

Comments

STATUS OF WOMEN: THE UNITED NATIONS AND MEXICO

There are two divisions of law: the written and the unwritten. Written law is that under which we live in different cities, but the law which emerges out of custom is called unwritten law. . . .

Plato¹

The above quote indicates that at least the existence, if not the influence, of the law of customs was recognized at an early point in the development of our civilization. The power of unwritten laws has had a subtle and heavy impact upon the women of the world today even though women constitute the majority of the world's population. Notwithstanding this numeric plurality, the modest goal of equal status between the sexes remains an international concern. Most nations have awakened to the realization that there is nothing divine or natural about subordinating the female segment of their population, and legal equality between the sexes is almost universally accepted as a legitimate and desirable goal. The absence of such equality today remains a source of embarrassment to many governments.² While the lawbooks throughout the world have been written largely by men, they are now being modified and changed by men and women to reflect legal equality.³ This emphasis on the attainment of legal equality must now shift toward the underlying customs, practices and cultural attitudes that gave rise to the discriminatory laws in the first place,⁴ for it is the

1. L. DIOGENES, *LIVES OF THE PHILOSOPHERS*, 91, 117 (R. Caponigri transl. 1969).

2. K. NEWLAND, *WOMEN IN POLITICS: A GLOBAL REVIEW* 35 (Worldwatch Paper 3, 1975) [hereinafter cited as NEWLAND]. The author points out that at the 1975 International Women's Year Conference held in Mexico City, all governments were eager to point to gains made by women in their respective countries.

A United States reporter who visited Saudi Arabia, states her view that "[t]he educated Saudi men already feel sensitive and ashamed of their treatment of women, and are trying to work in their own way against the forces of the past." Geyer, *The Veiling of Feminism in Saudi Arabia*, *The Los Angeles Times*, Jan. 4, 1978, § II, at 5, col. 1.

3. Togerson, *A Special Report, Women of the World: An Uncertain Change*, *The Los Angeles Times*, May 31, 1972, § I, at 19, col. 1.

4. This is not to imply that the legal status of women is no longer of any concern. In the United States alone there exist over 1,000 laws within the various states that discriminate against women. McDougal, Lasswell & Chen, *Human Rights for Women and World Public Order: The Outlawing of Sex Based Discrimination*, 69 AM J. INT'L L.

502, 505 (1975) [hereinafter cited as McDougal]. The authors point out that according to United Nations Progress Reports, existing discriminatory laws throughout the world are particularly harsh on married women. A woman's ability to acquire, change, and transfer her nationality is determined by marriage. Moreover, her ability to enter into contracts, to sue or be sued, and her right to "acquire, administer, enjoy, dispose of and inherit property" also is hampered by marriage. Her right to "undertake independent work, business or profession outside the home" depends upon her husband's consent and basic legal rights are affected by her husband's choice of domicile, to which she is subject.

Recently, President and Rosalynn Carter visited Saudi Arabia where, in deference to local custom, Rosalynn dined alone with the royal women and walked appropriately behind her husband while in Riyadh. In Saudi Arabia women have no legal rights, cannot divorce or vote, and in court two women's words equal one man's. Geyer, *The Veiling of Feminism in Saudi Arabia*, *The Los Angeles Times*, Jan. 4, 1978, § II, at 5, col. 1.

According to a United Nations report, as late as 1973 there were six countries where women had no voting rights and were not eligible for election. They were Jordan, Kuwait, Liechtenstein, Nigeria, Saudi Arabia, and Yemen. See U.N. Doc. E/CN.6/571/Add. at 2 (1973).

It is worth noting that women in the United States still await ratification of the Equal Rights Amendment (ERA). Thirty-eight states are required to ratify the proposed 27th Amendment to the Constitution of the United States by March 22, 1979. The amendment simply states that "[e]quality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." NATIONAL COMMISSION ON THE OBSERVATION OF INTERNATIONAL WOMEN'S YEAR, ". . . TO FORM A MORE PERFECT UNION . . ." JUSTICE FOR AMERICAN WOMEN 31 (1976) [hereinafter cited as PERFECT UNION]. As the Equal Rights Amendment approaches the March 22, 1979, deadline, the controversy surrounding the amendment intensifies. Thirty-five of the required thirty-eight states have ratified the amendment. Hager, *Equal Rights Amendment: Is It Needed?* *The Los Angeles Times*, Nov. 21, 1977, § I, at 1, col. 1. However, Idaho, Nebraska, and Tennessee have voted to rescind the ERA ratification that they had adopted in 1972. The Idaho state Senate's 18-17 vote to rescind on February 8, 1977, preceded the vigorous applause, anger and generally high emotionalism that followed the outcome of this action. In *Nevada Equality Measure Advances*, *San Diego Evening Tribune*, Feb. 9, 1977, § E, at 1, col. 6. Texas and Maine are considering rescinding their previous ratifications, but have not yet voted to do so. *Florida Defeat Major Setback for ERA Forces*, *San Diego Evening Tribune*, Apr. 14, 1977, § C, at 1, col. 6. Whether states can rescind their ratifications is a question that Congress ultimately may decide. In this respect it is worth noting that, according to a Justice Department memorandum, Congress declared in 1868 that states could not rescind their ratification of the Fourteenth Amendment. *Congress May Have Final Say On ERA Action*, *San Diego Evening Tribune*, Mar. 28, 1977, § D, at 1, col. 5.

On March 1, 1977, the amendment suffered a severe setback when key state North Carolina killed the amendment by a 26-24 vote. This result occurred in spite of last minute lobbying efforts by President Carter and Rosalynn Carter. *ERA Backers Suffer Setback in N. Carolina*, *San Diego Evening Tribune*, Mar. 2, 1977, § D, at 1, col. 1. Florida followed North Carolina to further dim the hopes of ratification of the amendment in 1977. *Florida Defeat Major Setback for ERA Forces*, *San Diego Evening Tribune*, Apr. 14, 1977, § C, at 1, col. 6.

The purpose of this discussion merely is to emphasize that the attainment of legal equality between the sexes is by no means an issue that is moot. Note that Mexico has constitutionally guaranteed Mexican women equality before the law by adopting an equal rights amendment to their constitution which has been effective since January 1, 1975. See text accompanying note 76 *infra*.

unwritten law that presents a formidable barrier stubbornly resistant to the stroke of a pen or the vote of a legislative body.

Both the United Nations and Mexico represent systems that have faced the issue of sex discrimination. The United Nations is an example of a system that recently has turned its focus toward the problem of discriminatory customs and attitudes on an international level. On the other hand, while Mexico represents a system that has taken significant strides toward legal equality for women, it now must face the second and more difficult hurdle of overcoming the custom-attitude barrier.

This Comment shall attempt to analyze the interdependent issues of legal equality between the sexes and discriminatory customs that frustrate the implementation of such legal achievements by 1) reporting upon the United Nations documents that were established for the purpose of achieving legal equality between the sexes, and the recent recognition that the United Nations focus must now turn to the abolition of discriminatory customs and attitudes throughout the world, and by 2) reporting on the legal status of women in Mexico as an example of a member nation that is attempting to comply with United Nations standards in the area of equality between the sexes. These reports shall be followed by a discussion of some fundamental socio-cultural attitudes with which Mexico must deal if their stated ideals and total compliance with United Nations standards are to be achieved.⁵

I. THE UNITED NATIONS

There is no question that the United Nations has recognized and addressed itself to the inequities inflicted upon half the human race. This is evidenced by references to sexual equality in various official documents, declarations and conventions. The position of the United Nations concerning the elimination of sex discrimination will be reviewed by focusing on 1) a report on various United Nations' documents dealing with sex discrimination, and 2) a review of recent United Nations actions for the purpose of eliminating the root causes of sex discrimination.

5. No inference should be drawn at this point to the effect that Mexico was selected as an example of a country where sexual inequality is rampant. On the contrary, this Comment shall point out some significant strides toward legal equality between Mexican men and women. The fact of the matter is that when it comes to women's rights, all societies are "underdeveloped" in terms of "confinement to stereotyped roles, the uneven attainment of basic human rights, and inequalities under the law." M. CORDELL, J. MCHALE, with G. STREATFEILD, *WOMEN IN WORLD TERMS, FACTS AND TRENDS* 31 (Center for Integrative Studies 1975).

A. A Report of United Nations Documents Referring to Sex Discrimination

The United Nations' primary document, the Charter, states that one of its goals is to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."⁶ The Charter further states that "the United Nations shall place no restriction on the eligibility of men and women to participate in any capacity and upon conditions of equality in its principal and subsidiary organs."⁷ A second United Nations document of equal importance is the Universal Declaration of Human Rights, which specifies sex as an impermissible ground of distinction when it explains that, "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind such as . . . sex"⁸ These two primary documents, the Charter and the Universal Declaration of Human Rights, form the foundation upon which many of the human rights conventions are based. While the Charter and the Declaration refer generally to fundamental human rights, the conventions are more specific about a particular right.

There are two human rights conventions which, like the above-mentioned documents, refer to sex generally in conjunction with "race, colour, language, religion, social origin or other status." One is the Convention Against Discrimination in Education which provides that member nations must not "deprive" one of access to education or "limit" one to an inferior standard of education based on "race,

6. U.N. CHARTER, art. 1, para. 3.

7. *Id.* art. 8. The United Nations system has experienced difficulties similar to its member nations in putting the principle of sexual equality into practice. A 1971 computer study pertaining to professional employment within the United Nations revealed the familiar pyramid pattern. The "higher the position, the less likely a woman holds it." Helva Sipila of Finland is the only woman to achieve the rank of Assistant Secretary General in the United Nations history. Ginsburg, *The Status of Women*, 20 AM. J. COMP. L. 585, 586 (1972). The lack of women in professional posts within the United Nations system has become an ongoing concern of the United Nations. In 1975 special attention was given to this problem. After studying the Secretary General's report on the male-female composition of the Secretariat, the General Assembly at its thirtieth session suggested some barriers that prevented a more equal representation. In "some areas of the world there were cultural inhibitions to the candidacy of women," and "governments in general put forward few names of women." Also, family considerations intervened when both spouses were professionals. U.N. DOC. E/CN.6/593 at 22 (1976). It is precisely this type of practice with which the 1967 Declaration on the Elimination of Discrimination Against Women is concerned. See text accompanying notes 44-47 *infra*.

8. Universal Declaration of Human Rights, art. 2, G.A. Res. 217, U.N. Doc. A/810 at 72 (1948) [hereinafter cited as Declaration of Human Rights].

colour, [or] sex”⁹ Any distinction, exclusion, limitation, or preference on the basis of race, colour, sex or other characteristic is proscribed. However, the convention specifically states that the establishment of separate educational systems for the two sexes is acceptable if the systems have the same standards and offer the same opportunities.¹⁰ The second human rights convention that refers to sex generally is The Convention Concerning Discrimination in Respect of Employment and Occupation, which forbids distinction, exclusion or preference based on “race, colour, sex” that would “impair equality of opportunity.”¹¹ Exclusion or preference based on “inherent requirements” for a particular job is also forbidden.¹² The convention, however, specifically allows parties to establish “special protections” for those groups which are generally recognized to require special protection due to “sex, age, disablement, [or] family responsibilities”¹³

The above-mentioned four documents refer to sex generally and establish the initial framework for international equality between the sexes. Other United Nations documents refer to sex discrimination exclusively and extend the framework with which to discern the United Nations position regarding the international legal status of women.

There are seven conventions that pertain specifically to women and embody accepted principles of equality. They are:

1. The Convention on the Political Rights of Women merely recognizes that “everyone has the right to take part in the government of his country.”¹⁴ This convention contains three articles which provide that women shall be entitled to vote, that they shall be eligible to be elected to public office, and that they shall be entitled to participate

9. Convention Against Discrimination in Education, art. 1, para. 1, *adopted* Dec. 14, 1960, 429 U.N.T.S. 94.

10. *Id.* art. 2, at 97.

11. Convention Concerning Discrimination in Respect of Employment and Occupation, art. 1(b), *adopted* June 25, 1958, 362 U.N.T.S. 32, 34.

12. *Id.* art. 1(c), at 34.

13. *Id.* art. 5, para. 2, at 36. The concept of legislating special protections for the female sex currently is being questioned in the United States. It is thought that the special protection laws have been misused to hinder the advancement of women in the economic sphere of society. Yet, the protections countered some valid and real abuses. Therefore, it has been suggested that rather than repeal special protection laws entirely, they should be extended to both sexes. B. BABCOCK, A. FREEDMAN, E. NORTON, & S. ROSS, *SEX DISCRIMINATION AND THE LAW: CAUSES AND REMEDIES 19-41*, at § II (A), (B), (C) (1975).

14. Convention on the Political Rights of Women, *opened for signature* Mar. 31, 1953, 193 U.N.T.S. 136, T.I.A.S. No. 8289 [hereinafter cited as Political Convention].

in decision making. All of these rights are to be granted on "equal terms with men and without any discrimination."¹⁵

2. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage¹⁶ recognized that certain laws and practices concerning marriage were inconsistent with principles set forth in the Charter of the United Nations¹⁷ and in the Universal Declaration of Human Rights.¹⁸ Therefore, the convention demands that party states take appropriate measures to abolish such laws and customs by ensuring "complete freedom in the choice of a spouse, [and by] eliminating completely child marriages and the betrothal of young girls before the age of puberty."¹⁹ Party states must specify a minimum legal age for marriage which may be waived only for serious reasons.²⁰

3. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others²¹ consolidates four previous conventions that spoke to the problems of white slave trade and traffic in women and children.²² This convention recognizes that traffic in persons for the purpose of prostitution is incompatible with the dignity of the human person. Article 1 and 2 support this premise by requiring that the parties to the convention agree to punish any person who procures or exploits another person for the purpose of "gratifying the passions of another." Punishment also shall be extend-

15. *Id.* art. 1-3, at 138. The United States is a rather recent party to this convention. The President signed the instrument of ratification on March 22, 1976. 15 INT'L LEGAL MATERIALS, 731 (1976). Mexico has signed this convention, but has not yet ratified it. A REPORT OF THE COMMITTEE ON HUMAN RIGHTS, THE RATIFICATION OF INTERNATIONAL HUMAN RIGHTS TREATIES 56 (1976) [hereinafter cited as COMMITTEE ON HUMAN RIGHTS].

16. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, *opened for signature* Dec. 10, 1962, 521 U.N.T.S. 232 [hereinafter cited as Marriage Convention]. As of November 5, 1975, thirty-eight member states are parties to this convention. The United States has signed, but not yet ratified this convention. COMMITTEE ON HUMAN RIGHTS, *supra* note 15, at 72. Mexico, however, was not a party to this convention as of the above mentioned date. U.N. Doc. E/CN.6/592, Annex, at 1 (1976).

17. U.N. CHARTER art. 55.

18. *See* Declaration of Human Rights, *supra* note 8, art. 16. This article states that men and women of full age are entitled to equal rights regarding marriage, during marriage, and at its dissolution. It further states that marriage shall be entered into only with the free and full consent of the intending spouses.

19. Marriage Convention, *supra* note 16, at 232.

20. *Id.* art. 2, at 234.

21. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *opened for signature* Mar. 21, 1950, 96 U.N.T.S. 272. As of April 13, 1976, fifty states have ratified this convention. Mexico is a party to this convention, but the United States is not. U.N. Doc. E/CN.6/592, Annex, at 2 (1976).

22. *Id.* at 272.

ed to any person who keeps or finances a brothel. Some preventative measures are built into this convention; all parties are urged to "take the necessary measures for the supervision of employment agencies".²³ The purpose of these agencies is to prevent those seeking employment, particularly women and children, from being exposed to the dangers of prostitution.

4. The Convention on the Nationality of Married Women declares that neither the dissolution nor the celebration of marriage shall affect the nationality of the wife.²⁴ Nothing in the convention, however, should prevent an alien wife from acquiring the nationality of her husband through right or by special privileged naturalization procedures.

5. The Convention Concerning Equal Remuneration for Men and Women Workers²⁵ simply calls on each party to the convention to ensure equal remuneration for men and women workers for work of equal value without discrimination based on sex.²⁶

6. The Maternity Protection Convention of 1919, revised in 1952, is the oldest convention relating to women.²⁷ It states that a working woman to whom the convention applies shall be entitled to a maternity leave²⁸ which shall include a compulsory leave after "confinement" of at least six weeks.²⁹ Such a woman, however, is entitled to cash and medical benefits while absent for the healthy maintenance of herself and her child.³⁰ These benefits should include prenatal and postnatal care from qualified practitioners, with the woman retaining her freedom to choose a particular doctor and to select

23. *Id.* art. 20, at 284.

24. Convention on the Nationality of Married Women, Aug. 11, 1958, 309 U.N.T.S. 65. Fifty-nine countries have ratified this convention, however, neither the United States nor Mexico are parties. U.N. Doc. E/CN.6/592, Annex, at 1 (1976).

25. Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, *adopted* June 29, 1951, 165 U.N.T.S. 304 [hereinafter cited as Equal Remuneration Convention]. Mexico is a party to this convention, but the United States is not. U.N. Office of Public Information, Equal Rights for Women—A Call for Action—The United Nations Declaration on the Elimination of Discrimination Against Women 29 (OPI/538, 1975).

26. Equal Remuneration Convention, art 2, *supra* note 25, at 306.

27. Convention Concerning Maternity Protection (revised 1952), *adopted* June 28, 1952, 214 U.N.T.S. 322.

28. *Id.* art. 3(1), at 326.

29. *Id.* art. 3(3), at 326. Forbidding a woman from returning to work for a specified period after birth is an example of a type of protection that could be used against women. *See* note 13 *supra*.

30. *Id.* art. 4(1), at 326.

either a public or private hospital.³¹ Other provisions state that an employer may not give notice of dismissal during the maternity leave³² and that interruptions in work for the purpose of nursing an infant are to be counted as working hours.³³

7. The Convention Concerning Night Work of Women Employed in Industry proscribes the night time employment of women in public or private places of "industrial undertaking".³⁴ The reference to "industrial undertaking" means work in mines or places where "articles are manufactured," as opposed to agriculture, commerce or other "nonindustrial occupations".³⁵ However, this employment restriction is not applicable to women holding responsible positions of a managerial nature or those employed in health and welfare services who are not "ordinarily engaged in manual work."³⁶ It should be noted that this prohibition concerning the night work of women may be suspended when a serious emergency that affects the national interest demands such a suspension.³⁷

The nine conventions itemized above, supplemented by the Charter and the Universal Declaration of Human Rights, provide a basic legal standard and guide in the area of sex equality for the international community. This United Nations standard has called for equal educational opportunities and standards,³⁸ a minimum age and consent to marriage,³⁹ the abolishment of white slave practice,⁴⁰ a right to maintain one's nationality regardless of marital status,⁴¹ and full political rights for women.⁴² These rights seem reasonable and generally are accepted principles of equality. However, blind compliance with the United Nations legal standard in the area of employment may not cause

31. *Id.* art. 4(3), at 326.

32. *Id.* art. 6, at 328.

33. *Id.* art 5(2), at 328.

34. Convention Concerning Night Work of Women Employed in Industry (revised 1948) art. 3, *adopted* July 9, 1948, 81 U.N.T.S. 148, 150. Mexico had a law similar to this convention, but modified it to exclude women from its protective wing under the rationale that it was discriminatory and that women performed the work in spite of the law at low pay and minus the benefits that could be derived therefrom. *See* text accompanying notes 142-45 *infra*.

35. *Id.* art. 1, at 150.

36. *Id.* art. 8, at 152.

37. *Id.* art. 5(1), at 150.

38. *See* note 9 *supra*.

39. *See* note 16 *supra*.

40. *See* note 21 *supra*.

41. *See* note 24 *supra*.

42. *See* note 14 *supra*.

the most equitable result between men and women workers. Although few would argue the inherent equities of equal pay for equal work, or equality of economic opportunity, the "special protection" authorizations in the employment conventions must be scrutinized carefully in light of the potential discriminatory effects that are built into these particular concepts.⁴³

Nevertheless, these eleven documents have provided a basic standard to which nations should aspire regardless of whether they are parties to the conventions. Despite this comprehensive legal standard, the United Nations felt compelled to adopt the 1967 Declaration on the Elimination of Discrimination Against Women in the belief that international progress toward sexual equality had been minimal.⁴⁴ The preamble to this declaration recognized that "despite the progress made in the matter of equality of rights, there continues to exist considerable discrimination against women."⁴⁵ Therefore, the Declaration provides that all appropriate measures shall be taken to abolish existing laws, customs, regulations, and practices which discriminate against women.⁴⁶ Note that this declaration addressed itself not only to the elimination of discriminatory laws and regulations, but also to the abolishment of all discriminatory customs and practices. There was considerable debate within the Commission on the Status of Women, and the General Assembly as to whether the word "abolish" was appropriate to use in conjunction with customs and practices because both are based on long standing traditions and cannot be changed overnight. It was suggested that the words "modify" or "change" would be more appropriate. The majority rejected this view, explaining that the abolishment of discriminatory customs and practices was one of the purposes of the Declaration and it was unanimously adopted on November 7, 1967.⁴⁷

With the legal foundation secured in the form of various conventions⁴⁸ and the 1967 Declaration calling for the abolishment of not only all offensive laws, but also of discriminatory customs, it would seem the next logical step would be the establishment of implementation

43. See notes 13 and 29 *supra*.

44. Declaration on the Elimination of Discrimination Against Women, G.A. Res. 2263, 22 U.N. GAOR, Supp. (No. 16) 35, U.N. Doc. A/6716 (1967) [hereinafter cited as Declaration on Elimination of Discrimination Against Women].

45. *Id.*

46. *Id.* art. 2, at 36.

47. McDougal, *supra* note 4, at 519.

48. See generally notes 14-43 *supra*.

machinery. Recently, the United Nations addressed itself to that particular problem.

B. Recent United Nations Actions for the Purpose of Eliminating All Forms of Sex Discrimination

In 1972, the General Assembly declared that 1975 was to be International Women's Year.⁴⁹ A worldwide conference was held from June 19 to July 2, 1975, in Mexico City for the purpose of defining goals pertaining to the elimination of sex discrimination.⁵⁰ Over 1,000 delegates, representing 133 states, attended the conference. Approximately seventy percent of these delegates were women,⁵¹ which, in addition to the historic subject matter discussed, contributed to the unique atmosphere of the conference.

The most significant result of the Mexico Conference was the adoption of the World Plan of Action.⁵² This plan represents one of the stated goals of the conference: "to launch an international action programme."⁵³ The plan sets forth "minimum goals, target dates, and strategies for member nations to involve women in governmental and non-governmental [*sic*] sectors of national life."⁵⁴ The General As-

49. G.A. Res. 3010, 27 U.N. GAOR, Supp. (No. 30) 66-67, U.N. Doc. A/8730 (1972).

50. The stated purpose at the World Conference was:

[t]o examine to what extent the organizations of the United Nations system have implemented the recommendations for the elimination of discrimination against women made by the Commission on the Status of Women since its establishment, and to launch an international action programme including short-term and long-term measures aimed at achieving the integration of women as full and equal partners with men in the total development effort and eliminating discrimination on grounds of sex, and at achieving the widest involvement of women in strengthening international peace and eliminating racism and racial discrimination.

62 U.N. ESCOR, Supp. (No. 3) 61, U.N. Doc. E/CN.6/593 at 15 (1976).

51. *Id.* at 16.

52. The official title of the plan is the World Plan of Action for the Implementation of the Objectives of International Women's Year. *Id.* There were some philosophical differences between the United States and Mexico that became apparent at the conference. Former President Escheverría of Mexico gave an opening call at the conference for a "New International Economic Order." It was contended that this emphasis on economics was a prerequisite to the improvement of the status of women. This opening call became known as the "Mexican Theme". The United States position was converse in the sense that the United States delegation contended that an improvement in the status of women will enhance development. The committee session did not insert the "Mexican Theme" into the World Plan of Action and presented the plan to the plenary session where the delegates eventually adopted the plan by consensus. PERFECT UNION, *supra* note 4, at 363.

53. *See* note 50 *supra*.

54. The section of the plan concerning national action suggests the following key areas for national attention:

sembly has called upon governments to examine the World Plan of Action "as a matter of urgency," to establish "short-term, medium-term and long-term targets," and to report to the United Nations on the implementation of the plan.⁵⁵

The Mexico City Conference, the World Plan of Action, and the 1975 Women's Year all have had a positive international impact. Because of these events, the thirtieth session of the General Assembly called for the dedication of the period 1976-1985 as the United Nations Decade for Women and for the establishment of another world conference in 1980.⁵⁶ The purpose of the proposed 1980 conference is to provide a forum for "comprehensive review and appraisal of the first five years of the Decade for Women and for administering plans and programmes for the rest of the Decade."⁵⁷

[P]olitical participation commensurate with women's numbers; education and training as a right and a means of advancement; employment in accord with skills; equity of compensation; recognition of domestic work as employment; adequate social security coverage and child care facilities; participation in and ready access to health and nutrition programs; re-evaluation of the role of women in family life and marriage practices; provision of information and means for individual determination of numbers and spacing of offspring; consideration of the special needs of women in the planning and design of housing; and attention to the more balanced development of social services, with particular reference to the needs of the migrant, the elderly, the delinquent, or criminal woman.

PERFECT UNION, *supra* note 4, at 363.

55. 62 U.N. ESCOR, Supp. (No. 3) 61, U.N. Doc. E/CN.6/593 at 56 (1976). Both the United States and Mexico responded in February of 1976 to the Secretary General's note verbale of November 5, 1975, which requested information on policies and programs which have been or are intended to be adopted in order to implement the goals of the World Plan of Action. Both Mexico and the United States reported on activities in the areas of education, family planning, and employment. *See generally*, U.N. Doc. E/CN.6/598 (1976).

56. G.A. Res. 3520, 30 U.N. GAOR, Supp. (No. 34) 95, U.N. Doc. A/10034 (1975). The thirtieth session of the General Assembly also proposed the establishment of an International Research Institute for the Advancement of Women and proposed that the voluntary fund, which was intended to cover only International Women's Year 1975, be extended to cover the entire Decade for Women until 1985. 62 U.N. ESCOR, Supp. (No. 3) 61, U.N. Doc. E/CN.6/593 at 56 (1976).

57. 62 U.N. ESCOR, Supp. (No. 3) 61, U.N. Doc. E/CN. 6/593 at 56 (1976). Minimum expectation levels pertaining to the advancement of women are to be achieved by 1980 which is the halfway mark of the Decade for Women. Some of those goals are:

- (a) [m]arked increase in literacy and civic education of women, especially in rural areas;
- (b) [t]he extension of coeducational technical and vocational training in basic skills to women and men in the industrial and agricultural sectors;
- (c) [e]qual access at every level of education, compulsory primary school education, and the measures necessary to prevent school dropouts;
- (d) [i]ncreased employment opportunities for women, reduction of unemployment and increased efforts to eliminate discrimination in the terms and conditions of employment; . . .
- (f) [t]he enactment of legislation on voting and eligibility for election on equal terms with men and equal opportunity and conditions of employment including remuneration, and on equality in legal capacity and the exercise thereof;
- (g) [t]o encourage a greater participation of women in policy-making positions at the local, national and international levels;

Clearly, the United Nations has expanded the standards to which member nations should aspire beyond mere legal compliance in the area of equality between the sexes.⁵⁸ The goal now is to eliminate the root causes of sex discrimination.⁵⁹ This emphasis upon the elimination of the underlying causes of sex discrimination is evident in the 1967 Declaration on the Elimination of Discrimination Against Women⁶⁰ and the World Plan of Action with its concomitant requests to all member nations stressing that they regard the plan as a "matter of urgency."⁶¹ Mexico, as a member nation, has responded to the standards set up by the United Nations. This Comment shall attempt to measure their compliance.

II. THE STATUS OF WOMEN IN MEXICO

As the following report on the legal status of Mexican women shall make clear, Mexico has complied substantially with United Nations legal standards. Nevertheless, as with all nations,⁶² there is a gap that exists between the Mexican legal ideal and actual reality. It is the cause of that lacuna which now requires attention according to current United Nations standards. Because this Comment adopts the premise that cultural customs and attitudes pertaining to sex roles are a major factor in preventing the realization of stated legal ideals,⁶³ the

-
- (h) [i]ncreased provision for health education and services, sanitation, nutrition, family education, family planning and other welfare services; . . .
 (j) [r]ecognition of the economic value of women's work in the home in domestic food production and marketing and voluntary activities not traditionally remunerated; (k) [t]o direct formal, non-formal and life-long education towards the re-evaluation of the man and woman, in order to ensure their full realization as individuals in the family and in society;

CENTRE FOR ECONOMIC AND SOCIAL INFORMATION, MEETING IN MEXICO: WORLD CONFERENCE OF THE INTERNATIONAL WOMEN'S YEAR 69 (1975).

58. The United Nations expressed concern that in the reports from 41 governments concerning the appraisal of women's status from the period of 1965 to 1975, "nearly all countries addressed themselves only to the *de jure* situation of women and did not discuss the degree of implementation and enforcement of the laws mandating equality Only some countries indicated that the *de facto* equality of women depends not only on legal equality, but also on socio-economic and cultural factors." 62 U.N. ESCOR Supp. (No. 3) 71, U.N. Doc. E/CN.6/598 at 9 (1976).

59. In conformity with the goal of abolishing all forms of discrimination against women, the Commission on the Status of Women currently is considering a Draft Convention on the Elimination of All Forms of Discrimination Against Women. This draft convention was to be given top priority at the commission's twenty-sixth session in 1975. 62 U.N. ESCOR Supp. (No. 3) 1-12, U.N. Doc. E/5909 (1976).

60. See text accompanying note 44 *supra*.

61. See text accompanying note 55 *supra*.

62. See note 5 *supra*. See also text accompanying notes 181-203 *infra*.

63. This premise is in agreement with a panel of "eminent personalities" who, on International Women's Day of March 7, 1975, discussed the theme, "Women and Men: The Next Twenty-Five Years". They generally agreed that "attitudinal change was an

subsequent report on the Mexican women's legal status will be followed by an analysis of socio-cultural attitudes with which Mexico must deal in order to fully comply with recent United Nations standards in the area of sex equality.

A. *An Overview of Mexican Laws Pertaining to Women*

When discussing the status of women within any legal system there are certain laws that reflect their status more accurately than others. Laws pertaining to marriage, divorce, illegitimacy, rape, prostitution, reproduction, education, work, and political rights usually provide a good indication of the woman's legal status within that system. The Mexican legal system⁶⁴ lends itself well to categorizing these laws into the five basic areas of family, personal, economic, criminal and political rights. A report of the laws under these areas produces a fairly accurate picture of Mexican women's legal position.

1. *The Family Area.*

a. *Marriage.* Marriage in Mexico is strictly a civil contract as set forth in the 1917 Constitution.⁶⁵ The minimum age for marriage is generally fourteen for the female and sixteen for the male,⁶⁶ although this age varies, depending upon the state.⁶⁷ Nevertheless, a person

element of paramount importance" in order for societies to benefit from the contribution of women. 62 U.N. ESCOR, Supp. (No. 3) 61, U.N. Doc. E/CN.6/593 at 15 (1976).

64. The Mexican legal system is based upon a federal constitution issued in 1917. The Constitution functions as the legal framework for Mexico's 28 states and one federal district. Although each of Mexico's 28 states has its own codes, the Federal Code provides an adequate overview to the state codes for purposes of this Comment. While this Comment will refer to the Federal Penal Code, the Federal Sanitary Code, and the Constitution, its primary focus will be on the Federal Civil Code because this code pertains to the main legal areas that affect Mexican women. *See generally*, Mejorada, *The Legal System of Mexico*, XLIX L. NOTES 5 (1945) and L. PADGETT, *THE MEXICAN POLITICAL SYSTEM* 2 (2d ed. 1976).

65. Constitution of Mexico (*Constitución Políticas de los Estados Unidos Mexicanos*) art. 130, as amended [O.A.S. transl. 1972] [hereinafter cited as MEX. CONST.]. The Constitutional stance pertaining to the separation of Church and State is so strong that, unlike the United States, a church marriage is not recognized and the couple must submit to a civil marriage to attain legal recognition. Borah & Cook, *Marriage and Legitimacy in Mexican Culture: Mexico and California*, 54 CALIF. L. REV. 969 (1966). The full legal impact of this requirement of a civil marriage becomes apparent when one considers the number of church marriages in Mexico that have no legal recognition. *See* text accompanying note 77 *infra*.

66. Civil Code of Mexico (*Código Civil para el Distrito y Territorios Federales, en materia común y para toda la República en materia federal*) art. 148 (Editorial Porrúa México 1977) [hereinafter cited as MEX. CIV. C.].

67. In the State of Puebla, the minimum age for marriage is 12 years for the female and 14 years for the male. Laws and Codes of the State of Puebla (*Leyes y Códigos Del Estado De Puebla, México*) art. 153 (Ed. José M. Cajica Jr., S.A. 1957).

under eighteen is considered a minor and must obtain consent from a proper authority to marry.⁶⁸

Certain obligations arise as a consequence of marriage.⁶⁹ Prior to 1975 it was the obligation of the wife to be responsible for the housework;⁷⁰ however, she could engage in nondomestic work if it did not interfere with her family obligations or harm the morale of the children.⁷¹ Thus, a husband could legally oppose his wife's nondomestic work if he could prove that he provided for all the needs of the home.⁷²

By 1975 this provision was modified significantly. The new law no longer limits the woman to housework "as if there were no other reason for her existence."⁷³ It grants either of the spouses the right to oppose the work of the other when such activity may be harmful to the morals or the internal structure of the family.⁷⁴ This provision simply grants to both partners the right that formerly belonged to the male partner only.⁷⁵ This modification corresponds with amended article 4 of the Constitution, which states that "[m]en and women are equal before the law. The law shall protect the organization and development of the family."⁷⁶ The significance of this amendment should not be underestimated, for it is, in effect, the equivalent of an equal rights amendment.

68. The rank order of the proper consenting authorities is that the minor must first obtain permission from both parents or guardians, and if that is not possible, then from the person's paternal grandparents, and secondly, from his maternal grandparents. MEX. CIV. C., *supra* note 66, art. 149.

69. *Id.* arts. 162-77.

70. Civil Code of Mexico (*Código Civil para el Distrito y Territorios Federales, en materia común y para toda la República en materia federal*) art. 168 (Editorial Porrúa México 1974).

71. *Id.* art. 169.

72. *Id.* art. 170. See text accompanying notes 73, 74 *infra*.

73. CONSEJO NACIONAL DE POBLACION, LOS DERECHOS DE LA MUJER, WOMEN'S RIGHTS, LES DROITS DE LA FEMME 79 (No. 139, 1975) [hereinafter cited as LOS DERECHOS].

74. *Id.* at 79. MEX. CIV. C., *supra* note 66, art. 169.

75. Although the various state codes are beyond the scope of this Comment, it should be kept in mind that several states specify that the household responsibilities are the primary obligation of a married woman. G. CORNEJO, A. KELLER, S. LERNER & L. AZUARO, LAW AND POPULATION IN MEXICO, 43 (No. 23, 1975) [hereinafter cited as CORNEJO].

76. MEX. CONST., art. 4, amendment in official Daily of Mexico (*Diario Oficial*) Dec. 31, 1974. This article went into effect on January 1, 1975. Thus, Mexico has constitutionally guaranteed Mexican women equality before the law while the United States is experiencing serious problems in ratifying their Equal Rights Amendment. See note 4 *supra*.

Discussion of marriage in Mexico is incomplete unless reference is made to the prevalence of common law marriages. It is in this situation that the rights of women and children are limited. A 1970 census revealed that fifteen percent of Mexico's couples were living in common law marriages. When one considers that church performed marriages are not legally recognized by the state, the figure climbs to an estimate of twenty five percent.⁷⁷ A woman in these marriages has the legal status of a concubine and, as such, has few legal rights unless she can show that she has lived with the man for five years, has publicly acted out a married life with him or has borne children by him. In such cases, limited legal rights concerning "medical attention, pension payments and inheritances attach" to the common law wife, but certainly not to the same degree that they attach to a legal wife.⁷⁸ Common law marriages are a current focus of concern for the Mexican government, because the abandonment of marital partners and the children of these unions occurs frequently.⁷⁹ This leaves large numbers of women and children with little or no legal recourse. Maria Esther Zuno de Escheverría has been instrumental in supporting programs to legitimize common law marriages.⁸⁰ These efforts could secure some legal rights for the women and children of these marriages.

b. Divorce. Access to the divorce courts is relatively easy in Mexico. There are two procedures for obtaining a divorce.⁸¹ A simple administrative procedure is available for those couples who do not hold property jointly and do not have any children.⁸² The second procedure is judicial. Prior to 1975, a judge, according to judicial procedure, had

77. CORNEJO, *supra* note 75, at 21. Twenty-five percent is considered a conservative estimate.

78. For example, in the event of death, a man's estate is divided so that his legally recognized children and spouse are supported. Then, if there is any remaining, a share must be given to his parents and only then the concubine is given a share if it can be shown that there are no other concubines, and if she can show that she has lived with decedent for five years prior to his death or has borne children by him and if she is not now married. MEX. CIV. C., *supra* note 66, art. 1368, para. 5. These rights are limited and affect a large number of Mexican women and children when one considers the number of marriages that are not recognized by the State. *See* note 77 *supra*.

79. CORNEJO, *supra* note 75, at 35.

80. L. PADGETT, *THE MEXICAN POLITICAL SYSTEM* 310 (2d ed. 1976) [hereinafter cited as PADGETT]. Maria Esther Zuno de Escheverría is the wife of former President Escheverría.

81. MEX. CIV. C., *supra* note 66, arts. 183-218. There are two types of matrimonial systems in Mexico, *sociedad conyugal*, where all property is jointly owned, arts. 183-206, and *de la separación de bienes*, where each partner has absolute control over his or her own property, arts. 207-18.

82. *Id.* art. 272.

the discretionary power to “place the wife in the safety of a decent home” for the purpose of separating the spouses and protecting the children.⁸³ By 1975 this law had been modified to recognize that “both partners, by mutual consent or in compliance with a court order” have equal rights in requesting a separation without the woman being “deposited” in the care of a third person.⁸⁴ The old law had been criticized as rendering women legally incompetent and treating them as a chattel that must remain under the care of a third person of “good reputation”.⁸⁵

Another aspect of divorce by the judicial procedure concerns alimony. In a divorce by judgment, the woman is entitled to alimony only if she is the innocent party, does not remarry, and lives chastely.⁸⁶ This law reflects a double sexual standard and the culture’s concern with the female’s chastity.

Within the laws concerning marriage impediments, women are specifically singled out in cases of annulment. In such cases, a woman must wait three hundred days before remarriage and the waiting period should be determined from the time the decree is enforced or cohabitation ceases.⁸⁷ An exception is made if she gives birth within that time period.⁸⁸ There is no mention of a required waiting period in the case of a man when a marriage is nullified. This is because the impediment to marriage laws are intended to protect the identity of the paternity of a child born after an annulment.⁸⁹

2. *The Personal Area.* This is the area in which we find those laws that impact heavily upon the personal sphere of a woman’s life in any society. Laws pertaining to reproduction, abortion and education not only heavily influence a woman’s personal life, but often they are “outcome determinative” of the direction her life eventually will take.

a. *Reproduction.* Mexican policy in the area of reproduction has been pronatalist until quite recently. The annual population growth rate has climbed from one half of one percent, which was the rate for some years following the 1917 Revolution, to an annual rate of 3.6

83. CORNEJO, *supra* note 75, at 28.

84. LOS DERECHOS, *supra* note 73, at 80.

85. *Id.*

86. MEX. CIV. C., *supra* note 66, art. 288.

87. *Id.* art. 255.

88. *Id.* art. 158.

89. CORNEJO, *supra* note 75, at 35.

percent.⁹⁰ At this rate of growth, one of the highest in the world, the Mexican population will double within the next twenty years.⁹¹ As late as 1969, former President Escheverría expounded favorably upon the pronatalist policy of Mexico.⁹² By 1973, however, it became clear that Mexico had to face the fact that “rapidly increasing population can be politically, economically and socially detrimental.”⁹³ Thus, in recent years there has been a rather abrupt change in policy. The most impressive manifestation of this policy shift is amended article 4 of the Constitution. Article 4 provides that, “[a]ll persons have the right to decide in a free, responsible and informed manner on the number of children they will have and the intervals between them.”⁹⁴ Mexico now boasts that this reform makes their constitution the first in the world to recognize the “fundamental right of the individual to free and responsible procreation.”⁹⁵ This amendment brings the policy of the Mexican government full circle from the pronatalist policy of the post-revolutionary period to elevating family control to the supreme arena of the Constitution.

It is possible, in view of the strong influence of the Catholic Church, that the implementation of the current antinatalist policy will be an uphill battle. It should be noted, however, that Mexican bishops have endorsed the government family planning programs that began early in 1972 despite the language of *The Humanae Vitae* that “eschewed” the use of “unnatural” methods to achieve family planning.⁹⁶ Nevertheless, the antinatalist policy is relatively recent, and implementation actions are still in the planning stage.⁹⁷

90. Alisky, *Mexico's Population Pressure*, 72 CURR. HIST. 106, 107 (1977) [hereinafter cited as Alisky]. Although the National Population Council estimated the annual growth rate at 3.6% as of November 1976, the author states that this is a conservative estimate and that private and public demographers believe the rate to be as high as 3.8%. *But see* Cabrera, *Legal Protection of the Environment in Mexico*, 8 CALIF. W. INT'L L.J. 22, 29 (1978). The author maintains that recent government programs have reduced the current annual growth rate to 3.2%.

91. LOS DERECHOS, *supra* note 73, at 51.

92. CORNEJO, *supra* note 75, at 7-8. The monograph credits former President Echeverría with the following statement during his campaign for office:

I do not know whether Mexican mothers understand the effectiveness of the contraceptive pill. What I do know is that we need to populate our country. . . . We do not want to control our population. . . .

By April 27, 1972, former President Escheverría “reversed his position 180 degrees.” Alisky, *supra* note 90, at 108.

93. PADGETT, *supra* note 80, at 308.

94. MEX. CONST., art. 4, amendment in Official Daily of Mexico (*Diario Oficial*) Dec. 31, 1974.

95. LOS DERECHOS, *supra* note 73, at 46.

96. CORNEJO, *supra* note 75, at 6.

97. *Id.* at 13.

The General Population Law of 1947 was unquestionably a pro-natalist document. It stated that measures must be adopted to "encourage marriage and increase the birth rate."⁹⁸ This law was drastically modified in 1974 to provide the National Population Council with the responsibility of conducting a "national information campaign, promoting the full integration of women into the economic, educational, social, and cultural processes."⁹⁹

These changes forecast a favorable climate for women in the area of reproduction.¹⁰⁰ The new laws have enabled the Mexican Institute of Social Security, the Social Security and Service Institute for Government Employees, and the Ministry of Health and Welfare to combine their efforts with private institutions to provide family planning services.¹⁰¹ The goal is to have 2800 fully functioning family planning centers by the end of the first quarter of 1977. This goal seems attainable in view of the fact that the number of fully functioning centers had reached 2,757 by November of 1976.¹⁰²

In addition to these services, an educational program will be needed if current government policies are to be realized. In 1973 the percentage of contraceptive users among married women between fifteen and forty-four years of age was 13.2%. Only 1% of that number

98. The General Law of Population (*Ley General de Población*) art. 5, in Official Daily of Mexico (*Diario Oficial*) Dec. 23, 1947 [hereinafter cited as Population Law].

99. *Id.* arts. 3 § V and 5, amendments in Official Daily of Mexico (*Diario Oficial*) Jan. 7, 1974.

100. Not only article 4 of the Constitution, *see* text accompanying note 94 *supra*, and the amended General Population Law, *see* text accompanying note 99 *supra*, forecast a favorable climate for women in the area of family planning; but the Sanitary Code was liberalized in 1973. The Code authorizes the presentation of family planning information and education through public health channels. Sanitary Code of Mexico (*Código Sanitario para el y Territorios Federales en materia común y para toda la Republica en materia federal*) arts. 34-37, in Official Daily of Mexico (*Diario Oficial*) Mar. 13, 1973, (Editorial Porrúa, Mexico, 1977) [hereinafter cited as MEX. SAN. C.]. Until recently, producers of contraceptives were required to classify them as "menstrual cycle regulators" (oral contraceptives) and "disease preventatives" (condoms). CORNEJO, *supra* note 75, at 101. The advertising of contraceptives is limited in that it must be directed to doctors rather than the general public. *Id.* at 12. This restriction could seriously hamper the government's goal of reaching the population. Nevertheless, considering the intensity surrounding the adoption of the recent antinatalist policies, it is likely that these restrictions will be eliminated, or at least diluted, as these programs gain momentum.

101. CORNEJO, *supra* note 75, at 13. Family planning services will provide medical examinations and contraceptives at a cost of five pesos; however, those that cannot afford the five pesos are exempt.

102. Alisky, *supra* note 90, at 108. Of those who use the family planning centers, 90% are women who want the pill.

received the contraceptive devices from public programs, while 12.2% received them from private sources.¹⁰³ The new laws, particularly the Sanitary Code,¹⁰⁴ have authorized the use of public health channels and the educational system to influence "population dynamics".¹⁰⁵ The goal of these policies is to establish educational programs that will increase the use of contraceptives among the population.¹⁰⁶

b. Abortion. Abortion is not included in the family planning policies and programs currently being advocated by the Mexican government. Both article 22 of the Civil Code¹⁰⁷ and article 329 of the Penal Code¹⁰⁸ vest the fetus with a legal personality before birth. It would appear that there is a conflict between these articles and article 24 of the Civil Code,¹⁰⁹ which states that a person has the right to freely dispose of their person and assets unless the act is prohibited by other ordinances. Apparently, the two codes that vest the fetus with a legal personality take precedence over article 24 of the Civil Code.¹¹⁰

Abortion is permissible under two circumstances. The first is when the pregnancy is the result of "violacion", which is the most serious category of rape.¹¹¹ The second is when, in the opinion of two concurring doctors, the procedure is necessary to save the mother's life.¹¹² The ultimate decision to perform an abortion is that of the

103. M. CORDELL, J. MCHALE, with G. STREATFIELD, *WOMEN IN WORLD TERMS, FACTS AND TRENDS 45* (Center for Integrative Studies 1975) [hereinafter cited as CORDELL].

104. MEX. SAN. C., *supra* note 100, arts. 34-37.

105. Population Law, *supra* note 98, art. 3, § IV, amendments in Official Daily of Mexico (*Diario Oficial*) Jan. 7, 1974.

106. The General Population Council created by the amended Population Law, *see* note 99 *supra*, has made use of popular television programming to influence and educate the public. A soap opera script, written by feminist María Elena Becerril, won a government contest. The script, *María, The Forgotten One*, was produced by the council and it directly attacks the "cult of male virility" which, it is suggested, is often proved by the impregnation of females. Alisky, *supra* note 90, at 106.

107. MEX. CIV. C., *supra* note 66, art. 22. This article refers to the "product of conception" and gives it protection from the moment of conception.

108. Penal Code of Mexico (*Código Penal para el Distrito y Territorios Federales en materia común y para toda la República en materia federal*) art. 329 (Colección Porrúa 1977) [hereinafter cited as MEX. PEN. C.]. Abortion is defined as any act which causes "the death of the product of conception at any time during pregnancy."

109. MEX. CIV. C., *supra* note 66, art. 24.

110. Cornejo, *et. al* reason that the effect of vesting the fetus with a legal personality is to elevate the rights of the fetus over the rights of a person to use one's body as one deems necessary. CORNEJO, *supra* note 75, at 14.

111. MEX. PEN. C., *supra* note 108, art. 333.

112. *Id.* art. 334.

doctor with the consent of the woman, but in some cases the consent of the woman's spouse, guardian, or parents is necessary.¹¹³

The abortion laws provide heavy penalties for all of the parties involved in an illegal abortion procedure.¹¹⁴ When punishing the consenting woman, however, the law is influenced by the concept of *honoris causa*. *Honoris causa* circumstances are present if the woman has a good reputation, has hidden the pregnancy, or if the pregnancy is illegitimate. In such cases the law will be more lenient. On the other hand, if she has a bad reputation and has not attempted to hide the pregnancy, or if the pregnancy is legitimate, the law will not be so lenient. Thus, if circumstances of *honoris causa* are present, the woman will get a sentence of six months to one year, but in the absence of *honoris causa* circumstances, she could get a sentence ranging from one to five years.¹¹⁵

Despite the abortion laws and the attendant penalties, "recourse to illegal abortion in Mexico is substantial,"¹¹⁶ and the laws for all practical purposes simply are not enforced.¹¹⁷ In fact, some authorities speculate that if abortion was to become legal, it may not even result in an increase in the number of abortions performed.¹¹⁸ A recent newspaper article estimates the abortion rate to be 800,000 per year. The abortion situation in Mexico was studied by the Feminist Congress, who revealed the alarming estimate that 30,000 women may die annually from illegal abortion procedures. They reasoned that since abortion will never be eliminated, the laws should be changed in favor

113. CORNEJO, *supra* note 75, at 15. Such is the case when a minor is involved.

114. MEX. PEN. C., *supra* note 108, arts. 330-31. Punishment depends upon the consent of the woman. With her consent, the performer of the abortion gets one to three years imprisonment and without her consent he or she gets three to six years imprisonment. If the performer is a professional, such as a doctor or midwife, they are also suspended from practice from two to five years in addition to imprisonment. If physical or moral violence is involved, the punishment ranges from six to eight years.

115. *Id.* art. 332.

116. CORNEJO, *supra* note 75, at 18. The authors state that, "extrapolated calculations of hospital data show an average of about one illegally induced abortion for every 5 live births", and interview studies indicate "13 induced abortions for each 100 pregnancies." Thus, the number of induced abortions may fluctuate between 325,000 and 500,000 per year. Other authorities are cited, such as Dr. Manual Mateos Candádo, who estimates that the number of induced abortions may be as high as 600,000 per year. See text accompanying note 119 *infra* where a recent news article estimates the abortion rate at 800,000 per year.

117. *Id.* at 19. In the Federal District, where approximately 20% of the illegal abortions are performed, only 162 persons were accused under the abortion law in 1972. "Many of those cases were dismissed for lack of evidence, and others were acquitted."

118. *Id.*

of legitimizing the procedure.¹¹⁹ The effect upon women is that those who avail themselves of this procedure must submit to high risk and unsafe abortion procedures.¹²⁰ It would seem that the legalization of abortion would not only conform to Mexico's present population policies, but also contribute to the health of Mexican women, since indications are that substantial numbers will seek the procedure whether or not it is legal.

c. Nationality. Mexican nationality is acquired by birth or naturalization.¹²¹ Prior to 1969, the right of women to transmit nationality by birth and naturalization was limited. A person born abroad of Mexican parents or of a Mexican *father* acquired Mexican nationality. A Mexican woman whose child was born abroad could not transmit her nationality to her child unless the father was unknown. This was amended in 1969 and now reads, "persons born abroad of Mexican parents or of a Mexican father or *mother*" acquires Mexican nationality by birth.¹²²

A woman's right to transmit her nationality by naturalization was secured in January of 1975.¹²³ Prior to that time, a Mexican man's nationality would confer nationality upon his foreign born wife if they established a home in Mexico. Now "the foreign woman or man who marries a man or woman of Mexican nationality and has or establishes a home within national territory" may acquire Mexican nationality.¹²⁴

d. Education. Primary education in the Mexican Republic is compulsory under the Constitution¹²⁵ and both sexes have the same right to receive a primary education.¹²⁶ Nevertheless, it is estimated that 13% to 18% percent of the child population do not have an opportunity to attend school. Of those that do begin primary school, only 49% complete their primary education.¹²⁷ Finally, of those that do complete their primary education, 62% are men and 38% are women.¹²⁸ It is speculated that "functional illiteracy affects 40% of the

119. Paz, *Se Alarma una Disputada por el Alto Indice de Abortos*, *Ultimas Noticias* 2d ed., Nov. 8, 1976 (on file with CALIF. W. INT'L L.J.).

120. CORNEJO, *supra* note 75, at 70.

121. MEX. CONST., art. 30.

122. *Id.* art. 30, para. A(II) (emphasis added).

123. LOS DERECHOS, *supra* note 73, at 78.

124. MEX. CONST. art. 30, para. B(II).

125. *Id.* art. 3 para. VI.

126. *Id.* art. 3 para. I(c).

127. CORNEJO, *supra* note 75, at 56.

128. Lecture delivered by Magistrate Gloria Leon Orantes to the Congress of Businesswomen and Professionals of the Americas (*Conferencia Sustentada por la Magistra-*

adult population¹²⁹ and that illiteracy affects more Mexican women than Mexican men."¹³⁰

Beyond the primary level of education, the educational differences between the sexes widens dramatically. The late and former Mexican Ambassador to Israel, Rosario Castellanos, lamented that among those who do move into higher education in Mexico the sex "differences are something more than appreciable, they are alarming."¹³¹ This is not surprising when one considers psychologist Diaz-Guerrero's observations that a woman who has achieved higher education in Mexico is thought to have done so at the expense of losing her womanhood.¹³²

Nevertheless, the Mexican government has indicated a respect for the role that education can play in reversing what has been identified as undesirable trends or conditions.¹³³ Because there are indications of a link between a woman's educational level and the number of children

da Gloria Leon Orantes en el Congreso de Mujeres de Negocios y Profesionales de las Américas) 14 (1975). Translation provided by Carol Goldberg (on file with CALIF. W. INT'L. L.J.) [hereinafter cited as Orantes' Lecture].

129. CORNEJO, *SUPRA* NOTE 75, AT 56.

130. LOS DERECHOS, *supra* note 73, at 63. This is merely reflective of a worldwide problem, for 62% of the world's illiterates are women. NEWLAND, *supra* note 2, at 31. Of the illiterate in Latin America in 1970, 19.9% were males and 27.3% were female. CORDELL, *supra* note 103, at 33. One factor contributing to this phenomenon is global in scope. Education for women is seen as "largely irrelevant to the fulfillment of their adult responsibilities." Other factors contributing to female illiteracy rates are the "prevalence of early marriages" and expectations that they will help to "care for younger siblings." Thus, girls are likely to "leave school earlier." *Id.* at 33-34. The United Nations Conference on the Status of Women saw the illiteracy problem as significant enough to include reduction of illiteracy as one of its halfway goals for 1980 in the World Plan of Action. *See* note 57 *supra*.

131. Castellanos, *Women's Contribution to Culture*, REGENERACION, translated by C.M. Keyser (on file with CALIF. W. INT'L L.J.).

132. R. DIAZ-GUERRERO, *PSYCHOLOGY OF THE MEXICAN CULTURE AND PERSONALITY* 7 (1975). The author states:

if one of Mexico's relatively few career women obtains high grades, one or many of the male students will exert himself to express with a serious face and in a loud whisper that he knows from reliable sources that this student has already missed several menstruations. Americans would leap to the conclusion that the girl is pregnant, but in Mexico the implication is that she is becoming a male.

Yet, statistics compiled by the National University of Mexico reflect an encouraging growth of participation of women in higher education. In 1972, of the students attending centers of higher education, 26.4% were women; in 1973, 27.5%; in 1974, 28.5%; and in 1975, 30%. Meyer, *Women in Mexican Society*, 72 CURR. HIST. 131 (1977).

133. *See generally* CORNEJO, *supra* note 75, at 13. Consider the impact of the Sanitary Code, which allows the preparation of family planning courses for use in the primary or secondary levels in the official curriculum. *See* text accompanying notes 104-05 *supra*.

she bears,¹³⁴ it is likely that the Mexican government will focus more attention upon the formal education of women, particularly in view of their current policy toward curbing the population growth rate.

3. *The Economic Area.* In Mexico, women represent about 19% of the total labor force.¹³⁵ Considering married women only, a 1970 census revealed that 15% to 17% worked outside the home.¹³⁶ This percentage should not be too surprising when one considers that, until recently, housework was a married woman's legal obligation.¹³⁷

The Mexican Constitution guarantees the right to work¹³⁸ and guarantees equal pay for equal work regardless of sex.¹³⁹ Recent modifications of the Constitution¹⁴⁰ and the Labor Law¹⁴¹ have sharply cut back on "protective" elements for women involved in the labor force. As late as 1972, the Labor Law stated that women and children under sixteen years of age were forbidden to work overtime¹⁴² or work at night in industrial activities or in commercial establishments after 10:00 P.M.¹⁴³ These restrictions did not apply to "executive women. . . , university degree women," or to women where the "necessary measures have been adopted by authorities to protect their health."¹⁴⁴ In actuality, women did carry out the forbidden activities, but "did so illegally and without any of the benefits" that corresponded to the forbidden work.¹⁴⁵ By 1975 these protective laws were changed simply by striking the word women. The restrictions now apply only to children under sixteen years of age.¹⁴⁶

134. PADGETT, *supra* note 80, at 310. The author cites a 1974 study of demographic patterns that indicates a direct relationship between a woman's level of education and the number of children she bears. Women with no education averaged 4.44 live births, those with some primary education averaged 4.02, those with a full primary education averaged 3.13, those with a secondary education averaged 2.11, and those with some university education averaged 1.53.

135. LOS DERECHOS, *supra* note 73, at 67.

136. CORNEJO, *supra* note 75, at 52.

137. *See* text accompanying notes 70-72, *supra*. Most of the provisions of the various states specify that household responsibilities are the primary obligation of a married woman. CORNEJO, *supra* note 75, at 43.

138. *See generally* MEX. CONST., art. 123.

139. *Id.* art. 123 paras. A(VIII) & B(V).

140. *Id.* art. 123 paras. A & B.

141. [1975] MEX. LAB. & SOC. SEC. LAWS (Sp.-Engl. ed. CCH) [hereinafter cited as MEX. LAB. & SOC. SEC. LAWS, 1975].

142. [1972] MEX. LAB. & SOC. SEC. LAWS (Sp.-Engl. ed. CCH), Labor Law, art. 5 para. IV, at 17.

143. *Id.* art. 5 para. XII.

144. *Id.* art. 168, at 91. This provision was repealed entirely by 1975.

145. LOS DERECHOS, *supra* note 73, at 71.

146. MEX. LAB. & SOC. SEC. LAWS, 1975, Labor Law art. 5 para. IV, *supra* note 141, at 17.

The only remaining employment restriction on women pertains to pregnant women. If the health of the mother or fetus is endangered during pregnancy or nursing, she may not work in unhealthy or dangerous conditions, industrial night work, commercial establishments, or businesses engaged in rendering services after 10:00 P.M. Additionally, a pregnant woman may not work overtime; however, none of these restrictions are to affect her salary benefits and rights.¹⁴⁷

Article 171 of the Labor Law states that nursery services shall be provided by the Mexican Institute of Social Security.¹⁴⁸ Women who work for government institutions or state agencies have the right to place their children under five in these nurseries.¹⁴⁹ Maternity leave at full salary for six weeks preceding birth and six weeks after birth is available under article 170(II) of the Labor Law.¹⁵⁰ This leave may be extended for sixty days with the mother retaining the right to fifty percent of her salary.¹⁵¹ The woman's right to return to her job remains intact for no more than one year¹⁵² and the prechildbirth and postchildbirth periods are computed for seniority purposes.¹⁵³ In addition to the above modifications of the labor law, the working Mexican woman is aided by the Constitution, which also provides for day care services and maternity leave.¹⁵⁴

When women are confined to traditional domestic responsibilities, a society has difficulty controlling its population growth. Recent studies have indicated that a correlation exists between the labor force activity of women and the number of children she bears.¹⁵⁵ Mexico, in a report to the United Nations concerning compliance with the 1967 Declaration on the Elimination of Discrimination Against

147. *Id.* art. 166, at 91.

148. *Id.* art. 171, at 93.

149. CORNEJO, *supra* note 75, at 39.

150. MEX. LAB. & SOC. SEC. LAWS, 1975, Labor Law, art. 170 para. II, *supra* note 141, at 91.

151. *Id.* art. 170 para. V, at 93.

152. *Id.* art. 170 para. VI, at 93.

153. *Id.* art. 170 para. VII, at 93.

154. MEX. CONST., art. 123, para. B(XI)(c).

Pregnant women shall not perform any heavy labor that might endanger their health as related to their pregnancy; they shall invariably be granted six weeks leave before the approximate expected birthdate and a further six weeks leave following the birth, during which time they shall receive full pay and retain both their jobs and all rights pertaining to such employment. During the period of lactation they shall be allowed two special half-hour rest periods per day to feed children. Furthermore, they shall be provided with medical and obstetrical attention, medicines, lactation assistance, and day nursery services.

LOS DERECHOS, *supra* note 73, at 70.

155. PADGETT, *supra* note 80, at 310. A 1974 study of demographic patterns indicates that working women average 2.4 live births while nonworking women average 3.7.

Women,¹⁵⁶ recognized that traditionally Mexican women's main work was to procreate and raise children.¹⁵⁷ Participation of women in the economic sphere of society tends to reduce fertility¹⁵⁸ and liberalize a woman's attitude toward family planning. Mexico seems to realize that the level of labor force participation of Mexican women is among the lowest in the world¹⁵⁹ and that serious efforts to establish programs that will provide and secure jobs for women will have the ultimate and beneficial effect of lowering the birth rate.

4. *The Criminal Area.*

a. *Rape.* Under Mexican Federal law, there are three categories of the crime rape: violation (*violación*), rape (*rapto*) and statutory rape (*estupro*). The first category, violation, is the most serious and is defined as "having sexual intercourse with a person of either sex, by means of physical or moral violence."¹⁶⁰ Conviction of this crime carries a punishment of imprisonment ranging from two to eight years and a fine of 2,000 to 5,000 pesos.¹⁶¹ Coitus with a person under twelve years of age or with a person incapable of making a conscious decision also is considered violation. It should be noted that violation can be committed against either sex while the next two categories of rape and statutory rape can be committed only against females.

The next category, rape, is defined as taking advantage of a female by "means of physical or moral violence, seduction or deceit in order to satisfy an erotic sexual desire or for the purpose of marriage."¹⁶² Thus, an act less than sexual intercourse constitutes the crime of rape under Mexican law. Conviction is punishable by imprisonment from six months to six years and a fine of 50 to 500 pesos.¹⁶³

The last category, statutory rape, is defined as "having intercourse with a chaste female who is less than eighteen years of age,

156. See note 44 *supra*.

157. Mexico's Reply [to the United Nations in Compliance with the Declaration on the Elimination of Discrimination Against Women 1967] Regarding the National Promotion and Integration of Women In the Development of Mexico. 15 (*Informe del Gobierno de México Acerca de los Progresos Realizados a Nivel Nacional en la Promoción del Adelanto de la Mujer y su Integración en el Desarrollo*) 15 (on file with CALIF. W. INT'L L.J.) Translation provided by Carol Goldberg [hereinafter cited as Mexico's Report].

158. CORNEJO, *supra* note 75, at 34.

159. CORDELL, *supra* note 103, at 41.

160. MEX. PEN. C., *supra* note 108, art. 265.

161. *Id.*

162. *Id.* art. 267.

163. *Id.*

through deceit or seduction." This is punishable by imprisonment of one month to three years and a fine from 50 to 500 pesos.¹⁶⁴

The last two categories of rape and statutory rape are reflective of social and cultural concerns of protecting the female's chastity. In reality these laws are scant protection when one considers that in 1970 only 1388 men were sentenced for these crimes.¹⁶⁵ A complaint from the person affected, or from those who legally represent her, is required for enforcement of these laws. Thus an admission of one's loss of chastity is necessary for enforcement in the case of rape and this requirement may account to some degree for the few number of complaints, which in turn accounts for the small number of convictions. Parental and social pressures actually are more effective than the above mentioned laws in protecting the valued chastity of the middle class female.¹⁶⁶

b. Adultery. Adultery is illegal and punishable under the Federal Code by a maximum imprisonment of two years and the loss of civil rights up to six years.¹⁶⁷ However, the adulterous act must be committed in the conjugal home or done scandalously before punishment may attach.¹⁶⁸ This requirement that the act occur in the conjugal home may explain the common practice of *casa chica*, or "little house", which means the keeping of a woman other than the wife.¹⁶⁹ Since the crime of adultery is also punishable if done scandalously, surely some *casa chica* situations would fit this category. Yet, the prevalence of the *casa chica* practice attests to the lack of enforcement of the adultery laws. As in the crime of rape and statutory rape, the injured party must bring a complaint in order to enforce the adultery

164. *Id.* art. 262.

165. CORNEJO, *supra* note 75, at 68.

166. *Id.*

167. MEX. PEN. C., *supra* note 108, art. 273.

168. *Id.* CORNEJO, *supra* note 75, at 66. Spain's adultery law is similar in that a husband cannot be prosecuted for adultery unless he has "kept a mistress inside the conjugal house or flagrantly outside it." In Spain, however, there is no right to divorce and couples have no other recourse to solve marital difficulties except to live apart. Yet, the husband retains legal power over the estranged wife and can bring criminal charges against her if he suspects adultery. Conviction of the crime carries a jail sentence from five to twenty years and the husband is entitled to payment for "damage to his property". Women in Spain currently are protesting the Maria Angeles Munoz case where Munoz is threatened with jail unless she surrenders her child to the paternal grandparents. She is faced with prosecution for adultery in spite of the fact that her husband voluntarily chose to leave the marriage. Rockwood, *Protests In Spain: "I Too Am An Adulteress"*, Ms, Mar. 1977, at 19.

169. CORNEJO, *supra* note 75, at 67.

laws.¹⁷⁰ Because of social and cultural pressures, it is unlikely that the wife would do so. In theory, the adultery laws are intended to protect women, but in practice, if they are enforced at all, they are likely to be enforced against female offenders.¹⁷¹ This is because the idea of a woman establishing a *casa chica* situation in order to avoid prosecution is improbable, for cultural as well as financial reasons, even among middle class women. Therefore, the chances of an adulterous act being committed in the conjugal home by a woman would seem to be increased. A husband could then exercise his prerogative and file a complaint in this type of situation. Thus, the requirement necessary for prosecution under the adultery laws seems to favor the male party.

5. *Political Rights Area.* A discussion of women's political rights is crucial in determining the general status of women within any system.¹⁷² In Mexico, women were granted limited suffrage in 1946, and full political rights were granted in 1953.¹⁷³ Some authorities have suggested that the Mexican government, recognizing the power of the female vote, delayed women's right to vote for forty years. The belief that so many women were "bitterly hostile to the revolutionary program . . . particularly the secularization of the state," has been suggested as the basis for this delay.¹⁷⁴

Nevertheless, Mexican women have shown a relatively high degree of political awareness and participation in the Mexican political system. In 1953, when women were first granted suffrage, they represented forty-four percent of the voters and this participation increased to forty-six percent by 1973.¹⁷⁵ In the legislative branch of the Mexican federal government, there are three women senators and sixteen women representatives in the Mexican Congress.¹⁷⁶ The judicial branch of the Mexican federal government features a woman judge in the Supreme Court of Justice of the nation. Moreover, there are two women magistrates in the federal circuit courts of justice.¹⁷⁷

170. *Id.* at 67.

171. Consider the Maria Angeles Munóz case. *See* note 168 *supra*.

172. New Zealand took the lead in the area of political rights for women by enfranchising women on an equal basis with men in 1893. Switzerland granted suffrage to women as late as 1971. *See* CORDELL, *supra* note 103, at 13.

173. LOS DERECHOS, *supra* note 73, at 59.

174. NEWLAND, *supra* note 2, at 24.

175. *Id.* at 38.

176. Orantes' Lecture, *supra* note 128, at 14.

177. *Id.* The Mexican woman's political involvement outshines her United States counterpart in several aspects. In the United States, no woman is serving or ever has served on the nine member Supreme Court. Of the 97 authorized judgeships of the circuit courts, only two women have ever been appointed, with one currently serving.

In order for women to become fully integrated into the political arena of any society, many factors, such as educational opportunities, employment opportunities, and family supportive services must be attended to simultaneously. This is an enormous task for a society to attempt, but one that should be worthwhile because "any society that categorically excludes one half of its members from the processes by which it rules itself[,] will be ruled in a way that is less than fully human."¹⁷⁸

B. *Mexico's Compliance with United Nations Standards Regarding Equality Between the Sexes*

The foregoing report is not meant to be an exhaustive treatment of the Mexican woman's legal status; however, it is sufficient to measure Mexico's compliance with United Nations standards pertaining to sex equality. From a *de jure* standpoint it seems reasonable to conclude that the above report reflects substantial compliance, at the federal level, with United Nations legal standards of equal educational opportunities, minimum age and consent to marriage, a right to maintain one's nationality regardless of marital status, full political rights for women, and equal pay for equal work.¹⁷⁹ In fact, Mexico is a step ahead in the employment area because "special protections" under their labor laws have been abolished as being discriminatory toward women,¹⁸⁰ while the United Nations retains these provisions.¹⁸¹

Yet, women's *de facto* situation in Mexico does not reflect the legal standards. There are sufficient indications to safely conclude that a gap exists between the stated legal ideal and the Mexican woman's real situation. Recently, the Secretary-General of the United Nations requested information concerning the extent to which member nations are conforming to the World Plan of Action.¹⁸² Mexico replied that absolute "*de jure* and *de facto* equality existed between the sexes and that women are free to participate in development and to exercise their

PERFECT UNION, *supra* note 4, at 341, 347. Muriel Humphrey, appointed to the United States Senate to succeed her husband until a special election is held in November of 1978, is the only woman serving in the United States Senate. Charlton, *In Political Partnerships, Mrs. Humphrey No Novice*, The San Diego Union, Jan. 26, 1978, § A, at 4, col. 2.

178. NEWLAND, *supra* note 2, at 34.

179. See text accompanying notes 14-36.

180. See text accompanying notes 140-46.

181. See text accompanying note 13, and note 13.

182. See note 55 *supra*.

rights if they so desire and if they meet the necessary prerequisites.''¹⁸³ This response was not entirely justified, for while there is substantial *de jure* compliance with United Nations standards, the *de facto* situation of women in Mexico falls significantly short of the legal ideal.

In the economic field, the representation of women is among the lowest in the world.¹⁸⁴ This is so in spite of exemplary economic legal rights for women under Mexican law. A woman in Mexico is guaranteed the right to work, equal pay for equal work, day care services, and liberal maternity benefits;¹⁸⁵ yet, she represents only nineteen percent of the total labor force.¹⁸⁶ This low representation may be because until recently, the Mexican woman was legally required to obtain her husband's consent before embarking upon work outside of the home.¹⁸⁷ Although this requirement has been abolished at the federal level, it must be remembered that most states still maintain laws which declare that housework is a woman's primary legal duty.¹⁸⁸ Whether amended article IV to the Constitution, which guarantees women equality before the law, will automatically invalidate these state laws is yet to be determined. Mexico, in a report to the United Nations, has stated that traditionally a married woman's work was to procreate and raise children.¹⁸⁹ Thus, marriage in Mexico brings a woman's involvement in the work force or in education to a virtual standstill.¹⁹⁰ Yet, the progress of women in the economic area has been impressive when one considers that for every working woman in 1930 there were 2,034 in 1970.¹⁹¹

Various other factors mentioned in the previous report indicate that the Mexican women's *de facto* situation does not measure up to stated ideals. The large percentage of common law marriages, where abandonment of women and children is high, leave large numbers of women and children with limited legal rights.¹⁹² The adultery laws are intended to be protective toward women, but in actuality they have the potential of being used against them. The common practice of *casa*

183. 62 U.N. ESCOR, Supp. (No. 3) 71, U.N. Doc. E/CN.6/598 at 20 (1976).

184. See note 159 *supra*.

185. See text accompanying notes 138-54 *supra*.

186. See text accompanying note 135 *supra*; see also, Meyer, *Women in Mexican Society*, 72 CURR. HIST. 123 (1977) [hereinafter cited as Meyer].

187. See text accompanying notes 69-74 *supra*.

188. See note 76 *supra*.

189. Mexico's Report, *supra* note 157, at 15.

190. *Id.* at 23.

191. *Id.* at 3.

192. See text accompanying notes 77-81 *supra*.

chica is an outgrowth of the adultery laws.¹⁹³ Participation in illegal and unsafe abortions is alarmingly high with estimates running as high as 800,000 per year and with a possible death rate of 30,000 per year.¹⁹⁴ The double sexual standard can be seen in the concept of *honoris causa*, which influences the severity of the punishment for a woman who submits to an illegal abortion.¹⁹⁵ Alimony laws also reflect the double sexual standard where a woman's right to alimony depends upon her living chastely.¹⁹⁶ The rape and statutory rape laws are an attempt to protect the female's valued chastity, although enforcement of these laws is weak.¹⁹⁷ While this Comment has focused upon the federal codes, the state codes are significant when appraising the *de jure* situation of women, for it is under these codes that the masses of women exist. For example, under the Civil Code of Puebla, a single woman must remain under the guardianship of her parents until she marries or until she is thirty years old, unless she obtains permission from her parents to leave home for other than marriage reasons.¹⁹⁸

The above reference to conflicting state codes is not meant to dilute the value of the recent changes in the Constitution and the federal codes. In fact, it may be that amended article IV to the Constitution will invalidate these discriminatory state laws. In any event, it is Mexico's intent that federal policies will serve as a pattern for local laws that exclude and discriminate against women in both family and collective life.¹⁹⁹

The existence of a gap between *de jure* and *de facto* equality has been recognized by Mexican leaders. Former President Escheverría perceptively admonished that the establishment of equitable laws alone would not achieve the desired goal of equality. "It is also necessary that men and women be able to shake off the old mental structures that have caused the current unjustified situation."²⁰⁰ The late Mexican Ambassador to Israel, referring to this gap, commented that "all the legal arrangements that we have been elaborating throughout our history have tended to establish justice—political, economic, educa-

193. See text accompanying notes 169-71 *supra*.

194. See text accompanying note 119 *supra*.

195. See text accompanying note 115 *supra*.

196. See note 86 *supra*.

197. See text accompanying notes 160-65 *supra*.

198. Laws and Codes of the State of Puebla, (*Leyes y Códigos Del Estado De Puebla, México*) art. 591 (Ed. José M. Cajica Jr., S.A. 1957) [hereinafter cited as *Laws & Codes of Puebla*]. CORNEJO, *supra* note 75, at 43.

199. Mexico's Report, *supra* note 157, at annex 1.

200. Orantes' Lecture, *supra* note 128, at 21.

tional, social—between man and woman. But we allow ourselves the luxury of violating the law to continue rotating as mules circling a well, around custom.”²⁰¹ Victoria Junco Meyer reports that Mexico is one of the most advanced countries in Latin America regarding the legal status of women. Yet tradition is often stronger than law²⁰² and the “actual situation of women does not correspond to the theoretical situation.” Ms. Meyer maintains that a change in values is urgent.²⁰³

What are the “mental structures” that Mexican leaders have identified as stultifying the carefully drawn legal arrangements? Studies of Mexican social and personal character may offer some insight into the complexities of these “mental structures”.

C. *Socio-Cultural Attitudes Pertaining to Sex Roles*

Dr. Samuel Ramos, 1897-1959,²⁰⁴ a distinguished professor of social philosophy and aesthetic theory,²⁰⁵ presented a theoretical formulation in the 1930's²⁰⁶ concerning Mexican character. He believed that in order to “know thyself” it was necessary to equip oneself with the intellectual tools of psychoanalysis.²⁰⁷ Thus, he proposed the use of Adler's psychological theories in order to explain Mexican character. Adler's theories essentially embrace the concept that there is “one basic dynamic force behind all human activity; a striving from a felt minus situation towards a plus situation.”²⁰⁸ In interpreting Adler's theory, Ramos states that when there is an unconscious sense of inferiority, an exorbitant thirst for power appears in an effort to achieve primacy in a world where everything is seen as superior or inferior.²⁰⁹ Ramos proposed that this abnormal sense of inferiority was a characteristic applicable to all races and nationalities, but that Mexico was distinguishable in that, where other nations displayed the abnormality individually, Mexico did so collectively.²¹⁰ Ramos took

201. Castellanos, *Women's Contribution to Culture*, REGENERACION 15, translated by C. Keyser (on file with CALIF. W. INT'L L.J.).

202. Meyer, *supra* note 186, at 120.

203. *Id.* at 131.

204. Batt, *Mexican Character: An Adlerian Interpretation*, 25 J. INDIVIDUAL PSYCH. 183, 184 (1969) [hereinafter cited as Batt].

205. S. RAMOS, PROFILE OF MAN AND CULTURE IN MEXICO xi (3d ed. 1972) [hereinafter cited as RAMOS].

206. Batt, *supra* note 204, at 199.

207. RAMOS, *supra* note 205, at 72.

208. H. & R. ANSBACHER, THE INDIVIDUAL PSYCHOLOGY OF ALFRED ADLER 1 (1956) [hereinafter cited as ANSBACHER].

209. RAMOS, *supra* note 205, at 128.

210. *Id.* at 127.

great pains to clarify that this unconscious sense of inferiority was not to be equated with real or organic inferiority.²¹¹ Rather, he maintained that the "Mexican undervalues himself."²¹²

Since Ramos first adopted Adler's theories to explain Mexican national character, other writers in the field have agreed on some approximation of these theories to explain certain collective characteristics.²¹³ Psychologist R. Diaz-Guerrero credited Dr. Ramos as the first to realize that "it was not the Freudian system, but the Adlerian that was appropriate to explain the 'idiosyncracies of our nation'."²¹⁴ Diaz flatly states that "it would seem that the doctrines of Alfred Adler were devised specifically to explain the personality of the Mexican."²¹⁵ Octavio Paz, one of the major poets of our time, has been preoccupied with the psychology of his nation and its national character. He expressed complete agreement with Samuel Ramos that the Adlerian analysis was proper to explain what he termed "our instinctive doubts about our abilities."²¹⁶

When it comes to identifying specific characteristics of the Mexican culture, the writers are understandably hesitant, for the dangers of stereotyping a people as "luxuriantly diverse" as the population of Mexico are enormous indeed. Yet, Diaz contends that his studies have revealed "something called Mexican."²¹⁷ Ramos also recognized the rich diversity among the people of Mexico from "the people of the cool high plateau" to those of the "tropical coastal areas . . . the Northerners and the Yucatecans." Yet, he felt that there was enough of a sense of national unity in order to decipher a Mexican type just as Spain could decipher a Spanish type with her Andalusians, Castilians, Basques, Galicians, and Catalans.²¹⁸

Upon acceptance of the Adlerian premise by the above writers, it is suggested that the striving for superiority from the basis of a classical Adlerian complex produces identifiable characteristics in men and women. These characteristics form the undesirable "mental structures" that thwart Mexico's progress toward full equality between the sexes.

211. *Id.* at 4.

212. *Id.* at 9.

213. Batt, *supra* note 204, at 183.

214. R. DIAZ-GUERRERO, *PSYCHOLOGY OF THE MEXICAN CULTURE AND PERSONALITY* 37 (1975) [hereinafter cited as DIAZ].

215. *Id.*

216. O. PAZ, *THE LABYRINTH OF SOLITUDE* 10 (2d ed. 1961) [hereinafter cited as PAZ].

217. Preface to DIAZ, *supra* note 214, at xi.

218. RAMOS, *supra* note 205, at 170.

Adler, commenting on western culture, referred to “overestimated masculinity”²¹⁹ and the “excessive pre-eminence of manliness” as the “arch evil of our culture”. He theorized that doubts are dealt with by exaggerating those traits considered masculine and devaluing those traits considered feminine.²²⁰ This is known as the “masculine protest”. For example, to doubt²²¹ is considered a feminine tendency and, thus, negatively valued. Therefore, masculine characteristics of forthrightness and positivism are exaggerated as a form of compensation to combat these undesirable tendencies toward doubting.²²²

This “masculine protest” that Adler observed in Western European culture is also thought to be observable in Mexican culture, but to an exaggerated degree.²²³ Ramos utilizes the lowly *Pelado*²²⁴ to make his point in the belief that the *Pelado*’s elementary conduct corresponds precisely, albeit blatantly, to Adler’s concept of the “masculine protest”.²²⁵ Although the *Pelado*’s language is “crudely realistic,” Ramos felt that its impact would be detrimentally diluted by acceding to a notion of decency in language. Thus, in an extremely hostile environment, the *Pelado* consoles himself by boldly asserting that he has “got balls”.²²⁶ This reference to testicles is not limited to affirming sexual power, but every kind of human power is quite literally equated with male sexual potency.²²⁷ Diaz also observed that all power is directly related to the male sexual organs and their functions. He proposed that the undisputed authority of the male in relation to the female may be explained by the fact that he has testicles and she does not.²²⁸

Although Ramos referred to the *Pelado* to articulate and relate his thesis, he did so because he believed the *Pelado* presented an uncomplicated and clearly defined outward manifestation of his perceptions. He was of the opinion, however, that the *Pelado*’s characteristics could be observed in all classes with varying degrees of subtlety and

219. ANSBACHER, *supra* note 209, at 452.

220. *Id.* at 55.

221. *Id.* at 55. See also, PAZ, *supra* note 216, at 10 and RAMOS, *supra* note 205, at 9.

222. ANSBACHER, *supra* note 209, at 48.

223. RAMOS, *supra* note 205, at 9.

224. *Id.* at 59. The *Pelado* is among the ranks of the lowest of classes. The author describes him as “rubbish from the great city” and “less than a proletarian in the economic hierarchy.”

225. RAMOS, *supra* note 205, at 9.

226. *Id.* at 60.

227. *Id.* DIAZ, *supra* note 214, at 40.

228. *Id.* at 6-7.

complexity.²²⁹ Thus, compensating characteristics in men in response to the Adlerian complex have been exemplified by the “cult of manliness,” the “masculine protest” and the “machismo” element.²³⁰

Writers have pointed out, however, that compensatory characteristics in women follow a radically different path. The machismo complex in Mexican men has its counterpart among Mexican women in the martyr complex.²³¹ Diaz summarizes the female role with one word—abnegation—the denial of all her needs and the “absolute pursuit” of the satisfaction of everyone else’s needs.²³² He points out that after grade school, the young woman is returned to the home to learn her true role in life, which is to attend to the males in the household who, in return, will become the “faithful custodians” of her chastity.²³³

Because the Adlerian purpose of compensatory behavior is to transfer the person from a “felt minus situation” to a “plus situation,”²³⁴ one might reasonably ask how the female’s self-deprecating behavior can possibly be labeled compensatory. Octavio Paz has reasoned that a female’s inferiority is constitutional and resides in her sex in that submission as to sexual behavior is associated with such negative characteristics as cowardice.²³⁵ Thus, a woman is always vulnerable despite her personal modesty and society’s vigilance in protecting her honor. Nevertheless, her “natural frailty” is made a virtue by creating the “long-suffering Mexican woman”. It is through this suffering that she is able to transcend her constitutional condition and acquire some attributes of men.²³⁶ Batt adopted this concept when he proposed that this oversubmissive reaction will remove her, in a sense, from the battle of superiority where the odds seem too great. Her martyrdom, then, in actuality, may create a sort of moral superiority from which she can exert some semblance of power and self-esteem.²³⁷

229. RAMOS, *supra* note 205, at 68-69.

230. Batt, *supra* note 204, at 187-92.

231. Meyer, *supra* note 186, at 120-22. The author maintains that there is no typical Mexican woman because the distinctive values within the various subcultures influence the behavior of women accordingly. Yet, she maintained that self-denial, sacrifice and submission are the highest virtues and the only constant in the life of Mexican women.

232. DIAZ, *supra* note 214, at 4-9.

233. *Id.* at 7-8.

234. ANSBACHER, *supra* note 208, at 1.

235. PAZ, *supra* note 216, at 29.

236. *Id.* at 38-39.

237. Batt, *supra* note 204, at 193.

The ideal woman, one that is to become a wife, is "chaste, delicate, homey, sweet, maternal, dreamy, religious, must not smoke or cross her legs."²³⁸ As this woman is found and idealized, Diaz believes that all other women become objects for the "sexualized search."²³⁹ Women are shelved into two distinct classes: 1) wives, daughters, sisters, and mothers whose purity can be counted on, and 2) all other women who provide an open field for conquest.²⁴⁰

The above compensating characteristics in men and women are thought to emanate from the typical Latin family which features the dominating authoritarian father and the long-suffering martyr mother.²⁴¹ This observation of the Latin family is verified by Diaz-Guerrero who suggests that the "dominant Mexican family pattern" is founded upon two basic propositions: 1) "the unquestioned and absolute supremacy of the father", and 2) "the necessary and absolute self-sacrifice of the mother."²⁴² This absolute authoritarianism vested in the Latin father²⁴³ renders him a disciplinarian whose authority, Diaz-Guerrero feels, is often exercised irrationally or unjustly. This, it is reasoned, leads to a destruction of self-esteem in children at an early age with the resultant self-doubts that spark the appropriate compensatory behavior as they become adults.²⁴⁴

Thus, the reasoning of the writers of Mexican national character is brought full circle. These collective doubts, then, are dealt with by adopting the characteristic compensatory behaviors in men and women

238. DIAZ, *supra* note 214, at 6.

239. *Id.*

240. Batt, *supra* note 204, at 192.

241. *Id.* at 200. Octavio Paz and Dr. Samuel Ramos disagree as to the the primary cause of this complex. Ramos has tended to link the cause of the Adlerian complex to the historical and cultural roots of the Spanish conquest and colonization. RAMOS, *supra* note 205, at 9. Paz credits the Spanish inheritance as a partial explanation of women's position within Mexican society. The Spanish attitude is simply and brutally summarized in the saying, "A women's place is in the home, with a broken leg." PAZ, *supra* note 216, at 36. Diaz and Batt are of the opinion that explanations of the complex in terms of history have been exaggerated, while the typical Mexican family which features the extremely authoritarian father and the protective pampering mother has been underestimated. Diaz states that he is in complete agreement with Ramos concerning the historical and socio-cultural factors that have contributed to this complex, but of "greater importance" in the "final result" are the characteristics of the Mexican family. DIAZ, *supra* note 214, at 38. Note that these writers agree as to the existence of a national Adlerian type complex, but disagree merely as to the primary cause of this complex.

242. DIAZ, *supra* note 214, at 3.

243. RAMOS, *supra* note 205, at 60. Ramos states that "in our patriarchal societies the father is for all men the symbol of human power."

that are described in detail above, such as, the machismo complex in men and the martyr complex in women.

Although the above Adlerian analysis offers but one perspective, it is presented merely as a possible or partial explanation of the negative "mental structures" that Mexican leaders have identified as hindering the national goal of achieving *de facto* as well as *de jure* equality among the sexes.²⁴⁵

III. CONCLUSION

Since 1910, Mexico has experienced revolutionary political, social and economic developments. These massive changes should not be equated with a concurrent upheaval in Mexican social and personal character. The characteristics delineated herein substantially describe current national character, despite the remarkable political and economic changes that have occurred.²⁴⁶ The concept of "machismo", which emphasizes male dominance, affects the multiplicity of issues which are related to the status of women and their role in Mexican society. Mexican legislation may assure women equal rights with men, but such policies are not always realized in the face of these pervasive underlying social attitudes.²⁴⁷

In her emergence as a modern nation, Mexico has distinguished herself in the international struggle for human rights. The national conscience has been disturbed by the plight of the Indian and the downtrodden city dweller.²⁴⁸ Yet, as Octavio Paz has observed, "[w]omen are imprisoned in the image masculine society has imposed on them."²⁴⁹ Recent concern with the population growth rate indicates that the Mexican national conscience will now focus on women and their new role in society. The most impressive manifestation of this national concern is amended article IV to the Constitution that guarantees the right to family planning and particularly the portion of article IV that insures women equality before the law.²⁵⁰

244. DIAZ, *supra* note 214, at 38. See also PAZ, *supra* note 216, at 10 and RAMOS, *supra* note 205, at 9.

245. See text accompanying notes 200-03 *supra*. It would seem that such an Adlerian analysis could be applied to various cultures and offer at least a partial explanation as to why the unwritten laws throughout the world have hindered the goals of achieving *de facto* as well as *de jure* equality between the sexes.

246. Batt, *supra* note 204, at 198-99.

247. CORNEJO, *supra* note 75, at 53.

248. Introduction to RAMOS, *supra* note 205, at ix-x.

249. PAZ, *supra* note 216, at 198.

250. See text accompanying notes 76 and 94 *supra*.

It would appear that not only Mexican women, but women of the world may place their highest hopes upon the fact that the preponderance of nations have come to the realization that the ancient adage of "go forth and multiply" is no longer in their best interests. This revolutionary concept has the potential of forcing nations to view women essentially as productive rather than reproductive beings. This, in turn, could lead to the profound reforms in the unwritten laws throughout the world which are necessary if the international goal of true equality between the sexes is ever to be accomplished.

Colleen Fahey Fearn