

ELIMINATING DISCRIMINATION AGAINST WOMEN: THE IMPACT OF THE UN CONVENTION

BY ELIZABETH EVATT*

INTRODUCTION

This paper describes the operation of the U.N. Committee on the Elimination of Discrimination Against Women, shows the limitations which inhibit its effectiveness, and suggests measures which might improve its potential. Recent proposals to develop a new international instrument to deal with violence against women are used to illustrate these themes.

BACKGROUND TO THE CONVENTION

The Convention on the Elimination of All Forms of Discrimination against Women (the Women's Convention) was adopted by the United Nations General Assembly on 18 December 1979,¹ and entered into force on 3 September 1981.² The Convention came into force for Australia on 27 August 1983. More than 100 States have become parties to the Convention.³

Scope of the Convention

The Women's Convention defines discrimination as any distinction, exclusion or restriction which prevents the equal exercise or enjoyment by women of human rights and fundamental freedoms 'in the political, economic, social, cultural, civil or any other field'.⁴ It supplements the anti-discrimination provisions in the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights,⁵ by identifying specific areas of discrimination of special concern to women. It is sometimes called an international bill of rights for women.⁶

Obligations of States Parties

Under Article 2, 'States Parties condemn discrimination against women in all its forms, [and] agree to pursue by all appropriate means and without delay a policy of elimination of discrimination against women.' Articles 2-6 set out the

* Elizabeth Evatt AO, President of the Australian Law Reform Commission, member of the United Nations Committee on the Elimination of All Forms of Discrimination Against Women 1984-1992.

¹ G.A. Res. 34/180, 34 G.A.O.R. Supp. (No. 46).

² Art. 27.1.

³ As at 17 January 1992, 111 States had ratified or acceded to the Convention (information from the Secretariat).

⁴ Arts 1, 2, 3.

⁵ I.C.C.P.R. Art. 2.1; see also Arts 3, 26; C.E.S.C.R. Art. 3. Rights are to be ensured to all persons without distinction of any kind, such as race, colour, sex *etc.*

⁶ *E.g.*, provisions relating to rural women, Art. 14.

kind of legal, administrative and other measures to be taken by States; these include affirmative action,⁷ modification of social and cultural patterns of conduct,⁸ and suppression of traffic in women.⁹ The remaining 16 Articles cover specific areas of discrimination: political and public life (Article 7); international representation (Article 8); nationality (Article 9); education (Article 10); employment (Article 11); health care (Article 12); economic and social life (Article 13); rural women (Article 14); equality in law (Article 15); marriage and family (Article 16).

Supervisory Machinery

States Parties undertake to submit written Reports at least every four years on the measures they have adopted to give effect to the Convention.¹⁰ The Reports are considered by the Committee on the Elimination of Discrimination Against Women (referred to as 'CEDAW').¹¹ CEDAW consists of 23 independent experts elected by the States Parties.¹² The members serve in their personal capacity.

CEDAW is restricted to meeting for only two weeks annually.¹³ The State Reports are presented to the Committee by a representative of the State party, who then receives and later responds to the Committee's questions.¹⁴

CEDAW reports annually, through the Economic and Social Council, to the General Assembly.¹⁵ It can 'make suggestions and general recommendations based on the examination of reports and information received from the States Parties'.¹⁶ Up to the end of the 10th Session in 1991, 18 recommendations have been made.

CEDAW first met in 1982, and is due to have its 11th Session in January 1992, in New York. It has dealt with more than 60 initial reports of States parties

⁷ Art. 4: The adoption of temporary special measures aimed at accelerating *de facto* equality shall not be considered discrimination; they are to be discontinued when the objectives of equality have been achieved.

⁸ Art. 5.a.

⁹ Art. 6.

¹⁰ Art. 18.1: 'States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

Art. 18.2: reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the Convention.'

¹¹ The Constitution and functions of the Committee are set out in Part V of the Convention, Arts 17-22.

¹² States may nominate one of their own nationals. Membership should reflect an equitable geographical distribution. In practice, this is taken to mean maintaining a balance between the five regions: Eastern Europe; Western Europe; Asia and Pacific; Africa and Middle East; Latin America and Caribbean.

¹³ Art. 20.1. Exceptionally, in 1988, this was extended by one week to help overcome the backlog.

¹⁴ Rule 49, Rules of Procedure: Attendance by States parties.

¹⁵ Art. 21.1.

¹⁶ Art. 21.1: 'Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties'. A copy of the Committee's Report is forwarded to the Commission on the Status of Women.

and has commenced consideration of second periodic reports. Australia's initial Report was presented to the Committee at the 7th Session held in New York in 1988.

How Effective is the Convention?

The Women's Convention represents a commitment by the international community to equality in the enjoyment of human rights. To make this commitment effective, the States which have accepted the Convention should, in accordance with their obligations, act to improve progressively the status and equality of women.

The mechanics of implementing the Convention require States to review their laws and policies in order to prepare their reports for CEDAW. There is a general expectation that this process of review, repeated at regular intervals, will bring to light areas where further progress is necessary. The Committee's procedures enable it, in theory at least, to monitor progress by individual States and to discuss issues relevant to particular States in a public forum. The process has been described as one of 'constructive dialogue'. Essentially it depends on the willingness of State parties to take part in good faith.

The question is, whether the Convention and its supervisory machinery have been effective as a catalyst for change at national level — the place where it counts for women. Leaving to one side the problem that a considerable number of States have not complied with their obligation to report to CEDAW, a number of issues remain. They can be illustrated by taking as an example an issue of considerable importance to women and by showing how the Convention has been used in dealing with that problem and how effective it has been.

This paper focuses on the issue of violence against women, because it brings into question a range of human rights issues of concern to women and because there are current proposals to develop additional international standards to deal with such violence.

VIOLENCE AGAINST WOMEN

Violence against women is an important issue of concern to women in many countries. Women have worked to ensure that State governments accept responsibility to prevent and deal with such violence as a serious infringement of women's rights, and to move the issue of violence from the area of private action to that of public responsibility.

Violence has been on the international women's agenda for many years.¹⁷ A 1988 U.N. Report observed 'that in the late twentieth century, violence as an ordinary form of behaviour may be becoming more public, common and

¹⁷ See, e.g., *1988 Report for the Commission on the Status of Women on Efforts to Eradicate Violence Against Women Within the Family and Society*. Report of Secretary General E/CN.6/1988/6 for the 32nd Session of the Commission of the Status of Women (C.S.W.), 7, 8 (The Report surveyed studies dating back to 1975); *Violence Against Women in the Family*. Connors, J., U.N.O.V., Centre for Social Development and Humanitarian Affairs, 1989, 20, 97.

frequent'. Studies and research done for the U.N. have covered many aspects of violence against women, including 'physical, sexual, emotional and economic abuse within the family; rape and sexual assault; sexual harassment and trafficking in women; involuntary prostitution, and pornography'.¹⁸

Recent studies have emphasized that women are frequently subjected to human rights abuses *as women*.¹⁹ Examples of gender based violation of women's rights include: rape of detainees as a form of torture, sexual humiliation and abuse of prisoners, asylum seekers and refugees; threats and harassment of women relatives of human rights activists.

A 1990 study of human rights abuses against women commented that such abuses are 'rampant, violent, dehumanising, and occur throughout the world'.²⁰ They included acid attacks, dowry death, bride burning, rape and abuse of women in custody, forced labour, torture, harassment of politically active women, forcible denial of inheritance rights, sex tourism and pornography.

The Convention Does Not Refer to Violence

Bearing in mind the extent of violence against women and the fact that it has long been a matter of concern, it is surprising that the Women's Convention does not mention violence as a form of discrimination, nor as an obstacle to the equal enjoyment of rights by women. The absence of an express reference to violence in the Convention may have contributed to the failure of some States to deal with it adequately in their Reports. Nevertheless, the issue has been important for CEDAW. The Committee frequently asks States about the incidence of violence against women and about the measures they have taken to prevent violence or to deal with its occurrence.

Recommendation on Violence

Partly in response to the lack of express reference to violence in the Convention, CEDAW has recommended that States include violence and the measures taken to deal with it in their Reports.²¹ Periodic reports to the Committee should include information about:

- (a) the legislation in force to protect women against the incidence of all kinds of violence in everyday life (including sexual violence, abuses in the family, sexual harassment at the work place, *etc.*);
- (b) Other measures adopted to eradicate this violence;

¹⁸ *Ibid.* 1988 Report for the Commission on the Status of Women on Efforts to Eradicate Violence Against Women Within the Family and Society, 7, 8.

¹⁹ Amnesty International, *Women in the Front Line: Human Rights Violations Against Women* (1991).

²⁰ International League for Human Rights, *Human Rights Abuses Against Women: A Worldwide Survey. A Compilation of Exerpts from the U.S. State Department's 1990 Country Reports on Human Rights* (1990).

²¹ Recommendation No. 12, 8th Session 1989; Report of C.E.D.A.W., U.N. Doc. A/44/38 (1989) 81: 'considering that articles 2, 5, 11, 12 and 16 of the Convention require the States parties to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life . . .'

- (c) The existence of support services for women who are the victims of aggression or abuses;
- (d) Statistical data on the incidence of violence of all kinds against women and on women who are the victims of violence.

This recommendation does not ask States to take specific measures to deal with violence.²² Instead, it adopts the rather less emphatic form of indicating what States should include in their Reports. The clear implication is, however, that States should take such measures as are necessary to eradicate violence.

How States Report on Violence

Most States Reports now deal with aspects of violence against women.²³ However, States have not adopted a uniform approach to the issue of violence, either as to the Article under which it is dealt with, or as to what is included in the report. A brief survey of the relevant articles and of State practice will illustrate this.

Violence as Discrimination: Articles 1 and 2

To the extent that violence is directed against women *as women*, its effect is to deprive women of their fundamental rights and freedoms; to this extent it is a discriminatory act, against which States are obliged to provide legal protection.²⁴ A number of States have reported to the Committee on violence and measures to deal with it under Article 2 and other general articles.²⁵

Violence as a Practice Based on Inferiority: Articles 2.f and 5

Traditional attitudes under which women are regarded as subordinate contribute to practices involving violence towards or coercion of women, such as forced marriage, dowry deaths, acid attacks, genital mutilation, family violence and abuse.

The Convention requires States to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women,²⁶ and to take measures '(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and other practices based on idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.'²⁷ The Committee

²² *C.f.* the Committee's recommendations in regard to equal remuneration: Recommendation No. 13, 8th Session 1989.

²³ See Report of 10th Session, 1991, G.A.O.R. Supp. (A/46/38).

²⁴ Arts 1 and 2. Under Article 2.c States parties undertake 'to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.'

²⁵ See Report of 10th Session, 1991, G.A.O.R. Supp. (A/46/38): Italy, 13, 16, sexual violence, rape in marriage; Philippines, 38 sexual harassment [C/13/Add. 17] and violence associated with civil unrest 43; Rwanda 44 [C/13/Add. 13]; Portugal 53, 54 sexual harassment and domestic violence [C/13/Add. 22]; Austria 59, 60 [C/13/Add. 27] marital rape; Yugoslavia, 65 statistics on domestic violence, rape in marriage [C/13/Add. 22].

²⁶ Art. 2(f). Related articles are I.C.E.R.D. 7, Convention Against Torture (C.A.T.) 10 & 11.

²⁷ Art. 5.

has urged States to adopt education and public information programs to help eliminate prejudices which hinder women's equality.²⁸

Several State Reports have dealt with violence, sexual harassment and pornography under Article 5.²⁹

Exploitation of Prostitution and Trafficking in Women: Article 6

Involuntary prostitution and trafficking in women are often associated with violence against women.³⁰ There can be an element of coercion in prostitution, and prostitutes are especially vulnerable to violence. Many women are forced into prostitution by poverty and unemployment. Prevailing attitudes in some societies, however, do not consider that prostitutes require the same protection against rape as other women.³¹

Article 6 requires States to take measures 'to suppress all forms of traffic in women and exploitation of prostitution of women.'³² Although Article 6 was not mentioned in the Committee's recommendation on violence, issues raised by States parties and by CEDAW's questions include rape and violence towards prostitutes.³³ The Committee asks questions under Article 6 about forms of exploitation, such as sex tourism, the recruiting of domestic labour from Sri Lanka and the Philippines and other Asian States to work in the Middle East, and organized marriages between women from developing countries and men in industrialized nations — a practice which puts women at special risk of violence and abuse.

Violence and Abuse in the Workplace: Article 11

Article 11 deals with discrimination and equality in employment; it does not refer expressly to sexual harassment. CEDAW has, however, recommended that

²⁸ Rec. 3, 6th Session, 1987. See also, general observation adopted at CEDAW 5th Session, 1986, 47. The Committee urged States to adopt education and public information programmes to eliminate prejudices and practices, including stereotyped conceptions of women, which hinder equality.

²⁹ *E.g.*, Canada [C/13/Add. 11, 56]. See Report of 10th Session, 1991, G.A.O.R. Supp., (A/46/38); Burkina Faso, excision 21-25 and violence; Poland, 34 [C/13/Add. 16]; Portugal, 53, 55 sexual harassment, pornography and violence [C/13/Add. 22]; Canada, 103-4 para. 297 [C/13/Add. 11]; Belgium, sexual harassment 18-25 para. 297 [C/5/Add. 53]; Nigeria, female circumcision [See Report of 9th Session, 1990, G.A.O.R. Supp., (A/43/38) para. 297]. Other concerns of the Committee under Art. 5 include measures to combat pornography, and the portrayal of women in the media. Australia's Report covered the portrayal of women in the media and in advertising, sexist language *etc.* under this article, 34.

³⁰ See 1988 Report for the Commission on the Status of Women on Efforts to Eradicate Violence Against Women Within the Family and Society *op. cit.* n. 17.

³¹ In *The Queen v. Hakopian*, Supreme Court of Victoria, Court of Criminal Appeal, 11 Dec. 1991, the Court affirmed that in determining the sentence for rape, the fact that the complainant was a prostitute was relevant. See also *The Attorney-General v. Harris*, Supreme Court of Victoria, Court of Criminal Appeal, 11 August 1981. In some legal codes, *e.g.* El Salvador, rape of a prostitute is a separate and lesser offence than rape of other women.

³² Related articles are I.C.C.P.R. 6, 7 and 8; C.A.T. 1 and 16 (rights to life, to physical and moral integrity, freedom from slavery, forced labour).

³³ Australia's Report dealt with rape law reform under Art. 6 (as a form of sexual exploitation of women) and also domestic violence, 46, 47. Australia was asked questions about violence under Arts 5 and 6. [SR 114, §60, 64, 66] and about rape under Art. 6 [SR. 114, §64].

States include sexual harassment in the workplace in their Reports as a form of violence against women.³⁴

A number of States have reported on measures to combat sexual harassment under Article 11.³⁵ In Australia, Commonwealth legislation outlawing sexual harassment as a form of discrimination against women relies on the Convention for its validity.³⁶

Violence as a Health Risk: Article 12

Article 12 requires States to take measures to ensure equal access to health care. Violence against women puts their health (and lives) at risk, and Article 12 could therefore be regarded as the appropriate place to deal with services for battered women. Some States also report on domestic violence and rape under this provision.³⁷ Those matters might more effectively be considered under Articles which call for positive measures to prevent violence or to take action against its perpetrators, rather than under Article 12, which is directed to the provision of health care and services.

Female circumcision or genital mutilation is a form of violence against women which is perpetuated by culture and tradition. Because of the sensitivity of the issue, and the reluctance of some members of the Committee to confront directly the cultural context in which it occurs, the Committee's recommendations on the issue of female circumcision were dealt with under Article 12 as a traditional practice affecting the health of women and children.³⁸

Family Violence: Article 16

Article 16 calls for the elimination of discrimination in marriage and the family. Family violence is clearly a form of discrimination which denies women equality. Some States report on violence under Article 16.³⁹

Further Action by CEDAW

Since CEDAW made its recommendation about violence, it has kept the issue on its agenda. At the 10th Session in 1991, the Committee decided to allocate part of the 11th Session, 1991, to a study of violence against women.⁴⁰

³⁴ Recommendation 12, 8th Session, 1989.

³⁵ Denmark; Canada.

³⁶ The Sex Discrimination Act 1984 (Cth) applies to unwelcome conduct of a sexual nature, where the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment. The Federal Court of Australia decided that the provision is a valid implementation of the Convention. In the case, *Aldridge v. Booth* (1988) 80 A.L.R. 1, before Spender, J., the woman was awarded \$7,000 damages for humiliation and injury.

³⁷ *E.g.*, Canada. See Report of 10th Session, 1991, G.A.O.R. Supp., (A/46/38); Norway, 29 [C/13/Add. 15]; Poland, 36 [C/13/Add. 16]; Philippines 41; Denmark 47, 52 [C/13/Add. 14]; Austria, 59, 61 [C/13/Add. 27].

³⁸ The Committee has recommended that States parties take appropriate and effective measures with a view to eradicating the practice of female genital mutilation. The recommendation included a list of measures which States could take; they were to include these measures in their reports under Arts 10 & 12. Recommendation No. 14, 1990, 9th Session.

³⁹ *E.g.* Canada. Portugal reported on the criminal law aspects of physical illtreatment and on programmes to change attitudes and behaviour under Art. 16 [C/13/Add. 22 See Report of 10th Session, 1991, G.A.O.R. Supp., (A/46/38) 53, 59].

⁴⁰ Report of the 10th Session, 1991 (A/46/38) §369, 374, 380-382.

CEDAW's annual Sessions are limited by the Convention to two weeks. The main priority is to deal with States' initial reports as soon as possible after they are submitted. Most of the Committee's time is spent examining those Reports. The Committee has adopted eighteen recommendations; these are usually drafted by working groups who meet during the Session. The time pressure on the Committee has meant that there is little opportunity for the Committee to undertake in depth analysis of the substantive issues covered by the Convention.

In dealing with violence, for example, the Committee has not yet explained how the specific articles of the Convention mentioned in its recommendation are relevant to the issue of violence, or how States' Reports should deal with violence in relation to these articles. The Committee's projected study of violence at the 1992 Session could lead to the preparation of a general comment on that subject, clarifying those issues.⁴¹

A noteworthy aspect of CEDAW's decision to study violence is that non-governmental organizations were invited to contribute information to be used in preparing the background study for the Committee.⁴² While the Committee has previously recognized the important role of non-governmental organizations,⁴³ this is the first time they have been invited to contribute in this manner.

PUTTING WOMEN'S RIGHTS ON THE HUMAN RIGHTS AGENDA

As mentioned above, CEDAW is not alone in its concern about violence against women. There is a growing body of opinion that seeks to have violence regarded as a serious violation of women's fundamental rights, rather than as a private or family issue, or as a form of discrimination. Lori Heise, for example, commented that there is considerable concern when people are beaten to death for their political ideas, but when they are beaten to death simply because they are women, this tends to be overlooked.⁴⁴

A Wider View of Violence

In a recent study of international human rights law and its relevance to women, Andrew Byrnes has analysed the gender dimensions involved in the violation of human rights.⁴⁵ His paper accepts that women suffer many human rights abuses along with men, in much the same way and for the same reasons. The fact that race, class or political opinion are the determinative factors in many human

⁴¹ Report of the 10th Session, 1991, §382. The study will cover Art. 6 (and other Articles related to violence towards women and the sexual harassment and exploitation of women).

⁴² *Ibid.* §381.

⁴³ See, e.g., Recommendation 10, 8th Session, 1989, on publicizing the Convention. I.W.R.A.W. contributes to the Committee's work in an informal manner by providing information about specific countries.

⁴⁴ *Guardian Weekly*, 23.12.90.

⁴⁵ Byrnes, Andrew, 'Women, Feminism and International Human Rights Law: Methodological Myopia, Fundamental Flaws or Meaningful Marginalisation?', paper delivered at the Conference on Gender and International Law, Centre for International and Public Law, Australian National University, 14-17 August 1990.

rights violations against women, perhaps to the exclusion of sex and gender, may mean that some violations of rights are free of gender implications.

But there are situations, says Byrnes, where there are specific gender aspects involved in the violation of women's rights. Failure to identify these may mean that the rights protected by International Covenants are not given their full meaning, and that serious breaches of those rights are not adequately recognized. An obvious example is sexual violence against women prisoners, which should be regarded as a gender specific form of torture. Human rights violations which have similar gender specific aspects include the right not to be deprived arbitrarily of one's life,⁴⁶ the right to be free from torture and other forms of cruel, degrading or inhuman treatment or punishment,⁴⁷ and the right to be free from slavery.⁴⁸

Byrnes acknowledges that much violence against women is the result of private acts, while human rights law deals principally with State violations. Nevertheless, it is important to identify the role of gender in human rights violations of which women are the victims, and to consider the extent of State responsibility for this. Failure to introduce preventive measures which have been shown to be effective elsewhere, or to provide effective remedies to deal with violence, could possibly amount to a breach of a State's obligations under the covenants and conventions to which it is a party. Byrnes also suggests that attention be given to recent developments in the area of State responsibility for acts of private individuals.

Human Rights: The Institutional Framework

Violence against women, in all its forms, is so widespread in all cultures that it should be seen as a systematic violation of human rights. Nevertheless, it has been almost completely ignored in the mainstream human rights area. This was noted in a recent report on human rights abuses against women, based on material gathered by the U.S. Department of State.⁴⁹ The Department had asked for violations of rights in the States concerned to be reported under the heading of the appropriate right. Incidents of violence against women were nevertheless reported under the heading of discrimination.⁵⁰

The failure to regard violence as a major human rights issue, and relegation of domestic violence to the sphere of private and family rights may well be reinforced by the way in which the U.N. human rights system is itself divided. Most of the human rights work is centered at Geneva. The Human Rights Commission and the Human Rights Centre are located there, as are the secretariats of nearly all the U.N. human rights treaty bodies, including the Committee established under the new Convention on the Rights of the Child.

The Commission on the Status of Women ('C.S.W.'), and the Committee on

⁴⁶ I.C.C.P.R. Art. 6.

⁴⁷ I.C.C.P.R. Art. 7, C.A.T. Art. 1, 16.

⁴⁸ I.C.C.P.R. Art. 8.

⁴⁹ *Human Rights Abuses Against Women: A Worldwide Survey*, *op cit.* n. 20.

⁵⁰ *Ibid.*

the Elimination of Discrimination Against Women are based at Vienna. This institutional and geographical split is important because it reflects a view that women's rights are largely a matter of discrimination. Clearly there is a need to lift the issue of violence out of the sphere of discrimination and private rights and to put it squarely on the mainstream human rights agenda.

PROPOSALS FOR A NEW INSTRUMENT ON VIOLENCE AGAINST WOMEN

In 1991 the Commission on the Status of Women decided to give the issue of violence against women greater prominence.⁵¹ The Commission adopted a resolution which stressed that violence against women is an issue of equal rights, and urged States to strengthen and enforce legislation prohibiting violence and to take appropriate administrative, social and educational measures to protect women.⁵² Of special interest is paragraph 5 of the resolution which

recommends that a framework for an international instrument be developed in consultation with the Committee for the Elimination of Discrimination against Women that would address explicitly the issue of violence against women.

The Secretary-General of the U.N. was requested to convene in 1991 or 1992 a meeting to be funded from extra-budgetary resources, of experts representing all regions, including representatives of CEDAW, to address the issue of violence against women and to discuss the possibilities of preparing such an international instrument and to report to the Commission on the Status of Women at its thirty-sixth session 1992. The Economic and Social Council adopted the C.S.W. draft resolution;⁵³ the meeting has been planned for November 1991.⁵⁴

Relative Merits of a New Instrument

If resources are to be allocated to preparing a new instrument the question has to be asked what such a new instrument is intended to achieve and how it would affect the Women's Convention and the role of CEDAW.

The case for a new instrument is that the Women's Convention does not refer expressly to violence either as a discriminatory practice or as a practice based on traditional attitudes towards women. The Commission on the Status of Women noted in its resolution that the Women's Convention does not explicitly address violence.⁵⁵

⁵¹ Report of the Commission on the Status of Women on its Thirty-Fifth session, 27 February-8 March 1991, E/1991/28; E/CN.6/1991/14. Violence against women came up in C.S.W. in two other contexts at the 1991 meeting: in a draft resolution for the Economic and Social Council (ECOSOC) on refugee and displaced women and children; 1991 Report, 18, draft resolution VII. para. 2; and in the draft programme of the world conference on women to be held in 1995. Resolution 35/4, 1991 Report, 29.

⁵² *Ibid.* 10, paras 1-4. Other parts of the resolution urged Governments at all levels to develop training programmes for members of the criminal justice system and health-care system, including police officers, doctors, nurses, social workers and members of the legal profession, to ensure sensitization to and fair administration of justice with respect to equality issues (para. 7); para. 8 requests Governments, international organizations, non-governmental organizations, other relevant bodies and academics, to undertake research into the causes of violence against women.

⁵³ At its 1991 meeting (May-June 1991).

⁵⁴ Report of the Expert Group Meeting on Violence Against Women, Vienna, 11-15 Nov. 1991; U.N.O.V., C.S.D.H.A., D.A.W.; E.G.M./V.A.W./1991/1m 15 Nov. 1991.

⁵⁵ Draft resolution to be put before the ECOSOC.

One goal of a new instrument could be to elaborate in more detail the obligations which States have under the Women's Convention by covering expressly matters such as violence against women and girls in the family, sexual assault and sexual harassment, pornography, and institutionalized violence such as forced prostitution and trafficking in women.⁵⁶ These are issues which CEDAW already expects States to cover in their Reports under the Convention and about which questions are asked of State representatives. If such matters were included in a separate instrument, this could help to raise awareness of these issues and ensure that greater attention was given to violence at the State level.

A new instrument could also specify in more detail the kind of measures which States should take to prevent and deal with violence against women. It is clear from reports to CEDAW that many States do not provide adequate legal remedies to prohibit or prevent violence, to punish acts of violence against women or to protect victims and change attitudes and behaviour.

Another goal of a new international instrument could be to make explicit the obligations of States in respect of gender specific violations of human rights.

What Kind of Instrument? Links to the Convention and CEDAW

The options for a new instrument include a protocol to the Women's Convention, and an entirely new and separate instrument.

A new instrument would be open to ratification by all States, whether or not they had become parties to the Women's Convention. Its provisions would be self-contained, and could cover a wider or different range of issues than those in the Convention. If it were decided to proceed with a new, legally binding instrument, independent supervisory machinery would have to be established. The instrument would be binding only on States which accepted it.

Effect on Existing Instruments

A possible disadvantage of a new instrument dealing expressly with violence is that it might undermine the effect of the Women's Convention. While in theory CEDAW's mandate would remain unaltered, the argument could be mounted that States parties had specific obligations in respect of violence only under the new instrument. As a result, States might give less attention to violence against women in their Reports to CEDAW, and the influence of the Committee in dealing with the issue could be weakened. It might give less of its time to issues of violence if a new instrument and machinery on that subject were established.

An obstacle which could hinder efforts to introduce a new instrument is the general reluctance to establish new machineries in the human rights system

⁵⁶ Report of the Commission of the Status of Women in its Thirty-Fifth Session, *op. cit.* n. 51, Recommendation No. 12; examples are female genital surgery, dowry deaths, bride burning, acid throwing, forced prostitution, rape, marital rape, female bondage, female infanticide, favouring of male children.

because of cost and overlapping reporting requirements.⁵⁷ There are already six UN human rights instruments, each with separate reporting requirements. On one view, it is preferable to draft new instruments in the form of protocols to existing instruments, so that existing machinery can be used.⁵⁸

If a protocol were chosen as the form for a new instrument, the supervisory functions could be carried out by CEDAW; this would avoid proliferation of human rights bodies and would enable the Committee to continue its work in this area.⁵⁹ A protocol would be open to ratification only by States which are already parties to the Women's Convention. It could build on the obligations under that Convention, and, in a sense, extend its scope. It would bind only those States which decided to accept it.

These factors tend to suggest that a protocol is the most likely form for a new instrument dealing with violence against women. In any event, the States likely to accept such a new instrument would most probably be those already party to the Women's Convention.

A Protocol — The Obligations to be Covered

If it were decided to work towards a protocol to CEDAW to deal with violence, its content would, presumably, build on the provisions of the Convention, by making express the obligation to take all appropriate measures to overcome all forms of violence against women, including physical, sexual, emotional and economic abuse within the family; rape and sexual assault; sexual harassment and trafficking in women; involuntary prostitution, and pornography. It should be drafted in a way that makes clear its links with the provisions of the Convention, to avoid limiting the effect of the Convention in its application to violence.

Need for More Resources for CEDAW

If a protocol were added to the Women's Convention, this would add to the workload of the CEDAW Committee, which is already hampered by lack of resources. There are over 100 States parties to the Convention, reporting to the Committee on a four year cycle. The Committee can normally meet for only two weeks each year.⁶⁰ It can allocate only one three hour meeting to raising questions on the initial report of each State. Given the range of issues covered by the Convention, this is clearly inadequate. There is a considerable backlog of reports, including initial reports and periodic reports. It would be essential to

⁵⁷ See, e.g., *Effective Implementation of International Instruments of Human Rights, Including Reporting Obligations under International Instruments on Human Rights*. A/44/668, 8 Nov. 1989, 44th Session Agenda Item 109. Report of the Meeting of Chairpersons of Human Rights Treaty Bodies, October 1990, A/45/636, para. 14.

⁵⁸ Report of the Meeting of Chairpersons of Human Rights Treaty Bodies, October 1990, A/45/636, para. 29, 30. Further observations were made about the drafting of instruments.

⁵⁹ Report of the Meeting of Chairpersons of Human Rights Treaty Bodies, October 1990, A/45/636, para. 29.

⁶⁰ A pre-Session Working Group meets for one week, to prepare a list of issues and questions for States in respect of their second Periodic Reports.

extend the time available to the Committee if significant new issues were added to the agenda; otherwise even less time could be spent on specific issues.

OTHER OPTIONS?

The question needs to be asked whether resources should be given to drafting a new instrument, when so much needs to be done to strengthen CEDAW, and to make the Women's Convention more effective. There is already a proliferation of instruments, declarations, standards and recommendations relating to the status and equality of women. The full implementation of these instruments, and in particular the Women's Convention, should perhaps be the main strategy in dealing with violence, rather than setting up further instruments whose effectiveness is an unknown quantity.

More Effective Machinery: Enhancing the Role of CEDAW

If it is decided to work towards a protocol to the Women's Convention, the opportunity should be taken to strengthen the supervisory machinery, to remove the time restrictions on CEDAW and to give an expanded role to the Committee in investigating and dealing with specific violations of women's rights. A weakness of the existing supervisory machinery is that there is no provision for those whose rights are in question to take part in the process, or to complain that their rights have been violated. The Committee bases its work primarily on material presented by the States themselves. It may also use material from a source outside the U.N. system, but it is the responsibility of individual members to obtain this material. There is no formal mechanism for putting it before the Committee. Nor is there any provision for the Committee or any agency on its behalf to investigate and determine whether particular States comply with Convention standards, or whether an alleged violation has taken place.

Communication Procedures

In contrast with CEDAW, the Commission on the Status of Women *can* receive and consider communications concerning violations of human rights affecting the status of women.⁶¹ At each Session a confidential and a non-confidential list of communications is considered by a Working Group which reports back to the Commission. At the 1991 Session, the Working Group noted two particular issues concerning women: gender-specific discrimination with regard to equality in working life, and violation of the physical integrity of women.⁶² The Commission is now considering how to improve and strengthen

⁶¹ This procedure dates back to 1947 (Resolution 76(V) ECOSOC; see Res. 1983/27, 26 May 1983). See also Centre for Human Rights, *United Nations Action in the Field of Human Rights*, 325-326; Guggenheim M. H., 'The Implementation of Human Rights by the U.N. Commission on the Status of Women: A Brief Comment (1977) 12 *Texas International Law Journal* 239, 245-6; G.A. Res. 41/120, 41 U.N. G.A.O.R. Supp. (No. 53) 178, U.N. Doc. A/41/53 (1987).

⁶² Report of 35th Session, Official Records of the Economic and Social Council, 1991, Supplement No. 8 (E/1991/28), 48-49, under the agenda item 'Monitoring the Implementation of the Nairobi Forward Looking Strategies for the Advancement of Women', 44, 48.

its communication procedures,⁶³ which represent 'the only possibility for victims of discrimination to make themselves heard.'⁶⁴

An obvious and necessary way to strengthen the machinery under the Women's Convention would be to establish a procedure under which individuals could complain of violations of the Convention.⁶⁵ Such a procedure could be modelled on the Optional Protocol to the International Covenant on Civil and Political Rights,⁶⁶ under which the Human Rights Committee may receive written communications from individuals claiming to be victims of a violation by a State Party to the Protocol of the rights set out in the Covenant.⁶⁷ About 50 States have accepted the Protocol.⁶⁸ Australia has recently ratified the Protocol; it came into force for Australia on 25 December 1991.

The case for a Protocol to the Women's Convention dealing with violence would be greatly strengthened if it included an individual right of complaint, whether that right were limited to the new provisions on violence, or were extended to other matters covered by the Convention. Such a procedure would add to the status and influence of CEDAW. It would also add to its workload and create the need for additional resources.

Other Improvements to the Machinery

Other possible ways of dealing more effectively with alleged violations of women's rights under the Women's Convention include making provision for the appointment of a 'thematic' rapporteur, with a mandate similar to that of the Human Rights Commission's rapporteurs.⁶⁹

Greater efforts could be made to publicize the Convention, and to encourage the involvement of non-governmental organizations in the work of CEDAW. It is a matter for regret that the Committee's work is not better known.⁷⁰ Non-governmental organizations have proved a valuable source of information for the Committee and for other human rights bodies.⁷¹ CEDAW has been assisted by

⁶³ In 1990 ECOSOC requested the Secretary-General to examine the effectiveness of the C.S.W. procedure for dealing with communications [1990/8]. The question was whether the procedure provides an efficient tool for identifying communications that reveal a consistent pattern of reliably attested injustice and discriminatory practices.

⁶⁴ Report of 35th Session, *op. cit.* n. 61. The Working Group of C.S.W. commented that 'the current procedure for communications on the status of women should be improved . . . , and that clear criteria for receiving communications should be given', 49, paras 43, 48. It was suggested that the Commission should study in depth the report of the Secretary-General (E/CN/6/1991/10). Suggestions included greater cooperation with the Centre for Human Rights and the appointment of a rapporteur.

⁶⁵ Meron, T. 'Enhancing the Effectiveness of the Prohibition of Discrimination Against Women' (1990) 84 *American Journal of International Law* 213.

⁶⁶ Adopted by the U.N. General Assembly (Res. 2200 A (XXI)) on 19 December, 1966.

⁶⁷ Art. 1 of the Optional Protocol to the International Covenant on Civil and Political Rights.

⁶⁸ Communications dealt with by the Human Rights Committee under the Optional Protocol include several in which discrimination on the ground of sex was claimed. See also General Comment No. 4/13, 36 U.N. G.A.O.R. Supp. (No. 40) 109, U.N. Doc. A/36/40 (1981); General Comment No. 18, 37th Session, on non-discrimination (covering Arts 2, 3, 26).

⁶⁹ Meron, T., *op. cit.* n. 64, 213.

⁷⁰ McGoldrick has recently commented on the need for more publicity for its work: McGoldrick, D., *The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights*, (1991) 503-504.

⁷¹ *Manual on Human Rights Reporting*, U.N. Centre for Human Rights and U.N.I.T.A.R., 1991, 28; Report of the Meeting of Chairpersons of Human Rights Treaty Bodies, October 1990, A/45/636, para. 38.

by the informal provision of information by the International Womens' Rights Action Watch.⁷² This information may suggest specific instances where there has been non-compliance by a State with its obligations. It is used in questioning States, and can assist in revealing their degree of commitment to the principles of the Convention.⁷³ Regrettably, however, national women's organizations have not been involved to any great extent in the work of CEDAW. The influence of the Committee as a catalyst for change would be enhanced if there were greater awareness of the Convention,⁷⁴ and if a wider range of individuals and organizations could assist the Committee by providing information about the actual situation of women in the States whose reports are under consideration.

CONCLUSIONS

More than 100 States have ratified the Women's Convention, and the Committee has dealt with more than 60 initial Reports. While many States take their reporting obligations seriously, it is not clear whether the Convention is used as a force for change at the national level. Its impact depends to a large extent on the cooperation of States in taking part in the reporting process. The ability of CEDAW to influence change has been hampered by the lack of resources, lack of time, and by the fact that the Convention is not well enough known to national women's organizations.

Violence is a significant issue which affects women in virtually every country. Its prevalence is witness to the attitudes to women which prevail in many societies. CEDAW has chosen violence as a matter for special attention when States reports are under consideration. However, the ability of CEDAW to influence change in this area, as in all the other areas which come within its mandate, is limited for the reasons given.

It is doubtful what advantages could flow from the development of a new instrument covering just one issue, however important that issue may be, unless at the same time action is taken to overcome the present weaknesses in the system. These include extending the meeting time of the Committee and providing for the right of individual communication. Without improvements of this kind, the expectations associated with a new instrument may not be realized.

ADDENDUM:

At its 11th Session in January 1992, CEDAW did not support a proposal for an Optional Protocol limited to the issue of violence. It adopted a major Recommendation and Comment on Violence Against Women (No. 19, 11th Session).

⁷² I.W.R.A.W., a global network of advisors and scholars monitoring issues under the Convention publishes *The Women's Watch*, reporting on law and policy change in accordance with the principles of the Convention on the Elimination of All Forms of Discrimination Against Women. The address is: Arvonne Fraser, Senior Fellow and Project Director, Women, Public Policy and Development Project, Humphrey Institute of Public Affairs, University of Minnesota, 3010 19th Avenue, South Minneapolis, MN 55455 (612) 625-2505.

⁷³ Evatt, E., 'CEDAW: The Reporting and Supervisory Proedures' paper for the Cook Islands Conference, March 1991, 10.

⁷⁴ See CEDAW's Recommendation 10, 8th Session, 1989, concerning publicity. Report of the Meeting of Chairpersons of Human Rights Treaty Bodies, October 1990, A/45/636, paras 43, 44.