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*Gender Voice and
Correlations with Peace*

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Gender Voice and Correlations with Peace

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ABSTRACT

The statistics regarding violence in today's society are staggering. A newly released study published by the World Health Organization, making headlines in the *Wall Street Journal* (Oct. 3, 2002) reports that "Violence Took 1.6 Million Lives in 2000." Notably, this report considers only the data obtained from the seventy countries that report such statistics to the World Health Organization. It does not include reports from many countries whose violence is also high, such as Burundi, Rwanda, Iraq, Liberia and Afghanistan.

This manuscript seeks to address some of these issues of violence by considering issues of gender. We pose the question whether there may be some correlation between violence and the lack meaningful involvement of women in the economy. If the countries that appear more violent are also countries where women are systematically excluded from business opportunities, perhaps one way to curb some of the societal violence would be to improve the opportunities for women in the economy. Multi-national corporations can play an important role in increasing these opportunities.

As has been argued elsewhere, a reduction in poverty promotes stability and leads to a more peaceful society. Studies show that in developing countries, involving women in the economy as wage earners can reduce poverty. As the locus of production shifts away from the home, an initial decline in employment opportunities may occur. However, this eventually disappears and both women and men benefit.

Keywords: corporate governance, gender, comparative law, discrimination, peace, globalization

GENDER VOICE AND CORRELATIONS WITH PEACE⁺

Terry Morehead Dworkin* and Cindy A. Schipani**

In developing countries, involving women in the economy as wage earners¹ can “lead to output gains and a reduction in poverty in general.”² As has been argued elsewhere, a reduction in poverty promotes stability and leads to a more peaceful society.³ As the locus of production shifts away from the home, an initial decline in employment opportunities may occur. When women are transitioning in society into the workforce, violence may increase.⁴ However, when women have attained status through

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¹ The distinction between women working, and women as wage earners, is important in data analysis. All women work. However, in many parts of the world, work in the fields and work in the home is not compensated through wages. The distinction is largely “socially constructed” and affects a countries reporting of statistics. For example, when Sweden included agriculture work in its definition of women’s work, the percentage of working women rose from about 8% to 52%. Zafiris Tzannatos, *Women and Labor Market Changes in the Global Economy: Growth Helps, Inequalities Hurt, and Public Policy Matters*, 27 WORLD DEVELOPMENT 551, 554-55 (1999).

² *Id.* at 552.

³ Timothy L. Fort & Cindy A. Schipani, *Corporate Governance, Stakeholder Accountability, and Sustainable Peace*, 35 VANDERBILT J. TRANSN’L L. 389, 394-399 (2002).

⁴ Partner violence is highest when women begin entering the labor force and fill non-traditional roles, challenging norms. WORLD REPORT ON VIOLENCE AND HEALTH, WORLD HEALTH ORGANIZATION, October 3, 2002, available at http://www5.who.int/violence_injury_prevention/main.cfm?p=0000000117 (hereinafter cited as World Report).

economic empowerment, the violence⁵ and decline in employment opportunities disappear and both women and men benefit.⁶

A significant factor affecting the participation rate of women is the dominant religion in the country. Approximately one-third of the variation in participation rates between countries can be explained by religion.⁷ Such statistics have led to a call for secularization of the law in some countries such as India because traditional interpretations marginalize the perspective of women.⁸ Secularization is justified as a matter of social utility, logic, and modern values.⁹ Additionally, traditional interpretation is only one possible interpretation, and “common understanding” is sometimes not the

⁵ *Id.* The reason for the increase is that when women are at the low end of society, violence is not needed to demonstrate male superiority. With the attainment of status, gender norms change so that violence is not accepted. *Id.* This, of course, does not mean that it doesn't occur; it is merely reduced. For much of the 1990s, homicides were the leading cause of death of women in U.S. workplaces. In 2000, 30% of the women who died on the job were homicide victims. *Workplace Violence*, 18 *Indiv. Rts. Rptr.* (BNA) 70 (Aug. 6, 2002).

⁶ Tzannatos, *supra* note 1. Women entering the workforce does not have merely a redistributive effect; instead, the “size of the pie” grows, and women claim a bigger share. Men's wages do not necessarily decline in absolute terms. *Id.* at 560.

⁷ *Id.* at 555. In Viet Nam, for example, the influence of Confucianism which is strong in Vietnamese culture tends to put women in a subordinate position in families and society, and awareness of gender equality issues is relatively low. This is despite the fact the Viet Nam ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1982, and instituted a National Plan of Action for the Advancement of Women in 1997. Under this, all provinces and the central level of government have developed plans of action. The 1994 Labor Code mandates equality in the workplace and affirmative action in recruitment. UNICEF, *The Situation of Women and Children in Viet Nam, 2000*.

⁸ Robert D. Baird, *Gender Implications for a Uniform Civil Code*, 28 *L. & SOC'Y REV.* 145 (1994). “It is a common indictment of many if not most traditional texts, religious and otherwise, that they were written by men for men, that they express a man's point of view, and that the perspectives of women and other marginalized persons are systematically, if not consciously excluded.” *Id.*

⁹ *Id.* at 149.

best interpretation.¹⁰ Depending on the interpretation of Islamic Law, for example, girls have a right to education on a par with boys in their family and a right to work and earn before and after marriage,¹¹ or they do not. This can be seen in the societies in Turkey and Afghanistan in 2000.¹²

The statistics regarding violence in today's society are staggering. A newly released study published by the World Health Organization, making headlines in the *Wall Street Journal* reports that "Violence Took 1.6 Million Lives in 2000."¹³ Notably, this report considers only the data obtained from the seventy countries that report such statistics to the World Health Organization. It does not include reports from many countries whose violence is also high, such as Burundi, Rwanda, Iraq, Liberia and Afghanistan.¹⁴

There are other studies of violence throughout the world. The Heidelberg Institute for International Conflict Research, for example, studies conflicts and compiles data comparing how various types of conflicts are resolved.¹⁵ The data identifies four types of conflict: (1) latent conflicts; (2) crisis conflicts that are mostly nonviolent; (3) severe crisis conflicts where there is some use of force; and (4) war. Previous research

¹⁰ For example, Tahir Mamood, speaking on the Muslim law of *khul'*, states that the law of divorce is not widely understood by Indian Muslims. He states that a wife can dissolve a marriage that is irretrievably broken down, as can a husband. Most think, though, that this right only belongs to the husband. *Id.* at 155.

¹¹ *Id.* at 157 (citing Mamood).

¹² See Dexter Filkins, *Can Islamists Run a Democracy?*, N.Y. TIMES, Nov. 24, 2002, at Sec. 4. "The Koran is inadequate as a basis for legislation.... There are too many places where it would conflict with the civil law [of Turkey]." *Id.* (quoting Nilufer Narli, a professor of sociology at Bogazici in Istanbul).

¹³ WORLD REPORT, *supra* note 4; Rachel Zimmerman, *Study Finds Violence Took 1.6 Million Lives in 2000*, WSJ, Oct. 3, 2002, at D5.

¹⁴ Zimmerman, *supra* note 13, at D5.

¹⁵ Heidelberg Institute for International Conflict Research at http://www.conflict.com/hiik/manuel_en.html (last visited November 25, 2002).

has compared the Heidelberg Institute's data of how conflicts are resolved with an index prepared by Transparency International. Transparency International ranks countries throughout the world based on the perception of corruption in business.¹⁶ This research showed a direct correlation between corruption and violence. That is, countries that were reported by the Heidelberg Institute to have addressed conflict in peaceful, or mostly nonviolent means were the same countries that were perceived as least corrupt according to the index prepared by Transparency International.¹⁷ Conversely, those countries that the Heidelberg Institute reported as mostly violent in their conflict resolution were also found by Transparency International to be perceived as the most corrupt.¹⁸

This manuscript seeks to address some of these issues of violence by considering issues of gender. We pose the question whether there may be some correlation between violence and the lack meaningful involvement of women in the economy. If the countries that appear more violent are also countries where women are systematically excluded from business opportunities, perhaps one way to curb some of the societal violence would be to improve the opportunities for women in the economy.

To address this question, this paper is organized as follows. Part I examines data compiled by The United Nations and the Heidelberg Institute, and finds that many violent nations do not rate positively on gender-related indices. Conversely, the more peaceful nations tend to have more positive gender-related scores. Pushing the results in Part I a step further, Part II considers how some of these gender imbalances might be corrected. Here we note that laws are only partially successful and suggest that business might play

¹⁶ Information on Transparency International can be obtained at <http://www.transparency.de>. See also Fort & Schipani, *supra* note 3, at 394-399.

¹⁷ Fort & Schipani, *supra* note 3, at 398.

¹⁸ *Id.*

a role by granting social rights and by adopting policies on nondiscrimination, providing mentoring and training programs, and implementing child care and other “family friendly” policies. Part III follows with our concluding remarks.

I. Data

As noted above, previous research has compared the Heidelberg Institute’s work on conflicts throughout the world with Transparency International’s data on the perception of corruption, finding an interesting correlation between violence and corruption.¹⁹ We utilized the same data from the Heidelberg Institute and compared it to the Gender Development Index published by the United Nations.²⁰ Here, we too found significant correlations between countries that resolve disputes by peaceful, or mostly nonviolent means, and more positive rankings on the Gender Development Index. Similarly, countries that ranked in the violent or mostly violent tiers of the Heidelberg Index, had poorer rankings in gender development.

In undertaking this analysis, we ranked 144 countries, for which data was available on gender development from The United Nations. Each year, The United Nations publishes a human development index (“HDI”) as a composite measure of human development.²¹ The HDI measures the achievements in a country in three basic dimensions of human development: longevity, knowledge and a decent standard of living.²² These categories are measured using life expectancy, adult literacy and

¹⁹ Fort & Schipani, *supra* note 16, at 398.

²⁰ *Id.*

²¹ See UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 14 (2001) [hereinafter HUMAN DEVELOPMENT REPORT].

²² *Id.*

combined primary, secondary and tertiary enrollment, and adjusted income per capita in purchasing power parity in US dollars.²³ Because the HDI assesses only average achievements, it disguises gender differences in human development. To reveal these differences, The United Nations extrapolates data from the HDI to compile the gender-related development index (“GDI”).²⁴ We use the latter measure, the GDI, in our statistical comparison. The GDI uses the same components as the HDI, but “captures inequalities in achievement between women and men.”²⁵ If a state had achieved gender equality in human development, its GDI and HDI would be the same.²⁶ However, The United Nations study indicated that for all countries studied, the GDI was lower than the HDI, indicating the presence of gender inequality everywhere.²⁷ Therefore, as the report describes, the GDI is “simply the HDI adjusted downward for gender inequality.”²⁸

We began our analysis with each country’s gender development index (GDI) ranking. For the 2001 study, the GDI was estimated for 144 countries, measuring: (1) the female and male life expectancy at birth; (2) the female and male adult literacy rates and the female and male combined primary, secondary and tertiary enrollment rates; and (3) the estimated female and male earned income. The last category reflects women’s and men’s command over resources.²⁹ Australia, Norway, Belgium, and Canada ranked at the top of the United Nations GDI index, indicating the lowest levels of gender

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 15.

²⁷ *Id.*

²⁸ *Id.* at 14. In relation to the World Development Report, the greater the disparity in basic human development, the lower is a country’s GDI compared with its HDI. *Id.*

²⁹ *Id.* at 14.

inequality.³⁰ At the other end of the spectrum, Burkina Faso, Burundi, and Niger ranked the lowest, indicating the highest levels of gender inequality.³¹

We then compared each country's GDI ranking to its ranking on the Heidelberg Institute's violence index, to the extent data was available.³² The data used are detailed in Table 1 below. The Heidelberg Institute's violence index, commonly known as the "Kosimo database" uses a variety of sources and twenty-eight variables³³ to define the types of conflict involved and the methods used by parties to those conflicts to resolve them.³⁴ The index defines "Conflict" as:

[t]he clashing of overlapping interests (political differences) around national values and issues (independence, self-determination, borders and territory, access to or distribution of domestic or international power); the conflict has to be of some duration and magnitude of at least two parties (states, groups of states, organizations or organized groups) that are determined to pursue their interests and win their case. At least one party is the organized state. Possible instruments used in the course of a conflict are negotiations, authoritative decisions, threat, pressure, passive or active withdrawals, or the use of physical violence and war.³⁵

³⁰ *Id.* at 213. The United States' GDI ranked it fourth of 144 countries. It fell behind Norway, Australia and Canada because of income disparity. In comparison, the United States had the greatest income disparity between men and women. *Id.* at 211.

³¹ *Id.* at 213.

³² Unfortunately, data was not available from the Heidelberg Institute for all countries for which we obtained a gender development index ranking. In total, we had 86 data points from the Heidelberg Institute data. *See* Table 1.

³³ Among the twenty-eight variables used to measure and rank countries by their levels of conflict are: region, participants, external parties, number of participating parties, initiator, political systems of the conflict initiator, political systems of the affect party, economic and political stage development, disputed issues in conflict, and political, territorial and military outcomes. Further information regarding these variables may be found at Heidelberg Institute for International Conflict Research, *supra* note 15.

³⁴ Fort & Schipani, *supra* note 16, at 397 (citing the Heidelberg Institute for International Conflict Research, *supra* note 15).

³⁵ Heidelberg Institute for International Conflict Research, *supra* note 15.

We used the database to rank the countries according to the number of conflicts resolved violently and the total number of conflicts between 1975 and 2000.

Next, we divided the countries into six groups, of approximately twenty-five countries, comparing the country's GDI rank to its Kosimo rank. We found that there is a linear progression of the percentage of violent resolution of conflicts ranging from 11% in the first group of twenty-five countries, to 71% in the last group. These results are reported in Table 2.

In the first group, the only countries that report violent conflicts are the USA, UK, Ireland and Israel. Israel is the anomaly in the group with three violent conflicts of five total conflicts while the other three countries report only one violent conflict each. The total percentage of violent resolution of in this group was is 10.7%.

When we consider the second group, we find that the percentage of conflicts being resolved violently increases to 35.4%. Eleven of the seventeen violent conflicts in this group involve Latin American countries. Middle Eastern countries accounted for the remaining six conflicts.

In our third group, violent resolution of conflict goes up to 38%; increasing to 58% in the fourth group, remaining at 58% in the fifth group and increasing again to 71% in our final and sixth group.

In addition to grouping the data according to GDI rankings, we computed correlation statistics between a country's ranking on the GDI and its Kosimo ranking. The correlation coefficient between these variables is .73, with a Spearman rank correlation of 767.8. These numbers indicate a correlative relationship between a country's ranking on the Gender Development Index and the level of violence involved

in resolution of disputes. Of course, this does not indicate causation. For example, it may be that in countries with weak, corrupt, or ineffective legal systems, people will tend to resolve disputes outside of the courtroom, often violently. These same countries may also not have laws or practices promoting gender development. Nevertheless, these figures seem to run in tandem.

TABLE 1

Country	GDI Rank	Heidelberg Rank	Conflicts resolved violently	Total number of conflicts between 1975-2000
Australia	1	13	0	1
Belgium	2	25	0	1
Norway	3	6	0	2
Sweden	4	3	0	2
Canada	5	5	0	3
USA	6	14	1	8
Iceland	7	6	0	1
Finland	8	1	0	2
Netherlands	9	9	0	1
United Kingdom	10	10	1	7
Japan	11	23	0	1
France	12	21	0	9
Denmark	13	2	0	3
Switzerland	14	11	-	-
Austria	15	15	-	-
Germany	16	17	0	3
Ireland	17	19	1	1
New Zealand	18	3	0	1
Luxembourg	19	11	-	-
Italy	20	39	0	1
Spain	21	20	0	1
Israel	22	22	3	5
Hong Kong	23	15	-	-
Singapore	24	6	0	0
Greece	25	35	0	3
Cyprus	26	-	0	1
Slovenia	27	28	-	-
Portugal	28	23	0	1
South Korea	29	48	0	1
Malta	30	-	0	1
Brunei Darussalam	31	-	-	-
Czech Republic	32	42	0	1
Argentina	33	52	2	6
Slovakia	34	52	0	0

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Hungary	35	32	0	2
Poland	36	43	0	2
Uruguay	37	-	3	6
Bahamas	38	-		
Chile	39	18	0	3
Bahrain	40	-	1	3
Costa Rica	41	30	3	4
Lithuania	42	43	0	1
Croatia	43	51	2	2
Kuwait	44	-	4	6
Trinidad and Tobago	45	-	-	-
Latvia	46	57	0	1
United Arab Emirates	47	-	0	1
Qatar	48	-	1	4
Mexico	49	59	1	1
Belarus	50	43	0	1
Panama	51	-	1	2
Russian Federation	52	82	2	9
Bulgaria	53	52	-	-
Malaysia	54	36	0	2
Romania	55	68	-	-
Colombia	56	60	-	-
Venezuela	57	71	0	2
Belize	58	-	1	3
Mauritius	59	37	0	2
Thailand	60	60	0	2
Libya	61	-	0	1
Armenia	62	76	1	2
Philippines	63	69	2	2
Brazil	64	49	0	2
Fiji	65	-	-	-
Ukraine	66	87	0	2
Jamaica	67	-	-	-
Maldives	68	-	-	-
Lebanon	69	-	9	10
Sri Lanka	70	-	3	3
Turkey	71	50	1	6
Saudi Arabia	72	-	1	3
Peru	73	-	5	11
Albania	74	-	0	2
Paraguay	75	-	0	1
Uzbekistan	76	79	2	2

China	77	63	5	6
Oman	78	-	0	2
Dominican Republic	79	-	-	-
Ecuador	80	74	3	5
Tunisia	81	32	2	3
Cape Verde	82	-	-	-
Iran	83	-	7	18
Jordan	84	39	0	1
Guyana	85	-	0	1
Moldova	86	74	-	-
El Salvador	87	43	1	2
South Africa	88	34	2	4
Vietnam	89	76	1	4
Algeria	90	-	3	3
Indonesia	91	85	4	5
Syria	92	-	-	-
Equatorial New Guinea	93	-	-	-
Tajikistan	94	-	3	3
Mongolia	95	-		
Bolivia	96	71	0	1
Nicaragua	97	-	3	4
Honduras	98	-	3	3
Egypt	99	63	3	3
Guatemala	100	-	2	4
Namibia	101	-	0	1
Morocco	102	37	2	4
Swaziland	103	-	-	-
Botswana	104	26	0	1
India	105	69	5	7
Myanmar	106	-	1	2
Zimbabwe	107	65	1	2
Ghana	108	52	1	2
Cambodia	109	-	1	2
Papua New Guinea	110	-	1	3
Lesotho	111	-	1	2
Kenya	112	82	2	4
Congo	113	-	3	3
Comoros	114	-	1	2
Cameroon	115	84	-	-
Sudan	116	-	6	7
Togo	117	-	2	2
Laos	118	-	0	2

Nepal	119	-	0	1
Pakistan	120	-	5	6
Bangladesh	121	-	1	3
Haiti	122	-	1	1
Madagascar	123	-	-	-
Nigeria	124	90	1	4
Uganda	125	80	4	6
Tanzania	126	76	1	1
Mauritania	127	-	1	1
Yemen	128	-	5	9
Zambia	129	57	1	3
Senegal	130	52	2	2
Congo, Dem Repub	131	-	-	-
Côte d'Ivoire	132	71	-	-
Eritrea	133	-	2	4
Benin	134	-	-	-
Rwanda	135	-	2	2
Gambia	136	-	-	-
Malawi	137	43	0	1
Mali	138	-	2	2
Central African Republic	139	-	0	1
Chad	140	-	7	9
Guinea Bissau	141	-	1	1
Ethiopia	142	60	5	7
Burkina Faso	143	65	2	2
Mozambique	144	81	3	3

TABLE 2

Country's Gender Development Index Rank	Composite Percentage of violent resolutions of conflict
1-25	10.7
26-50	35.4
51-75	38.0
76-100	58.0
101-125	58.0
126-144	71.0

II. Implementation

A. Laws

Discrimination against women in the workforce is economically inefficient. As the proportion of women in the workforce rises, the effects of the inefficiency rise.³⁶ Thus, it makes economic sense for countries to pass nondiscrimination laws. There is also broad global support for nondiscrimination. Many international treaties and conventions call for the elimination of discrimination against women.³⁷ As countries become signatories, they begin to change their laws. Ratification of the ILO Convention 156 on workers with family responsibilities, the UN Convention on the Elimination of All Forms of Discrimination Against Women,³⁸ and the OECD Guidelines for Multinational Enterprises,³⁹ are examples of international anti-discrimination policy. Groups and individuals increasingly appeal to such norms of international law to oppose state laws.⁴⁰

Various kinds of laws may need to be enacted to effectively address discrimination against women in the workforce. These can range from equal access to education to tax laws that do not unduly penalize a second income in a household, from family leave to adequate childcare. The most obvious are laws that ban discrimination in the workplace. One example is a law banning discrimination against married women. In Indonesia and Korea it is permissible to discriminate against married women.⁴¹ Such

³⁶ Tzannatos, *supra* note 1, at 563.

³⁷ See *infra* notes 38- 39 and accompanying text.

³⁸ 19 I.L.M. 33 (opened for signature on Mar. 1, 1980).

³⁹ Clarification on Environmental Concerns in OECD Guidelines for Multinational Enterprises, 25 I.L.M. 494 (1986).

⁴⁰ David Engel, *Concepts of Rights: Introduction*, 28 L. & SOC'Y REV. 489, 490 (1994).

⁴¹ *Id.* at 564.

discrimination not only prevents married women from getting jobs; it also affects the type of job an employer is willing to give women if hired and the type of training they are provided. If an employer hires single women, it will tend to channel them into dead-end jobs, pay them lower wages, and lay them off first. Since most women will marry and (they assume) leave the workforce, there is little incentive to invest much in them.⁴² Additionally, it affects the kind of education a family is willing to provide a girl.

Legislation, however, is only a beginning on the long road toward a solution. Several studies by social scientists in developing countries indicate that legislation mandating equality is not sufficient, at least in the short term, to change social norms.⁴³ For example, a study done in Indonesia after a “Western” legal system was implemented showed that the system operated at the formal, state level in “a thin layer at the top,” but that the traditional processes operated below that. This latter layer represents most of the issues faced on a daily basis.⁴⁴ Imposing rights was considered “impolite” because it went against harmonious communal life by putting the individual before the community.⁴⁵ One of the results was that Toba Batak married women did not assert their

⁴² While it is permissible to discriminate against married women in hiring in Korea, it is now illegal to discriminate them in promotions and dismissal. *Id.*

⁴³ *See, e.g.,* T. Omas Ihromi, *Inheritance and Equal Rights for Toba Batak Daughters*, 28 L. & SOC’Y REV. 525, 527 (1994) (citing the work of Max Weber, and of Sally Falk Moore).

⁴⁴ Satjipto Rahardjo, *Between Two Worlds: Modern State and Traditional Society in Indonesia*, 28 L. & SOC’Y REV. 493, 494 (1994). The author further found that development did not proceed in the traditional way Weber’s theory hypothesized, e.g., progressing from the stage of traditional authority to charismatic authority to rational legal authority. The development of new nation-states in the second half of the 20th century experienced “simultaneous waves of development.” *Id.*

⁴⁵ *Id.* at 500. The author asserts that this is true of Southeast Asian countries in general.

right to inherit from their fathers' estates.⁴⁶ In India, women are persuaded out of asserting their legal rights.⁴⁷ Traditional legal rights are as interpreted by men from traditional texts.⁴⁸ The main property right of women emanates from marriage – labor markets are only a secondary source.⁴⁹

Singapore and Malaysia have tried to address the resistance issue in implementing laws that conflict with cultural norms. Before adopting laws, an attempt is made to change people's perceptions, in preparation for the change.⁵⁰ Then, if laws have not become generally accepted after passage, implementation is deferred until the community accepts the laws.⁵¹ Consequently, Malaysia has not adopted the Convention on Elimination of All Forms of Discrimination against Women,⁵² and although various civil rights are mentioned in the constitution, no such right is mentioned with respect to gender equality.⁵³ In Thailand, women and family-related issues are seen as not being within the realm of the law.⁵⁴ Women, however, have been seen as good workers, obedient and non-demanding.⁵⁵ But they are hindered from achieving greater parity with men because of their historical place as appendages to men, the cultural devaluation of manual labor,

⁴⁶ See Ihromi, *supra* note 43. Ihromi cites Sally Falk Moore's theory of semiautonomous social fields. Falk argues that these fields generate internal rules, customs, and symbols. However, they are also vulnerable to forces coming from the surrounding world. *Id.* at 527.

⁴⁷ Srimati Basu, *Indian Women and Inheritance Law*, 28 L. & SOC'Y REV. (1994).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Juree Vichit-Vadakan, *Women and the Family in Thailand in the Midst of Social Change*, 28 L. & SOC'Y REV. (1994).

⁵⁵ *Id.*

and the religious definition of women as polluting.⁵⁶ Women tend to hold themselves back in competition with men.⁵⁷ These are issues that are difficult to change through legislation.⁵⁸

In addition to laws not being enforced by individuals, governments may also ignore them and employers may purposely avoid them. For example, Mexico prohibits discrimination against women in the Mexican Federal Labor Law⁵⁹ and the Mexican Constitution.⁶⁰ These laws are commonly ignored, though, especially as they pertain to women.⁶¹ In another example, when equal pay legislation was implemented in Canada, employers avoided the intended result by reclassifying jobs so that they were not comparable, or changed the wage rates for “female” and “male” jobs to “light” and “heavy” work.⁶² Despite these barriers to effectiveness, law can play an important symbolic role⁶³ and can “educate a population to expect new forms of participation.”⁶⁴

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See sources *supra* note 7. Ethiopia presents another example where “tradition and culture often prevail over civil and criminal law, and in practice women do not enjoy equal status with men.” Discrimination is worst in the rural areas where 85% of the population lives. They cite the abduction of women for marriage despite its banning in the penal code. “Culturally-based abuses including wife beating and marital rape are pervasive social problems.” In 1997 the government adopted a National Program of Action to enhance the status of women. This includes education and work opportunities for women. www.afrol.com.

⁵⁹ Ley Federal del Trabajo, arts. 3, 5, 56, 86, 164, 166.

⁶⁰ Constitución Política De Los Estados Unidos Mexicanos, Art. 123, cited in Charles Hollon & Kathryn Culbertson, *Employment Discrimination Law in the U.S., Canada, and Mexico: A Comparative Overview*, 6 INT’L HUMAN RESOURCES J. 39 (1997).

⁶¹ See, e.g., Baird, *supra* note 8, at 157-58 (discussing the Islamic law as it is practiced “on the ground” in India regarding women’s rights, and as interpreted by scholars, and its relation to a civil code granting women’s rights).

⁶² Tzannatos, *supra* note 1, at 566.

⁶³ Law in Indonesia has been said to be an “expression of national aspiration,” rather than an instrument of social change. Ihromi, *supra* note 43.

⁶⁴ Joel Handler, *Legal Rights and Social Inclusion*, 28 L. & SOC’Y REV. 504, 505 (1994).

An example of legislation that is counterproductive in terms of women's employment is protective legislation. China's labor legislation is illustrative. It emphasizes the biological differences between men and women, and protects women on the basis of some of those differences such as menstrual cycle, pregnancy, and nursing.⁶⁵ The result of such protective legislation reinforces traditional stereotypes, puts the burden of child rearing entirely on women, and leads to a preference for male workers.⁶⁶ It also hinders women's movement into nontraditional work roles.⁶⁷

B. Other Influences

Influences other than the law such as non-governmental organizations (NGOs),⁶⁸ the media, and the Internet,⁶⁹ can also lead to change.⁷⁰ However, the change may only occur in certain classes. For example, newspapers are influential,⁷¹ but tend to reflect the concerns of the middle or upper classes.⁷² Education can also play a role. Educating

⁶⁵ See notes 154-159 and accompanying text, *infra*.

⁶⁶ Charles J. Ogletree & Rangita de Silva-de Alwis, *Gender Differences Become a Trap: The Impact of China's Labor Law on Women*, 14 YALE J. L. & FEMINISM 69 (2002).

⁶⁷ *Id.* It also leads to women being seen as more expendable in economic downturns. This is reinforced by legislation requiring earlier retirement for females.

⁶⁸ Sydney M. Cone, III, *Symposium: The Multinational Enterprise as Global Corporate Citizen*, 21 N. Y. L. SCH. J. INT'L & COMP. L. 1 (2001).

⁶⁹ Kathleen Peratis, et al., *Markets and Women's International Human Rights*, 25 BROOK. J. INT'L L. 141 (1999).

⁷⁰ Tourists can also be an agent for change toward global norms. See Engel, *supra* note 40, at 490.

⁷¹ The media has been important as a change agent in Southeast Asia. "Governments fear and respect the media and are sometimes inclined to capitulate rather than risk adverse publicity. The media are thus able to empower those groups within states whose causes they choose to report. . . Indirectly, the media also play a significant role in disseminating ideas about law and politics across state boundaries." Engel, *supra* note 40, at 491.

⁷² Akin Rabibhadana, *Custom, State Law, and the Problem of Selective Enforcement*, 28 L. & SOC'Y REV. 503, 504 (1994) (speaking of Thai society).

about rights at the elementary school level may eventually lead to a transformation.⁷³

However, multinational corporations (MNCs) operating within countries have the biggest potential to change existing norms through policies they implement in their generally large and desirable workplaces.⁷⁴

C. What can Business Add?

MNCs can help by implementing what have been called *social rights*, such as the right to work and to a decent income.⁷⁵ MNCs can be particularly influential in developing countries which are anxious to get the developmental benefits of the companies presence.⁷⁶

1. Non-Discrimination

Probably the most essential thing a company must have in order to successfully integrate women into the workforce is a nondiscrimination policy. As mentioned above, there are a large number of international treaties and compacts that call for such policies.⁷⁷ Additionally, MNCs operating in the United States will have a nondiscrimination policy. While this policy will comport with the U.S. federal

⁷³ Handler, *supra* note 64, at 505 (citing Myrna Feliciano speaking of the Philippines' experience); Baird, *supra* note 8, at 147 (citing a study showing a lack of knowledge of the areas of law most significantly affected by a uniform civil code in India).

⁷⁴ Engel, *supra* note 40, at 490. As states lose some of their predominance, the influence of multinational organizations including corporations becomes greater. See Dworkin, *infra* note 90, at 458, 486.

⁷⁵ Handler, *supra* note 64, at 507 (citing T.H. Marshall). Marshall posited three types of rights important to the development of citizenship in Western society – civil rights (legal recognition of contracts, property rights, etc.), political rights (enfranchisement), and social rights. He viewed these as occurring by century, from the 18th to the 20th.

⁷⁶ James L. Gunderson, *Symposium: The Multinational Enterprise as Global Corporate Citizen*, *supra* note 68, at 15.

⁷⁷ See notes 38-41, *supra* and accompanying text.

nondiscrimination laws such as Title VII,⁷⁸ the Americans with Disabilities Act,⁷⁹ and the Age Discrimination Act,⁸⁰ and thus may be broader than the international mandates, they would largely be consistent in regard to the treatment of women. Clearly, in order for women to be hired in nontraditional workplaces, employers must begin with equal opportunity.

In many instances, as a practical matter, a nondiscrimination policy will not be enough. The organization will have to put incentives and oversight into effect to make sure the policy is implemented effectively. One important way to encourage compliance is to have the evaluations of those hiring and supervising be in part based on whether qualified women are brought into the workplace at appropriate levels and whether they receive appropriate training and promotion opportunities.⁸¹ The evaluations should also be tied into pay raises. In economies where women are largely untrained to enter the workforce, the employer may need to make sure its training and educational efforts outside the workplace are nondiscriminatory for girls and women, as discussed below.⁸²

a. Harassment

Once women are in the workplace, an essential component of a nondiscrimination policy is a ban on harassment. Harassment is a way to show that the person being harassed is not welcome. It has typically been used by those in the majority group to

⁷⁸ Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000e (1994).

⁷⁹ Americans with Disabilities Act, 42 U.S.C. § 12111(5)(A) (1995).

⁸⁰ Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 (1994).

⁸¹ Some developing countries such as Viet Nam have instituted affirmative action requirements as a way to increase the number of women in the workplace. Labor Code of the Socialist Republic of Vietnam, available at

www.ivietnam.com/eng/business/laws/labourcode/basic/chapterX.asp, Chapter X, Art. 111.

⁸² See notes 83-111 and accompanying text, *infra*.

send this message and to protect “their” territory.⁸³ For example, when women entered nontraditional jobs after passage of VII, harassment commonly followed. In the United States, harassment today is seen to be more about power than about sex.⁸⁴ In harassment law, it is an abuse of economic power to force demeaning and unwelcome behavior on women.⁸⁵ Besides reducing workers to sex objects, harassment reinforces sexual stereotypes, assaults individual dignity, and fosters a sense of degradation that can result in a loss of productivity, and physical and emotional problems.⁸⁶ It can also involve violence.⁸⁷

In developing countries such as China, where women are going from a rural area to a growing commercial area to get jobs, women must often be willing to sleep with the person doing the hiring and/or the supervisor to get or keep a job.⁸⁸ This is seen by many as the dues one must pay to earn a living.⁸⁹

MNCs which operate in the United States and other parts of the West are likely to have an anti-harassment policy. There are problems, though, with global application of a

⁸³ See, e.g., *Robinson v. Jacksonville Shipyards, Inc.*, 760 F. Supp. 1486 (M.D. Fla. 1991); *Horne & anor v. Press Clough Joint Venture & anor*, EOC 92-556 (Western Australia 1994)

⁸⁴ Note, *Sexual Harassment Claims of Abusive Work Environment Under VII*, 97 HARV. L. REV. 1449, 1449-51 (1984).

⁸⁵ Terry M. Dworkin et al., *Theories of Recovery for Sexual Harassment: Going Beyond Title VII*, 25 SAN DIEGO L. REV. 125, 127 (1988).

⁸⁶ *Id.* at 127-8.

⁸⁷ See, e.g., *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986); *Hunt v. State of Missouri*, 89 Fair Empl. Prac. Cas. (BNA) 867 (8th Cir. 2002); *Gaines v. Bellino*, 89 Fair Empl. Prac. Cas. (BNA) 886 (N.J. 2002).

⁸⁸ In 1995, approximately 25 million Chinese were employed by Foreign-owned export-processing firms, and the great majority of these workers were young female migrants from rural areas. *Women Workers in China*, U.N. Official Report 3 (1995), cited in Wiseman, *infra* note 143, at 198.

⁸⁹ Young women working in the *maquiladoras* also feel compelled to tolerate harassment in order to keep their jobs. Arriola, *infra* note 148, at 781-83.

program developed to meet U.S. law.⁹⁰ Two forms of sexual harassment are recognized in the U.S.: quid pro quo harassment and hostile environment sexual harassment. Quid pro quo harassment occurs when a supervisor offers or withholds a job or job benefit in exchange for sexual favors.⁹¹ A hostile environment occurs when unwelcome sexual conduct from a supervisor or coworker unreasonably interferes with individual job performance or creates an intimidating, hostile, or offensive work environment.⁹² These same theories have been adopted by other countries and trade organizations.⁹³ However, cultural and legal differences have resulted in the concept having different meanings and legal outcomes.⁹⁴

The differences in the approaches of Japan, the Czech Republic, Australia, and the E.U. are illustrative. In Japan, there is no law specifically addressing sexual harassment, but courts have recognized harassing environment cases, and women have formed pressure groups to get organizations to address the problem.⁹⁵ In the Czech

⁹⁰ See Terry Morehead Dworkin, *Whistleblowing, MNCs, and Peace*, 35 VAND. J. TRANSNAT'L L. 457, 478 (2002); *Highlights, Global HR*, 89 Fair Empl. Prac. (BNA) 108 (Aug. 29, 2002) [hereinafter *Highlights*].

⁹¹ See, e.g., *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).

⁹² *Id.* The Supreme Court has recognized a defense to this type of harassment if the employer makes a reasonable effort to prevent and correct it, including effective policies and complaint procedures. The employer must also prove that the employee unreasonably failed to take advantage of employer-provided procedures. See, e.g., *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 744 (1998). Employers are strictly liable for quid pro quo harassment when a job benefit is denied.

⁹³ See generally, Michael Starr, *Who's the Boss? The Globalization of U.S. Employment Law*, 51 BUS. L. 635 (1996); Beverly H. Earle & Gerald A. Madek, *An International Perspective on Sexual Harassment Law*, 12 L. & INEQ. 43 (1993).

⁹⁴ See Dworkin, *supra* note 90; *Highlights, supra* note 90.

⁹⁵ Nancy Patterson, Recent Development, *No More Naki-Neri? The State of Japanese Sexual Harassment Law: Judgment of April 16, 1992, Fukuoka Chiiho Saibansho, Heisei Gannen (1989)(wa) No. 1872, Songai Baisho Jiken (Japan)*. 34 HARV. INT'L L.J. 206 (1993). This decision occurred at a time when harassment was dismissed as trivial by

Republic, women have been reluctant to press or even recognize the issue,⁹⁶ but as the Czech Republic prepares to join the E.U., changes may have to be made because the E.U. has taken a position against sexual harassment⁹⁷ and has adopted a program on gender equality.⁹⁸ There is currently no mechanism, however, to enforce the E.U. policy against harassment.⁹⁹ Australia statutorily bans both harassing environment and quid pro quo sexual harassment,¹⁰⁰ but if companies implement effective training programs, they cannot be sued.¹⁰¹ The differences mean that MNCs must adjust their policies to meet

companies and businessmen. *See* Daniel Niven, *The Case of the Hidden Harassment*, HARV. BUS. REV., Mar.-Apr. 1992, at 12.

⁹⁶ *See* Dworkin, *supra* note 90, at 479.

⁹⁷ The European Commission prepared a Code of Practice after the Council of Ministers passed a resolution, *The Protection of the Dignity of Men and Women at Work*, which defined harassment in the same terms as those used in the United States. It did so after finding that harassment was a serious problem for many working women. *See generally*, MICHAEL RUBENSTEIN, HOW TO COMBAT SEXUAL HARASSMENT AT WORK: A GUIDE TO IMPLEMENTING THE EUROPEAN COMMISSION CODE OF PRACTICE (1993); MICHAEL RUBENSTEIN, THE DIGNITY OF WOMEN AT WORK: A REPORT ON THE PROBLEM OF SEXUAL HARASSMENT IN THE MEMBER STATES OF THE EUROPEAN COMMUNITIES (1987).

⁹⁸ In 2000, in response to a proposal from the European Commission (2000 O.J. (E 337) 196), the Council issued a decision that established a program for a Community framework strategy on gender equality. It does not specifically mention sexual harassment. 2001 O.J. (L17/22) 19.1.

⁹⁹ The Code is nonbinding on Member States and has no enforcement mechanism. Anita Bernstein, *Law, Culture, and Harassment*, 142 U. PA. L. REV. 1227 (1994). Bernstein posited that the lack of sanctions resulted from the fact that sexual harassment was not widely viewed as a legal wrong in the EU Member States. *Id.* Since the Code was nonbinding, the Member States were free to establish or maintain their own laws, and these vary from country to country. *See* Dworkin, *supra* note 90, at 478-79.

¹⁰⁰ Sex Discrimination Act of 1984, 20 FCR 217, Div. 3, §§ 28A-28B (Australia). In addition to the federal legislation, Australia's six states and two territories have anti-discrimination legislation. *See, e.g.*, Equal Opportunity Act 1984, § 87 (S. Austl. Acts & Ord.); Anti-Discrimination Act 1991, §118 (Queensl. Stat.). *See generally*, Jeffrey Minson, *Second Principles of Social Justice*, 10 L. IN CONTEXT 1 (1992).

¹⁰¹ "In any proceedings brought under this Act . . . it is a defence to prove that the person exercised all reasonable diligence to ensure that the agent or employee would not act in contravention of the Act." Equal Opportunity Act 1984, § 91 (3) (S. Austl. Acts & Ord.). The U.S. Supreme Court has created a defense for hostile environment sexual harassment. *See, supra* note 84.

local requirements. However, they would be legally safe and ethically correct to have a policy banning quid pro quo harassment no matter where they operate.¹⁰²

No country approves of the idea of a woman being forced to trade sexual favors for the right to employment and its benefits, of having her personal security threatened, or her human dignity undermined. Evidence of this is reflected in global and regional declarations. These include the 1948 Universal Declaration of Human Rights,¹⁰³ the UN Convention on the Elimination of All Forms of Discrimination Against Women,¹⁰⁴ OECD Guidelines for Multinational Enterprises,¹⁰⁵ the Council of Europe's 1996 Social Charter,¹⁰⁶ and EC Directives and Codes of Practice.¹⁰⁷ Additionally, the laws, tenets, and philosophies of particular countries and religions support a ban on such behavior.

Ethically, the pervasiveness of coverage suggests there are three general rules, or *hypernorms* that justify a ban on quid pro quo harassment. Hypernorms, principals "so fundamental to human existence that [they serve] as a guide to evaluating lower level moral norms," are usually reflected in global principles that are generally recognized in a variety of ways.¹⁰⁸ They are often cast in the language of rights. An examination of the global and regional declarations above suggests quid pro quo harassment involves the

¹⁰² Dana Deane, in-house counsel at Abbott Laboratories, argues for a global harassment and anti-discrimination policy so the organization can articulate a uniform policy and corporate culture. *See Highlights, supra* note 90.

¹⁰³ U.N. GAOR, 3d Sess., 67th plen. Mtg., at 1, U.N. Doc. A/811 (1948). This document was part of the International Bill of Human Rights, U.N. GAOR, 3rd Sess., Supp. No. 1, at 71, U.N. Doc. A/565 (1948).

¹⁰⁴ 19 I.L.M. 33 (opened for signature on Mar. 1, 1980).

¹⁰⁵ Clarification on Environmental Concerns in OECD Guidelines for Multinational Enterprises, 25 I.L.M. 494 (1986).

¹⁰⁶ European Social Charter, Europ. T.S. No. 163, 36 I.L.M. 31 (1997).

¹⁰⁷ *See supra* note 97.

¹⁰⁸ Donaldson & Dunfee, *infra* note 112, at 265.

hypernorms of personal security,¹⁰⁹ respect for human dignity,¹¹⁰ and nondiscrimination.¹¹¹ Professors Donaldson and Dunfee, in their integrative social contracts theory, recognize macrosocial and microsocal contracts.¹¹² They argue that hypernorms can be used to border or limit the cultural relativism of micronorms. If nonharassment is a hypernorm, then a MNC can ethically justify a global ban on harassment. This means that although quid pro quo harassment may be tolerated in China, for example, it is appropriate for a company operating there to ban it.

It is harder to justify a global ban on environmental sexual harassment. This type of harassment seldom involves personal security and there is no general consensus—even in the United States—as to what is included within the concept. Staring, verbal comments, jokes, and similar actions are not perceived as harassment of women in many countries.¹¹³ To the extent that such harassment erodes human dignity and is discriminatory, it violates two of the hypernorms. Thus, organizations can ban demeaning and discriminatory treatment. What constitutes such treatment, though, should be determined on a microsocal basis. Cultural imperialism should also be avoided.¹¹⁴

¹⁰⁹ W.C. Frederick, *The Emperical Quest for Normative Meaning: Introduction and Orientation*, 2 BUS. ETHICS Q. 91 (1992).

¹¹⁰ Donaldson & Dunfee, *supra* note 112, at 267.

¹¹¹ THOMAS DONALDSON, *THE ETHICS OF INTERNATIONAL BUSINESS* 87 (1989).

¹¹² Thomas Donaldson & Thomas R. Dunfee, *Toward A Unified Conception of Business Ethics: Integrative Social Contracts Theory*, 19 ACAD. MGMT. REV. 252 (1994). *See also* THOMAS DONALDSON & THOMAS R. DUNFEE, *TIES THAT BIND: A SOCIAL CONTRACTS APPROACH TO BUSINESS ETHICS* 49-81 (1999).

¹¹³ *See, e.g.,* Sandra Orihuela & Abigail Montjoy, *The Education of Latin America's Sexual Harassment Law: A Look at Mini-Skirts and Multinationals in Peru*, 30 CAL. W. INT'L L.J.323 (2000).

¹¹⁴ Richard T. DeGeorge, *International Business Ethics*, 4 BUS. ETHICS Q. 1 (1994); Derek G. Barella, Note, *Checking the "Trigger-Happy" Congress: The Extraterritorial*

It is appropriate for a MNC to have a uniform corporate culture¹¹⁵ that stresses respect for individuals and equal opportunity. However, it would be necessary to have training and possibly some form of mentoring to effectively implement it. This is where cultural differences can be taken into account.¹¹⁶ Exploration of what constitutes a harassing environment in a particular location should be addressed through seminars, focus groups, and by other means.¹¹⁷ It is unrealistic to expect that the U.S. standard for harassing environment sexual harassment would be accepted elsewhere. However, respecting cultural differences does not mean respecting the lowest common denominator. A minimum standard should be set by the MNC, and a chance to appeal outside the local organization should be provided.¹¹⁸

b. Equal Pay/Comparable Worth

Another important part of a nondiscrimination policy is equal pay. Worldwide, no more than one-fifth of wages go to women.¹¹⁹ This is partly due to the fact that women are concentrated in low-paying jobs, but it is also attributable to the fact that

Extension of Federal Employment Laws Requires Prudence, 69 IND. L.J. 889, 913 (1994). Cf. Mark Granovetter, *Economic Action and Social Structure: The Problem of Embeddedness*, 91 AM. J. SOC. 481 (1985) (arguing that contractarianism and other business ethics arguments have a Western bias).

¹¹⁵ See *Highlights*, *supra* note 90, at 108.

¹¹⁶ Hofstede, *infra* note 216, at 276.

¹¹⁷ See Callahan, et al., *Integrating Trends in Whistleblowing and Corporate Governance: Promoting Organizational Effectiveness, Societal Responsibility, and Employee Empowerment*, 40 AM. BUS. L.J. ____ (2002) (forthcoming).

¹¹⁸ The appeal could go to the person doing organizational compliance auditing, who would then be responsible for ensuring that local interpretations are not setting the bar too low. Dworkin, *supra* note 90, at 481. This may be easier not that companies are taking compliance more seriously and instituting oversight. See, e.g., *ABA Task Force on Corporate Responsibility*, BUS. L., Nov./Dec. 2002, at 60-61; Carol Hymowitz, *Building a Board That's Independent, Strong and Effective*, WALL ST. J., Nov. 19, 2002, at B1.

¹¹⁹ Tzannatos, *supra* note 1, at 551.

women are often paid less than men for the same work.¹²⁰ At a minimum, a company should have a policy of paying women the same wage as men for the same work. This would represent a big change in some developing countries where women are sought as workers because they are willing to work harder for less.¹²¹ A more problematic issue is that of comparable worth. Although “women’s” jobs are often lower paying than those where men are concentrated, the jobs that are predominately female are not necessarily of lesser value to the organization. Comparable worth is a means of addressing this inequity.

One basis for the doctrine of comparable worth has its basis in the United Nation’s Convention on the Elimination of All Forms of Discrimination Against Women, which was adopted by the United Nations General Assembly on December 18, 1979.¹²² It entered into force on September 3, 1981, when it had been ratified by twenty states as provided by Article 27 of the Convention.¹²³ It is the most comprehensive Convention dealing with women’s rights, and as of 1997, it had been ratified by 161 states.¹²⁴ The Convention requires signatories to “embody the principle of the equality of men and women” in their constitutions or appropriate legislations¹²⁵ and to “modify or abolish existing laws, regulations, customs and practices” that discriminate against women.¹²⁶ Article 11 explicitly mandates the doctrine of comparable worth by requiring signatories

¹²⁰ *Id.*

¹²¹ *See e.g.,* Arriola, *infra* note 148, at 765-782.

¹²² Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature Mar. 1, 1980, 1249 U.N.T.S. 13 [hereinafter CEDAW].

¹²³ *Id.* art. 27, at 23.

¹²⁴ Malvina Halberstam, United States Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, 31 *GEO. WASH. J. INT’L L. & ECON.* 49, 49 (1997).

¹²⁵ CEDAW, art. 2(a), at 16.

¹²⁶ *Id.* art. 2(f), at 16.

to “take all appropriate measures to eliminate discrimination against women in the field of employment”¹²⁷ and to ensure equality of men and women to “equal remuneration” and “equal treatment [for] work of equal value.”¹²⁸

In practice, the doctrine of comparable worth requires employers to pay workers in jobs traditionally held by women according to their worth to the employer.¹²⁹ Since “male” and “female” jobs are traditionally compared in terms of the skill, effort, responsibility and working conditions of the job,¹³⁰ under the doctrine and after a comparative evaluation of the jobs, employers are required to make equity adjustments if they find that jobs in which women predominate are valued by the employer, but are not paid according to this value.¹³¹ The idea of comparable worth focuses on the requirement that men and women within the same organization be paid the same salary for work that is judged to be of equal value.¹³²

Opponents of the comparable worth theory argue that “salaries are determined in large part by an assessment of the demand for, and the supply of the type of labor needed. Relying on prevailing market rates, they contend, is a neutral, non-discriminatory wage mechanism based on supply and demand.”¹³³ In comparison, the doctrine of comparable worth assumes that women will continue to work in female-dominated occupations, but

¹²⁷ *Id.*, art. 11(1), at 18.

¹²⁸ *Id.*, art. 11(1)(d), at 18.

¹²⁹ See Andrea Giampetro-Meyer, *Resurrecting Comparable Worth as a Remedy for Gender-Based Wage Discrimination*, 23 S.W. U. L. REV. 225, 226 (1994).

¹³⁰ Value is determined by a detailed evaluation of jobs and considers the factors of skill and knowledge, mental and physical effort, responsibility and working conditions. *Id.* at 229.

¹³¹ *Id.*

¹³² *Id.* at 229.

¹³³ SUSAN G. MESEY, *IN PURSUIT OF EQUALITY PAY* 99 (1992).

that they should be paid according to their worth to the employer rather than the value an imperfect labor market places on their services.¹³⁴

Comparable worth has limited application in the United States,¹³⁵ but it is mandated in many other countries. Australia, Ireland, New Zealand, Switzerland, the United Kingdom and Canada have implemented pay equity programs in one form or another.¹³⁶ As demonstrated by the GDI, the wage gap in Australia is much narrower than the wage gap in the United States, or other countries. This narrow gap has been attributed to “deliberate efforts by centralized wage-setting tribunals to promote equality for workers in jobs predominately held by women.”¹³⁷ State and federal tribunals set minimum wages and other minimum terms of employment.¹³⁸ The tribunals, taking mandate from CEDAW, embraced pay equity principals as a natural part of the wage setting process. Australia’s wage-setting process is not market-based, workers in predominately female jobs benefit from pay equity without having to assert their individual rights, as litigation would require.¹³⁹

In developing countries, especially, women who are in the labor force generally work in different sectors and perform tasks different from men.¹⁴⁰ For example, almost

¹³⁴ Giampetro-Meyer, *supra* note 129, at 229.

¹³⁵ *See id.* at 230-31. Comparable worth has mainly been adopted through union efforts, and primarily in the public sector. The primary argument against its adoption is that it does not let the marketplace determine wages.

¹³⁶ *Id.* at 236. When the E.C. was established, France insisted on the adoption of comparable worth because it had already implemented the concept, and it felt that it would be at a competitive disadvantage if all the countries didn’t adopt it.

¹³⁷ *Id.* at 238.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Tzannatos, *supra* note 1, at 555.

two-thirds of garment workers worldwide are female.¹⁴¹ In some areas, women are the preferred workers because they are considered more submissive, they will work for lower wages, and are easier to fire.¹⁴² Globalization increases the pressures on investment-hungry countries to “race to the bottom.”¹⁴³ This type of exploitation must be avoided if women are to become meaningful members of the economy.

c. Pregnancy

Nondiscrimination on the basis of maternity and child care issues is another important component of a discrimination policy. In some countries, women are confronted by sterilization certificate requirements, pregnancy tests, and single-status requirements.¹⁴⁴ Such screening devices obviously keep large numbers of women outside the workforce.¹⁴⁵ Employer nondiscrimination is particularly important where young women are being hired for entry-level jobs in developing countries. Even if the laws prohibit such practices, they are still common. Mexico, for example, prohibits discrimination on the basis of maternity including against pregnant, and nursing

¹⁴¹ *Id.* at 556. These female workers account for nearly one-fifth of all women in the labor force in manufacturing. *Id.*

¹⁴² See Arriola, *infra* note 148, at 783-87.

¹⁴³ Lesley J. Wiseman, Note, *A Place for “Maternity” in the Global Workplace: International Case Studies and Recommendations for the International Labor Force*, 28 OHIO N.U. L. REV. 195 (2001).

¹⁴⁴ *Id.* at 562.

¹⁴⁵ In the Arab world, there is often a tension at the national level between a desire to further development and to preserve the traditional family unit. This results in explicitly pro-natalist policies such as unavailability of effective contraception which, of course, inhibits women in becoming members of the labor force. Valentine M. Moghadam, *The Political Economy of Female Employment in the Arab Region*, in GENDER AND DEVELOPMENT IN THE ARAB WORLD: WOMEN’S ECONOMIC PARTICIPATION: PATTERNS AND POLICIES 6 (Nabil F. Khoury & Valentine M. Moghadam, eds., 1995).

women.¹⁴⁶ However, these laws are not enforced¹⁴⁷ and pregnancy tests before hiring, or firing on determination of pregnancy are common, especially in the border factories, or *maquiladoras*.¹⁴⁸

The policies of the *maquiladoras* have been challenged by NGOs, the ILO, and lawsuits as being discriminatory and abusive.¹⁴⁹ Many of the *maquiladoras* are operated by MNCs who have policies against such discrimination in their United States operations.¹⁵⁰ So far, they have successfully withstood the outside pressures to change their Mexican operations, arguing that if a company was to change, it would be at a competitive disadvantage vis-à-vis the other organizations, and that it cannot afford the “substantial financial liabilities in the social security system for maternity benefits.”¹⁵¹ The Mexican government has avoided forcing the issue because it is afraid of companies moving their operations elsewhere.¹⁵² They claim that pregnancy testing of applicants is not illegal because their law speaks in terms of protecting employees, not applicants.¹⁵³ Even if this interpretation is accurate, it does not address the problem of the firing or constructive firing of employees who become pregnant. As the challenges to such

¹⁴⁶ Hollon & Culbertson, *supra* note 60.

¹⁴⁷ Chinese labor laws protecting women are also commonly not enforced. Ogletree & Silva-de Alwis, *supra* note 66.

¹⁴⁸ See No Guarantees: Sex Discrimination in Mexico’s Maquiladora Sector, Human Rights Watch, Aug. 1996; Elvira R. Arriola, *Voices from the Barbed Wires of Despair: Women in the Maquiladoras, Latina Critical Legal Theory, and Gender at the U.S.-Mexico Border*, 49 DEPAUL L. REV. 729, 784 (2000); Reka S. Koerner, Note, *Pregnancy Discrimination in Mexico: Has Mexico Complied with the North American Agreement on Labor Cooperation?*, 4 TEX. F. ON C.L. & C.R. 235 (1999).

¹⁴⁹ See Koerner, *supra* note 148; Wiseman, *supra* note 143, at 213-15.

¹⁵⁰ See Wiseman, *supra* note 143, at 214-15. General Electric is one of the companies cited.

¹⁵¹ See Arriola, *supra* note 148, at 785 (quoting Zenith Corporation’s policy on pregnancy screening).

¹⁵² Wiseman, *supra* note 143, at 215.

¹⁵³ Koerner, *supra* note 148, at 247.

policies continue to grow, as does the publicity, it becomes harder for the MNC to maintain such inconsistent policies. A feasible step in the right direction would be to ban firing of employees on the basis of pregnancy.

Protective legislation based on women's reproductive abilities present a barrier to equal treatment in some countries. China, for example, has regulations that limit a woman's work during menstruation and menopause.¹⁵⁴ During menstruation the level of physical exertion is regulated, and work in cold water, low temperatures, and high altitudes is prohibited.¹⁵⁵ More generally, Chinese Labor Law prohibits women from working in especially strenuous or dangerous jobs,¹⁵⁶ which are often the most highly paid, because such work is believed to increase the risk of dislocating the uterus.¹⁵⁷ Protective legislation and rules in the United States were seen as barriers to equal treatment decades ago, and as such has generally been eliminated.¹⁵⁸ China is a signatory to the Convention for the Elimination of All Forms of Discrimination Against Women, and the protective legislation is arguably in violation of this.¹⁵⁹

Protective legislation based on pregnancy is more common, as is maternity leave. Over 120 countries have laws providing for paid maternity leave.¹⁶⁰ This does not solve

¹⁵⁴ Woo, *infra* note 180, at 157.

¹⁵⁵ *Id.* at 157-5.

¹⁵⁶ Labor Law of the People's Republic of China, art. 58-65, translated in CHINA L. & PRAC. 21 (1994).

¹⁵⁷ Woo, *infra* note 180, at 158.

¹⁵⁸ See, e.g., UAW v. Johnson Controls, Inc., 499 U.S. 187 (1991).

¹⁵⁹ Wiseman, *supra* note 143, at 206.

¹⁶⁰ International Labor Organization, *More than 120 Nations Provide Paid Maternity Leave: Gap in Employment Treatment for Men and Women Still Exists*, ILO Press Release (Feb. 16, 1998), <http://www.ilo.org/public/english/bureau/inf/pr/1998/7.htm>.

the problem (and indeed may contribute to)¹⁶¹ the discrimination against women “due to their reproductive roles”¹⁶² because it is more expensive to hire women.

d. Childcare

One of the hardest cultural norms to change is the idea that it is women who should bear the responsibility for children. Companies can address this by providing parental rather than only maternal leave. However, even in the United States, where this is mandated by the Family and Medical Leave Act,¹⁶³ men seldom avail themselves of this option. Yet, they too need childcare. Over two million workers are single fathers; one in every six single parent is a dad.¹⁶⁴ Rather than fight against this norm, companies can better address the issue by providing childcare. Studies have indicated that providing childcare is not unduly expensive because it cuts down on absenteeism, increases employee loyalty, and contributes to a more stable workforce. The Families & Work Institute’s (FWI) National Study of the Changing Workforce found that employees of companies that have implemented family-friendly programs were more likely to have “higher levels of job satisfaction, more commitment to their companies’ success, greater loyalty to their companies, and a stronger intention to remain with their companies.”¹⁶⁵

¹⁶¹ Wiseman, *supra* note 143.

¹⁶² *Id.*

¹⁶³ 29 U.S.C. § 2601 et seq. (1993).

¹⁶⁴ *Household and Family Characteristics from the March 1998 Current Population Survey*, Bureau of Labor Statistics. (as cited in Hawaii Community Foundation – Biz Kids, *It’s Good Business to Invest in Child Care*, www.hcf-hawaii.org/hcf/bizkids/employers/good_business.htm).

¹⁶⁵ Ellen Galinsky & James T. Bond, *Executive Summary*, THE 1998 BUSINESS WORK-LIFE STUDY: A SOURCEBOOK, Families and Work Institute (1998).

Employee-sponsored childcare is a practice that enables employees to better integrate their work and personal lives. Research has shown that the difficulty of juggling work and personal lives can result in stress and fatigue, complaints about work demands, and more critically, the loss of valued employees or the sudden change in the performance of people who otherwise had great potential.¹⁶⁶ By providing childcare, companies make “an explicit link between people’s personal needs and business goals.”¹⁶⁷ As a result, companies both benefit the employees, and increase productivity and effectiveness in the business. Childcare “contributes to employees being at work and working productively.”¹⁶⁸

According to FWI’s 1998 Business Work-Life Study, few companies have actually evaluated return on investment for work-life programs, including child care assistance. However, the study does note a “perceived return on investment.”¹⁶⁹ Two-thirds of employers reported that the benefits of childcare programs exceeded the costs or that the programs were cost-neutral.

Another study found that “when considering a job change, 93 percent of parents say work-site childcare is an important factor. In addition, 26 percent of management-

¹⁶⁶ Lotte Bailyn, Joyce Fletcher and Deborah Kolb. *Unexpected Connections: Considering the Employees’ Personal Lives can Revitalize Your Business* SLOAN MANAGEMENT REVIEW (SUMMER 1997).

¹⁶⁷ *Id.*

¹⁶⁸ Phyllis Hutton Raabe, *Constructing Pluralistic Work and Career Arrangements* in THE WORK AND FAMILY CHALLENGE: RETHINKING EMPLOYMENT (SUSAN LEWIS, ED. 1996).

¹⁶⁹ Combining Human Resource professionals’ personal views with reported findings from evaluations, the study derives the *perceived return on investment*. “Among companies offering any child care benefit, 24 percent perceive negative returns on their investments, seven to eight percentage points higher than the percentages reported for flexible work arrangements and family leave policies. Another 40 percent perceive child care assistance programs to be cost-neutral and 36 percent think the benefits of these programs outweigh their costs.” *Id.*

level employees say they have turned down or failed to pursue a job opportunity because they valued their existing work-site childcare.”¹⁷⁰ According to the charity Women Returners' Network, affordable childcare is still the biggest problem for women going back to work.¹⁷¹

Other studies have considered the cost of not providing childcare and found that employee absenteeism, due to childcare breakdowns, are estimated to cost U.S. businesses three billion dollars annually.¹⁷² These breakdowns occur when parents are forced to rely on informal arrangements. “Forty percent of employees report missing one to five days of work annually due to child care breakdowns.”¹⁷³ This study concluded that better childcare, backed up in law, could save business up to 30% of the absenteeism and tardiness costs.¹⁷⁴ For example, one law firm reportedly spent \$170,000 in one year to provide back-up childcare in emergencies, while realizing approximately \$800,000 additional revenues from increased billable hours that the backup childcare provided.¹⁷⁵

¹⁷⁰ Lindsay Wood, *Workplace Childcare Centers Increasing in Numbers*, The Galt Global Review, Business News www.galtglobalreview.com/business/workplace_childcare.html.

¹⁷¹ Galinsky & Bond, *supra* note 165.

¹⁷² Sheri A. Mullikin & Anthony B. Taddeo, Jr., *Balancing a Legal Career and Child Care in a 24/7 World* <http://www.milesstockbridge.com/articles/parentrap.html> also appearing at For the Defense Research Institute, FOR THE DEFENSE (Jan. 2001); see Landsman, *Juggling Work and Family*, BUS. INS. 28 (1994); Friedman, *Child Care for Employees' Kids*, HARV. BUS. REV. (March/April 1986).

¹⁷³ Mullikin & Taddeo, Jr., *supra* note 172; see Families & Work Institute, *National Study of the Changing Workforce* (1997).

¹⁷⁴ Mulliken & Taddeo, Jr., *supra* note 172; see Landsman, *supra* note 172; Friedman, *supra* note 172.

¹⁷⁵ Mulliken & Taddeo, Jr., *supra* note 172; see *Big Washington Law Firm to Offer On-Site Child Care to Ease Stress for Parents*, CHIC. TRIB., March 29, 1995, at C2 (citing increased morale and productivity as additional benefits of its backup child care services).

Similarly, a review of JP Morgan Chase's backup childcare program "showed that 98% of parents who use the program would have taken unscheduled time off from work to care for their children had the back-up program not been available. In just one year, the back-up program generated more than a 100% return on investment."¹⁷⁶ JP Morgan Chase tracked the savings from their program of backup care centers at \$803,000 annually. Moreover, a JP Morgan Chase work-life manager observed that when employees feel less torn between going back to work and staying home with their babies, the loyalty factor for the firm was tremendous. Their work-life manager has been quoted as saying that they "know that free infant care has made a big difference for people, and thus for the company."¹⁷⁷

Whether and what may need to be provided varies across countries. For example, in societies where there are close, extended families as in the Philippines and Thailand, childcare may not be much of an issue for the employee.¹⁷⁸ A growing trend in this regard is to provide nursing areas and time off for mothers to nurse their children.¹⁷⁹

Some countries mandate that companies provide childcare. In China, for example, regulations were created requiring employers to provide childcare centers and kindergartens.¹⁸⁰ The change in China from the government provided subsidies for child

¹⁷⁶ Bright Horizons, *Benefits of Employer-Sponsored Care* at www.brighthouse.com/pages/frameset.asp?side=employer.html&content=benefits_employer.html (last visited December 2, 2002).

¹⁷⁷ Child Care Information Exchange, *JP Morgan Chase Offers Free Infant Care*, EXCHANGE EVERY DAY, 492, October 22, 2002 (<http://mail.ccie.com/eed/issue.php?id=142>) (last visited December 2, 2002).

¹⁷⁸ *Id.* at 565.

¹⁷⁹ Chinese regulations require two thirty-minute nursing periods per day. Woo, *infra* note 180, at 159.

¹⁸⁰ Margaret Y. K. Woo, *Bioblogy and Equality: Challenge for Feminism in the Socialist and the Liberal State*, 42 EMORY L.J. 143, 159 (1993). These were part of a large set of

care due to economic reform and privatization, however, has resulted in many employers ignoring this requirement.¹⁸¹

2. Training

Training is particularly important for companies to implement for two reasons: to ensure compliance with company policies such as nonharassment, and to ensure a competent workforce, especially in developing countries.¹⁸²

Studies of workplace harassment in the United States show that the level of harassment has remained relatively consistent despite companies implementing bans.¹⁸³ Compliance with legal rules, without training, does not lead to success in fighting harassment. Training, while not required for the “safe harbor” that companies seek through legal compliance, provides the necessary link between bans and results. It helps change perceptions and understanding of the rules.¹⁸⁴ Social science studies show that training affects different people differently. For example, women tend to be less affected by training than men.¹⁸⁵ Also, men with a high propensity to harass are affected more highly than men with a low propensity.¹⁸⁶ This suggests that training will be most effective when done in small groups of similar people.¹⁸⁷ Training is also likely to be

regulations aimed at addressing health and other issues of women workers. The regulations are provincial regulations.

¹⁸¹ Wiseman, *supra* note 143, at 202.

¹⁸² Training helps break the vicious cycle of women’s low initial human capital endowments and inferior labor market outcomes compared to men’s. Tzannatos, *supra* note 1, at 551.

¹⁸³ Joanna Grossman, *Sexual Harassment in the Workplace*, FINDLAW’S WRIT, @Justice.com /MY FindLaw (Nov. 11, 2002). Grossman is an Associate Professor of Law, Hofstra University.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ See Callahan, *et al.*, *supra* note 117.

most effective when it is clear that top management strongly supports it. This recommendation is consistent with the recommendation regarding mentoring for corporate norms. Additionally, it will probably be most effective when done by someone who thoroughly understands the cultural milieu.

The Philippines, in attempts to promote equality for women, implemented sensitivity training programs for males *and* females. The latter was thought necessary because women “tend to denigrate their own sex when it comes to making decisions.”¹⁸⁸ Among the Toba Batak people, many families no longer think that investing in a girl’s training or education is a waste because they can depend more on their daughters than their sons to be successful when they attend an institute of higher learning.¹⁸⁹

Employers have an incentive to train women workers. Training makes them “persistent” workers as opposed to casual or secondary workers, which increases the stability of the workforce.¹⁹⁰ An area where there may be less gender bias in terms of jobs is in computer work. Training women to be “tech-savvy” not only gives employers a larger core of workers, it also means that women have portable skills and better chances of advancement and rehiring in times of economic downturns.

Some companies have recently been recognized for their training efforts.

Motorola Malaysia, a winner of the Albright Award in the Large Multinational category

¹⁸⁸ Myrna Feliciano, *Legal Rights and Social Inclusion*, 28 L. & SOC’Y REV.507, 508 (1994). Cf. Ihromi, *supra* note 43, at 535 (“A convention on an international level, made into law, and equating the rights of men and women in cases of interitance . . . cannot work for the Batak people. The women themselves would not be willing to accept such a matter.”, quoting the reaction of the Toba people to the U.N. Convention on the Elimination Discrimination Against Women.).

¹⁸⁹ Ihromi, *supra* note 43, at 536.

¹⁹⁰ Tzannatos, *supra* note 1, at 562. Viewing women as persistent workers means that employers are more likely to invest in them in terms of training.

in 2000, has one of the largest private-sector workforces and a wholly Malaysian management team.¹⁹¹ It supports a variety of training and educational opportunities at various levels in cooperation with different institutions.¹⁹² If these training programs are open to women as well as men, their efforts will have a significant impact on women in the region. Xerox do Brasil, a winner in 1999, was cited for its significant training and education efforts, particularly at the local community level.¹⁹³ Several programs are aimed at teenagers. To the extent that such early intervention includes girls as well as boys, it can go a long way towards meaningful inclusion of women in the economy.¹⁹⁴

3. Mentoring

When women enter the workforce, they often enter in jobs that are segregated by sex. One result of such segregation is a limitation in career opportunities.¹⁹⁵ In the United States mentoring, “a developmental relationship between an individual and a more senior and influential manager or professional,”¹⁹⁶ has long been recognized as a way to help individuals in underrepresented groups be successful in an organization.¹⁹⁷ In

¹⁹¹ See www.state.gov/www/about_state/business/cba_00award_motorola.html (last visited December 2, 2002).

¹⁹² The company supports programs such as school adoption, local university internships, scholarships, and support for university and industrial training collaboration through joint development of curriculum, research and cross-training. It also hosts an ethical practices workshop. *Id.*

¹⁹³ See www.state.gov/www/about_state/business/cba_99award_xerox.html (last visited December 2, 2002).

¹⁹⁴ Much of the training is aimed at high-risk teens and less privileged groups. One of the programs helps teenagers learn in the workplace by combining work with training for personal and professional life and reaches beyond Xerox permanent staff. *Id.*

¹⁹⁵ Tzannotos, *supra* note 1, at 556. The segregation also negatively affects wages.

¹⁹⁶ George F. Dreher & Taylor H. Cox, *Race, Gender, and Opportunity: A Study of Compensation Attainment and the Establishment of Mentoring Relationships*, 81 J. APPLIED PSYCHOL. 297, 297 (1996).

¹⁹⁷ R. J. Burke, *Mentors in Organizations*, 9 GROUP & ORG. STUD. 353 (1984); E. A. Fageson, *The mentor advantage: Perceived career/job experiences of protégés vs. non-*

comparison to some of the other pro-equality measures mentioned above such as comparable worth, mentoring is relatively inexpensive for a company to implement.

Mentoring can provide visibility, access to information, and chances to gain experience and show competence that would otherwise not be available.¹⁹⁸ In countries where women have traditionally not been a part of the workforce or have only been involved at the lowest levels, company-provided mentoring programs are particularly important.¹⁹⁹ When women are seen as appendages to men,²⁰⁰ and their decisions are suspect,²⁰¹ they cannot succeed in a male-dominated environment.²⁰² In addition to the mentoring benefits mentioned above, the relationship can also provide protection and help buffer the mentee from both overt and covert forms of discrimination²⁰³ through

proteges, J. OF ORG. BEHAV. 309 (1989). In one study, employees with extensive mentoring relationships received more promotions, higher income, and experienced more satisfaction with their pay and benefits. George F. Dreher & Ronald A. Ash, *A Comparative Study of Mentoring Among Men and Women in Managerial, Professional, and Technical Positions*, 75 J. APPLIED PSYCHOL. 539 (1990).

¹⁹⁸ *Id.* at 298. The mentee is referred to as a *protégé*.

¹⁹⁹ Ragins, *infra* note 203, at 348, states that mentoring is “essential for women” in order to achieve success within an organization. Catalyst reported that 91% of female executives they surveyed had mentors. *Id.* Newcomers to organizations are at a particular disadvantage in interpreting the organizational cues “because they have no history and limited contacts for making sense of the context.” Jane E. Dutton, et al., *Red Light, Green Light: Making Sense of the Organizational Context for Issue Selling*, 13 ORG. SCI. 355, 356 (2002).

²⁰⁰ Juree Vichit-Vadakan, *Women and the Family in Thailand in the Midst of Social Change*, 28 L. & SOC’Y REV. 515522-24 (1994). Vichit-Vadakan, cites Thailand, where women have made gains in entering the paid workforce. However, their advancement toward parity with men is hindered by the “beauty culture” and the traditional notion of their being appendages to men.

²⁰¹ Feliciano, *supra* note 188.

²⁰² They are also at greater risk when trying to raise potentially controversial issues such as gender-related issues. Dutton, et al., *supra* note 199, at 356.

²⁰³ Belle Rose Ragins, *Gender and Mentoring Relationships*, in HANDBOOK OF GENDER & WORK 347, 348 (GARY N. POWELL, ED. 1999). “Cultural patterns of interaction influence every aspect of an organization and give information about what is collectively

“reflected power.”²⁰⁴ Further, mentoring can help the mentee develop a positive and secure self-image²⁰⁵ and it helps to alter stereotypical perceptions.²⁰⁶ However, in order for mentoring to be successful in an environment in which there has been discrimination, studies indicate that the mentor needs to be someone who has traditionally been seen as powerful within the organization.²⁰⁷ In most developing societies, this will be a male, and often a male from a connected family,²⁰⁸ or an older male.²⁰⁹

Studies done in the U.S. suggest that male mentors can better confer organizational legitimacy because they are seen as having more power.²¹⁰ This includes both formal power, and informal power. Informal power gives holders better access to information and the social networks of organizations.²¹¹ However, psychosocial mentoring may be better provided by someone who more closely matches the mentee.²¹²

valued and how people typically behave and react.” Dutton, et al., *supra* note 199, at 365.

²⁰⁴ *Id.* at 348.

²⁰⁵ Dreher & Cox, *supra* note 196, at 298.

²⁰⁶ Ragins, *supra* note 203, at 348. They help women overcome the “male managerial model.” *Id.*

²⁰⁷ In a study by Dreher & Cox, *supra* note 196, mentees mentored by White males earned an average of \$16,840 more than those who had women or minorities as mentors. In another study of African-American graduates of traditionally black colleges, the graduates with white male mentors had higher pay. George F. Dreher & Josephine A. Chargois, *Gender, Mentoring Experiences, and Salary Attainment among Graduates of an Historically Black University*, 53 J. VOCATIONAL BEHAV. 401 (1998).

²⁰⁸ There is very little research on mentoring outside the United States. Ragins, *supra* note 203, at 369. Ragins cites Hofstede’s work on cultural differences to note that effective mentoring relationships in cultures which have collectivist orientations may differ from the Western model. *Id.* at 369-70.

²⁰⁹ Older may be more persuasive in societies where age rather than a youth culture is valued. Ragins, *supra* note 203, at 370.

²¹⁰ Dreher & Cox, *supra* note 196, at 298, citing Belle Rose Ragins, *Barriers to mentoring: The female manager’s dilemma*, 42 HUMAN RELATIONS 1 (1989).

²¹¹ *Id.*

²¹² *Id.* at 299. Ragins found that women may provide more psychological or supportive mentoring functions. Ragins, *supra* note 203, at 357. Additionally, there is some

Having a successful woman mentor a junior woman may give the mentee a model to emulate²¹³ and enable her to see that success is possible and how to achieve it.

Additionally, peer mentoring may be successful if “pioneers” who have successfully worked in the organization for a while mentor newer female employees. This implies that there is not one model that will succeed in all settings, and that multiple mentoring relationships or programs may need to be established by a company.²¹⁴

Some scholars have suggested that in collectivist societies, the mentoring relationship would likely be more focused on socializing mentees to the norms of the organization whereas in societies that have greater tolerance for individual differences, the mentoring relationship could foster career paths that could extend beyond the organization.²¹⁵ These studies rely on Hofstede’s work in which he divided cultures along five dimensions including individualism, power distance, and whether a society tends to be dynamic or tradition-bound and resistant to change.²¹⁶ In situations where great emphasis is placed on organizational conformity and loyalty to the organization, then support from leaders in the organization becomes critical if cultural norms are to

evidence that same gender mentoring serves yields psychosocial and career development functions. *Id.* at 362.

²¹³ Belle Rose Ragins & D. McFarlin, *Perceptions of mentor roles in cross-gender mentoring relationships*, 37 J. VOCATIONAL BEHAV. 321 (1990).

²¹⁴ Ragins, *supra* note 203, at 349, notes that mentoring can take a variety of forms, but identifies three as particularly relevant to the effects and outcomes of mentoring women. The most important of these is the distinction between formal and informal mentoring. In formal mentoring, mentors are matched with or assigned to their mentee, and the relationship typically lasts about a year. Informal mentoring arrangements happen spontaneously, and tend to last two to five years.

²¹⁵ H.C. Triandis, *The self and social behavior in differing cultural contexts*, 96 PSYCHOL. REV. 506 (1989). Triandis described “tight” cultures with clear norms and low tolerance for deviation, and “loose” cultures with greater tolerance for individual differences.

²¹⁶ GERT HOFSTEDE, *CULTURE’S CONSEQUENCES: INTERNATIONAL DIFFERENCES IN WORK RELATED VALUES* (1980).

change to include women as important members of the workforce.²¹⁷ A large number of the societies that have traditionally excluded women from the workforce fit within this profile.

In the United States, mentoring programs often were established as part of a formal affirmative action plan.²¹⁸ In societies where unattached men and women do not normally mix, a formal program is probably essential. It can be a part of a corporate nondiscrimination policy (discussed below). The company-sponsored mentoring activities should take place primarily, if not exclusively, in the workplace. This can help overcome negative connotations of cross-gender mentoring.²¹⁹ MNCs that operate in the United States are likely to have mentoring programs. Thus, they have an established base of experience to call on in establishing mentoring programs in their non-U.S. operations.

For example, several of the companies that have received the Albright Award have mentoring programs. Ford Motor Company, which received the award for its innovative HIV/AIDS program in South Africa,²²⁰ has company-sponsored resource groups such as the Professional Women's Network (PWN) and the Women In Finance Network (WIFN). PWN focuses on the professional development of women through

²¹⁷ Dworkin, *supra* note 90, at 474. One U.S. study indicates that the most crucial cue that women relied on regarding whether to push a gender-related issue within their organization was the openness of male managers to the raising of issues. This was more important than the number of women in management positions and changes in demographic composition. Dutton, *supra* note 199, at 366-68.

²¹⁸ *Id.*

²¹⁹ In the U.S., this is usually due to the perception of a romantic relationship. J.G. Clawson & K.E. Kram, *Managing cross-gender mentoring*, 27 BUS. HORIZONS 22 (1984). Of course, the incidence of intimate *relationships* may also increase. Conversely, woman-woman mentoring can have the negative consequence of being viewed as "plotting a revolution." Ragins, *supra* note 203, at 359.

²²⁰ The award was given to Ford Motor Co. South Africa in 2001. The CEO of this organization is a woman, and two of the six members of the board of directors are women. www.gov/r/pa/prs/ps/2002/7288.htm.

promoting an environment that attracts, develops, retains and advances talented women. An important part of this is mentoring programs. WIFN works to support diversity, among other goals. Another winner is Xerox do Brasil. In the U.S., Xerox USA has a reputation as a good place for women to work, and it has a variety of programs to foster this atmosphere, including mentoring programs.²²¹ In the U.S operation, 21% of the people at the vice-president level and above are women.²²²

There is virtually no information on cross-cultural mentoring. Thus, it is unclear whether mentors from the United States who are sent overseas to work would be successful in mentoring women in that milieu. Some emerging work suggests that the relationship is especially susceptible to “conflicts in cultural values, work values, and gender expectations.”²²³ It would seem that the individual would be less successful at psychosocial mentoring and mentoring to the norms of the (local) organization. However, if that person is seen as having power within the organization, she or he is more likely to be successful in terms of women advancing within the organization.

III. Conclusion

Jeffrey Garten, the Dean of the Yale School of Management and a columnist for *Business Week*, argues that it is time for corporate officials to reassert their influence to work for global stability and peace. He visualizes this happening as part of the effort of

²²¹ For example, Xerox has an Assent Management Program which includes mentoring. The CEO of Xerox is Anne Mulcahy, has been identified by FORTUNE as one of the “Most Powerful Women.”

www.xerox.com/go/xrx/template/display2X.jsp?url=about_xerox/about_xerox_detail. Another company cited for its employee development efforts, especially with minority Maori, is Rayonier New Zealand.

²²² *Id.*

²²³ Ragins, *supra* note 203, at 370.

companies to dig themselves out of their “reputational hole.” It may be a byproduct of the increased vigilance of Corporate America by the public, Congress, and more aggressive legislators.²²⁴ Additionally, the heads of some MNCs have put forth the idea of an affirmative civic duty, the “duty to be doing good as opposed to avoiding doing bad.”²²⁵ Implementing these goals in conjunction with policies designed to better integrate women into the workforce as wage earners can have many positive effects. These include the ability to attract top people,²²⁶ output gains and a reduction in poverty, and social stability.

Companies can most consistently, on a daily basis, often more than law, help effect change and bring women into the economy as wage earners. Being a wage-earner leads to real power within the family. According to the World Report on Violence and Health, women becoming educated and economically empowered decreases the likelihood of violence within the family.²²⁷ This power can also “expand out”²²⁸ and create conditions that socialize and empower women outside of the workplace and “give them tools to interact more successfully in their society.”²²⁹ As indicated at the beginning of the paper, there seems to be a correlation between involving women in the workforce, and peace. The benefits to women, the employer, society and global stability call for companies to implement inclusion policies.

²²⁴ Jeffrey E. Garten, *A Foreign Policy Harmful to Business*, BUS.WK., Oct. 14, 2002, at 72-73. Garten cites a long history of companies influencing foreign policy. He argues that the national policy pendulum has swung too far in the direction of force of arms, and needs to swing back to a focus on long-term economic and social issues.

²²⁵ Gunderson, *supra* note 76. Gunderson is Secretary and General Counsel of Schlumberger Limited.

²²⁶ *Id.*

²²⁷ WORLD HEALTH ORGANIZATION, *WORLD REPORT ON VIOLENCE AND HEALTH* (2002).

²²⁸ See Dworkin, *supra* note 90, at 486.

²²⁹ *Id.*

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