

THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: AN EFFECTIVE MECHANISM OR A DIPLOMATIC SHOW?

1. Introduction

The International Convention on the Elimination of All Forms of Discrimination Against Women (UNCEDAW) is one of six major treaties currently enforced by the United Nations. Its objective is to eradicate the continuing discrimination against women around the world. Discrimination is described in the convention as “any distinction, exclusion or restriction made on the basis of sex”.¹ From this definition, any forms of discrimination from the above in any area, such as the workforce, education, civil servant, citizen status, etc. is strictly prohibited.

To monitor implementation of the UNCEDAW Part V, Article 17 establishes the Committee on the Elimination of Discrimination against Women (CEDAW). CEDAW consists of twenty-three experts of high moral standing and competence, demonstrating expertise in their field. Their function is to monitor the work of States to implement every article of the Convention, steps taken by States to ensure that these provisions are upheld and dutifully observed. Following the introduction of the Optional Protocol in 2000 the Committee is now able to investigate State conduct and accept complaints made by individuals or other Contracting States.²

The Committee is responsible for observing implementation through the periodic reporting procedure contained in Article 18 of UNCEDAW. Under the Optional Protocol it also investigates State implementation and approach to gender equality. With the rise of feminism and gender

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¹ Article 1, Part I of the United Nations Convention on the Elimination of Discrimination Against Women (UNCEDAW).

² Suzanne Egan, *The UN Human Rights Treaty System: Law and Procedure* (Bloomsbury Professional 2011), 193–205.

equality movements it seems inevitable that the Committee will have its job cut out for them. The need for equality is vital in a world that accepts human rights. Is this, however, a dream or is it reachable in the real world?

As with other UN Conventions reporting procedures are not respected with regards to UNCEDAW. Some Contracting States have failed to report altogether (Afghanistan, Bahamas, Botswana, Chad, Dominica, Grenada, Haiti, Kiribati, Liberia, Monaco, Montenegro, Oman, San Marino, Switzerland, Tuvalu, United Arab Emirates) whereas some have combined reports due to failure to report in previous sessions (Albania, Austria, Bangladesh, Brazil, Cape Verde, Congo, Dominican Republic, Ecuador, France, Germany, Ghana, Ireland, Jamaica, Latvia, Mali, Myanmar, Nepal, Philippines, Moldova, Slovakia, Thailand, Ukraine, Vietnam, Zambia).³ This is the first major issue faced by CEDAW, one of many.

The purpose of CEDAW is to improve gender equality but with lack of backing from the United States gender equality is set back. The influence the United States has on many states is important to recognise and realise. The effect of the failure of ratification in the United States is clearly visible in the failing periodic reports and lack of effective remedies and measures taken by Contracting States to ensure compliance. As such is the Committee fighting a losing battle or are they making progress in the area of gender equality? Is CEDAW nothing more than a diplomatic show in order to appear to further gender equality when in reality it is only spinning its wheels?

This article aims to critically look at the introduction of an inquiry procedure and complaints mechanism by the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (OP-CEDAW) in December 2000. By way of example of the Committee's work using the OP-CEDAW inquiry mechanism, its report on Mexico in 2005 will be examined in detail as to its effect and legacy.

³ All statistics accessed on the UN Website for Gender Equality and Empowerment of Women, <http://www.un.org/womenwatch/daw/cedaw/protocol/history.htm>.

2. History of OP-CEDAW

Originally objected against was any monitoring body whatsoever. Some even stated that these procedures were only required for “serious international crime”.⁴ Despite there being discussions on a potential monitoring body at the time of drafting very little attention was paid to the inclusion of a complaint mechanism or inquiry procedure.

The only potential monitoring procedure included in the UNCEDAW was contained in Article 18, the reporting procedure. It requires a report to be submitted to the Secretary General of the UN on “the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention”.⁵ A report is required one year after ratification and every four years thereafter or whenever the committee so requests it.

After the ratification of UNCEDAW in 1981 by 189 Contracting States it soon became apparent that a complaints procedure was required. Feminism and the rise of gender equality that began in the 90s and continues to be present today called for a more stringent approach to the implementation of UNCEDAW. In 1993, at the world summit in Vienna, it was noted in the Vienna Declaration and Programme of Action, that there was a requirement for the adoption of an inquiry and complaints (both individual and inter-state) procedure. As such the Conference called upon the Commission on the Status of Women (CSW) and CEDAW to introduce quickly the right to petition through an Optional Protocol.⁶

OP-CEDAW was drafted and open for signature by October 1999 and entered into force in December 2000. There are currently 108 contracting States to OP-CEDAW.⁷ By ratifying OP-CEDAW the State party acknowledges and recognises the authority held by CEDAW to investigate complaints made by individuals and groups of individuals within

⁴ United Nations Entity for Gender Equality and the Empowerment of Women website, <http://www.un.org/womenwatch/daw/cedaw/protocol/history.htm>.

⁵ Article 18, Part IV UNCEDAW.

⁶ <http://www.ohchr.org/EN/AboutUs/Pages/ViennaWC.aspx>.

⁷ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=-4&clang=_en.

their territory and the ability of CEDAW to launch inquiries based on its own merit.⁸

The OP was a huge step forward in terms of holding States, party to CEDAW, accountable for implementing mechanisms to ensure gender equality in workplaces, at home and in law. 108 States have ratified the treaty making it a successful treaty in terms of ratification. Those States that ratified the treaty are subjected to CEDAW investigations and complaints.

Though this is a huge advance in the area of gender equality, especially at the time of ratification, these are only statistics. Though OP-CEDAW has been a success, in terms of signatories, has it been a success in terms of effective remedies? Has OP-CEDAW held States accountable under the terms of UNCEDAW? Have States been cooperative with CEDAW during investigations? These are all questions to bear in mind as we examine the operations of CEDAW following the ratification of OP-CEDAW on 22nd December 2000.

3. Background to Ciudad Juarez

Ciudad Juarez is located in Chihuahua, Mexico. It is infamous for the violent crimes against women that occur there every day. The violence in Ciudad Juarez began to increase in the 1990s, reaching a peak in 1995 when fifty-two women were murdered during that year, prompting CEDAW's investigation in 2003.⁹

One of the biggest problems causing the rapes and murders of women in the city was the local police. They failed to effectively catalogue evidence, frequently misidentified bodies and were disinterested in the murder of women.¹⁰ Problems continued to form when police began victim blaming the women for their own murders. Women who were out on the street at night were deemed "bad girls" and were "inviting"

⁸ <http://www.un.org/womenwatch/daw/cedaw/protocol>.

⁹ Mark Ensalaco, *Murder in Ciudad Juarez*, Sage Publications (May 2006), <http://journals.sagepub.com/doi/abs/10.1177/1077801206287963>.

¹⁰ Natalie Panther, "Violence Against Women and Femicide in Mexico: The Case of Ciudad Juarez" *Oklahoma State University* (June 2007), Chapter Three.

trouble, despite the fact that many of the women were abducted on their way to or from work.¹¹

As the murders continued throughout the 90s and into the early 2000s a trend and pattern began to emerge. Most of the women killed were workers in the “Maquiladora” (colloquial term for the many factories in Ciudad Juarez). Between 1993 and 2003 approximately four hundred women were murdered, one hundred of those victims were raped before being killed. Bodies were brutally treated with many being mutilated and dismembered.¹² It soon became apparent that there was a serial killer in Ciudad Juarez and only when international attention began to be paid to the situation did the police launch an investigation.

The investigation was poorly executed with most of their efforts put on blaming the victims and even their families for allowing them out at night or for wearing provocative clothing.¹³ The police began by looking for drug cartels and other associations with history of violence. They arrested several suspects none of whom were successfully convicted due to lack of evidence or botched investigative techniques.¹⁴

With violence continuing to grow and still no effective measures taken to protect women and find the culprits, women were being murdered every day, their bodies being discarded in the desert surrounding the city. The lack of effective investigation and protection for women was a huge violation in women’s rights in multiple human rights treaties, supposedly enforced by the Mexican government.¹⁵

It was clear that United Nation intervention was required. The OP-CEDAW would be the perfect tool to investigate and hopefully aid the end of the extreme sexual violence against women in Ciudad Juarez. CEDAW resolved to begin an inquiry in its twenty-eighth session in January 2003

¹¹ Ibid.

¹² The Associated Press, “Commission: Killings of Women Decline in Ciudad Juarez” (7 December 2004), http://web.lexis.nexis.com/universe/document?_m=f687733fd082d05d11cb14711761ce5.doc.

¹³ Melissa W. Wright, “A Manifesto against Femicide”, *Antipode*, 33 (July 2001), 557.

¹⁴ John Burnett, “Chasing the Ghouls: The Juarez Serial Murders” *Columbia Journalism Review* 42 (March/April 2004) 12.

¹⁵ Lydia Alpizar, “Impunity and Women’s Rights in Ciudad Juarez” *Carnegie Council: The Voice for Ethics and International Policy*, http://www.cceia.org/resources/publications/dialogue/2_10/articles/1056.html.

following a complaint issued by “Equality Now” and “Casa Amiga” in 2002.¹⁶ CEDAW would finish its investigation in 2004, following a State visit in 2003, but only published its findings in 2005. The ninety-three-page document encompasses the report of CEDAW and the Government of Mexico’s response.

This was the first time that Article 8 of OP-CEDAW was invoked. In order to examine its effect and objective we must examine the reporting done by CEDAW, how it conducted the State visit to Mexico and its conclusions and recommendations. The Mexican Government’s response will also be examined in order to assess the response of Governments to the authority of CEDAW and their conclusions.

4. CEDAW Report

After a complaint submitted by Equality Now and Casa Amiga in 2002, CEDAW instigated an investigation. The complaint detailed the failure of the police to investigate the numerous murders of women and the failure to identify and sentence the perpetrators. Upon request from the Committee the Mexican government agreed to provide CEDAW with additional information, to allow a State visit and to cooperate with CEDAW fully during its investigation.

Members of CEDAW visited Mexico between the 18th and 26th of October in 2003. They visited the Federal District and State of Chihuahua (including Ciudad Juarez). They conducted interviews with various ministries, including the Ministry of the Interior, and a number of members of the Attorney General’s office, police and the public prosecution. They also met with members of Equality Now and Casa Amiga.¹⁷

In Ciudad Juarez, the members met with various non-governmental organisations, police and members of the victims’ families. They visited numerous sites where victims’ bodies had been found and the

¹⁶ 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 (January 2005), hereinafter CEDAW Report (2005).

¹⁷ CEDAW Report (2005) 6.

poorest parts of the city. Two experts accompanied them and conducted interviews with the State Prosecutor and relatives of the victims.¹⁸

Though it seems the Committee was able to fit a lot into their visit to Mexico, they were only there eight days. In a situation where there is a clear human rights crisis in Mexico, eight days does not seem like a sufficient amount of time to fully understand the problems. Though extensive research was undertaken, prior to the visit, and during the visit, eight days is not a long time when the sheer volume of people affected is taken into account. The police, prosecutors, special investigators, victims' families, non-governmental organisations and various other persons must be contacted and interviewed. Case files must be read and understood in order to ascertain the level of investigation gone into the murders of these women. Given that between 1993 and CEDAW's visit there were just above four hundred murders in the city, eight days does not seem like a sufficient amount of time to accurately conduct interviews, review case files and talk to relatives of the victims.¹⁹

CEDAW did try to understand the root and causes of discrimination and violence towards women in Ciudad Juarez. It identifies, in its report, that the creation of jobs specifically for women within the numerous factories throughout the city, with no alternative for men, caused resentment towards the female population, which can account for some of the violent rage taken out on the murder victims.²⁰

The Committee recognised that the Mexican Government had established the Office of the Special Prosecutor to investigate the murders in Ciudad Juarez. The National Human Rights Commission considered thirty-six cases in 1998 and found huge deficiencies amongst the police investigators and gathering of evidence.²¹

CEDAW identifies the inadequate measures taken by the police in their investigations and protection of the women of Ciudad Juarez. The lack of impunity fuelled the increase in murders and disappearances with

¹⁸ CEDAW Report (2005) 7.

¹⁹ Sandra Jordan, "Rich Killers" stalk City of Lost Girls' *The Guardian* (2 November 2003).

²⁰ CEDAW Report (2005) 9 para 25.

²¹ CEDAW Report (2005) 9 para 28.

no definite figure found for the number of victims. The report then goes on to list the violations made by the Mexican Government in allowing these murders to continue and be left unpunished.²²

Mexico has signed and ratified many human rights treaties, including UNCEDAW, OP-CEDAW and the Universal Declaration of Human Rights. In taking on these voluntary obligations CEDAW is very critical of their blatant violations of the rights that Mexico had promised to uphold.²³ CEDAW continues to list articles breached by the Mexican Government in the case of Ciudad Juarez and the violence against women. It includes the violation of Article 1 of the Convention as the violence witnessed in Ciudad Juarez inhibits women's ability to enjoy the rights contained in UNCEDAW.²⁴ Article 2 is also violated as public authorities of Mexico have failed to take precautions to ensure the safety of women in Ciudad Juarez.²⁵ Article 5 has been violated as the Mexican government has failed to take effective measures to prevent the violence which arises out of the growing resentment of unemployed men towards the women working in the maquiladoras.²⁶ CEDAW considers that article 6 may apply and be violated as the disappearances of women, whose bodies are not discovered and may well be alive, may be linked to human trafficking which the Government of Mexico has elected to legislate against without effective measures in place. Article 15 was also considered by CEDAW in that equality towards women and men, specifically in the right to free movement, may be impeded by the state authorities and the maquiladoras in Ciudad Juarez.²⁷

It also became apparent during CEDAW's State Visit that the police investigations were totally inadequate. One of the biggest problems created by the police themselves was their practice of victim blaming.²⁸

²² CEDAW Report (2005) 13 paras 48–60.

²³ CEDAW Report (2005) 13 para 49.

²⁴ CEDAW Report (2005) 13 para 51.

²⁵ CEDAW Report (2005) 14 para 58.

²⁶ CEDAW Report (2005) 14 para 57.

²⁷ CEDAW Report (2005) 14 para 58.

²⁸ CEDAW Report (2005) 15 paras 66–67.

The police also showed a disinterest in correctly identifying the bodies of victims. Some victims would be identified and later their bodies lost, misplaced or mixed up with a different body.²⁹

The Committee were also unimpressed by the failure of the police in Ciudad Juarez to act on abduction cases, usually blaming the victim for their own disappearance and refusing to look for the victims.³⁰ To combat the vast number of missing persons cases the police began to implement a new system of “high risk” abduction cases. These were the abductions of girls who were abducted on their way to or from school or work and had no reason to disappear. This excluded a huge number of girls from poor backgrounds or those with family problems.³¹

The experts accompanying the Committee were very critical of the obvious corruption infiltrating the Ciudad Juarez police officers. Many took bribes to cover up drug imports, others planted evidence at crime scenes to “solve cases” faster. The police also preferred to discredit the victim and blame them for their own fate so as to close the case without having to investigate.³² The experts were also very surprised by the hostile attitude towards the victims’ family. The Committee used actual case reports in their report to explain the inadequacy of the police investigation in Ciudad Juarez.

Josefina Gonzalez identified the body of her daughter, however upon seeing her eight days later the body was completely decomposed. The police refused to carry out DNA tests and requested payment for her medical file, which Mrs Gonzalez could not afford.³³ In the case of Ramona Rivers the police completely failed to investigate the disappearance of her daughter, blaming a man for her murder who was already in prison.³⁴ Rosaura Montanes was asked to identify her daughter by her

²⁹ CEDAW Report (2005) 16 para 72.

³⁰ CEDAW Report (2005) 16 paras 75–82.

³¹ CEDAW Report (2005) 17 para 84.

³² CEDAW Report (2005) 18 paras 94–96.

³³ CEDAW Report (2005) 20 para 112.

³⁴ CEDAW Report (2005) 21 para 113.

foot, twenty feet away.³⁵ When Patricia Cervantes refused to identify her daughter's body, as the victim's hair was a different colour to her daughter's, the police threatened her. They insisted it was her daughter but Ms Cervantes refused to identify her.³⁶

The Committee's reporting, though initially objective and analytical, seems to deteriorate into shaming the police of Ciudad Juarez and Mexican public authorities. Whilst beginning by listing human rights violations and victimology the report quickly descends into listing and blaming the police for their inadequate investigatory procedures. The large list of victims and their families listed in the report, though at some points unnecessary, does give the situation a distinctly real feeling. The names and family members listed in the report are numerous and real. Their struggles are detailed by the Committee and interviews. Their difficulties with the police of Ciudad Juarez is upsetting and almost unbelievable. The real case history gives an emotional side to the reporting procedure. Is this appropriate, however, to include in a report to the General Assembly? Is the emotional impact desired by the Committee necessary or over indulging their horror at what met them at Ciudad Juarez?

Though this report is long and detailed it repeatedly blames the Ciudad Juarez police. It calls them inadequate, lazy and unspeakable. It is difficult to see how this could be helpful in such a report. Though it is clear to see that the police in Ciudad Juarez are very much inadequate and fail to properly protect the women of the city and investigate disappearances and deaths, perhaps blaming the individual police officers is not helpful. The Committee fails to place much blame on the Government of Mexico, high ranking officials in Ciudad Juarez or the Prosecutor's Office, instead they blame solely the police force. They accuse them of evidence planting, gross negligence and serious misconduct. Though it is very plain to see, upon reading the report, that this is true, the quite offensive and aggressive approach taken by the Committee towards the police in Ciudad Juarez may come across as over-emotional and result in a defensive approach taken by the police themselves.

³⁵ CEDAW Report (2005) 22 para 118.

³⁶ CEDAW Report (2005) 22 para 119.

Rather than simply highlighting deficiencies in the police force the Committee instead highlights deficiencies with police officers. Though this is absolutely necessary, is such an approach the correct way to assess on a State visit? Is it correct to openly blame and shame the law enforcement officers of the city or will this simply impact negatively on the attitude towards the CEDAW Report? Will it have negative effects and defensive tactics by the Mexican government, cutting off the mutual trust that OP-CEDAW is founded upon? This seems like a very strong and serious approach to take by CEDAW and it is uncertain if such an approach is wise.

The Committee's appraisal of the steps taken by the Mexican government to combat the growing violence in Ciudad Juarez is far more objective than their analysis of local law enforcement. They acknowledge the several bodies and commissions set up by the Government of Mexico in trying to combat the violence occurring in Ciudad Juarez, however they do comment that the steps taken do tend to "play down gender violence".³⁷ The State established the National Women's Institute in 2001 specifically to follow up on the murdered women.³⁸

In 2003 the Government of Mexico established the Programme of collaborative action by the federal government to prevent and combat violence against women in Ciudad Juarez.³⁹ It had three aims, to prevent crime and administer justice, social advancement and protecting human rights of the women living in Ciudad Juarez. A stress was placed on cooperation with the FBI to train the police officers effectively.⁴⁰ The submissions from third party organisations indicate that the presence of federal police does more to intimidate the inhabitants of the city, rather than to protect women. The launching of an awareness campaign was also criticised by both organisations and the committee for placing the responsibility of preventing violence on the women themselves,

³⁷ CEDAW Report (2005) 27 para 163.

³⁸ CEDAW Report (2005) 28 para 166.

³⁹ CEDAW Report (2005) 29 paras 172–174.

⁴⁰ CEDAW Report (2005) 30 para 182.

rather than on society.⁴¹ There was also an apparent lack of coordination between the various bodies set up by the Mexican bodies. Those working in the bodies were inadequately trained and there was no clear objective of the implementation and maintenance of the working bodies.⁴²

The committee's generally upbeat appraisal of the Mexican government can be an effective way of promoting good faith and cooperation between the government and UN institutions. On 1st September 2003 President Fox promised to appoint a commissioner to coordinate the involvement of the Federal Government in the situation in Ciudad Juarez. The committee was very positive towards this suggestion. The commissioner would coordinate the various public bodies in solving the violence in Ciudad Juarez. She would also be in contact with the relatives of the victims of the violence in the city. She would liaise and help them in finding justice for the loss of their loved one.⁴³ As well as a positive response from CEDAW, the relatives of those murdered and the non-governmental organisations were also positive at the prospect of a commissioner.⁴⁴

The assessment of the measures adopted by the Government of Mexico and the public bodies therein was generally upbeat and positive. The approach taken was far more objective and constructive than that of the assessment of the police officers themselves. With a far more objective approach the positive aspects of the measures taken were encouraging. With the inclusion of reports by non-governmental organisations the Committee drew their report to a close on a positive outlook.

With a far more positive appraisal of measures taken by the Mexican government it does seem odd that CEDAW would take such a negative approach towards the police officers in Ciudad Juarez. The emotional aspect of the report early on seems unnecessary and perhaps unhelpful towards the police officers and prosecutors in Ciudad Juarez. The report, though clearly highlighting deficiencies in the local authorities in Ciudad Juarez does not as clearly and distinctly highlight the deficiencies in

⁴¹ CEDAW Report (2005) 33 para 207.

⁴² CEDAW Report (2005) 34 para 211.

⁴³ CEDAW Report (2005) 35 paras 220–221.

⁴⁴ CEDAW Report (2005) 35 para 223.

the measures taken at a federal level. Though there is comment on the coordination and planning of the authorities and commissions, there is no comment on the realistic expectations and ambitious nature of the measures adopted by the State.

With such differences between the analysis of both local and federal authorities it appears that CEDAW is not totally unaware of the negative effect critical comments can make at a federal level. Is the reason for such optimistic and positive words towards the Mexican State because of the tension surrounding state sovereignty and UN institutions? Such an optimistic approach towards the federal government and a contrasting negative approach towards local authority seems arbitrary as federal changes would be far more substantial and effective than local changes. This contrasting approach highlights the cautious approach taken by CEDAW in order to preserve state sovereignty rather than a firmer approach, similar to the comments made about local enforcement, which can have an effective and constructive result.

5. Committee Recommendations

The Committee applauded the Mexican government for the positive measures taken by them but concluded by saying they are insufficient.⁴⁵ CEDAW suggests adopting specifically gender based measures, giving due regard to differing social status of men and women. Concerns are also raised by the committee about the mistrust between non-governmental organisations and the public authorities. CEDAW places the blame for this mistrust on the local authorities in Ciudad Juarez. It is therefore their responsibility to foster better relations with non-governmental organisations and the relatives of victims.⁴⁶

Following up on the inadequacy of the local authorities CEDAW recommends a punishment placed on officers who do not act effectively during investigations of murder, sexual violence or disappearances. They recommend criminal sanctions on those officers who allow for

⁴⁵ CEDAW Report (2005) 42 para 264.

⁴⁶ CEDAW Report (2005) 43 paras 269–270.

the impunity existing in Ciudad Juarez to proceed.⁴⁷ They also recommend the establishment of an emergency response search mechanism in the event of disappearances. The search body should be organised and searching for the disappeared within twenty-four hours of the filing of a report, currently the police rarely investigate disappearances.⁴⁸

The Committee also recommends sufficient training of local law enforcement to cope with the large number of crimes occurring in the city, as well as diverting more resources to aid the local officers. There is also a timid suggestion to “consider” establishing an arrangement with the United States to aid the disappearances and murders of the women in Ciudad Juarez. The wording of this suggestion is not firm in the least and seems to be nothing more than a timid attempt at international cooperation without any real vindication or hope of such an arrangement actually taking form.⁴⁹

As for the actual prevention of violence against women, CEDAW recommends that the Mexican government should not downplay the extreme violence against women in its cities and instead treat each count as a violation of fundamental rights of these women, in doing so they will acknowledge the gross and systematic violations occurring in Ciudad Juarez every day.⁵⁰

To combat discrimination specifically the committee recommends the inclusion of male figures in campaigns to raise awareness for equality and protection, in doing so they may influence the male population to be more aware of the violence and violations against women. CEDAW also recommends legal support for victims of violence and the relatives of murdered or disappeared women. They also suggest a national monitoring body to monitor the authorities in Ciudad Juarez closely.⁵¹

Some of the recommendations made by the Committee are practical and reasonable. Once again, heavy blame is placed on the local authorities

⁴⁷ CEDAW Report (2005) 44 para 274.

⁴⁸ CEDAW Report (2005) 44 para 276.

⁴⁹ CEDAW Report (2005) 44–45 paras 278, 283–284.

⁵⁰ CEDAW Report (2005) 45 para 286.

⁵¹ CEDAW Report (2005) 46.

in Ciudad Juarez, rather than on the authorities of Chihuahua for not training them adequately or punishing them for gross negligence and accepting bribes. There are few recommendations for change at a federal level, and those that are included are timid, the language used is far less forceful than in other recommendations aimed at a local level. Though state sovereignty is important in these proceedings to maintain mutual trust and international cooperation the obvious concerns of CEDAW towards offending the Mexican government come across as weakly calculated recommendations.

The wording and language used does not seem hopeful that the recommendation will not be complied with before the government has even considered it. With such an approach is CEDAW not setting itself up for failure? With timid language, it would seem that the suggestion is not truly a suggestion and would not be considered as closely by the government as the other more forceful suggestions in the report. This adds to the general hypothesis that CEDAW is not in fact an effective monitoring body but a diplomatic show of international cooperation. The very notion that they are afraid to make strong recommendations at a national level seems to make the whole process arbitrary. Though local recommendations come across firmly and adamantly, any recommendation to the Mexican Government is quite the opposite and begs the question as to whether or not mutual trust actually exists enough for it to be protected.

6. The Response of the Government of Mexico

In its initial response, the Mexican government is quick to blame local law enforcement deficiencies for the serious human rights violations in Ciudad Juarez. They claim that not only is it inadequate local law enforcement but also as a result of deep seated cultural beliefs that women are inferior.⁵²

The report provided by the Mexican Government highlights the national measures taken by the government to ensure gender equality in Mexico. In 2001 the National Women's Institute (INMUJERES) was established.

⁵² CEDAW Report (2005) 51.

Followed by the National Programme for Equal Opportunity and Non-discrimination against Women (PROEQUIDAD). Following from this the National Programme for a Violence-Free Life was set up. On the basis of this the Mexican government highlight how much work they have done to promote gender equality rights and that they have taken every step required by international law.⁵³ They do however acknowledge that more still needs to be done. In response to the recommendations made by CEDAW the report is realistic in its saying that changing these cultural aspects of gender discrimination will be a lengthy and ongoing process.⁵⁴

To further offer explanation for allowing the violence in Ciudad Juarez to grow over the course of the decade, the government highlights that steps were taken to combat this growth. In 1998 the Office of the State Special Prosecutor was established to investigate the murders of women in Ciudad Juarez.⁵⁵ In its report the government maintains that promising results were received following the establishment of this office. However, over the course of 1998 to 2003 murder rates grew, as did cases of sexual violence. The Mexican Government further highlights how cooperative it has been with international bodies and scrutiny. It lists the number of visits it has welcomed, and at times requested. It details the multiple institutions it has added to and the information and willingness of this particular state visit.⁵⁶

In response to CEDAW's report the Government of Mexico established the Chihuahua Women's Institute (ICHIMU). Its aim is to promote equal opportunities for women and "foster a culture of nonviolence".⁵⁷ A programme for the support of close relatives of murder victims was also drawn up, it included plans for psychological care and training on criminal and legal proceedings. ICHIMU also remains in contact with Nueva Vida Association, a non-governmental organisation that aids the

⁵³ CEDAW Report (2005) 53.

⁵⁴ CEDAW Report (2005) 55.

⁵⁵ CEDAW Report (2005) 57.

⁵⁶ CEDAW Report (2005) 58–59.

⁵⁷ CEDAW Report (2005) 60.

victims and relatives of violence.⁵⁸ The government also reports that it has launched an awareness raising campaign, regular patrols of Ciudad Juarez, “gender equality” workshops and a conference on violence against women in Ciudad Juarez and the wider Chihuahua State area.⁵⁹

The Ciudad Juarez local enforcement has also been trained to assist the relatives of victims of murder or sexual violence (in association with Casa Amiga). Modern forensic labs and technology for criminal investigations has been made available to the police force to aid in their investigations into the murders and disappearances of the women in Ciudad Juarez. Surveillance sweeps are also carried out regularly along the streets.⁶⁰

On a national level the Federal Government has taken comprehensive steps to combat the issues faced in Ciudad Juarez. They promise to provide support and funds for the local police network. It wishes to establish contact with the local government in the State of Chihuahua and with the relatives of the victims. The Federal Government has installed four shelters for women victims of domestic violence.⁶¹ A programme for psychological care of victims was also designed, as well as two campaigns for the prevention of domestic violence.⁶² The Ministry of Health has offered financial support and training for local public bodies to deal with the psychological harms faced by the victims and their families.⁶³

The Ministry of Labour and Welfare has invested in a programme to adapt private transport routes to and from factories. They have opened 29 day-care centres and recommended a savings account constituting 10 per cent of worker’s wages. The establishment of medical clinics on maquiladora property was also instigated.⁶⁴

In response to the question as to why the Federal Government did not step in sooner the report outlines the legal system of Mexico. It

⁵⁸ CEDAW Report (2005) 59–62.

⁵⁹ CEDAW Report (2005) 63.

⁶⁰ CEDAW Report (2005) 64.

⁶¹ CEDAW Report (2005) 69.

⁶² CEDAW Report (2005) 70.

⁶³ CEDAW Report (2005) 70.

⁶⁴ CEDAW Report (2005) 70–71.

maintains that in order for a case to be adopted at a federal level it must be a crime committed by a gang. Where “ordinary” crimes occur, the Federal Government has no reason to interfere with state competence.⁶⁵ Once again the local law enforcement in Ciudad Juarez is blamed for a problem far larger than the misconduct of police officers.

In relation to the handling of abductions by the Ciudad Juarez police a new system has been put in place that all missing persons reports will be handled within the first twenty-four hours of filing the report. The case will not be closed until the person has been found and a reason established for their disappearance.⁶⁶

The Federal Government also, at the request of the Committee, established communication with the Federal Bureau of Investigation (FBI) in America. Training of officials in Ciudad Juarez was initiated in areas of evidence, interrogations, investigations and abductions.⁶⁷

In concluding its report the Government of Mexico highlights, once again, the challenges it has faced in completing the report. They blame the incompetence of the local authorities but insist that it is no reflection on the general stance of the Mexican Government nor its people. The Government outlines, once again, the measures they have taken, throughout history, to ensure gender equality and compliance with international treaties and law. The report also criticises the report given to them by CEDAW. It maintains that more information was needed to conclude the recommendations they made and more reasoning was required.⁶⁸

The report by Mexico is very much a defensive one. It opens with the long history of women’s rights in Mexico, how suffragettes won out earlier in Mexico than in many other countries and how compliant Mexico is in its legislation and implementation of international law. The local authorities in Ciudad Juarez are used as a scapegoat throughout the report for the serious systematic abuses of the rights of women living in their city. With fifty women being murdered in one year it seems hard

⁶⁵ CEDAW Report (2005) 76.

⁶⁶ CEDAW Report (2005) 82.

⁶⁷ CEDAW Report (2005) 87.

⁶⁸ CEDAW Report (2005) 91–93.

to believe that “local incompetence” can truly be to blame, rather than a deep-seated problem in the justice system of Mexico and the blatant disregard for gender equality and women’s rights.

The report repeatedly blames local authorities and maintains the work that the Mexican Government does is very conscious of gender equality. The steps taken by the Mexican government in response to the report is promising. The establishment of many programmes and bodies to undertake the responsibility of aiding local enforcement and providing assistance for victims and relatives is promising and for the better of the women in Ciudad Juarez. Though the report may seem like a list of excuses, positive steps have been taken and planned in response to CEDAW’s visit. This suggests that perhaps more weight is given to CEDAW’s authority under OP-CEDAW than a gesture of good will. No acknowledgement, however, was made of the deep-rooted problem of a breach of fundamental rights.

7. The Current Situation in Ciudad Juarez

With the promising statements made by the Government of Mexico in their report to CEDAW, and the recommendations made by CEDAW, everyone was hopeful following the 2003 UN intervention. In reality, however, things have far from improved as much as one might have hoped. Though there was a drop in homicide rates in Ciudad Juarez from 2003 to 2008, after the recession hit the border town there was a sharp rise in drug cartels and murders. During the recession period, it is estimated that three hundred homicides occurred every month with the government failing to respond to the violence, allowing authorities to accept bribes. It is unclear how many of those murdered during these years were women.⁶⁹

During his visit to Ciudad Juarez, Sam Quinones, a reporter for the National Geographic magazine labelled the city as far more peaceful after the peak in violence during the recession.⁷⁰ Indeed there was a drop in the murder rate in 2015, down from 434 in 2014, to 312. Of these 312 people

⁶⁹ The Economist, “Ciudad Juarez Trembles Again” (29 October 2016).

⁷⁰ Sam Quinones, “Once the World’s Most Dangerous City, Juarez Returns to Life” *National Geographic Magazine* (June 2016).

murdered however, 150 of them were women, one of the highest figures in history.⁷¹ Authorities downplay the abductions of women making it uncertain how many women have been abducted since 2008.⁷²

The violence in Ciudad Juarez is so high that the US Department of State recommends only necessary travel to the city and considers the risk of kidnapping as high. They advise against use of public transport and travelling alone.⁷³ This fear is echoed by the report by French News channel France 24 where they estimate 1,500 women have been murdered since 1993. They report that by February 2016, eight young women had been abducted.⁷⁴

The violence against women in Ciudad Juarez has far from fallen following the State visit. In November 2014 eight women were raped and murdered. The police arrested two bus drivers, with no evidence connecting them to the women, and tortured them until they confessed, reminiscent of the behaviour of authorities prior to CEDAW's visit in 2003. This incident is currently being investigated by human rights advocates in the Chihuahua state.⁷⁵ Despite training by the FBI, it seems that the local authorities in Ciudad Juarez are slipping back into their old ways, with no sign of the Chihuahua state government, or the Federal Government stepping in.

This repeated behaviour by local authorities was seen again in January 2016 where approximately six women were murdered in one day. It is estimated that only 24% of murders were investigated during the year of 2012–2013, and of those 24% only 1.6% resulted in sentencing.⁷⁶ In one incident, reported by Judith Matloff, Irinea Buendia's daughter was murdered by her husband, a police officer in 2010. Upon arriving at the scene her husband told his fellow officers that she committed suicide, despite

⁷¹ United States Department of State Bureau of Diplomatic Security, OSAC, Mexico 2016 Crime and Safety Report: Ciudad Juarez, <https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=19527>.

⁷² Duncan Tucker, "Young Women Are Getting Abducted Off the Streets of Mexico's Second Largest City" *Vice News* (28 March 2016).

⁷³ <https://travel.state.gov/content/passports/en/alertswarnings/mexico-travel-warning.html>.

⁷⁴ France 24, "Mexico: Ciudad Juarez, the city of missing women" (2 February 2016).

⁷⁵ ABC News, "Who is Killing the Women of Juarez?" (30 January 2015).

⁷⁶ Judith Matloff, "Six Women murdered each day as femicide in Mexico nears a pandemic" *Aljazeera America* (4 January 2015).

the fact that her body was covered in bruises and her supposed hanging left no marks and there was no area for her to hang herself. Nonetheless, the officers believed him and shut the case. Human rights lawyers in the city took on her case but she is not hopeful for justice, as her husband was promoted to police commander later that year.⁷⁷ This corruption in local authorities continues to persist, despite promises by the Mexican government to combat police corruption with criminal sanctions.

In 2014 approximately 59 women were murdered in Ciudad Juarez, an increased figure since CEDAW's visit. By May 2016, approximately 39 women were murdered.⁷⁸ This increase in number of femicides has prompted the women of Ciudad Juarez to stand together. In April 2016, they organised a march with the slogan "Queremos Vivas" (we want to live).⁷⁹ It seems apparent that the Federal Government has not fulfilled all of their promises made in their report to CEDAW. It is also clear that CEDAW's recommendations fell on deaf ears. With such a response, of blatant disregard, towards the work of CEDAW is there any chance for the advancement of gender equality? The apparent disregard by the Mexican government towards the authority of CEDAW, which is not much, makes it clear that in this case, CEDAW's standing in international law is not as firm as desirable.

8. Conclusion

From all of the evidence and research gathered during the course of this paper it is apparent to me that the work of CEDAW under Article 8 OP-CEDAW is not taken as authoritatively as one might hope. The work done by the Committee in Ciudad Juarez was admirable but they only spent a total of eight days in the city. When the problem is as big as it is in Ciudad Juarez, and a serious systematic abuse of human rights, it seems inappropriate to devote simply a week in the area affected. The

⁷⁷ Ibid.

⁷⁸ Alan Hernandez, "Emergency measures haven't slowed rising violence against women in Mexico State" *Vice News* (28 July 2016).

⁷⁹ María Murriel, "The State of Violence against Women in Mexico" *USA Today* (25 April 2016).

huge number of people involved at a local, state and federal level cannot be achieved in one week.

The function of the Committee is to combat violations of human rights. This is obviously a huge task that will take a long time to complete but given its authority it seems unlikely that they will accomplish it any time soon. The recommendations made by CEDAW were practical but in some cases idealistic, rather than realistic. Their quickness to blame local authorities, not state or federal authorities, highlights the weakness imposed by state sovereignty. The failure to hold the Federal Government accountable for the mass homicide of women seems odd and unhelpful. The problem is not one of local proportions with the huge number of deaths every year. It is one of society. The reluctance of the Mexican Government to intervene in the first place should not deter CEDAW from suggesting realistic recommendations and solutions. Instead, their recommendations were weak and timid.

Similarly, the response of the Mexican Government appears to be a list of excuses rather than solutions. They too are quick to blame the local area of Ciudad Juarez, but admit that there is a social belief of inferiority of women, which is more than what CEDAW said. Their plans to combat the situation were promising, if not a little too idealistic. The report did give the impression of appeasement and good words, rather than realistic goals and aim setting. The Government of Mexico was also quick to point out how much work Mexico has actually done for gender equality, as if this negates the gross negligence from the terror of homicides in Ciudad Juarez.

Viewing the situation in Ciudad Juarez today it is impossible to believe that the work of CEDAW was taken seriously. Not only has there not been a decrease in homicides of women, but an increase. The femicide rates are only growing with local authorities still unqualified, under-resourced and under-financed. The “culture of superiority” of men has not been combatted. Women are still being raped, abducted, murdered and trafficked in the city today, especially following the recession of 2008. Such statistics as mentioned above are disheartening and the lack of an enforcement mechanism shows how little regard the state of Mexico had for UNCEDAW.

There is a need for an enforcement mechanism if UNCEDAW is going to be seen as anything more than a goodwill gesture. The state of Ciudad Juarez today is worse than it was prior to CEDAW's visit. The failure of the Mexican Government to hold themselves and the State of Chihuahua, as well as the local authorities in Ciudad Juarez, shows how disinterested they are in combatting the serious violence and systematic abuses of human rights in Ciudad Juarez. With such blatant disregard for the authority of CEDAW, UNCEDAW and OP-CEDAW it can only be concluded that these international instruments are nothing more than a diplomatic show. Their authority is ignored and disregarded, with states claiming "state sovereignty" as a defence to not adhering to the human rights instruments.

The failure of this report does not negate the work CEDAW has accomplished as a whole. In many countries UNCEDAW has been effectively implemented and effective. In countries with historic human rights abuses against women, however, these effects have not been seen and respect for UNCEDAW is not as good as one might have hoped. It is in these cases that CEDAW's authority is most important, yet often blatantly ignored.

In order for UNCEDAW to be properly enforced and adhered to there needs to be an enforcement mechanism. Financial sanctions, trading restrictions and many other options are open under international relations to deal with the issues at hand but because of "state sovereignty" all contracting states resist an international governing body. Until such time as states are willing to recognise their importance to an appropriate degree, it seems unlikely that OP-CEDAW will be as effective as envisioned, or indeed any other human rights mechanism.

Summary

This article considers the functioning of the Optional Protocol to the UN's Convention on Elimination of All Forms of Discrimination Against Women (OP-CEDAW) and the work of the Committee for the Elimination of Discrimination Against Women. In particular, this research focuses on the report into gender based violence occurring in

Ciudad Juarez, Mexico, written in 2005, as a result of OP-CEDAW. This paper considers the methods of investigation used by the Committee and their conduct throughout the investigation. The committee's observations are critically assessed, as well as international response to the report. The investigation procedures and response by the Mexican government is critically assessed in line with international law and cooperation. The conclusion of the report and its findings are considered and compared with the government response following the publication of the report in 2005. Its effect on Mexico, and on an international level, are assessed to gauge cooperation with, and the efficacy of, this UN institution. The overall aim of this research is to critique the functioning of OP-CEDAW and the Committee during the investigation process. The international perception of the Committee is also critically reviewed, in an attempt to ascertain the authoritative power of the Committee in international law. After reviewing all aspects of the investigation, and both the national and international response to the report, this paper forms a conclusion of the efficiency and purpose of the Optional Protocol, the UN institution and their place in international law.

Keywords: Women's rights, human rights, discrimination, sexism, gender equality