

25 years of the CEDAW

Convention on the Elimination of All Forms of Discrimination against Women in the world

Introduction

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted and opened for signature, ratification and accession by the UN General Assembly resolution 34/180 of 18 December 1979. At a special ceremony that took place during the Copenhagen mid-decade review conference¹ on 17 July 1980, 64 States signed the Convention and two States submitted their instruments of ratification. On 3 September 1981, 30 days after the twentieth member State had ratified it, the Convention entered into force.²

As of 18 March 2005, 180 countries - over 90% of UN members - are party to the Convention and an additional country (United States of America) has signed the treaty, binding itself to do nothing in contravention of its terms.

The last country to ratify the Convention was Monaco in March 2005. The years 1981 and 1985 were when most ratifications were registered (around 20 countries each year). After 2000, the pace of ratifications slowed down. In early 2005 only 11 member States had not yet ratified (Brunei Darussalam, Holy See, Iran, Marshall Islands, Nauru, Oman, Palau, Qatar, Somalia, Sudan and Tonga). In most cases, these States have cited religious reasons for not ratifying the Convention.

This international bill of rights for women consists of a preamble and 30 articles; it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

The Convention defines 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."³

According to the United Nations Division for the Advancement of Women,⁴ by accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination;
- to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life - including the right to vote and to stand for election - as well as education, health and employment. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.

The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of trafficking and exploitation of women.

Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

Beijing World Conference on Women and the CEDAW

In September 1995 the Fourth World Conference on Women was held in Beijing and the Beijing Declaration and Platform for Action were adopted.

Paragraph 8 of the Beijing Declaration states that: "The equal rights and inherent human dignity of women and men and other purposes and principles enshrined in the Charter of the United Nations, to the Universal Declaration of Human Rights and other international human rights instruments, in particular the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, as well as the Declaration on the Elimination of Violence against Women and the Declaration on the Right to Development."⁵

It also upholds the CEDAW and in the Mission Statement, paragraph 25, states: "In 1979, the General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women, which entered into force in 1981 and set an international standard for what was meant by equality between women and men. In 1985, the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace adopted the Nairobi Forward-looking Strategies for the Advancement of Women, to be implemented by the year 2000. There has been important progress in achieving equality between women and men. Many Governments have enacted legislation to promote equality between women and men and have established national machineries to ensure the mainstreaming of gender perspectives in all spheres of society. International agencies have focused greater attention on women's status and roles."

Optional Protocol to the CEDAW

On 6 October 1999, at the 54th session of the United Nations General Assembly, the Optional Protocol to the CEDAW was adopted.⁵

The draft Optional Protocol incorporates the features of existing UN complaints procedures. It incorporates some of the practices of other UN treaty bodies that have developed as their complaints procedures have been used. It also refers to the principles of equality and non-discrimination as embodied in the UN Charter, the Universal Declaration of Human Rights, and other international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women. It reaffirms the determination of States parties which adopt the protocol to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms.

The Fourth World Conference on Women called on UN member States to support the elaboration of the Optional Protocol. In the Beijing Platform for Action, among the actions to be taken it is also noted: "Support the process initiated by the Commission on the Status of Women with a view to elaborating a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women that could enter into force as soon as possible on a right of petition procedure,

1 World Conference on the United Nations Decade for Women: Equality, Development and Peace.

2 CEDAW, Article 27 (1): "The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession."

3 CEDAW, Part I, Article 1.

4 www.un.org/womenwatch/daw/cedaw/

5 Adopted by Resolution A/RES/54/4.

taking into consideration the Secretary-General's report on the optional protocol, including those views related to its feasibility."⁶

The Protocol entered into force on 22 December 2000, in accordance with Article 16 (1). The last country to accede to the Optional Protocol was Cameroon in January 2005, bringing the total number of ratifying countries to 71, while 76 countries signatory countries are still to ratify.

The signature and/or ratification of the Optional Protocol represents a measure of the political will of the States towards the full implementation of the CEDAW. Among the countries that have signed or ratified the Protocol there is dissimilar behaviour according to regions: while 36 European countries have signed or ratified the Protocol, only 6 have done so in Central Asia, 8 in South Asia and the Pacific, 18 in Latin America and the Caribbean and 20 in Sub-Saharan Africa. It must be noted that in South Asia only Nepal, Bangladesh and Sri Lanka have declared themselves in favour of the Protocol. At the regional level, the most notable case is Libya, which is the only member State that has ratified the Optional Protocol among the 20 countries belonging to the Middle East and North of Africa region.

Amendment to Article 20, paragraph 1

In 1995 the Governments of Denmark, Iceland, Finland, Norway and Sweden proposed an amendment to Article 20, paragraph 1, of the Convention. It was adopted at the CEDAW Committee session held on 22 December 1997, and the General Assembly noted with approval the amendment.

Article 20 of CEDAW limits the Committee's normal meeting time to two weeks annually. The proposed amendment introduces a procedure that allows for more flexible time allocation. The amendment has not yet received the number of acceptances required for its entry into force. According to the resolution of the amendment, "...it shall enter into force following consideration by the General Assembly and when it has been accepted by a two-thirds majority of States parties which shall have so notified the Secretary-General as depositary of the Convention." As of May 2005, only 45 UN members are parties. Since the early 1990s, and pending the entry into force of the amendment, the General Assembly has authorized the Committee to meet for two three-week sessions annually. The most recent acceptances of this amendment were made by Ireland, Lithuania and Uruguay in 2004.

The acceptance by these countries and of the other UN member States constitutes an important gesture of political will as it gives the CEDAW Committee more freedom and flexibility to undertake its monitoring task. Furthermore, it gives more validity to the recommendations made to the countries in the implementation of the Convention, since the Committee will have more time to analyze each

country report as well as the complaints brought before it.

Without a doubt, the allocation of resources to the Committee will translate into better monitoring of the implementation of the Convention as well as the study of the interdependencies of the Convention with action plans that emerged from other conferences and summits of the 1990s, especially that of Beijing 1995.

Reports to the Committee on the Elimination of Discrimination against Women

The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) is an expert body established in 1982 and composed of 23 experts on women's issues from around the world. The Committee's mandate is very specific: it watches over the progress for women made in those countries that are the States parties to the 1979 Convention on the Elimination of All Forms of Discrimination against Women. A country becomes a State party by ratifying or acceding to the Convention and thereby accepts a legal obligation to counteract discrimination against women. The Committee monitors the implementation of national measures to fulfil this obligation.

As remarked earlier, countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

The Committee reviews national reports submitted by the States parties within one year of ratification or accession, and every four years thereafter. These reports, which cover national action taken to improve the situation of women, are presented to the Committee by government representatives. In discussions with these officials, the CEDAW experts can comment on the report and obtain additional information. The Committee also makes recommendations on any issue affecting women to which it believes the States parties should devote more attention.

By analyzing the status of the reports to the Committee it is possible to see that many countries have not fulfilled their obligations: of the 180 States parties to the Convention, only 26 are up to date with their reports and another 45 countries are classified as "pending presentation". Within this last group, 16 countries are already scheduled for the presentation of their reports at the July 2005 and January 2006 sessions. These countries are: Australia, Benin, Burkina Faso, Cambodia, Eritrea, Gambia, Guyana, Ireland, Israel, Democratic People's Republic of Korea, Lebanon, Former Yugoslavian Republic of Macedonia, Mali, Thailand, Togo and Venezuela.

One hundred and two States parties are overdue in the presentation of their report to the Committee. The table marked **UN Member**

States with Overdue Status (as of May 2005) lists the countries that have not submitted their reports on time.

Sub-Saharan Africa presents a critical case where only 3 of the 43 countries in the region (Angola, Equatorial Guinea and Nigeria) are up to date on their reports while 30 others are overdue. In North Africa and the Middle East there is an equally critical situation since only Algeria and Yemen are up to date; Lebanon, Israel and Libya have scheduled presentations, and the remainder of the countries are overdue in their obligations. The American continent follows the same pattern, as much in Latin America and the Caribbean as in Canada. In Europe, the countries that are not delayed in reporting (15) almost equal those countries (14) that have a pending status or are scheduled to present their respective reports in upcoming sessions.

Countries' reservations to CEDAW

In accordance with the contractual outlook of International Law where the States may make reservations in order not to contradict their internal legislation, Article 28 of the Convention permits ratification subject to reservations, provided that the reservations are not incompatible with the objective and purpose of the Convention.

According to the Committee, Article 2 is central to the objective and purpose of the Convention. States parties which ratify the Convention do so because they agree that discrimination against women in all its forms should be condemned and that the strategies set out in Article 2, subparagraphs (a) to (g), should be implemented by States parties to eliminate it.

Neither traditional, religious or cultural practices nor incompatible domestic laws and policies can justify violations of the Convention. The Committee also has stated that reservations to Article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn.

Although some States have withdrawn their reservations in what constitutes a true gesture of will to more integrally implement the Convention, many reservations still remain mainly due to religious, traditional and cultural reasons. Examples of this are the reservations entered by countries such as Bahrain, Bangladesh, Egypt, Iraq, Libya and Syria, which make reservations to certain Articles of the Treaty, based on its incompatibility with the Sharia.⁸ Other cases such as the Maldives, Morocco and Mauritania ratify all articles provided they do not interfere with the Sharia since this is the law that

6 Beijing Platform for Action, "Actions to be taken by Governments", Para. 230 (k), 1995.

7 Adopted by Resolution 50/202.

8 The *Sharia* contains the rules by which a Muslim society is organized and governed, and it provides the means to resolve conflicts among individuals and between the individual and the State.

UN Member States with Overdue Status (as of May 2005)

CENTRAL ASIA AND EUROPE	THE AMERICAS	EAST ASIA & PACIFIC AND SOUTH ASIA	MIDDLE EAST AND NORTH AFRICA	SUB-SAHARAN AFRICA
Albania	Belize	Afghanistan	Bahrain	Botswana
Andorra	Bolivia	Fiji	Djibouti	Burundi
Armenia	Canada	India	Egypt	Cameroon
Azerbaijan	Colombia	Indonesia	Iraq	Cape Verde
Belgium	Costa Rica	Lao PDR	Jordan	Central African Republic
Bosnia and Herzegovina	Cuba	Maldives	Kuwait	Chad
Bulgaria	Dominica	Mongolia	Malta	Comoros
Estonia	Dominican Republic	Myanmar	Morocco	Côte d'Ivoire
Greece	Ecuador	Nepal	Saudi Arabia	Ethiopia
Hungary	Grenada	Pakistan	Syrian Arab Republic	Gabon
Kazakhstan	Haiti	Papua New Guinea	Tunisia	Ghana
Lithuania	Honduras	Solomon Islands		Guinea
Netherlands	Mexico	Sri Lanka		Guinea-Bissau
Portugal	Nicaragua	Timor-Leste		Kenya
Russian Federation	Panama	Tuvalu		Lesotho
Serbia and Montenegro	St. Kitts and Nevis	Vanuatu		Liberia
Slovakia	St. Lucia	Viet Nam		Madagascar
Sweden	St. Vincent and Grenadines			Mauritania
Tajikistan	Suriname			Mozambique
Ukraine	Trinidad and Tobago			Namibia
Antigua and Barbuda	Uruguay			Niger
Bahamas				Rwanda
Barbados				Senegal
				Seychelles
				Sierra Leone
				South Africa
				Tanzania
				Uganda
				Zambia
				Zimbabwe

Source: Social Watch based on information from Amnesty International Website (web.amnesty.org/pages/treaty-countries-reporting-eng) and Office of the UN High Commissioner for Human Rights (www.ohchr.org/tbru/Reporting_schedule.pdf)

“governs all marital and family relations of the 100 percent Muslim population...”⁹

By analyzing the reservations it can be noted that some States enter reservations to particular articles on the ground that national law, tradition, religion or culture are not congruent with Convention principles, and purport to justify the reservation on that basis. In some cases, States entered reservations to Article 2, although their national constitutions or laws prohibit discrimination. There is therefore an inherent conflict between the provisions of the State's constitution and its reservation to the Convention.

There is an example of this in the declaration made by Chile when it signed the Convention in 1980: “The Government of Chile has signed this Convention on the Elimination of All Forms of Discrimination Against Women, mindful of the important step which this document represents, not only

⁹ See full list of reservations at: www.un.org/womenwatch/daw/cedaw/reservations-country.htm

in terms of the elimination of all forms of discrimination against women, but also in terms of their full and permanent integration into society in conditions of equality. The Government is obliged to state, however, that some of the provisions of the Convention are not entirely compatible with current Chilean legislation. At the same time, it reports the establishment of a Commission for the Study and Reform of the Civil Code, which now has before it various proposals to amend, inter alia, those provisions which are not fully consistent with the terms of the Convention.”

This case is significant since part of the commitment of the States to ratify the Treaty implies the confirmation of equality between men and women in the national laws, as well as the implementation of the premises and paradigms that this international treaty demands.

In two of the general recommendations and its statement on reservations the Committee has called on the States to re-examine their self-imposed limitations to full compliance with all the principles in the Convention.

Almost 30 States have already complied with this request and have reviewed and withdrawn part or all of their reservations. These States are: Australia, Bangladesh, Belarus, Brazil, Bulgaria, Canada, Cyprus, Czech Republic, Fiji, France, Germany, Hungary, Ireland, Jamaica, Liechtenstein, Malawi, Malaysia, Mauritius, Mongolia, New Zealand, Poland, Republic of Korea, Romania, Russian Federation, Switzerland, Thailand, Turkey, Ukraine and United Kingdom.¹⁰

Removal or modification of reservations, particularly to Articles 2 and 16, indicate a State party's determination to remove all barriers to women's full equality and its commitment to ensuring that women are able to participate fully in all aspects of public and private life without fear of discrimination or re-crimination. ■

¹⁰ According to data provided by the UN Division for the Advancement of Women, www.un.org/womenwatch/daw/cedaw/reservations-country.htm