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"Vindicating the Rights of Women"

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The challenge

It is 10 years since the Beijing World Conference on Women and more than 25 since the inception of CEDAW, the principal international convention relating to discrimination against women. The jurisdictions we represent in the Pacific have committed to the international vision of the equal rights of women. Solid gains have been achieved, but the reality of women's lives in important respects lags behind the expectations expressed by the international community. We are not alone in this. In other regions the lag is greater. What is clear is that the notion that equality with men is a human right for women throws up particular challenges both in terms of the extent of the international obligations we accept and in terms of their reflection in domestic law. This is a topic which produces great uneasiness in all societies. It strains relations between nations, particularly between developed and less developed countries. Yet none of us can feel complacent. The manifestations of inequality may be different in our societies, but they are real enough.

We know that the extent and effect of violations of women's rights continue to be staggering. Female genital mutilation is widespread in certain parts of the world even though its implications for girls' health have been documented by the World Health Organisation (WHO).[2] Dowry violence and "honour" killings are a fact of life for many thousands of women: the National Crime Bureau of the Government of India reports up to 6,000 dowry deaths annually.[3] Conflict in Rwanda, the Democratic Republic of Congo, Liberia and the former Yugoslavia has had horrendous effects on the lives of women, with rape being used systematically to destroy particular societies. The World Health Organisation reports that during childhood, girls are fed less, breastfed for shorter periods, taken to doctors less frequently, and die or are physically maimed by malnutrition at higher rates than boys. Women, mostly in rural areas, represent more than two-thirds of the world's illiterate adults. In employment, education and in

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2 See, for example, publications listed at: http://www.who.int/reproductive-health/pages_resources/listing_fgm.en.html (last accessed 25/07/05).

3 Carin Benninger-Budel and Anne-Laurence Lacroix, *Violence Against Women* (Geneva, World Organisation against Torture) 1999, 119-20.

income in all societies, women come in well behind men. The world is only slowly coming to address domestic violence against women,[4] from which no country is immune and in respect of which under-reporting means that we see only the tip of the iceberg. Despite increasing recognition that domestic violence is a main inhibitor to social development in our region, our laws and enforcement agencies have been slow to respond. In Vanuatu I understand that a specific strategy for identifying domestic violence as a separate offence has been announced. Such legislation is an important part of communicating the message that gender-based private violence is a public wrong. Some critics have called for recognition by international institutions of "private torture" as a category of violence against women. CEDAW itself does not refer to violence against women, but the Committee, by General Recommendation No 19, has identified violence against women as "a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men".

It would be misleading to point only to examples from war-torn or poverty-cursed countries. In my own country, the gap between formal equality under law and the reality continues. Dame Silvia Cartwright has compared gender-based violence in New Zealand to that in Islamic, Asian and African countries.[5] Her view is that:

> "Our culture acquiesces in such violence and only comparatively recently has our law begun to ensure that the clear public message is that violence against women is a crime, is unacceptable and will be punished."

The New Zealand government admits that "sexual violations which lead to conviction are estimated to represent as little as 5 percent of all violent sex offences in New Zealand". These are cultural inhibitors in my country to the achievement of equal protection of the law for women. Nor is there room for complacency about the economic position of New Zealand women. New Zealand's Pay and Employment Equity Unit has recently reported on changes to average earnings of women and men. It notes that the gap in earnings is closing only slowly: New Zealand women's median hourly earnings in 2004 were 87% of men's earnings, unchanged since 2003. Only five percent of the boards of New Zealand's top 100 companies are constituted by female members: an EEO Commissioner

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[4] Thus, the UN 1994 Declaration on the Elimination of Violence against Women condemns gender-based violence occurring privately as well as publicly. The Beijing Declaration and Plan for Action confirmed that domestic violence is a violation of the human rights of women.

[5] Silvia Cartwright, "Rights and Remedies : the Drafting of an Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women" (1998) 9 *Otago Law Review* 239.

described progress since 1995 (when the figure was just less than four percent) as "glacial".

The reality is that, 20 years since most of our jurisdictions ratified CEDAW, there remains a gap between the ideals expressed in the Covenant and what it is to be female. It is worth considering why this should be so, when the progress of the international community in terms of other recognised human rights has been less controversial and more steady. I want to suggest that progress under this Convention was bound to be slow. There is more ambivalence in the Convention expression of the rights of women, more reservations by States in their accession to this Convention, more scope for different translation of the rights by different societies, and more scope for clash in the interpretation of the content of such rights between different societies.

Should that be disheartening? I do not think so. The recognition of the equality of women as a human right by the international community is a huge advance. It establishes not a mere aspiration but the moral conviction that inequality between men and women is wrong. The paths to substantive equality may vary between different societies. The achievement may take some time. Eventually equality between men and women will come about because of the shared sense of morality that it is a human right. In that process, international statements of right and the work of international agencies will be very important. As critical, will be domestic laws and their application by domestic courts.

International obligations

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a very popular Convention. It has been acceded to by 180 member States. That popularity is something we should celebrate, because it demonstrates the depth of the moral sensibility that discrimination on the grounds of gender is a violation of the human rights of half the world. The fact that a specific Convention was necessary at all should give us some pause. After all, equality of men and women was a basic principle of the United Nations. The preamble of the Charter of the United Nations affirms:

> Faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.

By the terms of the Charter the member states are bound to promote and encourage respect for human rights and fundamental freedoms for all

without distinction as to sex. The Charter was followed by the Universal Declaration of Human Rights which identified sex as an impermissible ground of distinction and which proclaimed the entitlement of everyone to equality before the law and to the enjoyment of human rights and fundamental freedoms. Both of the great Covenants of 1966 (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) confirm that sex is an impermissible distinction in the enjoyment of equality and fundamental freedoms. Both bound acceding states to undertake to ensure that women and men have equal rights to the enjoyment of all the rights established.

These statements and their affirmation of the humanity and dignity of women proved inadequate. The Committee on the Status of Women sought to define and elaborate the more general rights for women. It led to the adoption of a number of treaties to protect and promote the rights of women in areas where they were particularly vulnerable: in relation to political rights, nationality of married women, and consent to and minimum ages for marriage. There was a feeling that this fragmented approach was unsatisfactory and that there was a need for an overall and comprehensive statement. Drafting of a single instrument to recognise the equality of women began in 1965. It led to a 1967 Declaration on the Elimination of Discrimination of Women being adopted by the General Assembly. Although not a Treaty binding on member states, the drafting of the Declaration threw up a number of difficulties, particularly in relation to equality in marriage and the family and equality in employment. Those difficulties were a pointer to future problems.

With the emergence in the 1960s of widespread consciousness of the disadvantages experienced by women in all communities, the Committee on the Status of Women in 1974 decided in principle to prepare a single internationally binding treaty dealing comprehensively with the elimination of discrimination against women. The project gained impetus from the World Conference to mark International Women's Year held in Mexico City in 1975. The Convention on the Elimination of All Forms of Discrimination Against Women was eventually adopted by the General Assembly in 1979. No votes were cast against it, but 10 states abstained. The Convention came into force after its ratification by 20 members on 3 September 1981, faster than any other human rights convention.

Despite this success, there are indications in the text of some ambivalence or perhaps compromise, particularly when the provisions of the Convention are contrasted with other human rights instruments proscribing discrimination. For example, Stopler[6] points to the difference between the language of CEDAW and the language of the International Convention on

[6] Gila Stopler, "Countenancing the Oppression of Women" (2003) 12 *Colum J Gender & L* 154, 168.

the Elimination of Racial Discrimination. The latter is unequivocal in its condemnation of racial discrimination:

> Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and there is no justification for racial discrimination, … Convinced that the existence of racial barriers is repugnant to the ideals of any human society …

By contrast, the strongest language in the CEDAW preamble stresses the unacceptable consequences of discrimination against women, rather than its inherent repugnancy:

> Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with in men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity …

Is it fanciful to see in this different treatment of the two forms of discrimination more ambivalence about discrimination against women, more readiness to see the appropriate response not as complete denunciation but as the encouragement of a process for change in which there is more scope for relativity of response according to the circumstances of different countries?

Although CEDAW was accepted with alacrity by the international community and remains the second most-acceded to United Nations convention, it is also the convention with the greatest number of reservations by acceding states. Cartwright says of this rate of reservation:[7]

> CEDAW's high ratification rate must be measured against the ease with which States enter and maintain impermissible reservations, and against its lack of an effective enforcement mechanism. It may even be the case that its approval rating reflects its general impotence rather than an acknowledgement that it contains universally accepted human rights.

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7 Cartwright, 240.

She points out that many reservations to key articles in CEDAW are made in the name of religious or traditional practices and that on occasions such reservations do not comply with the provisions of the reserving states' own constitutions. Again, such dissonance between constitutional texts and domestic laws and practices suggests that higher order statements remain aspirational for many communities.

CEDAW requires states to take measures to modify existing legislation, customs, practices, and social and cultural patterns of conduct that discriminate against women. This is a significant break with other conventions. CEDAW targets culture and tradition as forces which shape gender roles and discrimination against women. It affects family organisation by affirming the right of women to acquire, change or retain their nationality and the nationality of their children. It obliges states to take measures against "all forms of traffic in women and exploitation of prostitution of women". In addition to obliging states to eliminate discrimination against women in participation in public life, in economic and social life, in health and in employment and in marriage and family life, states are obliged to ensure that women have access to health care services "including those related to family planning" and to ensure that women have the same rights as men "to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights". These rights are controversial in many parts of the world.

Although written in terms of non-discrimination, CEDAW attaches to indirect discrimination as well as direct discrimination. That is made clear by the definition of discrimination 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 in the political, economic, social, cultural, civil or any other field.

The states parties to the Convention undertake to "ensure, through law and other appropriate means, the practical realization" of the principle of non-discrimination.

Stopler has noted, that the requirements that states modify legislative and cultural practices that discriminate are frequently the subject of reservations.[8] Often the reserving states say that they contradict domestic law. The result, in her view is that "those countries whose religious and

[8] At 169.

cultural practices are the most oppressive to women have no international obligation to changes these practices".

Discrimination based on race receives different treatment in this context as well. In the first place, there are few substantive reservations to ICERD – most relate to its dispute resolution provisions. In the second, none of the reservations are justified on the basis of religion or tradition. A third difference is that the process for challenging reservations is stronger. Unlike CEDAW, ICERD has a clear mechanism by which reservations can be declared incompatible with its object and purpose.[9] These differences too point to more ambivalence about discrimination against women.

There are other practical issues. The mechanisms that exist to encourage compliance with international human rights face a number of general difficulties, being rarely used, lacking political independence and being perceived as weak, but the compliance regime for the rights of women is less firm still. The Optional Protocol which permits individuals to bring complaints against states for violation of their rights has been adopted by comparatively few of the 180 states which have ratified the Convention. It has been in place for only five years. It may be that it is too early to assess its potential impact, but the opportunity was not taken with this Convention, as it has been with the International Convention on the Elimination of Racial Discrimination or under the Convention against Torture, to permit the Committee to receive and consider communication from individuals or groups.

Reporting by ratifying states has been subject to significant delays in many cases. That hampers the CEDAW Committee's ability to assess and report on progress. It is fair to acknowledge that reporting itself is a major undertaking. Because the scope of the Convention is necessarily so wide (covering as it must all aspects of the social, cultural and legal context affecting women), reports impose a substantial burden upon states. That seems to have been a particular problem in this region. In addition, the reports make it necessary for states to confront aspects of their societies of some considerable sensitivity and in which the question of infringement of human rights may be contested.

Such sensitivity and contestability has not been so prominent in traditional libertarian statements of non-discrimination. CEDAW more ambitiously attempts substantive change of social attitudes through encouragement of changes to domestic law and social and cultural attitudes, often deeply held and unexpressed. These strategies have potential for divisiveness when undertaken even by a state in a wholly domestic context. When assessed by an international organisation against developing international standards they are capable of creating conflicts among groups of member

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[9] Stopler, 168-169.

states, fragmenting fragile international consensus. Perversely, if the Committee is astute not to impose unrealistic outcomes upon states where competing social, religious, and cultural values make achievement of substantive equality between men and women difficult, it may undermine progress in countries which have no such impediments to removal of practices discriminatory in outcome. Some indication that this is not a fanciful concern is to be found in the Committee's refusal to review the Zimbabwe decision of *Magaya*, where the domestic courts upheld legislation that discriminated against women for the purposes of succession to property. This has I think implications for domestic law: in some countries conformity with international standards will not be realistic - in the shorter term; in others, such conformity will be inadequate to reflect domestic standards of equality. These realities call for some discernment by domestic legislatures and judges. Conformity with the international standards reported by the Committee may not be good enough. That has implications for domestic application of international human rights law.

It would be wrong to view the dissonance between statement and delivery and the differences in achievement and commitment among acceding states with cynicism. CEDAW aspires to promote substantive equality between men and women. The causes of inequality are complex. Overcoming inequality requires changes to attitudes and mobilisation of legal and economic strategies for redress. Like the economic and social rights recognised in other international conventions, the right of equality cannot be achieved in any society overnight. The statement of the right is itself hugely significant. So too are the obligations member States take, with or without reservations, to adopt strategies for its eventual achievement.

Domestic Law application of the international rights of women

In most of the jurisdictions represented at this conference, domestic law contains a Bill of Rights. In my country, the domestic law statement of rights is contained in an ordinary statute, whereas in most Pacific jurisdictions it is contained in a constitution. I do not think it matters greatly for the purposes of the domestic law's consideration of international texts. Modern Bills of Rights invariably draw on the language of the International Covenants. They therefore import as persuasive in the domestic legal system the texts themselves, any international agency consideration of them, and the jurisprudence of domestic jurisdictions with similarly derived Bills of Rights. I know that domestic consideration of international law remains controversial in some jurisdictions. Not of course in countries like Fiji where the constitution directs the courts to consider international materials in applying domestic human rights instruments – but countries where there is no such direction. I think the world has moved on. Most of

us look for help wherever we can get it when we have to interpret statutes or consider common law questions.

In New Zealand the Bill of Rights Act 1990 and the Human Rights Act 1993 (which is the principal statute proscribing discrimination) are "navigation lights" for all branches of government, legislative, executive and judicial.[10] The legislature requires reports from the Solicitor-General where government bills may conflict with rights contained in the New Zealand Bill of Rights Act. Where there are gender implications, the Ministry of Women's Affairs must similarly report on all papers going before the Cabinet Social Equity Committee. I am not sure whether such reporting of implications through the political and legislative process is widespread. I know that there is no parallel in the United Kingdom, for example, but it strikes me as a strategy for good government. Also in New Zealand our Human Rights Committee has the function, in addition to considering complaints of discrimination, of reporting human rights infringements, including those contained in legislation.

Section 3 of the New Zealand Bill of Rights Act requires the judiciary to act in conformity with the rights contained in the legislation. Under s 6 enactments must be given meanings consistent with the Bill of Rights Act wherever possible. Through these provisions, the rights recognised wash through the entire legal system. This legislation ensures that, unless Parliament speaks unmistakably, human rights prevail where they are engaged unless they conflict with another human right.

I think it is fair to say that the implications of this legislation have not yet been fully appreciated in our legal system. Direct and indirect discrimination on the basis of sex is prohibited by our human rights legislation. Section 65 of the Human Rights Act forbids "any conduct, practice, requirement or condition not apparently in contravention of the Human Rights Act but which has the effect of treating a person or group of persons differently" on one of the prohibited grounds. That may well affect the deliberate omission from the New Zealand Bill of Rights Act of any entitlement to equality.

In New Zealand, there is no reference to "equality before and under the law" in the Bill of Rights Act 1990, such as is contained in s15 of the Canadian Charter of Rights and in many of your jurisdictions. The White Paper which preceded the Bill of Rights Act considered that the term was "elusive and its significance difficult to discern".[11] It took the view that "the general notion" of equality before the law was implicit in reference in the proposed bill (which would have bound the legislature) to "New Zealand being founded on the rule of law". Although the proposed preamble was

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10 *A Bill of Rights for New Zealand* (Govt Printer, New Zealand, 1985).
11 Ibid, paras 10.81, 10.86.

not enacted in the modified Act, the Supreme Court Act 2003 contains a similar reference to "New Zealand's continuing commitment to the rule of law". The extent to which the concept of the rule of law contains the notion of "equality before the law", as suggested by the White Paper, remains conjectural. So too does the content of equality under the law and its relationship with the express statutory rights to be free of the forms of discrimination prohibited by the New Zealand Bill of Rights Act and the Human Rights Act.

The liberal concept of freedom as the right to be free of legal disability cannot deliver equality under law. This is what Stephen Sedley has described as the "snake in the legal grass"[12] – the unequal effects of apparently equal laws. It was to redress that effect that the Supreme Court of the United States expanded the concept of discrimination to include what Chief Justice Burger, writing for the Court, referred to as "practices that are fair in form, but discriminatory in operation".[13] As he explained, alluding to the Aesop's fable:

> Congress has now provided that tests or criteria for employment or promotion may not provide equality of opportunity merely in the sense of the fabled offer of milk to the stork and the fox. It has … provided that the vessel in which the milk is proffered be one all seekers can use.

It is to address the unequal effect of apparently equal laws that indirect discrimination is proscribed. Indirectly discriminatory policies or practices may apply equally to all persons but operate to disadvantage a minority group. So, in *Australian Iron and Steel Pty Ltd v Banovic*[14] the High Court held that a "last on, first off" retrenchment of employment indirectly discrimination against women employees whose entry into employment had been delayed because of historic discrimination. In the United States, weight and height requirements for employment have been held to discriminate indirectly against women.[15] Such grounds of discrimination recognise real effect, despite the result being unintended.

Elimination of inequality in law is an ambitious goal. The truth is, as Stephen Sedley has pointed out, "all laws discriminate":[16]

> They discriminate between the virtuous and the wicked, between the permitted and the prohibited, between the taxable and the duty-free. They discriminate, too, on grounds which from era to era are taken to be so obvious that they do

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12 Stephen Sedley "The Lion and the Ox" in *Freedom, Law and Justice* (1999), 41.

13 *Griggs v Duke Power Co* 401 US 424 (1971).

14 (1989) 168 CLR 165.

15 *Dothard v Rawlinson* 433 US 321 (1977).

16 Stephen Sedley, 40.

> not even require justification. It was obvious that the right of all Athenian citizens to vote did not include women or slaves. Among the American founding fathers who proclaimed the self-evident truth that all men are born equal were several slave owners. In this country until well into the 20th century the unsuitability of women to vote, sit on juries or join the professions was regarded – at least by men – as too obvious for argument.

What we see as discrimination has always depended upon social context. It is 50 years since the United States Supreme Court decided that the "separate but equal" doctrine accepted by the Court in *Plessey v Ferguson* violated the constitutional right to "equal protection of the laws". Richard Posner has argued that the Supreme Court's about face did not arise from re-examination of the text of the Fourteenth Amendment, but from the changed social conditions in which *Brown* came to be determined:[17]

> It was not the "pull of the text" that compelled re-examination of *Plessy* but the vagueness of the text that *permitted* re-examination of the decision in light of half a century of social and political change. It was not brooding over the words "equal protection of the laws" but a change in the nation's ethical and political climate that resulted in the decision in *Brown.*

Posner suggests that the Supreme Court rejected *Plessey* for reasons of "political history, common sense and common knowledge, and ethical insight". The "ethical insight" was, however, heavily influenced by developing international law, especially the commitments in the Charter of the United Nations and the Universal Declaration to equality of men.

I think there are a number of lessons to take from this experience which apply to the achievement of equality for women. First, international law was pivotal in shaping domestic attitudes. That is why I earlier suggested that we should not be cynical about the gap between statements of equality and the reality on the ground. The normative force of such international commitments is very important indeed. Over time, they can be expected to prevail.

The second point of relevance to the equality of women I think we can take from *Brown* is that our legal systems cannot move dramatically ahead of our societies. *Brown* was an exceptional case which came before the Court at a time when there was significant political will for change, perhaps

[17] Richard Posner, *The Problems of Jurisprudence* (Harvard, 1990), 307.

majoritarian will. The Truman administration, greatly embarrassed in its foreign relations by the perpetuation of domestic inequalities at a time when it was asking other nations to commit to the Universal Declaration, filed an *amicus* brief in support of the claimants. That is not to diminish the impact of *Brown*. It was a case where the Court did not evade the snake in the legal grass. It determined that the unequal impact of apparently equal laws was contrary to the requirement of equality under law, an attribute of the rule of law. It stands to remind us that equality under law is not a formal concept only, but it also reminds us that achieving changes in social attitudes cannot be accomplished overnight.

The third point I would take from *Brown* is that Judges need to have what Posner called "ethical insight". They have a pivotal role in mediating between the aspirations of international law and the societies they are appointed to serve. We should not be complacent about the capacity of our judges either in respect of knowledge of international context or in their understandings of local conditions. In Australia, one judge writing in 2002 said:[18]

> By and large, judges simply do not read international instruments.

The problem is exacerbated by counsel who "do not often lift their sights to become familiar with international materials which, consistently with principle, may be of value".

A further inhibition on the development of ethical insight is the baggage Judges inevitably carry. Felix Frankfurter identified the critical quality of the Judge as the "power to discover and suppress his prejudices".[19] It is easier said than done, particularly if Judges come from narrow and privileged sections of society. The is what Oliver Wendell Holmes referred to as the "unexpressed major premise" in judging. It is the unconscious world view of the complacent. So, Lord Devlin pointed to the English Judges who applied a "Victorian Bill of Rights" when interpreting legislation which was based on the freedom of contract and the sacredness of property.[20] Sexual stereotyping by Judges has been well documented. In my time in legal practice I can point to the hostility of the then exclusively male judiciary in New Zealand to matrimonial property legislation. These were Judges who prided in their mastery of legalism. They would have been horrified to think that they were pushing any sort of ideological barrow. I suspect the same is true of the English Judges who were hostile to legislation impacting on property rights. They simply did not see that

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[18] Justice John Perry, "Courts Versus the People: Have the Judges Gone too Far?", Judicial Conference of Australia, Launceston Colloquium 2002.

[19] Felix Frankfurter, "The Appointment of a Justice" in P Kurland *Felix Frankfurter on the Supreme Court* (1970) at 211, 216-7.

[20] Patrick Devlin *The Judge*, 15.

their construction of the legislation was heavily influenced by their own personal values. They did not appreciate the extent to which those values were out of touch with the values of the times.

There are two lessons here I think. The first is that diversity in appointments matters. Had there been women on the bench, I think it is most unlikely that the gender stereotyping common in my youth would have continued unchallenged for so long. The second lesson is that judicial education is very important indeed if Judges are to know their societies and if they are to understand the international legal framework within which they operate. That is why the moves to set up judicial education programmes in our countries need our support.

The final point to take from the experience with *Brown* is that law is only a small part of the solution for inequalities within our system. Freedom from discriminatory policies is not sufficient to remove disabilities, particularly when they arise from systemic historic discrimination. In the United States, *Brown* paved the way for affirmative action programmes. It is evident in all societies that if we are serious about removing inequality, provision of a level playing field is not good enough. More active redress requires community commitment. They entail the allocation of resources and discrimination against groups that have benefited from years of discrimination against others. The contribution of the legal system is limited. Political and economic strategies are required, but the law does have a part to play. Legal process is deliberate and reasoned. In the end, if change is to come, it will have to be because majority opinion is convinced by reasons. Again, that is why the judicial role is likely to be important in achieving the aspiration of equality that the international community expects. That is a challenge to all of us.

Looking ahead

The conditions that promote the observance of human rights within the community lie substantially outside the jurisdiction of the courts. The law has a part to play - but it is only a part. Decades of formal equality in the eyes of the law have not led to real equality between men and women. Increasingly feminists are questioning the liberal legal tradition's emphasis upon statements of equal rights. Sandra Fredman has pointed out that equality in law will never achieve equality in fact while gender inequalities are part of the social system in which law operates.[21]

We should not however feel discouraged or impatient about the progress in implementing the human rights of women. Nor should we feel that cultural and social diversity blocks their achievement domestically. We are part of a process that may be lengthy. Domestic application of

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[21] Sandra Fredman, *Women and the Law*, Oxford, 1997.

international law standards entails translation and care. Standardisation in outcomes cannot be expected in the short term, if at all. The elimination of all forms of discrimination against women has been recognised as a human right. That is a substantial advance in itself. We can expect more guidance from the international community in devising strategies for overcoming discrimination and the dialogue carried on by the CEDAW Committee will be important in the development of our legislation, in the development of the shared ethical sense of our communities (without which there can be no real advance), and in the application of our domestic law. Keeping abreast of it and playing our part are challenges for us as Judges.

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