

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

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The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly of the United Nations by its resolution 34/180 almost 30 years ago on 18 December 1979. The Convention entered into force on 3 September 1981 as the first global and comprehensive legally binding international treaty aimed at the elimination of all forms of sex- and gender-based discrimination against women. As of December 2008, it had been accepted by 185 State parties. Although preceded by a number of general human rights treaties explicitly providing that the rights they establish shall be available to women and men on an equal basis, as well as those which address particular forms of discrimination against women, the rationale for the Convention is clearly stated in its Preamble which indicates “despite these various instruments extensive discrimination against women continues to exist”.

The Convention’s aim is the elimination of all forms of discrimination against women both *de jure* and *de facto*, resulting from the activities or omissions on the part of States parties, their agents, or committed by any persons or organizations in all fields of life, including in the areas of politics, economy, society, culture, civil and family life. Its goal is the recognition and achievement of the *de jure* and *de facto* equality of women and men, which is to be achieved by a policy of elimination of all forms of discrimination against women incorporating all appropriate legislative and programmatic measures. A primary requirement for States parties is to “embody the principle of equality of men and women in their national constitutions or other appropriate legislation” and “to ensure... the practical realization of this principle” (article 2 (a)). This requirement of practical realization of equality makes clear that the Convention envisages substantive equality between women and men in the enjoyment of all human rights.

The Convention provides a broad definition of discrimination against women as “[...] any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” (article 1.) This definition includes both direct and indirect discrimination against women, be it intentional or unintentional, in respect of law or practice, in all aspects of public and private life. Direct discrimination is intended to discriminate against women and constitutes apparent exclusion, distinction or restriction of rights of women as compared to men. Indirect discrimination occurs when apparently neutral legal standards or policies which do not seek to discriminate lead to consequences that, without justification, affect the enjoyment of rights by women disproportionately, simply because they are women. The fact that the Convention addresses both direct and indirect forms of discrimination against women makes it a unique instrument in international law for the achievement of genuine (both formal and substantive) equality between men and women.

The Convention protects women against all forms of discrimination throughout their life cycle and includes girls. In its four substantive parts, the Convention moves beyond guarantees of equal protection in international instruments which predated it, setting out measures for the achievement of equality between women and men, regardless of their marital status, in all aspects of political, economic and social life and family relations. General measures of implementation are elaborated in its first part, which also provides that temporary special measures aimed at accelerating *de facto* equality between men and women, such as affirmative action measures, will not be considered discriminatory. These measures may last as long as inequalities exist, but must be discontinued when equality of opportunity and treatment have been achieved (article 4, paragraph 1). Special measures aimed at the protection of maternity are also defined as non-discriminatory (article 4, paragraph 2). In a unique provision, States parties are required to modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women. They are also required to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in their children's upbringing (article 5). All appropriate measures are to be taken by States parties to suppress all forms of traffic in women and exploitation of prostitution of women (article 6), as well as to eliminate discrimination against women in political and public life, including in relation to the representation of their countries at the international level and in international organizations (articles 7 and 8). States parties are also required to grant women equal rights with men in relation to their nationality and that of their children, while all appropriate measures must be taken to eliminate discrimination against women in the fields of education, employment and health and economic and social life, including in respect to family benefits, bank loans and other capital, and recreational, sporting and cultural activities (articles 9 to 13). The particular problems faced by rural women are acknowledged in the Convention, with its article 14 requiring States parties to take all appropriate measures to eliminate discrimination against women in rural areas, and ensure that they participate in and benefit from rural development on the same basis as men. States parties are also required to accord women equality before the law, including in relation to civil and contractual capacity, movement, residence and domicile (article 15). They are also required to take all appropriate measures to eliminate discrimination against women in marriage and family relations, including in relation to children, while the Convention makes clear that the betrothal and marriage of a child are to have no legal effect, and all necessary action should be taken to specify a minimum age for marriage and make registration of marriage compulsory (article 16).

The Convention establishes a treaty body, entitled the Committee on the Elimination of Discrimination against Women (CEDAW) for the purpose of considering progress made in its implementation. The Committee is composed of 23 experts of "high moral standing and competence in the field covered by the Convention" elected by the States parties from among their nationals, but who serve in their personal capacity (article 17, paragraph 1). In elections, States parties are directed to give consideration to "equitable geographical distribution and representation of different forms of civilization as well as the principal legal systems." Members are elected by secret ballot at meetings of States parties for a renewable four-year-term (*ibid.*).

The Committee's primary means of considering progress in implementation is through the consideration of reports which the Convention obliges States parties to

undertake to submit on the legislative, judicial, administrative and other measures which they have adopted to give effect to the provisions of the Convention. Initial reports are to be submitted within one year after the entry into force of the Convention for that State, and thereafter at least every four years, and further whenever the Committee so requests. In December 2000, an Optional Protocol to the Convention entered into force. This Protocol, which has been ratified or acceded to by 96 States parties to the Convention (as of December 2008), provides the Committee with competence to consider complaints from individuals or groups of individuals where certain preconditions are fulfilled, most importantly where domestic remedies have been exhausted. It also allows the Committee to inquire into reliable allegations of grave or systematic violations of the Convention. To date (December 2008), the Committee has considered over 13 communications and undertaken one inquiry. Communications provide CEDAW with an opportunity to develop its jurisprudence against the background of an individual factual situation, while the inquiry competence allows it to craft recommendations to address grave or systematic violations of women's rights.

Since its establishment over twenty years ago, CEDAW has ensured that the Convention is a living instrument both in substance and procedures. It has fully exploited its capacity to formulate suggestions and general recommendations provided for in article 21 of the Convention, elaborating 26 General Recommendations which provide authoritative guidance to States parties on the meaning of the Convention's provisions and the themes which underpin it. During its first ten years, the Committee's general recommendations addressed such issues as the content of reports, reservations to the Convention and resources. After its tenth session in 1991, the practice of issuing general recommendations changed, with the Committee beginning to adopt general recommendations on specific provisions of the Convention and on the correlation between the Convention's articles and what the Committee described as "cross-cutting" themes. The general recommendations became more detailed and comprehensive, offering States parties clear guidance on the application of the Convention in particular situations. For example, since the Convention does not contain an explicit provision dealing with violence against women as such, in its General Recommendation No. 19 (1992), the Committee elaborated its authoritative understanding of violence against women in relation to the Convention. The Committee made clear that various articles of the Convention require States to protect women from violence and requested that States parties include information on the incidence of violence against women and measures adopted to confront such violence in their reports under the Convention. General Recommendation No. 19 of 1992 on violence against women explains the obligation of a State party to exercise due diligence to protect women from violence, investigate the crime, punish the perpetrator, and provide compensation to women victims of violence. It has guided States parties as they have created laws, policies and programmes, and has also been used by national judiciaries to promote and protect the rights of women.

From the point of view of procedures, CEDAW has encouraged full use by specialized agencies of the capacity outlined in article 22 of the Convention, which allows it to invite them to submit reports on the implementation of the Convention in areas within the scope of their activities, and the Food and Agriculture Organization, the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization regularly take advantage of this opportunity. United Nations Country Teams are now collaborating to present confidential reports to the Committee, while oral and written reports are also submitted by funds and programmes of

the United Nations, and other intergovernmental entities such as the International Organization for Migration and the Inter-Parliamentary Union. Strong cooperation has also been forged with non-governmental organizations, both country-based and international, which routinely supply the Committee with numerous “shadow reports”, in which they outline their views on the implementation or non-implementation of the Convention. The Committee has also expanded the categories of national stakeholders, such as national human rights institutions and national parliaments, which it encourages to be involved in its work. Like other human rights treaty bodies, CEDAW considers reports through a constructive dialogue with the high level delegation of the given State party, deliberating and adopting after consideration in a closed session concluding observations in which it highlights progress and areas requiring more attention, recommending measures to be undertaken. These are tailor-made for each State party, and the Committee has worked to ensure that they are concrete, focused and implementable. Starting from 2008, two areas are identified for immediate follow-up by each State party, with an interim report on progress required within one or two years.

The Convention was negotiated in the Commission on the Status of Women and the Third Committee of the General Assembly through a broad and participatory process, but envisages the possibility of reservations being made on ratification or accession. Reflecting the 1969 Vienna Convention on the Law of Treaties, the Convention’s article 28, paragraph 2, does not permit reservations that are incompatible with its object and purpose. Many States have lodged reservations on accepting the Convention, with a large number of these States withdrawing them when appropriate adjustments have been made at the national level to ensure compliance with the treaty. CEDAW, in its General Recommendation No. 4 (1987), General Recommendation No. 20 (1992) and in its Statement on reservations to the Convention on the Elimination of All Forms of Discrimination against Women (1998), has elaborated its position on reservations. In general, CEDAW calls upon States parties, if they consider entering reservations, to formulate them as precisely and narrowly as possible and to make sure that they are not incompatible with the core provisions of the Convention that express its object and purpose. (In General Recommendation No. 4, the Committee expresses its concern regarding the significant number of reservations that are incompatible with the object and purpose of the Convention, while General Recommendation No. 20 about reservations to the Convention calls upon other States parties to raise the issue of the validity and legal effect of reservations to the Convention.) CEDAW has thus proclaimed in 1998 that reservations to articles 2 and 16 of the Convention are incompatible with the object and purpose of the Convention and as such are impermissible (1998 Statement on reservations to the Convention (A/53/38/Rev.1) pp. 47-50).

Together, the Committee’s reporting, concluding observations, general recommendations, communications and inquiry competencies provide it with the tools to develop a comprehensive jurisprudence for the elimination of discrimination against women and measures needed for practical realization of the principle of equality between women and men. However, the Convention is the only United Nations human rights treaty with a limitation on its meeting time. According to article 20, paragraph 1, of the Convention, only one session of the Committee is provided for annually, of “at most two weeks” for the consideration of the reports by the State parties. Resolutions of the General Assembly have progressively provided CEDAW with expanded meeting time, and, in 1995, States parties to the Convention adopted an amendment to article 20, paragraph 1, providing for appropriate meeting time. Acceptance of at least two thirds of the State

parties is required for the amendment to enter into force, but only 45 States parties have ratified it so far (General Assembly resolution 50/202 of 22 December 1995). In the meantime, in 2007, the General Assembly authorized CEDAW from January 2010 to convene in three annual sessions of three weeks each preceded by a pre-sessional working group, in addition to the 10 days of annual meeting time approved for the CEDAW Working Group on Communications (General Assembly resolution 62/218 of 22 December 2007, paragraph 14). The provision of appropriate meeting time provides a framework for CEDAW to continue to introduce substantive and procedural measures for its effective work so that the promise of the Convention can become a reality for the women of the world.

Related Materials

A. Legal Instruments

Amendment to article 20, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, New York, 22 December 1995, (Doc. CEDAW/SP/1995/2).

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, New York, 6 October 1999, United Nations, *Treaty Series*, vol. 2131, p. 83.

B. Documents

General Recommendation No. 4 (reservations). Report of the Committee on the Elimination of Discrimination against Women, (sixth session), 15 May 1987 (A/42/38), para. 579.

General Recommendation No. 19 (violence against women). Report of the Committee on the Elimination of Discrimination against Women, (eleventh session), 24 June 1992 (A/47/38), p.1.

General Recommendation No. 20 (reservations). Report of the Committee on the Elimination of Discrimination against Women, (eleventh session), 24 June 1992 (A/47/38 of 1992), p. 1.

General Assembly resolution 50/202 of 22 December 1995 (Amendment to article 20, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women).

Statement on reservations to the Convention on the Elimination of All Forms of Discrimination against Women adopted by the Committee on the Elimination of Discrimination against Women. Report of the Committee on the Elimination of Discrimination against Women, (eighteenth and nineteenth sessions), 14 May 1998 (A/53/38/Rev.1), Part II, chapter I A.

General Assembly resolution 62/218 of 22 December 2007 (Convention on the Elimination of All Forms of Discrimination against Women).

C. Doctrine

N. Burrows, “The 1979 Convention on the Elimination of All Forms of Discrimination against Women”, *Netherlands International Law Review*, vol. 32, 1980, pp. 419-460.

A. Byrnes, “The ‘Other’ Human rights Treaty Body: The Work of the Committee on the Elimination of Discrimination against Women”, *Yale Journal of International Law*, vol. 14, 1989, pp. 1-67.

A. Byrnes and J. Connors, “Enforcing the Rights of Women: A Complaints Procedure for the Women’s Convention”, *Brooklyn Journal of International Law*, vol. 21, 1996, pp. 679-797.

R. Emerton, K. Adams, A. Byrnes and J. Connors (eds.), *International Women’s Rights Cases*, London, Cavendish Publishing, 2005.

E. Evatt, “Finding a voice for women’s rights: the early days of CEDAW”, *The George Washington Law Review*, vol. 34, 2002, pp. 515-553.

H. B. Schöpp-Schilling and C. Flinterman (eds), *The Circle of Empowerment: Twenty-five years of the UN Committee on the Elimination of Discrimination against Women*, Feminist Press, 2007.

D. Šimonović, “Reflections on the Future”, in H. B. Schöpp-Schilling and others (eds), *The Circle of Empowerment: Twenty-five years of the UN Committee on the Elimination of Discrimination against Women*, Feminist Press, 2007, p. 347.

K.-L. Tang, “The leadership role of international law in enforcing women’s rights: the Optional Protocol to the Women’s Convention”, *Gender and Development*, vol. 8, 2000, p. 65.

United Nations and Inter-Parliamentary Union, *Confronting Discrimination: The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol: Handbook for Parliamentarians*, 2003.

The treaties and the output of treaty bodies can be found at <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>.