



“Taking CEDAW Seriously”

**A Conference to promote, apply and
enforce the UN CEDAW Convention**

Thursday 23rd March 2006

Westwood House Hotel, Galway

Conference Report

Women's Human Rights Alliance

Irish Centre for Human Rights, National University of Ireland Galway

Irish Council for Civil Liberties



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This report comprises papers from the conference, as well as notes from meetings Shanthi spoke at in Belfast and Dublin. We hope you will find the report helpful and inspiring in your work to ensure CEDAW is taken seriously.

Nóirín Clancy
Co-ordinator, WHRA

Taking CEDAW Seriously: a Global Perspective

Maeve Taylor, Banúlacht

Good morning. My name is Maeve Taylor, and I work for Banúlacht, a feminist NGO based in Dublin that works to make links between women's situations, experiences and struggles in Ireland and globally. Banúlacht has always maintained a strong focus on women's human rights and has worked since its inception to bring a global perspective to the work of women's organisations in Ireland. I think I can speak for the other organisations that are members of the Women's Human Rights Alliance (and before that of the Pro-Beijing Women's NGO Coalition and prior to that of the Women's Human Rights Campaign), when I say that it is a particular pleasure to be here at this event where so much work has come to fruition. We are seeing today the realisation of a vision to have an independent women's human rights organisation with the expertise and confidence to produce a Shadow Report and to use it effectively as a tool to demand accountability of the Irish government during its hearing before the CEDAW Committee. To demand that the government start to take CEDAW seriously.

My role today is to talk about the global perspective: if we agree that human rights are universal – that, in the words of the Universal Declaration on Human Rights 1948, all human beings are born free and equal in dignity and rights – we have to think about rights in the context of the world and not just our own country. And we cannot talk about women's human rights without talking about the ways in which women have linked and strategised across borders and across cultural differences to challenge governments and the United Nations to rethink human rights.

CEDAW, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, is one of the most important international human rights conventions. It is one of a number of international human rights agreements that stem from, build on and strengthen the Universal Declaration of Human Rights, which was agreed by the world's governments in 1948. These agreements provide an overarching global framework that sets out a language and a set of principles and standards and defines the obligations of all the states in the UN system in relation to respect for and the protection, promotion and fulfilment of human rights. They include the International Covenant on Civil and Political Rights, which defines the rights to freedom of expression, association, fair trial, and prohibitions on torture, slavery and arbitrary detention, and the International Covenant on Economic, Social and Cultural Rights, which includes, for example, the right to the highest attainable standard of health, to an adequate standard of living. The former aspects of human right, the protection of the citizen from abuses of power by the State has tended to be seen as more important, and the latter aspect, which obliges the State to use economic resources and put social supports in place in order to fulfil economic and social rights, as somehow secondary. CEDAW does not reflect this kind of hierarchical thinking, but recognises the interdependence and interconnectedness of civil and political rights with economic, social and cultural rights.

CEDAW, also known as 'The Women's Convention' and adopted in 1979, was the first convention to comprehensively address women's rights within political, economic, social, cultural and family life. It emerged from the First World Conference on Women, held in Mexico in 1975. In other words it emerged from the concerted efforts of women's organisations throughout the world to bring governments together to recognise on the one hand, the ways in which existing human rights agreements failed to adequately reflect the specific human rights experience of women, and on the other, that repealing discriminatory laws alone is not sufficient to bring about equality between women and men, but that the deeper discriminations embodied not only in the law but in political,

social, cultural and economic systems also have to be removed, and that it requires a range of actions by governments to achieve this. For women to exercise the political right to run for elected office, for example, depends upon access to economic resources and social support. The Convention brings together provisions from existing human rights instruments concerning discrimination on the basis of sex and extends them further, creating an official, internationally sanctioned method of redress for combating discrimination against women.

According to its preamble, CEDAW is intended to be transformative. It recognises that “a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women”. Rather than adding to the list of rights already covered by other treaties, CEDAW aims to change the system within which women’s rights are violated. It addresses discrimination in a systemic fashion to address the inter-related discriminations against women that are pervasive in society. CEDAW addresses indirect as well as direct discrimination, and promotes positive action. It does not reflect the old hierarchy between civil and political rights on the one hand, and economic, social and cultural rights on the other.

While CEDAW forms part of international law, and is therefore legally binding on the Irish government, it has not been incorporated into Irish domestic law, and is not therefore binding on the Irish courts. There are no direct remedies for infringement of CEDAW in the Irish courts – it cannot be cited alone as the basis for a case against an employer or the government. But it should form part of the principles of interpretation of the courts, and should inform the thinking and analysis of the judiciary and the legislature. A challenge for the implementation of CEDAW is to ensure the incorporation of the Convention into Irish domestic law.

But apart from the need for greater recognition of CEDAW as a legal instrument, it has great weight as a tool to demand political accountability for states’ obligations under human rights agreements. One way is through participation in the hearings when the Irish government reports to the CEDAW Committee on its progress in the implementation of the Convention. Another is using CEDAW as part of a strategy to develop a culture of human rights based approaches. Using CEDAW in policy work is a way of linking issues that are identified locally into a global human rights framework by quoting the obligations that the state has undertaken. So that the health needs identified by Traveller women, or the employment needs of migrant women can be presented not merely as the needs or opinions of women in one particular locality, but as an analysis of existing discriminations on the basis of both sex and minority status, and of the state’s obligations to take action to eradicate those forms of discrimination under international human rights law. It’s a very powerful and empowering way of bringing global human rights perspectives into the national and local contexts. Women’s organisations throughout the world have worked in this way, and there is much to be learned from their analyses and strategies.

Over the last couple of days, while I have been thinking about this presentation, I have been looking through some of the concluding comments of the CEDAW Committee. They give an extraordinary overview of the situation of women in different countries of the world, and of the kinds of strategies and actions that are needed to bring about change. And, like the concluding comments on Ireland, they could not have been prepared without the contribution of women’s organisations in producing Shadow Reports. Some of the issues addressed by the committee are: polygamous marriages, lack of property rights, trafficking of women and girl children, bride money, forced marriages, education, violence against women, female genital mutilation, forced abortion, forced repatriation.

Reading through the comments reminds one of the range of ways in which women are denied human rights. But I was also reminded once again of the power of the women's movement. In all its diversity, with all its complexity, it is the women's movement in its various forms that has brought the ideological shift in human rights into the UN. It is women's organisations, activists, lawyers and academics who are forging the language of a transformative human rights approach aiming at eradicating discrimination against women. Through our local acts and analysis and our global links and analysis, we are contributing to the creation of a culture of human rights and social justice.

There's another reason why we should look to the language and principles of human rights. Increasingly, the decisions that are influencing our lives are not taken by our governments. They are taken by bodies like the World Trade Organisation, a powerful global institution whose ideology and language runs counter to the ideology and language of human rights. But human rights gives us tools to challenge such institutions: conventions like CEDAW give us a language of opposition to the rhetoric of the market, of corporatism, of 'efficiency' and competition. We can use the strength of agreed international principles that require public spending, public goods and social provision, to counter the rhetoric of the market, of cuts in public spending and privatisation.

And if we ignore the global perspective and think only in terms of the Irish government and the lack of implementation of CEDAW in Ireland, then we are closing our eyes to trends at the global level that have impacts here: the growth of fundamentalisms, whether religious or economic; the rising backlash against feminist analysis; the backlash against a discourse of reproductive rights; the rise of militarism worldwide.

Finally we need to maintain a global perspective as an act of and a mechanism of solidarity – the strength of women's activism and women's organising has always been to look beyond borders and beyond differences to seeing commonalities and connections and strategies that join rather than divide us. In being here in this conference we are not only looking at human rights in the Irish context, we are standing in solidarity with women worldwide. If we in Ireland take CEDAW seriously, we give strength to women worldwide to address the same challenge to their governments as part of a global movement for change and social justice and the creation of a culture of human rights.

Thank you.

CEDAW: a global perspective

Slides from PowerPoint presentation by Maeve Taylor, Banúlacht

WOMEN'S RIGHTS AS HUMAN RIGHTS:

Milestones:

1948	Universal Declaration of Human Rights.
1975-1985	UN Decade on Women.
1975	1 st World Conference on Women, Mexico.
1979	Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
1980	World Conference on Women, Copenhagen.

Human Rights:

- ◆ Universal
- ◆ Inalienable
- ◆ Indivisible
- ◆ Interdependent

Milestones cont'd.:

1985	3 rd World Conference on Women, Nairobi. <i>Forward Looking Strategies to the Year 2000.</i>
1993	2 nd World Conference on Human Rights, Vienna. <i>Women's rights recognised as human rights.</i>
1995	4 th World Conference on Women, Beijing. <i>Beijing Platform for Action.</i>
2005	Beijing+10: Platform for Action reaffirmed

Beijing Platform for Action 1995

Signed by 189 governments who thereby committed themselves to include a gender perspective in all policies and programmes.

Agreed to take action on 12 Critical Areas of Concern, including women and poverty, women and health, education and training of women, women and the economy, women and armed conflict, and violence against women.

Vienna Declaration at the 1993 UN World Conference on Human Rights

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life...and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Beijing+10 2005

Beijing Platform for Action reaffirmed by the UN at the Beijing+10 Review

What is CEDAW?

- ◆ Convention on the Elimination of All Forms of Discrimination Against Women
- ◆ A comprehensive, legally binding international agreement on the rights of women
- ◆ Opened for signature in 1979, ratified by Ireland in 1985

Preamble to CEDAW

- ◆ *Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries...*
- ◆ *...the role of women in procreation should not be a basis for discrimination...*
- ◆ *... a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women*

Article 3

States shall take in all fields in particular the political, social, economic and cultural fields all appropriate measures including legislation to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

Adoption by States of temporary special measures to accelerate equality between women and men, or aimed at protecting maternity shall not be considered discriminatory.

Article 5

States parties shall take all appropriate measures to modify social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

CEDAW in Irish Law

Although Ireland has ratified CEDAW, the Convention has not been incorporated into Irish domestic law. We have to lobby to ensure that it is incorporated and that the CEDAW definition of discrimination becomes the legal definition in Ireland.

The CEDAW Committee

- ◆ Every 4 years governments must report to the Committee on implementation.
- ◆ Committee consists of 23 experts nominated and elected by member governments of the UN.
- ◆ Committee examines governments' reports and issues 'concluding comments' with recommendations.

"Intersectionality"

Gender discrimination intersects with discriminations based on 'caste', class, disability, sexual orientation etc.

The 33rd CEDAW Session – The NGO Experience

Nóirín Clancy, Co-ordinator, WHRA

It is great to see so many people here today and it feels like the culmination of the last few year's work in terms of bringing CEDAW closer to home, and it is particularly exciting to have Shanthi here with us from Malaysia.

Before I begin I will say a few words about the WHRA. It is a feminist organisation and comprises an alliance of organisations, which include AkiDwA, Amnesty International, Banúlacht, Disabled Women's Working Group, Irish Council for Civil Liberties, National Collective of Community Based Women's Networks, National Traveller Women's Forum, National Women's Council of Ireland and WERRC, UCD. Established in 2002, it was initially funded by the Equality for Women Measure. Core funding is now provided by the Joseph Rowntree Charitable Trust and a co-ordinator, myself, is employed part-time.

Maeve has outlined what CEDAW is so I will focus on our work in raising awareness of CEDAW, doing the shadow report and describe the experience of participating at the 33rd CEDAW session in New York with some photos which should give you a flavour of the experience.

Raising awareness of CEDAW

When the WHRA was established in 2002 very few groups linked their work to women's human rights even though many of the issues groups work on are human rights issues. There was also little awareness of CEDAW despite the fact that the Irish government ratified it in 1985, more than 20 years ago. In 2002 we organised a number of regional workshops, which introduced groups to the concept of human rights, the UN system and treaties. We particularly wanted to inform groups about CEDAW since the government was due to submit another report on its progress in implementing it. So it was timely that we started to inform groups about this Convention. We were lucky that at this time, a lawyer from Bangladesh, Faustina Pereira, was on sabbatical at the Irish Centre for Human Rights. Faustina has extensive experience of using CEDAW in her own country and so she shared her experiences at many of the regional workshops, and we are delighted that she is here with us today and doing a presentation at one of the workshops.

The Shadow Report process

The series of regional workshops to raise awareness of CEDAW was important groundwork before beginning the process of drawing up the shadow report. This involved a twelve-month consultation process with over 150 groups and individuals nationwide, and involved a survey and a series of regional workshops.

Training: before embarking on the process we had two days of training with the German member of the CEDAW Committee, Hanna Beate Schopp-Schilling. This was very useful in terms of giving us a more in-depth understanding of CEDAW and guidance on how to go about writing the shadow report.

A community development approach was used, so the emphasis was on consulting with and ensuring the participation of local and regional women's groups in the process. This involved:

- A survey among women's groups to identify areas of concern that would be highlighted. The issues that emerged were: violence against women, political representation, health and barriers to education and employment.
- Regional workshops were then held to highlight specific issues under the four areas and to identify the barriers and solutions.
- Further regional workshops were held to present the Government's report to the CEDAW Committee, so as to give participants an opportunity to comment critically on what the government was saying; this round of workshops was also an opportunity for groups to identify the recommendations they wanted outlined in relation to the four areas of concern to be presented in our own shadow report.
- A number of relevant national organisations and individuals were also consulted.

An editing committee was established which comprised members of the WHRA. The Shadow Report was launched by Mary Robinson in April 2004 and then submitted to the CEDAW Committee. This process stimulated a number of organisations to produce shadow reports on specific issues - Amnesty International, Irish Council for Civil Liberties, Irish Family Planning Association, National Traveller Women's Forum, Pavee Point and Women's Aid. The Irish Human Rights Commission also submitted a report focusing on poverty and issues concerning marginalised women. (Download the reports at www.whra.ie.)

Heading to New York

In July 2005 the 33rd CEDAW session was held in New York. The sessions happen twice yearly, in January and July, and each time there are about eight countries examined. Eight representatives of Irish NGOs travelled. This was a fascinating experience to see first hand how the process works, and to get a chance to meet with and lobby members of the CEDAW Committee. Fortunately, they value hearing from NGOs and can be somewhat cynical about governments' views on progress made.

First, learning the ropes with IWRAW

Before attending the CEDAW session, we first did training with IWRAW (International Women's Rights Action Watch). IWRAW is an international NGO based in Malaysia that builds the capacity of NGOs to use CEDAW, and supports them to participate at the UN when their governments are being examined. Mags Tumelty from Banúlacht and myself went out a week before the CEDAW session and along with other NGOs, we participated in a three-day orientation course. The training was invaluable in helping us learn the ropes of participating at our first UN meeting. It gave us a more in-depth understanding of CEDAW itself, gave us great insights into how the reporting session works, who is on the CEDAW Committee, who to lobby on what issue, and guidance on preparing our own statements to make at the informal meeting between NGOs and the CEDAW Committee.

Lobbying at the UN

By the time our colleagues from other NGOs at home travelled from Ireland (two days before the government were due to be examined), Mags and I had it all worked out! We were able to fill them in on where to go, who to talk to etc. So we set about agreeing who would lobby the various Committee members and so ensure they would ask the hard questions of our government. This lobbying was done quite informally, catching them in the corridors or talking to them over a coffee. It was quite an empowering experience; they were ordinary women who were so interested and open to talking with us. While on the one hand it was a quite “awesome” to be in the UN, on the other hand it was no different to lobbying our politicians at home.

Having our say at the UN

Before the government examination, NGOs from five countries were given an opportunity to voice their concerns during an informal meeting with the CEDAW Committee. From Ireland, representatives from ICCL, IFPA, Pavee Point and the Women’s Human Rights Alliance spoke and we had just ten minutes between us to highlight our priorities, mainly issues already submitted in the shadow reports. This session was also an opportunity for the Committee to ask questions and clarify any issues.

The Government in the hot seat

Two days later the Irish delegation was led by the Minister for Equality, Frank Fahey and comprised about fourteen civil servants from different departments. The delegation had to answer questions in relation to their own report, submitted in May 2003. At the session we were delighted that many of the issues we lobbied the Committee members on were being raised in their questions to the government. Questions such as:

- Why are 23% of women still at risk of poverty?
- Why are women only 13% of the people in politics?
- Why are there such low conviction rates for perpetrators of violence against women?
- Why is there such a concentration of women in low paid part-time work?
- What is the delay with the National Women’s Strategy?

The responses given on some of these issues by the government did not impress many members of the Committee. The government’s lack of understanding of substantive equality, their view that women choose part-time work, their response to why there are so few women in politics in Ireland (a lack of confidence) left a lot to be desired. Shanthi will comment further on their performance in her presentation.

After the session the Committee issued a report in the form of “Concluding Comments”, which summarises the areas of concern and the recommendations. Some of the recommendations focus on a range of areas, including the national women’s strategy, incorporation of CEDAW into domestic law, traditional stereotyping, violence against women, trafficking, and the under-representation of women in public life. Download the Concluding Comments from WHRA’s website: www.whra.ie.

Bringing it all back home

After the CEDAW session, the follow-up work is most important and the role of NGOs is crucial. While governments are obliged to implement the recommendations outlined in the Concluding Comments, they are unlikely to do so without constant pressure and reminders from groups like ours.

In November 2005, with funding from the Combat Poverty Agency, we organised regional seminars to feedback to groups who had participated in the shadow report process the outcome of the CEDAW session in New York. We put the Concluding Comments into the form of a news sheet to make the information more accessible, and highlighted how groups could use them, for example in pre-budget submissions, policy documents, funding applications and when carrying out lobbying and campaigning work.

The presence of NGOs to witness the government being examined before a UN committee was really important. In 1999 when they were last examined there was only one NGO representative. This time there were twelve of us. The challenge now is to use CEDAW to hold the government to account on their international obligations to advance gender equality, to use it as a powerful lobbying tool to transform society and make our communities, workplaces and homes more equal and fair places. I will finish with this relevant quote from Eleanor Roosevelt, a woman who had significant influence in the drawing up of the Universal Declaration of Human Rights:

“Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”

Eleanor Roosevelt

The Obligation of States Under CEDAW

A Presentation by **Shanthi Dairiam,**
CEDAW Committee Member and Director of
International Women's Rights Action Watch, Asia-Pacific

CEDAW has to be understood from the perspective of:

- The dynamics of human rights treaty law and its domestic application, and
- The principles of CEDAW

The principles of CEDAW:

- Equality
- Non discrimination
- State obligation

The dynamics of human rights treaty law:

- Treaty law imposes obligations that are legally binding on the State, e.g.:
- States commit to reordering domestic law and policy, as it touches on matters, which is the subject of the treaty concerned, according to universal and international standards.
- States parties submit themselves to international scrutiny.

The CEDAW framework

CEDAW demands a strategic view for women's advancement:

A gender sensitive rights-based approach.

This requires that all interventions for women by the state will be based on:

- the principles of the universality, the interrelatedness and interdependence of rights;
- the norms of substantive equality and non discrimination;
- efforts to ensure equality in the public and private spheres be it in the areas of private enterprise or the family;
- efforts to eliminate not only individual acts of discrimination but also systemic discrimination as manifested and justified in institutional practices.
- efforts to ensure de jure and de facto rights of women;
- the principle that it is the obligation of the state to ensure that women's rights are respected, protected and fulfilled.

The Principles of CEDAW

• **Substantive equality**

- Not only formal legal equality but also equality of results in real terms

CEDAW demands:

- Equality of opportunity
- Equality of access and
- Equality of results

CEDAW acknowledges that:

- discrimination is socially constructed;

- laws, policies and practices can unintentionally have the “effect” of discriminating against women;
- women have been discriminated against historically and do not necessarily come in to a situation on an equal basis with men;
- women may have less access to resources, less mobility, less years of experience, etc.;
- Hence they cannot access opportunity in the way men can. In most cases men will be more eligible because of historic advantage they have.

Under such circumstances, neutrality (same treatment) has no legitimacy if it denies women the exercise of all rights on a basis of equality with men in real terms. Because of existing inequality, laws policies and programmes may have to be different for women and men so that equality of outcomes could be achieved. Substantive equality includes equity.

Non discrimination

The definition of discrimination in article 1 of CEDAW speaks of intentional and unintentional discrimination:

Article 1.

For the purposes of the present Convention, the term "discrimination against women" shall mean any *distinction, exclusion or restriction* made on the *basis of sex* which has the *effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women*, irrespective of their marital status, *on a basis of equality* of men and women, of *human rights and fundamental freedoms* in the political, economic, social, cultural, civil or any other field.

Intentional or unintentional discriminating treatment could be classified as follows:

- different treatment leading to non-recognition of human rights of women both in the private and public sphere (direct discrimination) eg. The nationality law prohibits women from transmitting citizenship to their children, but men can.
- different treatment preventing women from exercising their human rights both in the private and public spheres, (direct discrimination) eg. Only women in a particular country are prohibited through an administrative order, from going abroad to work because of the risk of exploitation of foreign workers in many countries. This is also called protectionism.
- same treatment preventing women from exercising their human rights in the private and public spheres. (indirect discrimination) eg. In a particular institution, playing golf is given a certain number of points for promotion irrespective of whether they are women or men. However, this gives men an advantage, as it is mainly men who play golf.

Interpreting CEDAW

CEDAW does not explicitly cover a wide range of concerns, e.g. violence against women, particular references to caste-based discrimination and violence, new economic policies that may disadvantage women, issues pertaining to migrant or refugee women and so on.

But, the strength of the Convention lies in its interpretation.

So it is possible to bring into the purview of the CEDAW Convention, groups of women or contexts not specifically mentioned in the text of this treaty

State obligation is legally binding.

- Article 26 of the Vienna Convention on the Law of Treaties (1969) states:
“Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”
- And article 27 states:
“A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”
- States have a legal responsibility to comply. Failure to do so undermines the basis of international treaty law. “All States have a common interest in securing that all parties respect treaties to which they have chosen to become parties.”
- The state entered into this obligation through the legal process of ratification and is therefore bound to ensure that the laws and practices of the country are harmonised with the principles of the treaty.
- Incorporating the treaty into domestic law is therefore desirable. This provides a basis for individuals to invoke the treaty in national courts and avoids problems pertaining to the translation of the treaty obligations into national law.
- Thus though the choice of the means of giving effect to the treaty is left to the State, there must be results and the CEDAW Committee will also review the means that has been used.
- It is also possible for women to petition national courts to force their governments to comply with their obligations under the treaty.
- The obligation of the State is towards all women within its jurisdiction and not only to those who are its citizens. The CEDAW Committee has developed jurisprudence through its Concluding Comments and through its dialogue with States Parties to establish.

IRELAND

- In spite of a large variety of measures and programmes envisaged or already in place, including under the Equality for Women measure, the CEDAW committee was of the view that there seems to be no comprehensive strategic view and framework for the achievement of equality.
- In all areas of life and with the involvement of all sectors and all social actors.
- Piece meal reforms such as the equality act and some gains made in the employment field but absence of macro framework based on the normative standards of the Convention.
- Not all provisions of the Convention have been incorporated into domestic law.
- Absence of definition of discrimination based on article 1 of the Convention, covering all areas.
- Initiatives for women’s advancement not based on principle of equality according to article 2 a and other specifications such as article 5 a that requires states to address social and cultural patterns (stereotyping) that lead to discrimination and article 14 on rural women.
- Ireland must incorporate all provisions of the Convention into domestic law and ensure legal remedies are available to women in case of discrimination. Including the establishment of appropriate institutions and procedures for obtaining remedies.

- It must raise awareness about the Convention, and the interpretations of the Convention through its general recommendations among, inter alia, parliamentarians, government officials, judiciary and the legal profession.
- Stereotypical values and attitudes are reflected in article 41.2 of the Constitution.
- Such values and attitudes must be eliminated through national campaigns.
- The Convention must be taken fully into account in considering amendment to article 41.2 and include legal provision for the obligation of the state to achieve substantive equality.
- The National Women's strategy must take on a comprehensive and integrated approach to women's human rights under which all current gender inequalities and problems faced by different categories of, including the most vulnerable groups of women are adequately addressed.

The Role of NGOs

- The domestic application of human rights norms requires in particular, effective enforcement mechanisms and the creation of a culture that encourages compliance with human rights principles and norms.
- A working premise that creates a synergy between the enforcement of rights and the culture of compliance with human rights norms is that a rights framework does not automatically confer rights; it only legitimises the claims for rights and women have to be able to claim their rights.
- NGO advocacy is critical for all of this to happen as it can improve the flow of information from the international level of legal standards to the local level, (including monitoring and facilitating the implementation of the Convention locally).

Examples of Successful Advocacy

- Nepal: repeal of 20 discriminatory provisions including in inheritance, divorce, criminal laws such as criminalization of abortion.
- India: amendments to Indian Divorce act, Hindu succession act granting equality in property rights and inheritance of agricultural land.
- Compulsory registration of marriage.
- Targeted budgetary allocation for initiatives benefiting women.
- Japan: labour case.
- Thailand: name change after marriage.
- Morocco: amendments to personal laws.
- Kyrgyzstan: Land rights guaranteeing equality.

PARALLEL SEMINARS:

Monitoring implementation of CEDAW

Chairperson:

Fidelma Joyce,
Combat Poverty Agency

Speakers:

Joanna McMinn,
National Women's Council of Ireland

Faustina Pereira,
Advocate, Supreme Court of Bangladesh;
Director (Advocacy, Research, Legal Aid)

Roisin Hennessy,
Irish Human Rights Commission

Monitoring Implementation of CEDAW: Monitoring by NGOs: Current Context and Mechanisms

Joanna McMinn, Director, National Women's Council of Ireland

Why is it important for NGOs to monitor government actions?

At the CEDAW Committee meeting in July 2005, NGOs have reported that the Irish delegation lacked an understanding of substantive equality¹ for women. It is well to remind ourselves that while there have been progressive changes for women in Ireland over the past 50 years, men continue to dominate all our public institutions, including our government and the judiciary; and sexist cultural attitudes persist.

So, while the Irish government has signed up to international covenants, including CEDAW and the Beijing Platform for Action, it does not follow that it will implement these, without strong and sustained pressure from civil society. NGOs with a commitment to equality, therefore, need to monitor government actions, and be able to make clear recommendations for implementation of international human rights covenants in Ireland; and then campaign/lobby for change. Having an analysis and evidence base that demonstrate the specificities of women's experience are important lobbying tools to put pressure on government to implement its international commitments.

What do we mean by monitoring?

Monitoring involves watching and checking over time the government's actions and programmes, in order to discover what it is doing to meet its international commitments to achieve women's equality and human rights.

One example of NGOs monitoring the government is the work of the Observatory on Violence Against Women, which includes all the Irish NGOs working in the area. The Observatory produced a National Report in 2004, with an overview of the policy context and relevant legislation in Ireland; as well as an assessment of current mechanisms to implement the Task Force Report on Violence Against Women, a government initiative headed by a Minister for State (currently Frank Fahey). The Task Force Report (1996) is a comprehensive document with wide ranging recommendations in relation to domestic violence, rape and sexual assault. However, it does not contain **targets, timeframes, budgets, and measurable and quantifiable indicators of progress** by Government departments. Therefore, the capacity to monitor government performance and hold the state accountable for implementation of the recommendations in the report is seriously undermined.

As yet, Ireland does not have a national plan for women as required and agreed under the Beijing Platform for Action (1995). However, a National Women's Strategy is currently being written, and we anticipate that it will be ready later this year. Of course, in order to monitor change, the National Women's Strategy must start by defining discrimination and inequality, and offer a comprehensive framework, which not only sets out the barriers for women achieving equality, but also the remedies to enable change. It is clear that in order to monitor government action on a range of areas, it is necessary to have targets, timeframes, budgets, and measurable and quantifiable indicators of progress; otherwise, monitoring is impossible.

¹ Substantive equality means that we achieve more than equal opportunities, and even equal access. It means equality of results and outcomes for women

One of the problems however, is a serious lack of information and data on women's lives and the specificity of inequalities experienced by particular groups of women. Data collection is a critical area that needs to be resourced in the implementation of the National Women's Strategy. We need to know what in reality is happening for women. To be effective, the NWS will have to be underpinned by a research strategy that supports the collection of both quantitative and qualitative data; and this needs to feed in on a continual basis to the monitoring process, to inform progress and formulation of targets.

Qualitative research includes looking at the impact of Irish cultural values on women's lives – what are the underpinning social messages that are holding the barriers in place. How women lose out for example, by the cultural norm of the male breadwinner model in social welfare. The dependency implied in this model reinforces and maintains barriers for women. As does women's unpaid care work that seriously compromised women's participation in all areas of social, economic and political life. Research can help to articulate the problem and provide a more detailed picture to support measures for change.

What can we do to put pressure on government to implement the CEDAW committee's concluding comments?

Keep the issue on the political agenda, in policy documents, manifestos, meetings with politicians coming up to a general election, civil servants, public awareness campaigns, etc.

Possible strategies that NGOs can adopt

Integrating CEDAW comments into their own policy documents, including the experience and voice of women who need change most.

I will give a current NWCI campaign as an example.

The NWCI have been working on a campaign to reform the social welfare system so as to ultimately achieve economic independence for women through employment and welfare systems. We are currently bringing a new dimension of human rights to the campaign. Using a rights based approach we will be analysing the social welfare that system from a women's rights perspective. A seminar 'Can the law create social welfare reform? Women's economic independence as a right' will be held in May this year. It is proposed that the seminar will identify the linkages between the inequalities which women experience as a consequence of Irish social welfare law and the commitments in CEDAW and other international human rights agreements. It will also assess how current social welfare laws that fulfil or fall short of meeting the various commitments in the agreements. It is also intended that new rights based approaches to developing the social welfare reform campaign will be identified and integrated into our campaign strategy and work.

Monitoring Implementation of CEDAW: A Snapshot of the Bangladeshi Experience

Faustina Pereira²

In this brief presentation I intend to touch upon the following:

- Some of the ways in which monitoring bodies (in this case including NGOs, women's rights groups, human rights and activist organisations) in Bangladesh play a watchdog role on the Government's implementation of CEDAW principles.
- The ways in which individual NGOs incorporate a monitoring role into existing lobbying and campaigning work.
- Some of the success stories of incorporating CEDAW principles in various institutions of State so as to enhance Government accountability to uphold CEDAW principles.

I will, of course, not go through these points strictly in the order set out above. But I trust that they will be adequately covered as I narrate some areas where monitoring bodies in Bangladesh have played and continue to play a constructive overseer role.

The Non-Adversarial Approach:

Both Ireland and Bangladesh have in the past two years had the experience of submitting their 5th Periodic Report to the CEDAW Committee. The CEDAW Committee, in its concluding comments for both countries (as in many other countries) have emphasised the need for a comprehensive interaction between Government and non-Government actors to work towards implementing the CEDAW. There was a time not long ago when NGOs expended much of their energy calling upon the Government to show more political will to implement its policies and international commitments. These were for the most part very wide and general demands, without much specificity as to how Government should proceed. Over the years, and through the process of increased civil society participation, women's groups and NGOs have learnt that simply demanding change in Governmental perspective and political will, is fraught with limitations. We have found that it is more effective to make strategic demands and follow them up with defined indicators of progress. One important lesson we have learnt is that to do so, there must be a concerted effort to strike a balance between a legitimate scrutiny of Government performance under the treaty³ on the one hand, and a demonstration of a non-adversarial approach on the other.

The submission of a 5th Periodic Report means that a history of documenting and reporting on Government implementation of policies on women's rights has been in the making for at least twenty years. With each periodic report there has been demonstrable evolution in many countries, of a more systematic approach to documenting and reporting and a greater interaction between Government and civil society in the process. This is true both in the case of Ireland and Bangladesh. In the case of Bangladesh, there was a turning point in the evolutionary process during the time our Third and Fourth Combined Periodic Report was to be submitted back in 1997.

² Dr. Faustina Pereira, Advocate, Bangladesh Supreme Court; Director (Advocacy, Research), Ain o Salish Kendra (ASK).

³ Professor Savitri Goonesekere, ADB's External Forum on Gender and Development;
<http://www.adb.org/Documents/Events/2005/IIS-Promoting-Gender-Equality/>

Around that time a strong network of women's groups started advocacy at the national level, hoping to mobilize other women to push for implementation of CEDAW provisions in domestic legislation.⁴ The strong grassroots based advocacy, lobbying and campaigning around the issue led later in 1992 to the creation of a CEDAW Forum. With the help of the International Women's Rights Action Watch (IWRAP), workshops, training, and CEDAW forums were conducted for different groups, from lawyers to journalists to general citizens. These were to raise public awareness on how to incorporate the convention into domestic laws with emphasis on withdrawing reservations to articles which the Govt. had entered, namely Articles 2, 13.1[a], 16.1[c] & [f].

The strongest message coming out of the 1997 experience was that a unified effort is more effective than several isolated approaches. The sustained efforts of the women's groups led to partial success in 1997 in that the Government withdrew its reservation on two of the four reservations, namely from Articles 13 [a] and 16.1 [f]. The other lesson coming out of that experience was that women's groups have to be vigilant and constructively involved in political decision-making; and that improving the quality of gender relations in the public and private domain cannot be left to the State alone.

The lessons of 1997 stood the Bangladeshi monitoring groups well in 2001 when Bangladesh prepared to submit its Fifth Periodic Report before the CEDAW Committee. Bangladesh's Fifth Periodic report to the CEDAW Committee was due in June 2001. The Government sought an extension for submitting its report, which was finally sent to the Committee by 31 December 2002. The Government Report was reviewed at a meeting held on 22 September 2002, at the Ministry of Women and Children's Affairs with government officials, members of the Policy and Legislative Advocacy for Gender Equality (PLAGE), the Advocacy Cell in the Ministry, and some representatives of women's and human rights' groups. The participants at the meeting commented on the report, and on progress in the Government's implementation of CEDAW.⁵

The Shadow Report was prepared on the basis of an examination of Bangladesh's Fifth Periodic Report, and Concluding Recommendations by the CEDAW Committee, and was then reviewed with grassroots members and partners of the three drafting organizations in different parts of the country. Consultations with leading CEDAW experts, government representatives and 34 organizations (both government and non-government) were held in Dhaka in October 2003 and January 2004.

The Shadow Report had been structured with a view to enabling the reader to relate Bangladesh's commitments in respect of the various provisions of CEDAW to:

1. The CEDAW Committee's concerns expressed in 1997, on Bangladesh's Third & Fourth Periodic Report;
2. The Government's responses to date regarding these concerns, and critique thereon;
3. Recommendations of women's bodies for legislative and policy reforms and other programmes to be undertaken by the public and private sector to ensure effective implementation of CEDAW.

⁴ Source: *WPRN Newsletter*, 1(3), March - June 1998.

⁵ Shadow Report to the Fifth Periodic Report submitted by the Government of Bangladesh to the CEDAW Committee, written by three women's rights and human rights organisations of Bangladesh, namely, Ain o Salish Kendra (ASK), Bangladesh Mahila Parishad (BMP) and Steps Towards Development (STD). For a copy of the Shadow Report, visit: www.askbd.org or contact ask@citechco.net

In addition, an article by article summary of progressive measures taken by the Government since 1997 and recommendations for further initiatives had been included to enable the government to prioritize its implementation plans.

Without going into the details of all these recommendations, I will highlight just one to show how Government's implementation or lack thereof, of CEDAW principles, can be addressed in a systematic, transparent and targeted way. Let us take, for example, the Bangladesh Government's continued insistence on maintaining reservations on Articles 2 and 16.1(c) of the CEDAW.

The Government's Fifth Periodic Report stated that "the government is actively considering withdrawing reservations from or approving." In the Third and Fourth Combined Report the Government had said it would explore the rationale of other Muslim countries that had not placed reservations. The Ministry of Law, Justice and Parliamentary Affairs was mandated to examine ways and means to withdraw reservations, and yet at the end did not make any recommendation for withdrawal.

The Shadow Report showed, however, of the 26 Muslim countries that have ratified CEDAW, only 7 countries have explicitly stated reservations with regards to Article 2.⁵ Moreover, Muslim-majority countries like Turkey, Tunisia, Yemen, Jordan, Kuwait, Lebanon have ratified CEDAW without any reservation to Article 2. The Shadow Report further made the argument that Bangladesh has a sizable non-Muslim population to whom *Shariah* principles are inapplicable and Article 28(1) of the Constitution guarantees all citizens freedom from discrimination by the State or in the public sphere on the basis of religion, race, caste, sex or place of birth. The Government should therefore act in the interests of its entire population by complying with its international and Constitutional obligations of equality and non-discrimination by withdrawing its remaining reservation to CEDAW. The article-by-article rebuttals made in the Shadow Report are being used extensively by all monitoring bodies during negotiations with Government on CEDAW implementation.

With the combined experience of the last three periodic reports, the civil society groups in Bangladesh have, either individually through their own organisation and collectively through the CEDAW Forum, agreed to concentrate on the following areas to ensure greater monitoring of Government implementation of CEDAW principles:

- Specific emphasis on making Government answerable to justify persistence of discrimination both in the law and in practise in those areas where no reservation has been entered, for example the law of citizenship (Article 9).
- Specific emphasis placed on Impact Assessment: Already a number of very specific indicators have been used in the 5th Periodic Report, using the Government's own statistics and indicators, to demonstrate lack of impact of Government programmes on women's advancement. More scientific and qualitative indicators will be developed to assess both successes and failures of programmes and test the adequacy of institutional mechanisms to monitor their progress.
- A more targeted interaction with the WID Focal Points: A set of questions and follow up mechanism will be developed to help the Women's Ministry to coordinate and monitor reports from the WID Focal Points. The Information, Monitoring and Evaluation Division of the Planning Commission should evaluate regular progress of women's advancement according to indicators set in the Plan.

- Maintain insistence that women’s development is an inter-ministerial issue and that projects focused on women and children should not be concentrated in the Ministry of Women and Children Affairs (MOWCA), and that development funding in these areas must be reflected across the ministries. Women’s development should be a priority for every Ministry and the projects targeted to women’s advancement and realization of rights should be distributed to line ministries, with their requirements being recognized in both revenue and development budgets. Appropriate funding should be allocated in both revenue and development budgets to enable them to perform monitoring functions, and to develop their expertise through training and allocation of business. The WID Focal Points should report to the Women’s Ministry so that it can assess progress.
- Insistence on Gender-specificity of information and analysis – still more work needs to be done to make the move from a WID approach to a GAD approach. Shift from women in development to gender and development. In case of all countries, and most particularly poorer countries like Bangladesh, there needs to be gender specific information and analysis in all sectors, such as in poverty reduction trend analyses. Civil society groups must point out the narrower, more specific, strategies aimed at reducing the gender gap in development which should be encompassed within the Government’s broad strategies for poverty reduction. The strategies should be based in a broader budgetary process that promotes the monitoring of revenue expenditures for its gender impacts, so to promote more effective uses of resources and reprioritization where necessary. Targeted assessment strategies will help in future analyses of institutional arrangements and identify the need for strategies to bolster development strategies, such as training programmes, educational campaigns, and legislative enactment.
- Continue demand for the Bangladesh Bureau of Statistics to produce gender-disaggregated data.
- Continue using various forums and institutions of the State, such as the Courts, to increase standards and measures for levelling the playing field in a gender-sensitive citing CEDAW principle. For example: Judgement in Women Ward Commissioners’ Case 2003, eliminating gender discrimination in public office in Bangladesh, where explicit use of CEDAW was made. Case involved a challenge to a Government circular which delineated duties and emoluments associated with public office on the basis of sex, creating hardship for and discrimination towards women who had been elected to those offices through reserved seats.

The Role of the Irish Human Rights Commission in monitoring the implementation of CEDAW

Róisín Hennessy, Assistant Legislation and Policy Review Officer, IHRC

Introduction

The remarks that I make in this presentation are in my personal capacity and do not necessarily represent the views of the Irish Human Rights Commission on the issues discussed.

In this brief presentation I will focus on the following issues:

1. The role the IHRC has played as a national human rights institution in the CEDAW treaty-monitoring process;
2. Possible strategies for monitoring the implementation of CEDAW in the future.

It is extremely important to monitor Ireland's compliance with CEDAW in a continuous manner. It is often the case that the resources and capacity of organisations are concentrated on influencing the various sessions at which Ireland is being examined before the treaty-monitoring bodies such as CEDAW, and in providing the UN Committees with "shadow reports" highlighting priority issues in relation to Ireland's compliance with a specific treaty. However, it is also extremely useful to engage in activities to follow-up on the Ireland's examination to ensure that the Government takes the CEDAW examination seriously at a domestic level, and in particular, to use the concluding observations of the Committee as benchmarks against which to measure Ireland's progress in complying with the provisions of CEDAW. In its concluding observations the CEDAW Committee stated that Ireland is required to submit its next report in 2007 and it specifically requests Ireland to respond to the concerns expressed in its concluding observations in its next report to the Committee. It is crucial that the intervening period is used by both NGO's and bodies such as the IHRC to strategically measure Ireland's progress on its CEDAW obligations.

It is also worth noting that some of the other UN treaty-monitoring bodies including the Committee on the Elimination of Racial Discrimination are moving towards a more continuous monitoring process that will take place in the intervening period between the examination of the State. The CERD Committee has amended its rules of procedure to appoint one of the expert members of that Committee as a Coordinator who will engage with the State in the intervening period between the examination of the State's report to examine what actions the State is taking to implement the Committee's recommendations. This may be a procedure that the CEDAW Committee might consider adopting in the future.

1. The role the IHRC has played as a national human rights institution in the CEDAW treaty-monitoring process.

The Human Rights Commission Acts 2000 and 2001 define the various statutory functions of the Irish Human Rights Commission as an independent national human rights institution which was established with the broad mandate of promoting and protecting human rights in Ireland. Human rights are defined in section 2 of the Human Rights Commission Act 2000 as the rights, liberties or freedoms guaranteed to persons by the Constitution and by any agreement, treaty or convention to which the State is a party. CEDAW is the primary treaty that Ireland has ratified that deals specifically with the rights and freedoms of Irish women and the obligations of the State in this

regard. In carrying out its statutory functions such as reviewing the adequacy and effectiveness of law and practice in the State relating to the protection of human rights; or examining any legislative proposals referred to the IHRC; or making recommendations to Government that it considers appropriate to strengthen and protect human rights in Ireland, the IHRC is mandated to examine Ireland's compliance with the provisions of CEDAW and to make recommendations to ensure such compliance.

In its strategic plan 2003-2006 the IHRC made a commitment to make a submission to the UN CEDAW Committee in relation to Ireland's compliance with CEDAW and also to track the gender dimension in its other submissions to the UN treaty monitoring bodies which it has done in its submission under the Convention on the Elimination of All forms of Racial Discrimination for example. The IHRC made a written submission to CEDAW and attended the 33rd session of CEDAW in 2005 where it made an oral presentation in its capacity as a national human rights institution. This was a novel development in the CEDAW treaty-monitoring process as this was the first time that a national human rights institution has made a presentation to the CEDAW Committee. The IHRC also submitted a brief background paper to the CEDAW Committee suggesting some of the ways national human rights institutions could usefully engage with the CEDAW Committee. The question of what role national human rights institutions can play in monitoring CEDAW and in attending the CEDAW sessions is currently being discussed by the CEDAW Committee.

In terms of the follow-up work that the IHRC has engaged in to date, the IHRC made a written submission and an oral presentation to the All-Party Oireachtas Committee on the Constitution in April 2005 in relation to the right to family life under the Constitution. In its submission the IHRC made a number of recommendations for reform of the Constitution to ensure that the Irish Constitution is in compliance with the norms in CEDAW.

In addition, the IHRC has made a commitment in its Business Plan 2006 to engage in follow-up activities to the Commission's input into the CEDAW process. The Gender and Equality Committee of the IHRC is in the process of discussing how the Commission will carry out this commitment. One of the key operational values of the Commission is to complement the work already being undertaken by other statutory bodies and NGO's. Therefore in planning its follow-up work around CEDAW the Commission will seek to support the work of the NGO's and to exercise its specific statutory powers in a manner which will bring "added value" to work already being undertaken.

One example of the type of activities the Commission has engaged around the CERD examination of Ireland's first report was to hold a follow-up seminar in February of this year. As I mentioned previously the CERD Committee is currently putting in place a follow-up procedure to ensure that it continues to dialogue with the State following its examination. The IHRC hosted a seminar to provide information on this follow-up procedure. The Secretary to the CERD Committee attended this seminar and an official from the Department of Justice, Equality and Law Reform attended to outline how the Department will implement the next stage of the CERD process.

2. Possible strategies for monitoring the implementation of CEDAW in the future

The following are some personal ideas for possible future strategies that could be adopted to monitor the implementation of CEDAW and in particular the CEDAW concluding observations:

- A session to brief the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights about the 33rd CEDAW session and the concluding observations of the CEDAW Committee could be arranged. Both the NGO's that attended the session and possibly the IHRC could make a presentation.
- Awareness raising seminars on specific issues raised in the concluding observations of the CEDAW Committee could be held to explore what concrete actions the Government should take to implement the CEDAW recommendations.
- Targeted meetings with officials from the various units in the Department of Justice, Equality and Law Reform as well as officials from other relevant departments including Social and Family Affairs, Health and Children, Enterprise, Trade and Employment including where possible those officials who attended the CEDAW session to enquire what steps are being taken to implement the concluding observations.
- Monitoring of the progress in relation to the National Women's Strategy and the extent to which this strategy incorporates the Concluding observations of the CEDAW Committee is also important.
- Integrate work around CEDAW into other ongoing areas of work.

PARALLEL SEMINARS:

Using CEDAW as a legal tool to eliminate discrimination

Chairperson:

Eilis Barry,
Equality Authority

Speakers:

Noeline Blackwell,
FLAC

Siobhan Mullally,
Faculty of Law, UCC

Brenda Campbell,
Convenor of CEDAW4Change Listserv for IWRAW-AP

Using Human Rights Instruments in Irish Courts

Noeline Blackwell, Director General, FLAC (Free Legal Advice Centres)

Introduction.

This short paper looks at how international human rights law, particularly the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol can be used as a tool in litigation in the Irish courts. I first look at how it is viewed traditionally by the Irish courts, and then suggest how its potential for use may be greater than the current reality.

Courts are almost always used for the adjudication of a specific set of facts. In the course of that adjudication, issues of rights may arise either to assert rights or to defend an alleged abuse of power. At the end of a court case, there will be an adjudication which should take into account the rights issues which arise in the course of the case, and where a sanction may be imposed, or an award made. I make this preliminary point because it seems to me that a number of issues arise for a person seeking to use international human rights law to vindicate their rights in the Irish courts, or for a lawyer seeking to use the international human rights law mechanisms to help a client vindicate those rights.

Chief amongst these issues are:

1. The structure of the Irish legal system;
2. The structure of individual complaint systems within the international treaty systems;
3. The effectiveness of the remedy afforded by complaints under this system.

The Structure of the Irish legal system.⁶

Ireland has what is called a *dualist* system of law. Article 29.6 of the Irish constitution states that:

“No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas”

This means that international human rights law treaties which have been ratified by Ireland, though binding on Ireland and on the Irish government, are not part of the domestic law of the state unless and until they are incorporated into domestic law by further legislation.

The result is that the provisions of such a treaty cannot be directly enforced by the courts. Decisions of the international courts cannot be enforced in the Irish courts if they conflict with Irish law. And if a decision is made by an international court or committee, the Irish courts may refuse to give effect to the decision.

It is open to the Irish state to incorporate any treaty into its domestic legislation, but this has to be done by a positive act of the legislature. In many other European countries, the situation is very different. Under their *monist* systems of law, the act of ratifying an international treaty immediately means that the treaty is part of the country's domestic legislation and in many such countries, international law treaties are regarded as superior to domestic law.

⁶ See further “JM Kelly: The Irish Constitution” 4th ed. GW Hogan GF Whyte. Lexis Nexis Butterworth.

With the European Convention on Human Rights Act 2003, Ireland has incorporated the European Convention on Human Rights and Fundamental Freedoms into Irish domestic law, some 50 years after we ratified the treaty. No such incorporation has occurred of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) nor of the Optional Protocol to the Convention. In fact none of the major UN human rights treaties that Ireland has signed and ratified have been incorporated into domestic law. This has been a cause of concern to various UN oversight committees. In its Concluding Comments on Ireland's fourth and fifth periodic report, the Committee on the Elimination of Discrimination against Women noted with concern that not all provisions of the Convention have been incorporated into Ireland's domestic law.⁷ It recommended that:

“... the State party take appropriate measures to incorporate all the provisions of the Convention into domestic law and to ensure that effective remedies are available to women whose rights are violated...”⁸

On many occasions, complainants to the Irish courts, seeking to vindicate their rights sought to persuade the courts that they should take account of Ireland's international law obligations. In 1970, the Irish Supreme Court said that the Universal Declaration of Human Rights was not part of Irish domestic law.⁹

Several cases have sought to rely on the European Convention on Human Rights (ECHR) which not only has set out a number of rights, but which also has a court – the European Court of Human Rights – which interprets the extent of those rights. In relation to all of the cases brought before 2003, the courts were clear. They could not be bound to follow the Convention or case law arising from it. Indeed, they were bound to apply Irish domestic law, even if that ran contrary to ECHR case law. Judgments of the court have included the following:

"The Oireachtas has not determined that the Convention on Human Rights and fundamental freedoms is to be part of the domestic law of the State, and accordingly this Court cannot give effect to the Convention if it be contrary to domestic law or purports to grant rights or impose obligations additional to those of domestic law." ¹⁰

“While there can be no question but that this Court is entitled to have regard to decisions of the Court of Human Rights in construing provisions of the Constitution there can be no question of any decision of the European Court of Human Rights furnishing in and of itself a basis for declaring legislation unconstitutional. I am bound by the repeated decisions of the Supreme Court that the European Convention on Human Rights is not a part of the domestic law of this jurisdiction.”¹¹

This is not to say that these treaties cannot be quoted with persuasive effect. They can and often are used in Irish courts to support a particular interpretation of human rights law but they can only have persuasive effect and, if they conflict with a provision of Irish law, then the provisions of Irish domestic law must prevail.

⁷ CEDAW/C/IRL/CO/4-5, Committee on the Elimination of Discrimination against Women, Thirty Third session. 5-22 July 2005. Para. 22.

⁸ Ibid. Para. 23.

⁹ Application of Woods. [1970] IR.

¹⁰ Re Ó Laighléis [1960] IR.

¹¹ Gilligan v Criminal Assets Bureau [1998] 3IR.

It must also be stressed that as the European Convention on Human Rights is now incorporated into domestic law, albeit in a somewhat dilute form, much of what is outlined above will be modified in relation to that Convention.

The structure of the individual complaint mechanisms in international treaty mechanisms.

An important purpose of international human rights law treaties is to hold States to account in the international community of nations for breaches of human rights law. For the most part, the main mechanism in a treaty is an oversight committee to take and examine the State's report on progress. That is an examination of a State by its peers. Individual complaint mechanisms tend to come as an add on. This is the case with CEDAW, where the individual complaints mechanism is an add-on, a protocol which is optional.

The individual complaints mechanism in the Optional Protocol to CEDAW, as in many of the other treaties requires a complainant to exhaust domestic remedies. This means that to bring a complaint under the Optional Protocol, a complainant will have to take all reasonable steps to use mechanisms within the State to deal with the case. Thus a State should only be held to account under this international mechanism in cases where there is no adequate remedy within the State to address the wrong complained of. In one of the three published decisions of the Committee on the Elimination of Discrimination against Women¹², the complainant's case failed because the Committee decided that she had failed to exhaust domestic remedies.

Domestic remedies will normally include bringing a case to the highest court or tribunal which conceivably right the wrong. Thus a complainant will be expected to use the courts, the Equality mechanisms and any other legal mechanism available. This can be a long, tedious and expensive process. This in itself can exhaust a complainant and indeed a complainant's lawyer. Only the truly dedicated and those with adequate resources will make it to this point.

The other limit on the international human rights mechanisms is that most of them, including CEDAW's Optional Protocol will only examine a complaint which has not been examined by another international law mechanism. Thus a complainant has to choose a forum at an early stage. Traditionally, this has led Irish lawyers to focus on the European Convention on Human Rights and the Court set up under that instrument. Judgements of that court receive substantial publicity in Ireland and are well understood by government, legislators and executive. Now that the Convention has been incorporated into Irish law, a judgment of that court is also likely to have significant value as a precedent in later cases tried in the domestic courts.

The effectiveness of the remedy.

This leads me to the third reason why there is little use of the individual complaint mechanisms of the various UN treaties. In an individual case, an individual complainant and their lawyer must try to assess whether a decision of the Committee that there is a breach of the complainant's rights will be effective.

In 1988, many years before the European Convention on Human Rights was incorporated into Irish law, Senator David Norris brought an action against Ireland to the European Court of Human Rights complaining that his right to respect for private life was infringed by the then penalization of consensual sexual acts between adult men in private¹³. The European Court of Human Rights

¹² Rahime Kayhan v Turkey 8/2005.

¹³ Norris v Ireland [1991] 13 EHRR

found that there had been a breach. The Irish State accepted that judgment. However, it was not until 1993, following wide publication of the judgment, and sustained lobbying on behalf of the gay community that the law in Ireland was changed to better comply with recognised international human rights.

In a more recent case, a Mr. Kavanagh went to the courts, asking them to quash his conviction on the basis that the UN Human Rights Committee had given a Decision that the Irish State had breached Mr. Kavanagh's rights as set out in the International Covenant on Civil and Political Rights, which Ireland had ratified. Here was someone who had used the international law mechanism successfully to show that his international human rights had not been vindicated. He now sought a sufficient domestic remedy. The courts did not accept that they were bound by the decision. As Mr. Justice Fennelly said in the Supreme Court:

“The notion that the ‘views’ of a Committee even of admittedly distinguished experts on international human rights experts, though not necessarily lawyers, could prevail against the concluded decision of a properly constituted court is patently unacceptable. To be fair, even in international law, neither the Covenant nor the Protocol make such a claim. Neither the Covenant nor the Protocol at any point purports to give any binding effect to the views expressed by the Committee. The Committee does not formulate any form of judgment or declare any entitlement to relief. Its status in international law is not, of course, a matter for this court. It suffices to say that the appellant has not furnished any arguable case for the effect of the Committee's views.”¹⁴

As An addendum, it is worth noting that Mr. Kavanagh then lodged a further communication with the UN Human Rights Committee, complaining that the remedy offered by the Irish government was inadequate, but the Committee rejected this communication as inadmissible on the grounds that it referred to material which the Committee had already considered.

While the complaint made by Mr. Kavanagh was valuable in terms of international human rights law jurisprudence, and was an encouragement within Ireland to use the procedure, and almost certainly will affect Irish State practice, the actual complainant benefited little from the entire process.

Even a successful decision by an international human rights adjudicating body will not always change the law. In December 200, the European Court of Human Rights held that s.52 of the Offences against the State Act 1939 was in breach of fair trial requirements of the European Convention of Human Rights in two cases.¹⁵ Although those decisions were widely publicised, the relevant legislation has not been amended. In practice, the State just does not prosecute people under this particular section any longer.¹⁶

Thus while undoubtedly, these decisions of international tribunals are important in terms of persuasion of the legislature, and in the setting of precedents, they can be of limited value to an individual complainant who seeks redress

¹⁴ Kavanagh v Governor of Mountjoy Prison [2002] IESC

¹⁵ Heaney & McGuinness v Ireland and Quinn v Ireland

¹⁶ See The Constitution, the ECHR and The District Court. Judge Tom O'Donnell at Law Society CPD Seminar: Making Human and Constitutional Rights Relevant in Practice" 20 March 2006.

Potential for future use.

While this paper has so far set out some practical issues which may limit the use of the international law mechanisms in individual cases in the Irish courts, it is clear that this traditional way of approaching a legal instrument is not the only way forward. This conference – “Taking CEDAW Seriously”, drawing on a wide range of expertise and disciplines is itself evidence that the use of law in a State extends beyond the individual complaint or defence to a court. My own organisation FLAC is also currently exploring how law in general may be used in the public interest and has concluded that such use must involve several strands including:

- An emphasis on law reform;
- The education of lawyers and of communities; and
- A strategic approach to the use of the courts.¹⁷

If international human rights instruments are used as part of an overall campaign of lobbying, information and individual complaints, the decisions of bodies such as the CEDAW Committee are likely to become more prominent and thus easier to implement and to enforce. This means that lawyers and NGOs will have to learn to understand more clearly how they can build on each other’s skills and information to prepare and present and use the law in a way which brings international human rights law home.

¹⁷ See “Public Interest Law in Ireland: The Reality and the Potential” FLAC Conference proceedings. www.flac.ie

CEDAW as an advocacy tool in domestic legal systems: Selected case studies

Dr Siobhán Mullally, Faculty of Law, University College Cork

This presentation is intended to highlight cases where CEDAW has been used as an advocacy tool to support women's human rights claims within domestic legal systems. I will draw on examples from three brief (given the time permitted) case-studies. Before moving on to present these case-studies, I will just make two general points:

1. As has already been highlighted, there are many obstacles to using international law in domestic courts, particularly in Ireland, where the judiciary in recent years has increasingly 'externalised' international law. Nonetheless, Ireland continues to have legal obligations under international law, arising from treaties that have been signed and ratified by the State and from customary international law, which forms part of the common law. Given these obligations, the courts have an obligation to interpret domestic law in accordance with international law and in cases of doubt to give preference to the interpretation of domestic law that ensures compliance with international law (*O'Domhnaill v Merrick* 1984, maxim of *presumption of compliance with international law*). International law may, therefore, be used by lawyers to support their cases and to give further weight to claims involving women's human rights;
2. The second point that I wish to make concerns CEDAW, the Convention itself. The CEDAW Convention, like many other human rights treaties, is general and abstract in its text. It is difficult to derive detailed arguments directly from CEDAW that can be used in complex cases at a domestic level. It is important, therefore, when using CEDAW as an advocacy tool, to draw on both the CEDAW text and the jurisprudence of the CEDAW Committee (General Recommendations, Concluding observations).

1. Case-Study One: Using CEDAW in a new democracy – Timor-Leste

Timor-Leste gained independence in 2002 and immediately signed up to all six core human rights treaties, without reservation. (It has since signed up also to the Convention on Migrant Workers, again without reservation). Following on from this, the Government of Timor-Leste began the burdensome task of reporting under each of the treaties. I was part of a CEDAW reporting and implementation project that was piloting a new reporting process that sought to alleviate the burden of reporting for low income countries and to avoid duplication in treaty reports. The pilot reporting process in the newly independent Timor-Leste was viewed as an important opportunity to raise awareness of Timor-Leste's treaty obligations and of the scope and content of international human rights law. The CEDAW reporting project was located in the Prime Minister's Office, specifically the Office for the Promotion of Equality (OPE), and worked closely with the fledgling justice sector, including the judiciary, the legal profession and legal NGOs. Timor-Leste's transition to independence was marked by significant violence and the complete collapse of the domestic legal system, which, during the period of Indonesian occupation (1975-1999) applied Indonesian laws, no longer applicable after independence. Key issues that arose during the CEDAW reporting project were: Legal responses to Domestic Violence; Trafficking in Women and Girls for sexual exploitation; Criminalisation of marital rape; Reproductive rights, including access to contraception and abortion services.

1.1 Legislative developments

In Government debates, submissions from the OPE included extensive reference to the State's obligations under CEDAW and other international human rights instruments. The submissions were at least partly successful in ensuring outcomes that were compatible with CEDAW. (Many issues remain unresolved, including the adoption of a dedicated law on domestic violence and the provision of a legal framework for access to abortion services). A draft law on domestic violence is now pending before Parliament, awaiting finalisation of the Criminal Code.

1.2 Professional training

To support the process of implementing CEDAW, changes were proposed within the domestic legal system, specifically in the training of judges and lawyers. (As a new nation-state, it was possible to begin with a clean slate, and with donor governments and agencies watching closely, arguments to support the inclusion of gender and law components into professional training were relatively easily won.) The judicial studies training programme was drafted so as to include extensive training on all aspects of international human rights law, including CEDAW, and a specific component on gender and law was also included.

1.3 Strengthening civil society – Justice NGOs

The CEDAW project worked closely with one of the leading human rights NGOs, JSMP (Judicial System Monitoring Project). In 2004, the JSMP established a women's lawyers unit with the specific objectives of: (i) monitoring courts and legal processes to determine compliance with CEDAW obligations; and (ii) providing resources and support to cases involving women's human rights claims; and (iii) raising awareness of women's human rights amongst the emerging legal profession.

Key achievements of JSMP have been the publication of reports on 'Gender Justice and the formal justice sector' and 'GBV: Legal Responses'. JSMP has also played an important role in ensuring the GBV was addressed by the transitional justice mechanisms established by the UN to examine and prosecute those responsible for human rights violations during the Indonesian occupation and on the transition to independence. JSMP has also been successful in forming an active network of women lawyer's and judges. The CEDAW reporting and implementation project provided a useful forum and impetus for these developments.

2. Case Study Two: Using CEDAW to promote gender equality in Pakistan

The coming to power of the Taleban in Afghanistan coincided with Pakistan's ratification of the 1979 UN Women's Convention. The rise of the Taleban in Afghanistan represented a victory for a conservative nationalist Islam. Given political alliances at the time, it was a victory that could easily have spilled over into Pakistan's legal system. Feminist movements in Pakistan were justifiably concerned, therefore, that Pakistan's ratification of the Convention should not be accompanied by an 'opt-out' clause.

The issue of ratification came to the fore in 1994, this time as part of the preparations for the Fourth World Conference on Women to be held in Beijing. The Minister for Women's Development complained that Pakistan's non-ratification was creating "international embarrassment."¹⁸ The Ministry for Religious Affairs recommended ratification subject to a

¹⁸ *Ibid.* p3.

general reservation that the Convention would be accepted only to the extent of its compatibility with the Constitution and “the religious beliefs of the majority population of Pakistan” - the majority population being Sunni Muslims.¹⁹ In addition, the Ministry suggested that reservations should be entered to specific provisions of the Convention, including, articles 2 and 16. Those lobbying in favour of an unequivocal ratification, including the Ministry for Women’s Development, argued that the Convention’s standards were in keeping with Islam and that no such reservations were necessary. The Government suggested ratification subject to a reservation ‘opting out’ of article 2(f) of the Convention, requiring States parties to modify or abolish law, regulations, customs and practices, which constitute discrimination against women.²⁰ The Ministry for Women's Development and NGOs lobbying in favour of ratification objected to these proposals, arguing that Islam, properly understood, was compatible with the Convention. It was a strategy that had met with some success in relation to children's rights and the CRC. Pakistan’s reservation to the CRC, invoking the principles of Islamic laws and values, was withdrawn, following recognition by the Government that “practically no provision of the Convention comes into direct conflict with any of the major precepts of Islam”.²¹

Ultimately, a compromise was arrived at. Pakistan ratified *CEDAW* on the 12th March, 1996, subject to a general declaration invoking “the Constitution of the Islamic Republic of Pakistan.”²² This general declaration raises a number of questions, not least of which concerns the precise role of the Shari’ah within Pakistan’s constitutional framework.

Despite these difficulties, some limited success has been achieved in using *CEDAW* within domestic courts to support the pursuit of gender equality, specifically in matters relating to the family and the regulation of intimate relations. Of particular note, are a series of cases in the Lahore High Court, which have invoked *CEDAW* and other human rights instruments to dismiss conservative, discriminatory interpretations of Islam and to support more egalitarian, feminist arguments. These cases have involved:

- (i) the right of an adult Muslim woman to marry without the consent of the *wali* (father or male guardian) and her recognition as a *sui generis* adult and (*Abdul Waheed, Humaira Mehmood and Samia cases*);
- (ii) ‘crimes of honour’, involving the defence of provocation arising from a woman’s alleged ‘dishonouring’ of her family by marrying without the approval of family / community. ‘No tradition, they said, was sacred, no convention indispensable, if it did not stand the test of, “the fundamentals of a civil society generally expressed through law and the Constitution’ (Muhammad Siddique v the State).

¹⁹ See S S Ali, *A Comparative Study of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women*, (Peshawar, Shaheen Press, 1995), p126.

²⁰ *Supra* n. **Błąd! Nie zdefiniowano zakłádki.**, p3.

²¹ See: Pakistan's initial report under the CRC, UN Doc. CRC/C/3/Add.13, para 3.1 of the Report. See also para. 37. In its reply to the issues raised by the Committee on the Rights of the Child, Pakistan stated that its reservation to the Convention was under review. Written answers from the Government of Pakistan to the List of Issues (CRC/C.5.WP.1) forwarded by the Committee in connection with the Initial Report of Pakistan (CRC/C/3/Add.13). Reply to List of Issues: Pakistan. 24/01/94, para.1. In its Concluding Observations, the Committee stated that the “broad and imprecise nature of the reservation” raised “deep concern” as to its compatibility with the object and purpose of the Convention. (UN Doc. CRC/C/15/Add.18. para.9).

²² See United Nations Treaty Collection. Declarations and Reservations, available at: http://www.unhchr.ch/html/menu3/b/treaty9_asp.htm. A reservation was entered to Article 29 of the Convention (providing for the referral of disputes to arbitration or, failing that, to the International Court of Justice).

A more recent and highly publicized case is that of *Mukhtar Mai*. On the 22nd June, 2002, Mukhtar Mai was raped by a gang of fourteen men, allegedly on the orders of a village council (*Panchayat*), in revenge for an earlier police complaint submitted by Mukhtar Mai's family following a sexual assault on her 12 year old brother. The case is now pending before Pakistan's Supreme Court. Mukhtar Mai has succeeded in overcoming her initial positioning by the international media as a 'victim subject',²³ becoming an activist and campaigner for women's rights, claiming agency against discriminatory laws, patriarchal traditions and 'protectionist' movements that seek to limit her freedom of movement and her political voice.²⁴ Pakistan's failure to comply with its obligations under CEDAW, specifically in relation to GBV and CEDAW General Recc No.19 has repeatedly been highlighted by supporters of Mukhtar Mai. In particular, the failure to regulate 'traditional justice' mechanisms for their compliance with human rights norms has been put under both national and international spotlights. Given the international attention to this case, a positive outcome, in the form of an effective domestic legal remedy is more likely.

3. Case Study 3: Using CEDAW in asylum cases

Following its Global Consultations on Protection, the UNHCR issued its *Guidelines on International Protection No.1: Gender-Related Persecution* within the context of Article 1A(2) of the 1951 Convention and / or its 1967 Protocol relating to the Status of Refugees. The UNHCR Guidelines (2002) build on earlier guidelines and recommendations made by the UNHCR and draw on state practice as it has evolved, in particular, over the last decade.

Reflecting gendered divisions between the public and the private within international human rights law, refugee status determination procedures have often failed to recognise gender related persecution as coming within the scope of the 1951 Convention. The relevance of gender as a factor in determining how an asylum applicant engages with the determination process was also ignored. Although international refugee instruments are *prima facie* gender neutral, "their interpretation by the State, at both national and international level, reflects and reinforces gender biases".²⁵ As a result women have not benefited equally from refugee protection. Procedural and evidential barriers may also hinder a woman's access to the determination process.

International refugee law, however, is undergoing an important transformation. This transformation has been catalyzed by greater attention to gender within international human rights law and by the emergence of new "gender asylum" doctrines and procedures. The human rights and refugee regimes are increasingly finding common ground, with governments, decision-makers and legal advisers drawing on the expanded jurisprudence of international human rights law to guide the interpretation of international refugee instruments. This expanded jurisprudence has broadened the definition of 'persecution' in international refugee law, has led to a recognition of non-state agent persecution as a ground for an asylum claim and has expanded the interpretation given to Convention grounds, such as political opinion and religion. Gender guidelines are intended to provide legal interpretive guidance for governments, legal practitioners, decision-makers and the judiciary.

²³ This term is borrowed from Ratna Kapur: R Kapur, 'The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International / Post-Colonial Feminist Legal Politics', 2002, 15 Harvard Human Rights Journal 2.

²⁴ See: 'Ban on rape victim leaving Pakistan' Monday June 13, 2005, The Guardian.

²⁵ Crawley H *Refugees and Gender: Law and Process* Jordan Publishing: UK; 2001.

Here, I will highlight a few key developments within asylum law, that draw to a large extent on the expansion of women's human rights law and, in particular, CEDAW.

- (i) Definition of persecution
- (ii) Recognition of non state agent persecution

3. 1 'Persecution'

The term 'persecution' is not specifically defined in the 1951 Refugee Convention. However 'persecution' has been defined with reference to international human rights law, and specifically is understood as referring to 'sustained and systematic violations of human rights'.

UNHCR has highlighted how and when gender-related or gender-specific persecution comes within the definition of a refugee:

What amounts to a well-founded fear of persecution will depend on the particular circumstances of each individual case. While female and male applicants may be subjected to the same forms of harm, they may also face forms of persecution specific to their sex. International human rights law and international criminal law clearly identify certain acts as violations of these laws, such as sexual violence, and support their characterisation as serious abuses, amounting to persecution. In this sense, international law can assist decision-makers to determine the persecutory nature of a particular act. There is no doubt that rape and other forms of gender-related violence, such as dowry-related violence, female genital mutilation, domestic violence, and trafficking, are acts which inflict severe pain and suffering – both mental and physical – and which have been used as forms of persecution, whether perpetrated by State or private actors (UNHCR 2002a para. 9).

Case-law:

Shah and Islam v SSHD (HL 1999) recognizing **domestic violence** as a basis for asylum. Case involved two Pakistani women who had fled abusive marriages in Pakistan and sought asylum in the UK (initially refused). The House of Lords emphasized the universal validity of the international norm of non-**discrimination** on the grounds of sex and domestic violence as a serious human rights violation.

USA:

Second Circuit approves asylum for a young Chinese woman fleeing **forced marriage**: *Gao v. Gonzales*, No. 04-1874-ag (2d. Cir. Mar. 3, 2006), citing article 16 of CEDAW.

Female Genital Cutting:

Is FGC persecution? CGRS Director Karen Musalo answers Ninth Circuit Judge Alex Kozinski – Judge Kozinski suggests that FGC is not persecution if it is not intended to harm a child but is done for her own good. CEDAW cited to support argument that FGC is a human rights violation.

Female genital cutting

CGRS Case No. 72

Key Facts

The applicant is a 13 year-old girl from the Yoruba tribe in Ibadan, Oyo State, who left Nigeria when she was 18 months old, when her mother came to the United States. Her father and grandfather are demanding that the applicant be subjected to FGM. Every female child on her father's side of the family has been subjected to FGM; one died from the procedure. Her mother was spared genital mutilation due to her father's opposition to the practice. Her mother is opposed to FGM, feeling that it is a barbaric and senseless ritual that men used to control a women's sexuality. Her mother would be powerless to protect her daughter from FGM in Nigeria.

Theory

Well-founded fear of persecution on account of membership in the particular social group of women of her clan who have not been subjected to FGM, and who oppose the practice.

Key Evidence

CEDAW Comments on Report from Nigeria, highlighting the extent of fgcutting and failure to protect against. Also CEDAW, Gen Recc. No 19

Domestic violence

CGRS Case No. 35

Theory

Persecution and well-founded fear of future persecution on account of membership in the following particular social groups: (1) women in Guatemala (2) women in Guatemala who are married to members of the military and (3) women in Guatemala who refuse to conform to social norms; and on account of imputed political opinion.

Key Evidence

1) General Recommendation No. 19 on Violence Against Women, under the Convention on the Elimination of All Forms of Discrimination Against Women CEDAW/C/1992/L.1/Add.15 (29 Jan. 1992); 2) Consideration of Reports Submitted by States Parties to CEDAW, criticizing Guatemala's compliance, CEDAW/C/GUA/1-2/Amend.1 (7 Apr. 1993);

3.2 Non-State Agent Persecution

Emergence of 'due diligence' standard in international human rights law, used in CEDAW General Recommendation No. 19 on Violence Against Women and in 1993 Declaration on the Elimination of Violence Against Women has supported the expansion of the legal concept of persecution to include events occurring at the hands of non-state actors. The 'due diligence' standard holds a state responsible under international law if it has failed to exercise due diligence to prevent or punish violations of international human rights law. See also: EU Qualification Directive specifically recognizing non-state agent persecution as coming within the scope of asylum claims.

Using CEDAW's Optional Protocol

Brenda Campbell, Convenor of CEDAW4Change Listserv for IWRAW-AP

The Optional Protocol establishes:

A **communications procedure** through which the CEDAW Committee can review complaints from individuals to decide if specific rights guaranteed by the CEDAW Convention have been violated and identify remedies for victims; and

An **inquiry procedure** through which the CEDAW Committee can launch an inquiry into grave or systematic violations on its own initiative.

The Communications Procedure

Points to note:

- must be Party to CEDAW & OP
- can be brought by or on behalf of individual/group of individuals
- must have consent or lack of consent justified
- discrimination must be based on sex or gender
- must be in writing
- must not be anonymous
- domestic remedies must be exhausted
- victim(s) must have suffered harm & been under SP's jurisdiction at time of violation

How?

Model Communications Form

Available on:

- www.iwraw-ap.org
- www.un.org/womenwatch/daw

The Communications Procedure

- Germany, 20th August 2002

Concerning: gender based discrimination under the statutory regulations regarding the law on the legal consequences of divorce in violation of Art 11 of the Convention.

Outcome: Inadmissible, domestic remedies had not been exhausted.

- Hungary, 10th October 2003

Concerning violation of articles 2(a), (b) and (e), 5(a) and 16 of the Convention - the state had failed to give effective protection from the physical & psychological abuse of her former common law husband. On 20/10/03 the Committee requested 'immediate, appropriate and concrete preventive *interim measures*'.

Committee's recommendations (of 26/1/05) included:

- Immediate & effective measures to guarantee her safety
- Ensure she has a safe home, receives appropriate child support and legal assistance as well as proportionate reparation

- Turkey, 20th August 2004

Concerning violation of Article 11 of the convention following dismissal from teaching employment for wearing a headscarf.

Outcome: The Committee noted that at no stage in the domestic arena did the author argue discrimination based on sex. The communication was therefore inadmissible, as domestic remedies had not been exhausted.

If violation is found, the Committee may direct general or specific remedies, including:

- Restitution, compensation, rehabilitation or other remedy.
- Steps to end ongoing violation and prevent repetition.
- Review or change of law/practice.

States Parties duties in response to recommendations are:

- To give 'due consideration' to views and recommendations.
- To give written response within 6 months setting out action taken.
- Good faith obligation to comply, even though not legally binding.
- The Committee may request follow up information.

The Inquiry Procedure

- Applies to **Grave & Systematic** violations.
- Information must be reliable/credible.
- There is no restriction on sources of information or format (e.g. NGOs, UN bodies or experts, regional organisations, humanitarian groups).
- Inquiry can address broad based discrimination resulting from social/cultural factors or widespread gaps between law & policy.

- Mexico, 27th January 2005

NGOs requested by letter that the Committee conduct an inquiry under Art 8 of the abduction, rape & murder of women in an around Ciudad Juarez in order to reinforce the support it had already given to the case following its examination of Mexico's 5th periodic report.

The Committee issued 16 recommendations falling into 3 categories:

- 3 general recommendations concerning respect for CEDAW obligations, implementing gender perspective into policies etc.
- 8 recommendations concerning the investigation of crimes, punishment of perpetrators and support for victims.
- 4 recommendations on preventing violence, guaranteeing security and promoting and protecting the human rights of women.

NGO Response

"It was not just an investigation but a process of dialogue with great emphasis on the issue of violence against women, not just on the crimes committed, but on the whole environment and on the need to change its underlying culture of misogyny and discrimination... [The Inquiry Procedure] is a powerful and valuable instrument within our reach. It must be used!"

By Maria Regina Tavares da Silva, prepared for IWRAW Asia Pacific's cedaw4change.

- Following an Inquiry, the information is made public.
- The Committee may invite SP to include information on it's responses to inquiry findings in it's periodic report.
- After 6 months, the Committee may invite SP to inform it of measures taken (and NGOs may submit information regarding SP's compliance with measures taken).

Recommended Reading

- www.iwraw-ap.org (go to cedaw4change and access OP discussions)
- www.un.org/womenwatch/daw/cedaw
- www.bayefsky.com

PARALLEL SEMINARS:

Working from a feminist perspective and making CEDAW relevant at the local level

Chairperson:

Councillor Catherine Connolly,
Galway City Council

Speakers:

Olive Moore,
Amnesty International

Eilis Ward,
Department of Sociology & Politics, NUIG

Crea Nolan,
Longford Women's Centre

Human Rights Based Approaches: Using international human rights at a local level

Olive Moore, Amnesty International Irish Section

“Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”

– Eleanor Roosevelt - Remarks at the United Nations, March 27, 1953

What is a human rights based approach?

A human rights based approach (HRBA) is using recognised and agreed international human rights standards to inform policy, practice and institutional structures. It is a **process** which applies a number of **core principles** and is aimed at ensuring the full enjoyment of human rights by all.

HRBA Key Premises

- People have rights.
- These rights are set out in international human rights law.
- These rights have corresponding duties and obligations on Governments, also set out in international human rights law.

Key Concepts in HRBA

- Link to Human Rights
- Participation
- Accountability
- Non-discrimination
- Empowerment

The fish story moves on...

Give a woman a fish and she eats for a day. Teach a woman to fish and she eats for lifetime.

But what if she is denied access to the river, she is too ill to fish, the river is polluted, someone has already taken all the fish, she has no access to a market to sell the fish...

Why adopt HRBA?

- Alternative to ‘charity’ model
- Re-focuses issues and problems as rights and infringements
- New language and concepts
- New frame for analysis and monitoring
- Introduces legal aspect
- Focuses on accountability and reparation
- Emphasises on participation, non-discrimination and empowerment
- Empowering process
- Compliments other approaches
- Links to a national and global movement

“This feels like a move from needs to rights, from frustration to implementation, from NGO fragmented responses to potential alliances for action. This is a lens change for all our work.”
Attendee at Amnesty HRBA Conference in Sept. 2005.

Limitations of HRBA

- Yet another approach...
- Language and systems complex and sometimes inaccessible
- Lack of compliance and enforcement
- Non-justifiability of ESCR
- Long term strategy
- Difficulties in explaining to public and constituency
- Risk - danger of raised expectations

Implications of HRBA

- Internal structures and practices
- Relationship with beneficiaries
- Relationship with funder
- Possible shift from service delivery to being actors in social and political transformation
- Long haul

But how?

1. Carry out analysis
2. Identify resources
3. Implementation

1. Analysis

Organisational

- Are you a human rights organisation?
- Organisational ethos and values
- Internal structures and practices
- SWOT
- Human Rights Audit
- Who and what

Issue/Thematic Analysis

- Actual human rights - who, what & where
- what existing rights are relevant
- can existing rights be reinterpreted
- need to press for recognition of new rights
- Identify rights holders and duty bearers
- Identify the structures and mechanisms (e.g. UN Committees)
- Identify processes and entry points (e.g. UN state & shadow reporting)
- Identify benefits and anticipate reactions

“In each situation we confront a rights based approach requires us to ask: What is the content of the right? Who are the rights claim-holders? Who are the corresponding duty-bearers? Are claim holders and duty bearers able to claim their rights and fulfil them? If not how can we help them to do so? This is the heart of a human rights based approach.”

Mary Robinson, former UN High Commissioner for Human Rights.

2. Resources

- Specialised NGOs and networks - Amnesty, ICCL, CRA, WHRA etc.
- State Bodies – Irish Human Rights Commission, Comhairle, Equality Authority etc.
- Academics – Irish Centre for Human Rights, Universities, Masters & PhD students
- Development agencies and returned development workers
- Internet
- Other NGOs – networking and sharing strategies

3. Implementation

5 Small Steps

- Adopt UDHR and CEDAW
- Make UDHR and CEDAW visible in your organisation
- Use CEDAW Concluding Recommendations
- Align with WHRA
- Human Rights Training
- Use HRBA model – apply human rights, participation, accountability, non-discrimination and empowerment
- Organisational vision, mission, values and objectives
- Strategic planning, project cycle management & monitoring and evaluation
- Training and awareness for staff, beneficiaries and stakeholders
- Explore and advance HRBA internally
- Inject rights language into policies and programmes
- Human rights based communications and campaigning
- Human rights proofing and audit
- ECHR Act 2003
- Public interest litigation & test cases
- Look at non-judicial remedies (ombudsmans, tribunals, commissions etc.)
- Focus on beneficiaries - develop rights charter, monitoring sheets, etc.

What is a feminist approach to human rights?

Dr. Eilís Ward

Department of Political Science and Sociology, NUIG

I'd firstly like to thank the WHRA for this opportunity and in particular Noirín Clancy for her work in organising today's event.

I've been asked to address the issue of women's human rights and local organisations and local women's activism. I won't be specifically addressing this, but hope to make a few introductory remarks and then three simple points which might help inform our considerations here. My interest is in the aspects of human rights which allow us to construct a path for change and transformation – in social change in relation to women's lives and how human rights language and concepts can be used.

Firstly – I simply want to ask the question again why, if the idea of human rights is a universal idea, do we need women's human rights?

This is a question which I think we must keep asking ourselves - in case we forget the answer and forget the need! It is a question which I think we need to keep to the fore. We could present a simple answer here – while, yes, the idea of human rights refers to all human beings, men and women, as carrying equally sets of rights, we know that women face particular disadvantages and difficulties because they are women. The whole area of Violence against Women has particularly underlined this. We know that globally, across all classes and cultures, women are systematically, because they are women, subject to gender violence. To tackle this, the particularities of women's situation (their economic dependency, their lack of political voice and so on) need particular recognition and particular protection or measures for change. We can note here also that it took the systematic rape of women in the war in former Yugoslavia, and the recognition of this as a part of war fare, to change international law to give special protection to women in war and to make this act a war crime. What happened in Yugoslavia was not unique – it was not a first. But because of the work that had been done on the need to recognize women's particularities, this change was possible. Prior to this change, there was no acknowledgement that women had a particular vulnerability in war time that men did not have. So we need to remember that while human rights are universal, women's lives throw up some particularities which require particular attention and protection.

We might then move on to a second question. Accepting the above, we might also wonder if the legal approach involved in the idea of rights offers women anything particularly given the structural and deeply cultural/attitudinal injustices and barriers they face. We might ask: is it useful to talk about rights (to do with law, the courts) when what we are facing is something deep, perhaps buried in the psyches, perhaps even unconscious and expressed in unspoken resistance or deeply held attitudes rather than transgressions of legal norms? We may feel that the law, particularly international law such as CEDAW, is very distant from our lives, and perhaps ultimately irrelevant. We may not even understand how it works. Here again, we might, if we are feeling very reflective, ask: how come we had a dynamic, vibrant, successful women's movement, long before we fully started talking about women's human rights? Can we have a politics for change without human rights? Can we have a women's movement without women's human rights?

Here I would like to make three points which I hope might treat these questions and raise some issues for discussion.

1. Human rights are, in themselves, abstract, dead things. We have to breath life into them; we have to claim them. The history of civil rights and women's rights shows that rights must be claimed from below. Women got the vote because they clamoured for it. African Americans organised to claim their basic rights in US society based on the particularities of their history and oppression. Cultural and ethnic minority groups are organising, in Ireland and elsewhere, to claim their right to recognition of their traditions, languages. The women's human rights agenda, best encapsulated in CEDAW, is, potentially, a radical script which can be taken and made meaningful to our lives if we so wish. It won't be easy. But rights, such as to political representation, or to health care, or to equality in employment and education, which, in turn recognise the structures which keep women out of the labour market or out of formal education (such as public transport, traditional attitudes, lack of child care, and so on) are now enshrined in international law. Governments do (reluctantly) take their commitments to international law seriously. They do not like being criticised publicly for failures; they do not like having to account for themselves to the UN or elsewhere. They would prefer if we would just go away and stop talking about rights. So we have to move into the space which has been opened up to us by CEDAW on this basis.
2. When we meet the state (government, local authorities) with the knowledge and the language of rights, our relationship with the state and its representatives changes. We are no longer, as we may have done in the past, having to plead for attention or favours, but we speak as citizens who can point to international law to legitimize our claim. This can give us a confidence and an understanding that while we have obligations too as citizens, the state also has obligations to us as women. In Irish culture, this is a radical shift in how we relate to the state. In this sense bringing human rights into how we work is very empowering in the face of the state and its power.
3. However, I would like to add a final and third point, notwithstanding all of the above, I think it is wise also to recognize the limits of a rights approach, including a human rights approach. Yes, we can now talk about state obligations which translate into local service provision or local supports for, say, women's refuges, but the rights agenda requires movement forward through negotiations (I mean here both negotiations, in that rights have to be negotiated and agreed in dialogue but also there is a public education dimension). Furthermore, that we must always keep sight of the fact that the greatest resistance to women's advancement comes from deep within cultural attitudes.

For me then, how to bring feminist and women's human rights or the human rights agenda together in a very powerful way is through dialogue and debate about the idea of human rights themselves at a local and national level. Ultimately this is about creating a human rights culture which is not just about the law (and drawing down the law to make our claims) but also about generating wider public debate at all levels about how we view each other, across sex/gender, ethnicities and cultures in ways which are sexist, racist, discriminatory and harmful. I believe that feminism and the women's movement has a lot to offer here.

Appendix I: CEDAW Conference Recommendations from the Parallel Seminars

Monitoring implementation of CEDAW:

- Use existing models such as the Observatory VAW.
- Ensure targets, indicators and timeframes are in the National Women's Strategy.
- Incorporate a research strategy headed by a Minister.
- Use CEDAW in our own work and correspondence.
- Get good data.
- Involve Human Rights Commission in an important monitoring role.
- Engage NGOs with relevant stakeholders and Government using CEDAW.
- Engage with Government to develop a road map and link this to the NWS.

Using CEDAW as a legal tool:

- Lobby to incorporate CEDAW into Irish law.
- Acknowledge need to reach wider audience.
- Look at judicial and legal training and education to overcome remoteness of international treaties.
- Use CEDAW to bolster existing strategies rather than in isolation.
- Promote definition of discrimination in CEDAW.
- Promote ownership of CEDAW amongst wider society.
- Publication of refugee appeals tribunal reports to monitor CEDAW.
- Marry equality and human rights principles.

Using CEDAW at the local level:

- Introduce a charter of rights in the housing sector.
- Work and network amongst various women's groups in Ireland using language of CEDAW.
- Use CEDAW as a tool to demand that funding structures be put in place for women's groups.
- Advance the need for solidarity and action amongst women.
- Work to put CEDAW into Irish legislation.
- Maintain a feminist approach in the work we do.
- Promote 'women empowering women' in local communities.

**Appendix II: Meeting Notes of the WHRA Advisory Committee
with Shanthy Dairiam, Monday 20th March 2006**

This meeting focused on the shadow reporting process. Since it was the first time for many NGOs to do a shadow report to the CEDAW Committee, we were very interested to review this process with Shanthy and explore what we might do differently next time around. For the 33rd CEDAW Session eight shadow reports were submitted from Irish NGOs.

Summary of comments:

- The CEDAW Committee prefers a consolidated report from a country.
- There is often tension between keeping a report concise with limited recommendations, and detailed reports that address issues with in-depth analysis. But there is a way of doing both.
- There has to be one organisation which brings people together, people who can write different chapters based on an article (health, law etc.). Two to three people plan and write on one issue and bring back to the co-ordinating group/coalition. This creates a big 'mother report' that can be distributed within the country.
- It's important when doing a report to mobilise the community and engage rights holders.
- Take the big report and then prioritise, producing a concise report based on it. Community development process can be used, building consensus, sharing papers in the process of finalising priorities.
- Structure of the shadow report – since the review of a government is structured taking each article at a time, for ease of reference for the Committee it is best if the report is structured likewise.
- N.B.: it is critical to comment on articles 1-5 – the macro law/policy framework of the country – because they have an impact on all the other articles.
- Send both reports to the CEDAW Committee, the large one containing the detailed analysis that can be referred to in the shorter report. Committee members may want to see the larger report if they are experts on particular articles and so require more specific information.
- Details can be important. Shanthy gave the example of Vietnam where fertility rates had decreased. According to the government this was due to the family planning programme. But the NGO shadow report highlighted the rise in abortions since women had difficulties with the side effects of IUDs.
- Evidence is critical to challenging the official version a government presents.
- NGOs should try to send representatives who can speak authoritatively on articles/issues that are critical to their country.

Summary of remarks on the review of Irish government:

Currently, there is no strategic framework for equality

- What is equality?
- What is discrimination?

What additional measures are needed?

What additional measures should the most vulnerable groups of women have?

The normative standards of CEDAW must inform all law and policy, and the Irish Government is not doing this. This cannot be absolved by the Constitution. There has to be a definition of discrimination. Under the Convention, ‘whether there is an intention or not’ it is still discrimination (unintended barrier still discriminative). The Government has to show that women are enjoying equal rights. The duty of the Government is to monitor the impact of legislation. If they are not doing this they are discriminating. Taking additional measures to overcome unintended barriers is the first responsibility of the Government.

Women must enjoy practical rights. Past discrimination is holding women back and State has an obligation to analyse what is holding them back. The proposed National Women’s Strategy – what would inhibit women from benefiting from the strategy? A strategic framework is essential which should be informed by CEDAW.

- ❖ Need to get lawyers to advise on legislative changes and issues involved in constitutional change.
- ❖ Need to make space for monitoring implementation. There are no unexpected results from good policy – must make room for all possibilities.
- ❖ Strategic framework – must ensure that the social environment is monitored to ensure that benefits are sustained, e.g. pay gaps – equal pay for equal work. Sweden has job evaluation / tribunals. (However, the job evaluation council is male dominated – complaints have to come through trade union, which is also male dominated...)

Importance of follow-up:

Ask for a meeting with government representatives who went to New York. Go through the Concluding Comments and ask:

- ❖ What are their plans, targets and timeframes?
- ❖ Practically, develop an action plan at the end of it.
- ❖ Are you going to implement this?
- ❖ What are the reasons stopping them? Gaps? Impediments regarding capacity of the government to remove the obstacles?
- ❖ What collaboration with NGOs would be useful?
- ❖ What info do we need to know to implement the Concluding Comments?
- ❖ Prepare a position and be prepared to address their resistance.
- ❖ A meeting with Government representatives can be cordial. Offer assistance and collaboration, and agree a monitoring mechanism.

Appendix III: Meeting Notes of the Equality Commission & Ad-Hoc Women's Policy Group

'CEDAW doesn't do anything for you unless you use it'

This was the message given by Shanti Dairiam to a meeting organised by the Equality Commission and Ad-Hoc Women's Policy Group that took place on 21 March. It was a highly informative, inspiring event, at which the NGO sector was left in no doubt on the crucial importance of its role in ensuring that governments were thoroughly scrutinised for their efforts to eliminate discrimination against women in domestic law. CEDAW - the Convention for the Elimination of All Forms of Discrimination Against Women - is the principal legal instrument addressing women's rights and equality. In the period leading up to the next periodic examination of the UK government in 2007 it is vitally important that we promote awareness of CEDAW and build capacity for its implementation.

Shanti Dairiam is an internationally renowned human rights activist from Malaysia. She is currently serving a 4 year term (2005-2009) as an expert member of the CEDAW examining committee. She is also the founder of International Women's Rights Action Watch Asia-Pacific (IWRAP Asia Pacific www.iwraw-ap.org), which organises collaborative programmes with women's groups to facilitate implementation of CEDAW. Her experience brought to life what CEDAW could be. It is much more than a paper commitment to equality and it can also be no more than a paper commitment, depending on whether women themselves get into the process and monitor the work of government.

Reports by states parties to the CEDAW Committee indicate the legal, administrative and programmatic measures they have adopted to give effect to the provisions of the CEDAW Convention. There is no enforceability mechanism for CEDAW. It is a monitoring mechanism, and governments who submit to a periodic examination of their record are told whether or not they have done a good job. It has dynamism only if it is forced to work. Ms Dairiam used a striking analogy - if a government ratifies the Convention, the situation is similar to the appearance of a door knob on a previously blank door - we still have to open the door through our own activity. Therefore we need to get governments to report regularly. Ratification is not enough.

She gave the example of Brazil, which has only submitted its first report, twenty years after ratification. When there is a lack of political will to take women's rights seriously, women in civil society have to be advocates, to maintain that political will. Women's groups have pushed governments by producing their alternative reports. In Brazil 1,500 women's groups coordinated an effort to produce a cohesive report and were congratulated by the CEDAW Committee for their role. The importance of giving alternative information to the Committee is that it alerts the committee to gaps and flaws in the official report and in this way helps the committee to ask more rigorous questions. The State Party has then to substantiate its claims. In Ms Dairiam's experience, having women at the UN in greater numbers through their presence as NGO observers creates a more respectful relationship between governments and women's NGOs.

After the examination of the state party, the CEDAW examining group issues concluding comments, assessing the current position of women in the country under review and making recommendations for future change. These concluding comments can be given wide publicity, and can be used by the NGO sector to force the pace of change. It is possible, for example, to have these comments raised in parliament, as was done in Nepal. This led to the amendment of twenty discriminatory provisions, including the decriminalisation of abortion. The tools of public scrutiny

and use of the internet were important elements in putting pressure on governments to fulfil their obligations and be part of a respected community rather than face public shaming.

In considering the question as to whether different laws can exist depending on economic and social conditions within a particular society, Ms Dairiam was firm that the principle of equality had to be the foundation of any law. She gave the example of Iraq, which had argued in 2000 that it could not implement CEDAW recommendations because of the impact of economic sanctions. The Committee responded that the principle of equality could be adhered to, no matter the social and economic conditions. If people have lost jobs, the government must ensure that women are not losing out disproportionately. They would not be compared with richer neighbours.

For those of us involved in discussions with the Gender Unit of OFMDFM, Ms Dairiam's observations regarding how discrimination experienced by women should be analysed were extremely useful and enhanced by a wealth of examples from many different countries. Above all, it was stressed that impediments based on the social construction of women's lives must be considered and assessed. The identical treatment of women and men can be discriminatory, so unequal treatment might be necessary in order to bring about substantive equality. Discrimination can be unintended and indirect through the application of a 'neutral' policy which has the effect of disadvantaging women through not enabling them to gain access. For example, the necessity to provide collateral for taking out a loan impacts on women because few women have property to be used as collateral. CEDAW can be used in domestic legislation to enable women to exercise their rights in terms of international standards. Cultural norms and stereotyping of women's roles in a particular society can be challenged. In Japan last year, women filed a discrimination case against an employer because the Equal Opportunities Employment Act didn't recognise discrimination – it was neutral. CEDAW drew attention to the neutrality of the Employment Act and the women went to the High Court. The judge instructed the employer to come to an out of court settlement, stating that 'National action must concur with international effort to eliminate discrimination. To tolerate vestiges of discrimination based on past understandings turn back the progress of society.'

On developing a strong shadow report

The women's sector was given clear guidelines of what needed to be done to ensure maximum impact for the next UK government report. We will need to build a constituency within the country, speaking as one voice, in a strong Shadow Report. Government reports are deficient on providing analysis of why women's status is low in their country and they do not provide specific recommendations on what they would do in the future. Ms Dairiam stressed the importance of Articles 1-4 of CEDAW, which concern legal standards and obligations of government and frameworks for action. Commenting on these articles provides an opportunity to comment on how equality is viewed in the particular country and what is the dominant culture. 'Neutrality is discrimination' she declared, a phrase that will be repeated many times by those of us fighting for positive action measures for women. In this first part of CEDAW macro policy issues can be considered, for example, on whether women are included within a National Economic Plan. When a country's performance is examined it has to be written in accordance with each article of the Convention and the Committee reviews the submission article by article. It is, however, easy to concentrate on specific issues only, ignoring the strategic policy framework and we were urged to ensure that a shadow report from here included those crucial articles 1-4.

The U.N. does not make it easy for NGOs to participate. The Division for the Advancement of Women (DAW) has stated that it is 'not in the mandate of DAW'. There are twenty-three experts in the CEDAW Committee, conducting reviews that take place in sessions normally conducted twice a year. Contact details for the experts, whose work is voluntary, are not given. For this

reason the IRAW Asia Pacific decided that one of their roles would be to act as a conduit for shadow reports. Their web site gives dates for when governments are due to be examined and they ask NGOs to submit their reports to them – preferably one month in advance of the due date – and they will post these off to the CEDAW Committee. While they cannot fund groups from Europe, they can also offer a three day mentoring and training programme to prepare NGOs for effective intervention in the CEDAW process.

British and Irish reports to CEDAW

In answer to questions, Ms Dairiam made a number of observations relating to the performance of the Irish and UK government's submissions to CEDAW. In her view, the Irish report had no strategic view or framework for women's advancement and lacked a normative standard of equality to pull together all the individual issues raised. While they highlighted the gains women had made in education, they failed to mention that this had not translated into greater participation for women in higher level employment and neither had it ended occupation segregation. Ireland's development assistance was commended for its gender approach, as was its anti-poverty strategy, although the lack of inclusion of Traveller women was criticised. The Irish government was adamant that it had no plans to change the law with regards to abortion, but they were 'not very honest' in how they portrayed the multiple referenda on the subject. It was stated to be part of a 'national dialogue' but they did not make it plain what the terms of the referenda were. The issue of violence against women was also problematic, with no strategic plan to redress the situation. In theory, the Irish government's treatment of women refugees was praiseworthy, including as it did gender-based persecution as grounds for asylum. However, as Ms Dairiam added, how this works in practice may be very different and it is here that NGO reports are very useful in showing the reality, in terms of the operation of burden of proof and dismissal of cases.

The UK government had declared that it was bound more by the European Convention on Human Rights than it was by CEDAW but the Committee had disagreed, replying that CEDAW was also a human rights instrument and it contained obligations to all categories of women, going beyond the provisions of the ECHR. The UK government received criticism for its treatment of migrant women, for the fact that teenage pregnancies were the highest in Europe and for the fact that three quarters of those above the age of eighty are women, many of whom are living in poverty. The government had declared that it was building more prisons to deal with the increasing numbers of women going to prison, but it was criticised for not investigating the reasons: poverty, non-payment of fines, etc. Policies regarding violence against women, women and decision making and job segregation were other critical areas where there was no definition of discrimination and an absence of remedies.

The Optional Protocol

The Optional Protocol to CEDAW, which the UK government ratified in 2003, allows for a complaints procedure, whereby an individual can petition the CEDAW Committee for redress if all domestic remedies have been exhausted. The Optional Protocol allows for both individual complaints and for inquiries.

Inquiries are into gross or systematic violations of rights. The Committee can be alerted to the fact that systematic violations of women's rights have taken place by a letter sent to the Committee. They will investigate, consider liability and write a report issuing recommendations. This has been done regarding domestic violence in Hungary and with the death of 300 women around the Texas/Mexico border. In the latter case, the CEDAW inquiry helped to internationalise the issue.

The Mexican government, because of the involvement of corporate interests, had not dared to take action, but it then felt more empowered to act.

With the complaints procedure, there must be an injured party, although there is provision for someone to file a complaint on their behalf if the person can't file their own complaint.

This remedy led to an interesting discussion regarding the denial of abortion rights to women in Ireland and possible future action.

Appendix IV: Conference Programme

10.15 a.m. – 11.00 a.m. Registration and refreshments

11.00 a.m. – 1.00 p.m. Morning session

Chairperson: Inez McCormack, Senior Adviser, Global Coalition for Women's Rights and Workers' Rights

Welcome and opening remarks

Joshua Castellino, Irish Centre for Human Rights, NUIG

Women's Human Rights – A Global Perspective

Maeve Taylor, Banulacht

The 33rd CEDAW Session New York – the NGO Experience

Noirin Clancy, WHRA

The Obligations of States under CEDAW

Shanthi Dairiam, CEDAW Committee Member and Director of International Women's Rights Action Watch, Asia-Pacific

1.00 – 2.00 p.m. Lunch

2.00 – 3.30 p.m. **PARALLEL SEMINARS**

Seminar I: Monitoring implementation of CEDAW

Chairperson: Fidelma Joyce, Combat Poverty Agency

Monitoring by NGOs – current context and mechanisms: Joanna McMinn, National Women's Council of Ireland

The International Experience: Faustina Pereira, Advocate, Supreme Court of Bangladesh; Director (Advocacy, Research, Legal Aid)

The Role of the Irish Human Rights Commission: Roisin Hennessy, Irish Human Rights Commission.

Seminar 2: Using CEDAW as a legal tool to eliminate discrimination

Chairperson: Eilis Barry, Equality Authority

Using human rights instruments in Irish courts: Noeline Blackwell, FLAC (Free Legal Advice Centres)

Cases where CEDAW has been used: Siobhan Mullally, Faculty of Law, UCC

Using CEDAW's Optional Protocol – experiences of NGOs: Brenda Campbell, Convenor of CEDAW4Change Listserv for IWRAW-AP

Seminar 3: Working from a feminist perspective and making CEDAW relevant at the local level

Chairperson: Councillor Catherine Connolly, Galway City Council

A feminist approach to human rights: Eilis Ward, Department of Sociology & Politics, NUIG.

Using CEDAW at the local level: Crea Nolan, Longford Women's Centre; Olive Moore, Amnesty International

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| 3.30 p.m. | Refreshments |
| 4.00 p.m. | Highlights from the Parallel Seminars |
| 4.20 p.m. | Closing Remarks
Katherine Zappone, Irish Human Rights Commission |
| 4.40 p.m. | CLOSE |

Appendix V: Conference Participants

1.	Ann Burke	Traveller Visibility Group
2.	Ann Mehegan	Youghal Women's Network
3.	Allesandra Fantini	Women's Health Council
4.	Agnes Warren	Galway Travellers Support Group (GTSG)
5.	Anne Marie Ward	GTSG
6.	Anne Caulfield	ADAPT House, Limerick
7.	Bernadette Doherty	Traveller Visibility Group
8.	Brenda Campbell	IWRAW, lawyer
9.	Brid Ni Thuathail	Irish Centre for Human Rights
10.	Bridget Barrett	GTSG
11.	Caroline Kelleher	NUI Maynooth
12.	Cathryn Mannion	National Traveller Women's Forum
13.	Clara Slattery	Indiv
14.	Clare Lombard	Women Allowed, Mallow
15.	Cliona Saidlear	Rape Crisis Centre Network
16.	Chrissie McAuley	Sinn Fein
17.	Christine Faul	Youghal Women's Network
18.	Crea Nolan	Longford Women's Centre
19.	Denise Dawson	Mayo Women's Support Services
20.	Edel Quinn	Athenry
21.	Edel McGinley	Migrant Rights Centre
22.	Ellis Barry	Equality Authority
23.	Ellis Ward	NUIG
24.	Faustina Pereira	Lawyer & human rights activist, Bangladesh
25.	Fidelma Joyce	Combat Poverty Agency
26.	Fiona Neary	Rape Crisis Network Ireland
27.	Finola Brennan	Donegal Women's Network
28.	Gillian Murphy	Tuam Community Dev Resource Centre
29.	Grace Conway	Equality for Women Measure
30.	Hannah McGiley	GTSG
31.	Inez McCormack	Global Coalition for Women's and Worker's Rights
32.	Ian Hughes	TASC
33.	Kathleen Reddington	Dunmore, Co. Galway
34.	Katherine Zappone	Irish Human Rights Commission
35.	Jameen Kaur	Amnesty International, Galway
36.	Jessa Ui Luanaigh	Traveller Visibility Group, Cork
37.	Jo Lambe	Open Door Network
38.	Joanna McMinn	National Women's Council of Ireland
39.	Joanna O'Connor	Suaimhneas refuge
40.	Joshua Castellino	Irish Human Rights Centre, NUI Galway
41.	Judith Cross	Equality Commission NI
42.	Liz Shield	Equality Measure for Women
43.	Loretto Needham	Tuam Community Development Resource Centre
44.	Lucy Claridge	Kurdish Human Rights Project, London
45.	Mags Brehony	Irish Refugee Council
46.	Maeve Taylor	Banúlacht

47.	Margaret Carr	GTSG
48.	Marja Almqvist	Canal Community Partnership
49.	Marian Nolan	Women with Disabilities in the West
50.	Maryclare Murphy	Gender Equality Division, Dept. of Justice, Equality & Law Reform
51.	Marie Hainsworth	WHRA
52.	Mary Lillis	Women's Studies, Clare VEC
53.	Mary O'Donoghue	POBAL
54.	Melissa O'Reilly	Traveller Visibility Group, Cork
55.	Nalinie Mooten	Irish Refugee Council
56.	Noeline Blackwell	Free Legal Advice Centre, Dublin
57.	Noirin Clancy	Women's Human Rights Alliance
58.	Noreen Meagher	Women Allowed, Mallow
59.	Noreen Quilligan	Traveller Visibility Group, Cork
60.	Olive Moore	Amnesty International
61.	Orla O'Connor	National Women's Council of Ireland
62.	Pat O'Rawe	Sinn Finn
63.	Paula Clancy	TASC
64.	Rachel Bernu	Kurdish Human Rights Project, London
65.	Roisin Dermody	WHRA
66.	Roisin Hennessy	Irish Human Rights Commission
67.	Roisin Eager	Women's Educ. Research & Resource Centre, UCD
68.	Rosemarie Fitzgerald	Suaimhneas, Limerick
69.	Shanti Dariam	CEDAW Committee Member, Malaysia
70.	Sharon Lupton	Youghal Women's Network
71.	Siobhan Mullally	UCC Law Faculty
72.	Therese Moore	Mercy Justice Group
73.	Santana O'Donoghue	Traveller Visibility Group, Cork
74.	Sandra Judge	Mayo Travellers Support Group
75.	Stacey O'Reilly	Traveller Visibility Group, Cork
76.	Tokie Laotan	Galway
77.	Theresa Sweeney	Women's Aid
78.	Triona NicGiolla Choille	Galway Refugee Support Group

Appendix VI: Biographies

Eilis Barry B.L. is a Legal Adviser to the Equality Authority (EA) and is head of the Legal Section. Prior to joining the Equality Authority she practiced as a barrister for 15 years, specializing in employment and discrimination cases, appearing in many equality cases before the Irish courts. She was a regular contributor on employment issues to the Irish Law Times and was editor of the Employment Law Reports for a number of years. She is co-editor of Equality in Diversity, The New Equality Directives, ICEL No.29.

Noeline Blackwell is an Irish-based lawyer specialising in refugee law and is the Director General of FLAC (Free Legal Advice Centres), an NGO that provides free legal advice and services for those living in poverty. She is the former Chairperson of both the International Human Rights Trust and the Irish Section of Amnesty International.

Brenda Campbell, Irish Barrister and Human Rights Activist currently practising from Garden Court Chambers in London. Brenda worked with IWRAW Asia Pacific in 2002 and 2003 and has continued to work towards the promotion and implementation of the CEDAW Convention in many jurisdictions. She continues to work with IWRAW Asia Pacific as well as a number of other human rights and women's rights NGOs.

Dr. Joshua Castellino is the Acting Director of the LLM in International Peace Support Operations at the Irish Centre for Human Rights. A graduate of Bombay University, he worked for many years as a journalist. After completing a Masters in international Law and Politics, he studied for a PhD in International Law in Hull University. In 2000, Dr. Castellino joined the Irish Centre for Human Rights at the national University of Ireland, Galway and was Academic Director of the Centre's LLM in Human Rights from 2000-2004. Dr Castellino also delivered a module in human rights to the M.Phil in Ethnic and Racial Studies, Trinity College, Dublin.

Noirin Clancy has been working as Co-ordinator of the Women's Human Rights Alliance since its establishment in 2002. Over the past ten years, she has worked with women's groups both as a community development worker and in a training capacity. Noirin is a member of the Executive Board of the National Women's Council of Ireland and is also Chairperson of the Galway Refugee Support Group.

Alpha Connelly took up the position of Chief Executive of the Irish Human Rights Commission in June 2002. She is the first Chief Executive of the Commission and has played a key role in its establishment. She has extensive knowledge and experience in the human rights field as an academic, an activist, a researcher and a legal practitioner, and has published widely. She introduced international human rights courses into the Law Faculty syllabus at University College Dublin and is a founder member of the interdisciplinary equality studies programme at this university. She has undertaken in-depth research for the Law Reform Commission of Ireland on the protection of privacy, was a member of the Constitution Review Group established by the Government in the mid 1990s to identify changes which are necessary or desirable to the Irish Constitution, and was a member of the Commission on Assisted Human Reproduction, which reported to the Minister for Health in 2005. Prior to taking up the position of Chief Executive of the Irish Human Rights Commission, she was Legal Adviser to the Department of Foreign Affairs.

Councillor Catherine Connolly is a practising barrister on the Western Circuit. In a previous life she worked as a Clinical Psychologist with what was then the Western Health Board. In this capacity she worked as part of a community care team in both Ballinasloe and Galway City. She was first elected a City Councillor in the west ward of Galway City in June 1999 and subsequently

re-elected in the South Ward in 2004. Catherine is one of three women Councillors in a Council comprised of fifteen members.

Shanthi Dairiam is an internationally renowned women's human rights activist from Malaysia and an expert member of the UN CEDAW Committee. She became involved in activism to promote women's rights through law and policy reform and the development of ways to identify and rectify discrimination against women. Ms. Dairiam is the founder of International Women's Rights Action Watch Asia-Pacific (IWRAP-Asia Pacific), an independent NGO that began collaborative programmes with women's groups in 12 countries of Asia to facilitate the implementation of CEDAW and other relevant UN treaties. Ms. Dairiam has served as an expert assisting key UN agencies such as APGEN, the Office of the High Commissioner of Human Rights and UNIFEM. She holds an MA in Literature from the University of Madras India and an MA in Gender and Development from the Institute of Development Studies, University of Sussex. She has recently become a member of the Board of ESCR-Net, the International Network for Economic, Social and Cultural Rights.

Róisín Hennessy is the Assistant Legislation and Policy Review Officer with the Irish Human Rights Commission. She drafted the IHRC submission to the Committee on the Elimination of Discrimination Against Women in relation to Ireland's 4th and 5th periodic reports and was part of the IHRC delegation who attended the 33rd CEDAW session. She holds the European Masters in Human Rights and Democratisation and an LLM from University College Cork.

Fidelma Joyce is currently Policy Liaison Officer with the Combat Poverty Agency, in addition to promoting the policy messages of Combat Poverty to diverse policy audiences, she is also working on economic, social and cultural rights, and health within the organisation. Fidelma previously worked for the European Youth Forum on policy issues, including women's rights and on youth policy development in Central and Eastern Europe, and was at one time Women's Rights Officer of the Union of Students in Ireland. She studied marketing and is currently completing a Masters degree in Equality Studies in UCD.

Inez McCormack became active in the Northern Ireland civil rights movement in the late 60s. Her work has contributed to recognition of the interdependence of rights and to an inclusive understanding of equality and human rights as an important element of conflict resolution. She was key in founding a broad based alliance of workers, sectoral groups and the disadvantaged from both sides of the community in a successful campaign to shape the sections of the Good Friday Agreement concerned with Human Rights and Equality. She is also currently joint chair of the Irish North/South Health Services Partnership. This is working to integrate equality and quality in delivery of effective health outcomes and to reduce health inequalities. She is a member of Vital Voices NI Executive Committee and also of the Vital Voices Global Advisory Network. She is an adviser to a joint employer/union international action research project based in New York and Belfast on how to increase quality and equality in delivery of health care. She was formerly the Regional Director for Unison, the leading public services union, in Northern Ireland.

Joanna McMinn has been a feminist activist and educator in the women's sector since 1981. She was the founding development worker of the Women's Education Project, and Director of the Women's Resource and Development Agency in Belfast until 1994. From 1994-2000, Joanna worked as an independent consultant on organisational development for the women's sector in both the north and south of Ireland. Joanna has written a doctoral thesis on women's community education, in relation to the promotion of social justice and equality for women. From June of 2001 Joanna has been working as the Director of the National Women's Council of Ireland in Dublin.

Olive Moore has been working with Amnesty International Irish Section as Human Rights Based Approach Officer since September 2004. She is managing the Human Rights Based Approach Initiative, a programme of work that aims to promote Human Rights Based Approaches in Ireland through training, research, capacity building, advocacy and awareness-raising. Prior to joining Amnesty International, Olive worked as a Human Rights Officer with the Permanent Mission of Ireland to the United Nations in Geneva. She also worked with Trócaire in their East Africa Office, as Human Rights Officer, promoting Human Rights Based Approaches to development in Sudan, Somalia, Kenya, Uganda and Tanzania. Olive has completed a number of traineeships, which include working in the Human Rights Unit in the Irish Department of Foreign Affairs and in the Human Rights and Democratisation Unit in the European Commission. She has holds a Degree in Social Science and a European Masters in Human Rights and Democratisation.

Siobhan Mulally lectures in human rights law at the Law Faculty, University College, Cork. Her research interests are in the field of gender equality, equality strategies, feminist theory and human rights. She was a visiting research fellow at the Harvard human rights programme in 1999. She lectured in international law at the Law School, University of Hull, from 1990-1995 and was a visiting lecturer at the Human Rights Studies Centre, University of Peshawar, Pakistan in 1992-1993 and in 1994. She is currently working on a doctoral thesis at the EUI, Florence on gender and international human rights law.

Crea Nolan has been working as a Refugee Support Worker with Longford Women's Link for the past three years. She works with immigrant women with a community development and human rights based approach. She has co-ordinated ERF funded projects. She has a keen interest in human rights and has just completed a week's training with Amnesty International on using a human rights based approach in organisations.

Faustina Pereira is a lawyer, human rights activist and author. She is an Advocate before the Supreme Court of Bangladesh and Director (Policy Advocacy and Research) of Ain o Salish Kendra (ASK), Bangladesh's leading legal aid and human rights organisation. Her areas of interest are gender and social justice, policy advocacy and legislative reform; development of constitutional remedies through public interest lawyering; devising creative strategies towards ensuring State accountability and transparency towards protecting human rights of citizens. Faustina's book, *The Fractured Scales* has received an award by the Asiatic Society of Bangladesh. She has played a critical role in framing several Public Interest Litigations through which the rights of previously unrepresented or under-represented communities have been upheld: such as under-trial prisoners, sex workers, slum dwellers, or foreign prisoners whose jail terms are over. Faustina holds a Doctorate in International Human Rights Law from the Centre for Civil and Human Rights, University of Notre Dame (USA). She received her LLM from the University of Dhaka. In 2002 she completed a Post-Doctoral Fellowship at the National University of Ireland, in Galway.

Maeve Taylor, Policy and Training Project Leader. Maeve has worked for Banúlacht since 1999, with responsibility for implementing education programmes with women's networks and for the trade policy aspects of the programme. She is the author of Banúlacht's 2003 publication, *Looking at the Economy through Women's Eyes: A Facilitator's Guide to Economic Literacy*. She has a masters degree in human rights law.

Dr. Eilis Ward lectures in the Department of Political Science and Sociology in NUIG. Her research and teaching interests include women's human rights, multiculturalism and the politics of the developing world.