

# DISCRIMINATION AGAINST WOMEN

## Combating its compounded and systemic forms

SIMONE CUSACK

The year 2008 was significant for the advancement of women's rights in Australia. Quentin Bryce was sworn in as Australia's first female Governor-General and Kay Goldsworthy was consecrated as the country's first female Anglican bishop. The Senate Standing Committee on Legal and Constitutional Affairs ('Senate Committee') completed a comprehensive review of the effectiveness of the *Sex Discrimination Act 1984* in eliminating discrimination and promoting gender equality — the first review of its kind in over a decade. The Productivity Commission released its draft inquiry report *Paid Parental Leave: Support for Parents with Newborn Children*, in which it proposed the introduction of a taxpayer-funded paid parental leave scheme. And, amongst other significant developments, the Australian Government — at long last — acceded to the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* ('Optional Protocol').

However, despite these and other important strides, intractable forms of discrimination persist in Australia, significantly impeding the elimination of all forms of discrimination against women and the realisation of substantive (ie, de facto) equality. It is the contention of this article that in 2009 — the year marking the 30th anniversary of the adoption of the *Convention on the Elimination of All Forms of Discrimination against Women* ('CEDAW') — the Australian Government must give greater priority to combating socially pervasive and persistent forms of discrimination against women. In particular, it must take more seriously the challenges of eliminating compounded and systemic forms of discrimination.

Using the human rights framework established in CEDAW, this article examines Australia's obligations to eliminate compounded and systemic forms of discrimination against women. In so doing, it reviews the Senate Committee's findings in relation to the effectiveness of the *Sex Discrimination Act 1984* (Cth) ('SDA') as a tool to address these forms of discrimination, and considers how a reformed SDA might strengthen efforts to eliminate them. This article also considers the opportunities that the Optional Protocol's recent entry into force for Australia presents for the elimination of all forms of discrimination against women. The article concludes by arguing that, in order to move the equality debate forward, the Australian Government must adopt a new vision for equality that prioritises the elimination of compounded and systemic forms of discrimination.

### CEDAW: eliminating discrimination and ensuring substantive equality

States Parties to CEDAW are obligated to eliminate all forms of discrimination against women. Article 1 defines 'discrimination against women' as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms...

CEDAW moves beyond the concept of discrimination used in other human rights treaties, which require the elimination of sex discrimination against both men and women. CEDAW acknowledges that, despite efforts to eliminate sex/gender discrimination, 'women have suffered, and continue to suffer from various forms of discrimination because they are women'<sup>1</sup> and that their rights therefore require specific, additional protection.

The definition of discrimination used in CEDAW must be considered together with its overarching object and purpose, which is 'to eliminate all forms of discrimination against women with a view to achieving women's de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms'<sup>2</sup>. The Committee on the Elimination of Discrimination against Women ('CEDAW Committee'), the UN treaty body that monitors compliance with CEDAW, has explained that, in order to fulfil this object and purpose, States Parties must:

- eliminate direct and indirect discrimination against women;
- improve women's de facto position; and
- address prevailing gender relations and wrongful gender stereotyping.<sup>3</sup>

Thus, in order to meet their CEDAW obligations, it is not sufficient for States Parties to adopt a formal (de jure) approach to equality. In addition to treating men and women identically where their interests are substantially similar, States Parties must acknowledge and accommodate biological as well as socially and culturally constructed differences between men and women.<sup>4</sup> In certain circumstances, non-identical treatment of men and women will thus be necessary to eliminate all forms of discrimination against women and ensure substantive equality.

CEDAW recognises that not all women experience discrimination in the same way; some women suffer

#### REFERENCES

1. *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981), prmbllr para 6.
2. Committee on the Elimination of Discrimination against Women ['CEDAW Committee'], *General Recommendation No 25: Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures*, UN Doc A/59/38 (2004), at para 4.
3. *Ibid* at para 7.
4. *Ibid* at para 8.

## *Eliminating all forms of discrimination against women is dependent not only on protecting individual women against discrimination, but also on bringing about structural change.*

'compounded' (ie, multiple) forms of discrimination because of the way that their sex/gender intersects with other traits such as age, disability and/or sexual orientation. Compounded discrimination is 'more than an accumulation of separate instances of discrimination, but is rather a unique and distinct form of discrimination that needs to be considered and remedied as such'<sup>5</sup>. For instance, many Indigenous women in remote communities are disproportionately disadvantaged in relation to basic living conditions not only because of their sex, but also because of their membership in the subgroup of Indigenous people living in remote areas.<sup>6</sup> Women who experience homelessness after escaping abusive relationships often suffer multiple forms of discrimination based on their sex and, for example, their housing status.<sup>7</sup> The challenge is to identify the different traits and how they interact to produce compounded forms of discrimination for different subgroups of women.

CEDAW obligates States Parties to adopt measures to 'eliminate such multiple forms of discrimination against women and its compounded negative impact on them'<sup>8</sup>. For example, States Parties are obligated to ensure that single women<sup>9</sup> and lesbians<sup>10</sup> are not discriminated against in their access to assisted reproductive technologies, or in their efforts to found a family through adoption.<sup>11</sup> They are also required to develop the necessary infrastructure to ensure that women living with disabilities have equal access to all healthcare services.<sup>12</sup> In the reproductive healthcare context, for instance, States Parties must take steps to ensure that women living with disabilities have access to doctors with expertise in women's health in clinics that meet their physical access and other needs.

The obligation to eliminate the root causes of discrimination against women lies at the very heart of CEDAW. Whilst protecting individual women against discrimination and its harms is an important component of eliminating all forms of discrimination, CEDAW requires States Parties to go further; they must reformulate their laws, policies and practices, and transform their institutions and systems 'so that they are no longer grounded in historically determined male paradigms of power and life patterns'<sup>13</sup>. That is to say, States Parties must address systemic discrimination, meaning 'policies, practices or patterns of behaviour, which are absorbed into the institutions and structure of society, that create or perpetuate disadvantage for a particular group'<sup>14</sup>.

On the basis of this transformative view of equality, States Parties must bring about a 'redistribution of power and resources and a change in the institutional structures which perpetuate women's oppression'. They must dismantle the private/public divide and reconstruct the public world so that childcare and parenting 'are seen as valued common responsibilities of both parents and the community'<sup>15</sup>. Eliminating all forms of discrimination against women is dependent not only on protecting individual women against discrimination, but also on bringing about structural change.

Key in this respect is the obligation to eliminate discrimination that arises because society is structured around gender stereotypes.<sup>16</sup> In this connection, article 2(f) of CEDAW requires States Parties 'to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women'. Article 5(a) further requires the modification of:

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

### **Sex Discrimination Act 1984 (Cth): Reflecting on 25 years of operation**

Australia ratified CEDAW in 1983. The SDA was introduced the following year in order to give domestic effect to CEDAW; however, in accordance with section 3, only certain provisions of the treaty were implemented through the SDA's enactment. Moreover, rather than prohibiting *all* forms of discrimination against women, as required by CEDAW, the SDA's operation was limited to particular areas of public life (eg, employment and education) and specific grounds of discrimination (eg, sex and marital status). The SDA also introduced a number of permanent exemptions that permit unlawful discrimination in certain circumstances.

Understanding of discrimination against women in Australia and its harmful effects has grown since the introduction of the SDA, so, too, has understanding of the need to secure its elimination. The SDA has also been effective in eliminating some of the most overt forms of sex discrimination.<sup>17</sup> In 2007-2008, Australia ranked third — after Iceland and Norway — in the *Human Development Report's* Gender-related Development Index.<sup>18</sup> Moreover, the SDA has played an important normative role in the development of laws, policies and practices in Australia, and in the law

5. HRLRC and PILCH, *Joint Submission to the Committee on Economic, Social and Cultural Rights on General Comment No 20: Non-Discrimination* (2008), at para 62.

6. HREOC, *Gender Equality: What Matters to Australian Women and Men*. The Listening Tour Community Report (2008), 3-4.

7. *The Road Home: A National Approach to Reducing Homelessness* (2008), 7, 33-34.

8. CEDAW Committee, *General Recommendation No. 25*, above n 2, at para 12.

9. See, eg, *McBain v Victoria* [2000] FCA 1009.

10. See, eg, *Assisted Reproductive Treatment Act 2008* (Vic).

11. See, eg, *E.B. v France*, Appl. No. 43546/02, Jan. 22, 2008, at paras 96-98 (European Court of Human Rights).

12. CEDAW Committee, *Concluding Observations: Australia*, CEDAW, UN GAOR, 61st sess, supp no 38 (A/61/38) part I (2005) 40, at paras 243-244.

13. CEDAW Committee, *General Recommendation No. 25*, above n 2, at para 10.

14. Senate Standing Committee on Legal and Constitutional Affairs, *Effectiveness of the Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality* (2008), at para 5.2 ['SDA Report'].

15. Sandra Fredman, 'Beyond the Dichotomy of Formal and Substantive Equality: Towards a New Definition of Equal Rights' in Ineke Boerefijn et al (eds), *Temporary Special Measures: Accelerating de facto Equality of Women under Article 4(1) UN Convention on the Elimination of All Forms of Discrimination Against Women* (2003), 111, 115.

16. See generally Rebecca J. Cook and Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (forthcoming, 2009).

17. SDA Report, above n 14, at para 5.2.

18. United Nations Development Program, *Human Development Report 2007/2008* (2008), 326.

reform and advocacy work of civil society. In the words of one commentator, the SDA has 'fundamentally changed our legal and social environment...'<sup>19</sup>.

Yet, notwithstanding these important developments, the SDA's limitations have significantly impeded its effectiveness as a tool to eliminate discrimination against, and inequality of, women in Australia. The 2008 report of the Senate Committee on the *Effectiveness of the Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality* highlighted a number of weaknesses in the current legal protections against sex/gender discrimination. Particularly noteworthy are the absence, in Australia, of robust measures to address compounded and systemic forms of discrimination against women.

Commenting on effectiveness of the SDA as a tool to address compounded forms of discrimination, the Senate Committee noted that it had 'received evidence that existing federal anti-discrimination legislation, including the [SDA], has a limited capacity to address discrimination on intersecting grounds, such as sex and race, or sex, disability and age'<sup>20</sup>. These comments echo those voiced by the Australian Law Reform Commission ('ALRC') in its 2003 report on *Equality Before the Law: Justice for Women*. There, the ALRC noted that 'anti-discrimination legislation treats women as a homogenous group without recognising the multiple forms of discrimination some women may experience'<sup>21</sup>. Women who suffer compounded forms of discrimination thus face difficulties in seeking redress under the SDA for violations of their rights to non-discrimination and substantive equality.

In acknowledging the challenges of effectively addressing compounded discrimination under the SDA, the Senate Committee noted its support for an examination of the merits of replacing the existing federal anti-discrimination framework with a single, comprehensive *Equality Act* (see below).<sup>22</sup> In the interim, however, it recommended allowing the joining of complaints that allege compounded discrimination and which implicate more than one federal anti-discrimination law. In this connection, it urged the relevant adjudicative bodies to 'consider the interrelation of the complaints and accord an appropriate remedy if the discrimination is substantiated'<sup>23</sup>.

With respect to socially pervasive and persistent forms of discrimination, the Senate Committee explained that the SDA 'has had an impact on the most overt forms of sex discrimination but has been less successful in addressing systemic discrimination'<sup>24</sup>. In support of this claim, the Senate Committee cited the submission of the Australian Human Rights Commission ('AHRC'), amongst others, which explained:

[W]hilst the SDA has been successful in contributing to reducing direct discrimination..., there has been less progress on addressing systemic discrimination or achieving substantive gender equality. There is clearly much more that could be done.<sup>25</sup>

That the SDA adopts an enforcement model based on an individual complaints mechanism is one reason

for its limited effectiveness to date in responding to systemic discrimination. The provision of individual relief is an important component of addressing the discriminatory treatment of a woman based on her sex/gender: it seeks to restore her to the position that she was in before the discriminatory conduct took place. Notwithstanding, individual relief is limited in its ability to effectively respond to socially persistent and pervasive forms of discrimination and to prevent future acts of discrimination before they occur. Individual relief is also dependent on a woman asserting her rights, which may often prove difficult in circumstances where there are obstacles that impede access to justice.<sup>26</sup>

An effective response to discrimination thus requires the adoption of measures of an individual and a structural nature. For instance, individual relief for a girl denied access to male-identified school electives (eg, industrial arts) because of sex-role stereotypes of women as homemakers and men as breadwinners, may address the wrong of providing an unequal and inferior basis for her future educational choices and employment prospects.<sup>27</sup> However, such relief is unlikely to bring about the de-institutionalisation of the operative stereotypes from laws, policies and practices in the education sector or prevent future discrimination of the same nature. Additional, targeted measures are needed to transform the underlying structure of society that is built upon these, and other, stereotypes.

In its report, the Senate Committee acknowledged the urgent need to take steps to ensure a more effective response to systemic discrimination. To this end, it made a number of recommendations for reform, including amending the SDA to include a general prohibition against discrimination and a general provision on equality before the law.<sup>28</sup> It also recommended strengthening the powers of the AHRC to address intractable and systemic areas of discrimination.<sup>29</sup>

In addition, the Senate Committee recommended that the AHRC undertake a public inquiry to consider:

- whether federal anti-discrimination laws should be replaced with a single *Equality Act*;
- what other grounds of discrimination (eg, sexual orientation and gender identity) should be prohibited under federal anti-discrimination laws; and
- what additional mechanisms might be adopted to maximize the protection and promotion of substantive equality.<sup>30</sup>

The Senate Committee further recommended that such an inquiry be completed by 2011. The Human Rights Committee recently affirmed the Senate Committee's recommendation, urging Australia to 'adopt Federal legislation covering all grounds and areas of discrimination to provide comprehensive protection to the rights to equality and non-discrimination'<sup>31</sup>. It is not yet clear, however, whether the Australian Government intends to implement these recommendations.

If Australia is to fully implement its normative obligations under CEDAW and other international

19. Beth Gaze, 'The Sex Discrimination Act After Twenty Years: Achievements, Disillusionment and Alternatives' (2004) 27(3) *UNSW Law Journal* 914, at 921.

20. SDA Report, above n 14, at para 4.50.

21. Australian Law Reform Commission, *Equality before the Law: Justice for Women*, ALRC 69 Part I (1994), at para 3.60.

22. SDA Report, above n 14, at paras 11.48, 11.105-11.111.

23. *Ibid* at paras 11.49, 11.58.

24. *Ibid* at para 5.2.

25. *Ibid* at para 5.3.

26. *Ibid* at paras 6.2-6.6.

27. *Haines v Leves* (1987) 8 NSWLR 442.

28. SDA Report, above n 14, at paras 11.24-11.25.

29. *Ibid* at paras 11.76-11.87, 11.91, 11.99-11.100.

30. *Ibid* at para 11.111.

31. Human Rights Committee, *Concluding Observations: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009), at para 12.

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human rights treaties, such as the *International Covenant on Civil and Political Rights* (arts. 2 and 26), any inquiry into the merits of a federal *Equality Act* must squarely address how an *Equality Act* might best respond to compounded and systemic discrimination. The effectiveness of such an inquiry will depend on the extent to which the views of ordinary women and their daily experiences of discrimination are taken into account. For example, despite recent legislative reforms,<sup>32</sup> how are lesbians discriminated against in Australia, including, in particular, in marriage and family relations? What are the experiences of single mothers who are impoverished as a result of bearing a disproportionate burden of childcare responsibilities?<sup>33</sup> How have different forms of discrimination been incorporated into federal laws, policies and practices, and how might they be de-institutionalised?

The enactment of a federal *Equality Act* would be an important step forward in the struggle to eliminate compounded and systemic discrimination against women. Notwithstanding, the introduction of a robust Act will take time and serious consideration will need to be given to such difficult conceptual questions as how best to address wrongful gender stereotyping. For this reason, it is imperative that the Australian Government also takes steps to implement the interim recommendations of the Senate Committee, including the recommendation to allow the joining of complaints that allege compounded discrimination. This two-pronged approach is necessary if Australia is to satisfy its obligations to eliminate all forms of discrimination against women and ensure substantive equality.

### Australia's accession to the Optional Protocol to CEDAW

The Australian Government's accession to the Optional Protocol to CEDAW provides a further opportunity to address weaknesses in the current domestic protections against discrimination and inequality. When the Optional Protocol entered into force for Australia in March — in time for International Women's Day — Australia joined the likes of Canada, New Zealand and the United Kingdom in demonstrating its commitment to achieving the full realization of the rights to non-discrimination and equality. In so doing, the Australian Government granted women access to an international means of redress for violations of these rights, in circumstances where it fails to adequately respect, protect and fulfil them. More specifically, it granted women access the two enforcement mechanisms established under the

Optional Protocol — the communication procedure and the inquiry procedure. Although decisions rendered under the Optional Protocol are not legally enforceable, the experience thus far demonstrates that states have generally been willing to take steps to redress their violations of CEDAW.

#### Communication procedure

The communication procedure empowers the CEDAW Committee to determine communications (ie, complaints) submitted by individuals, groups of individuals or persons acting on their behalf, alleging violations by a State Party of CEDAW.

Before examining the merits of a communication, the CEDAW Committee must be satisfied that it meets the Optional Protocol's admissibility criteria. To be declared admissible, a communication must be in writing, cannot be anonymous, and must concern alleged violations of CEDAW by a State Party (art. 3). It must also be established that:

- all available domestic remedies have been exhausted;
- the same matter has not already been examined by an international procedure;
- the alleged facts occurred after the Optional Protocol's entry into force for the State Party concerned; and
- the communication is compatible with CEDAW, is not manifestly ill-founded or insufficiently substantiated, and is not an abuse of the right to submit a communication (art. 4).

If a communication satisfies these criteria, the CEDAW Committee will examine its merits to determine whether the State Party has violated CEDAW. In the event that a violation is found, the CEDAW Committee will issue recommendations on how the State Party might remedy that violation (art. 7).

To date, the communication procedure has been used successfully to address violations of women's rights to be free of domestic violence<sup>34</sup> and forcible sterilisation.<sup>35</sup> In *A.T. v Hungary*, for example, the CEDAW Committee found Hungary in violation of its positive obligations to protect A.T. against domestic violence. In so finding, it affirmed that gender-based violence against women is a form of discrimination that States Parties are obligated to eliminate. It also affirmed that States Parties are accountable for the conduct of private actors where they fail to exercise due diligence to prevent and remedy violations by such actors. The CEDAW Committee recommended, *inter*

32. See *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Act 2008* (Cth); *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008* (Cth). See generally HREOC, *Same-Sex: Same Entitlements*, National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits (2007).

33. See generally Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children* (2008).

34. See, eg. *A.T. v Hungary*, CEDAW, Communication No. 2/2003, UN Doc CEDAW/C/32/D/2/2003 (2005).

35. *A.S. v Hungary*, CEDAW, Communication No. 4/2004, UN Doc CEDAW/C/36/D/4/2004 (2006).

alia, that Hungary compensate A.T. and take measures to guarantee her physical and mental integrity. More generally, it recommended that Hungary ensure women's rights, implement its national strategy on family violence and, for example, effectively investigate and prosecute allegations of domestic violence.

Following the CEDAW Committee's decision, Hungary has taken a number of steps to address violence, including the development of a national strategy on violence and the establishment of domestic violence shelters. Notwithstanding these developments, however, gender-based violence remains socially pervasive and the Government has yet to enact a specific law that addresses this wrong.<sup>36</sup> While further steps are still required, the communication procedure enabled A.T. to assert her rights and obtain relief unavailable domestically. It also fostered a conversation between the CEDAW Committee and Hungary about the measures required under CEDAW to address gender-based violence.

As of March 2009, women in Australia can seek international redress for violations of their CEDAW rights. A woman might seek to obtain redress where her CEDAW rights are not adequately protected owing to the limitations of the SDA (see above). For example, where a rural woman is unable to obtain effective domestic redress for discriminatory treatment that resulted in a denial of reproductive healthcare services,<sup>37</sup> she might decide to bring a communication against Australia. In so doing, she might elucidate her particular experiences of discrimination in accessing reproductive healthcare services as a rural woman. She might, for example, highlight how the Australian Government's failure to introduce comprehensive laws, policies and practices to ensure that the specific healthcare needs of rural women are met, has resulted in compounded discrimination against her as a member of that subgroup.

### *Inquiry procedure*

The *inquiry procedure* empowers the Committee, under articles 8–10 of the Optional Protocol, to undertake inquiries where it receives reliable information of grave or systematic violations by a State Party of rights protected under CEDAW.

The term 'grave violation' refers to a 'severe' violation of CEDAW rights, and includes discrimination 'expressed in the abuse of [women's] right to life and security, to their integrity, both physical and mental, or to any other fundamental right protected by [CEDAW]'.<sup>38</sup> The term 'systematic violation' refers to the prevalence of an alleged violation. It means that 'the violation is not an isolated case, but rather a prevalent pattern in a specific situation; one that has occurred again and again, either deliberately with the intent of committing those acts, or as the result of customs and traditions, or even as the result of discriminatory laws or policies, with or without such purpose'.<sup>39</sup>

As with the communication procedure, the inquiry procedure enables the CEDAW Committee to make determinations on alleged violations of CEDAW.

What distinguishes these procedures is that the inquiry procedure affords the CEDAW Committee the opportunity to inquire into patterns of offending conduct that culminate in alleged *systematic* violations. Moreover, as the inquiry procedure is not dependent on a woman alleging a violation of her rights, does not require exhaustion of domestic remedies, and has been developed to address widespread violations, it is an important tool for overcoming one of the SDA's most significant weaknesses — its limited effectiveness in eliminating systemic discrimination.

The effectiveness of the inquiry procedure as a tool to address systemic discrimination was demonstrated clearly in the first Optional Protocol inquiry, namely that into the abduction, rape, and murder of women in Ciudad Juárez, Mexico.<sup>40</sup> The events culminating in this inquiry can be traced back to 1993, when the incidence of gender-based violence in Ciudad Juárez increased exponentially. Countless theories have been put forward to explain the violence, however, it is generally agreed that women have been and continue to be targeted because they are *women*.<sup>41</sup> Whilst Mexico has taken some steps to eliminate these crimes, its overall response has been criticized as deficient.<sup>42</sup>

In its final inquiry report, the CEDAW Committee found Mexico in violation of CEDAW for its failure to protect women against violence and gender stereotyping. In so finding, it characterised the violence as violations of 'women's basic human rights and as the most 'radical' expressions of gender-based discrimination'.<sup>43</sup> It also found that these acts were 'not isolated, sporadic or episodic cases of violence'.<sup>44</sup> Rather, it said, 'they represent a structural situation and a social and cultural phenomenon deeply rooted in customs and mindsets ...';<sup>45</sup> they were 'founded in a culture of violence and discrimination that is based on women's alleged inferiority, a situation that has resulted in impunity'.<sup>46</sup> The CEDAW Committee therefore called on Mexico to take a number of measures to address the situation of violence, including the implementation of 'a global and integrated response, a strategy aimed at transforming existing sociocultural patterns, especially with regard to eradicating the notion that gender violence is inevitable'.<sup>47</sup>

Following the inquiry, Mexico has taken a number of steps to address gender-based violence in Ciudad Juárez, including establishing a Special Attorney's Office to monitor investigations into femicide.<sup>48</sup> Notwithstanding these steps, however, gender-based violence continues and Mexico has been criticized for failing to effectively investigate these crimes and prosecute and punish those responsible.<sup>49</sup> Still, positive steps have been taken, and Mexico continues to engage in constructive dialogue with the CEDAW Committee about how to eliminate this socially and culturally entrenched problem. Moreover, the inquiry helped to raise international consciousness of gender-based violence against women in Ciudad Juárez, and brought increasing pressure to bear on Mexico to eliminate such violence.

36. See CEDAW Committee, *Concluding Observations: Hungary*, UN Doc CEDAW/C/HUN/CO/6 (2007), at paras 18–19.

37. See, eg, 'Anger over "Third World" Pregnancy Death', *The Age* (Melbourne), 7 January 2009. See also Lisa R. Pruitt, 'Toward a Feminist Theory of the Rural' (2007) 2 *Utah Law Review* 421.

38. Maria Regina Tavares da Silva and Yolanda Ferrer Gómez, 'The Juárez Murders and the Inquiry Procedure' in Hanna Beate Schöpp-Schilling and Cees Flinterman (eds), *Circle of Empowerment: Twenty-Five Years of the UN Committee on the Elimination of Discrimination against Women* (2007) 299, at 300 n 2.

39. *Ibid* at 300.

40. *Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico*, CEDAW, UN Doc CEDAW/C/2005/OP.8/MEXICO (2005) ['Ciudad Juárez inquiry'].

41. Amnesty International, Mexico, *Intolerable Killings: 10 years of Abductions and Murders of Women in Ciudad Juárez and Chihuahua* (AI Index: AMR 41/026/2003), 25.

42. *Ciudad Juárez inquiry*, above n 40, at para 67.

43. *Ibid* at para 36.

44. *Ibid* at para 159.

45. *Ibid*.

46. *Ibid* at para 261.

47. *Ibid* at para 287.

48. See generally CEDAW Committee, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Sixth Periodic Report of States parties; Mexico*, UN Doc CEDAW/C/MEX/6 (2006), Annex.

49. CEDAW Committee, *Concluding Observations: Mexico*, UN Doc CEDAW/C/MEX/CO/6 (2006), at para 16.

*The enactment of a federal Equality Act would be an important step forward in the struggle to eliminate compounded and systemic discrimination against women.*

As a result of the Optional Protocol's entry into force for Australia, the CEDAW Committee is now empowered to inquire into alleged grave or systematic violations of CEDAW by the Australian Government. Should the CEDAW Committee receive reliable information concerning alleged compounded or systemic forms of discrimination against women, for instance in relation to the failure of the Australian Government to address the significant disparity between men and women's financial security in retirement,<sup>50</sup> it can therefore initiate an inquiry into those alleged violations.

Australia is required under international human rights law to end discrimination against, and inequality of, women. Where Australia fails to prevent such discrimination and inequality, for example, through its failure to adopt measures to address systemic discrimination, it is obligated to take all appropriate measures to remedy those violations. Where, in the past, Australia failed to comply with its normative obligations, there was no means of redress available to women. With the Optional Protocol's entry into force for Australia, victims can now seek recourse to the CEDAW Committee for violations of their CEDAW rights. Yet, rather than viewing the Optional Protocol as a panacea to gaps in the protection and promotion of women's rights to non-discrimination and equality, the Australian Government should take advantage of this critical juncture in the advancement of women's rights to strengthen its national laws, policies and practices so that it is not necessary for women to seek recourse to this instrument.

### Moving the equality debate forward in Australia

The year 2008 was an important year for the advancement of women's rights in Australia. However, if all forms of discrimination against women are to be eliminated and substantive equality is to be achieved, the Australian Government must adopt a new vision for equality that prioritises the elimination of compounded and systemic forms of discrimination. Reforming the SDA and undertaking an inquiry into the merits of a national *Equality Act* are important steps towards this new vision. Together with the entry into force of the Optional Protocol, these measures will help to 'ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men'<sup>51</sup>.



SIMONE CUSACK is Public Interest Lawyer at the Public Interest Law Clearing House (Vic) Inc.

Since writing this article, the Rudd government has announced the introduction of publicly-funded maternity leave, but not paternity leave.

50. See generally AHRC, *Australia's Future Tax System (Retirement Income System)*, Submission to the Review Panel (2009).

51. CEDAW, above n 1, art 3.

© 2009 Simone Cusack

email: [simone\\_cusack@yahoo.com](mailto:simone_cusack@yahoo.com)