

Why CEDAW Shows the Way Forward for the Women's Movement

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The International Interdisciplinary Congress on Women is widely recognized as the political and intellectual meeting point of the global women's movement. Since its early days feminists, women's rights activists and women's studies scholars have taken part in this prominent global gathering. This is the kind of medium where women share experiences, analyze problems, and develop perspectives-- always with a touch of self-disclosure and sisterly camaraderie.

United Nations and international relations, on the other hand, are a far cry from this place. Regardless of how many more women are at the UN these days, we think of international fora as interest-driven, reserved and perhaps a bit cold and formal environments. There are those who would even argue that what goes on in the UN buildings (aside from the few historical occasions when women have taken over these venues for a few days) has not proven to be crucial to the issues and concerns of the women's movement or central to such fora as the International Interdisciplinary Congress on Women. I will argue otherwise.

Why am I speaking of CEDAW, a UN treaty on discrimination against women in this conference where women traditionally have approached gender equality and women's rights issues from a 'hands-on', 'direct-experience', 'grassroots' and/or 'feminist' perspectives rather than from what some have considered to be the rather distant and abstract political and legal approaches of the UN documents? The answer is really quite obvious. CEDAW is, in reality, neither distant nor unrelated to the goals and politics of the women's movement. In fact, it is an outgrowth of the women's movement and reflects its very essence. CEDAW embodies and legitimizes all the fundamental premises and goals the global women's movement has developed over the years. It is not only an output of the women's movement but it should be better utilized as a vanguard of the movement's achievements.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a binding international treaty, one of the seven fundamental human rights treaties under the UN, that specifically spells out rights for women and lists the obligations for states to realize these rights. The formal commitments of the State parties to CEDAW and the periodic review process that all ratifying States need to undergo provide golden opportunities for the local, national and global women's movements to constantly underline, reclaim and further their gains, not to mention helping them fight the slip backs and retrogressions.

Furthermore the women's Convention also points to the still unfulfilled promises and remaining injustices of gender inequality and keeps them on the global agenda--not only as demands of women, but also as legal obligations of sovereign states and commitments of the international community. And most saliently, CEDAW provides room for the formerly unknown or neglected areas of women's oppression and violation all over the world so that states are expected to address all forms of discrimination against women regardless of whether or not any particular reference has been to them in the letter of the Convention.

As such it is a politically influential, legally potent, comprehensive and dynamic piece of international law. Particularly with the coming into force of its Optional Protocol (OP), which provides for individual 'complaints' and 'inquiry' procedures, CEDAW has a unique potential to have an impact on legal, cultural and personal change processes in 180 countries around the globe. To what extent this tool is utilized and its transformative potential is unleashed depends on how well it is known and how much it is owned by the women's movement. After all, tools can only be as good as they are used.

In CEDAW the women's movement indeed has a very potent instrument that is waiting to be better utilized. The women's movement has been the main force behind the creation of CEDAW in the 1970s to set universal women's human rights standards. Now, this movement needs to use CEDAW to better implement these standards and make them reality of ordinary women's lives. Let me briefly outline the fundamental

premises of the Women's Convention so as to make the connection between this legal document and the movement clearer.

CEDAW is built on the understanding that discrimination against women in any area of social, economic, political or cultural life is not an isolated incident; each instance is inextricably related to other forms of discrimination. Thus, CEDAW recognizes at the outset, the systemic nature of discrimination against women as stemming from the universal reality of patriarchy and foresees women's enjoyment of their human rights as contingent upon the dissolution of patriarchy in all its forms. This is one of the reasons why CEDAW has been called "an innovative and ambitious" treaty.

Furthermore, CEDAW is not based on an abstract concept of gender equality. The need for this Convention, as well as its title, reflects the international community's recognition that discrimination against women is a widespread reality, all forms of which are to be eradicated. Article 1 of the Convention which contains its basic premises provides a clear definition of discrimination against women: "...the term 'discrimination against women' shall mean 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."

The Convention thus talks about discrimination of "effect" and "purpose". It manifests a comprehensive perception which covers both "direct" and "indirect" or "intentional" and "unintentional" forms of discrimination. The definition also makes it clear that "any distinction, exclusion or restriction" on the basis of sex that in any way obstructs women's enjoyment of their human rights is discrimination. Article 1 of CEDAW by specifically referring to all women's equal right to full enjoyment of their human rights "regardless of their marital status", considers different attribution of rights to "unmarried", "married", "widowed", etc. women (observed in many societies) as essentially discriminatory. Similarly, CEDAW mentions both *de jure* and *de facto* equality as requisites of gender equality and insists on realization of equal rights and status for women in not only public but also the private sphere. Recognizing that much of the violations of women's human rights stem from discriminatory social values and traditions, this Convention also underlines the need to combat such social-cultural values.

The Convention also gives expression to the very wide scope of women's human rights. The reference to "any distinction, exclusion and action" means that discrimination against women is not seen as limited to state action but also as relevant to others including organizations, firms, and individuals. Similarly, the Convention does not only refer to political, economic, social, cultural and civil areas as conceivably possible venues where discrimination against women can take place but also mentions, as relevant, "any other field". Therefore the instrument is responsive to any and all existing or future forms of discrimination, reflecting the progressive and expansive nature of the rights foreseen in the women's Convention.

We already have a very good example, in this regard, illustrating the adaptive and progressive potential of CEDAW. It is a fact that violence against women, this most blatant form of women's human rights violation, is not specifically mentioned in the Convention and thus is not directly addressed by the letter of CEDAW. This fact has sometimes been viewed as reflection of the Convention's "dated" nature, if not its "weakness". Yet, CEDAW's monitoring organ, the CEDAW Committee, through its bold and creative interpretation of Article 5 of the Convention, as well as via its General Recommendation 19, has successfully and effectively incorporated violence against women in its review and monitoring process.

Having so mentioned the contents and some major premises of CEDAW let me, once again, underline that this piece of international human rights law, built on the twin axes of the international human rights movement and the women's movement, under the roof of the UN is indeed unique. CEDAW has been called 'revolutionary' in that it incorporates within itself fundamental human rights principles as 'indivisibility' and 'universality' of rights as well as the issues and concerns of the women's movement ranging from legal equality to economic equality and most importantly to equality in the family.

The densely-worded, compact and comprehensive text of CEDAW encapsulates the basic principles and premises of the women's movement as it evolved from 19th century onwards. The varied demands of the different branches of the women's movement, ranging from those of equality before the law – as in suffrage and nationality (citizenship) areas – to equality in all spheres of life including the cultural sphere and family relationships, have found their way into the Women's Convention.

Let us not forget that by requiring both *de jure* and *de facto* equality of women and rejecting both “discrimination of purpose” and that “of results” against women, the text of CEDAW has, in fact, made into law that most ambitious premise of the women's movement, the simultaneous guarantee of both formal and substantive equality.

Let us all think of the very long and tumultuous road we all have to travel and the challenges we face in our own countries for the enactment of every specific piece of equal opportunity legislation, or every little amendment to civil or penal codes hoping to do away with gender discriminatory provisions. Let us each think of the endless campaigns, training programs and awareness raising and dissemination efforts we undertake to alter mentalities and attitudes. Through these efforts we all hope to ensure that not only the letter, but also the spirit of the new laws are brought in line with our demands to achieve societies that both guarantee gender equality and allow for differences. We urge our societies to judge not only the intentions but also the consequences of actions directed to women on whether or not they are discriminatory. We call upon our governments, our firms and our fellow citizens to adopt universal standards of gender equality as the guiding light in all their decisions and acts. We demand that they do not remain bound by age-old discriminatory traditions and take ‘culture’ as an unapproachable, static formation

Only then, perhaps, we can begin to understand what a true wonder it is that the international community has agreed since 1979 to make all these standards a part of binding international law. The fact that 180 sovereign states around the world have voluntarily committed themselves to the principles of CEDAW (and by definition to the goals of the women's movement) to bring to life the grand goal of eliminating oppression of women and realizing gender equality, is no small achievement. These governments should be held to their word by the women of the world!

How then are we to go about it? First and foremost, I would say, by identifying the existing challenges and obstacles and collectively working towards overcoming them. I will point to three crucial challenges for the present: Ratification, reservation and implementation.

While it is already ratified by the overwhelming majority of states, CEDAW continues to be short of universal ratification and the OP to CEDAW is ratified by a relatively small number of states. Obviously, universal recognition, promotion and protection of women's human rights require that all governments, around the world pledge their allegiances to this global Constitution of women's rights. Getting CEDAW and its ratified by all governments, showed therefore, constitute a main goal of women's movements worldwide.

It is also true that many states have reservations to CEDAW that impair the overall validity of this piece of international law for women's human rights. CEDAW has the second highest number of ratifications among UN human rights treaties, but unfortunately it also has the largest number of reservations entered by states to any human rights treaty. What is more, a good number of these reservations are entered to Articles 2 and 16 with some being stated in very broad, sweeping terms. Since Article 2 constitutes the core provision of the Convention and Article 16 pertains to marriage and family matters, they are considered to be crucial so far as the spirit and essence of effective implementation of women's human rights. The UN Committee on Elimination of Discrimination Against Women, therefore considers the presence of wide-scoped reservations, particularly to articles 2 and 16, as highly problematic, and in fact, as incompatible with the ‘object and purpose’ of the Convention itself.

What can be done to cope with this challenge? Unfortunately, the Convention does not contain a procedure for rejection of incompatible reservations other than the referral (in Article 29) to International Court of

Justice of disputes between states. This article is itself the subject of many reservations. It is therefore, very critical that the women's movement call for and pressure governments not only for the remaining ratifications of both Convention and its OP but also for the removal timely of such reservations wherever they exist.

Campaigns to pressure individual governments to withdraw and/or narrow their reservations, as well as efforts to encourage other state parties to "object" to incompatible reservations of states need to be stepped up on the global agenda. In doing so, the women's movement can be expected to once again increase the visibility of gender equality and women's issues around the globe, as well as enhance its own role as an international political actor.

CEDAW-related issues such as universal ratification of the Convention and its Optional Protocol, removal of incompatible reservations are endemic to the goals of the women's movement. They are much too important to be left only to the diplomatic and political relations of governments.

Similarly, it is well-known that today national implementation is the real bottleneck for women's human rights. It is in translating state commitments made at the international level into national action that gender equality policies and women's human rights guarantees face greatest obstacles. It is a fact that economic factors such as poverty and scarce resources as well as political choices of governments and such factors as emergency situations or armed conflicts have an adverse effect on states' capacities to implement social policies and equality measures in line with their international commitments.

Yet, it is also obvious that the persistence of discriminatory traditions and so-called cultural factors are most relevant forces in obstructing and/or slowing down the national implementation of international commitments in women's human rights arena. What, in the language of CEDAW, are called "stereotypical attitudes towards gender roles of women and men" pose a critical challenge to national implementation of the Convention principles all over the world. Yet, states that have ratified CEDAW have committed themselves to modify all gender discriminatory traditions and cultural values, whether they pertain to public or private life. This is indeed a formidable promise.

It is here that the critical tie between the CEDAW Convention and the women's movement, once again need to be underlined. International experience points to many cases of success, when women's groups and NGOs have used provisions of CEDAW as bases and/or justification of their demands for proactive policies to alter mentalities and challenge seemingly 'untouchable' institutions. Much more, however needs to be done in this regard. CEDAW, Women's Movements all over the world have politically legitimate and legally sound tool in their hands to challenge 'culture' if and when it is discriminatory against women. They should recognize it and use it effectively.

In recent years, we often talk about a loss of enthusiasm, a falling of spirits in the global women's movement. Some have viewed this as a backlash of feminist gains and successes; others have attributed it to a premature sense of security the younger generation of women feels in many countries. Regardless of what may be the cause of the situation the actual facts and figures from around the world, including the rich, industrial countries, emerging economies and societies going through transition tell us that there is, in fact, no justification yet for such complacency. Continued presence of vast inequalities between women and men and very serious violations of women's human rights in all parts of the world are the reality. In such age-old, well-documented areas as economic and political life as well as domestic relationships not only can women still not share resources equally with men, but also, they continue to be deprived of their basic human rights -- such as control over their own bodies -- and fundamental freedoms.

What is more, in the "newer" areas such as trafficking, migration, and ethnic-racial realities, women are often caught in the crossroads of multiple forms of discrimination and are faced with aggravated abuses of their rights. These facts fly in the face of complacency or passivity.

The availability of an internationally accepted yardstick of women's human rights (CEDAW) is indeed very salient in this context. When the gains of the women's movement are threatened by apathy, complacency and conservative backlash, CEDAW can and should be used by the women's movement as a universal gauge. It is in this sense that women's studies scholars should engage in more research on CEDAW and women's NGOs should utilize the CEDAW process to provide visibility to women's issues, help keep them on the national political agenda and raise awareness among decision-makers and civil society.

The periodic state reporting to CEDAW brings with it, vast opportunities for civil society activism. Shadow-reporting and lobbying not only helps keep the issues on the agenda but creates opportunities for national and international women's NGOs networking. It is a fact that in many instances government-civil society cooperation in women's human rights issues is initiated or gains momentum at the CEDAW reporting stage. In another manner of speaking, the CEDAW process can well be a mechanism that keeps breathing new life into the women's movement.

All in all, let me conclude by saying that CEDAW is an offspring of the women's movement that has set sail into the waters of national politics and international relations. It is essential that CEDAW does not lose touch with the movement that gave birth to it as it navigates in trying waters. Therefore, it is very necessary that the women's movement associate itself with both the international monitoring and national implementation of CEDAW closely. To make this Convention stronger and to use it more effectively to promote the basic premises of the women's movement world-wide are the two faces of the same coin. It is time that the women's movement take 'custody' of CEDAW... To that end, learning about CEDAW, advocating for CEDAW and helping to monitor women's human rights through CEDAW need be prioritized by the women all over the world.

Just as forms of gender discrimination are interrelated, so are the instances of discrimination around the globe. Women's movement should therefore also prioritize the attention it directs to the inter-societal and inter-regional connections of gender discrimination, particularly in a globalised world. No doubt, gains in one society help set the concrete standards and targets for others, just as losses in some cause disappointment and loss of spirit in others, not to mention providing fuel for arguments discriminatory against women. We can not be content with gains in some societies, regardless of how impressive these may be, while women in other societies are still outrageously discriminated against. Neither can we disregard the almost routine violation of women's human rights in some contexts under misguided notions of 'cultural relativism' or 'multiculturalism'.

This is why, I believe, these days global awareness and sense of feminist responsibility give special credence to CEDAW as a very sound tool to move the women's equality agenda forward. As a global mechanism pooling the experiences and demands of women, monitoring national policies and actions, keeping abreast of developments worldwide, and holding governments accountable to universal standards of gender equality, CEDAW is crucial in promoting women's human rights. And it has every promise to be ever more so, to the extent that it is utilized and supported by the women's movement nationally and internationally.