

2 Thoughts on the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

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The story of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) comes out of many decades of women's activism and organising around issues such as the abolition of slavery, suffrage, trafficking, the peace movement and, in many countries of the Commonwealth, nationalism and struggles for independence. However, the move for the adoption of an international treaty dedicated to the elimination of all forms of discrimination against women – to achieve formal (legal) and de facto (real) substantive equality for women with men in all areas of life in recognition of their human rights and fundamental freedoms – was to build upon and strengthen the prohibition of discrimination (including on the basis of sex) contained in the UN Charters – the United Nations Declaration of Human Rights¹ and the 1966 International Covenants.²

Why does CEDAW matter?

I think CEDAW is a revolutionary document for women for reasons both at the time of drafting and in the way it has evolved.

At the time of its adoption, the Covenants did not define discrimination. CEDAW provides a definition of discrimination,³ which closely follows that of the Race Convention.⁴ The definition has been adopted by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights and is now widely accepted as the authoritative international law definition. It covers direct and indirect discrimination (intent and effect), equality of opportunity as well as formal equality, and disadvantageous discrimination that nullifies or impairs enjoyment by women of their human rights.

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1. See United Nations Doc. A/RES/217 (III).
 2. See International Covenant on Civil and Political Rights, available at <http://www2.ohchr.org/english/law/ccpr.htm> [last accessed 10 May 2010] and International Covenant on Economic, Social and Cultural Rights (ICESCR) <http://www2.ohchr.org/english/law/cescr.htm> [last accessed 10 May 2010].
 3. See Article 1, United Nations Doc. A/RES/34/180.
 4. See United Nations Doc. A/RES/2106 (XX).

Part I: Background

CEDAW requires positive action from states and provides a legal basis for temporary special measures, targeted steps to promote equality and to redress historic discrimination. It tackles the idea of cultural stereotyping and prejudice and requires states to take measures to modify social behaviours and the dominant ideology of patriarchy. This is a unique provision in human rights law, with an educative and social engineering function.

CEDAW also encompasses the totality of rights as it takes a comprehensive approach to non-discrimination. It identifies where women suffer from discrimination most and requires appropriate measures for its elimination in the public and the private (family) spheres, regarding civil and political rights and economic, social and cultural rights such as in the fields of education, health and employment. It has a free-standing 'equality before the law' clause. It also identifies the particular position of rural women – a clear link to issues of development.

CEDAW is now close to having universal membership. It was supplemented by the adoption of the Optional Protocol (OP) in 2000, which enhances the monitoring mechanisms by allowing for individual communication and a form of inquiry against structural discrimination. The Protocol also aligned CEDAW with the International Covenant on Civil and Political Rights (ICCPR), the Committee on the Elimination of Racial Discrimination (CERD) and the Convention Against Torture (CAT).

The adoption of the Protocol perhaps indicates the way in which CEDAW has grown in authority since its adoption. In the 1980s, it was called the 'Cinderella treaty', the poor relation in the body of UN human rights treaties, because of the vagueness of its language, its weak monitoring system (which was restricted to state reporting) and its association with the Commission on the Status of Women (CSW) rather than the Commission on Human Rights (CHR). However, some committed members of the CEDAW Committee worked to give effect to it as a living instrument, subject to dynamic and progressive interpretation through General Recommendations, Concluding Comments and jurisprudence under the Optional Protocol. This work, along with a commitment towards gender mainstreaming in the UN, has resulted in the Convention now having a greater authority and weight.

Let us turn to the way the Committee has developed both the Convention and its implementation. First, while the Convention itself does not refer to gender-based violence against women, the Committee clarified in 1992 that such violence is discriminatory of itself, and undermines women's enjoyment of all other rights. Accordingly, it is contrary to women's human rights and states' obligations apply to it. This analysis also assisted in the development of international criminal law where rape and sexual violence have become recognised as war crimes and crimes against humanity.

Second, the Committee has clarified states' obligations as both negative and positive. In particular the Committee has adopted the typology of layered obligation, requiring states to respect, protect and fulfil the obligations of the Convention.

Part I: Background

Third, the Convention is used as a tool for advocacy and lobbying – as demonstrated by women activists across the world. It provides the language of entitlement and a framework for empowerment. There are many examples where states have responded to constructive dialogue with the CEDAW Committee and have changed legislation or administrative practices – for example, with the adoption of domestic violence laws. It is not argued that the Committee's work is the only basis for change, but it offers 'an articulate voice in the form of concluding comments [that has] helped to promote political will and the campaign of gender advocates and women's groups who lobbied the state to initiate reform.'⁵ There are also examples where judges have applied and reinforced the principles of CEDAW (see chapter 12, summaries of case law).

Given the above, in my opinion, the Commonwealth's Victoria Falls Declaration of Principles for the Promotion of the Human Rights of Women, 1994 (see chapter 11) should be reaffirmed – perhaps reworked – to remind judges of states' obligations under international law and to create what might be called a 'travelling jurisprudence on women's rights that can fertilise domestic law in other jurisdictions'.⁶

Note

Nonetheless, CEDAW is only an effective tool for advocacy where the state has demonstrated the political will to comply with the Convention – a will that is discounted by reservations. This is why it is important that reservations be scrutinised and withdrawn, or at least narrowed and made more specific.

What CEDAW does is to provide a framework and a language which gives a basis for work between states and the Committee through dialogue, advice and examples of good practice to address obstacles and work towards full implementation. This is especially important today, when other challenges threaten to undermine its importance – for example, those of the adverse consequences of globalisation and extremist ideologies. The need to reassert and reaffirm the principles of CEDAW is ever more important for the lives of women throughout the world.

5. Savitri Goonesekere in Hanna Beate Schopp-Schilling and Cees Flinterman (eds.) *The Circle of Empowerment: Twenty-five Years of the UN Committee on the Elimination of Discrimination against Women*. New York: The Feminist Press at CUNY.

6. Ibid.

