Protecting Women's Rights: The Relative Values of Women's International Human Rights and Collective Paradigms

Ann Elizabeth Mayer

Upon reading the materials originally distributed to those of us invited to participate in this symposium, I was provoked to think, as I imagine we were supposed to be, by the questions posed. The main puzzlement that I had was regarding *why* it was being stated that the international legal regime was guilty of a serious omission with regard to women's human rights. Perhaps there are underlying assumptions behind this assertion that explain what otherwise would seem to amount to a counterfactual characterization. Not knowing what these assumptions could be and merely referring to international human rights law as it now stands, I am disposed to disagree with the assertion. Whatever its past sins of omission might be, in recent decades, the international system has focused considerable attention on women's rights. To cite only a few examples: We now have CEDAW, recently improved with the addition of a new protocol. We have the CEDAW Committee. We have had the 1994 International Conference on Population and Development in Cairo and 1995 Women's Conference in Beijing and its Platform for Action. In addition, we have attention being paid to women's rights in the world of work on the part of institutions like the ILO.

I am puzzled by the proposition put forward in the original symposium materials to the effect that the international legal regime has failed to articulate which approach more effectively protects women's human rights, the collective, or individual. This proposition was accompanied by the comment that "Arguably, international law has thus far failed to adequately articulate women's rights under either approach." Now, international law *has* extensively articulated women's human rights in much the same way it has articulated the human rights of the other half of humanity – in the form of individual rights. Would the authors of this statement also assert that international law has thus far failed to adequately articulate men's rights? Since I am unsure of the basis for the negative assessments that are being offered, I cannot ascertain whether the authors would agree that men's rights are also inadequately articulated. On the matter of collective rights, it seems to me that, if the international system has neglected to articulate women's collective rights, even as it has failed to articulate men's collective rights, these omissions are entirely reasonable. Neither men nor women constitute collectives, so classifying the rights of either under a collective rubric seems unwarranted. In this connection I note that a search through the law review literature in Lexis using terms like "collective rights" and "women" or "woman," indicates that in legal scholarship women's rights are not conceived of in collective terms. Of course, this does not preclude the kind of situation, discussed below, where women may be members of groups that are seeking collective rights and, as members of such collectives, such women may derive benefit from enhanced protections for the rights and interests of these groups.

The suggestion is offered that we might better protect women not by targeting individual women but by pro-actively seeking to protect women as women, or as members of other "collective groups," i.e., as mothers, wives, etc. Leaving aside the question of whether wives and mothers are appropriately designated collectives for purposes of articulating rights, I wonder what the basis is for assuming that we need to think of women as "collective groups" in order to better protect their rights. In international law as it now stands, we find extensive protections for women's rights, many provisions demanding pro-active measures for protecting women as women. Indeed, so extensive are the provisions for women's rights in international law that I can only list a tiny fraction here to illustrate the types of protections that they offer. For example, we have pro-active measures in CEDAW generally and in particular in Article 3, calling for states to take all appropriate measures to ensure the advancement of women and Article 4, calling for temporary special measures aimed at accelerating de facto equality between men and women. CEDAW calls on states in Article 11.2.c. to encourage "the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities...in particular through promoting the establishment and development of a network of child-care facilities." Surely, this is pro-active. Moreover, various CEDAW provisions, as well as provisions in other human rights documents, deal with women's rights as wives and mothers. CEDAW calls on states in Article 16.b to ensure women and men have "the same right freely to choose a spouse and to enter into marriage only with their free and full consent," in Article 16.c to ensure men and women have "the same rights and responsibilities during marriage and at its dissolution," and in Article 16.d to ensure that they have "the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children." In 1998 the CEDAW Committee proposed that "action be taken against employers who discriminate against women one the grounds of pregnancy," asserting that "the women concerned should be supported, and society sent a clear signal that such discrimination is not be tolerated." How could such an initiative be dismissed as failing to amount to a pro-active measure to protect women as women and women as mothers? The 1994 International Conference on Population and Development in Cairo, Egypt, dealt with reproductive health, a crucial issue for wives and mothers, defining it as "a state of complete physical, mental and social well-being...in all matters relating to the reproductive system and to its functions and processes." According to the final consensus document, women and men have the right to "appropriate health-care services that will enable women to go safely through pregnancy and childbirth and to provide couples with the best chances of having a healthy infant." In its General Comment No. 14 on the right to health, the ICESCR Committee stated that the obligation to provide for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child can be understood broadly to require measures to "improve...sexual and reproductive health services, including access to family planning [and] pre- and post-natal care." A large number of other relevant provisions could be cited to confirm that, far from neglecting the rights issues raised by women's roles as wives and mothers, these rights have been addressed in elaborate detail by those enunciating principles of international human rights law, often using pro-active measures. I know of no collective rights scheme that offers women equivalent protections. On the contrary, our historical experience to date suggests that

collective approaches to rights require women to sacrifice rights to which they are entitled under international law.

The question of the efficaciousness of remedies for rights violations was also raised in the symposium materials. Of course, the implementation of international human rights law is far from complete where women are concerned, but it is hard so see why resistance to expanded rights and freedoms for women should be attributed to defects in international law rather than the entrenched interests that have stymied the implementation of human rights standards more generally. After all, it is not merely in the area of women's human rights where the record shows the world falling far short of achieving the ideals set forth in international human rights instruments; we face a more general failure to protect human rights effectively, including human rights long established in areas where principles amounting to jus cogens are involved – such as the bans on torture, genocide, and slavery that have long been unequivocally stated in international law. The terrible plights of many indigenous peoples claiming collective rights and the persecutions and murders of those seeking recognition of their right to form labor unions and bargain collectively suggests that resorting to a collective approach to human rights will not necessarily afford better ways of ensuring that rights are respected in practice.

Questions provoked by the original symposium materials include: Is an implicit assumption being made that Muslims constitute a collective and that Muslim women's rights could be enhanced by a collective approach that would incorporate Islamic law and culture? Some hints of this idea surface in the agenda and in the selection of attendees from academics who work on Islam and/or on women's rights in Muslim countries. But, Muslim women are not a collective. Muslims comprise perhaps a billion two hundred million people. A group this size will not function as a collective, and even if we focus on the half of the Muslim world that is female, the diversity is too great to warrant using a collective approach in examining their rights situations! In searching through the law review literature in Lexis in an effort to see whether I could trace the idea that Muslims should be treated as a collective for rights purposes, I did not find any sources that espoused such an approach. However, I did locate one naïve and misinformed article that adopted the view that Muslims were bound by "communitarian" values.[1] This article resorted to egregious stereotyping. Muslims were assumed to be all exactly alike and to

[1] See Kimberly Younce Schooley, Cultural Sovereignty, Islam and Human Rights – Toward a Communitarian Revision, 25 Cumberland Law Review 651 (1994). The author opines that "the Islamic `individual' does not possess the characteristics of autonomy and isolation that the western `individual' possesses. Instead the Muslim exists only as a part of his or her family and the community that surrounds him or her." Id. at 712. Naturally, I reject this characterization. I have tried for years to counter the Western tendency to downplay the diversity and complexity in the Muslim world, a tendency that leads to treating Islam and its adherents as one monolith determined by a particular religious ethos and discounting the lively debates raging within the Muslim community about issues such as human rights. See, e.g. Ann Elizabeth Mayer, Universal versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct? 15 Michigan Journal of International Law 307 (1994).

share an identical repertory of Islamic beliefs and values – so that differences of class, ethnicity, education, gender, age, marital status, political orientation, etc. did not need to be taken into account. The author pressed the notion that rights were foreign to Islam and that the only viable approach to use on rights questions where Muslims were concerned was a "communitarian" one – which is perhaps in some regards analogous to a collective one. Fortunately, this article and the author's misguided conviction that Muslims march in lockstep so that they can all be subsumed under one Islamic totality seem to have been consigned to oblivion. Thus, for me, the provenance of any potential argument that Muslim women's rights are best approached as if Muslim women amounted to a collective remains a mystery.

We are also instructed in the symposium materials that "much of this debate" – and here it is unclear to me precisely *which* debate is meant – "hinges on the cultural and religious practices of respective areas of the world." We are told that: "This source of ambiguity has been the cause of great concern for many states, vis-à-vis their participation in the international legal regime." The meanings of these statements remain opaque. What "source of ambiguity" is meant and how would it relate to cultural and religious practices? Is this ambiguity somehow being related to the proposal to consider a collective approach to women's rights? With reference to the discussion of collective rights, are we meant to assume that a collective approach would be potentially helpful for eliminating some ambiguities? If so, how would this work? Or, is the intended implication that international human rights law fails to deal – or to deal adequately -- with the cultural and religious practices that it must necessarily confront in the real world, creating ambiguity? Or, is the purport that the problems that states have had in conforming to international human rights law actually derive from religious and cultural factors – as opposed to resulting from the unwillingness of ruling elites to respect human rights? What exactly is "the great concern for many states" that is referred to? Should we take this to imply that when the absolute monarchy that rules Saudi Arabia asserts that Islam bars acceptance of women's international human rights, these objections are dictated by the Saudi monarchy's "great concern" for cultural and religious practices – as opposed to being dictated by the political character of this particular regime and its calculations of its members' interests? Would another implication be that states are entitled to speak on behalf of religion and culture? Are we meant to gloss over the significance of the fact that, when governments of Muslim states invoke "culture" as an obstacle to endorsing women's human rights, they overwhelmingly represent the voices of men and the power elite, not a genuine cultural consensus? Are we to overlook the excluded voices of the Muslim women who may be affected thereby? [2] These and many

[2] I have analyzed Muslim countries' reservations to CEDAW in various publications. See Ann Elizabeth Mayer, Religious Reservations to CEDAW: What Do They Really Mean?, in Religious Fundamentalisms and the Human Rights of Women, Courtney W. Howland, ed. 105 (1999); Islamic Reservations to Human Rights Conventions: A Critical Assessment, 15 RIMO. Recht van de Islam: Human Rights and Islam 25 (1998); Rhetorical Strategies and Official Policies on Women's Rights: The Merits and Drawbacks of the New World Hypocrisy, in Faith and Freedom: Women's Human Rights in the Muslim

other questions were provoked when I read the program agenda. I shall be interested to learn more about the thinking behind the questions that have been prompted by a reading the symposium materials so that I can grasp the connections in which the points have been raised.

Of course, governments of Muslim states have often spoken as if they were representing an Islamic consensus that stood in the way of accepting women's international human rights. In reality, on the question of what Islam means for women's rights, there is nothing like a common cultural position with which Muslims, whether women or men, presently identify. One finds profound theological and jurisprudential cleavages and encounters competing Islamic factions with irreconcilable views, all claiming to have impeccable Islamic authority. Furious battles rage on the subject of women's rights even in tiny countries like Kuwait, and when one considers the enormous range of opinions on what rights women are afforded in Islam in large countries like Egypt, Iran, and Pakistan, one recognizes that it is impossible to isolate any Muslim consensus on rights principles governing women as women or women as wives and mothers. Indeed, these are among the most bitterly contested issues that Muslims who are concerned with how their faith applies to contemporary human rights issues are currently wrestling with. Like other human beings, Muslims' perceptions of how Islam pertains to rights often reflect their diverging interests. Some Muslims may have vested interests in upholding patriarchal norms, whereas the interests of other Muslims may benefit from feminist readings of the Islamic sources. The views of an Egyptian woman gynecologist on the merits of liberalizing women's access to divorce may have no overlap with those of a conservative, traditionally educated Saudi faqih; the opinions about what rules on child custody should stipulate on the part of an illiterate, childless Yemeni woman coping whose husband has children by his other wives may have little in common with those of a divorced Tunisian school teacher who has two children; the views of Algerian women's rights activists on the merits of international human rights law may be irreconcilable with those of the hardliners who are fiercely resisting Iranian President Khatami's reforms; the views of Islamic feminists may clash sharply with the views of Muslims who believe that feminist ideas are inherently Western and secular; the views of a poor Pakistani Shi`i woman whose family has long lived in Karachi regarding rules on inheritance may differ radically from those of a wealthy Pakistani Sunni man living in the Pashtun area by the Afghan border; the views of a woman minister in the new Afghan government on women's rights and their role in public life may be directly at odds with those members of the Taliban faction whose educations were shaped by Deobandi influences; the views on marriage of a Kurdish adolescent living in Scandinavia with her immigrant family who is being forced against her will to wed an obnoxious cousin may be radically at odds with those of her parents, who are convinced that such unions are clan alliances to be determined by family interests; and the views of a Turkish woman who wants to wear a headscarf as a sign of piety may have nothing in common with those of an Iranian woman who deeply resents having official rules of Islamic dress forcibly imposed on her, etc., etc. Given the enormous disparities in Muslims' points of view, referring to "Islam" on questions of women's rights, far from revealing one common approach, merely exposes

---

World, Mahnaz Afkhami, ed.104 (1995).

the rifts separating the views of different groups of Muslims and reveals sharply clashing interpretations of the Islamic sources. One will be augmenting the usual patterns of conflicts about women's rights by insisting on reference to relevant Islamic theological and jurisprudential dimensions.

The lack of a common Muslim position regarding Islam's rules affecting women and Muslims' widely diverging interests in how the debates over women's rights will be resolved precludes Muslims' common allegiance to Islam from qualifying them as a collective. As a search in the law review literature on Lexis can confirm, when scholars of human rights concern themselves with collective rights, these turn out to be the rights of discrete groups to protect their *common* interests and identities. Unless the *common* interests and identity of its members are substantial, treating any group as a "collective" will confuse the analysis of any pertinent rights issues.

Where women fall within rubrics of collectives that could claim rights as collectives, women may benefit from a collective approach to rights, but that is different from saying that they benefit as women. In saying this, I am not denigrating the importance that collective rights could have for women. Membership in a group may provide women with many things of great value -- such as dignity, sense of belonging and self worth, a belief system that infuses their life with meaning and purpose, and the rewards of sharing in a cultural tradition. The quintessential model of a group seeking to protect its collective rights is that of an indigenous people. One could note how women figure among the activists on behalf of indigenous peoples like the Wayeyi in Botswana, who are claiming formal recognition as a tribe and also demanding that their dying language be taught in schools. As part of these claims on behalf of their group, a group that constitutes a meaningful collective, Wayeyi women have fought to preserve their tribal identity and language, wanting equality as a people.[3] This area, the assertion of the rights of indigenous peoples, is one where a collective approach to human rights is appropriate. The claims here are not rights that that an individual speaker of the language or an individual concerned with preserving Wayeyi identity could effectively assert all by herself. There may be many analogous situations where asserting collective rights could incidentally help women -- not advancing their rights as women, but helping them as members of a group who simply happen to be women. Since, unlike the Wayeyi in this example, Muslim women do not identify with any uniform Islamic identity, I cannot fathom what benefit would be gained by shifting to a collective approach to assign them rights.

A further reason why I find it peculiar to raise the possibility that a collective approach could better advance the rights of women than using the rights set forth in international law is that I cannot think of *any* group that one would characterize as seeking collective rights that has dedicated itself to enhancing women's rights or that has succeeded in offering women a level of rights equal to that afforded women under international law, much less affording them rights superior to those that women enjoy under international

---

[3] See Okavango Delta Journal; A Sleepy River's People Fight to Keep Old Ways, The New York Times, December 29, 2001, A4.

law. (Here, of course, I am eliminating from consideration local political groups agitating for women's rights that sometimes loosely style themselves as women's "collectives;" their collaboration in pursuit of common political objectives does not mean that they do not consider the rights involved the rights of individual women.) Is there somewhere in the historical record an instance of a collective approach to rights that focused specifically on improving women's rights, conceiving these as collective rights? I would be interested to examine such a case, but no case comes to mind.

On the contrary, where one sees historical examples of groups that have utilized collective approaches to human rights, it turns out that these are often directly at odds with advancing women's rights. This has been the case, for example, in Canada, which seeks both to respect the individual rights that are set forth in Canada's Charter of Human Rights and the rights of minorities and indigenous peoples. The latter naturally have an interest in defending their collective rights. In accordance with international human rights principles on indigenous peoples, which affirm their right to thrive as distinct political and cultural communities, Canada recognizes their right to self-government, their control of lands and resources, and their human rights, as well as the freedom to develop their identities and cultures without having to assimilate. However, there is tension between the collective rights asserted by Canada's indigenous nations and women belonging to these same nations, who have often clashed with the male-dominated governments of their own communities. In order to protect the rights of women, the Native Women's Association of Canada has insisted that Canada's Charter *must* apply to indigenous communities and their governments. This is viewed as essential to ensure that the collective rights of the indigenous nations under governments dominated by men do not infringe the individual rights of women within the community. That is, in Canada, where women's rights and collective rights are *both* recognized, collective rights are seen as potentially negating women's rights, not furthering them.

Perhaps in some ideal world, collective rights and women's individual human rights would be in harmony. However, because they have proved to be in conflict, countries that are solicitous of rights give women a choice of either according priority to their own rights as women or to the values of the collective to which they want to belong. Now, some women belonging to collectives may have as their own personal priorities the advancement of the interests of their entire group, not their own individual rights. Women who do not want the individual rights provided in international human rights documents like CEDAW do not need to assert them. We see that in Western societies many women who could claim extensive rights do decide to place greater store by community solidarity or respecting the mores of a conservative religious community. Where this is the case, they are free to decide to opt out of the rights theoretically available to them and to elect instead to cede many of their own rights and freedoms as the price of membership in a group that calls for women's submission and women's acquiescence in a hierarchy in which women are controlled by men. But, as countries like Canada have recognized, rights protective of the individual woman need to be there for those women who decide that they do *not* want to sacrifice their rights and freedoms in the interests of any collective.

How women see their relationship to the collective and whether or not they decide to challenge the role to which their culture or community assigns them can depend on a variety of factors, and religious and cultural allegiances will only figure as part of this equation. To take an illustration from the Middle East and North African areas that I work on, a woman living there who feels oppressed by the local version of Islamic law – and what is understood to be Islamic law varies greatly from place to place -- may not believe that she has the ability to challenge her oppression, even while regretting that she fares poorly under the status quo. Such a woman might, for example, resent being subjugated to the will of a hostile and abusive husband, sensing that local rules allowing her husband to abuse her and to discard her at will but making it very hard for her to establish grounds for divorce put her at a grave disadvantage. However, if she is from a conservative family or lives in a community where women are expected to suffer abuse in meek silence, she may fear that voicing her opinions and openly criticizing the rules of family law will anger people whom she is destined to live with and lead to bad consequences for her. Besides, even were she to obtain a divorce, she might realize that she would not have realistic prospects of supporting herself. Perhaps she is ill-qualified to find gainful employment – especially if she is in an economy where the unemployment rate is already high, as it is in so many countries in the Middle East and North Africa. Estimating that her chances of surviving as an individual estranged from her family will be dismal, she may resign herself to her situation and appear to acquiesce in the local version of Islamic family law, behavior that might be interpreted by observers as betokening her acceptance of community/collective standards for rights that place women at a disadvantage. But such a reading would be superficial, because such seeming acquiescence may merely be no more than a byproduct of a woman's lack of options in restrictive socio-economic circumstances.

How immigration can affect Muslim women's perspectives regarding whether or not they want to adhere to rules associated with the religio-cultural tradition of their home countries is assessed in the detailed studies that the eminent Belgian legal scholar Marie-Claire Foblets has conducted.[4] Foblets meticulously documents and analyzes family disputes involving immigrants from the Maghrib living in Belgium, most of whom are Moroccan Muslims. Transformed by virtue of their departure from the Maghrib into members of minority communities distinguishable from the Belgian majority in terms of their language, ethnicity, and religion, Moroccan immigrants may develop a heightened sense of their collective identity. They may in many respects take on the characteristics of a collective. As members of a minority community with features that sharply distinguish it from the majority community, they may feel that they share common interests and a common identity, much as Canada's indigenous peoples do. Nonetheless, when family disputes arise, this does not stop Moroccan women in Belgium from daring to break with the rules prevalent in the Moroccan community and claiming the far more generous rights protections that women are accorded under Belgian law, which

[4] See Marie-Claire Foblets, Les familles maghrebines et la justice en Belgique. Anthropologie juridique et immigration, Paris: Editions Karthala, 1994.

incorporates the human rights principles of the European Union.[5] As Foblets shows, once they have moved to Belgium and when there is a dispute about whether Moroccan or Belgian law applies to a marital dispute, Moroccan men and Moroccan women frequently split in terms of their allegiances. The men want their cases to be governed by the Moroccan version of Islamic law, which in this context provides something akin to a collective standard affecting women's rights. Moroccan law is far more advantageous for men than Belgian law is. Not surprisingly, the Moroccan women want their cases to be governed by Belgian law. Belgian law offers women human rights protections as individuals, and it enormously strengthens their positions in family disputes. Moroccan women living in Belgium often effectively opt out of the collective, choosing to take advantage of the superior rights that Belgian law affords women, at the same time that the men in their lives insist that they should respect the Islamic standards that are in force in Moroccan law. That is, where the choice is between asserting their right to pursue their own interests as individuals and subordinating their interests to the values of the Moroccan Muslim minority, Moroccan women with an enhanced range of choices may opt to pursue the former goal.

One notes that Moroccan women immigrants in Belgium are situated in a dramatically different position from their sisters in Morocco. They live in a country with an elaborate social welfare system and where the economy gives them a much better chance of being self-supporting if they break with their families and communities. They have the chance to opt out of the Moroccan immigrant community and to find their own niche in the larger European society. If asserting their rights as individuals provokes condemnation on the part of the local Moroccan community or among relatives back in Morocco, this need not have the devastating impact on their lives or their social position that it would if they were still ensconced in places like Tangier, Ouarzazate, or Safi. They have options for survival and for supporting themselves as individuals that their sisters rarely have in Morocco. They may still identify themselves as Moroccan Muslims and may retain a strong Islamic faith, but in terms of women's rights, they may reject the authority of discriminatory rules that many of their coreligionists tell them that their religion requires them to defer to.

Now, one might point out that there are many Moroccan women who immigrate to Europe who, once in a system where they potentially enjoy expanded freedoms, do not try to take advantage of the protections for women's rights that are potentially available under European law. They may value communal solidarity over individual rights and prefer to adhere to the values supporting a collective identity. But, women's human rights are not devised for women who do not want to question the status quo into which they were born or for those who cheerfully accept a subordinate status. Human rights have no utility for women who embrace the inequalities, constraints, and lack of freedoms that are maintained by the systems under which they live. Human rights are

[5] Of course, rules of private international law may or may not decide that a given dispute involving a Moroccan family living in Belgium should be governed by Belgian law. Which law is controlling in marital disputes involving Moroccan immigrants depends on the facts of the particular case and the issues involved.

designed to validate the claims of women who do not want to be discriminated against or oppressed or denied freedoms, finding such treatment incompatible with their dignity as human beings. And, notably, these human rights for individual women are appreciated by many women who come from backgrounds that have helped them understand both the benefits and drawbacks of having their lives defined in terms of a collective identity and culture. For this reason, ensuring that women have access to the rights that are afforded by international human rights law remains crucial.

Of course, we have evidence that that not all Moroccan women support the idea of women enjoying rights beyond those currently afforded them under the Moroccan national version of Islamic law. Currently Moroccans are debating proposed reforms in Moroccan personal status law, reform proposals that provoked a massive protest demonstration by Islamists in March 2000. Many women participated in these protests. The reforms, which copy reforms already adopted in the more progressive legal systems in the Middle East and North Africa, would raise the minimum age for marriage to 18 for women (instead of the current 15), outlaw polygamy in all but exceptional cases, permit divorced women to keep custody of their children after remarriage, and give women equal rights to divorce and equal claims to assets acquired during marriage. However, to Moroccan conservatives, these reforms are antithetical to Islamic principles.

Nadia Yassine, the daughter of the influential Moroccan Islamist leader Sheikh Abdesslame Yassine, was in the forefront of those opposing the proposed reforms. She denounced "Westernized elites" for trying to destroy the Muslim world and its culture via these proposed reforms to enhance women's rights. Although she presented herself as believing that women should evolve, she protested: "We can't accept a plan simply because Westernized women with a Western mentality proposed it."[6] That is, Nadia Yassine spoke as if it were a given that all *true* Moroccan women – as opposed to the ones infected by Western attitudes – shared the same allergy to ideas of enhanced protections for women's rights, ideas that she associated with an alien Western mentality. The ability of Islamists to mobilize such a large public demonstration against the reform proposals proved that there was considerable popular support for her position. Of course, as Foblets' studies demonstrate, among the Moroccan women demonstrating were doubtless many who, if and when they succeeded in migrating to European countries like Belgium, would not only demand the rights that were promised in the proposed Moroccan reforms but other rights, as well.

One needs to consider the logic of Nadia Yassine's complaint, which assumed a collective cultural identity on the part of Moroccan Muslim women that would make them all think alike and reject proposals to shore up women's rights in Moroccan personal status law. In actuality, the intensity of her opposition betrayed her underlying awareness that Moroccan women did not all share her ideology. After all, if these reforms were enacted into law, they would *only* disrupt existing patterns of women's subjugation if Moroccan Muslim women actually wanted to vindicate the rights that they

---

[6] See the discussion in Susan Sachs, Where Muslim Traditions Meet Modernity, The New York Times, December 17, 2001, B1.

would be given under the changed laws. If Moroccan women had no interest in vindicating the rights the reforms would give them, the reforms would remain a dead letter and would be of no importance. Obviously, the reason that Nadia Yassine is so determined to ensure that the proposed reforms be blocked is precisely because she appreciates that, if they went into effect, many of Morocco's restive women would be going to court and claiming expanded rights. That is, they would not accept the Islamists' arguments that their culture and religion barred them from taking advantage of the reformed laws.

The presumption that Moroccan women would seek to profit from the reformed laws is entirely reasonable, given Egypt's recent experience with divorce law reforms. These reforms, which went into effect on March 1, 2000, over the vociferous objections of conservatives who claimed that the reforms violated Islamic law and infringed the sanctity of the Muslim family, greatly facilitated women's access to divorce. After the reforms, the courts were flooded with Egyptian Muslim women determined to end their marriages -- even though they exposed themselves to being denounced as impious or Westernized for demanding divorces over their husbands' objections. Not surprisingly, Egyptian Muslim women did not see religious merit in arguments that they had to defer to rules that kept them locked in unhappy marriages when their husbands could divorce them at will.

Of course, one can predict that Nadia Yassine, if faced with a similar phenomenon in Morocco were such reforms to go into effect, would likely dismiss its significance in the same way that Iran's hardliners dismiss the significance of Iranian women's demands for enhanced rights. According to Iran's hardliners, the views of women who do not adhere to their construct of how Muslim women are meant to behave can be discounted as being the products of corrupting Western influences. They, like NadiaYassine, think of Muslim women's rights in collective terms, referring to an imaginary model of complete community solidarity on women's rights issues. They can deny the obvious differences in Muslims' actual views on women's rights by arrogating unto themselves the prerogative of defining who is Muslim – with the result that all dissent from their views can be ignored, dissenters being deemed un-Islamic if not anti-Islamic.

As we see in these examples, placing Muslim women's rights within a collective framework winds up being an easy way to rationalize denying Muslim women the rights to which they are entitled under international human rights law. It also affords a means for delegitimizing the ideas of women within the supposed collective who challenge rules restricting their rights and freedoms. In the light of the real-world examples that confront us, I cannot envisage how resorting to a collective paradigm can be seriously proposed as a means of pro-actively seeking to protect women's rights in general or Muslim women's rights in particular. Instead, I remain convinced that international human rights law has the greater potential for advancing women's rights.