

COLUMN

EIGHT YEARS IN CEDAW

CEES FLINTERMAN*

On 31 December 2010 my second term as a member of the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) came to an end. So far CEDAW has had a predominantly female membership with only two Swedes, one Finn and myself as exceptions. There is clearly a need to involve more men as members of the Committee; it was, therefore, very disappointing that even during the last elections for CEDAW in 2010 only one male candidate (from Oman!) was nominated and that most regrettably this nomination was withdrawn. This reflects the stereotypical view from most, if not all 186 States parties to the UN Convention on the Elimination of All Forms of Discrimination Against Women (the Convention) that the realisation of the principle of equality of women and men is primarily an issue that concerns women.

Membership of CEDAW certainly requires the investment of a considerable amount of time, energy and commitment. Over the past eight years I attended 20 sessions of the Committee itself and 16 sessions of its Working Group on Communications under the Optional Protocol of which I have been a member since its inception in 2004. Altogether those sessions comprised 72 meeting weeks in New York and since 2008 also Geneva. During all those weeks CEDAW examined almost 200 State reports, adopted four General Recommendations, adopted views on 20 individual cases submitted under the Optional Protocol, conducted one inquiry under the same Protocol and adopted a large number of statements on various issues and urgent matters, such as statements on Iraq, Afghanistan, Haiti, the role of national parliaments, the role of non-governmental organisations (NGOs) and the strengthening of the United Nations treaty bodies system. Since 2003, the Committee met moreover in three informal sessions (Utrecht, 2004; Berlin, 2006; and Paris, 2010); those sessions were financed by the governments of the countries concerned and were used by the Committee to have in-depth discussions on matters for which there is usually too little time during regular sessions of the Committee, such as issues relating to the working methods of the Committee and general discussions on pending general recommendations.

* Editor in Chief of the Netherlands Quarterly of Human Rights. From 2003 until 2010 he was a member of the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW). In 2010, he was elected in the United Nations Human Rights Committee for the period 2011–2014.

Important structural developments have taken place since 2003. The number of sessions of CEDAW was increased by the UN General Assembly, first only for 2007 and 2008 and since 2010 on a permanent basis, from two to three per year despite Article 20 of the Convention that provides that '[t]he Committee shall normally meet for a period of not more than two weeks annually'; two of those sessions take place in Geneva and one in New York. From 2008, the Committee is facilitated by the Office of the UN High Commissioner for Human Rights (OHCHR) thus reflecting that CEDAW has now become a full member of the United Nations human rights treaty bodies family. The transition of the Secretariat from New York to Geneva has also had its drawbacks: in New York CEDAW was facilitated by the UN Division for the Advancement of Women and it was close to other UN bodies and entities that are working in the field of women's issues and women's human rights, while in Geneva CEDAW has to compete for the scarce resources available within OHCHR for supporting the activities of all human rights treaty bodies, presently nine. One of the big challenges for the Committee, now administratively being based in Geneva, will be to develop and sustain an effective and durable relationship with the new UN entity on women's issues, appropriately called United Nations Women, the secretariat of which will be based in New York.

The most important and every time again intellectually, legally and culturally challenging task of CEDAW is the examination of State reports. Challenging because it may be expected from the members of the Committee that they make all efforts to be as country specific as possible in their questions and that they pay attention to all relevant aspects covered by the Convention in an in-depth manner. Such focus is almost impossible without the active involvement of women's and human rights organisations in the work of the Committee through the submission of alternative reports and also by orally presenting relevant information to the Committee at the beginning of each session. The interest of such organisations in the work of the Committee has always been intense and has further grown over the past years. I have also been very pleased that in general States parties are taking the reporting process seriously by submitting detailed reports, sending high level delegations often chaired by ministers and by making all efforts to engage in a meaningful dialogue. The concluding observations that the Committee approves after the constructive dialogue with a State party reflect, in my opinion, a steady increase in quality and focus bearing in mind that only country specific recommendations may make a difference in the country concerned. Only such country specific concluding observations serve the objective of the supervisory role of CEDAW which is to contribute to the strengthening of the protection and promotion of women's human rights at the domestic level.

The Convention has now been ratified by 186 States, that is almost universally. It is true that many States have submitted reservations that are sometimes of a far-reaching character, such as those reservations that are aimed at subjecting the obligations of the State party concerned to the *Shariah* law prevailing in the country. It has been my experience over the past years that it has almost always been possible to have a serious

discussion on such reservations with the delegations of the States concerned which is aimed at urging such States to withdraw these reservations, which indeed in a number of situations has taken place. The Committee moreover has not refrained from stating explicitly that some reservations, in particular those of a general nature and those related to Article 16 of the Convention (equality of women and men in marriage and family), to be incompatible with the object and purpose of the Convention and, thus, impermissible (Article 28). The Committee has also always avoided to fall into the trap of cultural relativism which is so pernicious in particular in the field of human rights of women. The Committee, composed of independent members with very different cultural, religious and disciplinary backgrounds, considers culture to be a dynamic concept; States parties to the Convention are required to make all good faith efforts to eliminate over time and with the active involvement of civil society those cultural and religious practices that stand in the way of the full realisation of the principle of equality of women and men.

I regret that I have not seen all 186 States that are parties to the Convention. There is still the problem of underreporting or non-reporting States. The Committee has taken bold steps, like other treaty bodies, to remedy this problem by warning such States that the situation of women's human rights in their countries will be examined without a report; such warnings have often led to the submission of a report. So far, the Committee only on one occasion examined a State without a report albeit in the presence of a delegation from the State.

During the 90s of the last century I was privileged to be closely involved in the negotiations on an Optional Protocol to the Convention providing for two additional supervisory procedures, the individual communication procedure and the inquiry procedure; that Optional Protocol adopted by the UN General Assembly in 1999 has now been ratified by 101 States parties to the Convention, the latest being the Republic of Ghana. Little did I realise at the time that I would be given the opportunity to contribute to the development of the case law of the Committee, in particular by being a member of, and in my last two years by chairing, its Working Group on Communications under the Optional Protocol (WGCOP) that assists the Committee in the implementation of its quasi-judicial task. It has been fascinating to apply the rather generally worded provisions of the Convention to concrete cases in which women at the domestic level had suffered from violations of their rights under the Convention and had been unsuccessful in having their claims recognised in the domestic courts. I do think that the jurisprudence of the Committee, although still limited in terms of numbers of substantive views adopted and relevant issues covered, has contributed to further substantiating the obligations of States parties under the Convention. A case in point is *Ms S. vs Hungary* in which the Committee has clearly stated that sterilisation requires the full and informed consent of the woman concerned and in which the Committee, *inter alia*, recommended the State to pay a compensation to the woman sterilised which after some time was finally implemented. Another relevant case is *Ms Vertido vs the Philippines* in which the Committee found the manner in

which a Philippine judge had conducted a rape trial and had motivated her verdict constituted a violation by the Philippines of the rights of the complainant under the Convention; this decision although focused on the Philippine case gives guidance to all other States on their obligations *vis-à-vis* women submitting rape complaints to the domestic investigating and judicial authorities.

Over the past eight years the Committee has adopted four General Recommendations, one on Temporary Special Measures (No. 25), one on Female Migrants (No. 26), one on Older Women (No. 27), and the last one The Core Obligations of States parties under Article 2 of the Convention (No. 28). Such general recommendations are an important vehicle for the Committee to reflect at a more abstract level its experiences in the examination of State reports and individual communications and to give States parties more guidance in understanding the scope of their obligations under the Convention. Let me give an example to clarify this point more concretely: in General Recommendation No. 28 the Committee emphasises that women can be victims of multiple or intersectional forms of discrimination; it recognises that discrimination of women based on sex and gender is inextricably inked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. The inclusion of the last two grounds took quite some time within the Committee, but I am pleased that States parties are now reminded that they are also obliged to eliminate such intersectional forms of discrimination through laws and policies.

CEDAW is one out of presently ten human rights treaty bodies operating within the United Nations. I am very pleased that CEDAW has always played an important role in seeing to it that all those treaty bodies work as a unified and integrated system. CEDAW has taken the lead in reforming the State reporting procedure under the various human rights treaties. Such State reports ideally are now composed of a Common Core Document which may be used for all human rights treaty bodies and a treaty specific document focussing on the particular issues under each of the treaties. Detailed reporting guidelines have been prepared in order to assist States in preparing this new format of reports under human rights treaties. There is, however, no doubt that in the field of further harmonisation and coordination of the activities of the ten human rights treaty bodies there is still a lot to be achieved but CEDAW, in my opinion, has always been prepared to take that issue seriously, while maintaining that a specific human rights treaty body focussing on the human rights of women was, is and most likely forever necessary in order to help guarantee the full implementation of the principle of formal and substantive equality of women and men around the world.

That brings me to my final point. I feel privileged that I have been called upon to serve CEDAW, and for that matter the human rights of women, over a period of eight years. I have come to realise, even more than before I joined CEDAW, how important it is that within the United Nations a body has been created which is focusing in an explicit manner on the (cultural, religious, political and social) obstacles women

face in all States in enjoying, let alone fully realising their human rights and which is recommending States on how to overcome those obstacles. I will for always remember the generally cooperative, stimulating and conscientious attitudes of the members of CEDAW coming from different cultures, religions and social and political systems. At home, I have a bookshelf full of small little presents which members of CEDAW every now and then give each other, a practice I never experienced in any other international body or organ. Those presents form a precious souvenir of my CEDAW years.