

**United Nations
Division for the Advancement of Women (DAW)
Expert Group Meeting
Achievements, gaps and challenges
in linking the implementation
of the Beijing Platform for Action and
the Millennium Declaration and
Millennium Development Goals
Baku, Azerbaijan
7 to 11 February 2005**

**THE RELEVANCE OF THE LINKS BETWEEN HUMAN RIGHTS, THE
BEIJING PLATFORM FOR ACTION AND THE MILLENNIUM
DEVELOPMENT GOALS**

**Prepared by
Shanthi Dairiam**

* The views expressed in this paper, which has been reproduced as received, are those of the authors and do not necessarily represent those of the United Nations.

The Millennium Development Goals (MDGs) which originated in the Millennium Declaration are an attempt to capture measurable areas of development. They are acclaimed as an international consensus on global development goals. This paper makes the argument that while setting such goals is important, there also needs to be guidance on how the goals are to be achieved. The problem that the paper presenter sees with the MDGS is that they do not take into account normative human rights standards set forth in various treaties to which many governments are parties. In particular they do not take into account the dynamics of gender relations and the attendant inequality between women and men affecting development outcomes and goals. This does not necessarily have to mean that the MDGs in themselves are contrary to human rights principles. They will however be better achieved if the methodology for implementation brings in context and a human rights framework. In the case of enabling women to benefit on a basis of equality with men from the achievement of the MDGs, it is essential to integrate the human rights framework of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention) ¹ along with the programmatic content of the Beijing Platform for Action (BPFA).

What this paper will not attempt to do is to provide an over all critique of the MGDs especially from the perspective of their inadequacy in setting indicators for the goal of gender equality or mainstreaming equality between women and men through out the goals. Nor will it look at the achievements of the goals as evidenced by the MDG reports and Task Force Reports. These questions are being raised in many other fora. The paper will merely illustrate in broad terms, the importance of a human rights framework for the achievement of the MDGs and the significance of bringing in the norms and standards of the CEDAW Convention and the BPFA if women are to benefit from the MDGs.

The significance of a human rights framework: the need for standards and accountability

If we take a human rights approach to achieve the goals of the MDGs, we will be fixing standards for attainment at the national level according to international law. This is keeping with developments in human rights law and practice that the international community of nations has adhered to since the setting up of the United Nations and the

¹ The CEDAW Convention is an international human rights treaty, currently ratified by or acceded to by 179 countries. It was opened for ratification on 18 December 1979 and came into force on 3 September 1981. The Convention is a comprehensive bill of rights for women and combines concerns that had been hitherto addressed in an ad hoc manner through the UN system. The Convention is monitored by the CEDAW a committee which operates out of the United Nations in New York. States Parties to the Convention are obligated to report to the Committee one year after ratification, and thereafter every four years. On review of each report of States Parties, the Committee issues a report of its assessments along with its recommendations. These are referred to as **Concluding Comments**. Under article 21 of the Convention, The Committee is empowered to formulate **General Recommendations**. These offer States Parties clear guidance on the application of the Convention in specific situations. To date there are twenty-four general recommendations. Not all of them are substantive in content as some of them deal with procedural issues.

adoption of the Universal Declaration of Human Rights. There are many international human rights instruments and their jurisprudence whose norms and standards we can use for our purpose. By ratifying these instruments, member states of the United Nations have voluntarily undertaken certain specific obligations to respect protect and fulfil the human rights of their citizens.²

An international human rights treaty therefore creates obligations on States parties to the treaty that are legally binding. Hence human rights can be a powerful language as they clearly pinpoint state accountability under international law. They can be a potent tool for advocacy that effectively changes the dynamics of women's engagement with the state, from a position of needs (subject to the whims of the powers- that –be) to a position of strength premised on rights that women are entitled to and are guaranteed in the first place. Hence a rights approach demands that rights must be enjoyed and exercised. So there must be *de facto* realization of rights and there must be accountability; rights bearers and duty bearers must be identified and there will have to be mechanisms for claiming rights.

Second, a rights approach constitutes international standards against which state actions or inaction, violative of the human rights of woman can be challenged. They can also be used to demand specific actions from the state, including regulations or sanctions against non state actors. Third, the evolving concepts of human rights, vis-à-vis an emerging women's rights advocacy makes room for the infusion of women's perspectives into human rights discourse. This allows women in the process to clarify among themselves what their human rights should mean and should be. In this regard, adopting a rights approach connotes an organizing or mobilizing element to it. Fourth, the idea of women being holders of rights by itself can be very empowering to women.

The significance of CEDAW as a human rights instrument

Our understanding of rights must be based on a set of values and principles that provides a normative framework. Often the rights language is used but without a basis of normative standards. In the area of women's rights we have to frame our work on the principles of substantive equality and non-discrimination as demanded by the CEDAW Convention.

The concept of equality under the CEDAW Convention is very empowering as it goes beyond formal equality and insists not only the creation of equality of opportunity but also equality of access to the opportunity and equality of results. In other words it insists on ensuring *de facto* rights. To do this, the elimination of discrimination is critical. Discrimination under the Convention (article 1) includes both direct and indirect discrimination or anything that has a discriminatory effect though discrimination was not

² Examples of human rights treaties that are applicable to women are the following:
1979. The Convention on the Elimination of All Forms of Discrimination against Women.
1966. The Covenant on Civil and Political Rights.
1966. The Covenant on Economic Social and Cultural Rights.

intended. Under this Convention, a purely formal legal framework is not sufficient. Nor is it sufficient to guarantee women identical treatment with men. Women have to be specifically empowered with enabling conditions that they may have equal access to opportunity and to achieve equality of results.

It is critical to use this understanding of equality, also known as substantive equality as a normative framework to underpin all efforts to respect, promote, protect and fulfil women's rights. Otherwise, even sex disaggregated data that shows disparity between women and men can be interpreted as natural or solutions sought that discriminate against women further. In other words discrimination that exists may not be recognised as a problem or discrimination against certain groups may not be recognised as a problem. To avoid this we need to value all women as full human beings entitled to the highest attainable standard of well being and on a basis of equality and not see women as having lesser entitlements or view them as a means to another goal. But above all taking a human rights approach will allow us to name the disadvantage and discrimination faced by women as a human rights violation. Maternal death related to goal 5 of the MDGs will not merely be a health problem but a violation of the human right to life.

BOX 1

The framework of the CEDAW Convention encompasses the following:

Goals

*- the full realisation of women's human rights
equality in opportunity and equality in the law as well as equality in results (de facto equality: Article 2a)*

Means

Address unintentional and direct discrimination – Article 1

Address discrimination in public and private sphere (Article 2 d, e and 16)–

*Address historical discrimination – Article 4 (1)
Address discriminatory customary and other practices – Articles 2 (f) and 5*

Address stereotyped roles of women and men – Preamble paras 12 and 13, Articles 5 (a) and 5 (b)

Address needs of women on the basis of their biological function of maternity (Article 5b)

Uses comprehensive approach establishing the inter relatedness of rights(civil and political as well as socio economic) and by demanding all appropriate measures

through laws and other measures - Article 2and 15

through temporary special measures – Article 4.1

through provision of enabling conditions and other programmes and policies – Article 3

*Source: IRAW Asia Specific Training Materials

The need to address the context of gender relations

In taking into account the issues of discrimination against women, we need to address the context of the complex power relations and overlapping layers of subordination that exist in society at all levels – household, institutions, community and the state.³.. How are

³ Naila Kabeer refers to the broad institutions of the household, the community, the market and the state as interacting and reproducing discrimination against women on the basis of social norms and values. Kabeer.N. Reversed Realities: Gender Hierarchies in Development Thought. 1995. Verso.

gender roles and norms established and promoted at all these levels? It is too simplistic to understand gender relations as ‘man dominates woman’. For example, in the area of health,⁴ it is essential to move away from a disease model in epidemiology that frames health problems as “de contextualised exposures to risk factors, including the isolated behaviours of individuals.”⁵ This portrays risk as a life style choice and de politicises risk. In other words we need to be aware of the dynamic link between risk and susceptibility to risk.⁶ Even when we take the life cycle approach to women’s health it is not useful to focus merely on biological events determined by age and biological timing. This ignores how the biological timing of these events and women’s experiences of them are shaped by race, nationality, class and gender. We also need to understand how the combined factors of race, gender class and nationality affect the family, the society, institutions and health professionals and not merely study their effect on those “who have been historically construed as the ‘other’.”⁷ We need to know about the structural determinants of women’s health.

Another example is the fact that labour legislation in many countries has provisions for equal pay. However, in most countries, women are ghettoised into traditional low paying jobs, 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. 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. All of this is compounded by the fact that there are very few women in decision making position to effect pro-active women centred policies. Under these conditions, the existence of an equal pay for equal work clause does not really benefit women. This is not to under estimate the importance of the principle of equal pay for equal work but to remind ourselves that it is not enough.

What is needed is mechanisms through which a gendered analysis of human rights principles can be made to mandate pro-active pro-woman policies and practices. Mechanisms that will not only ask whether there are laws that guarantee equal pay for equal work but which will also ask whether there are programmatic measures to free women from family support services, that make special provisions to ensure personal security. We need mechanisms that ensure affirmative action for training opportunities, long term measures that attempt to change cultural patterns of conduct that place women and men in stereotypical roles that disadvantage women or measures that ensure that structures that facilitate all of this is not male dominated so that discriminatory decisions are not continuously made.

⁴ I have chosen health as one example where context is critical because goal 5 of the MDGs is the improvement of maternal health.

⁵ Inhorn MC and Whittle KL. Feminism meets the “new” epidemiologies: Towards an appraisal of anti feminist biases in epidemiological research on women’s health. In Social Science and Medicine. Vol. 53 No. 5. pp. 553-567. September 2001. . 2001.

⁶ Ibid

⁷ Ibid

So it means more than just considering whether women are an affected group but analysing why, bringing to light the socio-economic characteristics that can deny women civil and political rights and vice versa. As women's rights are violated not only in the civil and political sphere, but also in the socio-economic sphere (i.e. access to resources) on the basis of their sex, equality provisions based on the assumption that men and women are the same, face the same obstacles, and on male models of attributes and needs do not benefit women.

We must also take into account the multiple identities of constituents. Whose rights are we promoting? While 'women' are disadvantaged groups, they are not homogenous groups. Taking a rights approach will help us to address issues of diversity and disadvantage. Because such an approach will force us to recognise historical inequalities between different groups of people and entitle the right of a group that has faced cumulative discrimination.

Achieving the fulfilment of women's rights on a basis of equality with men is therefore a complex process. It means taking into consideration the gendered experiences of our lives current and historical and the interrelated aspect of the various forms of discrimination and how that has moulded male and female responses to life situations. Merely including equality clauses in various legal instruments or having national policy and plans of action for women without changing institutional practices has not necessarily benefited women. There is a need for a clear understanding of the various factors that work against women and holistic approaches developed to give women the capability to exercise their rights developed. Such measures have to take into consideration the link between civil and political rights and economic and social rights, the need for intervention in the private and public sphere, the adverse effects of culture and tradition and to make a distinction between immediate relief aimed at ameliorating the conditions of women and long term measures that will elevate the position of women in society. It is the CEDAW Convention that provides us with a framework holistic enough to do this. (Refer to Box 1)

The link between CEDAW and the Beijing Platform for Action (BPFA)

The paper has argued that what the CEDAW Convention brings to the process of advancing the status of women is the imperative of a rights approach and the insistence of norms and standards such as equality and non-discrimination which cannot be compromised. It provides a theoretical framework by which to identify barriers to women's right to equality, to assess needs, to set goals, to identify measures and to evaluate accomplishments. This does not make the Convention an exclusive instrument for planning the development of women. Rather, it provides an essential framework comprising principles, norms and desired outcomes on which to pin the specific actions arising out of other international initiatives like those of the World Conferences.

The CEDAW Convention is a legal instrument hence it does not define every context nor it does it give the details of the content of action that needs to be implemented. These can be taken from sources such as documents of the world conferences. The guidance for their choice comes from an assessment of whether they will promote equality. For

example article seven of the CEDAW Convention provides for the equal participation of women in public life. But in the text it merely says that

“State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and shall ensure to women on an equal basis with men the right to:

Vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.

Participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government

Participate in non- government organizations and associations concerned with the public and practical life of the country.”

The CEDAW Convention does not spell out what the appropriate measures should be as this is left to be formulated according to the context by the state. These measures have to be identified on the basis of whether they will eliminate discrimination against women and promote equality of outcome.

A look at the BPFA will show us a range of strategic objectives and actions to bring about the outcomes demanded by the Convention such as recruiting, training financially assisting women candidates, amending electoral processes, developing campaigns directed at equal participation, setting numerical goals and quotas, targeting women for appointments to public positions etc.

While the CEDAW Convention does not detail exhaustively the specific types of discrimination that women may face in different cultures, it provides a framework within which a range of issues pertaining to discrimination may be addressed, based on its core understanding of non-discrimination and equality.

The application of the CEDAW Convention is being continually updated to include new insights and new issues that are brought to the Committee’s attention, through the formulation of General Recommendations. For example taking into consideration the absence of any mention of violence against women in the Convention, the committee was of the opinion that violence against women was a pernicious form of discrimination against women and formulated General Recommendation 19 identifying the various articles under which violence against women should be reported by the states. It is this interpretative quality of the Convention that gives it its dynamism and sets it apart from a programme or plan of action.

However, the CEDAW Convention and the BPFA are mutually reinforcing. They should not be implemented in isolation from each other but the synergy between them must be exploited. If this is done, the principles of equality and non discrimination of the

CEDAW Convention will provide the normative standards for the BPFA and the legally binding nature of the treaty will ensure accountability. Ratification of the treaty subjects the state to periodic scrutiny by an independent body, the CEDAW Committee and draws accountability for its obligations under treaty law. This is the final strength of the Convention. There is a monitoring mechanism and it forces us to set targets and benchmarks for progress. This subjects the state to compliance with the minimum normative standards of performance set collectively by the state and an independent body covering all commitments whether under the CEDAW Convention or as parties to World Conferences. Furthermore since reporting has to take place every four years it facilitates the setting of time bound targets and goals.

The need for indicators

The CEDAW Convention therefore provides a strategic framework. The development of indicators under such a framework has to be multi layered and inter related. Not only should there be indicators of achievement such as improvement in literacy rates etc but also indicators of discrimination that need to be eliminated and indicators of state action that need to be in place. This section will attempt to provide a framework for indicators combining the demands of the CEDAW Convention and the recommendations of the BPFA. This framework of indicators need to be used for the achievement of the MDGs.:

Data Requirements

- The Status of Women in All Fields (disaggregated by sex)
- What are the obstacles to improving women's equality status?

(Lack of opportunity or lack of access: indicators of discrimination: direct and indirect: Article 1 of the CEDAW Convention: Gender analysis)

- What action has the state taken or should take and its effectiveness:
 - *Dejure: law, policy, programme, services (opportunity created) this is to be compared with:*
 - (i) Indicators of state obligation as required under articles 2 and 3 of the CEDAW Convention such as policy for eliminating discrimination; constitutional and legal guarantees for equality, for the prohibition and prevention of discrimination and for penalising discrimination when it occurs; establishment of competent tribunals and other public institutions to protect women against discrimination; measures to ensure that public authorities and institutions do not discriminate against women. Measures to ensure that no person, organization or enterprise discriminates against

women; measures to abolish customs and practices that discriminate against women: the repeal of all discriminatory laws

- (ii) Indicators of relevant strategies, programmes and services as recommended in the BPFA

(The relevance of the above is to be assessed on the basis of whether they create opportunity and access to the opportunity by removing obstacles)

- Are there indicators of weak state action such as gender bias contributing to lack of access, that needs to be eliminated
- What is the status of the practical realization of rights? (Monitoring over a period of time: The results of state action)
 - *Indicators of de facto rights (results)*
- Time framed goals and indicators of further action the state should undertake

(Source: IWRAP Asia Pacific Training Materials)

Conclusion

The MDGs help us to set goals and bench marks for the realization of women's rights and to get global consensus for this. This has the potential of generating the required political will. But this paper recommends that success of this endeavour requires a methodology that uses the normative human rights framework of equality and non discrimination of the CEDAW Convention. The paper also states that to eliminate discrimination against women and to put in place the proactive measures needed, the context of gender relations has to be taken into consideration and the Beijing Platform for Action provides the substance for this. The advantage of using a human rights framework is that not only are international and universal standards used for national level action but that such an approach will provide the basis for state accountability. Above all it will help mobilise constituencies of women and transform them from victims to holders and claimants of rights. This is what will ensure sustainability of the gains.