

THE INTERNATIONAL WOMEN'S RIGHTS ACTION WATCH
(IWRAP Asia Pacific)

**Convention on the Elimination of All Forms of
Discrimination against Women**
**Twenty-fifth anniversary of its adoption by the
General Assembly of the United Nations**

CEDAW AT 25: ARE WE MOVING FORWARD

13 October 2004, 3:00 to 6:00 pm
United Nations Headquarters, New York

IMPACT OF THE CONVENTION AT THE DOMESTIC LEVEL
By Shanthi Dairiam, Director, IWRAP Asia Pacific

Madam Chair, respected members of the panel, distinguished delegates and friends,

I wish to thank the Division for the Advancement of Women for giving me the honor to speak on the experiences and perspectives of my organization, IWRAP, at this historical occasion celebrating the 25th anniversary of the CEDAW Convention at the United Nations Head Quarters in New York. IWRAP Asia Pacific, a not for profit organization, was established in Kuala Lumpur, Malaysia to promote and facilitate the implementation of the Convention nationally, regionally and internationally.

Why work with treaties

Why did we decide to take such a singular focus for our programme, that is to work exclusively on the Convention. Our decision was informed by a keen awareness that in spite of decades of interventions for women through the UN system, complemented by corresponding initiatives at the national levels, the rights of women continue to be violated in all fields and we are nowhere near closing the gap between women and men in terms of achievement and well being. We realised that we needed to address the persistent nature of inequality. It is here that the Convention's guarantee of equality and freedom from discrimination which may occur in the private and public sphere, both direct and indirect, intentionally and unintentionally, provides a theoretical framework by which to identify barriers to women's advancement, assess needs, set goals, identify measures for action and assess accomplishments.

The Convention is a human rights treaty and hence carries with it the strength of a treaty which I elaborate as follows:

(i) The treaties create obligations that are legally binding on states. These obligations include:

- a set of normative values, principles and standards and in the case of CEDAW, these principles pertain to equality and non discrimination;
- a set of detailed substantive commitments that States Parties have to make ;
- obligation to submit initial and periodic reports by States Parties

(ii) The treaties establishes a monitoring mechanism by

- Setting up a treaty body that monitors implementation of the treaty by individual States Parties as well as globally, and engages in standard setting for the human rights of women on a continuing basis.

All of this makes the treaties living and dynamic instruments through which the scope and content of the human rights can evolve and progress according to the jurisprudence established by the treaty body concerned.

The specific strengths of the CEDAW Convention

Apart from possessing the strength of a human rights treaty, the CEDAW Convention has specific significance. It focuses on discrimination against women and makes us go beyond conventional approaches and forces us to unravel the pernicious, structural and dynamic process of discrimination that underpins the various manifestations of inequality. Because several institutions such as the family, the market, the community and the State interact and reinforce this pernicious web of discrimination, it facilitates a denial of responsibility and justifies a state of helplessness by each of these institutions when it comes to undertaking the elimination of discrimination. The excuse is that each institution has done its work and the problem is elsewhere.

Because it is a treaty, the CEDAW Convention demands the practical realization of rights and hence compels States Parties to eliminate all forms of discrimination, intended or unintended through law, policy, practice or custom and by state or non state institutions or private persons, even if they are family members and to approach the problem holistically and collectively..

Using the CEDAW Convention

But, the Convention does not automatically confer rights on women. Its promise can only be delivered if we learn to use it effectively in practice, thereby contributing to a jurisprudence of the Convention. This is the mission that IWRAW Asia Pacific has undertaken, that is to facilitate and build capacity of various institutions (both government and private) to enable their actions to fulfil the promise of the Convention.

In particular through our work we have worked collaboratively with women's groups so that they could form constructive partnerships with their governments to eliminate discrimination against women.

Much cynicism about the Convention exists, especially as in many countries; the principles of the Convention have not been incorporated into domestic legislation. But there are many examples of the use of the Convention in spite of this. Constitutions and domestic laws have been reformed on the basis of the principles of the Convention, discriminatory laws have been challenged, the Convention has been used to interpret ambivalent provisions of the law or it has been used where the law is silent to confer rights on women and development policies have been formulated using the framework of the Convention.

I wish in particular to highlight a programme that IWRAW Asia Pacific has implemented to bring the benefits of this Convention home by improving the flow of information from the international level of legal standards to the local level, (including monitoring and facilitating the implementation of the treaty locally)

First of all this programme called "From Global to Local", recognises that to fully enable the provisions of the treaty to be realized, it is important to enhance the process of reporting. Strengthening the synergy between the national and international processes relating to CEDAW implementation can do this. Consistent and systematic interaction between women's groups and the Committee is therefore necessary. The CEDAW Committee requires accurate information on the *de jure* and *de facto* situation of women on the ground in order to make recommendations that are useful to the State. Towards this end, women's groups can provide alternative information to the Committee and thereby, influence the standard-setting process. Women's groups reports on State action may also help to reveal why women's rights commitments often remain *de jure* commitments rather than representing *de facto* change. It enables groups to identify areas for intervention where the State may not be able to intervene effectively, and where NGOs may provide support services to create enabling conditions for women's rights to be achieved.

On the other hand, at the national level, women's groups advocating for equality have a powerful tool in CEDAW if they can learn to harness it for domestic application. The Committee's Concluding Comments are also useful in setting priorities for advocacy, based on what it identifies as areas of concern. This provides the basis for a collaborative process to be set up between governments and non-governmental organizations nationally for CEDAW implementation. There needs to be therefore Government and NGO dialogue on CEDAW implementation. This GO-NGO dialogue is important as it shows a conscious effort to pursue the Committee's recommendations as well as the building of a GO-NGO constituency on CEDAW Concluding Comments.

In view of this, IWRAW Asia initiated the programme called "From Global to Local" in 1997 that builds capacity of women's groups from the countries reporting to the CEDAW Committee annually to enable them to contribute to this review process with the intention of enhancing the implementation of the obligations under CEDAW nationally.

This is a programme, which has been conducted by IRAW and UNIFEM collaboratively, with cooperation from the Division for the Advancement of Women. As of 2004, agencies such as UNFPA have supported this effort. Through this programme women from at least 100 countries have been participating in the CEDAW review process since 1997.

Examples of CEDAW implementation

I will conclude with a few examples of the impact of the CEDAW Convention in some countries. These examples are not cited on the basis of a comprehensive review but are selective. Examples include those that are from countries that have yet to be reviewed by the Committee. Never the less they are examples of the good intentions of States parties to fulfil their obligations. The examples also reflect the collaborative efforts of government, NGOs and UN specialised agencies.

In Nepal, in 2002 the eleventh amendment to the country code brought to an end more than 20 discriminatory provision in the law. Significant among these were the discriminatory provisions in inheritance laws, adoption, divorce, criminal laws etc.

In the absence of a law on sexual harassment, the principles of equality and non-discrimination of the Convention were used by the Supreme Court in India to develop guidelines for employers to prevent and address sexual harassment in the work place. An ambiguous phrase in the Hindu Guardianship Act in India was re interpreted to favour women as guardians. Since its last report to the Committee the government of India has repealed discriminatory provisions in many areas of the law. These include amendments to the Marriage Act, and The Indian Divorce Act. Efforts are being made for the compulsory registration of marriage. Several state level and national policies for poverty eradication, the promotion of nutrition and the promotion of education of children are being enhanced.

In Sri Lanka, after the CEDAW review, the government and the NGOs held a consultation on every paragraph of the Concluding Comments discussing plans for implementing the recommendations of the Committee and NGOS offered their expertise and resources in pursuing the plan of action.

In South Asia, an important positive development has also been the amendments to citizenship laws eliminating the discriminatory provisions inherited during colonial rule.

In South Asia, a dialogue between governments and NGOs for the implementation of the Concluding Comments has taken place with support from UNIFEM.

In Mongolia, the UNDP plans to assist the government to implement legal reform to eliminate discrimination against women- a direct recommendation of the CEDAW Committee to the government of Mongolia; a domestic violence law has been adopted

In Japan, the Osaka Appeals Court instructed that the appellants (all women) and the respondent in a labour case, reach an amicable settlement based on the principles of Equality and non- discrimination and gave specific recommendations with regard to the same. The court in its statement pointed out that national action must concur with international efforts towards the elimination of sex discrimination. The appellants had made specific reference to CEDAW's Concluding Comments to Japan which pointed out the flaw in the guidelines in Japan's Equal Employment Opportunity Law as lacking an understanding of indirect discrimination. .

In Malaysia, the Constitution was amended to include gender as prohibited grounds for discrimination and amendments were made to abolish discrimination in the Distribution Act and Guardianship Act. This year the government has announced its policy to ensure 30% of women in senior decision-making positions.

In Thailand, the constitution court found that forcing women to change their name after marriage was unconstitutional and violated the principle of equality.

In Morocco, women's groups successfully advocated for amendments to remove discrimination in the Penal Code, Labour Law and Family Law, supported by UNIFEM. This again had been a recommendation in the Concluding Comments of the CEDAW Committee.

In Kyrgystan, recent amendments to the laws on land rights guarantee equality for women. This was also the result of advocacy and a collaborative effort between women's groups and the government supported by UNIFEM.

Continuing challenges

Problems still remain in many aspects. First of all, there remain a lack of understanding of and a resistance to the principle of equality. There also remains a lack of understanding of indirect discrimination. Such a definition does not exist in the law in most countries, so courts remain uninformed of the standards for equality and non-discrimination set by the CEDAW Convention. Women have to be more vigilant about their rights and activate the courts in this regard. Custom and culture often over ride considerations of state obligation under CEDAW. As the Appeals court of Japan cited above stated, " It must be borne in mind, that to tolerate the vestiges of discrimination based on past social understandings would result in turning ones back to the progress in the society." This is a point of view that needs to gain more currency. CEDAW remains unincorporated into domestic law so the full potential for the application of CEDAW is not attained at the national level. . Global economic trends such as privatisation also pose threats for the fulfilments of state obligation in the fields of economic and social rights. Nor is there a concerted effort to put in place a plan for CEDAW implementation. Many of the reforms cited above are done in a piece meal fashion.

All our governments are committed in principle to equality for women through the constitution and through various laws and policies. But it is the Convention that forces us to close the gap between law policy and reality. This is treaty that has attained 178

ratifications so has a universal recognition and mandate for equality. Congratulating new members of the CEDAW Committee, elected in August 2004, Mr Effah-Appenteng, chair person of the States Parties meeting., said that “The Convention had established the guidelines critical for the advancement of women and enjoyment of their fundamental human rights. But, 25 years after its adoption, discrimination against women was still rife, as they continue to suffer avoidable challenges by virtue of their gender”. Hence States Parties, UN agencies, other international bodies, donors and NGOs need to pay greater attention to its implementation and to the work of the CEDAW Committee and to integrate all other work towards the advancement of women, including the implementation of Plans of Action of World Conferences, into the framework of CEDAW’s normative standards for equality.

Thank you. Madam Chair