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ARTICLE

CREATING LAW AND POLICY WITH WOMEN'S VOICES: FEMINISM IN ACTION[1]

By: Alicia C. Carra

Many different international organizations, politicians, and lawyers have tried to address the oppression that women face by promoting the rule of law through creating policies and drafting legislative reforms.[2] Yet, until recently, most of the people drafting conventions and legislation to promote women's rights were powerful, educated, and politically-connected men. In the last few decades, the United Nations and its member nations have increased their focus on women's rights. With the Beijing women's conference[3] and the conferences following it,[4] women are starting to have more influence on the international policies and laws that are applied to them, laws and policies often drafted by others to "protect" women. After years of struggle,[5] women's leadership and participation led to the creation and reauthorization of the Violence Against Women Act (VAWA).[6]

2   See Alexandra Abound, *The Rule of Law Provides Foundation for Democracy*, Jan. 18, 2006, http://www.america.gov/st/washfile-english/2006/January/20060118165638maduobb A8.491153e-02.html (The U.S. Department of State defines the rule of law as: "The rule of law is a fundamental component of democratic society and is defined broadly as the principle that all members of society — both citizens and –rulers — are bound by a set of clearly defined and universally accepted laws.").

3   The Fourth World Conference on Women, Beijing, China, Sept. 4-5, 1995. This conference was preceded by three other conferences; however, the outcome of this conference focused on "empowerment" and included even more women than previous conferences from around the world. For more information see http://www.un.org/womenwatch/daw/Beijing /platform/.

4   See generally, U.N. Department of Economic and Social Affairs, Division for the Advancement of Women, *Women 2000: Gender Equality, Development and Peace for the Twenty-First Century* [hereinafter "Beijing +5"], New York, June 5-9, 2000, *available at* http://www.un.org/womenwatch/daw/followup/beijing+5.htm; U.N. Economic Commission for Africa, *Beijing+10 in Africa* [hereinafter "Beijing +10"], Oct. 6-14, 2004, *available at* http://www.uneca.org/beijingplus10/ (last visited Mar. 30, 2009).

5   Congressional hearings discussing issues later addressed by the Violence Against Women Act occurred as early as 1990. *See* History of VAWA, Faith Trust Institute, at 1, *available at* http://www.ncdsv.org/images/HistoryofVAWA.pdf (last visited Mar. 20, 2009).

6   Violence Against Women Act of 1994 (VAWA 1994), Pub. L. No. 103-322, 108 Stat. 1796, reauthorized in 2000 as Victims of Violence and Trafficking Protection Act of 2000 (VAWA 2000), Pub. L. No. 106-386, 114 Stat. § 1464, reauthorized in 2005 as part of the Department of Justice Appropriations Act (VAWA 2005), Pub. L. No. 109-108, § 631, 119

The rise of women's participation in the drafting of declarations and conventions addressing discrimination against women has begun to address the power imbalance in the history of who creates legal instruments and what those legal instruments do. Such participation is the first step in applying an empowerment/sustainable development model to the creation of rule of law instruments that promote women's human rights. This is a model adapted both from principles used in crisis lines to work with survivors of gender-based violence and from the concept of 'sustainable development' when applied to the creation of laws and policies promoting women's rights.

Who sits at the table when problems in a society are evaluated? Who decides which laws or policy initiatives will effectively respond to the problems that have been identified? How are those instruments or programs developed? What is the goal of those instruments? Are they based on protection or empowerment? Who has the ability to enforce the laws, treaties, or policies responding to societal problems? Having women's human rights addressed in legal instruments and policies has been a huge step forward. Now that there is a growing acknowledgement in international law of the need to address women's rights in any system of laws, we must evaluate how those laws work, and who decides what those laws should be. If we want to create laws and legal systems that promote equality and also redress past oppression and violence, we have to ask the same questions of communities that we ask of individual survivors of domestic violence and sexual assault: what would you like to happen, and how would you like what you propose to become reality?

Basis for the Framework

World Health Organization (WHO) data shows that "violence against women is widespread;" women around the world are the survivors of violence.[7] Applying a rubric that is designed to empower survivors of violence is therefore vital when drafting laws, conventions, and policies to respond to the violence and discrimination women face internationally and domestically.   Crisis lines and response teams have used this theory in responding to survivors of domestic violence and sexual assault as the best way to truly help each

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Stat. 2290, 2344 (2005) (codified in scattered sections of the United States Code including 8, 16, 18, 28, and 42.).

7   World Health Organization, *WHO Multi-country Study on Women's Health and Domestic Violence Against Women: Initial Results on Prevalence, Health Outcomes and Women's Responses,* http://www.who.int/gender/violence/who_multicountry_study/en/ index.html (last visited Feb. 28, 2009).

survivor do the right thing for herself.[8] 'Empowerment' in a crisis line setting means ensuring that survivors have a chance to control their own destiny.[9]   It is not about protecting survivors; it is about recognizing the rights of survivors to decide what happens next.

Sustainable Development Defined

Common use of the phrase "sustainable development" comes from the 1987 Brundtland Report to the United Nations:[10]

> Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.[11]

This means that development in a given community is steered by that community while they can evaluate all the internal and external factors that affect, and may affect, that community. Since the concept was first created in the 1980's, it has been expanded by the UN and some US based agencies from a focus on environmental concerns to encompass human and community development.[12] It can be described as a form of empowerment.[13] The concept of empowerment also underlies the popular framework for crisis response agencies supporting survivors of gender based violence in the United States.[14]

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8   Alice Twining, *Beyond Victim Blaming: Feminist Therapy and Battered Women*, IN OUR VISION (Virginians Against Domestic Violence) at 1, 4 (1991); Loretta M. Frederick, Effective Advocacy on Behalf of Battered Women, *available at* http://data.ipharos.com/bwjp/documents/effective_advocacy.pdf

9   Twining, *supra* note 8; Frederick, *supra* note 8.

10   World Comm'n on Env't and Dev., *Our Common Future*, U.N. Doc. A/42/427 (G.H. Brundtland ed., 1987), *available at* http://www.un-documents.net/wced-ocf.htm [hereinafter *Our Common Future*].   There was an earlier use of the term in 1980 by the International Union for the Conservation of Nature and Natural Resources (IUCN). *See* International Union for the Conservation of Nature and Natural Resources, *World Conservation Strategy, Living Resource Conservation for Sustainable Development* (1980).

11   *Our Common Future, supra* note 10, at 43.

12   *See* U.N.   Dep't   of   Econ.   &Soc.   Affairs,   Div.   for   Sustainable   Dev., http://www.un.org/esa/sustdev/index.html (last visited Mar. 20, 2009); USAID: PROGRAM DEVELOPMENT AND STRATEGIC PLANNING, PROGRAM DATA SHEET 940-001, *available at* http://www.usaid.gov/pubs/cbj2003/cent_prog/egat/940-001.html (USAID/Peace Corps Small Project Assistance (SPA) program as means of promoting community participation and training of host country nationals in technical skills for long term development describing "sustainable development," also paralleled to "self-help").

13   U.S. Peace Corps, http://www.peacecorps.gov (last visited Mar. 10, 2009).

14   Safe   House   Center   Mission   Statement   and   Guiding   Principles, http://www.safehousecenter.org/index-additionalinfo.html (last visited Mar. 10, 2009); Sexual Assault Prevention and Awareness Center (SAPAC) Mission Statement and Vision, http://www.umich.edu/~sapac/ (last visited Mar. 10, 2009).

Crisis Line Model

There is an established list of actions a crisis line operator follows for every crisis call in order to ensure that empathy is exercised and a survivor finds her own plan for her future:

1. Assess for Danger
    a. Is there an immediate threat to safety that needs to be addressed before discussing anything else?
2. Use Empathy
    a. Listen and reflect a survivor's feeling back to her.
3. Crisis Intervention
    a. Walk through a survivor's specific environment and thoughts.
4. Problem Solving
    a. Asking what a survivor wants to happen and how they think they want to get to that end.

SAPAC[15]

All of these steps are in response to what the survivor says and wants to happen, and they can take a few seconds or an hour. The survivor is in control, and the professional on the other end of the line is responding to her and supporting her as she travels through the process.[16] This set of interactions is in place to ensure that a survivor is in charge of the process, and that whatever happens is the result of the choices she makes, even though that may mean she chooses to return to her abuser.[17] In addition, this protocol is also in place to ensure that anything done will more likely work for the survivor because it evolves from the survivor's ideas of what will work in her world and not the crisis line worker's idea of what she should do.[18] This process respects an individual's right to make her own decisions, and it also respects her own unparalleled expertise on the details of her own life and future. A survivor, not an outsider on the crisis line, is the best person to try to anticipate what might happen after any actions taken and what she needs to feel safe.

Empowerment

"Empowerment" has become something of a buzz word in the non-profit/nongovernmental organization world. However, when used by crisis response teams in gender-based violence cases there is a specific protocol that is applied to assisting survivors. This gender-based

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15 LaTresa Wiley, *SAPAC 2000-01 Crisis Line Manual*, SEXUAL ASSAULT PREVENTION AND AWARENESS CENTER, (U. Mich., 2000).

16 *Id.*

17 Although men are also survivors of violence, in this paper I will use the female pronoun because the majority of survivors are women and the focus of this paper is on laws and policies for women by women.

18 Wiley, *supra* note 15, at 13.

violence response was designed to empower survivors to make their own choices and to cope in their own way with the discrimination and violence they faced and often still face. The theory behind this process is the exercise of empathy.[19] In this context, "empathy is a tool to help individuals help themselves."[20] It requires that the professional refrain from instant analysis, from applying the professional's own feelings and biases, from passing a judgment, and from focusing on the professional's own opinions regarding what a caller is experiencing and has experienced.[21] The responding professional listens, respects the survivor who has contacted them, and supports the survivor while she decides first what happens next, and then how she is going to make that happen.[22]

Empathy also means not giving advice or sympathy.[23] It requires the crisis line operator to respect and reflect back the feelings and opinions of the survivor as she works through her feelings and also moves forward to deal with what she has been through and what she would like to happen next.[24]

This system prevents "saving" survivors and instead ensures they are empowered to solve their own problems. Playing rescuer only reinforces a sense of helplessness in survivors.[25] Early international law addressing the oppression of women (and many other traditionally oppressed groups) was framed in this same rescuer role, using protective language and "granting" often unenforceable rights.[26] Although well-intentioned, the problem is that there is a difference between having been granted a right by others, implying it can be taken away and was not one's own originally, and gaining legal recourse to exercise rights that are inherent.[27] Empathy and empowerment in a process designed to be under the control of survivors ensures that the results of that process address a survivor's real needs in a way she is able to implement. She is in control and decides what she wants to and can do to assert her rights. Empathy, sustainable development, and empowerment ensure that women are

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19 *SAPAC Volunteer Manual, Empowerment in the 21st Century*, SEXUAL ASSAULT PREVENTION AND AWARENESS CENTER (U. Mich. 1999).

20 *Id.* at sec. IV.

21 *Id.* at sec. IV.

22 Wiley, *supra* note 15, at 1-5.

23 *Id.* at sec. IV.

24 *Id.*

25 *Id.*

26 MAGGIE BLACK, THE NO-NONSENSE GUIDE TO INTERNATIONAL DEVELOPMENT 123-25 (2002).

27 *Id.*

supported as they claim their right of equality in their own way, rather than being granted something by others.

Sustainable Development Process

The process of sustainable empowerment envisions a shift in power and control from educated political elites to the large numbers of women actually experiencing oppression. It involves trusting that women are capable beings and have a right to choose their own destiny. The international women's movement has begun this shift, through conferences such as Beijing, involving more and more women in the bodies that create international law and policies. However, more is needed than involvement; true empowerment, and hence sustainable women's rights development, also requires that women are able to design and put into practice procedures to ensure they can actually gain access to and exercise their rights. They need to be able to design procedures to meet their needs, needs on which they, not academics, lawyers, or politicians, are the experts.

The role in this process for lawyers is analogous to the role of trained respondents to survivors of gender based violence: it is a support role. The lawyers who are a part of the process can serve as a resource for women as they create the actual law. They can use empathy and respect as a crisis line operator would. They can also provide information and resources to aid communities of women in crafting laws that can function within the existing international law framework, while still shifting the power within that framework.

Transparency

Part of support, empathy, and empowerment is transparency regarding the ideologies that lawyers and politicians represent in participating in the process. Support does not mean ignoring one's own viewpoint, within reason. A gender-based violence responder supports and respects a survivor's ability to control her own destiny, and does not impose their own beliefs.[28] However, the responder also represents the idea that women have the right to make their own decisions, and that gender-based violence is always wrong.[29] Although a responder supports a survivor in coming to her own solutions and processing how she feels, part of the responder's work is also to explain and state her/his stance on violence against women and women's rights.[30]

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28   Wiley, *supra* note 15, at 35.
29   *Id.*
30   *Id.*

This is necessary because survivors may have internalized some form of societal misogyny and do not understand that gender-based violence is always wrong and that no one deserves to be abused or assaulted. A responder can disagree if the survivor has internalized misogyny and makes statements of misogyny. A responder can also explain the dynamics of sexism and gender-based violence, and in particular, the responder can stress that no one, ever, deserves violence. An operator can refuse to support any act of violence or any acts that would harm a survivor or others.[31] Transparency on these issues is a sign of respect for survivors, who have a right to know the position from which someone working with them and supporting them comes. It is a sign of respect that operators and survivors are working together and that survivors are not expected to blindly trust others or be "guided."

Lawyers working with women in drafting laws would also be expected to be transparent regarding their beliefs and motives. Again, this does not mean "rescuing" others or imposing outside solutions. It means openly adding a voice to the conversation.

APPLICATION TO WOMEN'S HUMAN RIGHTS LAW

These three concepts, empowerment, sustainable development, and transparency, can be combined to form a method for creating and evaluating law addressing women's needs. Empowerment translates into the process that ensures that the law developed for and by women can be applied in a way that gives women the ability to implement it. Empowerment becomes sustainable because the most informed people to evaluate the oppression women face in any specific environment are the women who are themselves in that environment. They are the most likely to know how to address oppression women face in that environment in a way that would work for themselves. They are also often the most interested parties in ensuring that a law redressing women's oppression is implemented. To create law, or promote the rule of law, in a way that respects and empowers women, the process must be transparent and attempt to build consensus among women of diverse background, including women most affected by the proposed rule of law change. This is not necessarily a majority rule or rules imposed by those in power; it must be a process that empowers instead of dominates. Therefore, the roots of this process are in consensus models of creation rather than majority rule.

The concept of sustainable development, in addition to empowerment and transparency, is what ensures that the process

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31 *Id.*

cannot be subverted in a way that could harm women in the affected community in the long run. For example, a powerful faction might dominate the process and decide that in order to address a rise in random acts of violence against women, a curfew should be implemented for women only. A powerful enough group might occasionally be able to dominate the process and promote this kind of solution. Throughout the process, ideas must be tested against sustainable development ideas, for example:

- What will this change in the long term?
- Is this a workable solution for all women?
- What kind of impact will this have on our community versus others?

Through this testing process, ideas that could cause harm to various groups of women, rather than help, can be weeded out.

Although the process of creating law should be composed of women who will be addressed by that law, outsiders do not have to be excluded. Similar to the experts in environmental sustainable development and crisis line responders focusing on empowerment, there are many ways in which outsiders and professionals can support the process. Outsiders can provide information, expertise, and support throughout the process. Of particular use would be lawyers and public policy professionals who can ensure that legal drafting is in line with legal standards and who can provide examples of what other communities have done and what has happened when a given law or concept was applied.

Professionals, from either within or outside of community, can support the process by following steps similar to those followed by crisis line responders. The format provided above for crisis line workers can be adapted to the group drafting process for a community meeting of women who want to draft a law or policy addressing oppression:

1. Assess for Danger becomes Ripeness: Is this process appropriate now or is a physical intervention needed for safety before even addressing a document or policy? Is this a time and place where an adequate enough representation of affected populations can assemble?

2. Use Empathy stays the same: How does the community feel about the oppression women are facing and how do they feel about their community?

3. Crisis Intervention becomes Problem Discussion and Selection: What issues would the group like to address and how do those issues play out within the community?

4. Problem Solving is expanded into Problem Solving and Drafting: How does the group want to address these issues? How do they

> think each of these ideas would play out? How would they like to implement their ideas? Which method do they choose?

These stages retain the ideas behind the progression for a crisis intervention meant to empower a single survivor but may now be used by a group. Using this process to create laws or policies to promote women's rights will help ensure that whatever is created addresses the real needs of women and does so in a way that women actually want to happen. It also ensures that any steps taken are under the control of women themselves. The questions and procedures of the crisis line model can thus be applied to the creation of laws and policies which affect women as a form of analysis for their applicability to real women and to evaluate whether they truly empower women or reinforce the power of others to protect/rule women.

DEVELOPMENT OF SUSTAINABLE AND EMPOWERING LAWS AND
POLICIES FOR WOMEN

Beijing

Beijing was the site of the fourth World Conference on Women in 1995.[32] The goal of that conference was to adopt a "Platform for Action," and in doing so, to discuss issues women face and to raise global awareness of those issues.[33] This conference gave women the chance to get together and discuss some of what they face and how they feel. They also had the chance to abstractly discuss what they would like to happen and to draft a declaration.[34] It was also a chance for women from around the world to respond to the Convention to End Discrimination Against Women (CEDAW) and the impact it has had on their lives and the impact they would like it to have. When the conference participants stated that: "Women's rights are human rights,"[35] they described a relatively new, even revolutionary, perspective for evaluating and protecting human rights. This reframed the relationship between human rights and women's rights and showed

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32 There were three previous conferences that also made great strides and contributed to the outcomes at Beijing and subsequent conferences. However, for the sake of space here, the focus is on Beijing and its predecessors.

33 Fourth World Conference on Women, Beijing, China, Sept. 4-15, 1995, *Action for Equality, Development and Peace, available at* http://www.un.org/womenwatch/daw/beijing/dpibrochure.html (last visited Mar. 20, 2009).

34 Fourth World Conference on Women, Sept. 4-15, 1995, *Report of the Fourth World Conference on Women,* Beijing, China, U.N. Doc. A/CONF.177/20 (Oct. 17, 1995), *available at* http://ih.stanford.edu/rosenfield/resources/FWCW%20Beijing%20Report%201995.pdf (last vistited Mar. 20, 2009).

35 *Id.* at 14; *see also* Professor Christine Chinkin, Discussion during Women's Human Rights Seminar, University of Michigan School of Law (Fall 2006).

that this community viewed them as the same, instead of women's rights as a subset of human rights.

Although under a sustainable and empowering model of creation there is much more to be done to promote women's rights, this conference accomplished a great deal and was closely in line with the principles of sustainable empowerment:

1. Ripeness
2. Empathy
3. Problem Discussion and Selection
4. Problem Solving and Drafting

As to Ripeness, the Conference was organized over a long period of time to include as many women as possible from around the world. To evaluate the use of Empathy, there are two considerations: the demographics/identities of people included and an understanding of differences within the group. It was the "largest-ever gathering of government and Non-Governmental Organizations (NGO) representatives at a United Nations Conference."[36] The focus was on government and NGO representatives, so there were some differences between the representatives and the communities for which they stood. However, in any gathering of this sort there will be questions of how to choose an adequately representative population, and who gets to do the choosing. The Conference was organized for women to discuss issues, and the differences between them in issues, in order to gain perspectives from each other.

Controversy and Consensus Part of Step 3: Evaluation

When evaluating Step Three's Problem Discussion and Selection of issues addressed, we can look at the specific issues that were addressed in the resulting Platform for Action.[37] Issues over which there was not and is not consensus, most notably a right to abortion, were not included in the guiding policy that resulted from the conference. Despite the conflict over a right to abortion, there was consensus over the problems related to unsafe abortion and a desire to eliminate the need for abortion.[38] In this way, conflicting ideologies

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36 Assistant Secretary-General, Special Adviser on Gender Issues and Advancement of Women, Division for the Advancement of Women, Department of Economic and Social Affairs, Pre-Session Briefing for Journalists (June 2000), *available at* http://www.un.org/womenwatch/daw/followup/akbriefing.html (last visited Mar. 20, 2009).

37 Fourth World Conference on Women, Beijing, China, Sept. 4-15, 1995, Division for the Advancement of Women, Department of Economic and Social Affairs, Beijing, China, Sept. 4-15, 1995, *Action for Equality, Development and Peace; Platform for Action, available at* http://www.un.org/womenwatch/daw/beijing/platform/index.html.

38 *Id.* at "Women and Health" §§ C.93, C.97, 106(j), 106(k), 109(i), *available at* http://www.un.org/womenwatch/daw/beijing/platform/health.htm.

were consciously avoided so as to build consensus on issues which could be agreed upon, including the promotion of contraceptives and health education. While some feminists insist on the need for abortion rights, others see it as in direct conflict with their feminist beliefs.[39] When creating as close to a consensus document as possible in a large scale forum, if the divisiveness of the issue is such that both sides will feel subjugated by the other, the document cannot include a statement regarding one side or the other.[40] The consensus document can only contain statements on which all factions can agree. In this case it was the danger and violence of unsafe abortions and the absolute right of women to contraceptives, family planning, and all possible information about reproductive health.[41] What results may not be the most effective document for any given individual cause or movement, but it is a sustainable document because no one group is subjugated by the other. The limitation of a consensus document when it comes to such a controversial topic reinforces the need for advocacy groups and education by specialized NGOs.[42] The Platform was not pro-choice, but it was also not pro-life; it did create a stance on health education, reproductive choice, and reproductive safety for women. Step three was as successful as possible; it built consensus instead of imposing majority rule or alienating a sizeable portion of participants. In areas where a consensus was reached, sustainable progress was made and continues based on that document, such as in the growth of health education programs world-wide.[43]

Step Four, Problem Solving and Drafting, can be evaluated as partially successful and partially unsuccessful. As a declaration does not have the power of a convention, women were empowered to speak

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39 *Compare* National Organization for Women, http://www.now.org/issues/abortion (last visited Mar. 20, 2009) (pro-choice), *and* Feminist Majority, http://www.feminist.org/rrights (last visited Mar. 20, 2009) (pro-choice), *with* Feminists for Life, http://www.feminists forlife.org/taf/1997/fall/despkill.htm (last visited Mar. 20, 2009) (pro-life quote from Elizabeth Cady Stanton), *and* Amnesty International, http://www.amnesty.org/en/library/asset/POL30/019/2007/en/dom-POL300192007en.html (last visited Mar. 20, 2009) (for an example of a Human Rights organization compromising both sides).

40 Majority rule systems create winners and losers and promote conflict. *See* Seeds for Change, Consensus Decision Making, http://seedsforchange.org.uk/free/consens#wrong (last visited Mar. 1, 2009). Ideally, in a consensus based system, there are no winners and losers, because decisions belong to the entire group. *See also* Earlham College, Comparison of Robert's Rules of Order and Quaker-based Consensus, http://www.earlham.edu/~consense/rrocomp.shtml (last visited Mar. 3, 2009).

41 Report of the Fourth World Conference on Women, *supra* note 34, at ¶¶ 94-95, 97.

42 In the United States, this need is fulfilled by the Planned Parenthood Federation of America and NARAL.

43 *E.g.*, CAREN GROWN, GEETA RAO GUPTA & ASLIHAN KES, U.N. MILLENNIUM PROJECT, TASK FORCE ON EDUCATION AND GENDER EQUALITY, TAKING ACTION: ACHIEVING GENDER EQUALITY AND EMPOWERING WOMEN 64-5 (2005), *available at* http://www.unmillennium project.org/documents/Gender-complete.pdf.

and plan, but not to take specific action from this conference. Although the women at the conference were not able to create any specific laws or enforceable rights, the Declaration and Platform for Action that came out of the conference shaped future women's rights work and was considered a huge stride forward.[44]   It has been adopted by 189 countries.[45] It met the needs of sustainable development in that it was created by women for women and did not cause any harm to future development in women's rights. However, it did not put any concrete measures or procedures in place, and it did not quite empower women as much as would be possible under a sustainable empowerment process.

Beijing +5

Beijing +5 was a follow up to Beijing and was a chance to review progress following Beijing and the other previous UN conferences on women.[46] The conference was focused on an evaluation framework, requiring reports on progress from participating countries and NGOs.[47] It evaluated progress, reaffirmed dedication to the goals of Beijing, and listed achievements and obstacles facing women in several areas.[48] In the conference's *Report from the Ad Hoc Committee*, the section focusing on "Actions to be Taken at the National Level" called for the ratification of existing conventions on women's rights as well as the development and implementation of several plans to advance women's rights within each participating nation. Further, in recommending that countries ratify existing conventions, they were able to aim at more enforceable requirements. This conference and the report that resulted included more action-oriented goals but were still without an enforcement mechanism or specific procedures for ensuring women's enforcement of their rights. However, a lack of enforcement is also part of any declaration, as opposed to a convention with stronger obligations and enforcement mechanisms.

When tested against the model of empowerment and sustainable development promoting women's rights, this conference does not do as well as the original Beijing. As to Ripeness and Empathy, this

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44   Christine Chinkin, Professor, University of Michigan School of Law, Discussion during Women's Human Rights Seminar (Fall 2006).

45   Assistant Secretary-General, Special Adviser on Gender Issues and Advancement of Women, Division for the Advancement of Women, Department of Economic and Social Affairs, *Pre-Session Briefing for Journalists* (June 2000).

46   *Beijing +5, supra* note 4 at *Process and Beyond*(2000) *available at* www.un.org/womenwatch/daw/followup/bfbeyond.htm.

47   *Id.*

48   Ad Hoc Comm. of the Whole, *Report of the Ad Hoc Committee of the Whole of the twenty-third special session of the General Assembly*, U.N. Doc.(Supp. No. 3) A/S-23/10/Rev.1 (June 10, 2000).

conference was organized in a hierarchical fashion without the diverse participation present at the original Beijing conference.[49] On the other hand, organizers sought reports and input from NGOs and communities around the world to better inform the meeting.[50] For Step Three, there was discussion of opinions, issues, as well as problem solving. Sustainable development can be seen in the overall consciousness of an impact on the future. However, as with Beijing, women themselves were not empowered to ensure these changes were put into effect. The appeals were to governments, and those in charge of the status quo; there was nothing reinforcing the power of women in their communities to effect change. The smaller group of participants was also from more powerful positions than women generally, or even the women who participated in Beijing. The evaluative instead of creative nature of this conference meant that it was not as empowering as Beijing for participation and consultation. Finally, as to Step Three, it also did not allow for problem solving by communities of women or the creation plans of action, only review of and expansion upon those already in place. On the other hand, despite the concentration upon expansion and evaluation, many new concepts and positions were incorporated into the review and a stronger stance on women's human rights was promoted by the meeting.

Beijing +10

Beijing +10, in February and March of 2005, was a review of the Beijing platform by the Commission on the Status of Women (CSW). It was more similar to Beijing +5 than the original Beijing. It was a smaller group reviewing the goals and implementation progress since the original Beijing Conference.[51] While formulated as a review, the meeting also moved forward in promoting gender equality by evaluating progress and areas needing more work around the world.[52] The time may have been ripe for a review of the Beijing platform, since ten years had passed from Beijing. However, the small group of participants and the focus upon a review of previous work, instead of the creation of new developments, meant less empathy and a more limited and/or constrained discussion of problems and solving (steps 2,

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49 United Nations Women Watch, *About Beijing +5*, http://www.un.org.womenwatch/confer/beijing5/about.htm.

50 *Id.*

51 *Review and Appraisal of the Beijing Declaration and Platform for Action and the Outcome Document of the Twenty-Third Special Session of the General Assembly*; 28 Feb. to 11 Mar. 2005; Division for the Advancement of Women, Department of Economic and Social Affairs, Draft submitted by Chairperson.

52 U.N. Econ. & Soc. Council [ESOSOC], Comm'n on the Status of Women, *Report on the forty-ninth session*, U.N. Doc. E/CN.6/2005/11 (Mar. 22, 2005).

3, and 4). This meant that the conference was further away from the process envisioned in a sustainable development and empowerment model than Beijing or even Beijing +5.

There was not an opportunity for very many participants with life experiences with the issues being evaluation to formulate their own solutions or programs to problems such as trafficking, HIV/AIDS, etc. Instead, there were calls to governments (dominated by men) to address these issues and formulate strategies in response to the needs stated by the conference. While these overall calls can, and have been, effective to some extent, there is not anything that women in a given community can do with these resolutions beyond pressuring their governments. In this way, it was similar to the previous conferences, but without the same scale of participation of women as seen previously. On the other hand, throughout this process, there has been an increasing effort to involve more women and NGOs in the "brainstorming" phase of evaluating effectiveness and the process.[53] In attempting to reach out to more women and include them in the process, these reviews, despite the smaller scale of the conference, in some ways came closer to empowering women and communities of women to affect the results of evaluations and programs in the future.

Possibilities for Future Conferences

Participants can design a functioning framework for grassroots input on a given issue, taking into account the pressures each participant has experienced in her own community. Similar to the format of an empowering crisis call, the women participants themselves can decide what a workable framework might be and what tools they need coming out of a conference to effect change at home. It might be a framework, it might be a model law, it might be documentation of and dissemination of best practices for a given issue, or it might be an international agency. The women participants themselves will know the best solution for what they face. The latter two Beijing reviews were just that: reviews. They came out with resolutions and evaluations but not binding treaties or even dynamic new platforms. However, the Beijing conferences did build upon and reference the Convention for the Elimination of Discrimination Against Women (CEDAW), a previous legal tool drafted to give women avenues through a convention to address discrimination.[54]

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53 *Beijing +5 Process and Beyond;* http://www.un.org/womenwatch/daw/followup/bfbeyond.htm.

54 Convention on the Elimination of All Forms of Discrimination Against Women, G.A.Res. 34/180, U.N. Doc. A/Res/34/180 (1980).

Convention on the Elimination of Discrimination Against Women
(CEDAW)

CEDAW came out of a Committee appointed by the Commission on the Status of Women (CSW).[55] The Commission has been dominated by women since its inception in 1947.[56] This means that the majority of drafters of CEDAW were women.[57] However, they were selected from within a group of elite, politically-connected women. The areas selected and studied were chosen by women working for the Commission or Committee, and they chose how to address the areas they focused on in the Convention.[58] They also adopted the Optional Protocol to CEDAW, which provided a right to women to petition the Committee on the Elimination of Discrimination Against Women (the Committee).[59] In this way, women around the world living in countries that have ratified the optional protocol have the right to seek aid on an international stage. This empowers women to address the problems they face and shows that they have allies in seeking gender equality.

Despite the right to petition created by the Optional Protocol, there is not much bite in the original CEDAW,[60] or in actions of the Commission in response to a petition. The main force behind any finding is that of publicity and public opinion, not damages or penalties related to the violations of women's rights.[61] Further, the Committee meetings on a petition are closed resulting in a report and possible recommendations.[62] On the other hand, the global community can be made aware of what is going on through this process, and women are at least able to draw attention to some of the rights violations they are facing. By the creation of CEDAW, and its ability to raise publicity and global notice, women empowered themselves as well as women in many countries around the world.

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55   G.A. Res. 2 (II), U.N. Doc. E/2 (June 21, 1946). Cf. G.A. Res. 3010 (XXVII), at 66, U.N. Doc. A/3010 (Dec. 18, 1972).

56   SHORT HISTORY OF THE COMMISSION ON THE STATUS OF WOMEN (2006), http://www.un.org/womenwatch/daw/CSW60YRS/CSWbriefhistory.pdf.

57   SHORT HISTORY OF THE COMMISSION ON THE STATUS OF WOMEN   2 (2006), http://www.un.org/womenwatch/daw/CSW60YRS/CSWbriefhistory.pdf.

58   SHORT HISTORY OF THE COMMISSION ON THE STATUS OF WOMEN 7 (2006), http://www.un.org/womenwatch/daw/CSW60YRS/CSWbriefhistory.pdf.

59   Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 54/4, U.N. Doc. A/Res/54/4 (Oct. 15, 1999).

60   Charlotte Bunch, *Women's Rights as Human Rights: Towards a Re-Vision of Human Rights*, 12 HUM. RTS. 486, 496 (1990).

61   Christine Chinkin, Professor, University of Michigan School of Law, Discussion during Women's Human Rights Seminar (Fall 2006).

62 G.A. Res. 54/4, *supra* note 57, article 7(2)(3).

In evaluating CEDAW under a sustainable development and empowerment rubric, it generally passes the ripeness step in that the UN and the global community started working on it while working on the rights of all oppressed peoples. Despite the timely beginning to CEDAW, it could be argued that it was overdue in coming and that some countries, such as the U.S., are overdue in ratifying it. Related to ripeness, the safety of those implementing the treaty is similar to any efforts to address violence against women: it is only as safe as is possible given the violence women around the world face every day. For Steps Two and Three: the Commission and the processes surrounding CEDAW have created and supported many opportunities for women to discuss what they face and what they would like to do about it, despite its inception and continued enforcement by many women of political privilege.[63] CEDAW, and work on CEDAW, has contributed to conferences around the world, such as Beijing, and continues to be a focus of work on women's rights done by women at the UN.[64]

Despite the many positives that have come out of CEDAW, involvement in the creation of CEDAW was limited to political elites[65] and has been continued largely under the control of women powerful enough to be appointed to the Commission at the United Nations or to be involved in international politics.[66] This means that most women have to rely on a small body of representatives to evaluate and find workable solutions for the discrimination they face in their various communities. Any meeting that can functionally draft a document will have to rely on representatives, but the degree of representation can be expanded. The Committee on the Status of Women (CSW) has made many efforts to increase the involvement of as many women as possible, including organizing Beijing for new input on the problems with CEDAW and issues women face.[67] Although after initial drafting, CEDAW was reviewed by the General Assembly and not communities of women, NGOs have had increasing involvement in the

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63 *See generally Short History of the Commission on the Status of Women*, UN Women Watch (2006) (providing a historical context to the creation of CEDAW), *available at* http://www.un.org/womenwatch/daw/CSW60YRS/CSWbriefhistory.pdf (last visited Mar. 22, 2009).

64 *Id.*

65 *Id.*

66 PAST AND PRESENT MEMBERS OF THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN 1982-PRESENT (2007), *available at* http://www.un.org/womenwatch/daw/cedaw/members.PDF (last visited Mar. 22, 2009).

67 *See Short History, supra* note 63.

creation and review of documents coming out of CSW including the Optional Protocol.[68]

Is CEDAW's increasing involvement of NGOs, and more and more women around the world, enough to meet the second and third steps requiring community evaluation and discussion? Is it enough to allow for true perspectives on how communities of women want to address these problems? Globally, the opportunity for women to comment on what was discussed by the committees drafting CEDAW was and is relatively limited. Through CEDAW's processes there was and is some opportunity for women to participate, and it must be recognized that at some point there are diminishing returns from the cost of increasing involvement and drafting; only so many people can participate and still finish the task. It can be evaluated by questioning how effective the solutions offered by CEDAW and the Optional Protocol have been in empowering women to challenge and change the oppression they face daily.

Step Four of a sustainable empowerment evaluation asks, "Did the process behind CEDAW lead to effective problem solving and drafting of those solutions?" The reporting process is a step towards empowering women to address discrimination and oppression on their own, but as yet there is not much that can be done after a report is made. It is not known if this is the process that women across the world would have chosen as the best way to address the need for gender equality in their day-to-day lives. It is a step towards being able to address these issues, but it does not do much for the average woman. A global process that is this complex and distant from a given community may not be able to truly empower women to fight oppression.

Contrast with Convention on the Elimination of All Forms of Racial Discrimination[69]

Generally, conventions addressing discrimination against women are weaker than those addressing human rights abuses also faced by men, such as on the basis of race or related to genocide.[70] The Convention on the Elimination of All Forms of Racial Discrimination

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68 The Secretary-General, *Report of the Secretary-General on Monitoring the Implementation of the Nairobi Forward-Looking Strategies for the Advancement of Women: Other Issues, delivered to the Commission on the Status of Women*, U.N. Doc. E/CN.6/1996/10 (Mar. 1996).

69 Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195 (Mar. 7, 1966).

70 Laura A. Donner, *Gender Bias in Drafting International Discrimination Conventions: The 1979 Women's Convention Compared with the 1965 Racial Convention*, 24 CAL. W. INT'L L.J. 241, 243-46 (1994).

(CERD) empowers those suffering from racial discrimination in ways that CEDAW does not. It contains specific goals for the elimination of racial discrimination, it sets standards countries MUST meet, countries must report on their progress towards those standards, and the right for an individual to petition was included in the original text of CERD.[71] The CERD body was created early on to monitor these requirements.[72] This is in contrast to the ability of an individual to petition, which was added later in an Optional Protocol as in CEDAW, with *optional* being the operative word in the comparison between the two conventions.[73] It also requires countries to take ongoing steps through active legislation, not simply urging to work on policies.[74] Countries drafting and signing onto CERD and CEDAW were more comfortable strongly condemning racism, at least against men, in ways they were not comfortable confronting gender-based discrimination.[75] This may be related to the relative power of the men who drafted versus the women, or the male-dominated political structures in the countries which signed and drafted, or public comfort condemning racism versus sexism.

Regardless of the reasons for the power dynamics and differentials, CERD seems to empower individuals and communities more than the convention or conferences on women, meeting the fourth step of a sustainable empowerment evaluation. However, similar to the declarations and convention for women, there was not widespread participation by oppressed peoples in the drafting process, not quite meeting the second and third prongs of the sustainable empowerment test.

The Violence Against Women Act; a Domestic Example

The National Task Force to End Sexual and Domestic Violence Against Women came together to work with Congress to create the first VAWA in 1994, after years of effort and outreach.[76] These efforts began by including a diverse range of advocates from across the nation, including victim advocates, attorneys, and community-based organizations, labor advocates, religious groups, etc., which crossed racial, ethnic, sexual identity, religious, and socioeconomic

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71   Comm. on the Elimination of Racial Discrimination, *Fact Sheet No. 12* (May 1991), http://www.unhchr.ch/html/menu6/2/fs12.htm.

72   *Fact Sheet No. 12, supra* note 71.

73   *See Optional Protocol to the Convention on the Elimination of All Forums of Discrimination Against Women, supra* note 59; *Fact Sheet No. 12, supra* note 71.

74   *Fact Sheet No. 12, supra* note 71.

75   *See* Donner, *supra* note 70, at 241-43, 251-52.

76   The Family Violence Prevention Fund, *History of the Violence Against Women Act*, http://www.endabuse.org/vawa/display.php?DocID=34005 (last visited Nov. 25, 2008).

lines. This diversified supported has continued to grow over the years.[77]

When this model is applied to VAWA, as to Step One, Ripeness, VAWA came more than twenty years after the second wave of the feminist movement gained national prominence. However, unlike the movement's most publicized foray into policy making, the Equal Rights Amendment (ERA),[78] VAWA was able to pass through Congress and become law. On the other hand, key portions of the law were struck down by the Supreme Court of the United States in *U.S. v. Morrison*.[79]

As to Step Two, Empathy and Consensus, VAWA has gained more input and has become more inclusive in each reiteration. VAWA was initially created by, and its reauthorizations have been driven by, the National Task Force of domestic violence, sexual assault, stalking, and harassment organizations, which represent grassroots participation in every state, and participation across racial, ethnic, class, religious, and sexuality identities.[80] The organizations, who are members of those networks, have grown over the years and continue to have input in the reauthorization of and funding related to VAWA.[81] VAWA 2005 was even more inclusive, building consensus, and overall making VAWA an even more sustainable law.[82] The most recent VAWA, 2005, passed the Senate by unanimous consent and the House by a vote of 415-4.[83] These votes demonstrated broad-based support, a form of consensus, among legislators for the law.

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77 *Id.* *See also* Garrine P. Laney, *Violence Against Women Act: History and Federal Funding* (2005), *available at* http://holt.house.gov/pdf/CRSonVAWADec2005.pdf; Kristin J. Roe, *The Violence Against Women Act and Its Impact on Sexual Violence Public Policy: Looking Back and Looking Forward* (2004), *available at* http://www.nrcdv.org/docs /Mailings/2004/NRCDVNovVAWA.pdf; *see also* comments from Leslye Orloff, one of the participants in drafting VAWA in each iteration, on file with the author.

78 *See* National Organization for Women, http://www.now.org/issues/economics /cea/history.html (last visited Mar. 1, 2009) (outlining the full history of the Equal Rights Amendment).

79 529 U.S. 598, 601-02 (2000) (striking down the federal civil remedy for victims of gender based violence created by VAWA 1994).

80 The Family Violence Prevention Fund, "History of the Violence Against Women Act" (2008). *See also* comments by Leslye Orloff, one of the participants in drafting VAWA in each iteration, on file with the author.

81 For example, Legal Momentum (formerly the NOW Legal Defense and Education Fund) ensures that the voices of members of the National Network to End Violence Against Immigrant Women (NNEVAIW) were and are represented when Congress works on VAWA. This coalition started with a few members and has been growing ever since.

82 *See also* comments by Leslye Orloff, on file with the author.

83 *See* National Coalition Against Domestic Violence, *President Signs Violence Against Women Act*, http://www.ncadv.org/files/WebsiteVAWADoc.pdf (providing a summary of the legislative record for H.R. 3402, 109th Cong. (2005)).

A further example of a progression towards more inclusiveness, more consensus, and therefore a more sustainable law for Step Two, but also reaching into Step Three with the Selection of Problems to discuss, VAWA 2005 stated outright that men could be victims of domestic violence as women could be victims.[84] While trumpeted as a victory by the men's rights movement, gender inclusiveness was supported for years prior by members of the National Task Force to End Violence Against Women, members of Congress, and those approving grants under the Act. While many women's groups had long supported this position, men's rights groups saw this wording in VAWA as an acknowledgement of their issues, and as recognition of their input in deciding how and what issues VAWA addressed.[85]

As to Step Three, Problem Discussion and Selection, as VAWA grows over the years, so does the list of issues addressed in each authorization.[86] With each reauthorization a greater number of and diversity of people have input as to what appears in the legislation as the scope of the Act increases. The Congressional process involved in making laws means that more and more issues are being recognized and discussed in hearings, findings of fact, and research, meaning that more issues are brought to the table and discussed by all involved.

As to Step Four, Problem Solving and Drafting, one of VAWA's most visible examples of problem solving was struck down by the U.S. Supreme Court in *U.S. v. Morrison*, when the provisions of VAWA 1994 providing a federal civil remedy for victims of gender-based violence was struck down.[87] However, despite what most law

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84   *See* Brief for Northwest Immigrant Rights Project et al. as Amici Curiae Supporting Respondents, Kewan v. Gonzales, No. 04-70630, 2005 WL 2703727 (9th Cir., Aug. 15, 2005), 2005 WL 2572185 (Legal Momentum signed amicus brief submitted in support of reconsidering the dismissal of a petition to review a decision of the BIA affirming an Immigrations Judge's decision to deny relief to a battered immigrant man in a Violence Against Women Act ("VAWA") cancellation of removal case); *see also* Press Release, Senator Joseph R. Biden, Jr., Senate Passes Violence Against Women Act of 2005 (Oct. 5, 2005) ("and will help law enforcement and social services coordinate their efforts to assist victims of domestic violence and sexual assault, regardless of gender."); *see also* http://www.ovw.usdoj.gov/state_grant_desc.htm (observing that the Department of Justice Office of Violence Against Women specifies that men must also be served by VAWA grant funded programs).

85   Press Release, Respecting Accuracy in Domestic Abuse Reporting (RADAR), VAWA Programs Must Help Male Victims, *available at* http://www.mediaradar.org/ vawa_must _help_men_too.php).

86   Violence Against Women Act of 1994 (VAWA 1994), Pub. L. No. 103-322, 108 Stat. 1796 (1994) (VAWA 1994), reauthorized in 2000 as Victims of Violence and Trafficking Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, (2000) (VAWA 2000), reauthorized in 2005 as part of the Department of Justice Appropriations Act (VAWA 2005), Pub. L. No. 109-108 § 631, 119 Stat. 2290, 2344 (2005) (VAWA 2005) (codified in scattered sections of the United States Code including 8, 16, 18, 28, and 42.).

87   529 U.S. 598 (2000).

students think after hearing of this case, VAWA is still alive and providing other empowering options for survivors of violence today.[88] VAWA was crafted to provide a broad range of relief and support for survivors of gender based violence, and these other parts of law survive and continue to be used today, even as many of them have been strengthened in each successive version of VAWA.[89] Just as the involvement of organizations in drafting and reauthorizing VAWA continues to grow, their ability to modify and create the law also continues to grow, as seen in the technical corrections and expanded reauthorizations. The leading organizations who are members of the Task Force have built strong grassroots connections in diverse communities, in order to base their support for and modification of VAWA on the needs of real women throughout the country.[90] The ability of these national organizations to tap into the grassroots base can be seen in the increased support for and use of VAWA as a tool for women to escape violence.[91] On the other hand, grassroots participation must be channeled through national organizations based in Washington D.C., which may limit how much participation any one woman can have in creating this law. The amount of participation, and the way in which it is channeled, will always have to be addressed when working on a sustainable document that applies on a nation-wide scale, and the VAWA Task Force makes a concerted effort to respond to the needs and opinions of women nationwide.[92]

Challenges

1. The intersectionality of characteristics within each woman, i.e., race, sexuality, religion, nationality, class, etc., who makes up the community drafting a law or policy adds depth to the process and raises several issues.[93] — If a truly representative group from a

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88 For example, VAWA permits battered spouses to self-petition for immigration benefits by completing the United States Citizens and Immigration Services (USCIS) for I-360 as provided in section 204 of the Immigration and Naturalization Act (INA). *See* Immigration and Naturalization Act, 8 U.S.C. § 1154 (2006). This is a way for abused immigrants battered or subject to extreme cruelty by their U.S. citizen spouse, parent, or child (as well as many others in each successive reauthorization of VAWA) to apply for immigration status independently of the their abuser, providing a way for survivors to control their immigration status, as opposed to have it used against them to further the power and control of their abuser. The survivor controls her own immigration status and response to the battery or extreme cruelty she has endured.

89 Comments by Leslye Orloff, on file with the author.

90 *Id.*

91 *Id.*

92 *Id.*

93 *See* Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

community is a part of the process, women with characteristics or issues that are in the minority could be overpowered or ignored by a majority rule. Also, sometimes pressure from a large group might push to ignore issues, such as sexuality or religion, which only some of the members face. The idea of sustainable development, to ensure that no harm is caused, may or may not fully address this concern, depending on the ways in which empowerment is practiced. It could be addressed if the issue is brought up at the beginning of the process and participants are willing to consciously work to respect the multiple facets of every woman's identity. However, since the process relies heavily on consensus, there may be pressure to follow a majority rule. Differences need to be respected for this to be a truly empowering process.

2. International law was not created by women and in many ways still discriminates against women. — As women draft policies and laws addressing their needs and the oppression they face, they are challenging the status quo. International law, organizations, conventions, and diplomatic relationships may be part of the problem that women are addressing in the creation of a convention of policy. Coordinating what women create through this process with existing systems will take time and outreach between women creating new documents and those currently in positions of power within international legal frameworks. It also requires recognition by those in power that women deserve respect and the right to define what problems they face and how to address those problems. This has already started to happen, notably with Beijing and the subsequent conferences, or even the African Protocol.[94] However, it needs to continue, and the products coming out of these conferences need to be given more weight on the international legal field.

3. Logistically organizing conferences with wide representation from the community or communities of women touched by the law or policy, to draft laws or policies, will be difficult and costly. — It is more time and cost efficient to have a few professionals evaluate a given situation and then draft the law or policy. However, the benefits of having something that more accurately addresses the needs of women in a given community and does so in a way that they are comfortable implementing far outweighs the initial cost of setting up a situation where this collaboration can happen. It is also more likely that a community will buy into and continue to follow a policy created

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94 *Protocol to the African Charter on Human and People's Rights on the rights of Women in Africa,* July 11, 2003, development of the protocol as described by Professor MacKinnon, class discussion during Women's Human Rights Seminar, University of Michigan, Fall 2006.

by them, as opposed to outsiders. The difficulty in organizing so many people and the time for the group to reach consensus can be balanced against the impact a law or policy drafted in this way can have on women's issues.

CONCLUSION

Great strides have been made by the women's movement towards empowering women and ensuring there is legal recourse for women in claiming their equality. To continue this process, the idea of sustainable empowerment can ensure that new laws and policies accurately reflect the current issues women face and deal with those issues in an effective and realistic manner. It is a process that gains legitimacy through respect and participation. It also ensures that women control the way women's issues are dealt with by international bodies and in international legal instruments. It is a way to prevent the hijacking of women's issues by those in power to promote their own agendas. Instead, the women who are affected by the issue will make the decisions. This process is also a symbol of respect for women; it ensures that women have a right to decide what happens to them and what laws govern them. This has yet to be fully realized in any legal instrument, but it may be possible through sustainable development and empowerment. That possibility exists because it is the creation of law through women's own voices and is based on ideas that have been supporting individual women survivors for years.