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## “Human Rights and Gender Equality”

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## BACKGROUND PAPER

By Shanthi Dairiam  
Member, Board of Directors  
International Women’s Rights Action Watch-Asia-Pacific

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**Note from the co-organisers:**

To prepare and facilitate the discussions during the 9th Informal ASEM Seminar on Human Rights, the co-organisers and Steering Committee defined a framework for a Background Paper and asked the eminent expert Ms. Shanthi Dairiam to prepare this report.

**Shanthi Dairiam** is Founding member and former Executive Director of the International Women's Rights Action Watch Asia Pacific. Shanthi has extensive experience in managing women's rights programmes and has been involved in building capacity for women's rights advocacy for over 20 years, both with Malaysian organisations and also at the regional and international levels. She has served as an expert assisting key UN agencies such as the UNDP, the Office of the High Commissioner of Human Rights and UNIFEM. She holds a Masters in Literature from the University of Madras, India and a Masters in Gender and Development from the Institute of Development Studies, University of Sussex. Shanthi served a four-year term (2005-2008) as an expert member of the CEDAW Committee.

Participants are kindly asked to come to the discussions with practical examples from their experience, which could complement and illustrate this general paper.

Any views expressed in this document are strictly those of the author, and do not necessarily reflect those of the Asia-Europe Foundation, the Raoul Wallenberg Institute, the French Ministry of Foreign Affairs, the Center for Human Rights of the Ateneo de Manila University nor the Philippine Department of Foreign Affairs.

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# WOMEN'S HUMAN RIGHTS & GENDER EQUALITY

By Shanthi Dairiam  
Member, Board of Directors  
International Women's Rights Action Watch-Asia-Pacific

## I Historical Background\*

- The historical evolution of the concept of human rights paved the way to the contemporary legal standards set out, *inter alia*, in the United Nations Charter, the Universal Declaration of Human Rights and two cornerstone International Human Rights Covenants and Protocols hereto, including the UN Covenant on Civil and Political Rights and its two Optional Protocols, known as the International Bill of Human Rights.
- The international human rights standards are universally recognized principles, based on premises of indivisibility and inalienability – they belong to *all* human beings *equally*, without any form of discrimination based on sex, race, ethnicity, religion, social or civil status and *no* human being shall be deprived of his rights on any grounds other than those established by law accorded to international human rights standards. The states have a positive obligation to guard the rights while refraining from encroachment on the latter. In the event of the state's unwillingness or inability to do so, it is for the international community to take the lead.
- The international human rights protection mechanism extends to all spheres of human life: civil, political, cultural, social and personal. In the Preamble to the Universal Declaration of Human Rights (1948), the drafters explicitly noted that both men and women shall enjoy those rights equally: “the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, [...] and in the equal rights of men and women”. Article 7 of the Declaration further reiterates the principle of equality before the law and protection against any forms of discrimination, including gender-based discrimination.
- The Declaration and the United Nations Charter were the first international human rights protection instruments which *de jura* acknowledges disparity between rights of men and women and the necessity to establish mechanisms for protection of women's rights.
- At the outset of the foundation of the United Nations, there was a clear sense that the disadvantaged position of women in society was one of the proprieties that a new international order needed to address. In 1946 the Economic and Security Council of the United Nations (ECOSOC) established the Commission on the Status of Women (CSW) with a specific mandate – to bring gender equality principle from the paper to real life. In the terms of reference of the CSW it was emphasized that main objective of this gender-specific body is to ensure the *de facto* observance of international human rights in respect to women.
- Over six decades, the United Nations women-focused machinery has worked to develop an elaborative mechanism specifically addressing women's issues. Thus, new

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\* The author wishes to acknowledge the assistance of Maria Iaitskaia in drafting this section. She is Project Executive at the Asia-Europe Foundation, LL.M in Law and Global Economy, New York University School of Law, LL.M in International and Comparative Law, National University of Singapore School of Law.

<sup>2</sup> See Charlotte Bunch and Samantha Frost. *Women's Human Rights: An Introduction*. Published in Routledge International Encyclopedia of Women- Global Women's Issues and Knowledge.

legal instruments have been created in order to compliment the gender- neutral human rights protection mechanism with specific measures to bring women on equal footing with men. The 1952 Convention on the Political Rights of Women, the 1957 Convention on the Nationality of Married Women, the 1974 Declaration on the Protection of Women and Children in Emergency and Armed Conflict were the first milestones intended to alleviate concerns of specific relevance for women.

- Prevailing definitions of general human rights however were not applied to women. In spite of good intentions, the human rights regime applied human rights standards according to the experiences of men. Women's experiences of violence in the home, or restriction of mobility by family members were not seen as torture or unlawful detention worthy of state intervention. The private public dichotomy served to confine women's interests and rights under the control of the male dominated family. In fact culture and tradition justified such control and it was even seen as necessary to maintain social cohesion. Men's rights were exercised in the public sphere and restraints were placed on these rights by a restrictive State. So the application of human rights was about curtailing the power of the State. On the other hand the restraints put on women, largely in the private sphere were not to be regulated thus limiting the scope of the responsibility of the State.<sup>2</sup>
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the General Assembly on 18 December 1979, symbolizes the climax of the decades-long efforts to create an integrated legal mechanism to advance women's rights in all spheres of life. It became the central and most elaborative women's rights legal protection instrument, and an ultimate basis for development and evolution of the subsequent women's rights protection strategies. The spirit and objective of the Convention emanates from principles of international law, general standards of equality and human rights and the goals of the United Nations as set forth in the United Nations Charter.
- In its Preamble CEDAW explicitly acknowledges that "extensive discrimination against women exists" and defines gender – based discrimination, as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field " (Article 1).
- By becoming a party to CEDAW, Member States explicitly undertake an obligation to condemn gender-based discrimination in any forms, direct or indirect, and to take active steps to pursue comprehensive policies and measures to eliminate discrimination against women at all levels and all fields covered by the Convention, including 'in the political, economic, social, cultural, civil or any other field' (Article 1 of CEDAW). It further mandates the states to undertake measures redressing instances of direct and indirect discrimination by amending its laws, setting up policies to change cultural practices and traditions that promote direct or indirect discrimination of women, regulating private individuals, organization or enterprise, compensating for past discrimination, abandoning identical treatment as the hall mark of equality and showing an understanding of gender based disadvantage that required different treatment. A complex multilayered approach to equality is mandated showing equality of results.

- The next landmark step taken by the international community to advance women's rights was the historic Vienna World Conference on Human Rights held in 1993. The effort was made to merge human rights of women into the theory and practice of human rights where the human rights of women and of girls were recognized as an inalienable, integral and indivisible part of universal human rights. The traditional stigmas of women's human rights as private, and thereby not subject to the public debate and proceedings have been rejected. Women's human rights are fundamental and universal and thereby trump any cultural practices or traditional beliefs. Thus, it was explicitly stated that "gender based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking are incompatible with the dignity and worth of the human person and must be eliminated"<sup>4</sup>. The violations of the human rights of women in situation of armed conflicts have been recognized as violations of fundamental principles of international human rights and humanitarian law. The Conference further undertook steps to strengthen the right protection machinery by urging the universal ratification of CEDAW and withdrawal of reservations previously applied by the Member States with regard to particular Articles of the Convention; strengthening the human rights protection mechanism of the United Nations system, *inter alia*, strengthening the mandate of the Commission on the Status of Women, Committee on the Elimination of all Forms of Discrimination Against Women, the Commission on Human Rights<sup>5</sup> and part of the UN Secretariat specifically working on advancement of women. The other fundamental change in the women's rights protection machinery attributed to the World Conference on Human Rights in Vienna was an introduction of the right to the individual communication procedure, the Optional Protocol, under the Convention on the Elimination of all Forms of Discrimination.
- The Optional Protocol to CEDAW, ratification of which is still in progress is an important instrument for putting the protection mechanisms under the Convention into practice to ensure that women all over the world effectively enjoy the rights set forth in the Convention on the Elimination of all Forms of Discrimination against Women.
- With the advent of CEDAW, the concept of gender equality gained currency. The principle of redistributive justice, compensating for historical discrimination and the transformation of systems of social interactions, traditions and culture were required ingredients to bring about equality of results or outcomes. In this paper, CEDAW with its obligation to eliminate discrimination against women and to fulfil women's right to equality will be the framework to assess success and challenges for women.

The next section of the paper will begin with an elaboration of the concept, the persistent nature of discrimination and the manner in which it is manifested.

## **II Understanding Discrimination against Women: Factors Contributing to Discrimination, Preventing Equality of Outcomes**

This section provides an explanation for the persistence of discrimination and inequality despite the existence of legal provisions prohibiting discrimination and guaranteeing equality. It argues for holistic measures to address women's right to equality that will take account of the structural basis of discrimination and inequality. It maintains that remedies for women

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<sup>4</sup> World Conference on Human Rights, United Nations DPI, DPI/1394-39399, August 1993-20M, p.34, para. 18

<sup>5</sup> Following the reform of the UN human rights protection machinery, the Commission on Human Rights has been substituted by the Human Rights Council.

may be limited if a gendered approach is not taken to establish sex –based discrimination or if discrimination in its multiple forms is not recognised. This section also expresses the view that while the understanding of human rights has evolved, exceptions to its application are still made in certain circumstances restricting the enjoyment of the right to equality for certain groups of women.

*a. The structural basis of discrimination*

While the goal of CEDAW is the fulfilment of women's right to equality, an important operational measure for the achievement of this goal is the elimination of all forms of discrimination. This is a complex agenda requiring the recognition of discrimination both overt and covert, visible and invisible, intended and unintended. As mentioned in the previous section, according to CEDAW, discrimination occurs when women are unable to exercise and enjoy a human right in the economic, social, political and cultural fields. In other words women must be able to enjoy all rights in all fields. The Convention does not allow for any kind of treatment or acts of omission that permits exceptions to or that prevents the enjoyment of human rights by women.

Discrimination is not a random phenomena. It is often group-based and is linked to perceptions of the value or worthiness or otherwise of different groups who are divided according to their ethnicity, religion, minority status, sex and many others. Assumptions regarding various traits attributed to certain groups work against them. This entrenches the superiority of some groups over others resulting in what Fraser calls status hierarchy with very material consequences.<sup>6</sup> Since women are one social category who face discrimination because of the group they belong to, rarely is an act of discrimination perpetrated against a woman as an individual. She comes bearing the stigma of being woman and is disadvantaged by it. This is the social construction of gender. Groups who are low in status hierarchies are usually among the poorest and most marginalised. Opportunities are denied to those seen as less worthy or capable and vulnerabilities are intensified. Those who are perceived to be less worthy therefore also experience socio-economic disadvantage.<sup>7</sup> Norms and rules by which society organises itself entrench the hierarchy and facilitate and perpetuate the uneven distribution of resources, responsibilities and power through various institutions of society.<sup>8</sup> The discriminatory social norms, are seen as natural, as part of culture and in certain contexts as God-given. Hence discrimination is not only socially-constructed but also supported structurally and justified on the basis of the dominant value system based on culture, religion or both. Its elimination can only be brought about and equality achieved through a multi-faceted approach. It requires the recognition of the equal status and value of the subordinated group as well as a policy and programme of redistribution of resources and benefits. While much has been done to bring about the former through equality legislation, the latter is often problematic. Left to the arena of policy and subject to the discretion of policy makers, redistribution is therefore rarely justiciable as rights.

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<sup>6</sup> N. Fraser and A Honneth. Redistribution or Recognition(2003) 13. Cited in Sandra Fredman. Redistribution and Recognition:Reconciling Inequalities. South African Journal on Human Rights. Volume 23 Part.2. 2007[215].

<sup>7</sup> Sandra Fredman. Redistribution and Recognition: Reconciling Inequalities. In South African Journal on Human Rights. Volume 23 Part.2. 2007[218].

<sup>8</sup> Kabeer, Naila and Subramaniam, Ramya. 1996. Institutions, Relations and Outcomes:Framework and Tools for Gender-Aware Planning. IDS Discussion

The prohibition of discrimination against women aims to bring about the recognition of the equal status of women with men but it needs to go hand in hand with redistributive policies that address the material consequences of inequality as well as the transformation of societal norms that position women as less worthy. It requires the balancing of power between women and men. The last is the most contentious as it may be seen as going against cultural values that are perceived to be immutable. These various dimensions are however critically interrelated. Often the strategy for eliminating discrimination is addressed at changing status hierarchy positioning the discriminated person as an “abstract individual freed of group-based characteristics.”<sup>9</sup> Constitutional guarantees for equality in most countries ensure that status hierarchy is prohibited but stop short of remedying the socio-economic disadvantage, often cumulative, that women and other subordinated categories experience. *De facto* equality remains therefore elusive for these groups.

In any given context therefore, it is essential that the gendered experiences of women's lives, current and historical, and the interrelated aspect of the various forms of discrimination and attendant deprivation have to be taken into consideration in order to achieve equality. For example there may be no overt current discrimination against women in a particular context and their status as equals may be recognised. But women may be prevented from exercising their right because of the restrictions or constraints they face in other aspects of their lives. For example, the labour legislation in many countries has provisions for equal pay. But because of job segregation, women may be bunched in certain categories of jobs that do not pay as much as the jobs that men traditionally occupy. Most women work inside and outside the home and at the same time face the risk of physical insecurity within the home, at the work site and in other public places hampering their mobility and limit their choices for work. Their lack of exposure and at times limited skills development, the absence of male responsibility for family care, the lack of family support services and the possible lack of autonomy at the personal level may prevent women from accessing opportunities for upward mobility. Under these conditions, the existence of an “equal pay for equal work” clause does not really benefit women. This is not to underestimate the importance of the principle of “equal pay for equal work” which equalizes the status of women and men workers in principle, but to remind ourselves that it is not enough and that this legal provision does nothing to compensate for women's disadvantage in the labour market as it does not compel the provisioning of enabling conditions to remedy that disadvantage and create *de facto* equality.<sup>10</sup>

At other times the inequality of women persists because they continue to bear the effect of past discrimination. In Australia, women retrenched from a steel mill because of the ruling “last hired, first retrenched”, filed a case of discrimination successfully. While it is true that the women concerned were hired last, the fact was that this mill had had a discriminatory policy several years ago of not recruiting women. At that time it was considered inappropriate for women to work in steel mills. The fact that women were the last to be hired was the consequence of historic discrimination, hence applying the rule of “last hired, first retrenched” in the case of these women was considered to be discriminatory against them although it was unintentional.<sup>11</sup>

So it means more than just considering whether women are an affected group but analysing why, bringing to light the social, cultural and historical factors that contribute to processes of

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<sup>9</sup> Ibid. [216]

<sup>10</sup> Dariam Shanthy and Suarez Maria. Recognizing and Realizing Women's Human Rights.1999. In Universal Declaration of Human Rights: Fifty Years and Beyond. Editors Yael Danieli et al. Baywood Publishing Company Inc. on behalf of the United Nations.

<sup>11</sup> Australian Iron and Steel Pty Ltd v Banovic [1989] HCA56 [1989]168 CCR 163(5 December 1989)

discrimination and the inequality of women. We need to unpack the inter-linkages between discrimination against women and the structural basis of inequality through looking at the way social rules are structured in different institutions of society<sup>12</sup> For example, the social expectation that men are responsible for the economic provisioning of the family (even if this is not always so in reality) and that women are homemakers is one of the reasons for the phenomenon of occupational segregation with women in low paying jobs. In such contexts, what we are dealing with is the familial ideology of the 'male breadwinner' and 'male parent lord' which has permeated socio-cultural and legal concepts as well as economic relations in the family in most communities and the major legal systems of the world."<sup>13</sup>

Rights are inter-related. The ability of women to make choices in the field of employment and access opportunities on an equal basis with men requires equal access to education and autonomy at the personal level within the family. Similarly, discrimination is also inter-related. The denial of rights in one field leads to the denial of rights in another. Under these circumstances what is needed is a gendered application of human rights principles through which pro- active and pro- women policies are implemented that will not only ensure formal equality in the law, eliminating status hierarchy and providing equal opportunities but also mandate other policies and programmes that provide adequate family support services, encourage male responsibility for child care, raise awareness of women's right to equality at the private and public levels, ensure personal autonomy as well as long term measures aimed at changing the ideology and cultural patterns of conduct of men and women that place them in stereotypical roles disadvantaging women. Such stereotyped positioning is not merely about who does what but it is normative, de-valuing women, diminishing women's aspirations, leaving women without power and reducing women's entitlements to equality.

*b. The non recognition of or exceptions to women's right to equality*

In attempting to deal with discrimination, it is also essential acknowledge that the understanding of women's right to equality is continuing to evolve and that there are still areas of rights and contexts in which the right to equality or even the fact of discrimination is not as yet fully recognised. Various elements of non recognition will be discussed here. The principle that all human beings are born free and equal in dignity and rights is not always practiced as a universal norm. There are several areas of concern such as non-recognition, or very narrow interpretation of sex-based discrimination, preference given to the rights of men in case of conflict of rights with regard to the rights of men and women, making exemptions to the guarantees for equality on the basis of culture, history or religion and the lack of adequate legal protection in law and in enforcement for certain marginalised groups thus also making exceptions to the universal application of the principle of equality.

Denial of sex based discrimination.

These situations include the need for a male comparator to establish sex-based discrimination , in other words that discriminatory treatment of women must be measured by the relative discriminatory treatment of men. Discrimination is a complex phenomenon. Article 1 of CEDAW articulates this complexity when it states that a differential or similar treatment of women that has the purpose or effect of denying women the enjoyment of all rights is discrimination. The operative term here is the word "effect". This captures the fact that whether

<sup>12</sup> Kabeer, Naila and Subramaniam, Ramya. Op cit

<sup>13</sup> Goonesekere Savitri. Women's Rights and Children's Rights: The UN Convention as Compatible and Complementary International Treaties. UNICEF. Innocenti Occasional Paper Series. 1992

an act or even an omission is discriminatory will depend on the life situation of the women concerned, including her history of disadvantage, the prejudice she faces as a woman in a patriarchal setting or that the non-recognition of her special biological needs as a woman increases her vulnerability and exacerbates her disadvantage. While demonstrating that in certain contexts women experience greater degrees of inequality as compared to men is essential, this may not always be necessary, useful or fair. What is needed then at times is to show that in a given context that women, on the basis of gender and biology have experiences that men may not or will never have, so there is no possibility for comparison or that the effect of the experience that a woman faces has a more deleterious impact on her than it would have on a man for reasons cited above. This is so, although they both have apparently similar experiences such as having to suffer from poverty or being harmed or deprived of rights because of their sexual orientation. Hence a uni-dimensional approach to equality and considering the merit of an act of commission or omission in a particular segment of time, divested of the history of the people concerned and the differential impact of the act on women and men restricts the potential for solutions.

The CEDAW Committee has made it clear that the need for a male comparator is not always necessary. Paragraph 5 of CEDAW's General Comment 26 on Women Migrant Workers, states,

“The Committee is aware that male migrant workers also face many violations of their human rights but stresses that it should be recognised that women and men find themselves in differing circumstances on the basis of sex and gender. Hence where women are concerned, these violations may be more intense, may be of a specific nature, or there may be differing contexts in which the violations occur, and the effect of the violations and the ability of women to cope with them may differ as compared to men.”<sup>14</sup>

Conflict of interest. Two cases submitted to the CEDAW Committee, 5/2005 and 6/ 2006,<sup>15</sup> illustrate that when there is a conflict between the interests or rights of men and women, the rights of men is likely to be given pre eminence. In these two cases, two women in Austria (separately) were shot dead by their husbands. In spite of repeated complaints to the police of the violent threats and acts of violence committed against them by these men, the police and the public prosecutor did not take a pro-arrest and pro-detention measure, possible under the law, to prevent the killings. The public prosecutor was of the view that detaining the men would be in violation of their right to movement privileging this right over women's right to life and bodily integrity. The Committee's decision in these cases, has added to the jurisprudence of equality. The Committee recommended that the State,

“--also ensure that in all action taken to protect women from violence, due consideration is given to the safety of women, emphasizing that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity;”<sup>16</sup>

Exceptions to the principle of equality. Other areas of concern include contexts in which exceptions to they guarantee of equality are made on the basis of culture, history, tradition or religious interpretation or perceived public interest. or conflict. There are many examples of these. At the international level, the evolution of the human rights regime establishes the

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<sup>14</sup> GR 26 on Migrants

<sup>15</sup> CEDAW. Communication 5/ 2005 and CEDAW Communication 6/2005

<sup>16</sup> Ibid.

<sup>18</sup> CEDAW. General Comment 21. Equality in Marriage and Family Relations. Para 42.

universality of rights. But at the national level, the resistance to the universality of human rights on the basis of culture continues unabated. While the rejection of universal human rights affects all rights, the cultural argument affects women's rights in particular. We can see many examples of this. While standards are set for the protection of women's rights through constitutional and statutory guarantees, the protection of women's right to equality and non-discrimination is often made the exception in the law or in practice.

In some countries until recently, constitutional provisions for non-discrimination did not include sex as prohibited grounds for discrimination. The idea was equality for all but not for women. At other times, there are exceptions to the constitutional guarantee of equality exempting areas such as religion and religious institutions from the application of the equality guarantee. It is often the rights of women that are restricted when such exceptions are made as various interpretations of religion deal with equality in marriage and family relations positioning women as dependents of men and as subordinate to them. One consequence of this is that several States have placed reservations on article 16 of the Convention, which provides for equality in marriage and family relations, citing non-compatibility with their religion. It is interesting to note that some of these contested rights within family relations include right to economic resources such as right to equal inheritance. This area of rights contested on the basis of culture or religion prescribes what is seen as socially-appropriate economic entitlements to women and men and maintains stereotypical roles for women and men in the family. What it does is to deny women the capacity for autonomy and control over their lives which will enable them to access economic opportunities, facilitate social inclusion and raise their value as equal citizens. In reality it is the balancing of power relations between women and men that is contested under the name of culture and religion. In its General Comment 21, the CEDAW Committee has expressed concern at the number of reservation to article 16 of CEDAW.

“Many of these countries hold a patriarchal belief in the structure of a family which places a father, husband or son in a favourable position. In some countries where fundamentalist or other extremist views or economic hardship have encouraged a return to old values and traditions, women's place in the family has deteriorated sharply. In others, where it has been recognized that a modern society depends for its economic advance and for the general good of the community on involving all adults equally, regardless of gender, these taboos and reactionary or extremist ideas have progressively been discouraged.”<sup>18</sup>

Subsequently, the CEDAW Committee has expressed an opinion that reservations to article 16 of the Convention is in conflict with the very object and purpose of CEDAW.<sup>19</sup>

There are also instances where equality provisions in the constitution and the laws are not interpreted in favour of women or adequate measures taken to provide women with the protection that is in the law. To illustrate this I would like to present a case 7/2005<sup>20</sup> presented to the CEDAW Committee under the Optional Protocol. In this case, the lower courts of Spain as well as its Supreme Court and Constitutional Court decided that the historical

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<sup>19</sup> “Neither traditional, religious or cultural practice nor incompatible domestic laws and policies can justify violations of the Convention. The Committee also remains convinced that reservations to article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn.” United Nations. Report of the Committee on the Elimination of All Forms of Discrimination against Women. A/53/38/Rev.1 [47] para 17.

<sup>20</sup> CEDAW/C/39/D/7/2005

principle of male precedence in succession to nobility titles was compatible with the principle of equality. The judgment of the Supreme Court specifically established that male primacy in the order of succession to titles of nobility, provided for in the then laws of Spain was neither discriminatory nor unconstitutional since article 14 of the Spanish Constitution which guaranteed equality before the law, was not applicable in view of the historical and symbolic nature of those titles. What is the implication of these decisions? The dissenting opinion in this case states, "Exceptions to the constitutional guarantee for equality on the basis of history or the perceived immaterial consequence of a differential treatment has to be seen as a violation, in principle, of women's right to equality. These exceptions subvert social progress towards the elimination of discrimination against women using the very legal processes meant to bring about this progress, reinforce male superiority and maintain the status quo."<sup>21</sup> The social relations of women and men remain in a time warp regardless of advances in the law.

Marginalised groups and lack of protection. There are some significant contexts where the human rights of women remain largely unrecognized. Some of these contexts which have economic implications privilege the rich and people of a certain class over the poor and marginalized. In many countries domestic workers, and migrant workers are not adequately protected against exploitative employers.<sup>22</sup> Or the law does not provide them with the means of seeking redress in case of violation of their rights. Domestic workers in many Asian countries do not fall under the legal definition of worker and so are not protected by the labour law of the country. In some cases pro-active measures to address special needs of certain groups such as the disabled, may not be in place. For example, if there is no public policy on accessible transportation for the disabled, the consequence is that they do not have the mobility to seize opportunities for skilling or for employment. They face harassment when they try to access an unfriendly public system and in fact even endanger their lives.

Another unprotected category and who fall outside the guarantee of equality and non-discrimination are people of all sexual orientation<sup>23</sup> and gender identity.<sup>24</sup> Many States now have laws and constitutions that guarantee the rights of equality and non-discrimination without distinction on the basis of sex, sexual orientation or gender identity but there also several States that do not extend their constitutional guarantee of equality and non-discrimination across the board and unconditionally. Hence when human rights violations such as torture, arbitrary detention, sexual assault and rape, or denial of employment or education opportunities are targeted toward persons because of their actual or perceived sexual orientation or gender identity, there is no protection under the law. While both men and women experience these violations, it is arguable that women are particularly vulnerable as their sexuality comes under greater scrutiny by society and enforcement agencies and their susceptibility to sexual violence or other forms of sex based discrimination exacerbates their

<sup>21</sup> CEDAW/C/39/D/7/2005. Individual opinion by Committee member Mary Shanthi Dairiam (dissenting) para 13.7

<sup>22</sup> In view of the information provided to the CEDAW Committee on the lack of protection for women migrant workers, the Committee has issued General Recommendation 26 on the Women Migrant Workers

<sup>23</sup> "Sexual orientation is understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender." Source: Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity. Adopted by a group of 29 human rights experts in November 2006 in Yogyakarta, Indonesia.

<sup>24</sup> Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms." Source: Ibid.

situation. Women come under a double burden. They could be discriminated as women and because of their sexual orientation.

Louise Arbour, former UN High Commissioner for Human Rights is unequivocal in her defense of the human rights of lesbian ,gay, bi-sexual and transgender (LGBT) people. According to her, “Neither the existence of national laws, nor the prevalence of custom can ever justify the abuse, attacks, torture and indeed killings that gay, lesbian, bi sexual, and transgender persons are subjected to because of who they are or are perceived to be. Because of the stigma attached to issues surrounding sexual orientation and gender identity, violence against LGBT persons is frequently unreported, undocumented and goes ultimately unreported and unpunished. Rarely does it provoke public debate and outrage. This shameful silence is the ultimate rejection of the fundamental principle of universality of rights.”<sup>25</sup>

It is reported that 78 countries of the world have criminalized male to male relationships and 45 countries have criminalized female to female relationships, while 8 countries have imposed the death penalty for such relationships.<sup>26</sup> There are also many reports of violence and harassment that LGBT people face.

Women from a wide range of countries are beginning to provide information to the CEDAW Committee on the violations of the rights of lesbians in their countries. They include Slovenia, Kyrgyzstan, Mongolia, Ecuador, Turkey, Netherlands and Lebanon . At the 42<sup>nd</sup> session of CEDAW in 2008, women from Kyrgyztan reported that 23% lesbian and bi-sexual women were subject to violence, in particular “curative rapes” or house arrests by parents to force them to change their orientation.<sup>27</sup>

The international human rights system including key human rights treaties and mechanisms have taken steps towards affirming States’ obligation to ensure effective protection of all persons from discrimination based on sexual orientation or gender identity.<sup>28</sup> Also many States now have laws and constitutions that guarantee the rights of equality and non-discrimination without distinction on the basis of sex, sexual orientation or gender identity. But many countries still provide no legal protection. Sonia Onufer Corrêa and Vítit Muntarhorn, Co-Chairpersons of the drafting of the Yogyakarta Principles point out in the introduction of that document that “human rights violations targeted toward persons because of their actual or perceived sexual orientation or gender identity constitute a global and entrenched pattern of serious concern”. They have also expressed the concern that international response to human rights violations based on sexual orientation and gender identity has been “fragmented and inconsistent.”

Women’s groups are raising the issues pertaining to the rights of various marginalized women at the CEDAW review. For real progress to be made in the protection of human rights for all there can be no derogation from the principle of all human rights for all persons on the basis of equality and without discrimination. Nor can the universality, inalienability, the inter relatedness and interdependence of human rights be compromised.

<sup>25</sup> Presentation by Ms Louise Arbour at the International Conference on LGBT Human rights, Montreal, 26 July 2006. Cited in ICJ. Sexual Orientation, Gender Identity and International Law. Practitioner’s Guide No. 4

<sup>26</sup> Douglas Sanders. Human rights and Sexual Orientation and Gender Identity in International Law. <http://ilga.org/ilga/en/article/577>

<sup>27</sup> Shadow Report on Discrimination And Violence Against Lesbian And Bisexual Women And Transgender People In Kyrgyz Republic. October 2008. CEDAW 42<sup>nd</sup> session.

<sup>28</sup> See International Commission of JURISTS. Sexual Orientation and Gender Identity in Human Rights Law. References to Jurisprudence and Doctrine of the United Nations Human Rights System. 2007.

*c. Multiple forms of discrimination*

Many women suffer from more than one form of discrimination. The 1995 Fourth World conference on Women held in 1995 recognised that the grounds for such discrimination could be age, migrant or part time or unorganized worker status, ethnicity, minority status, refugee, disability, HIV infected or sexual orientation etc. When people suffer multiple forms of discrimination they are usually among the poorest and most marginalized. The less power they have, the less likely it is that their conditions are addressed by law and policy. They have no participation in decision making affecting their lives. Or their powerless situation makes it impossible for them to access justice and redress. This is the result of several vulnerabilities compounding and intensifying inequality. Gender interacts with each of these grounds and intensifies vulnerability. This has been recognized at the international level. In the Durban Declaration and Platform for Action, States declare they

“Are convinced that racism, racial discrimination, xenophobia and related intolerance reveal themselves in a differentiated manner for women and girls, and can be among the factors leading to a deterioration in their living conditions, poverty, violence, multiple forms of discrimination, and the limitation or denial of their human rights.”

But the 2009 Durban Review Conference was also of the view that “despite the crucial intersection of discrimination against women and racism, racial discrimination, xenophobia and related intolerance, there are as yet limited efforts that link these human rights mechanisms to promote the rights of women facing multiple forms of discrimination.”<sup>29</sup>

Joanne Cunaghan posits that the legal frameworks have not yet been able to “articulate the normative, material and legal (inter)relations of distinct inequality grounds.”<sup>30</sup> Law usually considers different grounds as mutually exclusive but in not in combination.<sup>31</sup> She points out that human beings have, and here we are speaking of women, have multiple identities which blend together. In the lived experiences of women they do not merely manifest as an accumulation of identities. The solution says Cunaghan is not for law to take a grounds approach which then leads to the fragmentation of the grounds but to establish remedies for the effects of these grounds. If this is not done, a claimant may have to seek remedies across each ground separately. Establishing discrimination under each ground separately is difficult as discrimination may not be perceived as against a single identity comparator.<sup>32</sup> And it may result in condoning a hierarchy of grounds and rights. The complexity of the violation and its effects goes unnoticed. For example, in a case 3/2004<sup>33</sup> submitted to the CEDAW from the Netherlands: related to discrimination by a pregnant part time woman worker in access to maternity benefits by a part time / self employed worker as opposed to full time women workers, the State party stated that the grounds for the alleged differential treatment of the author was to do with the fact that she was a part time salaried employee and worked as a co-working spouse in her husband's enterprise at the same time self employed and not because she was a woman. In the view of the state party, there was no discrimination on the basis of sex in spite of the fact that the complaint was with reference to maternity that only women

<sup>29</sup> Durban Review Conference- Geneva 2009. [www.un.org/durbanreview2009](http://www.un.org/durbanreview2009)

<sup>30</sup> Cunaghan Joanne. Intersectionality and UK Equality Initiatives. In South African Journal on Human Rights. Volume 23 Part.2. 2007[318]

<sup>31</sup> Ibid.

<sup>32</sup> Bahl v Law Society EWCA 1070. Cited by Cunaghan Joanne. Ibid.[323]

<sup>33</sup> CEDAW Case 3/2004

experience. According to the State party, “the entitlement (maternity benefit) is exclusively given to women and is specifically designed to give women an advantage in relation to men. It is, therefore, impossible to see how it can lead to more unfavourable treatment of women in relation to men – considering that men cannot make any use whatsoever of the clause.”

Equality legislation is still not developed enough to address adequately the effects of cross cutting inequalities.

### **III Specific obligations under CEDAW and broad trends in the achievement of women's right to equality**

This section will present the trends and achievements in the protection of women's human rights. It will consider elements such as the applicability of international standards at the national level and the adequacy of legal and regulatory frameworks, as well as programmatic measures in place for the achievement of women's right to equality. It will juxtapose this against a brief elaboration of the obligation of the State under taken internationally. It will then provide snap shorts of progress made in women's enjoyment of rights in various areas of their lives.

#### *a. Obligation of the State:*

As member states of the United Nations and as parties to treaties such as the CEDAW, States have the obligation to ensure the practical realization of the principle of equality between women through effective law and policy measures and eliminate all forms of discrimination against women both in law and practice. Equality under CEDAW is not an abstract concept but its fulfilment has to result in the enjoyment by women of all human rights and fundamental freedoms in all fields. This has to be done on the basis of international standards as set forth in CEDAW. Hence it is imperative that CEDAW and its standards are made applicable in the domestic legal order.

These standards require that a definition of discrimination as per article 1 of CEDAW is made of the law whether in the constitution or other organic law, that such law binds both public and private actors in all fields. The law needs to be capable of prohibiting not only current discriminatory acts but must also address the effects of discrimination that may be current and that which may have taken place in the past. Policies for redistribution and compensation for those in an unequal position, eschewing identical treatment when necessary, are part of this process. Socio-economic and civil and political rights are interrelated and indivisible rights under CEDAW. States as duty holders then have obligations of means and results and the non-fulfilment of the right to equality is just as much discrimination as the non-prohibition of discrimination or unequal and unfair differential treatment of two individuals. This has far-reaching implications for the obligation of the State as the elimination of discrimination may require, according to the situation, the asymmetrical treatment of women and men and not just the avoidance of unequal treatment. Further, the obligation of results requires the creation of an enabling social environment by addressing the ideology and cultural constructs that creates hierarchies within gender relations. The State has to be both reactive but also importantly pro-active.

All appropriate measures have to be taken for this including through effective enforcement of laws and access to remedies, through macro-economic development plans that empower

women and marginalised groups, as well as strategies, budgetary allocations, mechanisms and competent institutions that ensure and 'compel' consistency of standards across the country.<sup>34</sup>

*b. Broad trends in the Achievement of Women's Right to Equality*

Since 1975 there have been more concerted and integrated efforts at the international level accompanied by national level efforts for the achievement of gender equality. Prior efforts between the forties and sixties, were more piecemeal and fragmented and conventions on single issues such as Convention for Suppression of Traffic in Persons and Exploitation and Prostitution of Others Convention on the Equal Remuneration For Men And Women Workers For Work of Equal Value, Convention On Political Rights Of Women, Convention on Consent to Marry, Minimum Age For Marriage, and the Registration of Marriages were adopted. The approach was to deal with certain rights but positioned as unrelated.

Significant developments in the last three decades or so are the adoption of the Convention on the Elimination of All Forms of Discrimination against Women,<sup>35</sup> The Declaration on Violence against Women and Four World Conference culminating in Beijing Declaration and Platform for Action. Two other World Conferences are of significance and they are the Vienna Conference on Human Rights and the International Conference on Population and Development. 2010 saw the Review of Beijing plus 15 and governments have reviewed the progress made in the advancing their commitments made at Beijing in 1995. The question for us is to know what the impact of these interventions are.

According to the review of the Beijing Platform for Action, the progress of women is mixed. The highest gains have been made in education. Globally education has increased, particularly in primary education. In 2006, 95% of girls were in school as compared to 92% in 1999 and 30 countries had 30% or more parliamentarians as compared to 5 countries in 1995. More women are now in the labour market but work under harsher conditions and have jobs that are insecure and pay poorly. In spite of the gains in education, women are still disproportionately poor and illiterate. Two thirds of adults who can't read are women, more than half a million women die in childbirth every year, and 70% experience some form of violence in their lifetimes.<sup>36</sup> Women's groups feel that progress has been very slow.<sup>37</sup>

There are also regional and intra regional variations. The Global Gender Gap Index (2009)<sup>38</sup> reveals that four European countries out of 134 rank the highest and 13 are among the top 20. The top four are all Scandinavian countries and those among the top 20 are Norway (11), Germany(12), Switzerland (13), Latvia (14), The United Kingdom (15), Spain (17) and France (18). Italy (72), Czech Republic(74), Cyprus (79) and Greece (85) are the lowest-ranking European Union countries in the index. In Asia, The Philippines (9) and Sri Lanka (16) are the only Asian countries among the top 20. Those with lowest ranking in Asia, below the 100 mark are Pakistan (132), Republic of Korea (115), India, (114), Nepal (110), Cambodia (104) and Malaysia (100). Some of these countries dropped in ranking as compared to 2006 rankings when Pakistan had a rank of 112, Republic of Korea 92, India 98, Cambodia

<sup>34</sup> These obligations are spelt out in to articles 1-5 of CEDAW.

<sup>35</sup> CEDAW has 186 ratifications as of June 2010

<sup>36</sup> Push to close gender gaps slow. UN, Beijing at 15. <http://news.bbc.co.uk/2/hi/Americas/8564782.stm>

<sup>37</sup> Ibid.

<sup>38</sup> The Global Gender Gap Report.2009. World Economic Forum, Geneva, Switzerland. The Global Gender Gap Index examines the gap between men and women in four fundamental categories: economic participation and opportunity, educational attainment, political empowerment and health and survival on the basis of several sub indicators under each category...

(89) and Malaysia (72). In fact all the Asian countries have dropped in ranking including the Philippines with the exception of Mongolia which rose from rank 42 to rank 22.<sup>39</sup>

These rankings tell us something about the relative effort being made in various countries but they do not tell us enough about the status of women within the country. When examined by the CEDAW Committee we can see that even the top ranking Scandinavian countries have not achieved equality in all fields. In these countries parity has been achieved in parliaments, in education and women's right to health is not an always an issue. But there is still job segregation, wage gaps, stereotypical assumptions regarding the roles of women and men and violence against women is prevalent.

Louise Arbour, former UN High Commissioner for Human Rights has pointed out that there is much insidious "lower intensity" discrimination, often sanctioned by law that condemns millions of women to daily hardship and suffering and they go unnoticed. According to her, the areas in which women's human rights go unprotected by the law are primarily in the arena of marriage and family relations where the private lives of women are controlled restricting women's entitlements to inheritance and property during marriage, at its dissolution and because of widowhood. Weak laws or lack of enforcement results in impunity for perpetration of violence against women including rape.<sup>40</sup>

A report produced by Equality NOW<sup>41</sup> for the Beijing plus 15 review welcomed the progress made by more than half the 52 countries highlighted in its two previous reports in either partially or fully repealing or amending discriminatory laws. But it also expressed concern that in many countries amendments to discriminatory laws have been partial, incomplete or merely cosmetic, resulting in little change to legally advance women.<sup>42</sup>

The next part of the paper will present a brief regional overview of countries in Asia and the EU.<sup>43</sup> In preparation of for the Beijing plus 15 review, regional assessments of the progress of women were undertaken. This review shows some success and good practices as well as some serious challenges.

Asia.<sup>44</sup> The region has made much gains in the field of education. Many countries have achieved parity at tertiary level. They include China, Malaysia, Mongolia, Philippines, Thailand and Brunei Darussalam . But these gains in education do not translate into upward mobility in employment. Women still have low labour force participation, are segregated into low paying jobs and there is wage disparity. As an example, women's labour force participation in Malaysia remains at 45.7% as compared to 79% for men in 2008. There has not been much change in this over the years.<sup>45</sup> Poor labour conditions and the concentration

<sup>39</sup> This could be because other countries did better as compared to 2006. So the index does not tell us about the progress in closing gender gaps over a period of time within the country. The index also has limitations because of the limited range of categories and indicators.

<sup>40</sup> <http://www.thestar.com/comment/article/310497>. March 2008

<sup>41</sup> Equality Now is an international Women's Rights non governmental organization

<sup>42</sup> Women still target of discriminatory laws. [http://www.usatoday.com/news/world/2010-03-05-discriminatory-laws\\_N.htm](http://www.usatoday.com/news/world/2010-03-05-discriminatory-laws_N.htm)

<sup>43</sup> The Regional overview is taken from the assessment undertaken by the UN regional commissions. ESCAP. High lights of Progress, and Challenges in Implementing the Beijing Patform for Action: Good Practices, Obstacles and New Challenges. E/ESCAP/BPA/2009/2 for Asia and ECE. Beijing plus 15 Regional Review. ECE/AC.28/2009/3 unless otherwise indicated.

<sup>44</sup> I have only included countries within the ASEM framework

<sup>45</sup> Source: Labour Force Survey Report. Malaysia.

of women in unregulated, low-wage sectors is also an issue. For example at the 39<sup>th</sup> CEDAW session 2007, the Committee expressed its concern on this to the Republic of Korea:

“The Committee is concerned about the serious disadvantages women face, including the concentration of women in certain low-wage sectors, the high percentage of women in non-regular work, the various flexible forms of work, such as outsourcing and contracting out, and the related lack of job security and benefits, as well as the significant wage gap between men and women. The Committee is also concerned about the insufficient compliance with existing labour legislation and about the practices of companies that circumvent the law denying women workers job security. In particular, the Committee is concerned about the lack of effective monitoring mechanisms and complaints procedures for women to claim their rights.”<sup>46</sup>

A focus of discussion at the Beijing plus 15 review in March 2010 at the United Nations, was the impact of the global economic policy and framework on the livelihoods of poor people and women in particular. It was felt that in terms of the dynamics of the free market and in light of the recent economic crisis, women may be disadvantaged in access to productive resources such as land and finance or to employment. This would exacerbate their poverty situation.<sup>47</sup>

Land is a premium and due to ambitious commercial programmes that favour the rich, there are instances when land that is common property and benefitting the poor is appropriated by big commercial initiatives.<sup>48</sup> Targeted measures are needed to mitigate the negative effect of global and national economic trends and to facilitate women's capacity to seize opportunities for economic participation

Poverty is a problem in many Asian countries and women disproportionately bear the brunt of poverty. The vast majority of women are working in the informal sector and in the rural areas. In India for example 93 per cent of the workforce is in the unorganized sector facing job insecurity and unfavourable conditions of work, women in addition face an ever persistent wage gap and carry out the most menial jobs<sup>50</sup>.

Governments have formulated and are implementing national poverty eradication strategies. Many are also integrating a gender perspective into these plans. Among such countries are Indonesia, Lao PDR, Philippines and Cambodia. There are specific programmes for the economic empowerment of women such as provision of micro credit. China promotes women's employment and entrepreneurship under the Employment Promotion Act and India has enacted the National Rural Employment Act (NREGA) 2006 . The NREGA is a bold venture and could greatly benefit women in the rural areas although not targeted specifically at women. But national data shows that women are more likely to continue to be poor. Intentions for gender responsive implementation are not always carried through and there is a lack of monitoring of gender impact. For example, the NREGA is criticized for the “ossified” structures through which it is implemented.<sup>51</sup>

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<sup>46</sup> CEDAW/C/KOR/CO/6

<sup>47</sup> United Nations Commission on the Status of Women. Implementing the internationally agreed goals and commitments in regards to gender equality and empowerment of women. Moderator's Summary. E/CN.6/2010/CRP.9. March 2010

<sup>48</sup> See para 46 and 47. CEDAW Concluding Observations India . 2007. CEDAW/C/IND/CO/3

<sup>50</sup> CEDAW/C/IND/CO/3

<sup>51</sup> Ambasta Pramathesh et al. Two Years of NREGA: The Road Ahead. Economic and Political Weekly. February 23-28 2008

The sustainability of the benefits of these programmes depend on how comprehensive the efforts are and whether they make provisions for women's participation in identifying their needs and in policy formulation, need based capacity building and the eradication of negative cultural norms, the creation of safe environments, the legal protection of vulnerable groups such as migrant women and minorities, the elimination of discrimination in law and practice and importantly the integration of international human rights standards into the efforts. All these are issues in Asia.<sup>52</sup>

A number of countries especially in South Asia, including India and Pakistan have some of the highest maternal mortality ratios. Besides bio-medical causes and lack of institutional capacity, there are many socio-cultural causes that need to be addressed in South Asia including women's freedom to make decisions for themselves.

There is much awareness today regarding violence against women. In the last decade many countries in Asia have passed laws or penal codes have been revised to protect women against various forms of violence. Countries that have done this include Mongolia, Malaysia, Indonesia, Thailand, India, Cambodia, Philippines, Lao PDR, Vietnam, South Korea. The Indonesian Act on the Elimination of Domestic Violence is one of the most comprehensive.<sup>53</sup> Marital rape in all these countries has been exempted as a criminal offence. Only the Philippines has criminalized marital rape. In the same breath it leaves room for forgiveness by the wife. Countries such as Indonesia, Thailand, India, Cambodia, Philippines, South Korea have also introduced anti-trafficking laws and other countries have anti trafficking plans in place. There is now more focus now on providing the victim with legal protection and support instead of treating her as criminal. What is still missing is adequate efforts to prosecute traffickers. The problem in the context of violence against women however remains in the area of enforcement and implementation. In the area of domestic violence in particular, Jaising points out that there is still a tendency to prioritize the preservation of family over the rights of the woman and inadequate investment in a well-resourced domestic violence response mechanisms.<sup>54</sup>

Women's political participation continues to be one of the weakest in Asia despite some strong efforts to increase women's participation in decision making. Temporary special measures have been used most here especially for positions in local council and to some extent in the lower house of Parliament. For example India made a constitutional amendment in 1992 to ensure 30% representation of women in local councils. In 2007 the cabinet has approved a move to raise this reservation to 50%. In March 2009 Parliament passed the Women's Reservation Bill to give women 30% seats in parliament. In Asia, Vietnam and Lao PDR have the highest representation of women in Asia with 25.8% and 25.2% of seats being held by women. Those countries who fall below the 10% mark are Malaysia 9.9%, Sri Lanka 5.3% and Mongolia 3.9%. There is better representation of women in the upper house where usually members are appointed. There is something about the electoral process that needs to be addressed.

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<sup>52</sup> United Nations. Commission on the Status of Women. Op cit

<sup>53</sup> ESCAP. Implementation of the Convention on the Elimination of All Forms of Discrimination against Women in Asia and the Pacific: Successes and Challenges. 2009. E/ESCAP/BPA/2009/INF/4

<sup>54</sup> Indira Jaising, Asmita Basu, Brototi Dutta of the Lawyer's Collective: *Domestic Violence legislation and its implementation: an analysis for ASEAN countries based on international standards and good practices*: UNIFEM, Bangkok 2009 in ESCAP Ibid.

Direct discrimination in the law continues to exist in many States. The situation is made more complex where plural legal systems co-exist. The areas in which the law continues to discriminate is the family law, age of marriage, divorce, guardianship of children, the marital power of the husband and citizenship. The restricting effect of control over women's freedom and equality has been discussed earlier. Other problematic areas are the prejudicial procedural provisions in rape and sexual assault laws as well as weak enforcement of the law. Many countries are also adopting gender equality laws. The intention of such a law seems to vary and its effectiveness and implementability needs to be tested.

Generally, weak institutional arrangements, an effective policy on women that binds all agencies, the lack of an overall integrated and cohesive strategy to promote and fulfill women's right to equality and a strong coordinating mechanism to monitor and enforce common standards for equality impede a plethora of efforts from bringing about results.

European Union Countries. At the regional review of Beijing plus 15 in 2009, priority areas identified for action were (a) legislation to address gender-based violence, including domestic violence and trafficking; (b) women in the economy, mainly through narrowing the gap between female and male employment rates and adopting specific measures to combat women's poverty; and (c) the development and strengthening of national mechanisms for gender equality and women's empowerment.

While these are the stated priorities at the inter-governmental review, women have raised other concerns. One of these regarding labour standards in trade agreements is that "work in the informal sector, which covers most of women's work, has been excluded from core labour standards and CSR schemes. Both also exclude many issues central to women workers, such as working hours, arbitrary and inhuman treatment, harassment, unhealthy working conditions, absence of contracts, prohibition of union activities, fair remuneration, respect for pregnant women, and maternity leave. And too many constraints still exist for women in getting involved in the forums that define workers' rights".<sup>55</sup> Another area of concern is the impact of free trade on sustainable development.

The area where there has been the most progress is in women's political participation with Sweden topping the list at 46.4%. But even where there is good representation of women in Parliament and in the Government, there is very low representation of women in municipal councils and local and provincial governments as well as in high-ranking posts, especially in the diplomatic service and in the security and defense sectors, the judiciary or in the academia; examples of these are Netherlands<sup>56</sup> and Denmark.<sup>57</sup>

There are examples of efforts taken to expand women's leadership into other areas such as the private sector. To overcome the lack of women in management and on the boards of private companies, in 2004-2006, the Norwegian government amended laws pertaining to companies to secure 40% women on the boards of companies.<sup>58</sup> And Netherlands has set a target figure of a minimum of 20% women in the top of the business sector by 2010 and followed this with some innovative strategies to implement this.<sup>59</sup>

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<sup>55</sup> Franck Anja. Key Feminist Concerns Regarding Core Labor Standards, Decent work and Corporate Social Responsibility. WIDE Publications. 2008

<sup>56</sup> CEDAW/C/NLD/CO/4. 37<sup>th</sup> session 2004

<sup>57</sup> CEDAW/C/DEN/CO/6.36<sup>th</sup> session 2006

<sup>58</sup> CEDAW/C/NOR/CO/7 39<sup>th</sup> session 2007

<sup>59</sup> CEDAW/C/NLD/CO/4.

It was also expressed at the regional Beijing plus review that the gains made especially in employment and laws to address gender-based violence would need to be consolidated and strengthened. In the area of violence against women, the review expressed the need to improve the effectiveness of the implementation of legislation and in particular to strengthen interagency coordination and response. It was reported that the collection of reliable data on domestic violence remains a problem across the region with the majority of cases staying unreported. The CEDAW Committee has been consistently recommending that what is needed is a comprehensive, inter-related, long-term, coordinated and multi-faceted strategy to combat violence against women.

Most European Union (EU) countries vary in their experience of poverty. Vulnerable groups among women include immigrant/migrant and minority populations who suffer multiple forms of discrimination. Their social inclusion while essential cannot be forced. It is reported that there is a growing need for foreign labour in Europe, but a lack of regulation in the issuing of contracts leading to exploitative work conditions.<sup>60</sup> Countries in Europe do not necessarily have a distinct poverty eradication strategy but focus on improving women's employability (e.g. Denmark and the Netherlands) through gender sensitive approaches. Focus has also been directed at national action plans for social inclusion (e.g. Ireland, Luxembourg, Slovakia).

Another strategy has been to implement social transfers through which income is transferred to vulnerable groups such as single mothers as well as to implement sensitive social welfare programmes. It is reported that this has been successful in Nordic countries to reduce gender differences in the at-risk-of-poverty rate.

The European review expressed concern at the vertical and horizontal labour market segregation. Despite improvements, women still earn considerably less than men and are vastly underrepresented as entrepreneurs. The economic value of unpaid work remains widely unrecognized. In recognition of this, countries in the region have facilitated the participation of women in the work force through policy interventions to make it possible for women and men to combine family responsibilities with work life by making provisions for part time work, provision for women to return to work after child birth, parental leave etc . The aim of policy interventions has also been to reduce wage and pension gaps which are prevalent in all the countries. This approach needs to be monitored as experience shows that it entrenches women's role as caregivers. Even in the most developed countries, more women than men take up the option of part time.

Sweden reported to the CEDAW Committee at the 41<sup>st</sup> session that part-time unemployment is particularly prevalent in sectors dominated by women. Regardless of whether part-time employment is voluntary or involuntary, it affects salary, development and career opportunities, as well as levels of compensation in the social insurance system, e.g. sick pay and parental leave insurance, unemployment insurance and pensions. Many countries including Sweden has also put in place several legal and accountability measures in various fields including in the sphere of employment to ensure the success of their strategy. For example, employers are required to submit annual plans to reduce wage gaps between women and men. Parental leave is allocated to both parents and is not transferable. But the wage gap persists. In the absence of a change in mind set as to the roles and responsibilities of women and men in the family, choices that women and men make will abide by societal norms even

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<sup>60</sup> <http://www.wide-network.org/index.jsp?id=509>

though there are options to change the social relations of gender created by state policy. Sex role stereotyping is as much a fact of life in Europe as it is in Asia.

The need for legally binding international standards. It would be useful to examine how States are relying on international standards they have ratified in fulfilling their obligations to close the gender gap. Globally, an effective legal framework through which the practical realization of women's right to equality according to the standards of CEDAW is still absent in many of the countries that have been reviewed by the Committee. While the top ranking countries in the Gender Gap Index have put in place a wide range of efforts to promote equality, these measures are not based on the standards of CEDAW. For example, the Committee has pointed out to almost every country that there was no definition of discrimination according to article 1 of CEDAW in the law and that CEDAW is still not applicable in the country. This is true even of countries like Sweden where the government had put in place several measures to bring about equality. At the 49<sup>th</sup> session in 2008, the Committee expressed its concern to Sweden that a recent commission of inquiry concluded that the instrument of Government of the Swedish Constitution is gender-blind, and not gender-sensitive, and the concept of equality in the Constitution is not in line with the Convention.

Generally the transformative potential of CEDAW is under-used in the countries of the European Union. Legal experts in Europe are of the view that the three main legal sources of equality and non-discrimination in the development of concepts of equality and non-discrimination in the European legal context are the constitutional traditions of Member States and the EEA countries; EC law; and human rights law, in particular the European Convention on Human Rights.<sup>61</sup> This leaves out CEDAW, so the meaning and scope of equality directives in Europe is not as multi-dimensional as CEDAW. For example, it is acknowledged that the gender, race and framework directives of the EU do not focus on the achievement of equality in the broader, more results-oriented, redistributive sense required for the achievement of substantive equality.<sup>62</sup> Legal opinion is that under EU law, positive duty may be permitted but not required.<sup>63</sup> So jurisprudence on this matter is also inconsistent.<sup>64</sup> Legal scholars have expressed the view that the limitation of the EU law on sex equality is also caused by the fact that in its origins, it is market-oriented. Its application in all fields is not certain.<sup>65</sup> There are also variations in the acceptance of the necessity for positive duty among EU countries.<sup>66</sup>

In the ASEAN, the status of treaty law is unclear in all the ASEAN countries although it is said that in Cambodia, Laos, Indonesia, Philippines and Vietnam, treaty law is recognized as part of domestic law. The problem is that the Constitution in these countries has no provision

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<sup>61</sup> Christopher McCrudden and Sacha Prechal. European network of legal experts in the field of gender equality. *The Concepts of Equality and Non-Discrimination in Europe: A practical approach*. 2009. European Commission

<sup>62</sup> Catherine Barnard, *The Changing Scope of the Fundamental Principle of Equality?* (2001) 46 McGill LJ 955, 976. Cited in Ibid.

<sup>63</sup> Christopher McCrudden and Sacha Prechal. op cit

<sup>64</sup> Holtmaat. Rikki and Tobler Christa. CEDAW and the European Union's Policy in the field of Combating Gender Discrimination. *Maastricht Journal of European and Comparative Law*. Special Issue. Thirty Years of EU Sex Equality Law. 2005 Vol.12 No.4 [399-425]

<sup>65</sup> Ibid.

<sup>66</sup> Christopher McCrudden and Sacha Prechal. op cit.

to make void any domestic law that is in contradiction to international standards nor is there any provision as to what prevails if domestic law is in conflict with international treaty law.<sup>67</sup>

In almost all the countries, either the law does not reflect the principle of substantive equality as required by the CEDAW (Malaysia, Sweden, China), or the equality legislation is not applicable in all spheres of endeavor or is enforceable only as against public agents (Malaysia, India), or accountability mechanisms are weak, or there are no remedies in the law. This is an area for serious consideration.

#### IV Specific Issues

In determining the implications for specific issues, it is essential to be aware of broader contexts of relevant macro policies and realities at the global and national level. These include the global and national economic policies and happenings such the recent economic crisis, the level of peace and security within a country, the state of the environment, the goals of national development, and the impact on women of the prevailing cultural and religious norms.

*“Women's empowerment and their full participation on the basis of equality in all spheres of society including participation in the decision-making process and access to power are fundamental for the achievement of equality, development and peace”*  
Beijing Declaration (para 13) (United Nations, 1996)

Equality, development and peace are intrinsically interlinked and interdependent. A discussion of the contexts of development and peace does not fall within the scope of this paper. But the intention here is to provide a reminder that addressing equality rights of women in the context of specific issues without the inclusion of gender perspectives into macro contexts would not allow for the achievement of equality or its sustainability. It is not possible for any of these components to be achieved without the other. Hence macro-economic policies must take note of the redistributive consequences of these policies in light of the constraints for women's empowerment,<sup>68</sup> the state of the environment as well as the compelling relevance of peace in both conflict and non- conflict situations. The CEDAW Convention in its preamble also reflects this understanding.

This section of the paper will discuss some specific issues and the implications for the agenda of women's equality rights. The issues are political rights, socio-economic rights, gender based violence, and the rights of vulnerable women.

##### *a. Political Rights*

Political participation and representation on a basis of equality is a recognised right that women still do not fully enjoy. The social and political acceptance of women in decision-making is synonymous with the acceptance of women's leadership and is one indicator of the erosion of gender-based status hierarchy. The significance of the representation of women in political decision making is that it has an impact on the laws and policies that affect their lives. But women continue to have unequal access to political and economic decision-making.

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<sup>67</sup> Dairiam Shanthi. The domestic application of interantional Human Rights Law. In Building Capacity for Change. A Training Manual.IWRAW Asian Pacific 2008.

<sup>68</sup> Department of Social Affairs, Division for the Advancement of Women. World Survey on the Role of Women in Development. 2009.

The rights in this arena include the right to vote, the right and to be elected into publicly elected bodies, to participate in the formulation of government policy and to hold public office. Owing to strong government policy matched by temporary special measures such as quotas and reservations as well as legislative mandates, women's representation in the political sphere in western countries and in a few developing countries has advanced considerably. However there is still cause for concern in these countries.

**As of June 2008:**

- Women occupy only 18% of parliamentary seats around the world.
- Regional averages of the percentage of women in parliament vary greatly:
  - Nordic countries - 41.4%
  - Americas - 21.8%
  - Europe (excluding Nordic countries) - 19.1%
  - Asia - 17.4%
  - Sub-Saharan Africa - 17.2%
  - Pacific - 13.4%
  - Arab states - 9.6%

*Source: Women's Democracy Centre.*

While women's representation in parliaments has increased primarily because of mandatory requirements, they are grossly under-represented in senior political bodies such as the cabinet of ministers, in local councils, and state level legislatures, in senior civil service positions, in the judiciary etc. Some countries in Europe have increased percentages of women ministers. In Spain and Norway, women make 50% of the cabinet. In France 7 out of 16 are women in the cabinet and in Denmark, women ministers comprise 46%. However in Europe as a whole, women ministers are concentrated in social areas (14%) rather than in legal (9.4%), economic (4%), political 3.4% and executive (3.9%).<sup>69</sup> Only one in ten board members

of Europe's biggest listed companies is a woman and all central bank governors in the EU are male.<sup>70</sup>

Barriers. There are several barriers to women's political participation and representation. The IDEAS and NIAS studies<sup>71</sup> maintain that the main impediment is the male domination in political institutions and the prevalence of a "masculine model" of exercising power in political life and in political parties. As a result the environment of these institutions is unfriendly towards women and their perspectives are not always respected or represented in the view point of the party. The studies also assert that unequal access to information and lack of mobility has an impact the rights of women to vote, contest elections, become members of political parties and social networks. This diminishes women's access to power circles. Such access is essential to consolidate one's position in the party. Secondly, there is a strong relationship between access to economic resources and participation in the political sphere and women lack the resources required and they find it difficult to obtain the financial support needed for political participation such as election campaign expenditure or resources required to attend meetings. The difficulty that women have in reconciling family life with public life

<sup>69</sup> Women's Democracy Centre: fact sheet

<sup>70</sup> More women in top jobs key to economic growth says EU Report. Europa Press release. <http://europa.eu/rapid/pressReleasesAction.do?referenceIP/10/362&formatHTML&aged&languageEN&guiLanguage.en>

<sup>71</sup> The barriers to women's political participation and representation has been studied by many. The discussion in this paper has relied on two studies: IDEAS. From Words to Action- Best Practices for Women's Participation in the Latin American Political Parties. 2008 and National Institute for Advanced Studies (NIAS) et al. Baseline Report on Women and Political Participation in India. 2001

is a serious impediment. This goes back to the universal culture of ascribing the role and functions of childcare solely to women and not valuing women's roles in the public sphere. Finally, women lack the knowledge and skills needed to be effective in policy formulation and to sustain their position as leaders effectively. While not all men who hold positions are skilled leaders, there is greater expectation from women regarding the quality of their leadership.

The exercising by women of the right to vote needs separate consideration. Here again the culture of male dominance and hostility towards the participation of women in public life is implicated. Since their participation in public life is relatively recent, in certain circumstances they may not have the freedom to vote independently but may be influenced or be required to follow family or community-based affiliations. Personal safety and security is another critical factor inhibiting women from exercising the right to vote. Factional rivalry or even hostility to women's political participation may be the reasons for targeting women for acts of violence.

Some solutions. The IDEAS study suggests some useful solutions.<sup>72</sup> Strong state policy is essential to bring about equality of results in this area. Policies and laws that regulate political parties and mandate positive action, including reservation of seats, requiring women's entry into decision making positions is essential. Otherwise it will not happen, borne out by experience in several countries. One example is the French experience. In France, political parties are required to present an equal number of women and men to local, regional, senatorial and European elections and face financial sanctions in case of noncompliance. As a consequence, nearly 50 per cent of members of regional assemblies are women (up from 27 per cent in 1998) – in contrast to only 18.5 per cent in the National Assembly, for which such requirements do not exist.<sup>73</sup> However such mandatory positive actions may not be sufficient. The gender gap in politics cannot be redressed simply by bringing more women in the system. There also needs to be the creation of an enabling environment and conditions that will help women overcome the barriers. Reservations or quotas must be so implemented that they also include measures to empower women, reduce risk and monitor the effective participation of women.<sup>74</sup>

The IDEAS study makes a recommendation worth considering. The suggestion is to create women's secretariat within political parties as opposed to women's wings. The latter does not empower women but positions women within the party as adjuncts or affiliation of the mainstream group of male members. It entrenches a social hierarchy of the dominant male versus the subordinate female who performs feminine functions within the party. The role of the women's secretariat on the other hand, would be the promotion and organisation of women's political participation on the basis of equality with men. The secretariat must be tasked with the preparation of a strategic plan for women's right to vote and be elected as representatives taking into consideration the social, economic and political barriers that women face. The plan would have of necessity to include alliances with civil society organizations in advocating for law and policy reform and for capacity building of women candidates, raise public awareness and provide a support network for elected women representatives.

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<sup>72</sup> The writer also recommends the General recommendations of CEDAW 23, Political and Public Life and General Recommendation 25, Temporary Special Measures as well as the Beijing Platform for Action for a more comprehensive range of ideas for the enhancement of women's political participation and representation.

<sup>73</sup> ECE/AC.28/2009/3 op cit

<sup>74</sup> Farzana Bari. Women's Political Participation: Issues and Challenges. UN DAW. 2005. EGM/WPD-EE/2005/EP.12

*b. Civil and Economic Rights*

This section proposes to address some features pertaining to the particular circumstances of vulnerable groups of women. Women who are vulnerable and face risk are of several categories. They include women in poverty, the disabled, the rural women, migrants in particular undocumented workers etc. The paper will not discuss each of their particular circumstances but will touch on some commonalities. A common feature is their extreme powerlessness and lack of political and social capital. We have seen that women generally experience such a deficit but the situation of vulnerable women is compounded by their low status arising from a combination of their various other identities of being poor, or of belonging to an ethnic minority group, of being disabled etc. Hence they have absolutely no say in the formulation of policies that affect them, their entitlements and access to even available public services is restrained and despite what the law says, their recourse to remedies in case of violations is undermined by prohibitive procedures or hostility in the environment. Furthermore solutions offered to them are mostly based on a welfarist approach and does not empower them to make claims as rights holders or make them agents of their own change to reduce their vulnerabilities. Nor is the environment that contributes to such vulnerabilities seldom targeted for change.

While there is a great deal that can be discussed here, only two issues will be looked at. One is the protection of the rights of women within the justice system and the other is the approach needed to empower vulnerable groups using women in poverty situations as a model.

It is well known that the more vulnerable a group is the more difficult it is gain justice from formal institutions. Facio<sup>75</sup> points to several reasons for this. Among others the following reasons are identified:

- Long delays in court processes;
- Prohibitive costs of using the system;
- Lack of available and affordable legal representation, that is reliable and has integrity;
- Abuse of authority and powers, resulting in unlawful searches, seizures, detention and imprisonment. The less powerful sections of society face this hazard
- Weak enforcement and interpretation of the law not in favour of the victim, as well as even weaker implementation of orders and decrees.
- Severe limitations in existing remedies provided either by law or in practice. Most legal systems fail to provide remedies that are preventive, timely, non-discriminatory, adequate, just and deterrent;
- Gender bias and other barriers in the law and legal systems: including knowledge of rights.
- Lack of *de facto* protection, especially for women, children, and men in prisons or centers of detention;
- Lack of adequate information about what is supposed to exist under the law, what prevails in practice, and limited popular knowledge of rights;

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<sup>75</sup> Ms Alda Facio's comments are based on information gathered by IWRAP AP from women around the world on their access to justice on women's access to justice and from studies conducted by the Organization of American States, Inter-American Commission for Human Rights (IACHR) (1)Access to Justice for Women); and (2) Access to Justice as a Guarantee of Economic, Social and Cultural Rights: Review of the Standards Adopted by the Inter-American System of Human Rights. 7 September 2007. OEA/Ser.L/V/II.129. Doc. 4 (IACHR, Review of Standards). Cited in IWRAP Asia Pacific. Report of the Interactive Discussion with the CEDAW Committee on the Optional Protocol. 19 July 2009. New York

- Lack of adequate legal aid systems;
- Limited public participation in reform programmes;
- Excessive number of laws;
- Formalistic and expensive legal procedures (in criminal and civil litigation and in administrative board procedures);
- Avoidance of the legal system by the people most at risk due to economic reasons, fear, or a sense of futility of purpose.

All the vulnerable groups referred to are protected under the law in theory as their status falls within grounds on the basis of which discrimination is prohibited. But then if the duty of the State is narrowly interpreted to contain only a negative duty to ensure the absence of discriminatory acts--hence, only the duty to respect rights or to protect against and prohibit violations--then justice will not be served. This is evident from the many barriers to justice just mentioned. Under substantive equality norms, as discussed earlier, there is also a positive duty to create the conditions for the promotion and fulfilment of rights. This is also referred to as the duty to cater for the needs of a person who comes under a protected ground of discrimination within human rights legislation. So a study of the law will have to cover not only an identification of the presence of discriminatory provisions of the law but also to note what is not in the law, policy or practice, such as: legal aid, access to legal counsel, victim protection, provisions that allow for adjustment to procedures like speeding up cases relating to critical areas of rights cases, or other enabling conditions related to the positive duty to promote and fulfil rights.

I next examine the context of women in poverty. Much effort is taken globally to eradicate poverty. The question for us is what needs are met within such programmes and whether poverty eradication programmes also focus on giving poor women access and control over resources facilitating the agency and autonomy of women and not merely targeting them as instruments of better food security, more immunizations etc.<sup>76</sup> Socio-economic and civil and political rights are inter-related and inter-dependent. So poverty reduction programmes including social transfer programmes for women cannot aim to meet survival needs without locating such programmes in interventions which seek to mitigate gender inequality that affect poor women's ability to "collectively and individually both articulate their security needs and mobilize resources to meet those security needs."<sup>77</sup> If this is not the goal, then women affected by poverty will always remain precariously at the survival level. Reducing the vulnerability of women cannot be achieved without facilitating the agency and autonomy of women and this is what empowerment is about.

Kabeer and Subrahmanian,<sup>78</sup> note that poverty alleviation programmes need to go beyond meeting survival needs and aim for attaining security of livelihoods as well as the development of agency of the people concerned to mobilize and access resources. Otherwise they slip in and out of poverty. Enabling them to mobilize resources will deliver them from relationships of patronage that are oppressive. This is more so for women who are constrained to remain in oppressive gender relationships for the sake of survival. Programmes that empower women need indicators to assess whether they move along a continuum of meeting

<sup>76</sup> Woronik Beth. Women's Empowerment In The Context Of Human Security Discussion .Paper for the Meeting on Women's Empowerment In The Context Of Human Security. 7-8 December 1999, ESCAP, Bangkok, Thailand

<sup>77</sup> Woronik. Ibid.

<sup>78</sup> See Kabeer, N. and Subrahmanian, R. 1996. Institutions, Relations and Outcomes: Concepts and Methods for Gender Aware Planning. IDS Discussion Paper. University of Sussex.

needs for survival, security and autonomy.<sup>79</sup> Using Kabeer and Subrahmanian's framework of survival, security and autonomy as inter related elements, I have developed a set of generic indicators that would need further refinement according to context. See table below.

**INDICATORS FOR SURVIVAL, SECURITY AND AUTONOMY: DESIRED OUTCOMES OF POVERTY REDUCTION PROGRAMMES FOR WOMEN<sup>80</sup>**

<b>Survival</b>	<b>Security</b>	<b>Autonomy</b>
<ul style="list-style-type: none"> <li>• Access to productive resources</li> <li>• Engaging in productive activity</li> <li>• Minimum income</li> <li>• Adequate food intake</li> <li>• Access to basic housing and related amenities</li> <li>• Access to basic health Services</li> </ul>	<ul style="list-style-type: none"> <li>• Ownership of productive resources and assets</li> <li>• Availability of safety nets</li> <li>• Access to community resources (labour and material)</li> <li>• Access to social network like group membership</li> <li>• Social and legislative framework that confers and legitimises rights to work, to ownership of assets, to be free of discrimination</li> <li>• Awareness of rights</li> <li>• Forum to claim rights</li> <li>• Political and social contacts</li> <li>• Freedom from risk of violence</li> </ul>	<ul style="list-style-type: none"> <li>• Mobility: able to move without family approval</li> <li>• Able to decide on important issues for self, family members and the community</li> <li>• Control over income/assets e.g. Use buy and sell</li> <li>• Control over own labour and time</li> <li>• Representing women and the community in decision making bodies</li> <li>• Access to a wide range of occupations</li> <li>• Able to act as social agent for self without intermediary e.g. access to health services, other public goods and services, make police report</li> <li>• Able to make claims for self from the family</li> <li>• Capacity to claim legal rights</li> <li>• Participation in public protests and political campaigns</li> <li>• Non-existence of harmful or discriminatory practices in the family</li> <li>• Have an identity outside the Home</li> </ul>

*c. Socio- Economic Rights*

Socio-economic rights are not just individual rights. The deprivation of these rights is an indication of the historical disadvantage and inequality experienced by the group to which the individual belongs. Attempts to address such deprivation must also include efforts to advance the status hierarchy of the person concerned as a member of their group. In other words, as discussed in the earlier section of the paper, inequality and discrimination have material

<sup>79</sup> Kabeer and Subrahmanian. Ibid

<sup>80</sup> This is a set of indicators first developed and presented by the author at an ESCAP meeting held on Gender Perspectives in Human Security and as part of a commentary made by me on the Discussion Paper: Women's Empowerment In The Context Of Human Security written by Woronik Beth for the Meeting on Women's Empowerment In The Context Of Human Security. 7-8 December 1999, ESCAP, Bangkok, Thailand See note 76 above.

consequences which must be remedied to bring about substantive equality and vice versa. The connection between the deprivation of socio-economic rights and denial of the right to equality is real and the fulfilment of one right is critical for the fulfilment of the other.<sup>81</sup> Socio-economic rights therefore are an essential component of the right to equality. Women as a social group have lesser entitlement to material goods on the basis of culture, religion and stereotypical notions of male superiority. This is done by assigning differential roles to women and men, devaluing the roles women play and entitling them to lesser material resources. Equal access to land and financial resources, jobs and wages as well as education are denied to women globally in varying degrees. Advancing women's enjoyment of socio-economic rights is a political agenda but vital to the project of equality. Further, gender inequality interacts with inequality on the basis of caste, race and ethnicity or disability status and must be addressed in all its complexity.

The improvement in women's enjoyment of socio-economic rights is linked to gains in poverty reduction and the general welfare of the members of the family especially children. In recognition of this, Governments committed themselves at the Millennium Summit in 2000 to promoting gender equality and the empowerment of women as effective ways to combat poverty and to stimulate sustainable development<sup>82</sup>

#### Access to factors of production: land , technology and financial resources

Improvement in women's access to and control over factors of production such as land and financial resources is a factor essential for the empowerment of women. It allows them to be productive and economically viable, reduces dependence on male providers and eliminates vulnerability and provides them with a safety net. In developing countries most of the population is in rural areas, have limited formal education and have little option for formal employment. For example, only 7 % of the labour in India is in the formal sector. So there has to be effective conditions and incentives for self employment. Women will benefit most from such conditions.

But women are discriminated against in this context due to inequality in inheritance practices, gender-biased land reform, cultural practices or biased implementation of land reform measures and women's lack of knowledge about their entitlements. There is also the phenomenon of land grabbing by powerful commercial interests as mentioned earlier..

Access to credit and finance is another vital ingredient for women's economic rights. There is much effort globally to provide women with credit especially microcredit. While many women have gained for this, these gains have their limitations. Many women tend to be engaged in micro and small enterprises. Bold efforts are needed and the use of temporary special measures to bring women into larger entrepreneurial schemes.

A further concern is that microfinance organizations are under pressure to become financially sustainable. One reason for this trend is that the potential for mobilising the savings of the

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<sup>81</sup> Liebenberg Sandra and Goldblati. The Interrelationship between Equality and Socio-Economic Rights under South Africa's Transformative Constitution in South African Journal on Human Rights. Vol. 23 Part 2 2007

<sup>82</sup> Commission on the Status of Women resolution 55/2, para, 20. Cited in UN Division for the Advancement of Women. World Survey on the Role of Women in Development. 2009

poor has been noted by international investors. Commercialising this process may lead to a disadvantage for women who are small borrowers.<sup>83</sup>

Women's access to social protection is another factor vital for their survival. Because of child bearing and caring and sole responsibility for care of the family contributes to interruptions in earning activities and building up of assets.

### Education

There is growing for higher retention rates of girls in schools. But this has not translated into better job opportunities for women. Part of the problem is the pattern of female education. Girls continue to take traditional subjects that do not prepare them for the job market. The link between education and employability is not fully appreciated. There are inadequate opportunities for vocational training and career counselling specially targeted at girls.

The privatization of education in many countries, especially at the tertiary level will soon be a cause for lack of access to education at this level.

### Employment and decent work

There are many critical issues here. Job markets have opened up in the wake of flexibility introduced into production processes that have become globalised. Skewed development concentrating on economic growth and the quest for cheap labour has become the cause of inter as well as intra country labour movements. In some countries, of the west, there are many interventions such as provision for part-time work or parental leave to encourage the labour force participation of women while helping them cope with family responsibility. Despite these developments, the labour force participation of women does not match that of men especially in developing countries, there continues to be job segregation vertically and horizontally and a persistent wage gap.

The expanding job market has in many instances not provided decent work. Terms and conditions of their work are exploitative and in these circumstances have no platform for filing complaints. The CEDAW Committee has consistently raised these concerns with States parties. For example, the situation of women in the labour market was one of the topics discussed with China at the CEDAW review:

“The Committee is concerned about the situation of women in the employment sector, including the lack of legal provisions guaranteeing equal pay for equal work and work of equal value, the persistent wage gap, the high concentration of women in the informal sector, the toxic and harmful environment certain women workers might be exposed to and income reduction in a competitive job market. While appreciating the various efforts to promote the re-employment of laid-off women workers, it is concerned that gender might be the primary reason for being laid off. It is also concerned about the limited monitoring of implementation of labour legislation and the very low number of women who report violations of such provisions. It is also concerned about sexual harassment at work.”<sup>84</sup>

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<sup>83</sup> UN Division for the Advancement of Women. World Survey on the Role of Women in Development. 2009

<sup>84</sup> CEDAW/C/CHN/CO/6

These work conditions are prevalent in the developing as well as the developed countries.

The growth of the informal sector needs mention as much of women's work falls within this sector and is the primary source of employment for women in most developing countries.<sup>85</sup> Women in the informal sector are mostly home-based workers or are street vendors. The reasons for women's predominance in the informal sector merits discussion. Several explanations are provided for this. Among these are lack of competitiveness among women owing to lower levels of education and skills and the constraints women face in relation to time and mobility as a result of socio-cultural norms that make women solely responsible for care giving.<sup>86</sup>

Chen also points out that there are demand factors at work. Home based work is a link in key export industries where a share of informal work is sub-contracted from formal work as a cost cutting measure which boosts competitiveness of businesses in the global market. But such cost cutting is at the expense of workers' rights relating to insecure contracts, lack of occupational safety, low wages and other social benefits.

The protection of the labour rights of home based workers and the lack of social security and safety net for workers in the informal sector generally needs to be kept on the agenda.

### Women migrant workers

There has to be some discussion of women migrant workers. They are also part of the trend characterized by a global pattern of production and cheap labour. While migration for purposes of work has provided opportunities for people to improve their economic situation, many workers including women are unskilled or are in low paid unskilled jobs. The policies pertaining to such occupations in receiving countries are restrictive and exclusionary. Immigration restrictions are placed on types of occupations available, visa categories available, term of employment that are restrictive such as stipulating limited time frames or those prohibiting change of employer, obtaining permanent residence or integration through marriage. Such restrictions cause migrant workers to enter the countries concerned illegally so besides the regular migrant workers there is also the irregular or undocumented worker in may receiving countries. While the laws of the receiving countries concerned should protect the rights of migrant workers, that is not always the case. Their labour rights are frequently violated; they are excluded from access to essential services such as health and may not have access to justice.<sup>87</sup>

Within this context, the significance of the phenomenon of women migrating out of their countries is that it is influenced by a gendered nature of the demands in receiving specific to women. Job openings available to women fall within a narrow range of occupations that relate to functions stereotypically ascribed to women. This includes a demand for women workers in their perceived capacity for reproductive functions such a domestic labour, a demand in receiving countries for entertainment services catering to men or in selected countries to become wives where there is a scarcity of women who are available to be spouses of men fulfilling certain desired criteria. While migration opens opportunities for the economic empowerment of women, it does so by and large, without disturbing certain traditional social

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<sup>85</sup> Chen. Martha A. Women in the Informal Sector: A Global Picture, The Global Movement.

<sup>86</sup> Ibid.

<sup>87</sup> Keiko Yamanaka and Nicola Piper. 2005 Feminised Migration in East and South East Asia: Policies, Action and Empowerment. Discussion Paper 11. UNRISD

norms pertaining to division of labour based on the social construction of gender.<sup>88</sup> The rights of women migrant workers must be protected in sending, receiving and transit countries.

### Health

Health rights and access to health services affect all other rights. They are particularly significant for the most marginalized as ill health is a serious risk factor if the individual has no fallback in case of illness and has to drop out of work. Livelihoods can be lost. In many developing countries, access to even basic health services was not always available for the poor.<sup>89</sup> Reasons for this were insufficient investment in health services and relevant infrastructure, the lack of targeting the most needy to create access, lack of affordability due to cost recovery measures or privatization of services and control over women's decisions to access services by the family.

Averting maternal deaths is an agenda that has not yet met full success. According to The Millennium Development Goals Report 2010, some nations have significantly reduced maternal death ratios. However, as the report notes, the reductions fall far below the rates required to meet the MDG 5 target of reducing maternal deaths by three quarters between 1990 and 2015. According to the report, more women are receiving skilled assistance during delivery in developing countries, particularly in Northern Africa and South-East Asia. However, less than half the women giving birth in Southern Asia and sub-Saharan Africa are attended by skilled health personnel.

UNFPA Executive Director Thoraya Ahmed Obaid in a press release stated "to speed up progress, we must invest more in reproductive health for women and girls. If every woman received reproductive health care, maternal death and disability would cease to be the devastatingly common tragedy it is today. Evidence from research and from the progress made so far prove that investing in women is not only the right thing to do, it is also smart economics. When women are healthy and survive, they provide enormous social and economic benefits for their families, communities and nations."<sup>90</sup>

Under CEDAW women's health goes beyond reproductive health. It encompasses all aspects of health on the continuum of a woman's life cycle. The Committee in its General Recommendation 24 has defined women's health and elaborated that Governments must develop the capacity to deliver services that is cognizant of the differential risk factors for various diseases among women and men on the basis of differential biological and social factors affecting women and men, differential progression in the diseases concerned in women and men and the differential reaction to treatment with drugs in women and men on the basis of the above factors.

Socio-economic rights are intrinsic to equality rights for women. They are integral to the empowerment of women and for gaining independency. There needs to be an integrated approach taken for the fulfilment of these rights based on the standards of equality and non discrimination and informed by the inter dependency of civil and political as well as socio-

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<sup>88</sup> Refer to CEDAW Committee's General Recommendation 26 for an elaboration for the duties of the State to protect, respect and fulfill rights of Women Migrant Workers.

<sup>89</sup> Noted by the writer during her tenure on the CEDAW Committee. 2004-2008

<sup>90</sup> Press release. 23 June 2010. <http://www.unfpa.org/public/news/pid/6083>

economic rights. Women's agency has to be developed for this and their representation in policy formulation and political decision making is essential.

*d. Violence against Women*

Violence<sup>91</sup> against Women is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” Evidence gathered by researchers reveal the pervasive nature and multiple forms of violence against women and led to the recognition that violence against women was global, systemic and rooted in power imbalances and structural inequality between men and women.<sup>92</sup> Violence against women is indeed a form of discrimination against women. The CEDAW Committee in its General Recommendation 19 has recognized violence against women as a gross form of discrimination and as a human rights violation. The committee exposes the range of human rights violated by the phenomenon of gender based violence. They include: (a) The right to life; (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict; (d) The right to liberty and security of person; (e) The right to equal protection under the law; (f) The right to equality in the family; (g) The right to the highest standard attainable of physical and mental health; (h) The right to just and favourable conditions of work.<sup>93</sup>

Initiatives to end violence against women require approaches that promote gender equality and address values and norms that see women as inferior. To meet their human rights obligations, “States must take up the challenge of transforming the social and cultural norms regulating the relations of power between men and women and other linked systems of subordination.”<sup>94</sup>

Violence against women manifests itself in many forms. It could be physical, psychological or sexual violence, economic abuse and exploitation, experienced in a range of settings, from private to public, and in today's globalized world, transcending national boundaries.<sup>95</sup> It also includes harmful traditional practices such as child marriage, female genital mutilation, the taking of dowry and dowry deaths, It could be perpetrated in the home, in the community and in public spaces or in work places. Its eradication calls for a comprehensive coordinated and concerted effort by several actors, government, the community and civil society.

### Challenges

Violence against women is universal. It prevails in all parts of the world including the most developed and bears witness to the fact that the unequal status of women is universal. In spite of many efforts, adoption of laws to combat violence against women, action plans, training of the police and various forms of institutional reforms violence against women continues. The comprehensive efforts needed for its eradication has not been undertaken by any government.<sup>96</sup> The area in which most effort has been taken is the adoption of laws to address

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<sup>91</sup> CEDAW General Recommendation 19

<sup>92</sup> United Nations. In-depth study on all forms of violence against women. Report of the Secretary-General. 2006. A/61/122/Add.12006.

<sup>93</sup> United nations. Ibid.

<sup>94</sup> United Nations. Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> This is an opinion made on the basis of my serving on the CEDAW Committee between 2004-2008 and keeping in touch with the CEDAW reviews since then.

domestic violence. Many countries in Asia and Europe have such laws. This to some extent does indicate a change in societal attitudes. In the past, domestic violence or spousal abuse was seen as a personal matter. In some situations it was condoned as the right of men to chastise their wives. By making domestic violence an offence, States are indicating that it is a public crime and not a personal matter. So progress has been made. But there are many variations of the law and their implementation is weak due to lack of capacity of law enforcers or their disregard of the law.<sup>97</sup> The issue therefore is not whether penalties are severe enough to act as a deterrent but more importantly whether a perpetrator is punished at all.

This situation leads to a state of impunity where the State fails to hold the perpetrators accountable. Impunity for violence against women not only intensifies the subordination and powerlessness of the targets of violence, but also sends a message to society that male violence against women is both acceptable and inevitable. As a result, patterns of violent behaviour are normalized.

While laws to combat violence against women have been adopted including to combat trafficking and actions plans have been drawn up and implemented, there is inadequate monitoring of the implementation of the plans or of the impact of the laws on violence. So States are unable to report on results.

Lack of data to establish prevalence and the epidemiology of gender based violence is lacking in all countries and hence targeted and holistic measures are still not possible.<sup>98</sup>

### Contributions of the United Nations

The following developments trace the contributions of the United Nations:

1992. The CEDAW drafted General Recommendation 19 and declared that violence against women is a form of discrimination against women there by bringing it under the purview of the CEDAW Convention requiring States to report on violence and measures introduced to deal with it periodically.

General Recommendation 19 also introduced the principle of due diligence by which States must regulate private actors violence. General Recommendation 19 emphasized that discrimination under the Convention is not restricted to action by or on behalf of Governments and the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. It was under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

1993. World Conference on Human Rights, Vienna: Asserted that women's rights are human rights; that culture could not be used to justify violence against women; led to the appointment of Special Rapporteur on Violence against Women

1994. The UN Declaration on Violence against Women

<sup>97</sup> Women's groups have recorded the apathy and lack of interest or blatant bias of law enforcers towards the victim.

<sup>98</sup> See note 96.

1995. The Fourth World Conference on Women in Beijing and the Beijing Platform for Action has a chapter on Violence against Women.

2006. The UN Secretary General's study on violence against woman was produced.

2008. As a follow up to the UN Secretary General's study on violence against woman the UN DAW held an expert group meeting and drafted a comprehensive framework for a law on gender based violence.<sup>99</sup>

In all of these developments, it must be acknowledged that the tremendous effort and advocacy of women's groups globally, since the eighties, contributed to internationalizing the crime of violence against women and declaring that "women's rights are human rights."

### **Conclusion**

There is much consciousness about women's rights nationally and internationally and much effort being taken in this regard by civil society, governments, international organizations and donors. But many challenges remain.

First of all, in my view a human rights approach is not always taken nor is there enough recognition of the universality and the interrelatedness of rights in dealing with women's rights. Interventions are often piecemeal and fragmented.

Secondly, the significance of the international standards of equality and non-discrimination as provided for in CEDAW is also not adequately appreciated and consistently applied in every aspect of endeavour to promote women's rights. Gender mainstreaming is one example of this and National Action Plans for the Advancement of Women is another. Even gender equality laws do not always provide for the pre-eminence of CEDAW standards. The committee has expressed concern in this at the review of States parties as the following statement illustrates:

“The Committee urges the State party to take all appropriate measures to ensure that the Convention is sufficiently known and applied by all branches of Government as a framework for all laws, court verdicts and policies on gender equality and the advancement of women.”<sup>100</sup>

Finally, a major impediment of the lack of sex disaggregated data to establish bench marks and monitor progress.

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<sup>99</sup> See Good Practices in Legislation on Violence against Women. Expert group meeting organized by United Nations Division for the Advancement of Women and the United Nations Office on Drugs and Crime United Nations Office at Vienna, Austria 26 to 28 May 2008

<sup>100</sup> CEDAW/C/LAO/CO/7. 44<sup>th</sup> session 2009. Para 12