

CEDAW AS A TOOL FOR PROMOTING SUBSTANTIVE GENDER EQUALITY

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The United Nations Charter, the Universal Declaration of Human Rights, and many of the conventions adopted by UN Member States since its founding have endorsed and sought to further define the universality, the inalienability and the indivisibility of the rights of every human being. The necessity of adopting a separate convention on women's rights, the Convention on the Elimination of All Forms of Discrimination against Women, was and is testimony to the reality that, despite much progress, women are both not able to enjoy all their rights on an equal basis with men and experience many forms of discrimination. The CEDAW Convention is a roadmap for countries for the creation of what is termed substantive equality- not just equality in law and policy, but equality in all matters public and private so that every woman and girl has opportunity to enjoy their rights.

It is critical in the beginning, however, to think of the Convention, as all the promises, principles, legal instruments and agreements of the United Nations, as part of the collective aspirations of nations to achieve a more equitable and just world. As example, in 1945 when the UN Charter was signed, more than half of the ratifying countries did not allow women to vote in the same way as men.

As early as 1972 it became clear to the United Nations , as it long been to women's rights advocates, that existing conventions addressing various aspects of women's rights were not adequate to overcome persistent discrimination against women. A recommendation for a new convention that was not only legally binding, but included effective procedures for implementation was put forward, adopted in 1979 and open for ratification in 1980.

The Convention is the second fastest treaty to attain the required number of signatory countries to enter into force, which it did in 1981. It is, however, the UN human rights treaty with the highest number of reservations. A country can ratify a convention meaning they agree with the object and purpose of the convention, but, at the same time, register reservations. Reservations can be broadly worded, which are difficult to interpret, or they can specific articles of the convention meaning they will not be legally bound regarding implementation of specifically designated article(s).

Hannah Beate Schopp-Schilling, a member of the CEDAW Committee for almost twenty years, in her recent excellent book on the history of the CEDAW Committee, *The Circle of Empowerment*, describes the complete range of timing regarding States Parties ratification of the Convention

- countries that ratified immediately without reservations because in their minds equality for women had been fully achieved in their country (even if this has proved, alas, not to be true)
- countries that changed some or all existing discriminatory legislation so they would be in compliance before ratifying
- countries that ratified but registered reservations, specific or general, because their legal system was not in compliance with CEDAW treaty obligations. Changes in law or political climate in some of these countries have allowed them to remove or modify reservations
- countries that are unlikely to remove their reservations because of religious factors that shape their legal and social systems
- countries who became States Parties without reservations despite widespread discrimination and inequality in legal systems and practice

Perhaps the greatest weakness of the Convention is that most reservations are to Article 2- a country's obligation to pursue **without delay** policies to end **all** discrimination against women- and to Article 16- a country's obligation to end discrimination in marriage and family relations. Since two of the commitments that make the CEDAW Convention a landmark for women's rights are the insistence on women's equal rights in the private sphere of the family and the concrete measures outlined as obligations of the State to end both public and private discrimination against women and girls, many experts, including the CEDAW Committee itself, consider reservations to these Articles as incompatible with the purpose of the Convention.

CEDAW has, in fact, adopted two general recommendations on reservations has called upon States to re-examine their reservations with a view to withdrawing them or modifying them to be more fully in compliance with the Convention. Some countries have done so and have used the Convention to change their Constitutions and laws, judicial rulings, and policies which has reduced gender stereotyping and promoted equality between men and women.

Even when States have issued reservations to the Convention, **becoming** a party to it allows CEDAW, which is, by the way, the short-hand for the Committee, not the Convention, to examine its implementation of other commitments made as treaty signatories.

Under the Convention, a treaty monitoring body was established to review the reports of States Parties. The CEDAW Committee consists of 23 experts from diverse backgrounds who are nominated by their governments for a four year term. Having a membership from various regions of the world, representing a cross-section of religious and cultural traditions is very important to countering the sometimes floated criticism that the CEDAW Convention has a "Western" mentality. Experts also bring a wide-range of expertise- legal, governmental, NGO- to the work of the Committee which aids in looking at issues from many perspectives. Candidates must be from

states that have ratified the Convention. Each serves in a personal capacity and most have been women. My personal experience is that these are some of the sharpest and most dedicated individuals at the UN.

CEDAW treaty parties are required to report to the Committee on implementation one year after ratification and then every four years. The Committee has developed guidelines for states in submitting their reports. The initial report is asked to document in detail the status of women for each aspect of the Convention's scope delineating restrictions in law, practice or tradition that could inhibit implementation; providing data and statistics on women; describing any existing national machineries for women and their functioning; and outlining the situation of NGOs-their participation in writing the report and their activities in implementing the Convention. It is meant to be used to measure progress when subsequent reports are submitted. The Committee provides Concluding Comments for each State Party report focusing on issues to be particular issues of concern, suggestions and recommendations to advance implementation of CEDAW commitments.

In subsequent periodic reports State Parties are requested to chronicle progress made since the previous report, particularly in the areas mentioned in the Concluding Comments. They are also requested to outline measures to implement outcomes of UN conferences, such as the Fourth World Conference on Women, which adopted the Beijing Declaration and Platform for Action; reviews, such as Beijing+5 Political Declaration and Outcome Document; and summits, such as the 2000 Millennium Summit which spawned the Millennium Development Goals, as well as other meetings where important issues for women's rights are discussed (2nd World Assembly on Ageing).

Since 1990, a pre-session working group of five Committee experts has reviewed subsequent periodic reports and prepared a document outlining further information, issues and questions that States Parties should be prepared to address in their oral presentation to the CEDAW Committee. The State Party, in turn, prepares a document of responses. All documentation received is available from the Office of the UN High Commissioner on Human Rights in Geneva, which services the CEDAW Committee since January 2008. Prior to that time, the Committee was serviced by the Division for the Advancement of Women in New York.

State Party presentations at CEDAW sessions are handled as a constructive and thorough dialogue on factors and difficulties in implementing each aspect of their commitment to end gender discrimination and establish substantive equality for human rights in every aspect of women's lives. It is also an opportunity to describe new, successful initiatives. The objective is not to chastise any country but, rather, to discuss and suggest ways in which that country can move closer to fulfilling not only its treaty obligations but the overall intent of the Convention. The approach, nonetheless, is a clear one. Although there is a national context to the challenges faced by each individual country in implementing certain provisions of the Convention,

State Parties are 1.)Obligated to modify and abolish social attitudes and cultural patterns and practices that are based on the social inferiority or superiority of either sex including in the family 2.)Required to eliminate discrimination against women, not only by States, but by private individuals and other entities.

One of the, perhaps, lesser understood, or perhaps ignored in some cases, provisions of the Convention is the obligation of the State to end discrimination “without delay”. While it would be unrealistic to expect all institutions and long-held attitudes and behaviors to change overnight, lack of positive action, including repealing discriminatory laws can be contrasted with the adopting policies, institutional arrangements and programs that further gender equality as indications of political will that can promote cultural change in the long run.

In recognition that substantive changes can take time, the Convention, Article 4, encourages States Parties to adopt temporary special measures that may artificially increase women’s representation and participation in certain areas where the natural evolution of processes might require a great deal more time to come to fruition. Mandating that a certain number of seats or percentage of places be reserved for women in national or local governments, an example of temporary special measures, has been used very effectively in various countries to immediately increase the role and influence of women in decision-making. Care must be taken, however, that these “quotas” do not become a rigid standard that actually limits that growth of women’s participation.

It is, however, up to the State to select their means within the context of all appropriate measures to accomplish these commitments. In this regard, the lack of women’s participation in the design and implementation and evaluation of programs and policies can often be noted. Apparently gender-neutral criteria can also be discriminatory in effect because it is based on male lifestyles and does not take into account women’s life experiences. The Committee is particularly adept at bringing forth such subtleties.

UN agencies, programs and funds, including the United Nations Children’s Emergency Fund (UNICEF), the United Nations Development Program (UNDP), the United Nations Population Fund (UNFPA) United Nations Educational, Cultural and Scientific Organization (UNESCO) and the International Labour Organization (ILO), provide additional information and evaluations on countries reporting to the CEDAW Committee that give the Committee an even fuller picture of the status of women and girls as well as the State’s activities and overall progress.

The United Nations Development Fund for Women (UNIFEM) has a special sponsor-like relationship to the Convention. UNIFEM has especially focused on promoting the CEDAW Convention and has adopted a rights-based framework for its own work. This close connection with UNIFEM has added visibility and impact to the Convention with national NGOs. UNIFEM, together with International Women’s

Rights Action Watch Asia Pacific, holds training sessions for NGOs whose countries are reporting to the Committee in a program called “global to local”. These trainings consist of strengthening women’s rights advocates understanding of the Convention and how the Committee works as well as examining potential applications for NGO advocacy at the national level using the Convention. NGOs are encouraged and aided in the development of “shadow reports” that present information and perspectives that may differ from or add additional areas of concern to the official State report.

Whereas in the beginning NGOs were not a formal part of the CEDAW meetings, today the Committee holds a session in each week of its deliberations to listen to NGO comments on their government’s report and to hear from women what they believe are critical issues of human rights that need to be addressed. The opportunity for NGOs to attend and learn from the CEDAW sessions and expertise of the CEDAW Committee members is matched only by the often critical insights provided to the CEDAW Committee through the remarks of national NGOs and experts on the actual, on-the-ground conditions.

An important feature of the work of the CEDAW Committee over the years has been the attention given to using the underlying principles of the Convention to address issues of women’s human rights’ violations not specifically mentioned in the Convention. Violence against women is often called the “missing link” in the Convention. It is not even mentioned once, which surprises all of us now because it has center stage now, recognized as one of the most egregious human rights abuses. The total absence of all aspects of violence against women has been explained in many ways, but what makes most sense is that not only was the full extent of it not known, but many states did not want to acknowledge it or deal with it or, in the case of domestic violence, many thought of it as a private matter. Article 1 of the Convention refers to “all forms of discrimination” and adds “or any other field” to those not specifically mentioned. The CEDAW Committee decided that it had the authority under Article 21 (1) of the Convention, to “make suggestions and general recommendations based on the examination of reports and information received from States Parties” to include “new “forms or “fields” of discrimination such as violence against women in its mandate.

The Committee has issued to date 25 general recommendations which have greatly enhanced the scope of the treaty and the Committee’s ability to respond to emerging challenges on ensuring women’s rights. During the first several years that the Committee met the general recommendations issued were rather short and modest in scope. However, starting in 1991 the Committee began issuing general recommendations on specific provisions of the Convention and what the Committee described as “cross-cutting themes”. These often consist of more detailed and comprehensive general recommendations which offer States guidance on the application of the Convention in particular situations.

The process adopted by the Committee since 1997 for the formulation of general recommendations is:

1.) There is an open dialogue between the whole committee non-governmental organizations and others regarding the topic. UN agencies, NGOs and other interested entities are invited to submit background papers for this discussion 2.) A Committee member is then asked to draft the general recommendations, which is then discussed at the next session of the Committee in one of its working groups. 3.) At the following session a revised draft is adopted by the Committee.

General recommendations are considered “soft law”. They are not legally binding because they were not part of the Convention, but the CEDAW Committee expects “States Parties to accept them and implement them in good faith”.

Similarly, the Committee has expanded its questioning of States Parties to include various segments of the population whose human rights all too often are not given equal scrutiny. The CEDAW Committee is, for example, currently preparing a general recommendation on the rights of migrant women. In another instance, the NGO Committee on the Status of Women in New York, Sub-committee on Older Women, prepared briefing papers on older women for each of the twelve critical areas of concern from the Beijing Platform for Action and distributed them to the CEDAW Committee members. Their persistent advocacy has resulted in the Committee both issuing a statement on the rights of older women and also incorporating more questions about the status of older women into the consideration of States Parties’ reporting. The NGO Committee on UNICEF Working Group on Girls has just initiated an effort to expand the visibility of girls’ rights and their violation using the same model. Their hope is that the Committee will eventually issue a general recommendation on the rights of girls.

In December 2000, the CEDAW Committee added another critical tool to its instruments for promoting non-discrimination and equal rights for women when the Optional Protocol to the CEDAW Convention came into force. The Optional Protocol to CEDAW, the first gender specific international complaints procedure, is actually a treaty itself, which States Parties ratify if they wish to participate. The Optional Protocol to CEDAW has two parts: 1.)The Communications Procedure recognizes the competence of the CEDAW Committee to consider written petitions claiming rights violations from individual women or groups of women who have exhausted all national remedies of redress. The procedure is strictly confidential. Once the committee receives a communication, it conveys the substance of that complaint to the State Party in question for comments. It then goes through two processes. A) To determine if the communication is admissible under the Optional Protocol criteria. B) If admissible - the communication will be decided on its merits. In addition, the committee has established a Working Group on communications, a sub-group of 5 committee members, which has the power under the Convention to take interim measures “to avoid irreparable possible damage to the victims or victims of alleged

violations.” This sweeping power, which has only been used two times, can be taken any time after the receipt of the communication before the merit of the complaint has been reached. If the case is decided to have merit, recommendations are written and then is a non-binding follow up where the state party is requested to respond and present actions taken.

2.) The Inquiry Procedure enables the Committee to conduct inquiries into serious and systematic violations of women’s human rights in countries that have become States parties to the Optional Protocol. The opportunity for the Committee to initiate investigations, which may include visits within a country by Committee members to collect information, is an important advancement in the potential of the Committee to evaluate first-hand possible human rights’ abuses. States may opt out of the Inquiry Procedure, but no other reservations are permitted. To date, there are 92 States Parties to the Optional Protocol.

The right of petition is one of the commitments made as both the Vienna Conference on Human Rights and the Fourth World Conference on Women. Its intent is to act as incentive for governments to look at the means currently available to women and girls to ensure their rights and to have their grievances addressed at the national level and in a timely manner. It also has the potential of strengthening States understanding of their CEDAW obligations from application to individual circumstances. Further, it could be hoped that more States will implement CEDAW to avoid complaints being made against them. NGOs need to undertake the challenges of promoting ratification of the Optional Protocol as a means of expanding implementation of the Convention as well as spreading awareness of the Optional Protocol as a means for women and girls to ensure that their government responds to human rights issues they raise. As of 2006, only fourteen communications have been initiated and one inquiry has taken place. This may not seem a large number in 7 years, but given the requirement that all national remedies be exhausted, a process which could take some years, and that only 1/2 of the UN Member States have signed the OP, which has been an evolving process also, the full potential for these procedures has not been realized. NGO and human rights advocates must press for all Member States to sign the OP to extend its effectiveness as a tool to fulfill and protect women’s rights. The Committee sets aside time in each of its sessions to strategize about advancing the effectiveness of the Optional Protocol.

In closing and in summary, the Convention is a dynamic tool for advancing women’s human rights, the end to gender-based discrimination and the realization of gender equality. It is very much strengthened by the diligent work of the Committee over the past twenty-five plus years to apply universally the intent of the Convention—substantive equality for women and men in all aspects of public and private life to affect equal opportunity for every individual to participate and enjoy unfettered all aspects of living. The Committee has used its mandate to further define, refine, interpret and broaden the obligations of States Parties to the implementation of the Convention so that all discrimination and all violations of the rights of all women are

encompassed. Civil society, non-governmental organizations in particular, also has a critical role as citizens and advocates, as watchdogs and as active participants, in ensuring that their government fulfills all its promises to women and that women claim those rights. Coming full cycle then, from the beginning of this conversation, the inalienability, indivisibility and universality of women's human rights is implicit in the CEDAW Convention and must be the ultimate goal in its attainment.