



The Convention on the Elimination of All Forms of Discrimination Against Women and the Optional Protocol

The *Convention on the Elimination of All Forms of Discrimination Against Women* (commonly referred to as the “Women’s Convention” or “CEDAW”) has been described as “an international bill of rights for women”. The Convention is one of the key advocacy tools in the fight for the rights of women around the world. This primer provides a basic introduction and overview of the Convention, its new Optional Protocol, and suggestions on how they can be used in projects for equality and development.

The Women’s Convention: Background

Human rights treaties perform three functions: they guarantee specific rights to individuals, they establish state obligations or responsibilities related to these rights, and they create mechanisms to monitor state compliance with these obligations and to allow individuals to seek redress for violations of their rights. States are free to choose which treaties they accept. In becoming “party” to a treaty or “ratifying” it, a state accepts obligations to apply the provisions of the treaty and to accept

international supervision of this compliance (see below).

CEDAW was adopted by the United Nations General Assembly in 1979 and entered into force September 3, 1981.¹ As of May 2002, 172 countries have signed onto the Convention, promising to abide by its terms. **As parties to the treaty, these countries agree to take all appropriate measures so that women can enjoy their human rights and fundamental freedoms.**

Unfortunately, many of these countries have entered reservations to the treaty, meaning that they exempt themselves

Definitions:

Ratify – By ratifying a treaty a country promises to comply with its terms and agrees to be held internationally accountable for their compliance with the obligations included in the treaty (sometimes informally referred to as “signing a treaty”)

Reservation – A reservation is a declaration that a state may not comply with certain provisions of a treaty or does not accept certain obligations contained in a treaty.

State Party – State Parties are the countries that have ratified a treaty.

Treaty – A treaty is a written international agreement among states which is legally binding and subject to international law (similar to a contract between a group of states).



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Making history:

How CEDAW came to be

*Unlike many other conventions the Women's Convention took a full 12 years to reach fruition.² Many questioned the need for a Convention (a legally binding document, as opposed to a non-binding declaration), arguing that either there was **no** discrimination against women, or that it was an unwelcome diversion from "more important" international matters like global security, poverty, self-determination and de-colonization.*

*Others saw "women's issues" as domestic matters which had no place at the United Nations (unlike racial discrimination which sees conflict **between** peoples, sex discrimination habitually takes place **inside** groups of people and therefore had no obvious international character). Yet other groups believed that there was sufficient protection of women's rights enshrined in other human rights documents. Despite the years of delay, it was finally rushed through in time for the World Conference on the UN Decade for Women (1980) and some commentators have argued that despite its positive effect, the impetus was one of political symbolism rather than any genuine recognition of the rights of women.³*

from certain provisions of the treaty. Some of the objections undermine the very purpose of the Convention and are arguably impermissible under international law.

Like other human rights treaties, CEDAW calls for the elimination of discrimination against women. This convention goes further, however, in that it does not only require equality between the sexes but prohibits any practices that perpetuate women's inequality. The Convention **applies to both intentional discrimination and acts that have a discriminatory effect** (e.g. the Convention would prohibit both legislation which explicitly prohibits women from running for political office, and also legislation which officially does not distinguish between men and women but, in effect, excludes women by requiring all candidates to have a certain level of formal education, land holding or financial assets. It would be less common for women to have any of these resources). By signing the Convention, states assume 'obligations of both means and results', that is, obligations to take specific actions aimed at eliminating discrimination and also obligations to actually achieve gender equality. CEDAW is also noteworthy because **it is the only human rights treaty that affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations**. See the back page for a summary of the rights CEDAW includes.

How is CEDAW enforced?

The primary responsibility to ensure that all members of a society enjoy their rights always falls upon the state. At the international level there are monitoring and complaint procedures in place to ensure that states fulfill the obligations they have agreed to by signing human rights treaties.

Under CEDAW, **states are required to submit a national report every four years on measures they have taken to comply with their obligations**. These reports are reviewed by the members of the Committee on the Elimination of Discrimination Against Women, a 23-member expert committee. Following the consideration of each report, the Committee formulates

“concluding comments” which outline positive and negative observations, and their recommendations to enhance implementation of the Convention. Non-governmental organizations (NGOs) can submit “shadow” or “alternative” reports to supplement the information provided in the official state report. This type of monitoring procedure is considered successful from the standpoint of human rights advocates if it brings publicity to human rights abuses, and shames governments and human rights violators to change their behaviour.

The Committee also makes “general recommendations” on issues affecting women to which it believes states should pay more attention. These comments are important in expanding the understanding of what is included in state obligations under the Convention, although they are not legally enforceable. Some of the topics that the Committee has written on are: violence against women, women and HIV/AIDS, unpaid work in rural and family enterprises, women with disabilities, and women and health, among others.

CEDAW can also be enforced at the national level, although procedures vary greatly between countries. In some countries, international human rights law automatically becomes part of the national law and

therefore CEDAW provisions would be enforceable through domestic courts. In other countries, courts and legislatures may look to international human rights norms as a guide when deciding how to interpret and develop national law. Also, some countries have political and administrative bodies which are entrusted with improving the status of women; the provisions of CEDAW could be either influential or binding on these bodies⁴.

It is no longer possible to say that there is no discrimination against women if laws and policies do not overtly discriminate against women. Under the regime of the Convention, neutrality has no legitimacy. Positive actions are required of the State to promote and protect the rights of women.

Shanthi Dairiam, International Women’s Rights Action Watch, Malaysia

The Optional Protocol: a new means of enforcement

Until recently, enforcement mechanisms for CEDAW have been very weak. However, on October 6, 1999, the U.N. General Assembly adopted the Optional Protocol⁵. On December 22, 2000 it came into force after 10 states had ratified it.

The Optional Protocol to CEDAW adds two enforcement procedures. It has the

status of a treaty in its own right although it acts more as an appendix, adding further provisions to the original Convention. Any state that is a party to the Convention can now choose to ratify the Optional Protocol and accept the further obligations of the enforcement procedures. As of May 2002, 74 states had signed the Optional Protocol and 36 states were full parties.



The procedures to use the Optional Protocol:

A) The Communications Procedure:

This procedure allows women (or groups of women) who believe that their rights have been violated to bring complaints before the Committee on the Elimination of Discrimination Against Women. The Committee looks at the facts presented in the complaint and the state's response to the allegations. The Committee issues a decision as to whether the state has in fact violated the treaties' protections, and offers recommendations about what the state should do to remedy the situation.

In order to submit a complaint under this procedure women must first exhaust their local remedies, which means that they must use whatever means are available within their own countries

(such as administrative tribunals and court appeals) unless these remedies are unreasonably prolonged or unable to bring effective relief. They also must meet the following requirements:

- The country against which they are complaining is a party to both CEDAW and the Optional Protocol;
- The violation about which they are complaining occurred after the date that the Optional Protocol came into force (or is an ongoing violation that has continued past the date that the Optional Protocol came into force).
- The right they are claiming was violated is included in CEDAW.
- If the communication is being submitted on someone else's behalf, that person's consent must be demonstrated unless the lack of consent is justified (e.g. they are unable to give consent).
- The complaint has not been or is not being

What about your country?

A list of countries that have ratified the Convention is posted on the Division for the Advancement of Women website at <http://www.un.org/womenwatch/daw/cedaw/states.htm>.

An explanation of what reservations are and the reservations that have been registered to this Convention are posted at <http://www.un.org/womenwatch/daw/cedaw/reservations.htm>.

At <http://www.un.org/womenwatch/daw/cedaw/reports.htm> you'll find information on Country Reports to the CEDAW Committee. Using these sources, it can be determined what a country has done with the Convention.

examined by another international procedure.

- The complaint must be submitted in writing.
- The complaint cannot be anonymous.

This procedure provides an international mechanism where women can obtain a remedy for violations of their rights when national level procedures fail to provide them with an adequate solution. The decisions generated can also provide important legal interpretations to illuminate the meaning of women's human rights.

B) The Investigative Procedure:

When the Committee receives reliable information indicating that grave and/or systematic violations of women's rights are occurring in a country, it can launch an investigation and may visit the country. The Committee will ask the government to cooperate and will send them its findings and recommendations. The state should respond within six months. The inquiry is confidential.⁶

Women who wish to prompt an investigation by the Committee under this procedure should gather evidence to document the rights violations that are occurring, and send this evidence to the Committee. The Committee can only undertake investigations of countries that have accepted the authority of the Committee to do so by ratifying the Optional Protocol.

This type of investigative procedure is useful when individual complaints fail to reflect the

systematic nature of the rights violations. It also allows for widespread violations to be investigated where individuals or groups might not be able to make a complaint, and it allows the Committee to make recommendations about structural issues and address a broad range of issues within a country⁷.

How the CEDAW Convention and Optional Protocol can be used by development practitioners and women's rights activists:

Advocates, activists and policy-makers can use CEDAW and the new Optional Protocol in a variety of ways. As with all human rights treaties, it is only through creative advocacy and demands for accountability from women around the world that the Convention truly becomes an empowering tool for justice, equality and development. The following are several ideas on how the Convention can be used:

- **In development projects and policies, the rights enumerated in CEDAW can be used as targets and indicators to evaluate success.** Guaranteeing women's rights by building a sustainable community that supports the rights of all citizens is a certain indicator of a successful development project. The articles on rural women and sustainable livelihoods could be used as the basic targets and indicators for an agricultural extension program, for example.
- When lobbying for law reform, service provision or social and economic policy changes, **activists can remind states of their obligations under the**



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Convention and the international rights standards they are required to uphold in areas such as the family, property, customs and traditions, and education, health and equality guarantees.

The general recommendations issued by the Committee and the decisions issued under the new enforcement procedures can be used to illuminate the government's responsibilities.

- **CEDAW can be used in domestic litigation.** Advocates can argue that domestic legislation and constitutional provisions should be interpreted in accordance with internationally accepted human rights principles and that, if the country in question has ratified the Convention, domestic provisions should be reformed to accord with the freely assumed obligations of the Convention.

The findings of the Committee under these Optional Protocol procedures can also be used in domestic litigation. Women must "bring it home" to effect change in their own communities⁸.

- CEDAW can be used as the basis for an empowering education program to train women, activists, judges, lawyers, police, the media, and anyone else in using women's rights as a framework for equality and justice. **Rights education trains people to use the law, human rights, and the human rights system** as a political resource to gain the power needed to effect change within their societies.
- **Women can take complaints forward under the petition procedure and instigate investigations of**

CEDAW strengths

- States must prevent violations of women's rights by individual citizens and non-governmental bodies, as well as by state institutions.
- Actions and policies with the *effect*, as well as the purpose of disadvantaging women, are prohibited.
- It challenges states to change gendered stereotypes and prejudices.
- It provides a forum to advance gender equality through consideration of state reports and the issuing of general recommendations.

CEDAW weaknesses

- There are no explicit provisions with regard to: domestic violence and marital rape, rights of abortion, equal protection for lesbian women or single women, prohibition of "hate speech" against women, or protection of older women.
- The extent and content of state reservations considerably weakens the Convention's normative force. There is no system for establishing the "incompatibility" of reservations, as is the case for

the Convention for the Elimination of Racial Discrimination.

- Enforcement provisions are weak, even under the Optional Protocol: the Committee can only "transmit its views" but has no power to sanction violating states.
- The Committee is massively under-resourced and faces a considerable backlog of reports.

gross and systematic violations. Both of these options could provide remedies to women whose rights have been violated. Using either option should be looked at as an opportunity to network and to strategize around the creative use of rights to effect positive change. These procedures have precedents under other conventions but are new to the women's human rights regime and, therefore, it is a critical point for women to decide how to most strategically use these provisions. As with all human rights enforcement procedures, these procedures will only be effective if used creatively and strategically by local activists and advocates.

Footnotes

¹ The official citation of CEDAW is 1249 U.N.T.S. 13. The full text of the Convention is posted on-line at <http://www1.umn.edu/humanrts/instree/e1cedaw.htm> or in publications such as the Center for the Study of Human Rights, *Women and Human Rights: Basic Documents* (Columbia University, 1996).

² Laura A. Donner, "Gender Bias in Drafting International Discrimination Conventions: The 1979 Women's Convention Compared with the 1965 Racial Convention" 24 *Calif Western Int'l Law J* 241 (1994) p243-4. The Declaration on the Elimination of All Forms of Discrimination Against Women was adopted in 1967; the Convention not till 1979.

³ Laura A. Donner, (1994) pp245-246.

⁴ Cook, Rebecca J., "State Accountability Under the Convention on the Elimination of All Forms of Discrimination Against Women", in *Human Rights of Women: National and International Perspectives*, (Philadelphia: University of Pennsylvania Press, 1994) pages 228-256.

⁵ General Assembly Resolution A/Res/54/4. The text of the Optional Protocol is posted on-line at <http://www.un.org/womenwatch/daw/cedaw/protocol/current.htm> and <http://www1.umn.edu/humanrts/instree/cedawopprot-2000.htm>. A list of states that have signed it is posted at <http://www.un.org.womenwatch/daw/cedaw/protocol/sigop.htm>.

⁶ This procedure is modelled on an existing human rights inquiry procedure, Article 20 of *The International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

⁷ The Convention on the Elimination of All Forms of Discrimination Against Women: The Optional Protocol, Text and Materials (United Nations, 2000).

⁸ Ilana Landsberg-Lewis (ed.), Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women, (United Nations Development Fund For Women) <http://www.unifem.undp.org/cedaw/cedawen0.htm>.

The Association for Women's Rights in Development (AWID) is an international membership organization connecting, informing and mobilizing people and organizations committed to achieving gender equality, sustainable development and women's human rights. A dynamic network of thousands of women and men, AWID members are researchers, academics, students, activists, business people, policy-makers, development practitioners, funders, and more, half of whom are situated in the Global South and Eastern Europe.

AWID's goal is to cause policy, institutional and individual change that will improve the lives of women and girls everywhere. Since 1982, AWID has been doing this by facilitating ongoing debates on fundamental and provocative issues as well as by building the individual and organizational capacities of those working for women's empowerment and social justice through its International Forums and strategic communications.

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QUICK REFERENCE: What CEDAW includes

Article 1 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" of all human rights of women.

Article 2 lists a range of **obligations on governments and goals to be pursued** without delay such as enacting or abolishing laws, practices or customs, or creating public institutions to guarantee women's human rights.

Article 3 requires that **states take all appropriate measures** to guarantee the advancement of women, in order that women are guaranteed the enjoyment of their rights equally with men.

Article 4 is the "**affirmative action clause**" of the Convention, stating that temporary special measures (such as special benefits for women or quotas for hiring women) that are aimed at achieving true gender equality should not be considered discriminatory.

Article 5 states that governments are to take appropriate measures to **modify social and cultural patterns** which are based on the superiority of either sex or on stereotyped gender roles. This includes giving men and women the common responsibility of raising children.

Article 6 provides that states must **suppress all forms of traffic in women and the exploitation of prostitution of women**.

Article 7 guarantees **equality in public and political life**, including voting, governmental policy and participation in non-governmental organizations.

Article 8 guarantees **women's right to represent their country at the international level**.

Article 9 provides for **equal rights with respect to nationality**, irrespective of marital status and also as concerns children.

Article 10 guarantees to women **equality in education**, which includes career counselling, access to the same curricula and evaluation, the elimination of stereotyped roles in textbooks, scholarships, sports, and family planning information.

Article 11 requires the **elimination of discrimination in employment**. Included is the right to work in any field, job security and benefits, training, equal remuneration, social security, healthy working conditions, the prevention of discrimination based on marriage or maternity, maternity leave and child care benefits, and special protections for women during pregnancy.

Article 12 requires the **elimination of discrimination in the field of health** and equal access to health care services, including those related to family planning. It requires that women have access to appropriate services in connection with pregnancy and childbirth.

Article 13 requires states to eliminate discrimination in **social, cultural and economic life**, making reference to family benefits, bank loans and mortgages, recreation, sports, and culture.

Article 14 stipulates that governments are expected to **eliminate discrimination against rural women** and to ensure that they participate in, and benefit from, rural development.

Article 15 guarantees **equality before the law**, and therefore women should have the identical legal capacity to men in all matters including contracts, property, or choice of residence.

Article 16 obliges governments to **eliminate discrimination against women in marriage and family relations**, so that women have the necessary information and means to exercise this right (e.g. to decide on the number and spacing of children) and that child marriage shall have no legal effect.



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Plan to attend AWID's 9th International Forum
from October 3-6, 2002 in Guadalajara, Mexico

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