

Opening Conference: Should States Ratify Human Rights Conventions? 18-20 August 2009, Oslo

Comments on the Convention on the Elimination of All Forms of Discrimination against Women

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I shall follow the three questions posed by the conference organisers to discuss the CEDAW research agenda. I am not a CEDAW specialist, so my comments would focus on general characteristics of human rights treaties as well as what I think to be the distinctive features of the CEDAW. I will also aim to set out how special features of the CEDAW interact with the research aims of this project.

A) Motivation: Why do states ratify the CEDAW?

The CEDAW is the second most ratified of the 8 core UN Human Rights treaties with a 96 % of ratification. The CEDAW follows the CRC (99 %) and is followed by the ICERD (89 %), the ICCPR (85%) and the ICESCR (83 %).

CEDAW is also the second treaty with most reservations. There are 167 reservations to the CEDAW and 32 % of state parties have entered at least one reservation.

Given the ratification rate, some may think that the motivation question is redundant: states are obviously motivated to ratify CEDAW. But, the key question is **why** there is such a high rate of ratification. I think this should be seen in the light of the nature of the CEDAW as a treaty as well as the extensiveness of reservations entered against it.

Overall, I find the high ratification rate to the CEDAW puzzling. The CEDAW is a very demanding treaty. It is what we may term as a 'combined treaty'. It includes civil, economic, political, social as well as cultural rights. It assigns duties to states to take a wide range of positive measures and to eliminate gender inequality in public and in private life. It has basic human rights provisions as well as justice-based claims. The latter suggests that the CEDAW requires re-allocation and re-distribution of resources in order to combat substantive inequality of women in societies. These features mean that the CEDAW engages with public policies of states on a wide range of areas. It demands states to structurally alter their political, economic and social choices. In most countries there are no existing legal or political structures to combat substantive inequality of women. So, the CEDAW is also about institution-building as well as improvement of existing arrangements.

It is for these reasons that I find such high numbers of ratification puzzling. Why have so many states ratified the CEDAW given the extensiveness of the demands the treaty makes of them? Which of these ratifiers are 'sincere ratifiers'? If ratifiers are not sincere what other motivations do they have? What pressures/incentives or persuasive processes international and domestic lead to ratification of CEDAW? How do ratification motivations differ from compliance motivations?

I think these questions are worth investigating.

B) Effects of the CEDAW

I think the 'effects' or 'domestic consequences of the CEDAW' need to be investigated in the light of the motivations of the ratifiers. It seems to me that there may be a close relationship between the two.

Significantly, the CEDAW has varying effects in different countries and CEDAW's specific articles (e.g. special temporary measures) have different effects even within a single country. Such varying effects may well be related to the motivations of ratification.

With all human rights treaties, the question of 'effect' is not a straight -forward one. There are a number of reasons for this:

1) Effect of what?

A combined treaty like CEDAW has so many articles. This means it has multiple objectives. When studying effect, such objectives will need to be disaggregated.

2) Effect on what?

The treaty may have different effects in different levels in domestic settings. A tripartite scheme may suggest that judicial effect, executive effect and civil society/citizen mobilisation effect need to be researched separately. Obviously studying judicial effect will require different tools than studying mobilisation of women. There is also the further question of how effect in one setting influences effect in another.

3) Effect to what degree?

This is a question of how we measure effect and how we can discuss 'low' effect v. 'high' effect or 'limited' v. 'extensive' effect. For example, a common observation on the CEDAW is that it is very important in mobilising women's rights groups and help frame their political, legal or economic demands in political arenas. This, however, would not mean that such mobilisation has any effect on change of policies.

This brings me to a last point about effect. How do we explain the limited effect (or extensive effect) of CEDAW on different domestic actors? Furthermore, how do we explain why effect on one set of actors does not translate to effect on another set of actors? (Again, the CEDAW example here is that the CEDAW helps women organise, but such mobilisation does not lead to change in elite views/positions on policy).

It seems to me that it is necessary to delve into the nature of the state and to have a typology of states in order to understand the overall effect. One model that would be helpful is to look at the relationship between elite learning and domestic pressure, i.e. if the latter has an influence on the former.

C) Assessment

Here, the project focuses on the normative assessment of ratifying/incorporating/internalising the CEDAW.

I will merely list four objections that were raised against the CEDAW. My aim is not to assess the merits of these objections, but to point to the necessity of countering them in order to increase the effects of the CEDAW amongst the sceptic implementors.

1. The treaty is expansive. It has too many objectives.
2. The treaty interpretation is expansive. The international bodies have read too much into the treaty.
3. The treaty is not an adequate tool for the judiciary. Judges cannot apply the CEDAW, on issues where there are competing considerations or when application involves economic and social policy.
4. The CEDAW does not address the question that there are real conflicts between addressing substantive equality for women and other social and economic considerations/goals.

These may or may not be good reasons, but such normative objections may help us explain some of the problems of slow implementation or contested implementation or implementation scepticism. This last point also suggests that CEDAW implementation may not be only a problem of 'capacity' or 'technical assistance'.

Finally, I would like to suggest that the three research questions may not be as separate from each other as they may first seem and the CEDAW is a particularly fruitful convention to approach the research questions of the project due to its comprehensive nature and its wide-ranging provisions.