

**CEDAW and Women's Human Rights:
Achievements and Obstacles**

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It is indeed my great pleasure to participate in the Annual Conference of the Castan Center for Human Rights Law, “Human Rights 2004: The Year in Review”, focusing especially on the theme of women’s rights in recognition of the 20th anniversary of the Sex Discrimination Act 1984.

As a feminist activist for 30 years and having participated in the process of legislating a similar law in my own country of Korea, ‘Gender Discrimination Prevention and Relief Act’ (1999), as well as three other legislations regarding sexual violence (1993), domestic violence (1997) and more recently on sex trade and trafficking (2004), I know very well that even beautifully crafted laws do not automatically solve problems or guarantee gender equality. Anti-discrimination legislations are only the necessary conditions for the protection of women from discrimination and achievement of gender equality.

It is even more so at the international level. Whether you are a firm believer in the system of international human rights laws or a skeptical person, you would all agree that CEDAW does not automatically guarantee non-discrimination and equality to women at the domestic level upon ratification.

However, you would also agree that CEDAW has gained much more visibility, respect and influence, especially over the recent years, thanks to the efforts of earlier members of the Committee and of the women’s movement around the world. As Andrew Byrnes has pointed out, the CEDAW Convention has been cited to courts and by courts of different countries in an increasing number of cases in recent years. Even the election of the members of the CEDAW Committee has been more competitive in

recent years.¹ As a person who has been on the CEDAW Committee for four years and will serve another four years until 2008, I would like to give you my assessment of the Convention and of the Committee in the protection and promotion of the human rights of women. This year 2004 marks the 25th anniversary of the Convention. Along with the 20th anniversary of Sex Discrimination Act in Australia, this is a proper occasion to reflect on how the Women's Convention has contributed in eliminating discrimination against women around the world, how the Committee has been working in fulfilling its mandate, and what the challenges ahead are.

The CEDAW Convention: Its Scope, Elements and Challenges

Since you are quite familiar with the Convention, it would not be necessary for me to explain about the nature or characteristics of the Convention. Instead I will just highlight some of the strengths and also the weaknesses the Convention brings with it.

No doubt, the CEDAW Convention is the most comprehensive international instrument to protect the human rights of women. As defined in article 1 of the Convention, discrimination means: *“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.”* (Article 1)

As defined above, the CEDAW Convention is intended to eliminate all forms of discrimination against women. And ‘women’ in this definition would include all

¹ In the 2000 election of the 11 members of the Committee, there were 18 candidates. In 2002, there were 23 candidates for 12 seats. In 2004, the States parties for again 11 seats nominated 25 candidates.

women--young/old, married/single, able/disabled, indigenous, immigrants, migrants, refugees, etc. When the Committee engages in the 'constructive dialogue' with the government delegation from the State party under consideration, questions from experts more increasingly include minority women. CEDAW also covers both *de jure* equality, equality of opportunity, and *de facto* equality, i.e. equality of result, which would cover both direct and indirect discrimination, covering all spheres of life, whether public or private, discrimination by any actors, whether state, enterprises or private individuals including intimate partners. The Convention also prescribes that discriminatory customs or traditions of gender role stereotyping should be eliminated.

Despite its comprehensiveness and potential usefulness, however, the CEDAW Convention has some serious obstacles. The first issue is the reservations, often times to the core articles such as articles 2 or 16, which are considered incompatible with the purpose and objectives of the Convention. The Committee always urges withdrawal of any reservations to the State party under consideration, but the problems of reservations are directly linked to discriminatory culture within the country. My experience on the Committee tells that the government delegation listens more attentively, when experts from a similar culture speak of the issue of reservations, giving examples of other countries with similar culture but without any reservations to the Conventions. Even in Islamic countries, there is a wide range of differences—some Islamic countries ratified CEDAW without any reservation at all. To remove the reservations, more social pressures need to be built from inside of the country.

Another obstacle is non-reporting or long over-due reports. In 2003, the CEDAW Committee had a meeting with the States parties whose reports to CEDAW were 5 years or more overdue, to find out causes of delayed reporting. The meeting was successful

not only with good attendance by many States parties but also the Committee actually received many long-awaited reports after the meeting. In addition to this, the Committee decided at its 31st session in July 2004 that it would consider the implementation of the Convention even in the absence of report, although as the last resort. This notice, hopefully, would work for the States parties with long over-due reports or no reporting at all to meet their obligation under the Convention.

The Work of the CEDAW Committee: Its Developments and Limitations

Under the Convention, the CEDAW Committee is mandated with two responsibilities. Consideration of the progress made in the implementation of the Convention by the States parties is prescribed as the main work of the Committee. The Committee may also make suggestions and general recommendations. Since its existence in 1981, the Committee has been continuously modified its method of work to fulfill its mandate.

In recent years, there have been some notable developments regarding the Concluding Comments issued by the Committee after the 'constructive dialogue' with the State party. The Concluding Comments increasingly contain a concern on the status of the Convention vis-à-vis domestic legislation. It is important to see whether ratification of CEDAW means that the State party would bring changes in the domestic legislation according to the principles and rights for gender equality and non-discrimination set forth in the Convention. One particular concern of the Committee regarding the European States parties to the Convention is that it seems to be the European Union, rather than CEDAW, which exerts a stronger influence upon the legal framework or policies and programs for gender equality..

Regarding the Constitution or domestic legislations, the first concern of the Committee is whether discrimination against women is clearly defined and prohibition is included in the legislation. Oftentimes, non-existence of a clear definition of discrimination against women and prohibition of it is a reflection of low level of understanding or commitment to the issue of gender equality within the country, together with an increased probability for discriminatory laws. Of course, the seemingly impeccable anti-discrimination laws enacted to guarantee gender equality and to provide protection for women do not mean that these laws are actually operating in the proper way. In fact, the mode of operation of the existing laws, policies or programs against gender discrimination at the national, regional and local community level and their effects are the interest of the Committee.

The discriminatory tradition and culture, which are often manifested in the form of gender role stereotyping, is the most difficult issue to tackle. The reports of the State party sometimes contain traditional systems or customs that are intended to be gender neutral but actually discriminatory to women. For example, an arbitration system found in the rural communities of some countries, which functions as an informal conflict resolution among villagers, often works against women who are victims of discrimination or abuse. Women under this kind of settlement system might be forced to reconcile rather than getting proper recognition or compensation for their rights. The work of the Committee, then, during the 'constructive dialogue' and in the concluding comments, is to point out the discriminatory aspects of the traditional customs and culture and to call on the State party to change them. Discriminatory tradition and custom seriously limit women's enjoyment of equal rights in employment or in public positions, which in turn has negative implications throughout the life cycle in terms of

pensions and other social benefits or rights.

In addition to the consideration of the States parties' reports, another mandate of the Committee, i.e. making suggestions and general recommendations, is also important. General recommendations are addressed to States parties, while suggestions are intended for bodies other than States parties.² General recommendations are issued to help the States parties in their implementation of the Convention, whether in terms of interpretation of the meaning of particular articles of the Convention or report writing.

The Committee issued so far 25 general recommendations. The general recommendations adopted in the initial years, starting from the first General Recommendation by the 5th session of the Committee in 1986 throughout General Recommendation No. 18 by the 10th session in 1991, are rather short. From 1992, however, the Committee began to issue general recommendations in a more comprehensive and sophisticated manner, such as No. 19 on violence against women (11th session, 1992), No. 21 on equality in marriage and family relations (13th session, 1994), No. 23 on Article 7 on political and public life (16th session, 1997), No. 24 on Article 12 on health (20th session, 1999), and most recently No. 25 on Article 4.1 on temporary special measures (30th session, 2004). The Committee is currently working on General Recommendation on Article 2 of the Convention, which is considered as one of the most central articles.

Suggestions are usually in the form of a statement or a letter. On the situation of women in Iraq, for example, the Committee, at its 29th session in July 2003, sent a letter to the then Special Representative of the Secretary-General for Iraq and UN High

² Rule 52 on Suggestions and general recommendations, Rules of procedure of the Committee on the Elimination of Discrimination against Women, Official Document Supplement No. 38 A/56/38.

Commissioner for Human Rights on the need to take into consideration the Convention in post-war Iraq, and at its 30th session in January 2004, the Committee issued a statement which called on the international community and all responsible authorities in Iraq to ensure full compliance with and implementation of all the provisions of the Convention in its attempts for legislative revisions.

With Optional Protocol now operating, the Committee has also responsibilities to carry out activities under the Optional Protocol to the Convention, i.e. to examine individual complaints or to conduct inquiries. The current cases under the Optional Protocol will be explained later in more detail.

As the Committee tries to fulfill all of its mandates in a very faithful manner, a real frustration and challenge is the serious limitation in the Committee's meeting time. The annual session of two weeks originally prescribed in the Convention was expanded in 1993 to two sessions a year, and then to three weeks each, but it is still far short of the two-thirds of the States parties required to officially amend article 20.1 of the Convention on Committee's meeting time. At the same time, with more ratification by the governments, the Committee is stuck with the backlog of reports, which accumulated as many as over 40. In 2002, the UN General Assembly granted the Committee an exceptional session, during which the Committee examined eleven States parties' reports, but the backlog soon returned.

In an informal seminar in Utrecht in May 2004, the Committee had an extensive discussion on its working method. The idea of working in two chambers, however, was not agreed within the Committee. Instead, the Committee decided to request an additional meeting time to the General Assembly, which did not produce any discussion so far.

How to improve the Committee's working method within the constraints of time and resources is a real challenge. The Committee of twenty-three experts now works with a time machine installed on the podium. Each expert is allowed to make only up to two interventions per a State party, maximum three minutes each, which is a source of big frustration for experts who have to read many reports from many sources but are given very little time to express their views. This propelled the Committee to come up with a new attempt. A country task force will be formed on an experimental basis--thus instead of every expert participate in the consideration of the report of a certain State party, only several pre-arranged experts are going to engage in the 'constructive dialogue'. This new mode of work has been tried only once in July 2004 session and will be tried again on a trial basis in January 2005 session. Until more meeting time is granted to the Committee, the 'success' of the Committee with increased ratifications and more reports will continue to be the source of its own failure in fulfilling its mandate.

Optional Protocol to CEDAW

The Optional Protocol, now with four years in its force, is surely a very necessary, long-awaited addition to the Convention. It provides two avenues in the protection of the women's rights set forth by the Convention, the individual complaint procedure and in case of grave or systematic violations, the inquiry procedure. The Optional Protocol is now becoming a real operating tool, although the number of cases submitted to the Committee is still small. The Committee has established a 5-member Working Group for Communications under the Optional Protocol, and the Working Group, in its meetings before the regular session of the Committee, discusses the individual

complaints and proposes draft decisions to the Committee.

So far, the Committee has received four individual complaints, one of which was put on the agenda of the 31st session of the Committee in July 2004. It was the case of Ms. B.-J. against Germany, in which she claimed to be a victim of violations by Germany of many articles of the CEDAW Convention. After extensive and heated discussions, the Committee decided that the communication was “inadmissible under article 4, paragraph 1, for the author’s failure to exhaust domestic remedies, and paragraph 2(e), because the disputed facts occurred prior to the entry into force of the Optional Protocol for the State party and did not continue after that date.”³ The 32nd session of the Committee in January next year will discuss other cases, which I expect are admissible cases and I am looking forward to their examination.

Regarding inquiry, the Committee has received three requests and conducted one inquiry, which was completed. It was into the case of abduction, rape and murder of hundreds of women in the Ciudad Juarez area of Chihuahua, Mexico. This inquiry procedure included an on-site visit in October 2003 by two members of the Committee, and produced a careful and comprehensive recommendation to the government of Mexico.⁴ The Committee still closely monitors the case.

Being effective for only four years now, it is still early to say how effective it would and could be. The inquiry on the Mexican case, however, has raised considerable

³ The decision of the Committee, declaring the communication inadmissible, was published as annex in the Report of the Committee to the General Assembly, A/59/38. The dissenting opinion of two members of the Committee was put as appendix to the decision.

⁴ Any case of individual complaint or inquiry is under the strict confidentiality rule while the case is under consideration. The inquiry on the Mexican case was completed and published in the report of the Committee to the 59th session of the UN General Assembly. United Nations, Report of the Committee on the Elimination of Discrimination against Women, A/59/38, pp. 161-164.

interests and response from the victims' family, women's NGOs, media and relevant authorities in Mexico. In particular, the government of Mexico was very cooperative, which set a good example for utilizing the inquiry procedure for the future. For individual woman's utilization of the Optional Protocol, it would still take some time, especially because of the requirement for exhaustion of domestic remedies. Active utilization of the Optional Protocol for women's rights is up to us, including awareness raising and publicity among women's groups and mobilization of enough pressure upon the government to ratify it, if not yet ratified, but also to actively use the individual complaint procedure.

Cooperation with the Women's NGOs

The heightened visibility and increased awareness around CEDAW as a tool to protect and promote the human rights of women are indeed the result of the continued efforts of women's NGOs. Nowadays, it is the rule, rather than the exception, that we have women's NGOs at the Committee meetings. Women's NGOs are actively intervening in the process of preparation of the government reports, prepare their own shadow reports and present their views at the sessions of the Committee. Much recognition and appreciation go to the groups like IWRAW (International Women's Rights Action Watch) and IWRAW-Asia Pacific, which were established to monitor the implementation of CEDAW. Women's NGOs are indeed critical to the Committee's work. Their presentations of the situation of women at the grassroots level in each country under consideration provide the valuable information, which is often lacking or insufficient in the government reports. The participation of NGOs in the Committee meetings increases state accountability and transparency in the reporting process, thus

enhancing the domestic implementation of the Convention.

Treaty Body Reform under Process

Another new development worth mentioning is the process of treaty body reform. In 2002, the Secretary-General, in his report entitled “Strengthening of the United Nations: an agenda for further change, proposed that the international human rights treaty bodies “should craft a more coordinated approach to their activities and standardize their varied reporting requirements,” and that “each State should be allowed to produce a single report summarizing its adherence to the full range of international human rights treaties to which it is a party”.⁵

Since then, extensive consultations have been undertaken by the Office of High Commissioner for Human Rights, including the brainstorming meeting in Malbun, Liechtenstein, followed by discussions by each treaty body as well as by the Inter-Committee Meetings (ICM) and Chairpersons’ Meetings of the treaty bodies. Although the necessity for reform was generally agreed, no treaty body accepted the idea of a ‘single’ report. At the second ICM in 2003, which I had the chance to represent the CEDAW Committee, it was decided that instead of a single report, a new streamlined report would be required, which would contain two parts: the Common Core Document (CCD) and the Treaty-Specific Document (TSD). Upon the request of the second ICM, the secretariat prepared a report and presented to the third ICM in June 2004, which is

⁵ UN, A/57/387, para. 52. An overview of the current reform efforts initiated by the Secretary-General regarding reporting under the seven core human rights treaties and of the development of the draft guidelines is contained in the Report by the Secretariat, Guidelines on an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties, HRI/MC/2004/3.

titled as “Guidelines on an expanded core document and treaty-specific targeted reports, and harmonized guidelines on reporting under the international human rights treaties.”⁶

To meet this challenge, the CEDAW Committee entrusted three members, including myself, to form a Working Group and to produce a position paper, which will then again be put on the table for discussion in the 32nd session in January 2005. The Working Group of the Committee submitted its opinion that the guidelines on coordination and streamlining in the CCD, by putting ‘congruent articles’ of the seven international human rights treaties together, have the danger that the specificity of discrimination faced by women would be lost. In the guidelines, women are treated just as one of several demographic groups, not recognizing the fact that women belong to every other demographic group and thereby neglecting the multiple discrimination women might face.

In this process of treaty body reform, the CEDAW Committee should satisfy dual objectives. On the one hand, it is necessary to mainstream the issues of women’s human rights into the main human rights discourse and into other treaty bodies. On the other hand, however, it is also needed to maintain the focus and emphasis on the peculiar experiences of women’s lives so that they are not lost. Ultimately, the goal of the reform should be to enhance the domestic implementation of the international human rights treaties at the national level.

How to make the international human rights treaties work at the domestic level would be the real challenge. Sporadic and preliminary discussions within the Committee were limited and referred to only the necessity to monitor the implementation by the State party of the Concluding Comments issued by the

⁶ HRI/MC/2004/3.

Committee. How to actually do it from the Committee's end would be a difficult task, given all the physical and financial constraints explained above. In protecting and promoting the human rights of women, the CEDAW Convention can be the most useful tool and the CEDAW Committee can be the venue. How to make use of the Convention and the Committee to the best advantage of women will ultimately depend on women themselves.