

USALI Perspectives

The Future of CEDAW

Some thoughts from a new CEDAW Committee member

By [Rangita de Silva de Alwis](#)
Published March 7, 2023

Editor's note: This essay is a condensed version of remarks delivered at a conference, Promoting Women's Rights in Asia & Globally, held by the U.S.-Asia Law Institute on Oct. 21, 2022 at NYU School of Law. We publish it to mark International Women's Day on March 8.

I have been asked today to envision some future directions for developing the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). I will discuss three developments that I hope to see: the US ratifying CEDAW, the Committee on the Elimination of Discrimination against Women opening an inquiry procedure into Afghanistan's denial of

education rights for women and girls, and the committee addressing newly emerging forms of gender stereotyping.

US Ratification

The late human rights scholar Louis Henkin famously [wrote](#):

*In the cathedral of human rights,
the United States is more like a flying*

buttress than a pillar - choosing to stand outside the international structure supporting the international human rights system, but without being willing to subject its own conduct to the scrutiny of that system.

America is one of only a handful of countries that has yet to ratify CEDAW, rendering it “strange bedfellows” with Sudan, Somalia, Iran, Tonga, and Palau. Twenty years ago, Harold Koh made a [clear foreign policy case](#) for ratification. I argue that a new moment of public reckoning spawned by the Black Lives Matter and #MeToo movements makes US ratification of the CEDAW a domestic policy imperative. The CEDAW represents an important vehicle to address institutional and structural sexism through an intersectional lens. Ratifying the convention will give the Biden Administration significantly more legitimacy in its effort to stem the rollback of rights for women in the United States.

My data analysis of the state party reports to the CEDAW Committee from 2016 to 2020 reveals a significant focus by the committee on two issues that are central to the Biden Administration and to the United States’ national security and foreign policy in general: intersectionality and gender-based violence. In every concluding observation across this five-year period (during which 107 countries reported to

the CEDAW Committee), the CEDAW Committee addressed intersectionality and gender-based violence 100 percent of the time.

An Inquiry in Afghanistan

In countries that have become states parties to the CEDAW Optional Protocol, the CEDAW Committee is authorized to initiate inquiries into serious and systematic abuses of women’s human rights. The committee should open an inquiry into Afghanistan’s denial of the right to education of women and girls.

Afghanistan is the only country in the world to [suspend women’s and girls’ access to education](#). In the 18 months since the second takeover of Afghanistan by the Taliban, the Taliban have issued more than 30 decrees that have resulted in a staggering diminution of the rights of women and girls. On March 27, 2022, the UN Security Council in a [press statement](#) called on the Taliban to “respect the right to education and adhere to their commitments to reopen schools for all female students without further delay.”

The [Report of the Special Rapporteur on the situation of human rights in Afghanistan](#), submitted to the High Commissioner for Human Rights on August 15, 2022, asserts “grave concern” about the regression in women’s and girls’ rights under the

Taliban. In the words of the special rapporteur, “In no other country have women and girls so disappeared from all spheres of public life, nor are they as disadvantaged in every aspect of their lives.”

The CEDAW Committee must condemn the denial of girls’ education as a tool of conflict and a tactic of war. While [conflict-related sexual violence](#) is not, strictly speaking, a legal term, it is a term of art that has developed into an understanding that conflict-related sexual violence happens both in and outside conflict. I argue that the deliberate denial of education for a targeted population as a widespread and systemic attack on a group can rise to the level of a tactic of conflict.

Moreover, defining denial of education for women and girls as a structural form of violence will help to challenge the orthodoxy of [UN Security Council Resolution 1325’s](#) focus on women’s bodies. Woman’s minds are battlegrounds as well and the Women, Peace, and Security Agenda initiated by Resolution 1325 must focus not only on the protection of women’s bodies but also on the protection of women’s educational and intellectual advancement and the empowerment of women’s minds. Rising inequality, attacks on women’s and girls’ education, reduced civic space, and the trafficking in small arms and light weapons are interconnected.

Newly Emerging Stereotypes

General recommendations are authoritative statements on the meaning of provisions in the **CEDAW** with respect to the rights of women and the obligations of states. They become part of the CEDAW’s international normative framework. The CEDAW Committee has decided to draft General Recommendation 41 on the subject of gender stereotypes. Two emerging stereotype threats demand a critical examination in the new general recommendation.

Frances Raday, a former CEDAW Committee member, has argued that one of the most globally pervasive harmful cultural practices is “the stereotyping of women exclusively as mothers and housewives in a way that limits their opportunity to participate in public life, whether political or economic.” As Raday rightly stated, the assumption that women are the primary or sole caregivers of children is often used to exclude women from the public sphere, especially with regard to political life, promotions, and high-profile employment opportunities.

However, a new generation of stereotypes has moved away from overt and explicit forms of stereotypes such as motherhood to more subtle and insidious forms of bias that are almost invisible. The daily indignities, slights, and exclusions based on gender, race,

ethnicity, class, caste, color, sexual identity, non-binary gender, religion, disability, appearance, care-giving status, age, urban/ rural divide, and migrant status can deliberately exclude women while reproducing and amplifying second-generation forms of biases that reinforce women's pervasive under-representation in all areas of life and work. These biases are less often expressed in overt attacks or conscious hostility and can be hard to fight. These biases are powerful because they are so woven into the very fabric of our lives that they can appear to be the natural order of things.

Algorithmic bias is another new source of inequity. The CEDAW's core articles can play a role in combating bias in artificial intelligence (AI). The new general recommendation on stereotypes must seek to understand whether and how gender and intersectional bias, including implicit and unconscious biases, are baked into technological designs and algorithms. Currently, there is gender and intersectional asymmetry in the AI workforce. Those designing, coding, engineering, and programming AI technologies do not represent a diverse demographic.

A theoretical exploration of coded bias must include the human rights framework, gender equality theory, post-colonial theory, and critical information theory, and explore subtle barriers to equality that bleed into the

design of AI technologies. Working together with tech leaders, designers, developers, programmers, philosophers, and technologists, the general recommendation must address the ways in which stereotypes are embedded and normalized into systems, structures, and institutions as coded bias.

Martha Minow, the 300th anniversary university professor of Harvard University and one of the most important scholars of anti-discrimination theory, recently wrote:

“Algorithmic practices trigger at least four related equality concerns: 1) the choice of contrasting definitions of equality and antidiscrimination is not only contested but also inevitable because multiple definitions cannot be accommodated or fulfilled by algorithmic designs; 2) in both design and results of the algorithmic practices, navigating legal and ethical norms against explicit or implicit uses of certain personal characteristics associated with historic discrimination, 3) inaccuracies and biases in the data and algorithmic practices inevitably reflect the values, perspectives, and interests of designers and decision-makers whose judgments are shielded from legal and political accountability; and 4) the displacement of alternative approaches to a problem by a technical solution that risks obscuring rather than tackling biases and patterns of

inequality already produced by human beings.”

CEDAW’s approaches on substantive equality, specifically in Article 4, provide guidance for potential resolutions of each of these issues. Substantive equality, as opposed to formal equality, is a fundamental concept in the CEDAW that requires proactive and positive temporary special measures to be taken to address a legacy

of historic discrimination. Whereas formal equality models disavow policies that aim to redress imbalances on a systemic level, a substantive model of equality envisions an intersectional approach that takes into account systemic barriers. In the final analysis, we must measure the success of AI systems based on the model of CEDAW’s substantive equality as a way to mitigate the risks of AI.



Rangita de Silva de Alwis is a member of the Committee on the Elimination of Discrimination against Women, associate dean of international affairs at the University of Pennsylvania Law School, and an adjunct professor of public policy at the Harvard Kennedy School of Government.

Suggested Citation:

Rangita de Silva de Alwis, “The Future of CEDAW,” in *USALI Perspectives*, 3, No. 19, March 7, 2023, <https://usali.org/usali-perspectives-blog/the-future-of-cedaw>.

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