


Landmarks and Pitfalls

by Lilian Mercado Carreon



At 3 a.m. on 10 December 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights, which stands to this day as the most widely recognised statement of the rights to which every human being is entitled. The person credited for having the biggest role in shaping the Declaration and unrelentlessly pressing the UN to pass it was Eleanor Roosevelt, then chair of the Commission on Human Rights and a woman.

In the years following the Universal Declaration, the UN adopted the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Later, developing nations championed collective or group rights in the UN. But because these rights challenge the western, liberal model of individual rights that can be invoked against the state, the international mainstream human rights community had been cautious in accepting "peoples" rights.

These human rights conventions, however comprehensive they seem, are criticised for their generic rather than gender specific approach to human rights and for contributing little to the

articulation of specific rights issues affecting women. For example, the International Covenant on Civil and Political Rights set out the standards for the treatment of prisoners. But up until 1985, rape was not torture. Only in 1998 did an international court pronounce rape committed while in the custody of authorities as torture.

It took more than 13 years, from 1966 when the Covenants were first adopted to 1979 during the Women's Convention, before women's human rights obtained international legal regulation. Even then, huge gaps in the recognition and protection of women's human rights remained and half a century since the adoption of the Universal Declaration, women still do not fully and equally enjoy the freedoms and rights that they are supposedly entitled to because they, like men, are human.

CRITIQUE OF RIGHTS

The formulation of human rights for women's is a crucial first step in improving the position of women. Because most women are in a disadvantaged position, women's acquisition of human rights is an important tactic in the international arena because it offers a

Some Landmark Developments

In 1977, two protocols were added to the Geneva Conventions to include rape, enforced prostitution and any form of indecent assault as “outrages upon personal dignity.”

In 1992, the Committee on the Elimination of all Forms of Discrimination against Women described gender-based violence as a form of discrimination against women.

In 1992, the Declaration on Violence against Women was passed. This is a valuable development in women’s international human rights law because it made violence against women (VAW) as an international issue. However, the Declaration does not clearly present VAW as a general human rights concern but appears as a discrete and special issue rather than an abuse of the right to life or equality.

In 1993, the UN unequivocally stated that women’s rights were human rights. The declaration of the UN World Conference on Human Rights held in Vienna in 1993 states: “the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights.”

In December 1993, following the Vienna Conference, the UN adopted the Declaration on the Elimination of Violence against Women.

In 1994, the UN Commission on Human Rights appointed a Special Rapporteur on Violence against Women.

The indictments before the **International Criminal Tribunal for the former Yugoslavia** defined sexual violence as a form of torture and inhuman punishment. In the trials on the crimes against humanity committed in Rwanda rape was looked at as a crime against humanity and sexual violence was clearly linked with forced impregnation and genocide.

In 1998, the International Criminal Court (ICC) included in the list of war crimes all forms of sexual violence. However, even if a court is ready to try sexual violence cases, prosecution remains difficult because cultural factors such as shame and retribution are major obstacles for women to overcome. Moreover, the inadequacy of witness protection programs discourages witnesses to come forward.

recognised vocabulary to frame political and social wrongs. This is on the one hand.

ESSENTIALISM

On the other, women have found it difficult to translate women’s experiences into the narrow language of international human rights law. Women generally live their lives in situations where the power relations that define their domination are absolutely complex. In contrast to this reality, human rights conventions assume that all women have similar attributes and experiences and often ignore the impact of class, race, wealth, and sexual preference. This weakness derives from the nature of international law, which necessarily has to

concern itself with transnational standards applicable in a vast range of circumstances. Often, women find that the disparity is great between universal standards and local experiences.

Critics also say that western values and structures generally inform international human rights law. In this sense, it had been a medium for the western distinction to be exported from the developed to the developing world and gave rise to the tendency to replicate reforms imposed by colonial administrators that often weakened the position of women in colonial societies.

COMPETING RIGHTS

Radhika Coomaraswamy, the UN Special Rapporteur on

Violence against Women, wrote that human rights discourse is weakened by competition from traditional sources of empowerment. Individual women’s human rights come up against the ideology of ethnicity, culture, and tradition. Ethnic, class, and nationalist struggles have strengthened this assertion that has resonated as well in international official conferences. One such conference was the meeting in Indonesia in 1994 to prepare for the Fourth World Conference on Women in Beijing the following year. The preparatory conference issued the Jakarta Declaration supporting the “national competence of all countries to formulate, adopt and implement their respective policies on the advancement of women, *mindful of their cultures, values and traditions, as well as their social, economic and political conditions.*”

Such a statement in effect provides individual states with a justification for failing to uphold women’s human rights. To this, feminists respond by asking why women’s human rights should be relegated to the choice of individual states and not ensured by the international community. Distinguishing between what falls in the purview of states and that of the international community is just like drawing a line between the private and the public spheres, only in a bigger scale.

PRIVATE AND PUBLIC DICHOTOMY

But nowhere do women’s right come into greater conflict than with the ideology of the home and family, which in Asia remains supreme even among women. This ideology interprets the basic human right to

privacy as protection for the family and declares this major site of women's oppression free from scrutiny. Celina Romany, in the "State Responsibility Goes Private," identifies love and intimacy as the border guards that place the family unit beyond justice. The private is so sacredly held that only in 1992 did the Committee on the Elimination of all forms of Discrimination against Women describe gender-based violence as a form of discrimination against women.

The delay in the international recognition shows just how much the private sphere is protected and feminists have criticised the human rights framework for upholding civil and political rights in public life but failing to protect women's rights in the private sphere of familial relationships. The dichotomy ignores the political character of power unequally distributed in family life and therefore the political nature of private life. Because it is ignored, there is lack of regulation over the private sphere. The lack of regulation implies that women are not enough to merit legal regulation. The lack of regulation devalues women and their functions. The lack of regulation does not mean neutrality. On the contrary, the lack of regulation reinforces the bias against women in the balance between competing rights.

The dichotomy turns a blind eye to the ways in which the public political realm, where the state reserves the right to intervene, creates and defines the private domestic arena. State laws on "public" concerns such as the economy, employment, taxation, social

Women and Human Rights

Right to life and dignity: The right to life and dignity is considered as central and therefore the most important right. Feminists say that if laws are reformed to give way to the holistic application of this right, it will be a move away from simple non-discrimination into the more empowering framework of human dignity for women. However, this right does not address how being a woman is in itself life threatening and the special ways in which women need legal protection.

Right to liberty and security: This refers only to direct state actions that impinge or violate this right. It does not address fear of sexual violence.

Right to freedom of expression: This has been interpreted in some national contexts as including the right to make, distribute and use pornography, which contributes directly to the level of violence against women.

Right to privacy: This has been interpreted as protecting from scrutiny the home and the family, the major sites of women's oppression

The Covenant on Economic, Social and Cultural Rights: The implementation of these rights is weakened by their controversial nature. Moreover, the notion of cultural or religious rights often reinforces a distinction between the public and the private that operates to the disadvantage of women. Culture and religion can be seen as protected from legal regulation even though they allow women's oppression.

Right to development: This right is defined and implemented in such a way that it supports male economic dominance.

Right to self-determination: This right has been invoked to allow the suppression of women. The oppression of women within groups claiming self-determination has not been considered relevant to the validity of the claim or to the form that self-determination should take. Moreover, many documented cases show that movements fighting for self-determination subordinate women through a particular definition of their role and place in society and enforce conformity to values that are often male-defined.

security, and crime impact on how power relations are played out in the private sphere by reinforcing the heterosexual, male-headed kind of family unit and the division of labour in it. Finally, the private/public dichotomy obscures the psychological and practical barriers that the social division of labour imposes on women and has historically contributed to the general condoning of abuse of women in the family.

Although women have won hard-earned victories in blurring the divide between the

private and the public spheres, the world's body of laws does not automatically respond to such changes. In fact, despite women's long years of struggle and documentation to irrefutably show how domestic violence violates the basic right to life and dignity, Special Rapporteur Coomaraswamy said that international legal doctrines on domestic violence, along with rape and trafficking, has developed only in the last five years. Explaining further, Coomaraswamy said courts have yet to fully use the language and doctrine of

women's human rights and this is why women need to link cases of violence against women with the law and to push for the criminalisation of these acts.

PRESERVING THE ANDROCENTRIC ORDER

But other feminists argue that focusing human rights discourse on the law has worked to preserve the place of law in the hierarchy of male structure. "The dispensation of fairness in the human rights world," wrote Romany in the same article, "is modelled after the abstract construction of women. This construction was imposed upon women by their forefathers ... the main actors in those revolutionary struggles that aimed to democratise and restore respect for their inner worth and dignity of human beings, [but] saw the world through the lens of privileged patriarchy." Many more have written on the overlaps and mutual resonance between the construction of laws and the construction of masculinity.

At the core of all human rights is equality, which is understood in different ways. Equality can mean equal access to empowerment or, as some societies choose to interpret it, separate but equal legal doctrines for the private and the public spheres. International human rights laws stress on non-discrimination and rely on what can be "factually ascertained" violations through empirical data and actual case studies. But the conditions of women, embedded in cultural and social traditions, do not lend themselves easily to fact-finding mechanisms and complaints procedures developed in the human rights

arena. To confine women's rights to the law is to limit these to the state, both of which—law and state—continues to be male-centred and dominated. Also, women's subjugation to the state is

EQUALITY WILL ONLY BE ACHIEVED IF IT IS UNDERSTOOD AS THE OPPOSITE OF PATRIARCHY AND ITS ATTAINMENT LINKED TO RADICAL SOCIAL TRANSFORMATION.

mediated through direct subjugation to individual men or groups of men.

Some feminists say that the international prohibition on sex discrimination promises equality to women who attempt to conform to a male world but offer little to those who do not. The fundamental problem of women is not discrimination, which is but a manifestation of a deeper problem. The real problem is that a gender classification and bias infect every aspect of life and women lack of real power both in public and private spheres. Therefore, equality will only be achieved if it is understood as the opposite of patriarchy and its attainment linked to radical social transformation. Rather than freedom to be treated without regard to sex, the law should support freedom from systematic subordination because of sex. This will address traditionally legally unrecognised harms of particular concern to women such

as sexual harassment and pornography.

Despite the critique, women agree that it is not the discourse on human rights per se that is the problem but the narrow universe of international legal order that does not acknowledge gender disparities of power. Feminists recognise that the challenge is to invest the language of human rights with meanings that undermine the current skewed distribution of economic, social, and political power.

Women's human rights are critical in improving the status of women. But getting the legal theory correct is no assurance that legal practice will follow. The path of legal reform is slippery and treacherous and political action at the micro-political level makes a big difference. ↻

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Lilian Mercado Carreon is the manager of the Communication Program of Isis International-Manila.