torture have long been denounced as war crimes, rape has been downplayed as an unfortunate but inevitable side effect of war.¹⁷

In addition to these blatant violations of their rights, girls also suffer from more subtle forms of discrimination that have a negative impact on their access to health care and education, leaving them more susceptible to stunted growth, illness, and various forms of exploitation. In many poorer countries, girls are breastfed for shorter periods of time and are usually the last family member to eat, resulting in an increased risk of malnutrition.¹⁸ Girls frequently have less access to health care than boys and are taken to health care centers less often when they show signs of illness.¹⁹ In addition, girls are expected to take on domestic responsibilities, such as cooking, cleaning, and caring for other siblings, at a very young age, in many cases as early as six years old.²⁰ Girls also suffer discrimination in educational opportunities. Of the 120 million school-age children not enrolled in school worldwide, the majority are girls.²¹ When girls do not have access to educational opportunities, they are forced to work at a younger age, increasing the risk of other forms of abuse, as described above, including exploitation from child labor, child prostitution, and other illicit practices in violation of the rights of girls.

Although, as these examples demonstrate, girls face the dual challenge of being targeted for human rights abuses as children and as young women, their situation is not without any hope. In fact, just as girls are often victims of human rights abuses as a result of their dual status as women and children, we must recall that they can also avail themselves of the protections of both the women's and children's rights regimes.²² Each offers protections that can support the rights of girls, and each offers protections that more broadly support the interests of the other group. In the next section, I examine how women's rights can benefit children, and, in turn, how children's rights can support the rights of women.

¹⁷ Graça Machel, *Promotion and Protection of the Rights of Children, Impact of Armed Conflict on Children: Report of the Secretary-General*, U.N. Res. 48/157, A/51/306, at 91 (1996).

¹⁸ See Cohen, *Feminist Landmark*, *supra* note 3, at 41.

¹⁹ See *id.*

²⁰ See *id.* at 42.

²¹ See UNICEF, *THE STATE OF THE WORLD'S CHILDREN 2004* 7 (2003) [hereinafter UNICEF, *WORLD'S CHILDREN*].

²² By suggesting that girls "can also avail themselves of the protections of both the women's rights regime and the children's rights regime," I recognize that those girls whose rights are violated may not be in a position to assert their rights on their own. As girls, however, they are *entitled* to the rights provided by both the women's rights regime and the children's rights regime, and thus if they cannot assert those rights on their own, family members, community members, government leaders, human rights advocates and others must assist girls in securing their rights.

II. THE INTERCONNECTEDNESS OF WOMEN'S RIGHTS AND CHILDREN'S RIGHTS

A. *How Women's Rights Benefit Children – Direct Impact*

Women's rights apply equally to girls. This may appear to be an obvious statement but it is worth emphasizing, as when young girls are viewed foremost as children, they are at risk of not being included fully in discussions of women's rights.²³ CEDAW, the primary international human rights treaty on women's rights, applies equally to girls of any age and to adult women and should be utilized where possible to assert the rights of girls.

The Preamble of CEDAW highlights the importance of achieving full realization of the rights of all women, noting in particular that:

[D]iscrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity[.]²⁴

CEDAW calls on states parties to "condemn discrimination against women in all its forms"²⁵ and to take steps to ensure the equality of men and women in the "political, economic, social, cultural, civil or any other field."²⁶

Women's rights law is found in other human rights instruments as well. The International Covenant on Civil and Political Rights (ICCPR)²⁷ requires governments to "undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the [ICCPR]."²⁸ More generally, most major human rights conventions contain a non-discrimination clause that requires each state party to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized within such conventions, without distinction of any kind, *including sex*.²⁹

²³ While the needs of adult women and girls differ in certain important respects, those differences are beyond the scope of this article. Moreover, those differences do not detract from the merits of including girls when seeking to enforce women's rights.

²⁴ CEDAW, *supra* note 5, at pmbl.

²⁵ *Id.* at art. 2.

²⁶ *Id.* at art. 1.

²⁷ *International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force*, Mar. 23, 1976 [hereinafter ICCPR].

²⁸ ICCPR, *supra* note 27, at art. 3.

²⁹ *See, e.g.*, ICCPR, *supra* note 27, at art. 2(2) ("Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such

Women's rights law provides a detailed expression of rights aimed at achieving equality between men and women. This law must be applied in the early stages of life to help achieve equality between boys and girls, otherwise the discriminatory and subordinate treatment of girls will lead to subordinate treatment of women.³⁰ Law prohibiting gender-discrimination can be applied to various aspects of a girl's life to ensure a range of rights, from the right to life to the right to an education. Article 5 of CEDAW calls on states parties to take steps to "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 idea of the inferiority or the superiority of either of the sexes."³¹ These prejudices contribute to abuses suffered by millions of girls, and thus women's rights law has direct application to the lives of girls. For example, the practice of female infanticide, rooted in traditional prejudices that attribute greater value to the life of a newborn boy than a girl, is a gross violation of girls' right to life. Similarly, parental decisions that place greater value on the education of sons often at the expense of daughters, leading in many parts of the world to a higher incidence of school-age girls not being in school as compared with boys, clearly inhibit girls' right to education. Women's rights law, such as CEDAW, imposes a requirement on governments to take steps to address these discriminatory practices and thereby make certain that girls' rights are respected.

Other specific provisions of CEDAW directly support the rights of girls. CEDAW prohibits states parties from discriminating against women in the context of acquiring and retaining nationality.³² It requires states parties to "grant women equal rights with men with respect to the nationality of their

as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."); *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force, Jan. 3, 1976 (Article 2(2) reads in part that "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."); *Charter of Fundamental Rights of the European Union*, 2000 O.J. (C 364) 1, entered into force, Dec. 7, 2000 (Article 21(1) reads: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."); U.N. CHARTER, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force, Oct. 24, 1945 (Article 55(c) reads that the United Nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without discrimination as to race, sex, language or religion."). See also *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948) (Article 2 reads in part that "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex language, religion, political or other opinion, national or social origin, property, birth or other status").

³⁰ See, e.g., Ladan Askari, *Girls' Rights Under International Law: An Argument for Establishing Gender Equality as a Jus Cogens*, 8 S. CAL. REV. L. & WOMEN'S STUD. 3, 4 (1998).

³¹ CEDAW, *supra* note 5, at art. 5(1).

³² See *id.* at art. 9.

children.”³³ This provision helps to ensure that women and their children are not at risk of becoming stateless or being forced to take the nationality of the husband against their will.³⁴ Article 10 of CEDAW provides for equal rights in the field of education for girls.³⁵ Article 12 of CEDAW requires states parties to provide women with appropriate services “in connection with pregnancy, confinement and the post-natal period . . . as well as adequate nutrition during pregnancy and lactation.”³⁶ The provision of such services will have a direct impact on early childhood survival rates and the health and development of infants and small children. Finally, Article 16 of CEDAW aims to eliminate discrimination against women in the context of marriage and family life. Under Article 16, states parties are required to provide a minimum age for marriage and give no legal effect to child marriages.³⁷ The value of Article 16 of CEDAW is heightened by the fact that the CRC does not address the issue of child marriage.³⁸ Each of these provisions demonstrates the relevance of women’s rights law to the lives of children.

In addition to CEDAW, other declarations and plans of action promulgated by the women’s rights community provide support for girls. The Beijing Declaration and Plan of Action of the Fourth World Conference dedicated nearly nine pages to the situation of girls, outlining numerous steps for governments to take in order to eliminate discrimination against girls.³⁹ The Beijing Declaration affirms that “[a]ll barriers must [] be eliminated to enable girls without exception to develop their full potential and skills through equal access to education and training, nutrition, physical and mental health care and related information.”⁴⁰ The Beijing Declaration establishes a Plan of Action to eliminate “harmful attitudes and practices, such as female genital mutilation, son preference – which results in female infanticide and prenatal sex selection – early marriage, including child marriage, violence against women, sexual exploitation, sexual abuse, discrimination against girls in food allocation and other practices related to health and well-being.”⁴¹ It also highlights the importance of more subtle forms of discrimination, noting that:

³³ *Id.* at art. 9(2).

³⁴ For example, in Thailand, prior to 1992, Thai nationality could be conferred upon a child by birth only if the child’s father was a Thai citizen. The Nationality Act of 1992 (version 2) amended the law so that a child can become a Thai citizen if either her mother or father is a Thai citizen. See Thailand’s Initial Report to the Committee on the Rights of the Child, CRC/C/11/Add.13, at para. 20 (Sept. 30, 1996).

³⁵ See CEDAW, *supra* note 5, at art. 10.

³⁶ *Id.* at art. 12(2).

³⁷ See *id.* at art. 16(2).

³⁸ See Askari, *supra* note 30, at 10.

³⁹ See *Beijing Declaration and Platform for Action, Fourth World Conference on Women*, Sept. 15, 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), Ch. 4 at paras. 259-85.

⁴⁰ *Id.* at para. 272.

⁴¹ *Id.* at para. 259.

Girls are often treated as inferior and are socialized to put themselves last, thus undermining their self-esteem. Discrimination and neglect in childhood can initiate a lifelong downward spiral of deprivation and exclusion from the social mainstream. Initiatives should be taken to prepare girls to participate actively, effectively and equally with boys at all levels of social, economic, political and cultural leadership.⁴²

In addition to the Beijing Declaration, the Declaration on the Elimination of Violence against Women calls on states to eliminate all forms of violence against women including "sexual abuse of female children in the household," "forced prostitution" and other forms of violence with application to the lives of girls.⁴³ All of these international instruments have direct application to the lives of girls.

B. *How Women's Rights Benefit Children – Indirectly*

In addition to the direct impact that women's rights law can have on the lives of girls, the role of women ensures that implementation of women's rights will also have a positive *indirect* impact on the lives of children. First, the practical reality is that women bear the primary burden of child rearing in almost every country in the world today.⁴⁴ As a result, when women's rights are violated or at risk of being violated, this situation puts children at greater risk. Moreover, when women cannot advocate on their own behalf, when they are voiceless, children lose what is often their greatest, and sometimes their only, advocate. Conversely, when women can fully exercise their rights they are in a better position to provide for, and advocate on behalf of, their children.

Second, not only do women do most of the work in taking care of children, in general, women do most of the work in the developing world. Studies in Asia and Africa have revealed that on average women work thirteen more hours per week than men.⁴⁵ One study in Africa found that over the course of a year men carry roughly one-eighth the amount of fuel, water and farm produce that is transported by families in their day-to-day activities.⁴⁶ Therefore, when women are subjected to social and economic discrimination, they may be shut out of certain job or educational opportunities that would have otherwise enabled them to provide more for

⁴² *Id.* at para. 260.

⁴³ Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, 48 U.N. GAOR, Supp. No. 49, at 217, U.N. Doc. A/48/49 (1993), at arts. 2, 4.

⁴⁴ While my research did not uncover a country where as a rule men are the primary caretakers of children, my legal training leads me to avoid speaking in absolutes, thus the use of the qualifier "almost."

⁴⁵ See FAO, Women, Agriculture and Food Security Fact Sheet, *available at* www.fao.org/worldfoodsummit/english/fsheets/women.pdf (last visited on Nov. 7, 2003).

⁴⁶ *See id.*

their families. CEDAW addresses this issue of social and economic discrimination, requiring the elimination of gender-base discrimination in the field of employment⁴⁷ and mandating that women and men enjoy the same rights with respect to access to family benefits, bank loans, mortgages and other forms of financial credit, and other forms of economic consideration.⁴⁸

Third, when women's rights are suppressed the impact is felt by all generations, and girls suffer greatly. In certain situations, young girls may be more at risk of various forms of abuse and exploitation because of their physical or mental development, which may not enable them to articulate their experiences or may leave them physically more vulnerable than adult women to being overwhelmed by men in sexual assault and abuse cases or other similar situations.

All of these linkages suggest that those advocating for children's rights should also press for the enforcement of women's rights. Similarly, as discussed in the following section, children's rights law can provide substantial support for women's rights and can help ensure equality for women.

C. *How Children's Rights Benefit Women*

How do children's rights benefit women? Some feminists have expressed concern that focusing on children will result in women being left even further behind.⁴⁹ Perhaps some governments would use the cause of child rights to avoid having to pursue improvements in the lives of women. Governments that oppose human rights for women, however, are not likely to be strong advocates of human rights for children either, which suggests that the fault lies not with the children's rights regime but with those governments. If a government used the idea of children's rights or any other rights to impede the progress of women, that would be a clear misuse of human rights. While we must guard against such misuses, we must also recognize that nothing inherent in children's rights law presents an obstacle to the advancement of women's rights. To the contrary, children's rights can help promote women's rights in a number of ways.

Foremost, children's rights law, specifically the CRC, addresses threats to girls' rights that are not adequately covered by CEDAW. In examining the provisions of CEDAW, Cynthia Price Cohen asserts that, "few of them address

⁴⁷ See CEDAW, *supra* note 5, at art. 11.

⁴⁸ See *id.* at art. 13. In addition, with respect to rural women, CEDAW requires states parties to consider the special problems faced by rural women and "the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy. . . ." See CEDAW, *supra* note 5, at art. 14.

⁴⁹ See Malone, *supra* note 4, at 6.

the girl child's needs."⁵⁰ Cohen advocates viewing the CRC as a "precursor" to CEDAW, stating that, "if a girl learns how to assert her rights while she is still a child, she is more likely to be able to successfully exercise her rights as a woman."⁵¹ Children's rights law can help ensure that girls receive appropriate healthcare, have access to educational opportunities, and are protected from abuse and exploitation and are on a more equal footing than they otherwise would have been without the protections of child rights. To that end, one of the unique features of the CRC is that it requires states to "make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike."⁵² Making girls aware of their rights and making others aware of the rights that girls possess will enhance their ability to exercise their rights as girls and later as adult women. An additional more general benefit is that greater attention to the rights of girls will bring more attention to women's rights issues, especially in situations where they face similar risks, such as with the threat of sexual assault, trafficking and forced prostitution.⁵³ These protections are set forth in detail in the CRC and a select number of them are discussed below.

In addition, the CRC is the most widely-ratified human rights convention in the world today.⁵⁴ As a result, a number of countries have ratified the CRC but have not ratified CEDAW, including Brunei Darussalam, the Holy See, Iran, Micronesia, Oman, Qatar, Somalia, Sudan, Swaziland, Tonga, and the United Arab Emirates.⁵⁵ In the absence of CEDAW, the CRC offers significant protections to girls in these countries.

Numerous provisions of the CRC support the rights of women and girls specifically. First, all of the rights set forth in the CRC apply equally to girls and boys. In fact, the CRC was the first international human rights convention that used gender-neutral language.⁵⁶ More important from a

⁵⁰ Cohen, *Feminist Landmark*, *supra* note 3, at 36. Cohen states that the CRC "is so comprehensive in its protection of the girl child that it cannot be fairly compared to [CEDAW]. Not only does it protect the rights of the girl child more effectively than the Women's Convention, but it includes rights not protected by that treaty." *Id.* at 50-51.

⁵¹ *Id.* at 74.

⁵² CRC, *supra* note 6, at art. 42.

⁵³ See Cohen, *Feminist Landmark*, *supra* note 3, at 76.

⁵⁴ 192 countries have ratified the CRC. Only two countries have yet to ratify the CRC – the United States and Somalia. The United States signed the CRC in 1995, but the current administration has indicated that it will not seek to ratify the CRC. Somalia, which signed the CRC in 2002, has been unable to ratify human rights conventions because it lacks an internationally recognized government due to ongoing civil unrest. It is expected that Somalia will ratify the CRC once a new internationally recognized government is in place. Not only is the CRC the most widely-ratified human rights treaty in the world, it also entered into force faster than any other human rights treaty, reflecting the immediate broad-based support of the rights and principles enshrined in the CRC.

⁵⁵ Other countries that have ratified the CRC but have not ratified CEDAW include: Cook Islands, Kiribati, Marshall Islands, Monaco, Nauru, Niue, and Palau. Status of ratifications is as of January 20, 2004.

⁵⁶ See generally Cohen, *Feminist Landmark*, *supra* note 3.

legal standpoint, the non-discrimination clause of the CRC requires states parties to respect and ensure the rights of each child within their jurisdiction without discrimination of any kind, irrespective of the child's or either of his or her parent's or legal guardian's sex.⁵⁷ Therefore, not only are states parties to the CRC prohibited from discriminating against girl children, they cannot discriminate against any children on the basis of the sex (or any other characteristic) of the child's parents or legal guardians. This reinforces the rule set forth in CEDAW and in other conventions that discrimination against women is a human rights violation. Furthermore, the non-discrimination clause in Article 2 applies to each of the rights set forth in the CRC. For example, the right to life, set for in Article 6 of the CRC, is a right that states parties are required to ensure for all children, without discrimination based on the sex of the child. In other words, the CRC offers significant protections to girls even when it does not specifically mention girl children. These general provisions (*e.g.*, the right to life) can be used to protect girls from human rights abuses that specifically target girls (*e.g.*, female infanticide).

The CRC offers additional protections that address a range of situations in which girls are particularly vulnerable. With respect to health-related issues, Article 24 of the CRC reads in part:

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.⁵⁸

Of particular relevance to girl children, the CRC was the first legally-binding international instrument to address the impact of traditional practices such as female genital mutilation.⁵⁹ Article 24(3) calls on states parties to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."⁶⁰ The drafters considered this provision to be a direct response to practices such as

⁵⁷ See CRC, *supra* note 6, at art. 2. The full text of the non-discrimination clause reads:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Id.

⁵⁸ *Id.* at art. 24(1).

⁵⁹ See UNICEF, *Children and Violence*, INNOCENTI DIGEST No. 2 (1997).

⁶⁰ CRC, *supra* note 6, at art. 24(3).

female genital mutilation. Further, the Plan of Action promulgated at the U.N. Special Session on Children in 2002 also requires governments to stop harmful traditional practices such as female genital mutilation.⁶¹

Education is another area in which the CRC's protections can offer lifelong benefits to girls. Gender discrimination often leads to differences in access to educational opportunities among boys and girls. UNICEF reports that there is "no tool for development more effective than the education of girls. No other policy is as likely to raise economic productivity, lower infant and maternal mortality, improve nutrition and promote health – including helping to prevent the spread of HIV/AIDS."⁶² States parties to the CRC recognize "the right of the child to education"⁶³ and are required to "[m]ake primary education compulsory and available free to all" and to make general and vocational forms of secondary education "available and accessible to every child."⁶⁴ All of these educational opportunities must be provided without discrimination on the basis of a child's sex pursuant to Article 2. Furthermore, states parties agree that "the education of the child shall be directed to . . . [t]he preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin."⁶⁵ Education grounded in these principles will not only open up new opportunities for girls but will also help raise future generations on the principles of equality among men and women.

Children's rights, if implemented comprehensively, will help girls develop to their fullest potential, taking advantage of educational opportunities while having their civil and political rights, as well as other social and economic rights, fully protected. Ensuring the rights of both boys and girls will have a positive impact on the lives of adult women as well. As women bear primary responsibility for raising children, they often are unable to pursue opportunities (*e.g.*, educational or job opportunities) because of their childcare responsibilities. When, for example, a child's access to healthcare is denied, he or she will become sick more frequently. The burden of caring for that ill child will fall most often on the mother, keeping her out of the workplace while the child is ill. This interruption in the mother's employment will make advancement in the workplace more difficult. Full implementation of children's rights will help both boys and girls to be healthier, enabling mothers and other adult women to spend less time nursing sick children and more time pursuing opportunities in the

⁶¹ See U.N. Special Session on Children, A World Fit for Children, A/S-27/19/Rev.1 (2002) at para. 44(9) [hereinafter U.N. Special Session on Children].

⁶² Kofi Annan, *Foreword* to UNICEF, THE STATE OF THE WORLD'S CHILDREN 2004, at vii.

⁶³ CRC, *supra* note 6, at art. 28(1).

⁶⁴ *Id.* at art. 28(1)(a)-(b).

⁶⁵ *Id.* at art. 29(1)(d).

workplace or elsewhere.

As the above discussion demonstrates, there is a symbiotic relationship between women's rights and children's rights. Each provides benefits to the other, suggesting that we need to pursue full implementation of both in order to achieve success in the human rights movement. In the next section, I offer one case study – child prostitution in Thailand – that demonstrates how women's rights and children's rights can be utilized in conjunction with each other to address human rights violations.

III. CASE STUDY – CHILD PROSTITUTION IN THAILAND

A. *Child Prostitution – Generally*

Child prostitution offers one example of how children's rights can be of benefit to the rights of women while at the same time focusing on gender issues can help further the rights of children. The United Nations Children's Fund estimates that there are over one million child prostitutes in Asia alone, as well as several hundred thousand in Africa, Latin America, Eastern Europe and in industrialized countries.⁶⁶ Demand for child prostitution is driven largely by the economics of the sex trade industry – it is big business. Sexual exploitation of children is estimated to be at least a five billion dollar industry for “go-betweens (agents, pimps, madams, etc.) and criminal organisations.”⁶⁷ It is not only illegal businesses that benefit from the sex trade industry. The International Labour Organization (ILO) reported that two to fourteen percent of the gross domestic product of Indonesia, Malaysia, the Philippines and Thailand derives from sex tourism.⁶⁸ Sex tourists traveling to places such as Bangkok or Manila bring hard currency to hotels, restaurants and other sectors of the tourism industry, providing economic benefits to numerous legitimate businesses and tax revenues to the governments of these countries. As a result, governments and businesses in many countries have consistently tolerated, and sometimes even encouraged, the sex trade industry in hopes of protecting revenues sources. Tragically, this encourages the prostitution of more and more children.

⁶⁶ See Jonathan Todres, *Prosecuting Sex Tour Operators in U.S. Courts in an Effort to Reduce the Sex Exploitation of Children Globally*, 9 B.U. PUB. INT. L.J. 1, 2 (1999); see also Laurie Nicole Robinson, *The Globalization of Female Child Prostitution: A Call for Reintegration and Recovery Measures Via Article 39 of the United Nations Convention on the Rights of the Child*, 5 IND. J. GLOBAL LEGAL STUD. 239 (1997) (citing figures of one million children in Asia, not including one-and-a-half-million children in India, as well as one-hundred-thousand children in the United States and five-hundred-thousand in Latin America).

⁶⁷ Cynthia Price Cohen, *Children Sexual Exploitation in Developing Countries*, 44 INT'L COMM'N OF JURISTS REV. 42, 42 (1990).

⁶⁸ See LIN LEAN LIM, *Preface to THE SEX SECTOR: THE ECONOMIC AND SOCIAL BASES OF PROSTITUTION IN SOUTHEAST ASIA* 7 (Lin Lean Lim ed., 1998).

The reasons why particular children get drawn into the sex trade are complex and involve social, economic and cultural factors.⁶⁹ Poverty, discrimination, gender bias, and low levels of education all contribute to child prostitution, though poverty and the profitability of prostitution are the primary causes.⁷⁰ The effects on children are devastating. UNICEF characterizes it as "one of the gravest infringements of rights that children can endure."⁷¹ Prostituted children suffer severe physical, psychological, and emotional harm. They are at significant risk of acts of violence, including rape and sexual assault, from clients, pimps, and police. Due to a lack of access to contraceptives, many prostituted girls become pregnant. Some of these girls are beaten to induce miscarriages, while others are forced to have abortions under unsanitary conditions, exposing them to further health risks and harm.⁷² Prostituted children are also at high risk of contracting HIV/AIDS, as well as other sexually-transmitted diseases.⁷³ These children also suffer long-term psychological damage, including anxiety, depression, and behavioral disorders, and are at high risk of suicide.⁷⁴

B. Child Prostitution in Thailand

Thailand has a population of a little more than 63 million people, of which approximately 20 million are children.⁷⁵ As prostitution has long been illegal in Thailand, it is difficult to obtain precise statistics on the numbers of adults or children involved in the industry. Brothel owners or traffickers of women and children do not declare such activities as their formal occupation. However, estimates on the number of prostitutes in Thailand range from 200,000 to one million,⁷⁶ of which approximately 60,000 to 200,000 are children.⁷⁷ Government figures report that ninety-five percent

⁶⁹ See, e.g., Brian M. Willis & Barry S. Levy, *Child Prostitution: Global Health Burden, Research Needs, and Interventions*, 359 THE LANCET 1417 (Apr. 20, 2002).

⁷⁰ See *id.* at 1417-18.

⁷¹ UNICEF, *Child Rights: The Ultimate Abuse*, in PROGRESS OF NATIONS (1995).

⁷² See Willis & Levy, *supra* note 69, at 1419 (reporting results from a five-country study finding that seventy-three percent of prostitutes were physically assaulted and sixty-two percent reported having been raped since becoming a prostitute).

⁷³ One of the many tragic results of the HIV/AIDS epidemic is that it has driven demand for younger and younger children, often under ten years of age, due to the mistaken assumption that a younger child is more likely to be a virgin and thus not infected. The awful reality is that children, especially younger children, are more susceptible to contracting HIV and other sexually transmitted diseases as sexual acts by an adult upon the immature body of a child often result in tearing of tissue, thereby increasing the possibility of disease transmission. See RON O'GRADY, *THE CHILD AND THE TOURIST* 112 (1992); see also Willis & Levy, *supra* note 69, at 1418.

⁷⁴ See Willis & Levy, *supra* note 69, at 1419.

⁷⁵ See UNICEF, *WORLD'S CHILDREN*, *supra* note 21, at tbls.1, 5.

⁷⁶ See Thailand Initial Report to the Committee on the Rights of the Child, *supra* note 34, at paras. 458-62.

⁷⁷ UNICEF, *AT A GLANCE: THAILAND*, available at <http://www.unicef.org/infobycountry/Thailand.html> (last visited Nov. 1, 2003).

of child prostitutes are girls.⁷⁸ Who are these girls? Where do they come from? How do they end up in prostitution? And most important, what can we do to help them and to prevent others from ending up with the same fate?

A number of factors contribute to the large number of girls entering the sex trade industry each year in Thailand. Poverty is a major factor. The migration of women and girls from poor rural areas in the North and Northeast of Thailand to Bangkok and other major tourist destinations to enter into the sex trade industry is well-documented.⁷⁹ In certain cases, familial obligation rooted in Thai culture combined with poverty lead some girls to prostitution as a means of supporting their parents. In other cases, families have sold their daughters into prostitution.⁸⁰

Poverty is not the only consideration, however, as most children of poor families do not end up in prostitution.⁸¹ Gender-based discrimination plays a key role as well. The Western media generally creates the impression that prostitution in Thailand is driven solely by sex tourists from Western Europe, North America, Australia, Japan, and other countries. Sex tourism certainly contributes to the problem and it is driven by gender discrimination and cultural biases.⁸² However, foreigners do not constitute the sole source of demand for child prostitutes, or even the majority. Reports estimate that while approximately 500,000 foreign tourists visit prostitutes in Thailand each year, 4.6 million Thai men routinely use prostituted women and children.⁸³

⁷⁸ By contrast, in other parts of the world, young boys make up a much larger percentage of prostituted children. For example, in Sri Lanka, ninety percent of child prostitutes are boys. See Cohen, *supra* note 67, at 42; see also Willy Pedersen & Kristinn Hegna, *Children and Adolescents Who Sell Sex: A Community Study*, 56 SOCIAL SCIENCE AND MEDICINE 135 (2003) (reporting that in Norway three times as many adolescent boys sold sex as did girls).

⁷⁹ See, e.g., Kritaya Archavanitkul & Philip Guest, *Migration and the Commercial Sex Sector in Thailand*, available at <http://www.seameo.org/vl/migrate/frame.htm>. (last updated June 1, 2001).

⁸⁰ Many times this is driven by poverty, though some studies have shown that parents are not always fully aware of where their children will end up, thinking instead their children will be merely domestic servants for wealthier families. Other reports suggest that in some cases families push their children into prostitution. See generally Wanphen Sreshtaputra, *Refuge of Last Resort*, BANGKOK POST, Oct. 23, 2001.

⁸¹ With respect to the problem of sexual exploitation of children globally, there are many "push factors" that lead children into prostitution, including not only poverty but also social practices, gender-bias, domestic violence, drug abuse, discrimination and armed conflict. See, e.g., Poona Antaseeda, *Rape of Innocence*, BANGKOK POST, Oct. 11, 2001. In Thailand, poverty and gender bias are two of the primary reasons.

⁸² See, e.g., Christine S.Y. Chun, *The Mail-Order Bride Industry: The Perpetuation of Transnational Economic Inequalities and Stereotypes*, 17 U. PA. J. INT'L ECON. L. 1155, 1177-78 (1996) (internal citation omitted) ("Throughout Western history, Asian women have been portrayed as erotic and exotic beings. Bridal agencies promote this image, capitalizing on and perpetuating the stereotype of the Asian woman as the subservient 'china doll,' a silent, dutiful, sexually accommodating object devoted to serving her man.")

⁸³ See Todres, *supra* note 66, at 22.

The domestic demand for prostitutes and the permissive attitude in Thailand toward prostitution of women have roots in traditional patriarchal views of Thai society. One prominent Thai child rights advocate admitted that the practice of prostitution "is deeply rooted in Thai culture."⁸⁴ Historically, courtesans, concubines and prostitutes have played a role in Thai society, and even in recent years a relationship with a mistress or secondary wife was recognized as a privilege for elite Thai men.⁸⁵

When this gender bias is combined with poverty, there is a greater likelihood that poorer families will choose to educate sons rather than daughters if they cannot afford to educate all their children. In poor rural areas of Thailand, girls then are at risk because their education is seen as a lower priority than the education of boys. Once girls leave school, there is an increased likelihood that they will become victims of exploitation. In Thailand, a slightly larger number of boys attend primary school than girls. However at the secondary school level, the numbers reverse – more girls are enrolled than boys.⁸⁶ This suggests a few interesting points. First, the lower number of girls entering primary school suggests that among the poorest and most marginalized segments of society, girls are particularly affected. However, as larger numbers of girls attend secondary school than boys, the data also reflects that there is a recognition in some segments of the Thai society of the value of educating girls. These statistics reflect both the positive impact of economic development among middle class urban Thai families, as well as the gap between rich and poor families and the lack of educational opportunities among the more marginalized segments of society.⁸⁷

It is imperative that we reach young girls (and boys) most at risk of being exploited by the sex trade industry. The situation in Thailand reflects the complex nature of the situation and raises the question of how best to address the problem. Rather than view the issue solely as a women's rights issue rooted in gender-based discrimination or a child rights issue targeting Thai girls, the best chance of success will come from adopting a holistic approach drawing upon both women's rights and children's rights law to address the problem.

⁸⁴ Ryan Bishop & Lillian S. Robinson, *NIGHT MARKET: SEXUAL CULTURES AND THE THAI ECONOMIC MIRACLE* 97 (1998) (quoting Sapharit Koonpraphant, then director of the Centre for the Protection of Children's Rights).

⁸⁵ *See id.* at 97. The "minor wife" or mistress remains commonplace today in Thailand, as does the practice of Thai men visiting prostitutes. *See supra* note 84 and accompanying text.

⁸⁶ *See* UNICEF, *WORLD'S CHILDREN*, *supra* note 21, at tbl.5.

⁸⁷ Thailand has experienced tremendous economic growth since the 1970s. This has resulted in increased opportunities for the emerging middle class, especially in Bangkok and other major urban centers. Unfortunately, the economic growth has not benefited everyone, and the gap between rich and poor remains significant.

C. *Human Rights Law Related to Prostitution and Commercial Sexual Exploitation of Women and Children*

An examination of international human rights law reveals that there is extensive law prohibiting the commercial sexual exploitation of both women and children. CEDAW requires that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."⁸⁸ The CRC contains a number of provisions that relate to the prostitution of children. Foremost is Article 34 of the CRC, which reads in relevant part:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent . . . [t]he inducement or coercion of a child to engage in any unlawful sexual activity . . . [and] the exploitative use of children in prostitution or other unlawful sexual practices.⁸⁹

In addition, Article 35 of the CRC requires states parties to "prevent the abduction of, the sale of or traffic in children for any purpose or in any form," a practice which often occurs in the context of commercial sexual exploitation of children.⁹⁰ Further, Article 39 of the CRC obligates states parties to "take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts."⁹¹ Implementation of this provision is essential to enable girls (and boys) who have been subjected to commercial sexual exploitation to have an opportunity to receive needed healthcare, return to school, and be able to pursue better opportunities in life.

In fact, the commercial sexual exploitation of children has been recognized as such a grave human rights violation that the above provisions of the CRC were further strengthened by the adoption in 2000 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.⁹² The Optional

⁸⁸ CEDAW, *supra* note 5, at art. 6.

⁸⁹ CRC, *supra* note 6, at art. 34.

⁹⁰ *Id.* at art. 35. Other provisions of the CRC that pertain to the obligations of states to prevent and eliminate commercial sexual exploitation of children include: art. 32 ("States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."); art. 36 ("States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare."); art. 11 ("States Parties shall take measures to combat the illicit transfer and non-return of children abroad.").

⁹¹ CRC, *supra* note 6, at art. 39.

⁹² See generally Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, Annex II, 54 U.N.

Protocol requires states parties to prohibit the sale of children, child prostitution and child pornography.⁹³ Specifically, a state party to the Optional Protocol must ensure that such acts are covered under its criminal or penal law “whether these offences are committed domestically or transnationally or on an individual or organized basis.”⁹⁴ The Optional Protocol also calls on governments to adopt penalties for legal persons, such as corporations or other business entities involved in the commercial sexual exploitation of children.⁹⁵ Additional legal protection can be found in the International Labour Organization’s Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted in 1999,⁹⁶ and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.⁹⁷

Other declarations, while not legally binding, provide further guidance in this area and support for action to eliminate commercial sexual exploitation of children. The Declaration on the Elimination of Violence Against Women calls on states to eliminate gender-based violence, including forced prostitution.⁹⁸ In addition, the Plan of Action from the U.N. Special Session on Children urges governments to implement national plans of action to protect children from all forms of sexual exploitation.⁹⁹

The above women’s rights law and children’s rights law provide a clear mandate requiring states to take a comprehensive set of steps to address commercial sexual exploitation of children, by not only outlawing such practices, prosecuting perpetrators, and providing assistance to victims, but also by addressing the underlying issues that have created an environment that permits child prostitution, such as gender-based discrimination, with a

GAOR Supp., No. 49, U.N. Doc. A/54/49 (2000), *entered into force*, Jan. 18, 2002.

⁹³ See *id.* at art. 1.

⁹⁴ *Id.* at art. 3, sec. 1.

⁹⁵ See *id.* at art 3, sec. 4. Such penalties may be “criminal, civil or administrative.”

⁹⁶ Convention Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour (ILO No. 182), 38 I.L.M. 1207 (1999), *entered into force*, Nov. 19, 2000. At present, 143 countries are a party to ILO Convention No. 182. No other ILO Convention in the 82-year history of the organization has been ratified more quickly. See *Has Your Country Ratified?*, available at <http://www.ilo.org/public/english/standards/ipecc/index.htm> (last updated Mar. 20, 2004).

⁹⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II, 55 U.N. GAOR, Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001). For purposes of this discussion, this protocol while relevant is not directly on point. Without question, trafficking often occurs in the context of sexual exploitation of children and others, however the focus of this paper is prostitution itself and not trafficking.

⁹⁸ Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, 48 U.N. GAOR, Supp. No. 49, at 217, U.N. Doc. A/48/49 (1993). Although declarations are non-binding, they are persuasive evidence of the state of the law.

⁹⁹ See U.N. Special Session on Children, *supra* note 61.

view to preventing it in the future.

D. Thailand's Response

In recent years, Thailand has taken a number of positive steps in the fight against prostitution of children, drawing upon the principles enshrined in both women's rights law and children's rights law. First, Thailand is a party to both CEDAW and the CRC.¹⁰⁰ Subsequent to becoming a party to these conventions, Thailand has increased efforts to address the problem of child prostitution. In 1996, Thailand dramatically revised its law on prostitution. The Prevention and Suppression of Prostitution Act of 1996 decriminalizes the behavior of commercial sex workers, and targets the behavior of pimps, madams, and customers, especially those of children under the age of eighteen.¹⁰¹ In a related step, in 1997, the Thai government also adopted stricter measures to prevent trafficking of women and children.¹⁰² These laws also contain provisions providing assistance to children and women who are victims of prostitution and trafficking. While these steps were taken in large part to address the issue of child prostitution, they add protections for women as well, thus demonstrating the benefits that the children's rights movement can provide to women as well.

Steps to better ensure women's rights can also create positive change for children. Drawing impetus from women's rights law, Thailand has taken steps to address some of the underlying gender-biases, which create a permissive environment in which prostitution thrives. The Constitution of the Kingdom of Thailand was amended in 1997, establishing equality between men and women. Section 30 of the Constitution reads, in part that, "[a]ll persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights."¹⁰³ The Thai Constitution also provides that "[t]he State shall protect and develop children and the youth, promote the equality between women and men, and create, reinforce and develop family integrity and the strength of communities."¹⁰⁴

Following the mandate of the Constitution, the Thai government has made a number of changes to the law to benefit women in recent years. The 1998 Labor Protection Law made sexual harassment illegal for the first time.¹⁰⁵ In addition, the Constitutional Court recently declared Article 12 of

¹⁰⁰ Thailand acceded to CEDAW in August 9, 1985 and the CRC on March 27, 1992.

¹⁰¹ See Prevention and Suppression of Prostitution Act B.E. 2539 (1996).

¹⁰² See Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540 (1997).

¹⁰³ THAIL. CONST. ch.1, §30, available at <http://www.oefre.unibe.ch/law/icl/th00000.html> (last visited Apr. 12, 2004).

¹⁰⁴ *Id.* at § 80.

¹⁰⁵ See ASIAN DEVELOPMENT BANK, *Gender Dimensions of ADB Operations*, para. 111, available at <http://www.adb.org/Documents/CAPs/THA/0305.asp> (last visited Apr. 12, 2004).

the Name Act unconstitutional because it does not provide equal treatment to men and women and as a result, Thai women are no longer required to take on their husband's family name when they marry.¹⁰⁶ While this last act may appear trivial to some, such revisions to the law are required in order to ensure full equality between men and women and to ensure Thailand's compliance with CEDAW Article 16 (on equality in marriage) and address the underlying societal beliefs and assumptions that perpetuate gender-based discrimination. Another positive step in this direction is the decision by the Thai Ministry of Education to develop, in conjunction with the National Human Rights Commission, human rights courses for all levels of education.¹⁰⁷

While the above changes are certainly welcome, there is still a great deal of work to be done in Thailand to eliminate child prostitution. Thai law on prostitution has improved, but penalties are still minimal in many cases, and efforts to enforce the law have been inconsistent at best. In addition, not enough has been done to reach the most marginalized population groups, provide viable economic opportunities for them, and minimize their risk of exploitation. Thailand, ideally with the assistance of the international community, must continue to take steps to alleviate poverty and to provide economic opportunities for the poor. Providing viable alternative means for supporting one's family will enable young women to pursue other opportunities. Gender-based discrimination must continue to be addressed in order to overcome the traditional views that tolerate the forced prostitution of women and children. This includes educating men as well as women on women's rights. Gender-based discrimination must also be addressed in the context of education to ensure that girls have equal opportunities to develop to their fullest potential. Finally, much greater emphasis must be placed on the enforcement of the new laws on prostitution. Business and government leaders must be convinced that a tourism industry that thrives on prostitution and images of subservient Thai women available for exploitation is not in Thailand's best interests.

These are not easy obstacles to overcome, but they are challenges for which women's rights law and children's rights law provide answers. Accordingly, we need to adopt a collaborative approach that draws upon both women's rights law and children's rights law. Ultimately, such an

¹⁰⁶ See THAI LAW REFORM COMMISSION, *New Law to Free Thai Women From Legal Yoke*, available at <http://www.lawreform.go.th/newsTXT.jsp?resultTab.index=4> (last visited Apr. 12, 2004) (reporting that Article 12 of the Name Act B.E. 2502 (1913) was declared unconstitutional. Ironically, the nullification of Article 12 also means women married after June 5, 2003 have no legal right to adopt their husband's family name even if they would like to. At present, an amendment to the law is being drafted to correct this anomaly).

¹⁰⁷ See *Making A Study of Human Rights*, Editorial, BANGKOK POST, July 18, 2003. Thailand hopes to introduce this curriculum in the 2004-05 academic year at the kindergarten, primary, secondary and university levels.

approach will help to reduce the incidence of, and hopefully put an end to, the prostitution of children and, at the same time, also strengthen the rights of women, providing women with greater freedom to exercise the full range of their rights.

CONCLUSION

The issue of child prostitution in Thailand offers one example of the overlap between women's rights and children's rights. Incorporating both agendas into a holistic approach to rights will have benefits for all individuals. UNICEF's medium-term strategic plan for the period 2002-2005, which places girls' education as the first of its five priorities, recognizes the interdependence between women's rights and children's rights and the value in reaching women at a young age.¹⁰⁸ As UNICEF explains:

Quality education for girls equals quality education for boys. Education for girls helps them and their future children. Girls and women are enabled to fulfill their potential. Fewer women will die in pregnancy and childbirth unnecessarily. Fewer infants will die. More children will be better nourished and healthier all around. Families will have additional income. More women will marry later and more will have fewer children. More women will serve in leadership roles. More women will be involved in financial decision-making. More women will contribute to social policy. More girls and women will enjoy the full range of their rights.¹⁰⁹

These are goal worth fighting for. Unfortunately, the fight is not an easy one, which is why it is imperative that human rights advocates and activists use all available resources. By drawing upon both women's rights law and children's rights law, we will have a greater chance of ensuring the rights of all women and children and ultimately all individuals.

¹⁰⁸ The five priorities in UNICEF's agenda for 2002-2005 include: (1) girls' education; (2) early childhood; (3) immunization 'plus'; (4) fighting HIV/AIDS; and (5) protecting children from violence, exploitation, abuse and discrimination. See UNICEF's Priorities for Children 2002-2005 11 (2002); see also UNICEF Executive Board document ICEF/2001/13 and Corr. 1 (copy on file with author).

¹⁰⁹ *Id.* at 17.