

Women And Human Rights

ELIZABETH EVATT*

An exploration of the gap between rhetoric and reality as regards women and human rights. Over the years measures have been taken to combat violence against women and to bring women's rights into mainstream human rights. The article considers these measures and then proceeds to examine Australia's compliance with its' obligations under the Women's Convention. The author then considers the implementation of human rights standards by treaty bodies and ways to further increase compliance with human rights obligations both at home and abroad.

I INTRODUCTION

Since 1948, when the Universal Declaration of Human Rights was adopted, all international human rights standards have applied, in principle, to all regardless of gender. There are also standards which apply only to women. There are many Conventions, Declarations and Resolutions. There have been major conferences, such as Beijing, and special mechanisms have been established, such as the Rapporteur on Violence Against Women.

I have worked in human rights, mainly at the international level for more than 16 years, in two UN (United Nations) human rights treaty monitoring bodies. When I consider the situation of women, I wonder what real effect the UN system of rights has had on women's lives. Women everywhere remain subjected to violence, and in some areas, to the most outrageous forms of violence and murder, just because they are women. Women in Afghanistan are cruelly repressed by the Taliban, and denied education and employment. Tens of thousands of women die every year as the result of unsafe illegal abortions, and hundreds of thousands die from pregnancy related causes, which should be preventable. In China and India, female foetuses are aborted deliberately and baby girls are abandoned in huge numbers. Women caught up in armed conflict suffer rape and violence. Women in many regions are victims of trafficking and forced prostitution. Far too many women endure poverty and hardship as their life story.

How can the representatives of States where these violations are happening stand up at international conferences and give lip service to the equality and rights of women when they appear so unwilling to remedy the situation?

* This paper was the keynote address delivered at a conference on 'Women and Human Rights' convened by the International Commission of Jurists in Melbourne on 25 August 2001.

In Australia there have been many gains for women, but even this country does not comply fully with international standards of equality in its laws and practices.

Is it possible to identify the reason for the gap between the rhetoric and the reality? Is it possible to do better? How can we, as Australians, contribute to this?

II WOMEN'S RIGHTS AND VIOLENCE: A CHALLENGE

A particular concern of women has been that human rights were defined and understood as the rights of men and that the enjoyment of rights by women, particularly civil and political rights, was largely ignored under the main human rights instruments.¹

Because women considered that apparently comprehensive human rights instruments failed to adequately address women's issues, they put their weight behind an instrument devoted to women's equality. Women's activism was largely responsible for the Convention on the Elimination of Discrimination against Women, adopted in 1979.

The Women's Convention, which came into force in 1981, concentrates on issues of discrimination, following in this the model of the Racial Discrimination Convention. However, it was soon seen to be deficient in certain respects. Although it expressly covers trafficking and the exploitation of prostitution, it does not mention many other forms of violence against women, such as rape and sexual violence, family violence, honour killings, female genital mutilation, or dowry death, all of which are serious violations of women's rights. Nor were these violations acknowledged as part of the human rights agenda under the other UN human rights instruments.

Partly in response to these concerns, CEDAW (the UN Committee which monitors compliance with the Women's Convention) adopted a number of General Recommendations directed to States' parties, indicating the scope of the Convention in certain areas. One General Recommendation dealt with the obligations of States to overcome the practice of female circumcision. This was followed in 1992 by a comprehensive General Recommendation on Violence against Women.² That General Recommendation defines gender-based violence as a form of discrimination that seriously impairs women's ability to enjoy rights and freedoms on a basis of equality with men.³ It makes it clear that violence against women not only violates the Women's Convention, but it also violates the

¹ Shelly Wright, 'Human Rights and Women's Rights: An analysis of the UN Convention on the Elimination of All Forms of Discrimination Against Women' in KE Mahoney and P Mahoney (eds) *Human Rights in the Twenty-first Century* (1993) 75.

² General Recommendation No 19 (11th session, 1992), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, [166], UN. Doc. HR/GEN/11/Rev.4 (2000).

³ See art 1 of the Convention.

wider human rights obligations of States.

A WORLD CONFERENCE 1993: GENDER PERSPECTIVES

The "women's rights are human rights" movement was prominent at the Vienna World Conference on Human Rights in 1993. It succeeded in having the issues of women's rights and violence against women successfully incorporated into the final Declaration and Program of Action.⁴ Three specific resolutions included in the program were:

the appointment of a Special Rapporteur on Violence Against Women.

steps to be taken towards a right of petition under the Women's Convention.⁵

a request to the treaty bodies to give greater attention to women's rights, to gender issues and to all forms of violence against women.

Each of these resolutions has had positive outcomes.

Pressure by the women's movement for a new instrument to deal specifically with violence against women also led to the adoption of a Declaration on the Elimination of Violence against Women in 1993.⁶

1 THE SPECIAL RAPPOREUR ON VIOLENCE AGAINST WOMEN

The mandate of the Special Rapporteur on Violence Against Women was established by the Commission on Human Rights in 1994.⁷ Ms Radhika Coomaraswamy of Sri Lanka was appointed; her mandate was renewed again in 2000 for another three years. She was recently on mission to Bangladesh, Nepal and India, looking at trafficking of women and girls.⁸ In 1999, she visited Afghanistan and Pakistan (where many Afghani refugees are found).⁹ Her report condemned the Taliban regime for its mistreatment of women and called for the non-recognition of the Taliban administration and for an arms embargo.¹⁰

⁴ Vienna Declaration and Programme of Action, World Conference on Human Rights, UN Doc A/CONF.157/23 1993.

⁵ Para 40 of Program of Action, Vienna. CEDAW, as well as NGOs and commentators, had been pushing for this as a way to make its monitoring work more effective. Eg, Meron, 'Enhancing the Effectiveness of Prohibition of Discrimination against Women' (1990) 84(1) *American Journal of International Law* 213. Andrew Byrnes, 'Towards more effective enforcement of women's human rights through the use of international human rights law and procedures' in Rebecca Cook (ed) *Human Rights of Women: National and International Perspectives* (1994) 189.

⁶ GA Res 48/104, 48 UN. GAOR Supp. (No. 49) [217], UN. Doc. A/48/49 (1993).

⁷ Res 1994/45.

⁸ E/CN.4/2001/73/Add.2 6 UN Doc(2001): The report calls for (inter alia) international cooperation and greater resources to meet the problem of human servitude and forced labour.

⁹ E/CN.4/2000/68/Add.4, 13 UN Doc(2000).

¹⁰ paras 87, 88.

2 THE OPTIONAL PROTOCOL TO CEDAW

The Optional Protocol to the Women's Convention, which had been proposed by the World Conference in 1993,¹¹ with the support of CEDAW,¹² was adopted in 1999. It came into force in December 2000.¹³ There are now at least 23 parties, including three in this region (Bangladesh, Thailand and New Zealand). The Optional Protocol establishes a communications procedure under which individual women, or groups of women, may complain to the Committee on the Elimination of Discrimination Against Women that their rights under the Convention have been violated.

The Protocol does not make the views of the Committee legally binding on States, which is regrettable. Nevertheless, it goes further than existing instruments, such as the Optional Protocol to the Covenant on Civil and Political Rights, by requiring States to give due consideration to the views of CEDAW, and to respond within six months with information about action it has taken.¹⁴

There is provision for CEDAW to initiate an inquiry procedure, when it receives reliable information which appears to indicate that there is a serious or systematic violation by a State party of rights under the Convention, or a failure to give effect to its Convention obligations. The Committee may make inquiries only in relation to States which have agreed to this particular provision and which consent to the conduct of the inquiry.¹⁵ CEDAW is now ready and waiting for cases to come through.

III BRINGING WOMEN'S RIGHTS INTO MAINSTREAM HUMAN RIGHTS

The Vienna Declaration called on the other treaty bodies to do more to integrate women's rights into their work. The treaty bodies are independent experts who monitor compliance with instruments such as the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. The treaty bodies had always dealt with discrimination against women in areas such as employment, political participation and family law, but they had given little attention to the gender dimensions of the rights protected by their instruments. The movement towards the integration of women's rights into the mainstream human rights agenda happened at a critical time for me, as I finished my term with CEDAW in 1992 and became a member of the Human Rights Committee in

¹¹ Para 40 of Program of Action, Vienna.

¹² Suggestion 5, *Report of the 13th Session of the Committee on the Elimination of All Forms of Discrimination Against Women*, ECOSOC Res 1994/7, [10], A/49/38(1994).

¹³ Of 23 parties as at July 2001, three are in our region, New Zealand, Bangladesh and Thailand.

¹⁴ Article 7(4).

¹⁵ Article 8. The procedure follows art 20 of the Convention Against Torture, though its coverage is wider.

1993. The Human Rights Committee is the monitoring body for the International Covenant on Civil and Political Rights.

A Human Rights Committee Response

The Human Rights Committee responded to the Vienna recommendations by amending its Guidelines to invite States to report, in respect of each Covenant right, on any factors affecting the equal enjoyment of that right by women.¹⁶

At about the same time, the Committee started to receive many submissions from NGOs (Non Governmental Organisations) about women's rights in the States whose reports were under consideration by the Committee. Armed with this information, the Committee was able to raise these issues effectively with those States, and then to draw specific conclusions. Changes in the Committee's membership, which occurred at about this time, led to many more questions being raised with States about gender specific issues arising under the Covenant.¹⁷

Some States responded to the Committee's request for information about the application of the Covenant to women in their reports or in their responses to the Committee's questions. For example, Australia included violence against women in its Third and Fourth Reports under the International Covenant on Civil and Political Rights, lodged in August 1998.

From about 1995 onwards, the Committee's Concluding Observations on States regularly dealt with issues such as honour killings, dowry death and other "culturally motivated" killing of women, rape and violence, the impact on women of unlawful abortion, forced sterilisation, genital mutilation, trafficking of women, forced sterilisation and other forms of sexual exploitation and abuse.

On the basis of this new emphasis on women's rights, the Committee went on to draft a new General Comment on women's rights under the Covenant. A General Comment is a considered opinion of the Committee about the interpretation and application of particular provisions of the Covenant. Its purpose is to guide States on how to implement the Covenant and on what to include in reports to the Committee.

When my colleague on the Committee, Professor Cecilia Medina, came to draft the new General Comment, the Concluding Observations of the Committee were a valuable source. The preparation of this General Comment gave the Committee for the first time an opportunity to analyse the gender dimensions of particular rights protected by the Covenant, such as the right to privacy. It was able to consider the relationship between violence against women and Covenant rights,

¹⁶ At its 53rd session in 1995.

¹⁷ The 1994 election brought into the Committee five new progressive minded members, including Cecilia Medina, who was elected as President in 1999.

such as the right to life or the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. It also considered the circumstances in which States could be considered to have obligations under the Covenant in respect of rape or other forms of sexual abuse or violence against women.

The new General Comment on article 3, 'Equality of Rights between Men and Women', was adopted in 2000,¹⁸ and was the Human Rights Committee's contribution to the Beijing + 5 Special Session of the General Assembly held that year. It deals with the gender dimension of almost every Covenant right, converting the Covenant, in a manner of speaking, into a Covenant on *Women's* Civil and Political Rights. The work of analysis is by no means completed, new issues may well be identified.

This outcome had resulted from a positive relationship between the Human Rights Committee and NGOs, a fact which was acknowledged by the President of Equality Now, one of the NGOs working for women's rights, at the special meeting of the Human Rights Committee to celebrate the 25th anniversary of the Covenant on Civil and Political Rights, in March 2001.

B Other Treaty Bodies and the Gender Dimension

The Human Rights Committee was not the only treaty body to respond to the call for integration of women's rights into the human rights mainstream. The Committee on the Elimination of Racial Discrimination (CERD) adopted a General Recommendation on Gender Related Dimensions of Racial Discrimination.¹⁹ This recommendation recognises that there are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way or to a different degree than men. Examples include sexual violence committed against women members of particular racial or ethnic groups in detention or during armed conflict; the coerced sterilisation of indigenous women; and abuse of women workers in the informal sector or of domestic workers employed abroad. CERD asked States to cover such issues in their reports.

The ICESCR (which has been critical of Australia in a number of issues relating to women) included a gender dimension in its recent General Comment on the right to the highest attainable standard of health.²⁰ This recommends that States integrate a gender perspective in their health-related policies, planning, programmes and research and that they protect women from domestic violence

¹⁸ General Comment No 28 on article 3. Replacing General Comment No. 4, adopted at the 13th Session, 1981.

¹⁹ CERD/C/56/Misc.21/Rev.3, 20 March 2000.

²⁰ Article 12; ICESCR *General Comment on Health Issues*, No 14 (2000), Report 2001, annex IV; see para 20.

and such harmful practices as female genital mutilation.

The Beijing Platform for Action, 1995, and the Beijing + Report reinforced the mainstreaming message and asked both States and treaty bodies to continue to take into account a gender perspective in the implementation of rights.

C Mainstreaming Sexual Health And Reproductive Rights

A prominent issue in the 1995 Platform for Action, which had been raised earlier at the Vienna Conference and again at Cairo in 1994, was that of women's reproductive health rights.²¹ That issue was chosen by a number of UN agencies as the theme of a meeting of representatives of all the treaty bodies in 1996.²²

This was the first meeting which brought together members of the six UN human rights treaty bodies to discuss the application of their different instruments to a specific issue. The aim was to ensure that the treaty bodies gave attention to sexual and reproductive health in carrying out their monitoring responsibilities, and that the UN agencies and NGOs supported the treaty bodies by providing them with relevant information for this purpose.

Women's rights to health, including reproductive and sexual health, is an issue critical to many millions of women. This right intersects with many recognised human rights. For example, the right to life is affected by the rate of maternal and infant mortality: The right to decide freely the number, spacing and timing of children is affected by the accessibility of family planning, contraception services and fertility regulation.

Following the meeting, there were some encouraging developments. In 1999 CEDAW adopted a General Recommendation on Article 12, dealing with equality in access to health services and in access to services related to pregnancy and confinement.²³ The General Comment on the right to the highest attainable standard of health adopted by ICESCR in 2000, covers such issues as sexual and reproductive health services, including access to family planning, pre and postnatal care.²⁴

The Human Rights Committee's General Comment on women's rights adopted in 2000, makes several connections between sexual and reproductive health rights and the Covenant. It states that the right to life may be compromised where States do not take action to reduce high rates of maternal mortality, to enable women to avoid unsafe clandestine abortions, or to provide services in relation to HIV/AIDS. The right not to be subject to inhuman or degrading treatment is

²¹ Platform, para 94.

²² NGOs and UN agencies also participated. The sponsors were the United Nations Population Fund (UNFPA) in collaboration with the Office of the High Commissioner for Human Rights (then, Centre for Human Rights) and the Division for the Advancement of Women.

²³ General Recommendation No 24 on article 12, adopted in 1999.

²⁴ Article 12; ICESCR General Comment No. 14 (2000), Report 2001, annex IV; see para 20.

compromised if women do not have access to safe abortion in case of rape, or if they are not protected from forced abortion, sterilisation or genital mutilation. Privacy rights are at risk where employers are allowed to demand pregnancy tests, where a rape victim's sexual history must be disclosed, or where doctors are required to report a woman who appears to have had an abortion. Regrettably, women in some countries not only risk their lives by having illegal, unsafe abortions. If they survive, they also face the risk of jail. Beijing + took up these issues again in 2000, asking States to consider reviewing laws containing punitive measures against women who have undergone illegal abortions.

D Mainstreaming And Opportunities For NGOs

The mainstreaming of women's rights creates wider opportunities for NGOs which want to raise with treaty bodies human rights issues affecting women in their own countries. The treaty bodies are the only independent monitoring bodies whose function is to assess compliance with treaty standards. Their observations can become an important tool for activists in their own countries. The usefulness of their observations, however, is diminished if they do not have accurate information about significant human rights issues in particular countries. State parties do not always tell the whole story in their reports. Very little research assistance is provided to the treaty bodies by the UN Secretariat due to lack of resources.

NGOs need to be aware that CEDAW is not the only treaty body dealing with women's issues, and that the other treaty bodies also need up-to-date information concerning women. The treaty bodies which are particularly important in this regard are the Human Rights Committee and the Committee on Economic, Social and Cultural Rights.

A comparison can be drawn between the reports considered last year, 2000, by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights

Australia's report to the Human Rights Committee under the ICCPR was prepared before the Committee had drawn up its general comment on women's rights. The report dealt with violence against women, but not with a number of other issues identified by the Committee in its general comment. The Committee did not have up-to-date information from NGOs on the gaps in regard to the protection of women's rights. As a result, the government's own glowing report went unanswered, and the Committee was rather complacent about the situation of women in Australia. It congratulated the government on progress in the status of women. In accordance with the practice guidelines the Committee members do not participate when their own State is under consideration.

The Committee did, however, criticise the absence of a Constitutional Bill of Rights or provisions giving effect to the Covenant, which leaves rights without

legal protection. This is of particular importance to women, especially the lack of a guarantee of equality.

By contrast, the Committee on Economic, Social and Cultural Rights came to grips with some significant issues affecting Australian women.²⁵ These included the disadvantages of the indigenous population in the enjoyment of economic, social and cultural rights, particularly in the field of employment, housing, health and education; the lack of protection for the rights of homeworkers, most of whom are women; and the lack of paid maternity leave. It gave Australia credit for the increase in the percentage of women employed at higher levels and the programs established to address domestic violence.

IV AUSTRALIA AND THE WOMEN'S CONVENTION

This brings me to the question of how well Australia complies with its obligations under the Women's Convention.

A Reporting

One of the obligations of States is to submit reports to CEDAW at prescribed intervals. Australia's last report was considered in 1997. Its current report, due in August 2000, has not been submitted. When it is submitted, there will be considerable delay before it comes before the Committee. This record is not good.

B Reservations

The next issue is to ask why Australia continues to maintain reservations to the Convention. In 1997 CEDAW once again expressed its concern about the continuing effect of Australia's two reservations. These reservations are specific and cannot be compared with the kind of reservations to the Convention which have been made by some countries in the Middle East and North Africa, mainly Islamic countries which make compliance with the Convention subordinate to Shari'a law. Nevertheless, it is time for Australia to commit itself to full compliance with the Convention by withdrawing its reservations.

1 Combat Duties

One reservation related originally to the participation of women in combat or combat-related duties in the Australian Defence Force (ADF). On 30 August 2000, with effect from that date, Australia withdrew part of that reservation, on the basis that since 1992, women had been permitted to serve in all ADF units except 'direct combat units'.

²⁵ Concluding Observations of the Committee on Economic, Social and Cultural Rights on Australia. 01/09/2000. E/C.12/1/Add.50.

However, Australia maintained its reservation in regard to the exclusion of women from combat duties.²⁶

In May 2001 a report to the government by the defence chiefs recommended that women be able to serve in wartime land combat roles if they meet the same physical standards as their male counterparts.²⁷ This is now under consideration. Issues which may arise include why the risks and opportunities of service should be borne only by men; whether decisions about Australia's involvement in conflict are likely to be affected if women are participants; whether women will be able to reach top level positions in the ADF if their service opportunities are limited; and whether peace keeping is the likely future role of our defence forces. The time for withdrawal of the reservation appears to be drawing closer.

2 Paid Maternity Leave

Australia's other reservation to the Women's Convention concerns paid maternity leave. The Women's Convention requires 'maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.' The reservation is in these terms:

The Government of Australia advises that it is not at present in a position to take the measures required by Article 11(2)(b) to introduce maternity leave with pay or with comparable social benefits throughout Australia.

In 1997, CEDAW expressed concern about this reservation and about Australia's non-ratification of ILO Convention No 103 concerning maternity protection.²⁸ In 2000, CESCR also expressed concern at the lack of paid maternity leave, which is required by Article 10(2) of that Covenant. Australia entered no reservation to that provision. Neither instrument specifies a period for the leave.

Australia seems to be out of step on this issue. The ACTU observed recently that 70 per cent of Australian women have no paid maternity leave. A recent study by Dr Marian Baird,²⁹ showed that only 7.48 per cent of federal agreements and 3.1 per cent of State agreements provide for paid maternity leave, for periods ranging from two days to 18 weeks. The example of 12 weeks paid leave provided by the Commonwealth public service is not followed widely. The ILO has recommended a standard of 14 weeks leave.

There was a great deal of interest recently in the deal won by staff at the Australian Catholic University, under which women will be entitled to 12 weeks leave at full pay, and the rest of the year at 60 per cent of their salary. The agreement also gives working fathers, who are not the primary carer, three weeks

²⁶ The complete text of the reservations is published in 1325 UNTS 378.

²⁷ A recommendation of a Defence Force report to the Defence Chiefs.

²⁸ This provides for 12 weeks of cash benefits for qualifying women, art 4.4.

²⁹ SMH 21.8.01.

leave on full pay.

In 2000, the government rejected a recommendation of the Human Rights and Equal Opportunity Commission (HREOC) that it should withdraw its reservation on paid maternity leave.³⁰ It also rejected HREOC's recommendations that the *Workplace Relations Act 1996* (Cth) be amended to extend unpaid maternity leave to casual employees employed for over 12 months and proposals that it should provide funding to undertake economic modeling and analysis of possible paid maternity leave options.

Pru Goward, the new sex discrimination commissioner, has now taken up the question of paid maternity leave and intends to issue an options paper within six months.³¹ She has said that the lack of universal paid maternity leave is one of the most important issues facing Australian families and that it is a serious impediment to women who wish to have children, as it limits their participation in the workforce.

The Prime Minister is reported to have observed that paid maternity leave is desirable, but cannot be afforded and would lead to increasing unemployment. Surely a country that can cope with the intricacy and cost of compulsory superannuation and the GST can find a way to implement this international standard of paid maternity leave, enjoyed by women in 157 countries.³²

Here is an issue for women to run with.

3 Other Compliance Issues

There are other issues where Australia's compliance with the Women's Convention falls short of its obligations. The situation of indigenous women is well below international human rights standards in health, education and housing, life expectancy and maternal and infant mortality. Violence is also a huge problem for indigenous women.

In addition, there are several issues which may have escaped the attention of the treaty bodies. For example, the *Sex Discrimination Act 1984* (Cth), which implements CEDAW is subject to a number of exemptions and exceptions which governments have been very reluctant to revisit.³³

³⁰ *Report of the National Inquiry into Pregnancy and Work - Pregnant and Productive: it's a right not a privilege to work while pregnant*. HREOC assessment of Government Responses to Recommendations, 1 November 2000, recommendation no 44.

³¹ Ms Goward released *Valuing Parenthood: Options for paid maternity leave - Interim paper* in April 2002, and this has been followed by further policy debate.

³² *Pregnancy Report*, above n 30, [14.11].

³³ Eg, the exemption contained in section 38 for educational institutions established for religious purposes in relation to pregnancy and potential pregnancy.

4 Reproductive Technology and Sex Discrimination Act

A recent issue which has attracted attention is the proposal to further amend the *Sex Discrimination Act 1984* (Cth) in relation to access to reproductive technology.

In *McBain v State of Victoria*,³⁴ the Federal Court held that Victorian legislation restricting access to reproductive technology was inconsistent with the Commonwealth Sex Discrimination Act and therefore invalid under s 109 of the Constitution. The Victorian legislation limited access to married women and to women living in a genuine de facto relationship. Single women and women living in a lesbian relationship were excluded. The Commonwealth Act makes it unlawful for persons providing goods or services to discriminate on the ground of sex or marital status.

The case is on appeal to the High Court, but if the decision stands, the federal government plans to introduce an amendment to the *Sex Discrimination Act 1984* (Cth) to allow the Victorian law, and any other similar restrictive State laws to operate. A Senate Committee has already found the Bill to be contrary to Australia's obligations under the Women's Convention.

The federal Attorney-General will argue that the prohibition on marital status discrimination in the *Sex Discrimination Act 1984* (Cth) is supported by the Convention on the Elimination of Discrimination against Women, and therefore constitutionally valid. He will also argue that the Act does not override the Victorian legislation limiting access to assisted reproductive technology services. There are some rather interesting procedural issues relating to the standing of the Catholic Bishops to bring the appeal. The HREOC, the Australian Family Association and the Women's Electoral Lobby have all been given standing to appear. This may be the first such intervention by WEL to uphold the *Sex Discrimination Act 1984* (Cth).

5 Rejection of the Optional Protocol

The Australian government gave considerable support to the project for a Protocol to the Women's Convention which establishes a right of individual petition. Australia provided financial support for the meeting of non-governmental experts in 1994 to prepare the first draft for the Protocol. It actively supported the project during the drafting process in the CSW working group.³⁵ In 2000, in reporting on its implementation of the Beijing Platform for Action, Australia said that it had worked on the development of the Protocol, and supported its adoption.³⁶

³⁴ [2000] FCA 1009.

³⁵ *Five Year Review of the Vienna World Conference*, 1998, section V, equal status and rights of women.

³⁶ *Australian Government Response* (2000) < <http://www.osw.dpmc.gov.au/index.html> >.

Within a few months, in August 2000, the government changed its mind and said that Australia would not become a party to the Protocol. This decision was part of a series of measures decided upon in relation to Australia's future engagement with all the treaty bodies. These arose from the government's dissatisfaction with CERD which led it to make unwarranted attacks on the treaty bodies and their members.

The decision about the Protocol to the Women's Convention was caught up in that process, which had very little to do with CEDAW or its operations. The Minister later said that Australia had satisfactory procedures in respect of women's equality.

The decision appears to run counter to the professed desire of the Government to improve the effectiveness of the treaty bodies. DFAT's explanation was that the decision did not repudiate CEDAW itself, but reflected the view that Australia should not support the creation of a new complaints mechanism when it is unhappy about the way existing ones are operating.³⁷

It will inevitably mean that Australian women are left without either national or international recourse in areas where the Convention has not been fully implemented, such as where there are gaps in the protection of the *Sex Discrimination Act 1984* (Cth), or where it is subject to exemptions.

The Protocol came into force on 22 December, 2000. It will create new opportunities for CEDAW to develop jurisprudence under the Convention, and should strengthen its standing in the UN system of human rights protection. It is most regrettable that Australia should turn its back on the process and withdraw its support for a procedure which could be significant for millions of women.

There is a connection between this and the IVF issue. If Australia were to amend the *Sex Discrimination Act 1984* (Cth) to enable States to deny single women access to fertility service, this could result in a violation of Convention rights. The government would then be even more reluctant to ratify the Protocol to avoid the issue being put to the test.

I regret this very much indeed. However, I must point out that some issues affecting women could be tested under the Optional Protocol to the ICCPR, which covers all aspects of discrimination against women. However, the government has shown its willingness to reject decisions of the Human Rights Committee which do not please it.

³⁷ Departmental briefing for Non-Government Organisations about the Government decision on Human Rights Treaty Bodies, 31 August 2000.

There is one final point to mention in relation to the government's attack on the treaty bodies. Women's NGOs should be especially irritable at the government's suggestion that the treaty bodies give too much weight to NGOs. This is completely out of step with the efforts made by the UN to increase the involvement of civil society. It is out of step with the efforts that have been made in the past by Australian governments to encourage women's organisations to participate in the major UN women's conferences. It fails to acknowledge that instruments such as the Women's Convention and the Optional Protocol have come about to a large extent as a result of international activism by women, in their pursuit of international standards which could make a difference to women's lives. It fails to acknowledge that the treaty body system cannot work effectively without NGO support.

V MAKING A DIFFERENCE: INTERNATIONAL STANDARDS AND MONITORING

I come back now to my original question, whether the many Declarations, Conventions, Platforms etc, have led to significant improvements for women and whether there is hope of change to come. My focus is on the legally binding standards of the human rights treaties (I am aware that there are also commitments to Beijing which need to be tested).

This is a question that I have often discussed with my colleagues on the Human Rights Committee and before that with colleagues on CEDAW. These treaty bodies monitor compliance by States with the instruments they have ratified and express their conclusions about each State. The Human Rights Committee also determines individual complaints. This monitoring is independent of governments and of NGOs. All ratifying States are required to report, and most do so eventually.

When a Committee deals with difficult States, such as Belarus, Iran, Algeria or Peru, let alone the Congo, members like me often wonder how we can maintain our composure and politeness while putting questions to governments about sometimes outrageous violations of rights said to be occurring in their countries. We wonder why the community of nations fails to censure these countries for the abuses which are revealed, how their leaders can be permitted to declare publicly their support for rights which they deny to their citizens.

Sadly, we remember that the States who set up the UN human rights system were not motivated towards making it effective. The supervisory mechanisms as written appear rather weak. The views of the treaty bodies are not legally binding. Some States trade their votes for the election of members to the treaty bodies in deals unrelated to the merits of candidates, so that not all bodies have the best

available membership.

We too remember, that the committees themselves have done a great deal on their own initiative to make the monitoring system effective. They have insisted that States appear before the committees to answer questions when their reports are under consideration; they have encouraged NGOs to provide information about the real state of affairs in countries being considered; they have developed a system of written assessments of States; and they have introduced a system of following up decisions in the complaint procedures to keep pressure on States to comply with their obligations. The treaty bodies have achieved these procedural results with a minimum of resources and often through the commitment and voluntary work of committee members. I have seen all this personally, and it is one reason why I was so appalled by the government's attack on the treaty bodies last year.

How do treaty body members console themselves when faced by the reality of widespread violations of rights? One answer is that the development of jurisprudence under the instruments is intellectually challenging and satisfying. But there is more. There are instances where States return to the Committee having altered a law or policy that had been found incompatible with the Covenant. There are cases where a remedy recommended by the Committee is given by the State. Even Australia has done this. In regard to women's rights, I recall more than once that a female member of a country's delegation has slipped away from her group at the end of the meeting to tell us how glad she was that we had condemned her State for its discriminatory laws and failure to ensure equality for women. She would be able to make good use of the Committee's comments.

Those things give heart, as does every step made towards greater democratisation in States' parties.

Unfortunately, many States are not yet sufficiently democratic to be ready for compliance with international standards. These States are unwilling to do what is needed to change centuries of oppression of women and attitudes which relegate women to subordinate status. Pakistan, for example, it is a party to the Women's Convention but has done nothing to stamp out the widespread practice of honour killings.

There has been increasing support, however, for the treaty bodies from civil society in many States, from individuals and NGOs that are willing, despite the odds, to submit information to the committees and to work as much as circumstances permit for change in the situation of women. When the committees' comments are used successfully in lobbying, the treaty bodies can be satisfied that their insistence on full and effective compliance with obligations aids the work of NGOs and puts pressure on governments.

VI NATIONAL ACTIVISM - TAKING IT HOME

Can we do better, and how can Australia contribute?

I have tried to make it clear that activism by individuals and NGOs can play a very significant, if not key role in the monitoring and implementation of standards at the national level. NGO action taking up the conclusions of human rights bodies could put pressure on governments to enact laws or take other action to implement their human rights treaty obligations. One could ask why the government has not published the conclusions of the four treaty bodies which considered reports from Australia last year.

To ensure that the treaty bodies are adequately informed of current issues, NGOs could make more effective use of the reporting process providing the treaty bodies with information about the laws and policies affecting women in their country which fall short of international standards.

It is encouraging to see that Australian NGOs have tackled the government on its failure to ratify the Optional Protocol to CEDAW, and that international women's groups are also calling for worldwide support from civil society and government bodies in urging their States to sign and ratify the optional protocol to CEDAW Convention.³⁸

VII FOREIGN AID - A HUMAN RIGHTS ISSUE FOR WOMEN

Activism needs to extend out to our region and to the situation of women in our neighbouring countries. The level of Australia's foreign aid is a human rights issue for women. The UN target for aid is 0.7 per cent of GNP. Recent reports suggest that our total has dropped to 0.25 per cent of GNP, only about a third of what it should be. Instead of increasing, it has been decreasing. Funding for NGOs involved in aid work has also dropped.

This is most regrettable since the aid dollar has been well spent, according to NGO reports, in poverty reduction through education and primary health care. Many aid programs support gender equity. Particular projects include the Fiji Women's Crisis Centre, support for a UN program aimed at reducing trafficking of women and children in the Mekong sub-region. Other programs in the human rights area have a focus on women and law, one is aimed at preventing female circumcision.

One way to improve the situation of women is to encourage the government to increase its commitment to aid as well as supporting NGO programs which have a focus on women.

³⁸ The Afro-Asian Peoples' Solidarity Organization (AAPSO); Dr Morad Ghaleb, President E-mails: <aapso@idsc.net.eg> and <aapso@gega.net>.