

Domestication of CEDAW in Pakistan – Challenges and Way Forward

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Backdrop

Pakistan acceded to the United Nations' Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in February 1996,¹ as a result of a consultative process between the government, the civil society, the legal fraternity and the religious scholars of that time. The Convention was signed with a declaration and a reservation though.² While the Declaration was a word of caution that the Government of Pakistan's accession to CEDAW would be subject to the provisions of the Constitution of Pakistan, the Reservation on the other hand declared that the Government of Pakistan did not consider itself bound by paragraph 1 of Article 29 of the Convention. Article 29 (1) relates to "any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration". This option is given to the State Parties under the same Article (29) clause (2), which a State Party may avail at the time of signature, ratification, or accession. Interestingly, the Government of India, which acceded to CEDAW in 1993,³ has also its reservation on exactly the same provision of CEDAW.⁴ Reservation on the same Article by the two neighboring countries is, perhaps, in consideration to the longtime dispute with each other on Kashmir including human rights atrocities being committed in the Indian held Kashmir that include violence against women, and the fact that the issues between the two countries are generally confined to the Security Council. Regarding its Reservation, Pakistan, however, argued that this was "in line with Pakistan's general position on the jurisdiction of the International Court of Justice".⁵ The Declaration by Pakistan, on the other hand, was given as a result of the consultation with the religious scholars and some segments of the legal fraternity who, at the time, had strongly recommended the Government to ensure that the ideological basis of Pakistan as an Islamic State are not compromised as specifically highlighted through the Objectives Resolution given in its Preamble. Hence, Pakistan argued in this regard that this Declaration had in fact "facilitated Pakistan to accede to the Convention", and was indicative of Pakistan's legal position on the matter.⁶ It was

¹ UN Treaty Collection. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en

² <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>

³ UN Treaty Collection. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en

⁴ <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>

⁵ Pakistan's Initial, First, Second, and Third Combined Report on CEDAW. P. 8

⁶ Ibid

further argued that the Constitution of Pakistan, while in its making had thoroughly consulted all international human rights standards and conventions that were reflected in its provisions and therefore, the Declaration was in no way contrary to the Convention.⁷ Out of the so far 185 States Parties, Pakistan was 174th state signatory. Ministry of Women Development is the designated national focal machinery to monitor the implementation of CEDAW in Pakistan.

Role and Mandate of Ministry of Women Development (MoWD)

The Ministry of Women Development as a national focal ministry for the advancement of women is mandated to play the role of an advocate, a catalyst, lobbyist, planner, coordinator and monitor of advancing women rights and empowerment.⁸ Its main responsibilities, therefore, include reviewing and proposing processes as well as driving the agenda for the integration of women's special needs and concerns in all pieces of legislation, public policies and program documents of all government ministries and departments.⁹ The Mission Statement of the MoWD is *"to bring a positive change in the lives of about 80 million Pakistani Women and Girls in order to accord them a status they deserve in conformity with the teachings of Islam and the Constitution of the Islamic Republic of Pakistan."*¹⁰

Subsequently, MoWD is also responsible for maintaining all international and regional Commitments along with all the UN Conventions that promote women's rights and empowerment. Hence, developing a CEDAW implementation and tracking mechanism along with writing the CEDAW country report and follow ups on the Concluding Observations of the UN CEDAW Expert Committee fall within its purview.¹¹

In line with the Constitution, and specifically since its accession to the CEDAW in 1996, Pakistan demonstrated its political will to implement international commitments to women's human rights and empowerment. It expediently adopted a number of national instruments including National Plan of Action (NPA) for women (1998)¹² that determined a set of priority actions for achieving the women empowerment agenda and also established the basis of National Policy for Development and Empowerment of Women (NPDEW) (2002) that focuses on the Social, Economic and Political

⁷ Ibid

⁸ <http://www.mowd.gov.pk/about.html> & National Plan Of Action (NPA) for Women, Ministry of Women Development, September 1998. pg. iv

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² Conceptualization of NPA was already in process since 1996. This was in-line with the Constitution of Pakistan.

empowerment of women, and included various programs and projects like the Gender Reform Action Plan (GRAP) on the advancement of women and promotion of gender equality, Pakistan's Poverty Reduction Strategy Paper (PRSP), Mid Term Development Framework, the Vision 2030 etc, as well as through following reporting requirements under CEDAW, Beijing Platform for Action, Millennium Development Goals and other international documents.

Despite some of the above mentioned measures and affirmative actions, the MoWD's capacity to provide a leadership role on women's empowerment and gender equality in Pakistan is very limited. There are major challenges that MoWD is beset with. It not only lacks authority within the public sector but is also deficient in the required expertise, and is under-resourced in terms of both human and financial resources and can barely fulfill its given mandate.¹³ This is mainly on account of the misperception and lack of understanding of the Ministry's potential to advance the gender equality agenda. The ministry is also never a part of important development planning and decision making for such as the CDWP and ECNEC. Monitoring and coordinating CEDAW implementation and its follow-ups have also been affected on account of the lack of resources. The ministry, therefore, needs to revisit and focus on its mandate and assume a stronger role and position in order to assert itself. It must lobby for a greater share in the annual budget which should be sufficient to meet its requirements. The ministry needs to effectively capitalize on capacity building opportunities available to enhance its human and organizational resource base.

Coordinating CEDAW implementation and writing the country periodic report are tasks assigned to the CEDAW Unit - a project of MoWD since 2004.¹⁴ It is imperative that being essential and key to the mandate of the ministry, the project must be fully integrated and institutionalized within the functioning of the Ministry. It may be worth mentioning here that the MoWD CEDAW Unit assumed its due role despite capacity issues and demonstrated a stronger commitment and adopted some unprecedented commendable measures in establishing and institutionalizing processes in CEDAW reporting. The fourth periodic country report was constructed by strictly following CEDAW guidelines and ensuring a participatory and consultative process between the stakeholders including the civil society and the government. Matrices were developed to seek and solicit information during the process. Besides, based on the last Concluding Comments of the UN CEDAW Expert Committee, a CEDAW National Action Plan is also being developed.

CEDAW Implementation and Tracking Mechanism – Challenges and Way Forward

¹³ Baseline report by GTZ Capacity Building of MoWD Project 2006

¹⁴ Pakistan and The CEDAW. Government of Pakistan. Ministry of Women Development. (Fact Sheet)

CEDAW being a unique and comprehensive treaty on gender equality and women rights integrates civil and political rights with economic, social and cultural rights. It recognizes the role of culture and tradition as a major impediment in allowing women to enjoy their rights and provides the principal framework for addressing their rights in international law. Through its substantive equality approach, the Convention places an obligation on the State Parties to develop an “enabling environment” to facilitate women to fully access and enjoy the rights set out in this Convention.¹⁵

By addressing “all forms of discrimination against women”, CEDAW strengthens and supplements a wide range of international, regional and national instruments that offer protection against discrimination on the basis of sex, ethnicity, race, or disability etc. Women’s protection against discrimination embedded in CEDAW and other international instruments are given domestic effect through a range of constitutional and statutory regulations that in turn are safeguarded by different judicial and administrative complaint mechanisms. The way in which the gender equality and non-discrimination principle is transformed into national law has implications for its content and outreach. In practice there are great variations as to how the gender equality principle figures in existing national hierarchies of legal principles and sources.

In Pakistan, like most of its regional counterparts, to honor its national and international commitments around gender equality and women empowerment by implementing CEDAW and the struggle of the civil society in this regard, has remain a challenging task. With the given mind sets, lack of understanding of the roles and responsibilities of the stakeholders in CEDAW implementation, and above all, the lack of awareness and understanding of the provisions of the Convention remain a major impediment in moving forward. Developing a national action plan on CEDAW¹⁶, which Pakistan is already currently in process of doing, would make a difference but not really enough. Given the strong ideological basis of Pakistan, CEDAW would have to be linked with the Islamic injunctions and widely disseminated accordingly in order to have a greater buy-in and acceptability with the masses. This could be an effective tool to initiate a change in the mindsets.

Ministry of Women Development (MoWD): Despite the fact that Pakistan is currently at the stage of submitting its fourth periodic country report, CEDAW implementation and tracking mechanism is still weak despite all these years. The ministry has generally remained confined to the country reporting as a fixed term project as opposed to retaining it as an ongoing activity for advocacy and monitoring CEDAW implementation and reporting. Awareness and familiarity about the Convention even with key stakeholders has not been enough, as a result of which fewer members of the

¹⁵ CEDAW Articles 2 & 3

¹⁶ The draft National Action Plan by MoWD; it focuses on the UN Expert Committee’s Concluding Observations on Pakistan’s combined initial, 1st, 2nd & 3rd Country Report.

society both as a common citizen as well as at policy making level have yet to know and understand CEDAW. Even the Gender Reform Action Plan (GRAP) (2004-2009)¹⁷ that was an outcome of Pakistan's accession to CEDAW,¹⁸ and envisioned setting out Key Reforms and Supporting Reforms within public sector, public policies area, gender budgeting and legislative actions towards women rights and empowerment and to undertake related capacity building interventions¹⁹ has yet to systematically familiarize the key stakeholders within the public sector about CEDAW. The orientation and awareness about CEDAW and entailing state obligations and respective responsibilities within the public sector is still very low. Even the gender focal persons within the key line ministries have yet to comprehend the gender concepts and are still unaware about CEDAW. In the presence of the National Women Machinery (MoWD), the key line ministries seem to have become oblivious of their respective share in complying with CEDAW and, hence, everything in respect to women issues is left up to the under-resourced MoWD. A strong visionary leadership is required for MoWD to strengthen and reorganize it and to help position it within the public sector. In addition, the national and provincial GRAPs and the MoWD '*CEDAW Implementation and Follow-up*' Project must combine their resources and expertise and synthesize their work in familiarizing the public sector including all the three organs of the government about CEDAW and the respective roles and responsibilities towards state obligations on CEDAW. Sensitization and training initiatives should target the government administration as well as civil society to encourage real lobbying and advocacy agenda around CEDAW and resource allocations in the budget for the purpose. An institutional framework should also be put in place to ensure more efficient monitoring and coordination of Gender Responsive Budgeting processes.

Key Line Ministries: The key line Ministries being the main implementing agencies of gender sensitive policies, plans and programs need to be sensitized and capacitated in order to mainstream gender. Aggressive policies to mainstream gender perspectives in all Government projects, institutions etc should be introduced; Given the apathetic approach towards gender issues by the line ministries, it is pertinent to enhance their skills around gender mainstreaming and provide them with tools and checklists to facilitate their work in this regard. Introduction of incentives and sanctions on non-compliance may also be productive. Besides, gender indicators for monitoring in line with specific situation in each sector Ministry could also be introduced.

Planning Commission: Although attempts have been made to mainstream gender in development strategies and pieces of legislation passed to protect and empower women in line with CEDAW obligations, few track how effective the policies, projects and programs are impacting. The mechanisms used to monitor and evaluate development programs, projects and policies are often weak and are gender blind and so is the PC-I

¹⁷ National GRAP is currently operational on no cost extension till June 2010

¹⁸ National GRAP document. Chapter 1

¹⁹ Ibid. Scope of GRAP. P. 10 - 11

that is a public sector Project Document Performa of the Planning Commission. The differential impacts of strategies on women and men can only be identified if PC-I Performa and the given M & E mechanisms are improved and made gender sensitive. This would enable crucial adjustment of programs and policies to fit and respond to gender issues and needs in a more comprehensive manner.

A “mainstreaming” mechanism for the integration of gender in sector policies, strategies and budgets should be put in place in close coordination with Ministry of Women Development.

Statistics and Data: One of the major issues impeding the advancement of women’s rights is the absence of any consolidated authentic data that could help assess and analyze various aspects and the state of women and men in terms of any discrimination in any area. While, the CEDAW reporting process offers governments an excellent opportunity to synthesize available gender- related data, and to use that data to measure advancements in the status of women, and to identify and fill data gaps, the need to authenticate that data and to develop an authentic data base is vital and cannot be undermined at all.

As the main responsible agency to generate national statistics, the role of the Federal Bureau of Statistics (FBS) remains crucial in conducting surveys, censuses, routine data collection and storage etc.²⁰ It is imperative that entire system and mechanism for tracking and producing data be gender responsive and should produce a gender disaggregated data in all areas. A standardized engendered data collection mechanism should be developed that could be reviewed periodically in order to evolve a strong mechanism in this regard. Following thus, a monitoring of progress by regularly reporting on and assessing results needs to be strengthened. Government needs to develop a system of providing coherent, comparable, timely sex-disaggregated data to monitor implementation of the National Gender Policy; data should also be disaggregated by other background variables. Gender responsive data analysts need to be trained for the purpose who could bring out gender sensitive reports and undertake specific surveys on key gender issues in the country. The FBS must also coordinate gender statistical activities among the line Ministries;

Parliament: Parliament plays both a legislative and oversight role in the formulation and implementation of government policies, strategies and programs through the parliamentary committees. The Standing Committees of the Parliament could play a

²⁰ Federal Bureau of Statistics (FBS) is an attached department of Statistics Division, and is Pakistan's official statistical organization. It assists and encourages informed decision-making, research and discussion within governments and the community, by providing a high quality, objective and responsive national statistical service. FBS compiles statistics from many sources and produces global updates, including the Statistical Yearbook , Pakistan Statistics Handbook and yearbooks in specialized fields of statistics. For further information, Pl refer to: <http://www.statpak.gov.pk/depts/index.html>

significant role in ensuring that the respective ministries integrate gender mainstreaming within their respective work in compliance with the national and international commitments of the Government including the CEDAW. The parliamentary committees in Pakistan are empowered to hold line Ministries accountable and hence they can hold the ministries for not reaching gender policy targets etc. For this, it would be extremely significant for the parliamentarians to be trained and sensitized along with their respective parliamentary support staff who could produce or commission the production of simplified independent analytical reports. Collaboration between NGOs and parliamentarians must be strengthened in the collection and dissemination of gender sensitive analytical reports. Parliamentary Women's Caucus can also play a significant role in this regard.

Women in Policy and Decision Making: Despite the existing quotas and laws favoring women's equal opportunities at the policy and decision making levels, the visibility of women remains low in the higher echelons where the decision making and policy making is undertaken. Girls and women are only largely visible at the 'foot-soldier' or middle level, but they are missing after a certain level of positions. This is where the glass ceiling and glass walls appear if seen closely and are a cause of alarm and concern. This calls for some very serious and practical measures it seems. Some of the suggestions in this regard that may help enhance women's participation in decision-making and leadership positions, could include provision of leadership and self-esteem training; developing transparent criteria for selection in decision-making positions; ensuring that job selecting bodies in the civil service have a gender balanced as well as gender sensitive composition; and providing gender-sensitive training to senior civil servants responsible for recruitment of senior public officials.

The term "discrimination" needs to be defined and positioned in some strong national legal instrument, as is also required by the CEDAW so as to have a clear cut defined lines to guide through anyone.

Violence against Women: Gender based violence and human rights abuse of women is inextricably linked. In most societies, cases of domestic violence are largely regarded as a private issue and relevant statistics are often lacking. Even in cases where statistics exist, they are often underrepresented. Victims of violence are often socially stigmatized and so many cases go unreported. Pakistani society is no exception in this regard. Violence against women, domestic violence and gender based violence are all visible and deep rooted. A major impediment in overcoming this issue is the existing mindsets deeply embedded within the society that need to be out-rooted and changed strategically. Education and media, particularly the electronic media, could be powerful tools to combat the deep rooted menace of our society. It would, therefore, be imperative to sensitize and raise public awareness on the dangers of such violence; provide services and support for victims of gender violence including trafficking. Mass public awareness would require sensitizing the clergy as well that could also play a very positive and effective role in influencing the mindsets along with

the sensitization of the members of the law enforcement agencies, legal and judicial fraternity, and the educationalists.

Women's Human Rights: Violations of various forms of women's human rights is a global issue. These violations are peculiar to societies and ensue from discriminatory traditions and customs that relegate women to secondary status in a society and are also strongly related to women's income, poverty, lack of access to education, health care, and inheritance etc. Besides, violation of women's human rights also includes lack of/prevention of information and awareness among women on their rights as well as lack of gender-disaggregated statistics that demonstrate trends in women's human rights violations, and women's access to justice. A comprehensive approach in promoting women's human rights is required together by the government and the civil society as a joint venture, with obvious support from the media, the legal and judicial fraternity. Similarly, all national legal instruments should essentially be brought in line with the Constitutional protection against discrimination and ensuring coherence with international commitments like CEDAW.

Donor Agencies: Given the resource constraints with governments and particularly with Pakistan, the donor community would need to support the government, which it already is doing. Almost all major projects and programs of the government around women rights and their empowerment are supported by the bilateral and other UN and international donor agencies. Despite existence of interagency networks like INGAD, there seems to be overstepping and lack of understanding of perspectives on projects in this regard.²¹ Following the Paris Declaration and Aid Effectiveness in its true spirit and working in close coordination with each other must be ensured by the donor community. Donors also need to harmonize their activities in support for gender equality.²² Key central ministries and gender experts should participate in the donor harmonization group. Development partners should make gender equality a cross-cutting theme in all sectors and levels of development aid; to achieve this, training and tools are needed. The Ministry of Finance and Economic Affairs Division in collaboration with the MoWD and the Planning Commission should develop accountability mechanisms between government and development partners that will ensure that budgeting and financing procedures are gender-responsive.

Conclusion

An effective CEDAW implementation would require CEDAW domestication, which means that CEDAW has to be widely disseminated within the Pakistani society

²¹ Themrise Khan. Gender Equality and Aid Effectiveness in Pakistan – A Mapping and Situational Analysis. A report commissioned by Interagency Gender and Development Group (INGAD). August 2008.

²² Ibid

through various strategies and via-medias with complete coordination. In the light of the afore-mentioned issues in implementing and domesticating CEDAW within the policy and legal frameworks along with the proposed options, it could, nevertheless, easily be inferred that a strong political will at the leadership and policy making level would have to be the underpinning factor in achieving the required goals and targets. The efforts would have to be joint, well coordinated and participatory to achieve optimum results. Working in bits and pieces or in isolation would keep taking everything in circles, as it has been in the past. The greater role of the civil society and the media in supporting the government and its working in this regard jointly could pave the way.