

# **1 CEDAW: Achievements and Challenges**

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# Progress, Achievements, Constraints and Key Priorities

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## Introduction

The United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 19 December 1979 and it came into force as a treaty on 3 December 1981. It is one of the most ratified conventions, with 177 States parties.<sup>1</sup>

CEDAW is a comprehensive bill of rights for women and combines concerns that had previously been addressed in an *ad hoc* manner throughout the UN system. It is monitored by the CEDAW Committee, which operates out of the UN in New York. States parties to the Convention have to report to the Committee one year after ratification, and thereafter every four years. On reviewing the reports, the Committee issues a set of recommendations for implementation, called Concluding Comments, to the countries concerned.

This paper looks at some of the achievements and challenges of CEDAW, drawing its examples from the Concluding Comments on selected States' reports.<sup>2</sup> It notes first of all that there is a lack of clarity on CEDAW as a human rights instrument. The Convention has not been made the basis of law or policy reform, and CEDAW principles are not integrated into domestic law; hence it is not directly applicable in the courts. The paper also draws attention to the lack of comprehensive and holistic plans to implement CEDAW. It points out that whatever reform is put in place suffers from weak implementation due to lack of monitoring, inadequacy of resource allocation, lack of capability and weaknesses of the institutions concerned. Discrimination therefore persists. In addition, almost all the reporting countries show a weak reporting record and lack of data collection for monitoring and report writing.

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The paper further looks at the fact that, under the Convention, obligations must be fulfilled evenly for all, including minorities, overseas territories and even where there is devolution of powers. Hence there is a need for a unified strategy and policy for implementation of all provisions of CEDAW.

### **The Dynamics of Human Rights Treaty Law**

In working with CEDAW, it is essential to understand the obligations of the State under international human rights treaty law. A treaty is a legal agreement between two or more countries and is a source of international law. Treaties can be entered into on a number of issues such as trade, delineation of borders, human rights, etc. Traditionally, international law used to be defined as the law governing relations between States (Buergethal, 1988). Under this definition, international law did not regulate the human rights of individuals vis-a-vis the country of their nationality, which were deemed to fall within the exclusive domestic jurisdiction of each State (ibid). Over the years, however, the doctrine of humanitarian intervention recognised as lawful the responsibility of one State to stop the gross maltreatment by another State of its own citizens.

As a result, today it is an established principle of international law that a State may voluntarily limit its sovereignty by treaty ratification and thus internationalise a subject that would otherwise not be regulated by international law. For example, if one State concludes a treaty with another State in which they agree to treat their nationals in a humane manner and to accord them certain human rights, they have to that extent internationalised that particular subject matter (Henkin, 1977).<sup>3</sup>

Human rights treaty law imposes obligations that are legally binding on any State that is a party to it. In this regard, States parties to the treaties are voluntarily surrendering their sovereignty and submitting themselves to international scrutiny as well as committing themselves to reordering domestic law and policy, as it touches on matters that are the subject of the treaty concerned, according to universal and international standards.

## Specific Obligations of the State Under CEDAW

The outcome that governments have to work towards under this Convention is to ensure that women will enjoy and be able to exercise all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other sphere on the basis of equality with men. This means that there must be both *de jure* and *de facto* equality rights for women (articles 1, 2a and 3).<sup>4</sup>

The norm of equality that the Convention imposes is that of substantive equality. This is a broad approach that requires equality in the substance of the law, equal protection of the law and equal benefit of the law. A related norm is that of non-discrimination, which requires the elimination of both direct and indirect discrimination. The latter means the elimination of laws and practices that have a discriminatory effect even though no discrimination was intended. All efforts to bring about equality between women and men need to be based on these understandings of equality and non-discrimination.

The means by which this is to be accomplished are given in articles 1–5. Obligations under these articles include the following:

- 1 To incorporate the principle of equality and non-discrimination of men and women in the legal system, abolish all discriminatory laws and practices, and adopt appropriate ones prohibiting discrimination against women (articles 2a, 2b, 2f and 2g);
- 2 To establish tribunals and other public institutions to ensure the effective protection of women against discrimination (mechanisms for enforcement) (article 2c);
- 3 To ensure elimination of all acts of discrimination against women by the public sector as well as by the private sector, including persons, organisations or enterprises (articles 2d and 2e);
- 4 To implement programmes and make relevant institutional arrangements and any other laws necessary that will enable women to exercise the equality rights given in the law (article 3);

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- 5 To accelerate the achievement of *de facto* rights by implementing temporary special measures such as affirmative action (article 4);
- 6 To eliminate cultural and traditional practices and attitudes, including stereotypical roles for women and men (article 5).

In conclusion, we could say that governments have to ensure the applicability of the norms and standards of the Convention at the domestic level.

### Questions to ask on implementation

As a quick reference of indicators to assess the extent to which the Convention has been implemented, the following questions may be asked:

- 1 Has the Convention been incorporated at the national level? This step may be necessary, depending on the legal system and the provisions of the constitution. A treaty can be self-executing, in that no further legislation is required to make it applicable at the national level, or enabling legislation may be required to make treaty law applicable.<sup>5</sup> Legal opinion is that only then may the norms and standards of the Convention – should they be different from the existing norms and standards at the national level – be legally applied to provide equality rights for women.
- 2 Has the definition of substantive equality and the definition of discrimination as given in article 1 of the Convention been adopted in the constitution or other relevant laws?
- 3 Has any other appropriate legislation been enacted to make discriminatory acts in the public and private sectors actionable? Such legislation could take the form of an equal opportunities act or an anti sex discrimination act (article 3).
- 4 Has there been a review of all existing legislation and have all discriminatory provisions in the law been eliminated?
- 5 As a result of this review have any other relevant laws, such as laws to protect women against domestic violence or sexual harassment, been enacted and enforced?
- 6 Have policy directives been issued to the public and private

sectors to adopt codes of practice that will help to eliminate discriminatory practices and to develop equality plans for the acceleration of the *de facto* equality status of women?

- 7 Are there laws and programmes to combat violence against women, which is identified under the Convention as an extreme form of discrimination against women?
- 8 Has the Convention been translated and widely disseminated at all levels of the public and private sectors to raise awareness of the obligations under the Convention?
- 9 Have all relevant government officers in all sectors, as well as the judiciary and relevant legal personnel, been trained to carry out their obligations under the Convention?
- 10 Is the Convention applicable in the courts? In other words, has the Convention been cited in the courts to gain equality rights for women?
- 11 Has an intersectoral monitoring mechanism been established to gather data on compliance with the obligations under the Convention and to assess the effectiveness of laws and policies meant to promote women's equality?
- 12 Is there adequate data to assess progress made in the implementation of the Convention, such as data disaggregated by sex and data that needs to be collected to identify obstacles to the achievement of *de facto* rights for women and to assess the effects of laws and policies on women?
- 13 Is there a plan for implementation that sets out benchmarks for progress, contains proposals for special programmes to enable women to access rights given in the law, delineates responsibility, identifies intersectoral co-operation, allocates budgets and integrates capacity-building measures for the implementers, and is this plan integrated into mainstream national development plans?

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## **Weaknesses in Implementation**

### **Lack of comprehensive and holistic plans**

If the above set of questions is used to assess the status of implementation of CEDAW, then there are no examples of any Commonwealth country that has put in place a comprehensive and holistic plan to implement the Convention. For instance, we have no examples of any country that has taken steps to incorporate the principles of CEDAW into municipal legislation, so the Convention is not directly applicable – although definitions reflecting substantive equality or non-discrimination as provided for in CEDAW have been integrated into the respective human rights acts of Canada and New Zealand.

There are also examples from India, New Zealand and Nigeria where CEDAW has been cited in the courts. However, the use of international treaty standards in courts has been sporadic in many of the countries, and this has not been sufficient to change the culture of the courts so that arguments of obligation under treaty law become the norm. In other words, there has only been piecemeal achievement and no holistic law reform, much less a cohesive plan for CEDAW implementation.

### **CEDAW is not the basis of law or policy reform**

Concerns in this regard include the fact that the principles of the Convention are not necessarily used to inform interventions such as law reform that could benefit women. An example is the adoption of the Human Rights Act 1998 in the United Kingdom. While the adoption of the Act is a positive move, the concern is that it is based on the European Convention on Human Rights and Fundamental Freedoms, which does not provide the full range of women's human rights incorporated in CEDAW. For example, it does not provide expressly for equality nor does it provide for positive obligations for governments to eliminate indirect discrimination and to implement temporary special measures.

Despite the existence of national plans of action for women and some gender-responsive budgeting, it is not clear that the norms and standards of CEDAW are being used as a frame-

work. This is compounded by States parties' lack of understanding of the meaning of equality for women and so these efforts tend to be based on protectionist or welfarist approaches. In addition, they are not being monitored.

### **Lack of clarity on CEDAW as a human rights instrument**

Further concern is the lack of appreciation of CEDAW as a human rights instrument. The Committee was particularly concerned with the replies of the UK expressing the view that it considers the obligation under CEDAW to be much more programmatic in nature than the European Convention on Human Rights and Fundamental Freedoms and thus difficult to introduce into common law.

The Committee commented on the processes in the UK to enable devolution of power to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales. With regard to women, it was reported that detailed post-devolution arrangements would be worked out by each of the respective assemblies. But the Committee expressed concern that the devolution of powers might result in uneven protection for women. It urged the UK to ensure that there is a unified national strategy and policy for the implementation of all provisions of CEDAW so that all women can benefit equally as a result of the government's obligation under the Convention to fulfil their *de jure* and *de facto* rights.

### **Piecemeal law reform and weak implementation**

Because of the lack of a holistic approach, law reform in one area is sometimes negated by conflicting laws. There may be dual or even triple legal systems – civil and religious or customary – as in the case of India, Sri Lanka, Malaysia and Nigeria. There may also be a lacuna in the law that has negative consequences in another area. In India, constitutional guarantees for equality do not regulate the private sector. The Committee has therefore recommended that India enact an anti sex discrimination act to make the standards of CEDAW and the guarantees of the Constitution applicable to non-state actors.



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### **Persistence of discrimination**

Basically there has not been much of an attempt to make a comprehensive inventory of discriminatory laws with a view to their revision or repeal, and in many countries discrimination in the law and practice remains. In Nigeria, the Constitution still contains discriminatory provisions, and social acceptance of harmful traditional practices – including widowhood practices, female genital mutilation (FGM) and child marriage – make their elimination difficult. In Trinidad and Tobago, the Committee noted that violence against women is deeply entrenched and perhaps tolerated by society. Other areas brought to the attention of the Committee are the need in India for a holistic health plan and the need to arrest maternal and infant mortality rates, which are among the highest in the world. The Committee also expressed concern at the lack of law reform with regard to the personal laws of different religious groups in India.

### **Rights not extended to minority women or throughout States' territories**

The Committee has also drawn attention to the fact that, in spite of laws and policies to protect the rights of minorities, governments have been unable to fulfil these rights or to monitor and provide adequate remedies for the violations of the rights of women from minority and other disadvantaged groups such as the Dalits of India, the Maoris of New Zealand or the women of ethnic minorities in the UK. Besides legislation, more positive action is needed by governments to protect the rights of these women.

As noted above, the Committee was concerned that, with the devolution of power in the UK to national assemblies, the protection of women might not be even. They pointed out that the State must ensure that there is a unified strategy and

policy for implementation of all provisions of CEDAW so that all women in the entire territory of the State party can benefit equally. Furthermore, the Committee pointed out that there was very little information in the report of the UK on the implementation of CEDAW in the Isle of Man, the Turks and Caicos Islands, the Virgin Islands and the Falkland Islands. The UK needs to pay serious attention to its obligations as a State party to CEDAW with regard to its overseas territories.

### **Weak representation of women**

The Committee has consistently pointed out the weak representation of women in decision-making in almost all Commonwealth countries, both developed and under-developed. Even in New Zealand, where women have held constitutional office, women are poorly represented in parliament and local government and do not hold adequate numbers of positions as chief executives in the public sector.

### **Weak reporting record and lack of data collection**

Reporting is seldom on time and there is inadequate data collection for the purposes of monitoring the implementation of CEDAW. This means there is no monitoring of the effects of laws, policies and programmes, no indicators of *de facto* realisation of women's rights and no knowledge of obstacles to their realisation. There also do not seem to be plans to implement CEDAW's Concluding Comments.

### **Weak institutions**

There are improvements in the infrastructure of the national machineries for women in all the countries concerned but these remain weak. Institutional arrangements for promoting women's rights lack the required technical capability or do not have the required influence to be taken seriously.

An example of this is India, which has put in place many initiatives for the protection of women's rights such as a National Commission on Women, with state-level commissions having the responsibility for developing action plans on

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gender and proposals for law reform. However, the CEDAW Committee and NGOs have observed that such plans adopt a welfarist approach and that the proposed law reform is not adopted by the Government.

Technically too the national machineries and plans of many countries suffer from a lack of resources, time-framed targets and/or monitoring.

## **Examples of Best Practices**

### **CEDAW in the courts**

CEDAW has been cited in the courts in India, New Zealand and Nigeria. The Committee commended the contribution made by the Supreme Court in India, in developing the concept of social action litigation and a jurisprudence integrating the Convention into domestic law by interpreting Constitutional provisions on equality between women and men. In the case of New Zealand it was pointed out that the courts had taken international treaties, including CEDAW, into consideration in domestic cases.

### **Law reform**

There is considerable evidence of piecemeal law reform. For example, Canada has created Domestic Violence Family Courts. India has banned sex selective abortion. New Zealand has enacted the Employment Relations Act 2000 which, though not focusing explicitly on women, would benefit women. It has also established a Pay and Employment Equity Task Force, to make progress in the area of pay and equality in employment in the public sphere, and established paid parental leave.

Nigeria has put in place new federal laws supporting equality, the Trafficking in Persons Prohibition, Law Enforcement and Administration Act 2003 and the Child Rights Act 2003. There are also a number of state laws prohibiting discrimination against women in areas such as FGM, widowhood practices and early marriage.

Trinidad and Tobago has passed Equal Opportunity Legislation and in 2002 was awaiting the appointment of the

Equal Opportunity Commission and Tribunal. Legislation preventing employers from discriminating against women on the basis of pregnancy has been passed and marital rape is a crime.

Reform in the UK includes new legislation in areas such as the national minimum wage, the new outcome-oriented budgetary reform, the commitment to family-friendly employment and legislation for the protection of women, namely the Anti-Sex Discrimination Act 1996, the Protection from Harassment Act 1997 and the Sex Offenders Act 1997.

### **Policies and plans**

There are a number of national policies for women, plans of action for women and initiatives for gender mainstreaming in budgeting, etc. Of interest is the UK's 1999 budget, which has a strategic orientation resulting in increased child benefit and family tax credit, and mainstreaming of the budget to benefit women.

### **Women in decision-making**

In New Zealand, women have held four constitutional positions, namely those of the Governor General, the Prime Minister, the Attorney General and the Chief Justice, while the proportion of women Ministers of the Crown and the representation of women at all levels of the Ministry of Foreign Affairs and Trade has risen considerably.

### **Development assistance as part of States' obligations**

Developed countries have an additional role: that of assisting developing countries. The obligation of States parties under CEDAW includes ensuring a gender dimension in any development assistance they may provide. New Zealand was commended for its policy of strengthening the promotion and protection of women's human rights and of integrating a gender dimension into development co-operation programmes, particularly in the Pacific region.

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## **Conclusion**

In many countries, while there is *ad hoc* reform of laws and creation of interventions for the advancement of women, such as plans of action or gender mainstreaming and gender budgeting, there does not seem to be a conscious application of CEDAW at the domestic level. States must take steps to incorporate CEDAW into domestic law so that it is directly applicable in the courts. Capacity has to be built in all branches of government, vertically and horizontally, to use CEDAW as a framework for all interventions such as law reform, plans of action, programmes and services, gender mainstreaming as well as gender budgeting. This will help introduce a rights-based approach into these interventions using the lens of CEDAW, focusing on substantive equality and non-discrimination. Special efforts must be made to train judges and lawyers to apply international human rights jurisprudence in court cases, with special reference to CEDAW jurisprudence. Capacity-building for all branches of government as well as for women's groups must focus on the creation of clarity on the meaning of substantive equality and indirect discrimination as embedded in the Convention. The capacity of women must be built to form constituencies for advocacy to claim their rights and to draw accountability from governments. Data collection must be consistent, sustained and refined to include indicators that will reveal the *de facto* situation of women and identify obstacles to *de facto* equality.

CEDAW report writing is a useful tool for a State to monitor itself and must be taken seriously. Reports must be submitted on time to ensure effective and progressive implementation of the Convention. Countries must draw up comprehensive plans to implement CEDAW, including incorporating the recommendations from the Concluding Comments, and special attention needs to be paid to disadvantaged groups of women. Adequate institutional arrangements, including mechanisms for intersectoral co-operation and budgetary allocation, must be put in place. States must form partnerships with NGOs for needs identification, data sharing and identification of obstacles to *de facto* equality.

Finally, a positive culture for human rights and women's equality must be created. CEDAW must be popularised and a

plan put in place to eliminate negative elements of culture and stereotyping of women and men.

## Notes

- 1 As of April 2004.
- 2 It is not the aim of this paper to provide a comprehensive assessment of CEDAW implementation in Commonwealth countries. Rather, what will be attempted is to provide brief snapshots of achievements and challenges in selected countries: Canada, India, New Zealand, Nigeria, Trinidad and Tobago and the United Kingdom. The information for this analysis is taken from the respective Concluding Comments of the CEDAW Committee. The years of the review and the reference to the Concluding Comments are as follows: Canada, 2003, A/58/38 (Part 1); India, 2000, A/55/38 (Part 1); New Zealand, 2003, A/58/38 (Part 2); Nigeria, 2004, A/59/38 (Part 1); Trinidad and Tobago, 2002, A/57/38 (Part 1); and the UK, 1999, A/54/38/Rev 1 (Part 2).
- 3 Cited in Buergenthal, 1988.
- 4 *De jure* and *de facto* – as a matter of law and as a matter of fact, i.e. in reality.
- 5 The lack of enabling legislation may be an obstacle for direct applicability of treaty law in the courts but, if there is political will, it should not be an obstacle to providing definitions of equality or discrimination or to amending legislation according to the norms and standards of the Convention.

## References

- Buergenthal, T (1988). *International Human Rights in a Nutshell*. St Paul, MN: West Publishing Company.
- Henkin, Louis (1977). 'Human Rights and Domestic Jurisdiction'. In T Buergenthal, *Human Rights, International Law and the Helsinki Accord*. Montclair, NJ: Allanheld, Osmun.

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# Recent Key Trends and Issues in the Implementation of CEDAW

*Feride Acar*<sup>1</sup>

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## Basic Premises of CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women has now been in force for over 20 years. To date, it has been ratified or acceded to by 170 States.<sup>2</sup> It is the only legally binding international instrument to set forth the human rights standards for women and girls in the full range of civil, political, economic, social and cultural areas of both public and private life. It sets the international standard of equality between women and men.

This unique instrument was drafted in the latter part of the 1970s, adopted by the General Assembly in 1979 and came into force in 1981. It was built on the legacy of decades of work going back to the inception of the UN itself. It is fair to say that the Women's Convention is the common offspring of the international human rights movement and the women's movement under the roof of the UN. The unique and almost 'revolutionary' text of this international legal instrument reflects the developments in both of these movements. Human rights principles and standards such as the 'indivisibility' and 'universality' of rights, as well as the issues and concerns of the women's movement of the 20th century ranging from legal to economic equality, are incorporated in CEDAW.

Thus, the Convention not only incorporates in itself provisions pertaining to all areas of human rights (i.e. political and civil as well as economic, social and cultural), and aims at their universal enjoyment by all women in all parts of the world, but it also elevates these broad-based human rights provisions to the level of a legally binding piece of international law.

Building on the gains of the second wave feminist movement, which emphasised the critique of patriarchy and the

dichotomy of public versus private spheres, CEDAW approaches the human rights of women from a more sensitive and relevant perspective than any other international legal instrument. The Convention, by referring specifically to women's human rights in the private sphere, i.e. in the family and in marriage (article 16), operates from an awareness that the family, that most private of all private spheres and relations within it, need to be addressed in order to ensure respect for, promote and implement women's human rights.

It is in this sense that CEDAW has been called "an innovative and ambitious" treaty. This Convention not only covers a wide spectrum of rights but is also very aware of the systemic nature of violations of women's human rights. It clearly operates on the basis that all human rights of women are inextricably linked to one another (i.e. they are indivisible and interdependent).

Prior to CEDAW, human rights instruments often failed to bring to light violations of women's human rights no matter how serious these may have been. Because such violations often took place in the private sphere, they were not considered 'public concern' or 'state responsibility', or many violations were also thought to relate to the domain of traditions, culture and religion, which are areas that were all too often assumed to be impenetrable by or to have immunity from legal and policy intervention.

Today, around 20 years after the coming into force of CEDAW, one of the six core UN Human Rights Conventions, our perceptions and attitudes all over the world are significantly different. I believe, despite problems and challenges (to which I will be referring a little later), the fact that basic premises of CEDAW are accepted by the large number of States that have ratified this Convention is a gigantic step in the right direction for humankind. What, then, are these basic premises of CEDAW? Let me briefly underline them. First and foremost, this Convention does not operate with an abstract concept of equality. Instead, article 1 of the Convention provides a clear definition of discrimination and reflects the recognition that discrimination against women is a universal reality that is to be eradicated. In other words, this Convention is neither vague nor neutral with respect to its diagnosis and definition of gender-based discrimination.

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Therefore, the State party that ratifies it should neither be passive nor neutral in the face of discrimination against women. Specific forms and areas of discrimination against women are to be identified and made visible, and proactive and therapeutic measures as well as actions for redress of victims and punishment of violators are to be taken effectively and swiftly.

Through its substantive articles (articles 1–16) CEDAW transcends the traditional human rights framework by addressing both public and private realms. Through its reference (article 1) to discrimination of ‘effect’ and ‘purpose’, the Convention manifests a sensitive and comprehensive outlook that covers both ‘direct’ and ‘indirect’ or ‘intentional’ and ‘unintentional’ discrimination. Through its targeting of both *de jure* and *de facto* discrimination against women, the Women’s Convention addresses legal norms as well as social norms, cultural practices, traditions and customs as possible bases of discrimination against women (article 5). Prejudicial and discriminatory traditions and cultural norms and practices are thus to be modified so as not to preserve or strengthen gender stereotypes that impede women’s full enjoyment of their human rights.

This premise of CEDAW is certainly a very bold step that could only be built on the gains of the international women’s movement. It nonetheless continues to constitute a major challenge to implementation worldwide (as the nature of so many of the reservations by State parties to CEDAW demonstrates). The issue of traditions and culture is inevitably raised, be it as an ‘obstacle’ or an ‘excuse’, during the CEDAW Committee’s dialogue with State parties when they report. There is no doubt that discriminatory traditions and prejudicial cultural practices continue to be major impediments to women’s human rights in most societies around the world.

Another very salient and radical aspect of CEDAW is the fact that this Convention clearly states (article 4.1) that affirmative action (called ‘temporary special measures’ in the language of the Convention) taken by States, political parties or employers to speed up *de facto* equality of women and men is not to be considered discriminatory. The Convention, at the same time, rules out very clearly the permanent maintenance of unequal and separate standards for sexes as discriminatory. This, I believe, is a critically important stand and most relevant to the realisation of gender equality in the world. In this

very important article (article 4.1), the Women's Convention says that encouragement and incentive policies are needed to accelerate attainment of equality but that these cannot be allowed to turn into permanent standards of judgment, achievement, remuneration etc. separate for women and men. Our experience around the world testifies to the relevance of this approach.

We are now able to see clearly that, in societies with different levels of economic development and cultural backgrounds, 'temporary special measures' such as incentives and quotas have been uniquely effective in promoting women's participation in politics and decision-making positions as well as in the economy. In others, premature removal of quotas has resulted in a reduced number of women in such positions. We also observe that in the 21st century there are still countries where women are persistently denied the right to vote, let alone to be in positions of political decision-making, simply because they are women. Many women around the world do not enjoy their right to make decisions about personal and/or public aspects of their lives because cultural and social values and their reflections in laws of their countries have set permanently different standards for women and men. This is why we can confidently say that, if used as stipulated by the Convention (article 4.1), 'temporary special measures' are an indication of the 'degree' of a government's political will to improve the situation of women in a country.

Another very basic tenet of the Women's Convention is that it covers not only State and public actors but individuals, organisations and enterprises. Thus, this Convention holds the State responsible for prohibiting any discrimination against women by third parties. The State is to ensure through its laws, policies and monitoring mechanisms that such discrimination does not happen and to punish those who do discriminate against women.

Bearing in mind that discrimination against women often takes place in places and in contexts that are not formally 'state-controlled' and/or by people who are not official agents of the State, this is indeed a sine quo non for full implementation of women's human rights.

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## **The Convention and the Beijing Platform for Action**

Provisions of the Convention as set out in its 16 substantive articles and the 12 critical areas of the Beijing Platform for Action (BPFA) are closely connected. In fact women's human rights as enshrined under the Convention form the legal framework for and are central to the Platform.

Furthermore, the Convention's monitoring process enables the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) to look for States' compliance with the Platform as well as the Convention itself. While it is the Commission on the Status of Women (CSW) that has the primary mandate for monitoring the implementation of the BPFA, the CEDAW Committee also has a salient role in this respect. The Platform specifically asks States parties to the Convention to include information on measures taken to implement it when reporting for CEDAW, and the Committee is tasked to take the Platform into account when considering these reports.

This is a responsibility that the CEDAW Committee takes very seriously and has been systematically carrying out through its review of State party reports since the Fourth World Conference on Women. Since that time the CEDAW Committee in its Concluding Comments has also routinely included a recommendation to the reporting State party to widely disseminate the BPA. In its review of State reports, the Committee has also often highlighted the commitments made by State parties at Beijing and in its Concluding Comments it noted if and where States have failed to address the BPFA in their reports. The Committee has often requested adoption of overall plans for implementation of the BPFA within a clear time frame, and in its 'constructive dialogue' with the States representatives it always inquires into the results of implementation of the Platform. Those issues and areas addressed more specifically by the Beijing+5 process, such as marital rape, crimes of 'honour', crimes of passion and racially motivated violence against women have also increasingly found their way into the Committee's review agenda in the years since 2000. Thus, the CEDAW Committee is accorded a unique opportunity to systematically observe and evaluate what is

happening around the world with respect to the human rights of women.

### **Some Observations on Key Issues and Trends in Women's Human Rights**

Looking out from the vantage point of CEDAW one is, first and foremost, struck by the fact that, despite significant progress, universal ratification of CEDAW – which was targeted for 2000 – has not been achieved, and there are still a large number of reservations to this Convention. In fact, CEDAW has the largest number of reservations of any human rights treaty. To me this shows that while most States may be willing to recognise the human rights of women on a general plane, many are still not ready to commit themselves to abide by these rights fully. It is also a fact that a good number of these reservations are entered on articles 2 and 16 of CEDAW and some, unfortunately, are stated in very broad, sweeping terms. Since articles 2 and 16 delineate the spirit and essence of effective implementation of women's human rights, the CEDAW Committee considers the presence of particularly very broad-based reservations to articles 2 and 16 as highly problematic and, in fact, incompatible with the Convention itself.

There are those who see ratification with such serious reservations to substantive articles as merely a political ploy by States who may want to jump on the band-wagon of international 'political correctness' without necessarily having a genuine political will to implement women's human rights. Perhaps some of the reservations to the Women's Convention give justification to these views. It is a fact that some States, contrary to international law, have placed reservations that are not only extensive in scope but also undermine the 'meaning and purpose' of the Convention. The Committee, as well as some other State parties and international women's voices (particularly the BPFA and Beijing +5), have expressed, time and again, serious concern over such reservations. I am pleased to say that in recent years there have been a few withdrawals of such incompatible reservations and/or limitation of their scope. Yet many such reservations still remain and some new ones have been added.

What is more, some States continue to indicate that they

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have no intention of withdrawing incompatible and sweeping reservations that seriously impede the implementation of the Convention. This is a true dilemma not only for the Committee but also for all defenders of women's human rights around the world. One is left in the highly uncomfortable position of having to decide which is less damaging: ratification with reservations that may be contrary to the 'meaning and purpose' of the Convention, which seriously renders the instrument ineffective in terms of its impact on women in that country, or non-ratification, which means no reporting obligation and consequent absence of any international monitoring or scrutiny of women's human rights in that State. While the Committee's attitude has been to support the first option and hope to use the reporting process and the 'constructive dialogue' opportunity with the State party in a patient and determined manner to encourage and pressure for removal or trimming of such incompatible reservations, it is essential that the international community systematically press for a change of attitude on the part of State parties on this matter.

The progress in the world in the area of recognition and implementation of women's human rights is obvious. New legislation, growing awareness and sensitivity, strengthening of machineries at both State and civil society levels are universal phenomena. Yet there is also evidence that implies that the international community is still far from having reached a shared notion of women's human rights as contained in CEDAW, formulated into policy guidelines and programmes in the BPFA and further elaborated and updated in Beijing+5. National implementation remains as the bottleneck for human rights of women. Strikingly wide differences in political will, as well as actual capacity and resources available for national mechanisms, and, most importantly, the extent to which the harmonisation of principles of women's human rights into the social and cultural climate at the national level has been achieved, constitute fundamental axes along which national implementation varies among States.

### **Legal rights**

It is true that legal frameworks for equality have been strengthened in most countries, and better mechanisms for redress for

violations of rights (such as more informed and gender-sensitive courts and ombudsman mechanisms) have come into being in many countries. Some States have enhanced their constitutional principles of equality between men and women in the aftermath of Beijing. With respect to incorporation of CEDAW into domestic law there are variations. In some States international treaties take precedence over domestic legislation in which case, when ratified, CEDAW automatically becomes the law of the land. In others, specific legislation needs to be adopted to implement women's human rights as they are depicted in CEDAW. In countries that travel the former route, actual justiciability of women's human rights is often the problem. In the latter cases, on the other hand, enactment of the necessary legislation often takes a long time and is uneven with respect to the various types of rights protected under CEDAW.

There are still quite a few countries where the constitution does not refer to equality between women and men, and many others where the constitution does not incorporate a clear definition of discrimination such as that contained in article 1 of the Convention. Generally speaking, while laws pertaining to civil and political rights are often enacted first and implemented more seriously, laws that protect women's economic rights in the areas of ownership and employment frequently lag behind.

At the national level, with regard to mechanisms, some countries have instituted specific gender ombudsman (notably the Nordic countries and some Eastern European States) and others have a deputy ombudsman and/or a women's rights commissioner in the Human Rights Commission to specifically respond to women's human rights issues. In most countries, however, women's human rights continue to be 'lost' in ombudsman or law commission structures and suffer from lack of sufficient attention at the national level. It is noteworthy that in several Muslim countries law reform measures, implementing the Convention and the Beijing Platform for Action, have included the revision of personal status laws, establishment of family courts, adoption of family codes and reform of citizenship laws. However, much more needs to be done in this area in order to make women's human rights, as they are depicted in CEDAW, 'real' for women at home in these countries.

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A relatively new area of law where women's human rights are increasingly being taken into consideration is migration and refugee legislation. Several States have recognised gender-based persecution in their refugee laws; provisions in immigration legislation to protect the human rights of immigrant women have also been adopted by a few. In report after report, we in the CEDAW Committee observe that discriminatory laws, particularly those governing marriage, administration of marital property, divorce and the family, persist. Many States also continue to have laws discriminating against women in relation to nationality whereby women cannot pass their nationality to their children on an equal basis with men. Blatant discrimination in penal law, particularly where prosecution of sexual crimes and rape and penalties for crimes committed in the name of 'honour' are concerned, can be found in many countries. Marital rape is recognised as a crime punishable by law in only a very small number of countries.

Discriminatory laws governing ownership and inheritance of land, access to loans and credits, and health, such as those requiring that a wife obtain her husband's consent for sterilisation or abortion, are maintained.

These observations provide sufficient evidence that at the national level even *de jure* discrimination is still far from being eradicated. It has also been the Committee's observation that women experience more discrimination as a result of the co-existence of multiple legal systems. In some countries, customary and religious laws, which govern personal status and private life, exist side by side with positive law. This situation often provides legal grounds for discrimination. Such laws sometimes prevail over the non-discrimination provisions of even the Constitution of the country and they often constitute a powerful foundation for non-implementation of women's human rights.

### **Violence against women**

Having been drafted in the 1970s, when the State parties convened under the roof of the UN were not yet ready to admit to the reality of violence against women as a form of gender-based discrimination, the text of the CEDAW Convention makes no explicit reference to violence against women. Conceptually

and theoretically, the Convention could readily accommodate it. So, since its establishment, the CEDAW Committee has taken it upon itself to make clear, in a number of General Recommendations, that gender-based violence falls within the meaning of discrimination against women. In 1989, the Committee adopted General Recommendation 12 on violence against women which recommended that States include information in their reports to the Committee on the incidence of violence against women. In 1990, General Recommendation 14 addressed 'female circumcision' and other traditional practices harmful to the health of women.

In 1992, the Committee adopted General Recommendation 19, which defines gender-based violence as violence that is directed against a woman because she is a woman or that affects women disproportionately, and declares it to be "a form of discrimination against women that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men". The general recommendation makes clear that "States may be ... responsible for private acts if they fail with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".

Our examination of State reports reveals that significant progress has indeed occurred towards the elimination of violence against women in the world. This scourge is now widely recognised as a pervasive and unacceptable gross violation of women's human rights. It is, nonetheless, a fact that in today's world there are still societies that fail to recognise violence against women as a public concern. In particular, violence that occurs in the home or is related to tradition or custom (such as female genital mutilation) presents a problem. Many countries have passed legislation and introduced policies in this area. I am proud to say that alongside rising global awareness on the subject, largely owing to the Beijing process and other UN efforts, the CEDAW Committee's own review and recommendations have helped pave the way for domestic violence legislation in many States. The remaining questions in many national contexts are: how adequate are these laws and policies, and how well are they supported by measures to sensitise the police, judiciary, health professionals and the public in order to ensure their effective implementation?

One particularly relevant contribution to the elimination

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of violence against women through the more effective implementation of CEDAW worldwide can be expected via the Optional Protocol. This instrument, which entered into force at the end of 2000, allows individual women and groups of individual women to complain to the Committee of violations of their rights in the Convention. It also allows representative complaints where victims consent to representation, although this requirement can be waived where it is impossible to get such consent. The Optional Protocol also entitles the Committee to inquire of its own motion into "grave or systematic" violations of the Convention. No reservations are permitted to the terms of the instrument, but it is possible to opt out of the inquiry procedure. There is also a provision that obligates States to protect individuals from ill-treatment or intimidation as a result of using the Protocol's provisions. These impressive and progressive elements of the Optional Protocol should be taken advantage of by women around the world, particularly to combat all forms of violence against them.

The adoption and entry into force of the Optional Protocol – now with 49 State parties, and many more signatories – point to the improved and better-equipped capacity of the international legal framework to address the human rights concerns of women. Only time, however, will tell about its actual effectiveness. National level awareness-raising and capacity-building are once again critical for this instrument's effective utilisation. Like any other instrument it will only be as good as the way in which it is used.

I believe that women's NGOs worldwide that have played an absolutely indispensable role in bringing the Optional Protocol to life now have an equally critical responsibility in ensuring it a robust existence.

A critical emerging fact about the implementation of women's human rights in the globalised world is that, in a number of culturally or ethnically plural societies or in countries that have large immigrant populations (many of which are developed societies), what is called 'respect for traditions, culture or religion of minorities' appears to impede vigorous protection of women's human rights. This is particularly so with respect to the prosecution and punishment of perpetrators in religious and ethnic communities. This is an extremely

grave situation because it adds a new dimension to an already existing serious challenge to women's human rights.

It is a fact that crimes that are committed against women in their communities, their workplace and in their own families are often excluded from the purview of much human rights protection, even if these violations are sustained by a State structure that tolerates or even encourages such action. But even more seriously, both *de facto* and *de jure* violations of women's rights – in areas such as family law, nationality, bodily integrity, freedom of expression, freedom of reproductive choice and liberty of movement – are also often overlooked, if not justified, by governments on the basis of respect for tradition, culture or religion. These are almost 'tolerated' due to a misguided notion of 'cultural relativism'. This not only obscures violations of the rights of women, but creates a dilemma and inhibits firm response to such acts from the international community. It is, therefore, a serious challenge which both the national governments and the international human rights community must be prepared to confront in the future.

We must all operate with the baseline assumption that not all traditions are good and are to be protected. Discriminatory traditions that violate women's human rights need to be changed.

Human rights are universal; women's human rights are also universal, which means they are the same everywhere and for every woman.

Our work in the CEDAW Committee bears witness to the rather disturbing and disappointing persistence of stereotypical attitudes towards the gender roles of women and men as a critical challenge to women's human rights worldwide. Prevalence of such attitudes is responsible for a whole range of violations in widely different contexts around the world. They form the social-psychological breeding ground of traditional practices and customs prejudicial to women, such as violence against women, polygamy, forced marriage, son preference and 'honour' killings. In many countries, stereotypical attitudes also create a pervasive climate of discrimination, incorporating rigid social codes that entrench the traditional role of women in the family and limit their participation in public life. In almost all regions of the world notions of appropriate work for women, which are often internalised by women themselves,

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discourage women from entering public life and seeking non-traditional employment and seriously limit women's freedom to make choices about their individual roles.

### **Multiple discrimination**

Last but not least, let me also point to a most relevant emerging issue. There is a growing recognition in the international arena that discrimination is multifaceted and complex, and that few individuals are affected by only one form of discrimination. The rise to prominence of women's issues has had a significant role in drawing attention at the international level to multiple discrimination. The multiple forms of discrimination that women may experience, indicating that cross-cutting factors such as age, disability, socio-economic position or belonging to a particular ethnic or racial group could combine with discrimination on the basis of sex and create specific barriers for women, gave visibility to the phenomenon and made clear that women so affected would experience multiple disadvantages. The BPFA emerges as a landmark document in that respect. The impact of multiple forms of discrimination in education and training, participation in decision-making, enjoyment of economic benefits and human rights, including in times of armed conflict as well as the right to be free from violence, was addressed in a number of the BPFA's critical areas of concern.

In this context, the CEDAW Committee has observed that while discrimination on the basis of sex has been slowly eroding, much more needs to be done with respect to the elimination of multiple and intersecting discrimination faced by women around the world. In recognition of this need, there is a growing tendency in the Committee in recent years to specifically inquire about and make recommendations to State parties with regard to women who are not only denied equality on the basis of their sex, but because of factors such as age, race and ethnicity. Other human rights treaty bodies are following suit, with the Human Rights Committee and the Social, Economic and Cultural Rights Committee increasingly integrating gender into their work. Over the years, through its consideration of States parties' reports, the CEDAW Committee has also seen that various types of discrimination do not always

affect women and men in the same way. The Committee has observed that gender discrimination may be intensified and may occur concurrently with other forms of discrimination, such as racial, ethnic or religious discrimination. Women who are particularly affected by the multiple impact of discrimination are women belonging to minority groups in terms of race, ethnicity, nationality or caste, as well as migrant workers, women asylum seekers, refugees, displaced women and indigenous women.

The Committee has seen that discrimination against women of different ethnic and racial origins is often manifested in the most extreme and horrific forms of gender-based violence.

Armed conflict and extreme poverty, as well as natural disasters and catastrophes, which are often reflected by increasing violence against women in general, impact disproportionately on women from marginalised, racial and ethnic groups. Selective immigration controls, commercial sexual exploitation and cross-border trafficking of women are also contemporary phenomena where racial, ethnic or religious discrimination render women particularly vulnerable.

In its work, the Committee has also observed that contemporary phenomena such as neo-nazism and neo-fascism, resurgence of ethnic nationalism and religious fundamentalism, to the extent that these are phenomena based on ethnocentric values and xenophobic hostility towards out-groups, often target women of such groups as the prey of their oppression and aggression. Around the world, also owing to the spread of such movements, women's human rights have been severely violated in a variety of ways, ranging from limitation of their access to resources and basic services to their subjection to intimidation and physical violence by State agents and/or fellow citizens, all the way to their systematic rape and forced impregnation as a war tactic. At this critical juncture of history, when world politics once again appear to give way to armed conflict, it is particularly important that the lessons of the past are not forgotten. Women and girl children should not be rendered vulnerable to heinous crimes and violations of their human rights that the international community has often come to deeply regret and be ashamed of in the past.

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## **Conclusion**

No country in the world has fully implemented the human rights of women, and full *de jure*, let alone *de facto*, equality has not been achieved anywhere in the world. There is, however, sufficient cumulative experience in combating different facets of discrimination against women in different countries. The globalised world, with the unprecedented communication opportunities it has, offers us a chance to benefit from each other's experience, to become aware of 'good practices' elsewhere and to share resources and, most critically, to avoid repetition of mistakes. I therefore insist that the challenge to confront the remaining obstacles can and should be taken up with a vision of a human condition based on full and equal enjoyment of human rights by all women and men as articulated by the Universal Declaration of Human Rights (UDHR) and a peaceful world free of all forms of discrimination against women.

## **Note**

- 1 A written statement submitted by Feride Acar, Chairperson of the Committee on the Elimination of Discrimination Against Women, to the 47th session of the Commission on the Status of Women, New York, 3–14 March 2003.
- 2 At the time of writing. There are 177 States Parties as of August 2004.