

Fordham International Law Journal

Volume 18, Issue 5

1994

Article 19

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WOMEN'S HUMAN RIGHTS: THE TWENTY-FIRST CENTURY

*Elizabeth F. Defeis**

In the past several decades, discussion of the protection of women's human rights has moved to the forefront of the agenda of international and human rights organizations. Translating this discussion into meaningful protection remains one of the challenges of the twenty-first century.

The principle that equality between men and women is a basic human right has been recognized in its current international form since the adoption of the United Nations Charter in 1945. Since that time, numerous treaties have entered into force which mandate equality of rights between men and women, including the comprehensive Convention on the Elimination of all Forms of Discrimination Against Women ("CEDAW"), now ratified by over 100 nations. Nevertheless, women continue to have a subordinate social and economic status in all societies and are virtually invisible in leadership positions within national governments and international organizations. As a result, women have little, if any, influence over allocation of global resources and policies despite the fact that these decisions often disproportionately affect them. Until recently, gender-specific violations have been ignored or marginalized by U.N. human rights programs and human rights organizations.

It has been argued that the existing international human rights norms and practices are the result of a male-centric approach to human rights norms and international law that addresses only the concerns of white males, leaving women and children of all nations, as well as developing nations, to challenge those established norms for legal recognition of their human rights in the public and private sphere. The western liberal tradition draws a distinction between public life encompassing work, politics, and macro-economics and the private sphere including home, children, and domestic concerns often gravely affecting the responsibilities of women. Traditionally, the law

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has functioned in the public sphere and avoided entanglement in the lives of those it governs. This public/private distinction is magnified at the international level, which purports to govern relations among states. Consequently, human rights violations specific to women are largely unregulated and have, until recently, continued without international legal sanctions.

Several important and far reaching initiatives have recently been taken in order to provide greater recognition and protection of women's human rights as well as greater access for women to policy-making positions. For example, some consensus was reached at the World Conference on Human Rights held in Vienna in 1993. The World Conference could well be considered a watershed in the protection of human rights of women and signal the end of the historic disregard of women's human rights. The Vienna Declaration and Programme of Action (or "Declaration") promulgated at the Conference expressly recognized that the human rights of women are an inalienable, integral, and indivisible part of universal human rights.¹ The Declaration identified numerous gender-specific abuses including those resulting from cultural prejudice, such as violence, sexual harassment, and sexual exploitation, as human rights violations incompatible with the dignity and worth of the human person. Accordingly, the Declaration called for their elimination. It stressed that equal status of women and the human rights of women should be integrated into the mainstream of the U.N. system-wide activity. The Programme also urged that treaty-monitoring mechanisms be strengthened and, in particular, that the Convention on the Elimination of All Forms of Discrimination Against Women be universally adopted by the year 2000, that the large numbers of reservations to CEDAW be reviewed, and that an optional protocol to allow for individual petitions be adopted. Further, it called upon governments and all international organizations to facilitate women's access to policy level posts and greater participation in the decision-making process.

The Declaration and Programme of Action, when fully implemented, could have a profound effect on the development of the human rights of women and indeed some promising first steps have already been taken. In December 1993, the U.N.

1. For the text of the Vienna Declaration and Programme of Action, see U.N. Doc. A/CONF.157/23 (1993), 32 I.L.M. 1661 (1993).

General Assembly adopted a Declaration on the Elimination of Violence Against Women.² This Declaration recognizes that violence against women is an issue of international concern and that all nations have an obligation to work towards its eradication. The preamble affirms that "violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms." Violence is defined as "[a]ny act of gender based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." Forms of violence encompassed in the definition include violence within the family, violence in the workplace, such as sexual harassment and intimidation, and all forms of violence perpetrated or condoned by the state. The Declaration rejects the concept of "cultural relativism" in addressing violence against women and urges states to condemn violence against women and pursue a policy of eliminating such violence by all appropriate means and without delay. Although the Declaration is not legally binding and continues the requirement of state action, it is extremely significant because it even reaches violence within the family and reduces the importance of the public/private distinction.

The Declaration might well be the first step towards the formation of customary international law and subsequent legally binding instruments in this area. In addition, in April 1994, a Special Rapporteur on violence against women was appointed to focus on violence in the home (domestic violence), in the community (prostitution, rape, pornography), and by the state (abuse in prisons and in armed conflicts). The reports of the Special Rapporteur will allow the U.N. to monitor and receive information on human rights violations and will be especially valuable in those states that have not ratified CEDAW or have made substantial reservations.

The Vienna Declaration also urges States to withdraw the numerous reservations to CEDAW. Unfortunately, reservations to human rights treaties and to CEDAW in particular have been an obstacle to the effectiveness of such instruments. There have

2. For the text of the Declaration on the Elimination of Violence Against Women, see G.A. Res. 48/104 (1994), 33 I.L.M. 1049 (1994).

been more than 100 reservations submitted by over forty States to CEDAW. Reserving states justify their reservations on grounds of religion, culture, tradition, and economics.

The most conspicuous of the reservations are those entered by Bangladesh, Egypt, Iraq, and Libya, which base such reservations on a conflict between Article 2 (stating that the parties agree to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulation, customs and practices which constitute discrimination against women") and the Islamic Law. Turkey, Thailand, New Zealand, Brazil, and Tunisia entered reservations regarding the equality between men and women in matrimonial property and family law. Malawi made a reservation stating that it did not consider itself bound by those provisions that require immediate eradication of discriminatory practices due to the "deep rooted nature of some traditional customs and practices." These reservations are incompatible with the object and purpose of CEDAW but have been tolerated in order to gain maximum adherence to the convention.

Nevertheless, the effectiveness of CEDAW and other human rights conventions has been undermined by reservations. The Human Rights Committee of the United Nations has recently indicated that it will take a more active role with respect to determining the appropriateness of reservations to the International Covenant of Civil and Political Rights because human rights treaties are of such a special character that compatibility of such reservations must be established objectively, guided by legal principles.³ A similar critical review by the CEDAW Committee of reservation to CEDAW and elimination of such reservations would greatly strengthen the effective reach of CEDAW.

The Vienna Declaration and Programme of Action stressed the importance of integrating women's human rights into the "mainstream" of U.N. human rights programs. Human rights bodies within the U.N. system have frequently been criticized because the human rights of women have not been integrated into the human rights mechanisms but instead have been marginalized by such bodies. This "marginalization" of women's rights is due not only to a gross lack of funding, but also the lack of sensi-

3. See *General Comment Adopted by the Human Rights Committee Under Article 40, Paragraph 4, of the International Covenant on Civil and Political Rights*, U.N.H.R.C., U.N. Doc. CCPR/C/21/Rev.1/Add.6 (Nov. 2, 1994).

tivity or awareness on the part of monitoring bodies and a lack of communication between the specialized women's rights committees and the more prominent generalized "Geneva Based" human rights commissions.

The Commission on Human Rights has recognized that some human rights violations are specific to or primarily directed against women and that the reporting of these violations demands specific awareness and sensitivity. Therefore, all Special Rapporteurs were directed both to include in their reports gender-disaggregated data and to address the characteristics and practice of human rights violations under their mandates that are specifically or primarily directed against women or to which women are particularly vulnerable. An expert group recently has been convened by the Center for Human Rights and the United Nations Development Fund to draft specific guidelines for the integration of the status and human rights of women into the activities of the United Nations Organization, its bodies, and mechanisms dealing with human rights.⁴

Initial steps have also been taken to implement new procedures for strengthening women's human rights under existing treaties. At its January 1995 session, the CEDAW Committee adopted a proposal outlining the elements of an Optional Protocol to CEDAW.⁵ Ultimately the protocol must be adopted by the General Assembly, and support among governments for the Protocol is growing. The Optional Protocol would establish both individual and group complaint procedures and an inquiry procedure to permit the CEDAW authority to examine allegations of serious or systematic violations of the Convention on its own initiative. The Optional Protocol, if adopted, would strengthen the protection of rights under CEDAW and is expected to generate support at the World Conference on Women in Beijing in 1995.

While the human rights community has now acknowledged that women's rights are human rights and that some human rights violations are gender-specific, there is no comprehensive legally binding document that protects women's rights. A new

4. See *Monitoring the Implementation of the Nairobi Forward-Looking Strategies for the Advancement of Women*, U.N. ESCOR, 39th Sess., U.N. Doc. E/CN.6/1995/L.11 (Mar. 24, 1995).

5. WOMEN IN INTERNATIONAL LAW ET AL., DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (Sept.-Oct. 1994).

convention to address all forms of sexual exploitation against women with a right of individual petition is needed and even foreseeable. A far reaching and imaginative convention is now in the drafting stage and was introduced by the Coalition Against Trafficking in Women, a non-governmental organization ("NGO") with consultative status with the United Nations Educational, Scientific and Cultural Organization ("UNESCO") at the World Conference on Human Rights in 1993.⁶ The Draft Convention Against Sexual Exploitation defines sexual exploitation as a "practice by which person(s) achieve sexual gratification, or financial gain, or advancement through the abuse of a person's sexuality by abusing that person's human right to dignity, equality, autonomy, and physical and mental well being." It then specifically addresses private sexual subordination of individual women and violence that escaped direct condemnation in both the CEDAW and the United Nations Declaration on Violence Against Women. The draft recognizes that while sexual exploitation mostly affects women, men can also be exploited by the sex trade. Enforcement mechanisms are patterned on the more recent human rights conventions, such as the Torture Convention, and thus includes a right of individual petition.

Finally, the Vienna Declaration and Programme of Action recognized the paucity of women in decision-making posts and particularly urged the U.N. Secretariat to appoint and promote women staff members in accordance with the mandate of equality in the Charter of the United Nations. Article 8 of the U.N. Charter provides that the U.N. shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

In a report prepared in 1994 for the Ford Foundation entitled "Renewing the United Nations System," Erskin Childers and Brian Urquhart note that although the United Nations has been a leader in standard-setting on gender issues, its Secretariat "is in standing violation of the Charter in abjectly failing to meet these standards." Under-representation of women in the Secretariat was addressed by the General Assembly as early as 1970 and has continuously been on its agenda since that time. In 1990, the

6. See KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY: THE GLOBAL EXPLOITATION OF WOMEN* 323-44 (1995).

General Assembly expressed its concern that women constituted only 7.1% of employees in decision-making positions and set a target of 30% representation throughout the Secretariat by 1990 and 35% by 1995. It also set as a target 25% participation of women in decision-making positions by 1995. These targets have fallen substantially short, particularly with respect to the decision-making positions. In 1993, women represented 11.8% of the employees at the Under Secretary General and Assistant-Secretary levels, while overall participation in the Secretariat rose to 31.3%.

On February 24, 1995, the General Assembly adopted the Report of the Third Committee and noted "with concern" that the current rate of increase was insufficient to meet the goal set in resolutions of the previous years of 35% participation of women in posts subject to geographical distribution and 25% participation of women in decision-making positions by 1995. It noted "with disappointment" that the participation of women in decision-making is unacceptably low.⁷ It also once again urged reexamination of practices within the U.N. system to increase job flexibility, including job-sharing, flexible working hours, child-care arrangements, career break schemes, and access to training. The General Assembly also urged the Secretary General to establish a focal point for women within the Secretariat for enforcement, monitoring, and increasing accountability within the Secretariat. Despite continued urging from the General Assembly, the bureaucracy of the United Nations appears unwilling to address the problem seriously. This may be due to several factors, including lack of accountability, effective sanctions, reluctance of member states to put forth women candidates for policy level positions, continued sexual stereotyping, and unwillingness to carry out these directives of the General Assembly.

The Childers-Urquhart report had urged that compliance with Article 8 of the U.N. Charter be a prime factor in performance reviews of U.N. personnel. The Secretary General has now indicated that he will issue clear and specific instructions to implement the plan to advance women within the Secretariat. These guidelines are essential; however, unless there is a clear

7. See *Improvement of the Status of Women in the Secretariat*, U.N. GAOR, 3d Comm., 49th Sess., U.N. Doc. A/RES/49/167 (Feb. 24, 1995).

and visible commitment accompanied by effective sanctions, the Secretariat will remain in violation of the Charter.

Although progress has been made in the past decade both in the recognition that women's rights are human rights and the several initiatives and programs adopted by NGOs and the United Nations and its organs, much remains to be done. Unquestionably, the work will continue into the twenty-first century, but with continued efforts, good will, sensitivity, and increased accountability, the goals of the Vienna Declaration and Programme of Action could realistically be achieved. This will require a reexamination of accepted philosophy, policy, and political will on the part of U.N. human rights system, the U.N. Secretariat, NGOs, and national governments. Consistent efforts, however, are well underway.