

12. Raising Women Up: Analysing Australian Advocacy for Women's Rights under International and Domestic Law

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On the twentieth anniversary of the Sex Discrimination Act (SDA), Elizabeth Evatt stated that Australia was 'falling short on women's rights'. Earlier in her UN role, she had said: 'Ultimately we have to be judged not by our highest ambitions and achievements, but by our ability to raise from the lowest level those whose needs...are greatest. That is the way I would like Australia, and every other country, to be judged in the United Nations.' This chapter reviews progress in Australia in the past five years according to Evatt's criteria, and celebrates the role of Australians in creating multilevel strategies to 'raise up' Australian women by improving their lives and realise their rights. The issues are analysed through a biographical lens. I examine the crucial role of Evatt, Andrew Byrnes, Jane Connors and Helen L'Orange (in the development of the UN Declaration on the Elimination of All Forms of Violence Against Women). The argument is that domestic reform and engagement with the UN system can be a mutually enriching experience, although the Australian women's movement has not always been effective in joining together international and domestic expertise and debates.

Introduction

In 2004, to mark the twentieth anniversary of the passage of the *Sex Discrimination Act 1984 (Cth) (SDA)*, Elizabeth Evatt made a speech in Melbourne titled 'Falling Short on Women's Rights'.² She argued that Australian law was falling short of its obligations under the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)³ and other international instruments

1 Many thanks for feedback on this chapter from participants at the SDA twenty-fifth anniversary conference. My gratitude goes to Margaret Thornton for her initiative in holding the conference and in producing this volume. Many thanks go to interviewees, Hilary Charlesworth and Anne Summers, for their comments.

2 Elizabeth Evatt, 'Falling short on Women's Rights: Mis-Matches Between SDA and the International Regime' in Marius Smith (ed.), *Human Rights 2004: The Year in Review*, Castan Centre for Human Rights Law, Monash University, Melbourne, 2005.

3 GA res. 34/180, 34 UN GAOR Supp (No. 46) at 193, UN Doc A/34/46; 1249 UNTS 13; 19 ILM 33 (1980).

to provide equality rights and non-discrimination safeguards for women. A decade earlier, in her role as chairwoman of the CEDAW Committee, Evatt had set a test for success in this regard: 'Ultimately we have to be judged not by our highest ambitions and achievements, but by our ability to raise from the lowest level those whose needs...are greatest. That is the way I would like Australia, and every other country, to be judged in the United Nations.'⁴

This chapter reviews progress in Australia in the past five years according to Evatt's criteria, to see whether Australia has progressed in meeting its international obligations regarding the goal of gender equality. Evatt identified that the *SDA* was 'mismatched' with CEDAW due to its imperfect and partial conception of equality and lack of methods to address structural disadvantage and power redistribution.⁵ The issue of intimate partner and family violence offers a prism through which to observe changes in the way international standards are employed in domestic debates about women's rights in the past quarter-century. Gender equality issues have often fallen by the wayside of wider human rights battles.

I employ the methodology of focusing on the biographies of prominent advocates to offer a way of analysing progression and regression over time. I examine the crucial role of Australians such as Evatt (in the development of CEDAW analysis), Andrew Byrnes and Jane Connors (in the development of the Optional Protocol to CEDAW) and Helen L'Orange (in the development of the UN Declaration on the Elimination of All Forms of Violence Against Women). My argument is that domestic reform and engagement with the UN system can be a mutually enriching experience. The stories of my protagonists demonstrate some common themes. These individuals were innovative in their use of the international system and created multilevel strategies at particular political moments, bolstered by a domestic emphasis on feminist representation in domestic policy machinery (especially Australia's unique 'femocracy')⁶ to realise the rights of women, including Australian women. Their experience has some commonality: the importance of qualities such as patience and determination; the key role of good gender analysis as opposed to general gender awareness; and the importance of strategic thinking, especially in relation to finding combinations of key expertise and political leadership, with an eye to the improvement of the machinery of decision making. These stories of leadership at the international level should be documented, especially as the feminist movement in Australia

4 Australian Human Rights Commission (AHRC) and the Australian Government Office for Women (OfW), *Women of the World: Know Your International Human Rights*, Australian Government, Canberra, 2008, p. 12, <http://www.fahcsia.gov.au/sa/women/pubs/govtint/know_int_humrights/Documents/cedaw_ed_pack.pdf>

5 Evatt, 'Falling Short', p. 58.

6 See further: Marian Sawer, *Femocrats and Ecorats: Women's Policy Machinery in Australia, Canada and New Zealand*, United Nations Research Institute for Social Development, Geneva, 1996.

undergoes generational change. Australian advocates for women's rights should continue to use UN processes as a tool, with detailed knowledge of the United Nations' limitations in achieving transformative change.

Using this biographical lens demonstrates, however, that despite some conceptual progress at the international level, certain issues—particularly violence towards Indigenous women and girls—have been extremely resistant to reform. Some domestic debates have lagged behind comparable nations, such as that on paid maternity leave. The misalignment between the scope of CEDAW and the narrow limits of the *SDA* has become more apparent over time. Also, it is clear that in 2010 many features of Australia's once impressive gender policy architecture that could drive domestic reforms and therefore inspire international innovation have been dismantled. How, then, can we re-energise the synergy between international innovation and systemic reform for gender equality at the domestic level? How can the UN human rights system be rendered vital and accessible and, above all, useful as a method to 'raise up' the rights of Australian women, in solidarity with women globally? One avenue might be the innovative approach taken by Australian non-governmental organisations (NGOs) in relying on extensive community consultation in the production of NGO reports to the CEDAW Committee, the Commission for the Status of Women and follow-up meetings to the Beijing Women's Conference. Generally though, the Australian women's movement has not always been efficient in joining together international and domestic expertise and debates.⁷

Women's Rights at the United Nations

The most wide-ranging of the international human rights treaties devoted to women is CEDAW, adopted by the UN General Assembly in 1979 and now with 186 state parties (but with many states making serious reservations to certain provisions).

Australia signed CEDAW at a special signing ceremony in Copenhagen at the UN World Conference for the Decade of Women on 17 July 1980, sending a strong delegation of experts led by Robert Ellicott (Minister for Home Affairs in the Fraser Government).⁸ The treaty then entered into force in September 1981. After a long consultation period with the States and Territories, Australia ratified the treaty on 28 July 1983, but made some reservations,⁹ such as on

7 This can be attributed at least in part to the continuing damage done to the women's sector by de-funding and 'gag' clauses, and continuing secretariat reform. See further: Marian Sawer, 'Disappearing Tricks' (2008) 27(3) *Dialogue: Academy of the Social Sciences in Australia* 4, 6.

8 AHRC and OfW, *Women of the World*.

9 Including the 'federalism' declaration Australian makes to most international treaties. Australian practice is to make a short 'federal declaration' on ratification of treaties where it is intended that the States will

- maternity leave: 'The Government of Australia advises that it is not at present in a position to take the measures required by Article 11(2) to introduce maternity leave with pay or with comparable social benefits throughout Australia'
- defence personnel: 'The Government of Australia advises that it does not accept the application of the Convention in so far as it would require alteration of Defence Force policy which excludes women from combat duties'.¹⁰

Even with these reservations, Australia's ratification of CEDAW became part of the intense domestic and partisan debates that affected the passage of the *SDA*, as set out elsewhere in this book by Thornton and Luker.

The Convention contains a broad definition of discrimination in Article 1, covering both equality of opportunity (formal equality) and equality of outcome (de facto or substantive equality):

[D]iscrimination 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 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.

The Convention requires states to take legal and other measures to ensure the practical realisation of the principle of sex equality (Article 2). The Convention covers a broad range of areas where state parties must work to eliminate discrimination, including political and public life (Article 7), international organisations (Article 8), education (Article 10), employment (Article 11), health care (Article 12), financial credit (Article 13b), cultural life (Article 13c), the rural sector (Article 14), the law (Article 15) and marriage (Article 16). Hilary Charlesworth notes that this

wide coverage means the Women's Convention transcends the traditional divide between civil and political rights and economic, social and cultural

play a role in implementing the treaty. The CEDAW reservation follows the sample declaration attached to the *Principles and Procedures for Commonwealth–State Consultation on Treaties*: 'Australia has a Federal Constitutional System in which Legislative, Executive and Judicial Powers are shared or distributed between the Commonwealth and the Constituent States. The implementation of the Treaty throughout Australia will be effected by the Commonwealth State and Territory Authorities having regard to their respective constitutional powers and arrangements concerning their exercise.'

¹⁰ This is the current text. On 30 August 2000, with effect from that date, Australia withdrew that part of the reservation which read: 'The Government of Australia advises that it does not accept the application of the Convention in so far as it would require alteration of Defence Force policy which excludes women from combat and combat-related duties. The Government of Australia is reviewing this policy so as to more closely define "combat" and "combat-related" duties.'

rights, illustrated by the separate development of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).¹¹

This is a key point of difference with the *SDA*, which focuses primarily on participation in the formal paid workforce, rather than other aspects of the life cycle.

CEDAW allows for progressive realisation but requires results in securing substantive gender equality under Article 2a. Notably, Article 4 allows for affirmative action, in the form of temporary special measures designed to accelerate de facto equality such as quotas in employment, education, financial services and politics to overcome historical barriers. The core organising principles of CEDAW are therefore equality, non-discrimination and state obligation.¹² CEDAW, notably, obliges governments to take proactive measures to prevent sexual stereotyping and address violations of its terms.

In 1999, CEDAW was supplemented by an Optional Protocol. The Optional Protocol creates a mechanism allowing individual claims of violations under CEDAW to be made to the CEDAW Committee, and a procedure enabling the committee to initiate inquiries into situations of grave or systematic violations of women's rights. As of 2010, 99 states were party to the Optional Protocol.¹³

As with CEDAW and the *SDA*, there were political difficulties with acceptance of the Optional Protocol as a result of the Howard Government's general disenchantment with the human rights treaty body system. Australia had received heavy criticism over its treatment of Indigenous Australians and asylum-seekers from the Committee for the Elimination of Racial Discrimination in March 2000.¹⁴ In a joint press release in August 2000, key ministers indicated that Australia would not ratify the Optional Protocol as part of this wider dissatisfaction with the UN human rights system.¹⁵ Hilary Charlesworth has

11 See Hilary Charlesworth, *Inside/Outside: Feminist International Legal Studies and Thirty Years of the CEDAW Convention*, Paper delivered at the Asian Society of International Law Conference, Tokyo, August 2009.

12 See further: Andrew Byrnes and Jane Connors, *The International Bill of Rights for Women: The Impact of the CEDAW Convention*, Oxford University Press, UK, (forthcoming).

13 There are also provisions relating to non-discrimination and equality in the other key UN human rights treaties. See further: Alice Edwards, 'Violence against Women as Sex Discrimination: Judging the Jurisprudence of the United Nations Human Rights Treaty Bodies' (2008) 18 *Texas Journal of Women & the Law* 1. Article 6 of the new Convention on the Rights of Persons with Disabilities specifically addresses multidimensional discrimination against women. There are also special protections for women and girls under international humanitarian law (including the Geneva Conventions and the Rome Statute). See further: Judith Gardam and Michelle Jarvis, *Women, Armed Conflict and International Law*, Kluwer Law International, The Hague, 2001.

14 See further: Spencer Zifcak, *Mr Ruddock Goes to Geneva*, UNSW Press, Sydney, 2003.

15 Alexander Downer, Daryl Williams and Phillip Ruddock, *Improving the effectiveness of United Nations committees*, Joint media release, 29 August 2000, Parliament House, Canberra.

stated that '(t)he thrust of the press release... was that the treaty bodies not only need reform but that they need reform because they are criticizing Australia a bit too much'.¹⁶ Although the government's decision not to sign or ratify the Optional Protocol was opposed by more than 200 women's groups and by a senior Liberal Party member, Dame Beryl Beaurepaire, the government did not change its decision during its following two terms.¹⁷ Australia finally acceded to the Optional Protocol on 24 November 2008 under the Rudd Government, and Australian women could make complaints from March 2009.¹⁸

There is also increasing 'soft law' in the area of women's rights at the United Nations. The Declaration on the Elimination of All Forms of Violence Against Women was adopted by the UN General Assembly in December 1993. The Beijing Conference for Women in 1995 adopted a Platform for Action, the implementation of which is currently undergoing a 15-year review at the 2010 meeting of the Commission for the Status of Women. The Security Council has also issued a series of resolutions on women, peace and security, including Resolutions 1325 (2000) (peace building), 1820 (2008), 1888 and 1889 (2009) (sexual violence in armed conflict).¹⁹ Women are also increasingly engaging with the international trade and development frameworks.²⁰

This is not to say that the United Nations offers a perfect or even an adequate framework for the protection of women's rights. The UN system is a product of elite diplomacy in which women are under-represented²¹ and, until very recently, it lacked effective gender architecture.²² Indeed, as Caroline Lambert states, the UN human rights treaty system 'is a partial site of justice for women and a site of partial justice'.²³ It does, however, offer an international space in which to debate issues of gender equality and a set of standards to which signatory states can be held to account. Australian participation in the development of these standards is illuminating.

16 Hilary Charlesworth, 'Australia's Relations with the United Nations in the Post Cold War Environment', *Australian Federal Parliament, Joint Standing Committee on Foreign Affairs, Defence and Trade: Joint Committee Hansard*, 21 March 2001, p. 429.

17 Joanne Kinslor, "'Killing Off" International Human Rights Law: An Exploration of the Australian Government's Relationship with United Nations Human Rights Committees' (2002) 8(2) *Australian Journal of Human Rights* 16, 19.

18 See further: Simone Cusack, 'Discrimination against Women: Combating its Compounded and Systemic Forms' (2009) 34(2) *Alternative Law Journal* 86, 89–91.

19 See further: Dianne Otto, 'A Sign of "Weakness"? Disrupting Gender Certainties in the Implementation of Security Council Resolution 1325' (2006) 13 *Michigan Journal of Gender and Law* 113.

20 See further: Sharon Pickering and Caroline Lambert (eds), *Global Issues, Women and Justice*, Sydney Institute of Criminology Series, NSW, 2004.

21 See further: Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law*, Manchester University Press, UK, 2000.

22 The UN General Assembly agreed to the establishment of a new gender architecture at its last session of 2009.

23 Caroline Lambert, 'Partial Sites and Partial Sightings: Women and the United Nations Human Rights Treaty System', in Pickering and Lambert, *Global Issues, Women and Justice*, p. 165.

Elizabeth Evatt and CEDAW

Elizabeth Evatt has had a stellar career combining international and domestic work in pursuit of human rights, especially women's rights. Evatt was Deputy President of the Australian Industrial Relations Commission in the 1970s, before becoming the first Chief Justice of the Family Court of Australia. From 1988 to 1993, she was president of the Australian Law Reform Commission and then Chancellor of the University of Newcastle. Notably, she chaired the Royal Commission on Human Relations from 1974 to 1977, which dealt with a wide variety of sensitive social issues, such as abortion, contraception, sex education, family law and violence against women. The royal commission broadened official definitions of domestic violence to include emotional and verbal as well as physical abuse.²⁴

In 1984, soon after the *SDA* finally made it through Parliament, Evatt was elected as an expert to the CEDAW Committee. When Anne Summers reportedly called Evatt to ask if she accepted the government's support for her nomination, she was surprised and asked if the CEDAW Committee did anything 'useful'. Summers replied that the government was nominating her precisely because they wanted CEDAW to do something useful.²⁵ And so it came to pass. Between 1984 and 1992, Evatt was a member of the committee, serving as its chair from 1989 to 1991. She was then elected a member of the UN Human Rights Committee from 1993 to 2000, which she combined with a role as a part-time commissioner of the Australian Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission) from 1995 to 1998. These simultaneous appointments exemplify Evatt's bond between the international and the domestic spheres.

During her long terms with both the CEDAW and the Human Rights Committees, Evatt embarked on a tireless agenda of procedural reform and succeeded in working with a group of like-minded committee members to improve the quality of analysis of general comments, the structure and length of meetings, the reporting procedures and the breadth of subject matter of the committees.²⁶ This procedural concern led to many substantive outcomes for women's rights, especially in the General Recommendations on sexual stereotyping, incompatible reservations to the Convention on the grounds of culture and

24 See further: Marian Sawer, *Making Women Count: A History of the Women's Electoral Lobby in Australia*, UNSW Press, Sydney, 2008, p. 48.

25 Peter Thomson, Elizabeth Evatt: Integrating Women's Issues in the United Nations Human Rights System, 'Australians at the United Nations', Unpublished ms, 13 August 1996, Department of Foreign Affairs and Trade, Canberra, p. 4 (on file with author).

26 Thomson, Elizabeth Evatt, pp. 8–10.

religion, and female circumcision. The document she is best known for, General Recommendation 19, drafted in 1992, found that violence against women constituted discrimination.²⁷

This was important because, notwithstanding the numerous strengths of CEDAW—including its extension to private actors and its aim to eliminate harmful customary practices²⁸—one of the most glaring shortcomings of the Convention is the omission of violence from its terms. Under Evatt's direction, the CEDAW Committee endeavoured to rectify this deficiency through Recommendation 19, which specifies gender-based violence as a form of discrimination prohibited by the treaty.²⁹ The adoption of the Declaration for the Elimination of All Forms of Violence Against Women by the UN General Assembly in 1993 also responded to this gap.³⁰ This work has been the foundation of many global policies and jurisprudence. Recommendation 19 and the Declaration provide the conceptual basis for and coherency of 'Outcome 4: Responses are just' under the *Time for Action* 2009 report of the National Council to Reduce Violence Against Women and their Children.³¹

Evatt's work with the Human Rights Committee was equally groundbreaking—working again on the compatibility of reservations to the International Covenant on Civil and Political Rights (ICCPR), contributing to drafting the controversial *General Comments on Article 18* (freedom of religion)³² and drafting Article 25 (free elections and universal suffrage).³³ She worked hard to realise the 'scope and potential' of the ICCPR's emphasis on the right to equality to be a 'powerful tool' to protect the rights of women in all fields, but found it a struggle.³⁴ Many of her interventions on violence against women, rights in marriage and gendered forms of persecution in asylum claims appear, however, in the revised *General Comment on Article 3* (equal rights of men and women) on which she worked closely with Professor Cecilia Medina of Chile. It was issued in March 2000.³⁵

27 CEDAW Committee General Comment 19 on Article 16 (and Article 5), *Violence against women*: 29/01/92, A/47/38.

28 See Articles 2 and 5.

29 CEDAW Committee General Comment 19 on Article 16 (and Article 5), *Violence against women*: 29/01/92, A/47/38.

30 General Assembly Resolution 48/104 of 20 December 1993.

31 National Council to Reduce Violence Against Women and their Children, *Time for Action: National Council's Plan for Australia to reduce Violence against Women and Children 2009–2021*, Canberra, 2009.

32 Human Rights Committee, *General Comment 22, Article 18* (Forty-Eighth Session, 1993), UN Doc CCPR/C/21/Rev 1/Add 4 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev 6, 2003, p. 155.

33 Human Rights Committee, *General Comment 25*. The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25), (Fifty-Seventh Session, 1996), UN Doc CCPR/C/21/Rev 1/Add 7 (1996), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev 6, 2003, p. 168.

34 Thomson, Elizabeth Evatt, p. 19.

35 Human Rights Committee, *General Comment 28*, Equality of rights between men and women (Article 3), (Sixty-Eighth Session, 2000), UN Doc CCPR/C/21/Rev 1/Add 10 (2000), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI/GEN/1/Rev

Elizabeth Evatt's vision of human rights is ultimately a unifying one. Her particular genius has been the ability to look beyond artificial legal boundaries and examine legal instruments from the standpoint of the holistic lived experience of an affected person, but then to translate this view into impeccably logical, analytically rigorous and technically accurate legal discourse. She sees life in all its messiness, but renders it in judicial prose. When you read the General Recommendations and comments she drafted, they sound so much like shining good sense, it is hard to remember how groundbreaking and controversial they were at the time, and how much Evatt had to invest in procedural reform for long periods to realise the opportunity to produce the documents.

Evatt's work for human rights certainly did not end with her time at the United Nations,³⁶ but my argument is that just as her international work was influenced by her domestic experience, so too has that international dimension added richness and weight to domestic advocacy—her own and that of the many of us influenced by her. Her critique of the *SDA*, then, is worth close examination.

CEDAW and the *SDA*

Evatt's central question in 2004 on the twentieth anniversary of the *SDA* was 'how well does the *SDA* fulfil Australia's obligations under the Women's Convention? Her answer: not very well at all. Of course, this is only one indicator of success, as the other contributions to this volume attest.

Evatt's critique of the *SDA* was based on its partial implementation of CEDAW, compared with the *Racial Discrimination Act 1975* (Cth), which tracks closely the provisions of the Convention on the Elimination of All Forms of Racial Discrimination (CERD). While praising the political breakthrough of the *SDA*'s passage, Evatt lists criticisms that the Act's 'definitions and restrictions are too narrow to deal with systemic discrimination; it has too many exemptions':

The *SDA* annexes the Women's Convention. But it aims to implement only certain provisions of the Convention. Its main aim was to prohibit sex discrimination in certain areas and provide remedies for discrimination. That was a significant innovation at Commonwealth level, one which some thought would bring us to the end of civilization.³⁷

6, 2003, p. 179.

³⁶ Evatt was a judge of the World Bank Administrative Tribunal, a Visiting Professor at the University of New South Wales and chair of the Board of the Public Interest Advocacy Centre in Sydney. She has for many years been a member of the Australian section of the International Commission of Jurists and was elected as a commissioner in April 2003. She has made valuable contributions to the public debate in recent years on sedition laws, the treatment of asylum-seekers and the need for an Australian Human Rights Act.

³⁷ Evatt, 'Falling Short', p. 58.

We see in her 2004 speech many of the themes Evatt grappled with at the international level: unfair or illogical exemptions to the Act, often based on religious grounds, which she felt should be challenged; restrictive interpretations of the grounds of discrimination; grounds too bound up in the male comparator;³⁸ interpretation using a very narrow view of a woman's life and the discrimination she could face over the life cycle.

Evatt's analysis was taken up in the NGO reports to the CEDAW examination of Australia and the concluding observations in 2006 correlate with her views.³⁹ Her arguments were used or closely mirrored in many of the submissions to the 2008 senate inquiry into the effectiveness of the *SDA*,⁴⁰ and were also submitted by many groups in support of the need for a Human Rights Act or Equality Act in the national consultation on human rights led by Frank Brennan in 2009.⁴¹ In my view, Evatt would be quite pleased with the recommendations of the senate inquiry into the *SDA*,⁴² especially Recommendations 1–3, which link the *SDA* more closely with CEDAW and other human rights treaties (see Box 12.1). The reforms would also focus on improving the machinery behind the *SDA*, especially the role of the Sex Discrimination Commissioner. The development of domestic machinery will be crucial to the effectiveness of the complaint mechanism under the Optional Protocol to CEDAW for Australian women.

Jane Connors and Andrew Byrnes: The Optional Protocol to CEDAW, 1994–2009

A key achievement since Evatt's speech in 2004 has been the belated accession by Australia to the Optional Protocol to CEDAW in November 2008. The failure

38 See further: Thornton's 'benchmark male' (Margaret Thornton, 'Feminism and the Changing State: The Case of Sex Discrimination' (2006) 21(50) *Australian Feminist Studies* 151).

39 Committee on the Elimination of All Forms of Discrimination Against Women, *Concluding Comments of the Committee on the Elimination of All Forms of Discrimination Against Women: Australia*, UN Doc CEDAW/C/AUL/CO/5 (2006). 'Australia's implementation of CEDAW was criticised by the Committee in a number of respects including the lack of adequate structures and mechanisms to ensure effective coordination and consistent application of the Convention in all states and territories, the absence of an entrenched guarantee prohibiting discrimination against women and providing for the principle of equality between women and men, the lack of sufficient statistical data, disaggregated by sex and ethnicity on the practical realization of equality between women and men in all areas covered by the Convention, and information on the impact and results achieved of legal and policy measures taken' (Sara Charlesworth, Submission 39 to Senate Standing Committee on Legal and Constitutional Affairs, *Inquiry into the Effectiveness of the Commonwealth Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality*, 8 August 2008). See further: Hilary Charlesworth and Sara Charlesworth, 'The Sex Discrimination Act and International Law' (2004) 27 *University of New South Wales Law Journal* 858.

40 On 26 June 2008, the Senate referred to the Legal and Constitutional Affairs Committee the matter of the effectiveness of the *Sex Discrimination Act 1984* (Cth) in eliminating discrimination and promoting gender equality.

41 Available at <<http://www.humanrightsconsultation.gov.au/>>

42 See further: Cusack, 'Discrimination Against Women', pp. 87–9.

to ratify under the previous, Howard Government was all the more galling for human rights advocates because three Australians were key players in its conception and drafting phase in 1993–94: Evatt herself and experts Jane Connors and Andrew Byrnes.⁴³

Jane Connors has been the Chief of the Special Procedures Branch at the UN Office of the High Commissioner for Human Rights since 2002. She joined the United Nations as the Chief of the Women’s Rights Division in the Department of Economic Affairs in 1996. Before that, she taught law at various tertiary institutions, spending 15 years at the School of Oriental and African Studies in London. She has written widely on the human rights of women and the treaty body system. Andrew Byrnes is Professor of International Law in the Faculty of Law at the University of New South Wales. He has published extensively on human rights topics, especially CEDAW and the human rights of women, with Jane Connors. He has been closely involved in the development of the Convention on the Rights of Persons with Disabilities in recent years.

Box 12.1

Recommendation 1

11.9. The committee recommends that the preamble to the Act and subsections 3(b), (ba) and (c) of the Act be amended by deleting the phrase ‘so far as is possible’.

Recommendation 2

11.8. The committee recommends that subsection 3(a) of the Act be amended to refer to other international conventions Australia has ratified which create obligations in relation to gender equality.

Recommendation 3

11.10. The committee recommends that the Act be amended by inserting an express requirement that the Act be interpreted in accordance with relevant international conventions Australia has ratified including CEDAW, ICCPR, ICESCR and the ILO conventions which create obligations in relation to gender equality.

Extract from Senate Standing Committee on Legal and Constitutional Affairs 2008, Report on the Effectiveness of the Commonwealth Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality, 12 December 2008, Parliament of Australia, Canberra, p. xiii.

43 Andrew Byrnes and Jane Connors, ‘Enforcing the Human Rights of Women: A Complaints Procedure for the Women’s Convention’ (1995–96) 21 *Brooklyn Journal of International Law* 679; Andrew Byrnes, ‘Slow and Steady Wins the Race?: The Development of an Optional Protocol to the Women’s Convention’ (1997) 91 *American Society of International Law and Procedure* 383.

At the Vienna Conference in 1993, there was considerable attention given to the idea of establishing an optional protocol to CEDAW. A group of NGOs, funded by the Dutch Government, met in Maastricht towards the end of 1994. Evatt attended, along with two other members of the Human Rights Committee and three members of the CEDAW Committee. Byrnes and Connors produced an influential background document for this meeting, which after successful negotiation produced a draft protocol that included both a complaints procedure and an inquiry procedure, based on the Optional Protocols to the ICCPR, CERD and the Convention Against Torture (CAT). The Maastricht document was then considered by the CEDAW Committee and a draft adopted in January 1995.

The General Assembly, acting without a vote, adopted the 21-article Optional Protocol to CEDAW on 6 October 1999, and it entered into force on 22 December 2000 after receiving the tenth state signature. While initially supporting the ratification process in the region, the Howard Coalition Government announced in 2000 that it did not intend to sign the Optional Protocol—ostensibly due to continuing concerns about the UN treaty body system.⁴⁴

Despite her personal experience of this rocky road to reform, Jane Connors, in my interview with her, focused on the key advantages of engaging with the UN system.⁴⁵ She noted that concluding observations from the UN committees, general comments on the treaty provisions and individual communications were all opportunities to test the Australian Government against an international standard, to add ‘oomph’ to an argument and to shine a spotlight on a particular domestic practice. In the case of the European Court of Human Rights, this led to binding gender jurisprudence.

Connors noted that NGO reports were a very effective strategy in structuring issues against a set of standards over the passage of time, which could also have domestic impact and act as a ‘baseline’ of minimum standards. Advocates have to manage their expectations of what the UN system can achieve. The practice of International Women’s Rights Action Watch (IWRAP) is an excellent regional and global example of using shadow reporting.⁴⁶ Australian NGOs have had a strong history of extensive grassroots community consultations producing high-level analytical reports that have had influence on the committee’s concluding observations.⁴⁷

44 Hilary Charlesworth, Madeline Chiam, Devika Hovell and George Williams, *No Country is an Island: Australia and International Law*, UNSW Press, Sydney, 2006, p. 88.

45 Interview with Jane Connors, 11 September 2009.

46 For more information on IWRAP, see <<http://www1.umn.edu/humanrts/iwraw/>>

47 See further: WRANA, *Australian NGO Shadow Report on the Implementation of CEDAW*, 2005; and YWCA Australia and Women’s Legal Services Australia, *Australian NGO Shadow Report on the Implementation of CEDAW*, 2009.

Connors also noted that this baseline approach was particularly useful in tracking regressions on particular issues, such as same-sex relationships. A particular challenge for many states in the United Nations was the issue of the rights of Islamic women in secular states. Connors urges patience when engaging in UN processes, observing that the international community is often not good at locating the centrality of gender concerns in issues that do not come obviously labelled as women's issues, including climate change, the global financial crisis and threats against peace and security. As Hilary Charlesworth notes: 'the players in international law crises are almost exclusively male... The lives of women are considered part of a crisis only when they are harmed in a way that is seen to demean the whole of their social group.'⁴⁸ Nonetheless, used strategically, the UN system can educate member states on their own achievements and blind spots, and the successes of other states. Connors reflected on the progress she had seen in UN debates over gender equality in the past decades. Her own career is testament to the influence individuals can wield within the international system to advance gender equality, just as Byrnes' work has often provided progressive force for women's rights and the rights of people living with disabilities from outside the system. Their experience teaches current advocates to play the long game, draw on the energy and resources of civil society and to be involved early in drafting processes.

Helen L'Orange: UN Declaration of Violence Against Women, 1993

Helen L'Orange is probably best known as one of Australia's leading public servants who focused on women's policy: the archetypal 'femocrat'. She headed national and State government (NSW) offices for the status of women from 1980 to 1993. During her time in the Women's Coordination Unit (WCU) in the NSW Premier's Department, supported by then Premier Neville Wran, major advances were made in the areas of domestic violence, sexual assault, rape and child protection in terms of law reform and policies and service delivery programs.⁴⁹ As Janet Ramsay notes of this period:

Partly as a result of the skill and energy of L'Orange and her staff, partly through the continuing enthusiasm of Wran and his government for the electoral rewards of the women's project and partly through the growing energy of the NSW women's policy community, L'Orange's term at the WCU saw an explosion of structural and policy achievement. The

48 Hilary Charlesworth, 'International Law: A Discipline of Crisis' (2002) 65 *Modern Law Review* 377, 389.

49 The Women's Advisory Council to the Premier of NSW (WAC) played an important role in devising policy and supporting the unit.

'hub/wheel' model of women's machinery expanded and the women's policy issues addressed spread to include non-sexist education, the access of girls to apprenticeships, community based child care, the establishment of women's health centres, women's access to housing, and the dependency of women on minor tranquillisers. Ongoing work on rape, sexual assault, domestic violence and eventually child abuse proceeded in this energetic context.⁵⁰

Marian Sawer states that it is not widely known that, along with Canada, Australia has developed a more comprehensive policy response to violence against women than any other democracy.⁵¹ Sawer attributes the wheel model as an early influence on the 'gender mainstreaming' framework adopted at the Beijing Conference in 1995.⁵² She attributes this leadership to some skilful footwork by femocrats during the Whitlam Government for the initiation in 1975 of federal funding for the women's refuges that had started appearing in 1974, and notes that the widespread nature of domestic violence quickly became apparent once refuges were available.⁵³ Sawer also acknowledges the success of the women's movement both in having the issue recognised within public policy as one of gender inequality and in achieving government funding for refuges run by feminist collectives.⁵⁴

Despite the change of government at the end of 1975, federal funding of refuges continued—albeit with some serious problems caused by the devolution in 1981 of refuge funding to sometimes hostile State governments.⁵⁵ There was insider/outsider activism over devolution as refuge workers camped in protest outside Parliament House in Canberra and the National Women's Advisory Council under Dame Beryl Beaurepaire lodged objections. Specific-purpose funding, however, was not reinstated until the Hawke Government was elected in 1983.⁵⁶

In the meantime, some State governments were taking a proactive role. In 1985, the NSW Premier, Neville Wran, declared that his was the first government in the world to proclaim in 10 languages that wife bashing was a crime.⁵⁷ This message appeared on billboards at railway stations and on buses and trains.

50 Janet Ramsay, *The Making of Domestic Violence Policy by the Australian Commonwealth Government and the Government of the State of New South Wales between 1970 and 1985: An Analytical Narrative of Feminist Policy Activism*, PhD thesis, 27 March 2006, University of Sydney, NSW, p. 177 (references omitted).

51 Sawer, 'Disappearing Tricks', p. 7. See further: S. Laurel Weldon, *Protest, Policy and the Problem of Violence Against Women: A Cross-National Comparison*, University of Pittsburgh Press, Pa, 2002.

52 Sawer, *Making Women Count*, p. 45.

53 Marian Sawer, *The Long March Through the Institutions: Women's Affairs Under Fraser and Hawke*, Australasian Political Studies Association 28th Annual Conference, Brisbane, 27–29 August 1986, p. 7.

54 See further Marian Sawer, *Sisters in Suits*, Allen & Unwin, Sydney, 1990.

55 Sawer, *The Long March Through the Institutions*, p. 15.

56 Sawer, *Making Women Count*, p. 158.

57 Carmel Niland, 'Women's Policy' in T. Bramston (ed.), *The Wran Era*, Federation Press, Sydney, 2006, p. 187.

When Helen L'Orange moved from the position of NSW Women's Adviser to that of Commonwealth Women's Adviser, she brought with her a commitment to a national community education program on domestic violence.⁵⁸ The 'Break the Silence!' Program launched by Prime Minister Bob Hawke in 1988 was again innovative in its community outreach both to migrant communities and to church and rural communities.⁵⁹

It was in this context of recognised global best practice that L'Orange went to Vienna. My interview with L'Orange focused on this international work, which has received less attention than it should.⁶⁰ From 1991 to 1993, she was a key member of the drafting team for the Declaration on the Elimination of All Forms of Violence Against Women adopted by the UN General Assembly in December 1993. The UN web site says that 'until that point, most Governments tended to regard violence against women largely as a private matter between individuals and not as a pervasive human rights problem requiring State intervention'.⁶¹

The Vienna Conference on Human Rights led to new machinery for gender equality. It called for the adoption of the Declaration, the creation of the mandate of special rapporteur and also urged the Commission for the Status of Women to embark on the elaboration of the Optional Protocol. The next year, the Commission on Human Rights adopted resolution 1994/45 of 4 March 1994, in which it decided to appoint the Special Rapporteur on Violence Against Women, including its causes and consequences. Many of the issues in the Declaration were developed further by the Beijing Platform for Action and the outcome document of its review by the twenty-third special session of the General Assembly in 2000.

In L'Orange's view, the role of international forums such as the United Nations was to serve as an opportunity or even a duty to use domestic learning and progressive policies for the benefit of women in developing or less progressive nations because at that time Australia was 'ahead of the game' in most policy areas. The exceptions in her view were issues faced by Aboriginal and Torres Strait Islander women. When it came to drafting the UN Declaration on Eliminating Violence, women in Canada and Australia took the lead because effective feminist lobbies in Canada and Australia had led to machinery in government for women, a full 15 years earlier than the United Kingdom, for example. L'Orange observes that in the early 1990s, CEDAW reports on Australia's machinery for implementation made other countries 'quite envious'. Germany had only two women's refuges, for example. This would sometimes work in the other

58 Sawyer, *Making Women Count*, p. 241.

59 Erika Sabine, 'Break the Silence: The State and Violence against Women' (1990) 36 *Refractory Girl* 13.

60 Interview with Helen L'Orange.

61 Office of the High Commissioner for Human Rights, *Women and Violence*, <<http://www.un.org/rights/dpi1772e.htm>>

direction—L'Orange noting that the Organisation for Economic Cooperation and Development (OECD) data were very influential in the continuing debates on paid maternity leave in Australia.

L'Orange was the Australian delegate sent to drafting sessions in Vienna in 1991 and 1992. She drew on NSW legislation in a 'major' way, believing that violence against women was a matter for state practice and criminal law. She said it took her a while to realise that this Declaration was leading the world towards 'a new perspective on violence against women'. She drew on her experience with the NSW Domestic Violence Task Force⁶² and the Supported Accommodation Assistance Program, which included refuges and public housing priority for women and children affected by violence.

Notably, it was the NSW Government report that led to the introduction into NSW law of Apprehended Domestic Violence Orders (ADVOs) in 1982 (South Australia was first). L'Orange asked Pat O'Shane to contribute the chapter on Indigenous violence. Ms O'Shane examined how violence split the Indigenous community in complex and interrelated ways. The ADVO was seen as a method of trying to find a way through these complexities for women, so that women would call the police and then at least the incident would be recorded. The hope was that police would react in a more timely manner when an ADVO had been issued.

In my interview with L'Orange, I saw again an emphasis on creating government machinery that could be responsive to women's needs. For example, she detailed how over eight years, her team 'colonised' other NSW departments, building units in health, education, industrial relations and housing.⁶³ In UN forums, Australia could then present its views in the following way:

We would hope that our national experience would be a useful resource for others. This is not to say we would want to be prescriptive in our suggestions. Rather, we would hope that others might feel able to draw on some of our experience, perhaps avoiding some of the difficulties we have encountered.⁶⁴

In terms of her experience with the United Nations, L'Orange has had mixed experiences. Generally she finds CEDAW and the Convention on the Rights of the Child very useful instruments because the reporting mechanism holds

62 New South Wales Task Force on Domestic Violence, *Report of New South Wales Task Force on Domestic Violence to Hon N K Wran QC, Premier of New South Wales*, 1981, and follow-up report in 1985.

63 L'Orange said this model was highly influential and when she moved into the federal sphere, she tried to recreate the scheme, but in departments the machinery was mostly limited to Women's Desks, which were not very effective compared with units.

64 Statement of Helen L'Orange, Leader of the Australian delegation to the 33rd session of the Commission for the Status of Women, Vienna, March–April 1989, p. 16.

states accountable. She found aspects of international diplomacy ‘heavy going’, including, for example, intense negotiations over who would host a particular meeting of the Commission for Status of Women (CSW). She recalls how many issues were off limits. At the 1985 Women’s Conference in Nairobi, she followed the drafting of a statement that violence against women was a ‘universal’ phenomenon around the globe. The USSR objected in the strongest terms, stating that there was no violence against women in Russia, only in capitalist countries, and the Vatican tried to strike the sentence out of the final report.⁶⁵ (In fact, there is barely any reference to domestic violence in the Nairobi final report.)

L’Orange is not necessarily an advocate for using human rights principles more broadly as an advocacy strategy. She felt that in the arena of public health, human rights as an advocacy tool was weaker than a focus on good public policy—laudable, but when the goal is to influence the practice of member states, it does not provide great leverage. She added that protection of women from violence has ‘a different note’ to rights. This could be a matter of style; Janet Ramsay says of L’Orange that she held a ‘strategic conviction’ that ‘the way for feminist policy activism to succeed was through a punctiliously professional observation of bureaucratic forms and processes’.⁶⁶ L’Orange advocates generational gender analysis: she urges advocates to look out for emerging issues from grassroots organisations, create policy, get political support, then work to have programs implemented by mainstream agencies.

Where L’Orange would completely agree with Evatt, Byrnes and Connors would be the central role of gender analysis backed by evidence. L’Orange is now involved with developing gender-sensitive health indicators and other measurement tools. She is critical of gender mainstreaming in organisations such as the World Health Organisation, but also domestically. She states that ‘gender mainstreaming ought to work but the transition in Australia didn’t work because there was not enough training given—the key is gender analysis skills’. She points to the recent National Indigenous Eye Health Survey; there was no reference to gender in the 22 key findings released by the Centre for Eye Research Australia.⁶⁷

65 Final report, <<http://www.un.org/womenwatch/daw/beijing/otherconferences/Nairobi/Nairobi%20Full%20Optimized.pdf>>

66 Ramsay, *The Making of Domestic Violence Policy by the Australian Commonwealth Government and the Government of the State of New South Wales between 1970 and 1985*, p. 191.

67 Available at <http://Indigenouspeoplesissues.com/attachments/2143_IHES_SummaryReport.pdf> This contrasts with the work done in several developing countries by Canadian Dr Paul Courtright and his colleagues. Nearly two-thirds of blind people worldwide are women and girls. In many places, men have twice the access to eye care as women. Of the 30 million blind people in China, India and Africa, 20 million are women. Women bear about 75 per cent of trachoma-related blindness. Compared with men, women are 1.8 times more likely to have trichiasis and account for about 70 per cent of all trichiasis cases. In Tanzania, these findings were used to develop gender-sensitive strategies, including transport programs to get women to clinics and village-level activities to counteract the attitude that women’s eyesight was not valued. Dr

Asked to reflect on the twenty-fifth anniversary of the *SDA*, L'Orange feels it contains good principles and some useful machinery but does not seem to have the 'teeth' that it once had. In terms of the status of Australian women in 2010, she had mixed feelings. Increased economic independence for women and young feminists made her optimistic about the future but she was nervous about the long-term impact of the very early demarcation of gender roles, especially the increasingly pink/blue dichotomy of consumerism and of 'having rather than doing' associated with modern childhood.⁶⁸

Analysing current debates

It would have to be said that much of the machinery established by L'Orange and others has been dismantled and the sharing of good practice in UN forums such as described by Connors and Byrnes has all but disappeared. Winter reports that from having become known as one of the two countries with the most comprehensive government response to the issue of domestic violence, Australia, in 2003, astonished overseas observers when it 'borrowed' unspent money from its domestic violence and sexual assault programs to pay for anti-terrorism fridge magnets mailed to every Australian household.⁶⁹

In 2004, the federal government attempted to suppress an Access Economics report, commissioned in part by the Office for the Status of Women, which found that the cost to the economy of domestic violence was \$8 billion per annum. The report, which was heavily criticised by men's rights groups for describing most perpetrators as male, was released only after a successful freedom-of-information (FOI) application by the FOI Editor of *The Australian* newspaper.⁷⁰ According to Marian Sawer, another 'low point' was the release by the Australian Bureau of Statistics of an Executive Summary of the findings of the 2005 'Personal Safety Survey', which seemingly confirmed the beliefs of men's rights groups

Courtright has also established similar programs in Nepal, India, Guatemala, Tibet, Egypt, Kenya and Malawi. See further: S. Lewallen, A. Mousa, K. Bassett and P. Courtright, 'Global Issues: Cataract Surgical Coverage remains Lower in Women' (2009) 93 *British Journal of Ophthalmology* 295.

68 See further: <http://www.designboom.com/weblog/read.php?TOPIC_PK=2376>

69 On the transfer of domestic violence funds to anti-terrorism fridge magnets, see Bronwyn Winter, 'Preemptive Fridge Magnets and other Weapons of Masculinist Destruction: The Rhetoric and Reality of "Safeguarding Australia"' (2007) 33(1) *Signs* 25.

70 Sawer, 'Disappearing Tricks' 7. See further: Chilla Bulbeck, 'Gender Policies: Hers to His' in Peter Saunders and James Walter (eds), *Ideas and Influence: Social Science and Public Policy in Australia*, UNSW Press, Sydney, 2005, p. 150.

that similar proportions of men and women engaged in domestic violence.⁷¹ In fact, the figures referred only to the proportion of assaults by an opposite-sex perpetrator that were by a partner, and were later corrected.⁷²

Under the Rudd Government, there were important policy developments. In 2009, the Prime Minister launched the report *Time for Action: National Council's Plan for Australia to reduce Violence against Women and Children 2009–2021*. The government took the report to the Council of Australian Governments (COAG) and turned it into a Commonwealth plan: *Protecting Children is Everyone's Business: National framework for protecting Australia's children 2009–2020*. These reports will join *The Road Home: A National Approach to Reducing Homelessness* as part of a social policy reform agenda, with a disability strategy still in progress.

The *Time for Action* report corrected the record on the prevalence and cost of domestic violence. It states that one in three Australian women will report being a victim of physical violence and almost one in five will report being a victim of sexual violence in their lifetime, according to the Australian Bureau of Statistics. Approximately 350 000 women will experience physical violence and 125 000 women will experience sexual violence each year. Violence against women also comes at an enormous economic cost—\$13.6 billion a year—but is mostly preventable.⁷³

The reports reflect a strong link between these three issues: domestic violence, child abuse and homelessness. What was stark in reading the reports side by side was that the overlapping area between these triangular issues seems to be where the government response is likely to be weakest. Both of the new reports acknowledge that Indigenous women and children are being failed in devastating ways by the current system. Again, there seems to be a lack of strength in the response, reflecting the government struggling with the intersection of race and gender. Despite the launch by the Prime Minister, this response partly reflects the fact that of the responsible ministers—Jenny Macklin and Tanya Plibersek—only one is a cabinet minister and is able to influence the continuing policy process more directly. The Minister for Housing and Women is not a cabinet post, although it should be.⁷⁴

71 Sawyer, 'Disappearing Tricks' 7.

72 Ibid. See further: Michael Flood, 'Violence against Women and Men in Australia: What the Personal Safety Survey can and can't tell us', *DRCV Newsletter* 4, 2006, 3–10.

73 National Council to Reduce Violence Against Women and their Children, *Time for Action: National Council's plan for Australia to reduce violence against women and children 2009–2021*, Executive Summary, Canberra, 2009, p. 1.

74 See further: Susan Harris Rimmer, 'Grand Plans' in B. Nelson and A. MacIntyre (eds), *Capturing the Year 2009: Writings from the ANU College of Asia and the Pacific*, The Australian National University, Canberra, 2009, p. 74.

The *Time for Action* report showed that strengthening government action to protect Indigenous women and children on the basis of their rights and full citizenship is still a major challenge 25 years after signing CEDAW. 'Healing centres' in remote areas where Indigenous perpetrators can receive culturally appropriate counselling is a good idea, but not at the expense of justice available to other Australian women. The focus must be on access to justice and providing a broader range of choices to women, wherever they live in Australia, and whatever their race. In fact, it could be that the current moves to reform the legal profession and improve access to justice will have the most impact, including calls to provide incentives for lawyers to practise in rural and regional areas and to provide better funding and conditions for Aboriginal and Torres Strait Islander legal centres. Some problems remain unchanged. In other words, Australia has lost its international edge in effective government machinery to prevent violence against women. In 2010, the Australian Law Reform Commission (ALRC) and the NSW Law Reform Commission (NSWLRC) released a consultation paper for a joint inquiry into family violence laws.⁷⁵ This inquiry represents an opportunity to engage with these architectural issues.

Conclusion

There are three main themes I gleaned from analysing the experiences of Elizabeth Evatt, Helen L'Orange, Jane Connors and Andrew Byrnes. First, these individuals were willing to work within the system and were supported by the Australian Government at key moments: Evatt's nomination, L'Orange's appointment as head of the Australian CSW delegation in Vienna and government funding for the expert meeting in Maastricht for the Optional Protocol. If Australians are to continue to make an impact on the international system, they need to be supported in key ways to have a presence on the world stage but also to remain independent and respected at home for their expertise. For example, Erika Feller, Assistant High Commissioner in the Office of the UN High Commissioner for Refugees, is the most senior Australian woman in the UN system, lauded globally for her expertise in protection of refugees and asylum-seekers, but she receives very little recognition within Australia (outside her field).⁷⁶ The picture is not as rosy if we look at the history of women engaging with CERD,

⁷⁵ Australian Law Reform Commission and New South Wales Law Reform Commission (ALRC/NSWLRC), *Family Violence: Improving Legal Frameworks*, Consultation Paper 1, 2010, <<http://www.alrc.gov.au/inquiries/current/family-violence/CP1/index.html>>

⁷⁶ Names of Australian women engaging with the United Nations include: Linda Bartolomei, Margaret Bearlin, Quentin Bryce, Gabrielle Cullen, Megan Davis, Anne-Marie Devereux, Alice Edwards, Louise Hand, Ellen Hansen, Lee Kerr, Caroline Lambert, Eve Lester, Libby Lloyd, Caroline Millar, Robyn Moody, Annie Petit, Margaret Reynolds, Ariane Rummery, Eileen Pittaway, Carole Shaw, Leanne Smith, Rosalind Strong, Irene Watson, Pera Wells, Penny Wensley, Donelle Wheeler, Natasha Yacoub, and many more.

the Declaration on the Rights of Indigenous Peoples or the Migrant Workers Convention, let alone the wider UN system, where progress in integrating women's rights has been much slower and harder.

Second, political leadership combined with adviser and bureaucratic expertise is a winning combination for women's rights at both domestic and international levels, and this is a rare commodity. Helen L'Orange and Neville Wran, Anne Summers, Geoffrey Yeend and Paul Keating, Susan Ryan, Mike Codd, Margaret Reynolds and Bob Hawke, Gough Whitlam and Liz Reid are all good examples of leadership in different roles that respected the expertise involved in good gender analysis.⁷⁷ Tanya Plibersek, Liz Broderick and Sally Moyle could draw on these past models of influence.

We need to have this expertise and leadership represented overseas where possible in order to help women in other societies and receive insights that can benefit women in Australia. The biographical lens employed in this chapter underscores that necessity. At the Commission for the Status of Women in 2009, Australia finally sent the first ever delegation of Indigenous women. Australia was successful in nominating lawyer Megan Davis for election to the Permanent Forum of Indigenous Peoples in 2011. Australia did not, however, nominate a candidate in 2010 for the CEDAW Committee, despite the noted international expertise of several Australians, not least Andrew Byrnes, Dianne Otto and Hilary Charlesworth.

Leadership must come from many levels. Government support for Australian NGOs to engage with the UN human rights system is extremely limited and ad hoc. Learning the procedures of the UN system takes training, financial support and patience. Often the rewards come after many years of intricate drafting discussions. Australian NGOs could have that expertise, but usually it resides in one or two individuals, often with little capacity or support for reporting back on international developments. A more systematic and long-term approach for NGO representation would improve the overall quality of Australia's engagement with the United Nations.

Third, procedural reform is important and fundamental to substantive gains. My firm view is that gender-sensitive laws are crucial but the aim is that preventative policies mean that individuals do not have to resort to legal action. Despite a long period of bipartisan support, a government adverse to the women's sector was still able to unravel substantial gains. General human rights machinery is

⁷⁷ Anne Summers notes that the 'femocrats had to fight and wheedle just like any other bureaucrat, even if their political masters were perhaps at times more sympathetic than other political leaders at different times' (Personal communication with author, 24 February 2010).

still not in place, therefore women's rights always require an extra struggle. The uneven history of Australia's ratification of CEDAW and its Optional Protocol, considered alongside the rocky passage of the *SDA*, is testament to this fact.

In 2004, Evatt was extremely pessimistic and ended her speech on a despondent note, situating the failings to secure the rights of Australian women in this broader human rights context, stating that the Australian Government

has refused to ratify the Optional Protocol to the Women's Convention as well as that to the Torture Convention. It has consistently refused to respect decisions of the treaty bodies relating to the detention and treatment of asylum seekers. This is part of a wider picture in which disregard of human rights by the Government has been manifested in the anti-terrorism laws and in the failure to uphold the human rights of our citizens detained in Guantanamo Bay; it is manifest in neglect of the self-determination rights of Indigenous people, and in the denial of reparations for the stolen generation.⁷⁸

In 2010, the landscape has changed significantly in terms of human rights protections, at least in relation to Australia's more welcoming view of the United Nations. During its first two years, the Rudd Government ratified the Optional Protocol to CEDAW and CAT, ratified the Disability Convention and its Optional Protocol and signalled acceptance of the Declaration on the Rights of Indigenous People. The government has extended an open invitation to the UN special procedures, resulting in the visit of James Anaya and Arnand Grover so far. The Nauru detention centre has been closed, temporary protection visas abolished and detention debt done away with. A National Security Legislation Monitor has been appointed and terror laws were reviewed. The Australian Agency of International Development (AusAID) is bedding down a new gender policy. National plans on social policies—such as public housing, domestic violence, homelessness, mental health and child protection—offer real hope of a rights-based approach to improving the conditions of life fundamental to wellbeing.

Generally, however, Elizabeth Evatt could still say we have much further to travel in making the rights of women part of the central project of protecting human rights in Australia, and simply achieving a Human Rights Act will also not be enough, if her experience with the ICCPR is any guide.⁷⁹ Debates over paid maternity leave were framed primarily in terms of economic benefit during the financial crisis. Debates over the Northern Territory intervention use paternalistic and partial tones when it comes to the rights of Indigenous women and girls. There remains parlous representation of women on corporate boards.

78 Evatt, 'Falling Short', pp. 77–8.

79 The Rudd Government rejected the recommendation for federal human rights legislation in April 2010 and said the decision would not be reviewed until 2014.

There is continued lack of recognition of gendered persecution in asylum claims. The need for more quality and convenient child care and after-school care was a goal abandoned by the Rudd Government in April 2010. The possible outcomes of the Henry tax review for women have not been fully explored. Many other current issues speak of lack of motivation and commitment, a partial and narrow national imagination and a paucity of use of existing evidence for gender analysis when it comes to really valuing Australian women, recognising their dignity and fulfilling their rights.

The CEDAW Committee in 2006 singled out Australia on the following matters: the low level of participation of women, particularly Indigenous women and women belonging to ethnic minorities, in decision-making bodies; the continuing prevalence of violence against women; the lack of a comprehensive approach to combat trafficking and exploitation resulting from prostitution; the gender-specific impact of law and policy on refugees and asylum-seekers; the lack of uniformity in work-related paid maternity leave schemes; women's ability to access health services; discrimination of immigrant, refugee and minority women and girls; and inequalities suffered by Aboriginal and Torres Strait Islander women.⁸⁰ Many of these issues remain unaddressed to the satisfaction of women's NGOs in the 2009 report.⁸¹ The committee is due to conduct hearings on Australia's combined sixth and seventh periodic reports in July 2010.⁸²

If we take Evatt's human rights test of whether Australia is committed to 'raise from the lowest level those whose needs are greatest', I am not convinced that Australia's parliamentary legislative process, bureaucratic machinery, political debate or data and evaluation methods are designed with that aim in mind. The experience of our heroes in this story of raising women up shows that progress will be slow, but possible. The fiftieth anniversary of the *SDA* could see the fruits of determination and patience in the current generation of advocates.

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