

## The Women's Convention

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### 1. INTRODUCTION

The protection of human rights and the equality of men and women have been given a prominent place in the United Nations. According to the preamble of the UN Charter, the peoples of the world are determined 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women (...)'. Article 1(3) states as one of the purposes of the Organization 'to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.' Article 55 goes on to state that the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. The present contribution will first provide a brief overview of the protection of women's human rights within the United Nations framework, and will then focus extensively on the most important

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instrument: the Convention on the Elimination of all forms of Discrimination Against Women. It will deal with its main characteristics, then provide a brief overview of the substantive rights and subsequently with the supervisory machinery.

## **2. THE PROTECTION OF WOMEN'S HUMAN RIGHTS IN THE UNITED NATIONS FRAMEWORK**

Throughout its history, the United Nations has undertaken many efforts in its attempt to achieve equality of men and women, including the equal enjoyment of human rights. In 1946, the Economic and Social Council (hereafter: ECOSOC) established the Commission on the Status of Women (hereafter: CSW),<sup>(1)</sup> charged with the preparation of recommendations and reports to the Council on promoting women's rights in political, economic, civil, social and educational fields. The CSW also makes recommendations to the Council on urgent problems requiring immediate attention in the field of women's rights. The object of the CSW is to promote implementation of the principle that men and women shall have equal rights. In 1987, the CSW's mandate was expanded to include the functions of promoting the objectives of equality, development and peace, monitoring the implementation of measures for the advancement of women and reviewing progress.<sup>(2)</sup> The CSW is composed of 45 Member States and meets annually in March for two weeks. The CSW has, amongst others, played an important role in drafting texts of instruments protecting women's rights, including the Convention on the Elimination of All Forms of Discrimination Against Women, which is the main subject of this contribution. Furthermore, it adopts resolutions on issues such as the situation of women in Afghanistan, women and HIV/AIDS and mainstreaming a gender perspective into all policies and programmes in the United Nations system.<sup>(3)</sup>

So far, the United Nations has organized four World Conferences on Women, most recently in Beijing (1995), which resulted in the Beijing Declaration and Platform for Action.<sup>(4)</sup> Through these documents, which are not legally binding, states have committed themselves to take steps to

eradicate discrimination of women and to advance the enjoyment of their human rights. The Declaration and Platform for Action were reviewed during a special session of the UN General Assembly in 2000, which resulted in the Beijing +5 Political Declaration<sup>(5)</sup> and Outcome Document.<sup>(6)</sup> The CSW plays an important role in reviewing the implementation of the Beijing Platform for Action and the Beijing +5 outcome document.

As the preamble of CEDAW states, despite the various existing human rights instruments ‘extensive discrimination against women continues to exist.’ In view of the persistent discrimination against women, it remains indispensable that specific organs with the necessary expertise deal exclusively with women’s issues. At the same time, adequate attention should be paid to women’s concerns in all United Nations organs, whether they deal with security, development, economics or human rights. It is one of the aims of the United Nations to mainstream gender in the work of the Organization.<sup>(7)</sup> In the area of human rights, both the World Conference on Human Rights (Vienna, 1993) and the Fourth World Conference on Women called upon the human rights treaty bodies to apply a gender perspective in their work.<sup>(8)</sup> At present, the human rights organs pay much more attention to women’s concerns than some ten years ago. For example, the Human Rights Committee, which supervises the implementation of the Covenant on Civil and Political Rights, adopted a general comment on the equality of rights between men and women<sup>(9)</sup> and the Committee on the Elimination of Racial Discrimination adopted a general recommendation on gender related dimensions of racial discrimination.<sup>(10)</sup> It thus becomes clear that women’s issues form part of the whole of the United Nations’ activities. The remaining part of this contribution will focus on CEDAW.

### **3. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

#### **3.1. HISTORY OF CEDAW**

In November 1967, the General Assembly adopted the Declaration on the Elimination of All Forms of Discrimination against Women,<sup>(11)</sup> which had

been prepared by the CSW. The Declaration stated in article 1 that ‘discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.’ In 1974, CSW decided that it was time to create a binding Convention. The Convention on the Elimination of all Forms of Discrimination Against Women was adopted by the General Assembly on 18 December 1979; it entered into force on 3 September 1981, following the 20<sup>th</sup> ratification, in accordance with article 27(1).<sup>(12)</sup> As of 1 January 2005, 179 States parties have ratified the Convention,<sup>(13)</sup> only the Convention on the Rights of the Child has been ratified more widely (192 ratifications).<sup>(14)</sup>

### **3.2. AIM AND CHARACTERISTICS OF CEDAW**

The aim of CEDAW is to eliminate all forms of discrimination against women; it is not a discrimination aimed at eliminating discrimination on the ground of sex. According to article 1, discrimination means ‘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.’ This definition largely resembles the definition in article 1 of the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), with the significant difference that the latter explicitly refers only to the public sphere, whereas the definition in CEDAW also concerns the private sphere. This is a very important addition, since many manifestations of discrimination against women occur in the private sphere, for example within the family.

CEDAW is a unique human rights instrument and has some characteristics that distinguishes it from other human rights treaties. It is the only universal, legally binding instrument that is solely concerned with women.<sup>(15)</sup> Article 2 – which has been described as the heart of the Convention<sup>(16)</sup> – provides a detailed list of measures to be taken by States parties, including the obligation to take legislative measures, to provide for

effective legal protection of the rights of women, to refrain from discrimination, to eliminate discrimination by persons, organizations and enterprises and to abolish or modify laws, regulations, customs and practices which constitute discrimination against women. Further, articles 2(f), 5 and 10(c) contain an obligation for States parties to eliminate stereotypes, which does not occur in any other human rights treaty. These provisions taken together impose on States various levels of obligations, namely to guarantee *de jure* equality of men and women, to guarantee *de facto* equality of men and women and to address the underlying causes of discrimination against women.

It must be noted that CEDAW is quite different from CERD, which recalls in article 5 a wide range of human rights and stresses that States parties must undertake to prohibit and eliminate racial discrimination in the enjoyment of these rights. The Women's Convention does not contain a comparable list of human rights – indeed, there are many relevant human rights that are not mentioned at all in the Convention, such as the right to physical integrity. It deals with equality and non-discrimination in the field of a number of civil and political rights, such as the right to political participation and nationality; and economic, social and cultural rights, such as the right to education, the right to work and the right to health. Section 4 of this contribution provides a brief overview of the substantive provisions.

### **3.3. MONITORING THE IMPLEMENTATION OF CEDAW**

States parties are under an obligation to give effect to the provisions laid down in the Convention. Within the United Nations system, seven human rights treaties provide for the establishment of monitoring bodies, the so-called human rights treaty bodies. In addition to CEDAW, these are the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights,<sup>(17)</sup> the Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The human rights treaty

bodies are composed of individual experts, acting in their personal capacity. These organs can be seen as quasi-judicial organs. The Committee on the Elimination of Discrimination against Women (hereafter: the CEDAW Committee or the Committee) supervises the implementation of CEDAW by means of a mandatory reporting procedure and an optional individual complaints procedure and investigation procedure. Furthermore, the Committee can adopt so-called general recommendations, in which it elaborates on a specific treaty provision or a more general issue. These procedures will be dealt with in detail in sections 6-8 of this contribution.

### **3.4. RESERVATIONS TO CEDAW**

Another feature of CEDAW, though one less positive, is that it is the human rights treaty with the largest number of reservations, which is a cause for concern.<sup>(18)</sup> The Convention does not prohibit reservations, but that does not mean that all reservations are permissible. Article 28(2) states that ‘a reservation incompatible with the object and purpose of the present Convention shall not be permitted.’ Many States parties have ratified the Convention, but with such far reaching reservations that these must be considered to be incompatible with the object and purpose of the Convention, and as such unacceptable. The Convention does not, unfortunately, contain a provision as to who decides on the permissibility of reservations.

In 1998 the CEDAW Committee, adopted a Statement on Reservations as its contribution to the commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights. It noted that reservations that challenge the central principles of the Convention are contrary to the Convention and general international law and may as such be challenged by other States parties.<sup>(19)</sup> It observed that reservations to articles 2 (on the obligations of States parties) and 16 (equality within the family) ‘perpetuate the myth of women’s inferiority and reinforce the inequalities in the lives of millions of women throughout the world.’ According to the Committee, article 2 is central to the objects and purpose of the Convention. It said furthermore that neither traditional, religious or cultural practice nor

incompatible domestic laws and policies can justify violations of the Convention. It stated that reservations to article 16 are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn.<sup>(20)</sup> In this statement, the CEDAW Committee leaves the main responsibility on dealing with impermissible reservations to the other States parties to the Convention.<sup>(21)</sup> However, only few States parties object against impermissible reservations, and very few reservations have been withdrawn. There is now general agreement among the human rights treaty bodies that they can request the withdrawal of reservations that are incompatible with the object and purpose of the treaty in question.<sup>(22)</sup> The General Assembly urged States parties 'to limit the extent of any reservations that they lodge to the Convention, to formulate any such reservations as precisely and as narrowly as possible, to ensure that no reservations are incompatible with the object and purpose of the Convention, to review their reservations regularly with a view to withdrawing them and to withdraw reservations that are contrary to the object and purpose of the Convention.'<sup>(23)</sup>

As of recently, the Committee has formulated its concerns and accompanying recommendations in stricter terms. For example, it found that the reservation to article 7(a) made by Kuwait, which reserves the right to vote and to be eligible for election to males, was incompatible with the object and purpose of the Convention. It called upon Kuwait to take all necessary steps, as a matter of the utmost urgency, to amend its legislation in order to ensure compliance with the Convention. It further encouraged Kuwait to withdraw its reservations to articles 7(a), 9(2) and 16(f).<sup>(24)</sup> Despite the steps taken by the Committee, the issue of reservations to CEDAW remains of great concern. States continue to ratify the Convention with such far-reaching reservations that their willingness to take any steps towards the eradication of discrimination against women must be questioned.<sup>(25)</sup>

#### 4. CONTENTS OF CEDAW

The Women's Convention consists of six parts. Part I (articles 1-6) contains general provisions that are relevant to all substantive rights laid down in the Convention. It includes the definition of discrimination, the various policy measures States parties must take, a provision on temporary special measures and one on the need to eliminate stereotypes. Article 6 deals with trafficking in women and the exploitation of prostitution. Part II (articles 7-9) contains a number of civil and political rights, including the right to equality in respect of the right vote and to be elected and the right to equal rights to acquire, change or retain nationality. Part III (articles 10-14) deals with equality in the sphere of economic and social rights, including the right to education, the right to work, the right to health and the special position of rural women. Part IV (articles 15 and 16) prescribes that men and women shall be equal before the law, and that there shall be equality in all civil matters; and that there shall be no discrimination in all matters relating to marriage and family relations. Part V (articles 17-22) deals with the supervisory mechanism; Part VI (article 23-30) contains the final provisions. The present section will provide a very brief overview of the substantive provisions of CEDAW. It cannot do justice to the contents of CEDAW, and the work of the CEDAW Committee in its further elaboration in general recommendations and concluding observations.

Article 1 contains the definition of the term 'discrimination against women', it was already mentioned in section 3.2 that it is significant that the scope of CEDAW extends to the private sphere. Further, it prohibits both direct and indirect discrimination. In its practice, the CEDAW Committee urges States parties to include this definition in their domestic legislation. As was mentioned before, CEDAW does not contain a provision on women's right to physical integrity. That does not mean that the CEDAW Committee cannot deal with issues relating to this important human right. In 1992, CEDAW adopted a landmark general recommendation, in which stated that 'Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.'<sup>(26)</sup> By bringing the issue of violence against women within the scope

of the definition laid down in article 1, the Committee had the opportunity to examine this issue. The fact that violence against women constitutes a form of discrimination and a violation of women's human rights has now widely been accepted.<sup>(27)</sup> In its work, the Committee has played a leading role in further specifying the scope of States parties' obligations in this respect.

Article 2 CEDAW defines the various measures States parties must take in respect of CEDAW as a whole, as well as in respect of all substantive provisions. It provides that States parties 'condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women'. To this end, they undertake to embody the principle of equality of men and women in their national constitution or other appropriate legislation and to ensure the practical realisation of this principle. Article 2 further prescribes that legislation must be adopted, which prohibits discrimination against women, including sanctions where necessary. States parties must ensure that they do not themselves discriminate, and to ensure that their institutions also act in accordance with CEDAW. Further, they must take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise. Article 2(f) was already referred to above, it contains the obligation to modify or abolish existing laws, regulations, customs and practices constituting discrimination against women, thus making clear that there can be no justification for discrimination against women.

Article 3 requires States parties all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. Article 4 makes clear that the adoption of temporary special measures aimed at accelerating *de facto* equality of men and women does not constitute discrimination, and that special measures aimed at protecting maternity shall not be considered discriminatory.<sup>(28)</sup> Article 5 is a unique provision in international human rights law, it requires States parties to modify the social and cultural patterns of conduct of men and women. Article 6 requires States

parties to take all appropriate measures to suppress all forms of trafficking in women and exploitation of prostitution of women.

Article 7 deals with women's participation in political and public life. States parties must ensure to women, on equal terms with men, the right to vote and to be elected, to participate in the formulation and implementation of government policy and to hold public functions at all levels of government, and the right to participate in non-governmental organizations concerned with the public and political life of the country. In its general recommendation on this article, the CEDAW Committee has underlined the relevance of this provision. Article 7 extends to all areas of public and political life. It pointed out that women's activities have traditionally largely been within the domestic sphere, which has hindered them to participate in issues such as formulating public policy. The inequality of women is reinforced by their low level of participation in the political and public sphere. The Committee has stressed the need for States parties to take temporary special measures under article 4(1) to give full effect to article 7.<sup>(29)</sup> Article 8 obliges States parties to ensure to women the equal opportunity to represent their governments at the international level and to participate in the work of international organizations. Article 9 provides that States parties shall grant women equal rights with men to acquire, change or retain their nationality. In its general recommendation on equality in marriage and family relations, the Committee emphasized that nationality is critical to full participation in society. It observed that without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. It stated that nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.<sup>(30)</sup>

Article 10 deals with equality in the field of education. This provision extends to all levels of education, from pre-school to vocational training. Women shall have access to the same curricula, teaching staff with qualifications of the same standard and school premises and equipment of

the same quality. Also this article pays attention to the need to eliminate stereotypes. States parties must take measures to reduce the reduction of female drop-out rates, and to ensure access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11 guarantees equality in the field of work and employment. This article applies to all relevant aspects, from the selection process to retirement. It states that women should have the same right to work and the same employment opportunities. States parties must ensure the right to free choice of profession and employment; promotion; job security; equal remuneration; social security, particularly in case of retirement, unemployment, sickness, invalidity; protection of health and safety in working conditions, including the safeguarding of the function of reproduction. Furthermore, States must take measures to prevent discrimination on the ground of marriage or maternity.

Article 12 requires States parties to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. In 1999, the Committee adopted one of its most elaborate general recommendation so far, dealing with this article.<sup>(31)</sup> It made clear that article 12 requires States parties to eliminate discrimination against women in their access to health care services, throughout the life cycle, particularly in the areas of family planning, pregnancy, confinement and during the post-natal period. It is noteworthy that the Committee has used language that is derived from article 12 of the Covenant on Economic, Social and Cultural Rights, by stating that the general recommendation 'seeks to elaborate the Committee's understanding of article 12 and to address measures to eliminate discrimination in order to realize the right of women to *the highest attainable standard of health*' (emphasis added). According to the general recommendation, measures to eliminate discrimination against women are considered to be inappropriate 'if a health care system lacks services to prevent, detect and treat illnesses specific to women'. Furthermore, it

provides that it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. The Committee observed that the duty of States parties to ensure, on a basis of equality between men and women, access to health care services, information and education implies an obligation to respect, protect and fulfil women's rights to health care. The duty to respect requires States parties to refrain from obstructing action taken by women in pursuit of their health goals; the duty to protect requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations and the duty to fulfil places an obligation on States parties to take appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to ensure that women realize their rights to health care.

Article 13 deals with the obligation of States parties to eliminate discrimination in other areas of economic and social life, such as the right to bank loans and to participate in recreational activities. Article 14 deals with the particular situation of rural women. States have an obligation to ensure that these women have an equal right to participate in the elaboration and implementation of development planning and to benefit directly from social security programmes.

Article 15 provides that States parties shall accord to women equality with men before the law. Further, States parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity; and the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.<sup>(32)</sup>

Article 16 deals with the right to equality in all matters relating to marriage and family relations. As was stated above, reservations have been made to this provision, in particular by Islamic States parties. The CEDAW Committee has responded very critically to these reservations and urged their withdrawal. In its general recommendation on equality in the family it stated that 'States parties should resolutely discourage any notions of inequality of women and men which are affirmed by laws, or by religious or

private law or by custom, and progress to the stage where reservations, particularly to article 16, will be withdrawn.’<sup>(33)</sup> Equality within the family is indeed crucial for women. In its general recommendation, the Committee observed that historically, human activity in public and private life has been viewed differently and regulated accordingly. In all societies women who have traditionally performed their roles in the private or domestic sphere have long had those activities treated as inferior. It stated that such activities are invaluable for the survival of society and that there can be no justification for applying different and discriminatory laws or customs to them. It stated that polygamous marriage contravenes a woman’s right to equality with men. The Committee stated that a woman’s right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. It expressed its concern about forced and arranged marriages and stressed that a woman’s right to choose when, if, and whom she will marry must be protected and enforced at law. Further, article 16 deals with the obligation to ensure, on a basis of equality of men and women, the same rights and responsibilities during marriage and at its dissolution, the same rights as parents, the same rights to decide on the number and spacing of children, the same rights and responsibilities with regard to guardianship and adoption, the same personal rights as husband and wife and the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.<sup>(34)</sup>

The above, very limited, overview demonstrates the additional value of CEDAW if compared to the general human rights instruments. It deals with the obligation of States parties to eliminate discrimination against women in numerous areas. Furthermore, many of the CEDAW provisions are much more elaborate and highlight the areas of major concern.

## 5. THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

As was mentioned above, CEDAW provides only for a reporting procedure, which is obligatory for all States parties (see article 18); the Optional Protocol provides for an individual complaints procedure and an investigation procedure. In this section, attention is paid to the CEDAW Committee, the organ entrusted with monitoring the implementation by States parties, and, in sections 6-8, to the three monitoring procedures.

Article 17 of CEDAW provides for the establishment of the Committee on the Elimination of Discrimination Against Women, which is composed of 23 members.<sup>(35)</sup> the CEDAW Committee is the only treaty body in which women are in such a large majority, indeed, only very few men have been members.<sup>(36)</sup> The Committee members are independent experts and act in their personal capacity; however, they are nominated and elected by governments. As is the case with all human rights treaty bodies, CEDAW does not list any incompatibilities for membership. Government officials, including ambassadors, are therefore not excluded from membership, though it may seriously be questioned whether they act 'in their personal capacity.' Since the outcome of the work of the Committee has the status of recommendations, its authority depends to a large extent on the status of its members. It is therefore of great importance that States parties nominate and elect members who are genuinely independent. Members are elected for four-year terms, they can be re-elected. An issue of concern is the absence of an adequate honorarium of members. On the basis of a General Assembly Resolution, members receive only one US dollar per year.<sup>(37)</sup>

The officers of the Committee are a chairperson, three vice-chairpersons and a Rapporteur. The Committee adopts its own rules of procedure, which were most recently amended following the entry into force of the Optional Protocol to CEDAW.<sup>(38)</sup>

In accordance with article 17(9), the Secretary-General shall provide 'the necessary staff and facilities for the effective performance of the functions of the Committee'. As to the term 'necessary', it must be noted that the lack of human and financial resources is a constant concern of the CEDAW

Committee, as well as of the other treaty bodies.<sup>(39)</sup> The Division for the Advancement of Women (DAW), which is located at UN Headquarters in New York, is responsible for providing the necessary services to the CEDAW Committee. This Committee is therefore the only treaty body that is not serviced by the Office of the High Commissioner for Human Rights (hereafter: OHCHR). The CEDAW Committee is also the only treaty body that meets in New York. All other treaty bodies meet in Geneva.<sup>(40)</sup> It has regularly been discussed whether the CEDAW Committee should also meet in Geneva and be serviced by the OHCHR, so that there could be closer cooperation with the other treaty bodies. In 1996, the Secretary-General decided, contrary to the Committee's own wishes,<sup>(41)</sup> that the Committee would continue to be serviced by the DAW, so as to provide for a strong and unified programme for the advancement of women within the United Nations.<sup>(42)</sup> Regularly, the question of the CEDAW Committee's location and the need for cooperation with the other human rights treaty bodies recur on the Committee's agenda, as well as on the agenda of the meeting of chairpersons of the human rights treaty bodies, that supported the CEDAW Committee's position and stated that the Committee cannot function properly if its secretariat is physically separated from the secretariat of other human rights treaty bodies.<sup>(43)</sup> At present, the emphasis is on seeking ways to ensure cooperation between CEDAW and the other human rights treaty bodies and their secretariats, rather than to continue to seek the Committee's relocation.<sup>(44)</sup>

According to article 20 CEDAW, the Committee 'shall normally meet for a period of not more than two weeks annually'. In view of the large number of States parties, the Committee requested the General Assembly to allow for more meeting time. At present, the Committee meets twice a year, for three weeks, on the basis of a General Assembly resolution.<sup>(45)</sup> On 22 May 1995, the Meeting of States parties adopted an amendment to article 20 of CEDAW, providing that the Committee shall normally meet annually, but that the duration of its meetings shall be determined by a meeting of States parties, subject to the approval of the General Assembly.<sup>(46)</sup> The amendment will enter into force when it has been accepted by two-thirds of the States

parties.<sup>(47)</sup> Only 44 States parties have accepted the amendment,<sup>(48)</sup> which is not even one third of all States parties. In view of the backlog in examining States parties' reports, the Committee requested the General Assembly to authorize it to meet for an additional week at its 33<sup>rd</sup> – 35<sup>th</sup> sessions (July 2005 and January and July 2006); and further to authorize the Committee to hold three annual sessions of three weeks each, with a one-week pre-session working group for each session, effective from January 2007.<sup>(49)</sup>

The CEDAW Committee does not operate in a vacuum. It has been established to monitor the implementation of CEDAW and for a good performance of its tasks it must maintain good working relationships with other organs. In the previous section, reference was already made to the UN Secretariat, which plays a crucial role in supporting the Committee. The Committee submits its annual reports to the UN General Assembly, while the CSW receives the annual report for its information. The Chairperson of the Committee participates in the sessions of the CSW, the General Assembly and the Commission on Human Rights. The Committee is regularly informed of the relevant activities of UN organs, including the CSW, the General Assembly and the Security Council by a representative of the Secretary-General (normally the Secretary-General's Special Adviser on Gender Issues). The Chairperson of the CSW participates in the Committee's session. The Committee further participates in the fora in which the treaty bodies discuss their methods of work and other matters relevant to all of them, which are the meeting of persons chairing the human rights treaty bodies and the inter-committee meetings. It further discusses its works with other relevant human rights mechanisms, such as the Commission on Human Rights' Special Rapporteur on violence against women. In the context of the reporting procedure, the Committee receives information from specialized agencies.

## **6. THE REPORTING PROCEDURE<sup>(50)</sup>**

### **6.1. FORM AND CONTENTS OF REPORTS**

In accordance with article 18 of CEDAW, States parties must submit a ‘report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect’. They must do so within one year after the entry into force of the Convention and thereafter every four years and whenever the Committee so requests. Reports may indicate the factors and difficulties encountered in implementing the Convention (article 18(2)). In order to assist States parties in fulfilling their reporting obligations, the Committee has adopted guidelines for reporting.<sup>(51)</sup> The guidelines contain information on the required substance of reports, as well as on their format. For example, reports must contain information on factors and difficulties encountered in implementing CEDAW, and describe the reasons thereof, and the steps taken by states to overcome them. Initial reports must have a somewhat different format than subsequent reports, the so-called periodic reports. Initial reports must contain information on the status of the Convention in domestic law and on the legal measures taken to give effect to the obligations laid down in the Convention. Furthermore, such reports must deal with all substantive articles. Subsequent reports should focus on the period between the consideration of the previous report and the presentation of the next report. Such reports should use the Committee’s concluding comments as a starting point and should provide information on progress made in the implementation. The Committee recommends that States parties consult national non-governmental organizations and women’s associations in the preparation of their reports.<sup>(52)</sup> It is noteworthy that States parties should also report on the implementation of the actions to be taken in regard to the twelve critical areas of concern identified in the Beijing Platform for Action.<sup>(53)</sup>

## 6.2. EXCEPTIONAL REPORTS

The Committee can further request the submission of a report on an exceptional basis, for which it derives its authority from article 18(1)(b). Such exceptional reports aim to obtain and examine the information on an actual or potential violation of women's human rights, where there is special cause for concern about such violation.<sup>(54)</sup> The Committee adheres to the following standards and guidelines: there should be reliable and adequate information indicating grave or systematic violations of women's human rights, in whatever situation; such violations are those that are gender-based, directed at women or affecting women because of their sex; reports should focus on a particular issue or issues identified by the Committee; States parties shall submit their reports for consideration at such session as the Committee determines.<sup>(55)</sup> So far, the Committee has received five special reports: from the Federal Republic of Yugoslavia (Serbia and Montenegro, oral report), Bosnia and Herzegovina (oral report), Croatia, Rwanda (oral report) and the Democratic Republic of the Congo (oral report).<sup>(56)</sup>

## 6.3. CONSIDERATION OF REPORTS

States parties' reports are submitted to the Committee, which discusses them in public meetings, during a dialogue with representatives of the State party concerned. Usually, the Committee invites eight States parties per session. Consideration of reports is prepared by a pre-sessional working group, which meets at the end of each session. Representatives of specialized agencies, international and national non-governmental organizations are invited to provide country-specific information to the working group.<sup>(57)</sup> Such additional information is indispensable to the Committee in the performance of its tasks. It can even be said that no State report can be examined without reference to other sources of information against which it can be tested.<sup>(58)</sup> State reports are often incomplete, in that they are too brief, or provide legalistic information only and not on practice, and give a very positive picture of the implementation of CEDAW. Various NGOs have expertise in submitting information to the Committee, one of them stands out in this respect: the International Women's Rights Action Watch (IWRAW).<sup>(59)</sup>

Having taken note of all relevant information, the working group draws up lists of issues and questions with regard to reports that are scheduled for consideration at the next session. These are sent to the State party concerned, in order to facilitate the preparation for constructive dialogues with the Committee. States parties must respond within six weeks. The list of issues and questions, together with States parties' responses, are circulated to the Committee prior to the session at which the reports will be examined. The Committee attaches great value to the presence of government representatives during the consideration of a report. It does not discuss a report in the absence of government representatives.<sup>(60)</sup> The consideration of reports takes place in a questioning and answering session, which is called the 'constructive dialogue'. The consideration has a non-contentious and non-adversarial character. Nevertheless, members frequently pose critical questions, and identify areas of non-compliance, they do normally not openly accuse States parties of human rights violations.<sup>(61)</sup> The examination of a report is concluded with the adoption of concluding comments.

#### **6.4. CONCLUDING COMMENTS**

The adoption of concluding comments takes place in a closed session, therefore also in the absence of the government delegation. They are structured according to a common pattern, beginning with an introductory statement by the representative of the State party. This is followed by the section 'introduction', in which the Committee includes some general remarks, for example on the quality of the report and the composition of the government delegation and its proficiency in responding to questions. Then follows the section 'positive aspects', in which the Committee welcomes positive steps taken by the State party concerned. These may include ratification of the Optional Protocol to the Committee, the withdrawal of reservations to the Convention, the adoption of specific legislation implementing provisions of the Convention or the establishment of specific organs dealing with one or more aspects relevant to the Convention. Until 2002, the Committee included a section 'factors and difficulties' in the concluding comments. It decided to reserve this section only for the most

exceptional circumstances, and no longer to refer to factors such as the persistent of stereotypical attitudes relating to the roles of men and women.<sup>(62)</sup> An example of such an exceptional circumstance is the devastating effect of hurricanes.<sup>(63)</sup> The concluding comments conclude with the lengthiest section, entitled “principal areas of concern and recommendations”. This section is of great importance to those who seek information on the Committee’s interpretation of the Convention’s provisions. Together with the general recommendations (see below, section 7) and the (future) case law under the Optional Protocol (see below, section 8), they provide a wealth of information. It would be beyond the scope of this contribution to deal in detail with the Committee’s ‘jurisprudence’, but some examples taken from the Committee’s annual report for 2004 will be provided as illustration.

- the Committee expressed its concern about the absence of a discrimination in conformity with article 1 of the Convention, and recommended the State party concerned that a definition of discrimination against women as set out in article 1 of the Convention be included in domestic legislation.<sup>(64)</sup>
- the Committee expressed its concern about the prevalence of domestic law over international conventions. It recommended that the State party incorporate in the Constitution the primacy of international conventions over domestic law in case of conflict. It also recommended that the State party undertake awareness-raising and sensitisation of the judiciary and other law enforcement authorities about the Convention.<sup>(65)</sup>
- the Committee expressed its concern about the lack of detailed information about women’s representation, particularly in decision-making positions and in various areas of public life, including in law enforcement, the judiciary and the diplomatic corps. It requested the State party to provide such information in its next report and to take measures to increase the representation of women in all areas of public life, through the use of temporary special measures, and to

undertake and support awareness-raising programmes on the importance of women's representation.<sup>(66)</sup>

- the Committee expressed its concern about the continuing existence of bride abduction and polygamy, despite the legal prohibition of these practices. It recommended action without delay by the State party to enforce its laws penalizing these practices. It further recommended that the State party take comprehensive and effective measures, including the training of the judiciary and law enforcement officials and public awareness raising campaigns, to eliminate these practices.<sup>(67)</sup>

- the Committee expressed its concern about the fact that women's access to land is still more limited than that of men. It requested the State party to take appropriate measures to eliminate all forms of discrimination against women with respect to access to land.<sup>(68)</sup>

- the Committee expressed its concern about the lack of specific legislation on violence against women, including on domestic violence, as well as the lack of adequate policies, programmes and services and their effective implementation and enforcement. It was further concerned about the attitude of law enforcement officers towards women who report cases of violence, which results in women victims' reluctance to report such cases of abuse. It urged the State party to place high priority on putting comprehensive measures in place to address all forms of violence against women and girls, recognizing that such violence constitutes a violation of the human rights of women. It called on the State party to enact legislation on violence against women, including on domestic violence and sexual abuse, as soon as possible, so as to ensure that violence against women constitutes a criminal offence, that women and girls victims of violence have access to immediate means of redress and protection and that perpetrators are prosecuted and punished. The Committee recommended that the State party intensify its public awareness raising efforts on violence against women and implement training for public officials, especially police and law enforcement

personnel, the judiciary and health and social workers and community leaders, in order to ensure that they are sensitised to the unacceptability of all forms of violence against women and adequately support victims of such violence. The Committee also recommends that the State party take appropriate measures to increase the availability of legal aid throughout the country in order to assist and advise women victims of violence.<sup>(69)</sup>

### 6.5. FOLLOW-UP TO CONCLUDING COMMENTS

States parties are asked to disseminate the concluding comments widely at the domestic level. Both the OHCHR and DAW publish the concluding comments on their websites, furthermore they are published in the annual report to the General Assembly. States parties should provide information on the implementation in their subsequent report.<sup>(70)</sup> In so doing, the Committee complies with the recommendation of the meeting of Chairpersons of the treaty bodies, to the effect that in the drafting of lists of issues for the consideration of periodic reports, treaty bodies should focus on the implementation of the concluding comments.<sup>(71)</sup> In order to facilitate follow-up by States parties – and for monitoring implementation by the Committee itself – concluding comments should be sufficiently precise and give details as to what is expected from States parties. At present, the CEDAW Committee does not have a specific procedure for the follow-up of concluding comments. Some of the other human rights treaty bodies have established such procedures; the Inter-Committee Meeting has recommended that all human rights treaty bodies should consider introducing such procedures. The CEDAW Committee explained that it could not introduce such a procedure owing to the heavy workload.<sup>(72)</sup> It is to be hoped that the CEDAW Committee will eventually follow the example set by the Human Rights Committee, which has appointed one of its members as Special Rapporteur on the follow-up of concluding observations, who reports to the HRC at each session.<sup>(73)</sup> If a good follow-up mechanism is established, maximum benefit will be obtained from the reporting procedure. This procedure is the only supervisory procedure that is based on continuous,

regular and comprehensive monitoring of implementation of treaty obligations.

#### **6.6. ADDRESSING THE BACKLOG IN REPORTING**

A long-term concern of all human rights treaty bodies has been the backlog of reporting. Many States parties submit their reports too late, or have failed to submit any report since they ratified the Convention.<sup>(74)</sup> Since 1991, States parties can submit information relevant to all treaty bodies in a so-called core document, rather than repeating the same information to each of the treaty bodies. The core document gives a country profile, it contains information on the country's political structure, the most important aspects of the legal order, the status of international law in domestic law and demographical information.<sup>(75)</sup> Despite the various measures taken to meet States parties' wishes to alleviate the burden of reporting, huge backlogs continue to exist. The Secretary-General has insisted that drastic reform of the reporting procedure is necessary; in his view, each state should be allowed to submit a single report summarizing its adherence to the full range of international human rights treaties to which it is a party.<sup>(76)</sup> Consultations by OHCHR demonstrated that there is little support for a single report, because it is considered difficult for States parties to submit a single report satisfying their reporting obligations under all treaties to which they are a party.<sup>(77)</sup> At present, a proposal to allow States parties to submit a so-called common core document is being discussed by the various treaty bodies.<sup>(78)</sup> It will be necessary to find a balance between streamlining the procedure and ensuring that each of the treaty bodies receive the information that is necessary to continue to carry out their functions properly.

The treaty bodies have also taken other measures to encourage States parties to submit their reports. On an exceptional basis the Committee allows States parties to combine all their outstanding reporting obligations into a single document, in order to catch up.<sup>(79)</sup> The Committee has decided that it will, like some of the other treaty bodies, consider the implementation of the Convention by a State party in the absence of a report, but only as a measure

of last resort. It will do so in the presence of a government delegation.<sup>(80)</sup> So far, it has not resorted to this measure.

## 7. GENERAL RECOMMENDATIONS AND STATEMENTS

In accordance with article 21, the Committee may make suggestions and general recommendations based on the examination of reports and information received from States parties. General recommendations are directed to all States parties to CEDAW. They can deal with one specific (sub) section of the Convention, or with a more general issue. So far, the Committee has adopted 25 general recommendations. Since 1992, the general recommendations have become more elaborate and provide comprehensive information on the Committee's interpretation of the issues it deals with. Examples of detailed general recommendations are those dealing with violence against women (No. 19), equality in marriage and family relations (No. 21), women in public life (No. 23), access to health care (No. 24) and temporary special measures (No. 25).<sup>(81)</sup> The general recommendations are prepared in three stages, beginning with an open dialogue on the topic of the general recommendation. The Committee invites specialised agencies, other UN bodies and NGOs to participate and to submit informal background papers. With respect to article 4(1), an expert meeting was held in The Netherlands in order to assist the Committee in preparing the general recommendation.<sup>(82)</sup> One of the Committee's members is then assigned to draft the general recommendation, which is subsequently discussed by the Committee. At present, the Committee has started working on a draft general recommendation on article 2 of CEDAW.<sup>(83)</sup>

In addition to general recommendations, the Committee has adopted a number of statements, in which it clarifies 'its position on major international developments and issues that bear upon the implementation of the Convention.'<sup>(84)</sup> During its 30<sup>th</sup> session (January 2004), it adopted a statement on the situation of women in Iraq.<sup>(85)</sup> It expressed its concern about a decision by the Governing Council to repeal existing civil statutes governing issues related to marriage, divorce, child custody and inheritance.

It called upon all parties concerned to place special emphasis in all their actions and activities on the respect for and protection of international human rights standards and norms, in particular those that specifically guarantee the rights of women and girls. Previous statements concerned the issue of reservations, gender and racial discrimination, Afghan women, gender and sustainable development and discrimination against older women.

## **8. THE OPTIONAL PROTOCOL TO CEDAW**

### **8.1. DRAFTING HISTORY<sup>(86)</sup>**

The World Conference on Human Rights called upon the Committee and the CSW to ‘quickly examine the possibility of introducing the right of petition through the preparation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women’.<sup>(87)</sup> Already in 1994 the CSW established a Working Group of government experts. Also in 1994, a group of independent experts, including members of the Committee, met in Maastricht, The Netherlands, and adopted a proposal for an optional protocol to CEDAW.<sup>(88)</sup> In 1995, CEDAW adopted ‘Suggestion 7’, containing elements to be in an optional protocol, which was submitted to the CSW;<sup>(89)</sup> this document was partly inspired by the Maastricht draft. ‘Suggestion 7’ not only contained an individual complaints procedure, but also an inquiry procedure, similar to the procedure in article 20 of the Convention Against Torture.<sup>(90)</sup> A CSW Working Group discussed the draft, and consulted intergovernmental and non-governmental organisations and governments. One of the Committee members acted as a resource person during the negotiations in the CSW. The CSW adopted the draft Optional Protocol in March 1999 and transmitted it to the General Assembly, which adopted it in the same year.<sup>(91)</sup> The Optional Protocol provides for both an individual complaints procedure, pursuant to which individuals who claim to be a victim of a violation of any of the rights laid down in CEDAW can submit a complaint to the Committee for examination; and an inquiry procedure, pursuant to which the Committee may initiate an investigation

when it receives reliable information that grave or systematic violations of the Convention occur in a State party. The Optional Protocol is composed of 21 articles. Articles 1-7 deal with the individual complaints procedure, articles 8 and 9 with the inquiry procedure, article 10 contains the so-called opting out clause, which allows states to declare that they do not recognize the competence of the Committee under articles 8 and 9; article 11 contains a protection clause; articles 12-21 contain the final provisions. It must be noted that article 17 explicitly stipulated that no reservations may be made to the Optional Protocol. It entered into force on 22 December 2000, after ten States parties had ratified it. There are now 70 States parties to the Optional Protocol.<sup>(92)</sup> It is noteworthy that the Optional Protocol has codified some important practices developed by other treaty bodies, such as the possibility to ask the State party to take interim measures to avoid irreparable damage and the follow-up of the views adopted by the Committee.

## **8.2. THE INDIVIDUAL COMPLAINTS PROCEDURE**

During the drafting of the Optional Protocol, it was debated whether the CEDAW provisions were justiciable, especially since many of them are not formulated in terms of rights, but rather in obligations of States. In various provisions, States undertake an obligation to take ‘all appropriate measures’. In dealing with this question, it must be reiterated that the central goal of CEDAW is the elimination of discrimination against women. There is no doubt that guarantees of equality and non-discrimination are justiciable, no matter whether discrimination occurs in the sphere of civil and political rights, or in the sphere of economic, social and cultural rights. So far, there is no case-law under the Optional Protocol in which the Committee has had to deal with the question of justiciability, but the general recommendations and concluding comments make quite clear that the Committee is in a position to assess whether or not a State party has complied with its obligations under CEDAW.<sup>(93)</sup>

Before the Committee can deal with the substance of a communication, it must consider its admissibility. Article 2 of the Optional Protocol contains a number of important requirements. Communications are admissible only

when submitted by or on behalf of (a group of) individuals. If a third party acts on behalf of an alleged victim, the representative must submit evidence that the individual consents, or that acting without consent is justified. This provision implies that organizations as such cannot claim to be a victim, and that a so-called *actio popularis*, for example about the refusal of States parties to amend discriminatory legislation in the abstract, cannot be examined by CEDAW. The complaint must be submitted by an individual, who is affected by the existence of such legislation. Complaints can only be submitted against actions or omissions by States, not by individuals or enterprises. At the international level, only States can be held accountable for their actions. Of course, if States do not redress a violation committed by private parties, it can be held accountable.

It is noteworthy that the Optional Protocol dedicates a number of provisions to the protection of the alleged victim. Under article 5, the Committee may transmit to the State party for its urgent consideration a request to take such interim measures as may be necessary to avoid irreparable damage to the victim of the alleged violation. It is the first time that such a provision is included in an international legally binding instrument. Under other complaints procedures, such provisions can be found in the rules of procedure of the supervisory organs. Another measure of protection is included in article 6, which states that the identity of the individual shall be kept confidential, unless the individual concerned consents to disclosure of her identity. The third protective measure is included in article 11, which provides that states must take measures to ensure that individuals who communicate with the Committee are not subjected to ill-treatment or intimidation as a consequence of their actions. Also the latter provision is unique if compared to the other United Nations complaints procedures. These provisions should ensure that women feel sufficiently secure to submit communications about violations of the Convention to the Committee.

Further, communications must be submitted in writing and may not be anonymous (article 3). Before the Committee can consider a complaint, domestic remedies must have been exhausted, unless the application of such

remedies is unreasonably prolonged or unlikely to bring effective relief. In its practice, the Human Rights Committee has put a large part of the burden of proof about the effectiveness of a remedy with the State party. It is to be hoped that the CEDAW Committee will follow this practice. Communications that are or have already been dealt with under another procedure of international investigation or settlement will be declared inadmissible by the Committee. Furthermore, the Committee shall declare inadmissible communications that are incompatible with the provisions of CEDAW, manifestly ill-founded, an abuse of the right of submission, or the facts that are the subject of the Convention occurred prior to the entry into force of the Optional Protocol (article 4(2)).

Once a communication has been declared admissible, the Committee will examine the merits of the case and decide whether or not there has been a violation of CEDAW. In the light of all information made available to it by or on behalf of individuals and the State party concerned, the Committee adopts its views and recommendations (article 7(3)). Article 7(4) and (5) state that States parties must give due consideration to the Committee's views and shall submit a written response within six months, including information on the action taken in response to the views and recommendations. The Committee may ask the State party to submit further information in its reports under article 18 CEDAW. Also the latter paragraphs codify practice developed by other treaty bodies, and had previously not been laid down in international legally binding instruments.

The examination of communications takes place in closed sessions, and all documents are confidential. However, under article 12, the Committee shall include a summary of its activities under the Optional Protocol in its annual report to the General Assembly. The other treaty bodies have not only reported in summary form about their activities, but have published the full text of all final decisions, i.e. inadmissibility decisions and views, in Annexes to their annual reports. The CEDAW Committee has included the full text of its first decision in its annual report,<sup>(94)</sup> and appears to follow the example set by the other human rights treaty bodies.

### 8.3. THE INQUIRY PROCEDURE

Articles 8 and 9 of the Optional Protocol deal with the inquiry procedure. If the Committee receives reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention, it can invite the State to cooperate in the examination of that information. CEDAW does not restrict the sources from which information may come, it merely requires that such information must be reliable. It is therefore possible that information is submitted by a single individual, a group of individuals, non-governmental organizations, or other United Nations bodies. When warranted, and with consent of the State party, the inquiry can include a visit to the State party. At all stages of the proceedings, the Committee shall seek the cooperation of the State party concerned (article 8(5)). This does not imply that the Committee must terminate the inquiry procedure if the State party refuses to cooperate. After examination of the findings of its inquiry, the Committee shall transmit its findings to the State party, together with its suggestions and recommendations. Within six months, the State party must submit its observations to the Committee.

The follow-up procedure in article 9 is very relevant, as it gives the Committee the authority to continue to monitor the measures the State party concerned has taken to implement the Committee's findings and recommendations. It may, if necessary, ask the State party to submit information on the measures taken, after the expiry of the six month period. It may further invite the State party to include in its report under article 18 details of measures taken in response to the inquiry.

As was stated above, reservations to the Optional Protocol are not permitted (article 17). However, under article 10, State parties have the possibility to declare that they do not accept the competence of the Committee under articles 8 and 9, providing for the inquiry procedure. So far, out of the 70 States parties to the Optional Protocol, only 2 States parties have made such a declaration (Bangladesh and Belize).<sup>(95)</sup>

This procedure is entirely confidential, but the Committee may include a summary of its activities in its annual report to the General Assembly. The 2004 annual report contains such a summary, in which the Committee

describes the inquiry undertaken pursuant to a letter, dated 2 October 2002, from Equality Now and Casa Amiga, a rape crisis centre in Ciudad Juárez, Mexico. These organizations submitted information containing allegations of large scale abduction, rape and murder of women in the Ciudad Juárez area of Chihuahua, Mexico. It was submitted that, since 1993, more than 230 young women and girls had been killed. Two Committee members were designated to examine this information, together with other available information. After having assessed that the information was reliable, the Government of Mexico was invited to submit comments, which it did. Subsequently, the organizations involved submitted their observations. At its 29<sup>th</sup> session, the Committee requested the two members to visit Mexico and to report to the Committee confidentially. The Mexican Government consented to the visit, and, according to the Committee, showed a willingness to cooperate fully with the Committee. The Committee members met with a large number of people and organizations, including government representatives, public prosecutors, the National Human Rights Commission, representatives of the Special Committee of the Senate to Monitor the Murders of Women in Ciudad Juárez, United Nations bodies and representatives from non-governmental organisations. They visited sites where bodies had been found, and met with associations of relatives of the victims. At its 30<sup>th</sup> session (January 2004) the Committee adopted its report with its findings and recommendations, which were sent confidentially to the Mexican Government. The Government submitted its observations to the Committee, which subsequently invited the Government party to submit, by 1 December 2004, a detailed report on steps taken, measures implemented and results achieved in relation to all the recommendations of the Committee. These follow-up measures were scheduled for consideration at the Committee 32<sup>nd</sup> session (January 2005).<sup>(96)</sup>

## **9. FINAL REMARKS**

CEDAW is a unique Convention in international human rights law. It is the only universal legally binding instrument dedicated in its entirety to

eliminating the discrimination against women. More than 25 years after its adoption in 1979, it is still a very relevant treaty. Widespread discrimination against women and other violations of their human rights continues to exist. To a large extent, the disadvantaged situation of women finds its origin in customs, traditions and religion, which cannot justify discrimination of women. With the acceptance of CEDAW, it was reaffirmed that discrimination against women violates the principles of equality of rights and respect for human dignity, and therefore, that achieving equality of men and women requires changes of such traditions.

While the International Bill of Rights, consisting of the Universal Declaration of Human Rights, the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights contain provisions on discrimination against women and the right to non-discrimination, CEDAW is the instrument that provides the tool to achieve the goal of eliminating discrimination and equal enjoyment of human rights. In the present day situation CEDAW is still indispensable, as is its monitoring body. The CEDAW Committee has the expertise that is necessary to point to the causes and consequences of discrimination against women, and to overcome this situation.

The Convention imposes far-reaching obligations on States parties, which are necessary to achieve equality of men and women. States that implement CEDAW in good faith – as they are obliged to do under international law – must continuously keep under review existing legislation and carefully examine proposed legislation, investigate the actual situation of women and take measures for improvement, monitor the impact of their policy measures and address the underlying causes for women's discrimination by eliminating existing stereotypes. Indeed, in many cases it requires fundamental changes in societies. That is indeed a major effort for States, requiring comprehensive legislative, administrative and other measures. Nevertheless, in order to implement CEDAW, they must take all appropriate measures to eliminate discrimination, and not hide behind existing laws, regulations, customs and practices. Not only must government institutions themselves refrain from discrimination, but must also ensure that private

parties, including individuals, organisations and enterprises, do not discriminate against women. CEDAW, together with the Beijing Declaration and the Platform for Action and the follow-up documents, provides an appropriate tool to achieve such changes.

The CEDAW Committee has been entrusted with the supervision of the implementation of the Convention. In its work, it has given States parties further guidance on the implementation of CEDAW. Since the entry into force of the Optional Protocol it has a new instrument at its disposal which it can use to further expand its responsibilities in interpreting the Convention and carrying out its monitoring function. Ratification of CEDAW may not remain a meaningless act. While 179 States parties is a commendable achievement, it also means that a significant number of States is not a party. It must therefore be a priority objective of the United Nations and individual states to continue to strive for universal ratification of CEDAW, and to persuade States parties to review and withdraw their reservations. Implementation of CEDAW is necessary to eventually eliminate of discrimination against women and ensure that they can lead a life in dignity. ❖

**NOTES:**

1. ECOSOC Resolution 11(II), 21 June 1946.
2. ECOSOC Resolution 1987/22, 26 May 1987.
3. E/2004/27; E/CN.6/2004/14, Commission on the Status of Women, Report on the Forty-Eighth Session (1-12 March 2004), Economic and Social Council Official Records, 2004, Supplement No. 7, Chapter I C. New York: United Nations. 2004.
4. A/CONF.177/20, Report of the Fourth World Conference on Women (Beijing 4-15 September 1995).
5. General Assembly Resolution S-23/2, Political Declaration, 10 June 2000.
6. General Assembly Resolution S-23/3, Further actions and initiatives to implement the Beijing Declaration and Platform for Action, 10 June 2000.
7. See ECOSOC's "agreed conclusions" 1997/2, in A/52/3, Report of the Economic and Social Council for 1997, Chapter IV.A, Mainstreaming the "gender" perspective into all policies and programmes in the United Nations system, part I.
8. A/CONF.157/23, Vienna Declaration and Programme of Action, par. 42, and A/CONF.177/20, supra note 4, par. 222 et seq., respectively. See more extensively on this issue Anne Gallagher, 'Ending the marginalization: strategies for incorporating women into the United Nations human rights system', *Human Rights Quarterly* 1997, p. 283-333.
9. HRC General Comment No. 28 concerning article 3 (equality of rights between men and women), in: A/55/40 (Vol. I), Report of the Human Rights Committee, Volume I, General Assembly Official Records, Fifty-fifth session, Supplement No. 40, New York: United Nations, 2000, Annex VI.B.
10. CERD General Recommendation No. XXV on gender related dimensions of racial discrimination, in: A/55/18, Report of the Committee on the Elimination of Racial Discrimination, fifty-sixth session (6-24 March 2000) - fifty-seventh session (31 July-25 August 2000), General Assembly Official Records, Fifty-fifth session, Supplement No. 18, New York: United Nations, 2000, Annex V.A.
11. General Assembly Resolution 2263(XXII), 7 November 1967.

12. See for more details on the process leading to the adoption of the Convention, Lars Adam Rehof, *Guide to the travaux préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women*. Dordrecht: Martinus Nijhoff Publishers, 1993, p. 6-12.

13. A/59/38, Report of the Committee on the Elimination of Discrimination against Women, thirtieth session, 12-30 January 2004) - thirty-first session (6-23 July 2004), General Assembly Official Records, Fifty-ninth session, Supplement No. 38, New York: United Nations, 2004, Part One, Annex I (updated with information from the UN website).

14. A/59/41, Report of the Committee on the Rights of the Child, General Assembly Official Records, Fifty-ninth session, Supplement No. 41, New York: United Nations, 2004, Annex I.

15. Important regional instruments are the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem Do Para”, 1994) and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003).

16. Roberta Jacobson, The Committee on the Elimination of Discrimination Against Women, in: Philip Alston (ed.), *The United Nations and Human Rights. A critical appraisal*. Oxford: Clarendon Press, 2000, p. 446.

17. This Covenant does not provide for a treaty body; supervision was entrusted to the Economic and Social Council. In 1985, the ECOSOC adopted resolution 1985/17, thereby creating the Committee on Economic, Social and Cultural Rights to monitor the implementation of the Covenant.

18. See extensively on this issue Liesbeth Lijnzaad, *Reservations to UN-human rights treaties: ratify and ruin?* Dordrecht: Martinus Nijhoff, 1995, and E/CN.4/Sub.2/2004/42, *Reservations to human rights treaties, Final working paper submitted by Françoise Hampson*.

19. Statements on reservations to the Convention on the Elimination of All Forms of Discrimination against Women, in: A/53/38/Rev.1, Report of the Committee on the Elimination of Discrimination against Women, eighteenth and nineteenth sessions, General Assembly Official Records, Fifty-third session, Supplement No. 38, New York: United Nations, 1998, Part Two, Chapter I.A, par. 8.

20. Statements on reservations, supra note 19, par. 15-16.

21. See for a somewhat different position, HRC General Comment No. 24(52) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, in: A/50/40

(Vol. I), Report of the Human Rights Committee, Volume I, General Assembly Official Records, Fiftieth session, Supplement No. 40, Annex V, New York: United Nations, 1996.

22. A/59/254, Report of the chairpersons of the human rights treaty bodies on their sixteenth meeting, par. 18.

23. General Assembly Resolution 58/145, 22 December 2003, par. 8

24. A/59/38, supra note 13, Part One, par. 60-61.

25. See for example the very broadly formulated reservation made by Saudi Arabia upon ratification in 2000, which reads: 'In the case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.'

26. General Recommendation No. 19, Violence Against Women, in: A/47/38, Report of the Committee on the Elimination of Discrimination Against Women, Eleventh session, General Assembly Official Records, Forty-seventh session, Supplement No. 38, Chapter I. New York: United Nations, 1992.

27. See for example General Assembly Resolution 48/104, United Nations Declaration on the Elimination of Violence Against Women. 20 December 1993.

28. General Recommendation No. 25, Temporary special measures, in: A/59/38, supra note 13, Part one, Annex I.

29. General Recommendation No. 23, Women in public life, in: A/52/38/Rev.1, Report of the Committee on the Elimination of Discrimination Against Women, Sixteenth and seventeenth sessions, General Assembly Official Records, Fifty-second session, Supplement No. 38, Part Two, Chapter I.A. New York: United Nations, 1997.

30. General Recommendation No. 21, Equality in marriage and family relations, A/49/38, Report of the Committee on the Elimination of Discrimination Against Women, Thirteenth session. General Assembly Official Records, Fiftieth session, Supplement No. 38, New York: United Nations, 1994, Chapter I.A, par. 6.

31. General Recommendation No. 24, Women and health, A/54/38/Rev.1, Report of the Committee on the Elimination of Discrimination Against Women, Twentieth session (19 January-5 February 1999) - twenty-first session (7-25 June 1999), General Assembly Official Records, Fifty-fourth session, Supplement No. 38, New York: United Nations, 1999, Chapter I.A.

32. See also General Recommendation No. 21, supra note 30, par. 7-10.

33. General Recommendation No. 21, supra note 30, par. 44.

34. See further General Recommendation No. 21, supra note 30, par. 11-50.

35. See extensively on the CEDAW Committee and its work, Mara R. Bustelo, 'The Committee on the Elimination of Discrimination Against Women at the crossroads', in: Philip Alston and James Crawford (eds.), *The future of human rights treaty monitoring*, Cambridge: Cambridge University Press, 2000, pp. 79-111.

36. From 1982-1984 Mr. Nordenfelt (Sweden) was a Committee member, from 2001-2004 Mr. Göran Melander (Sweden); as from 2003, Mr. Cees Flinterman (The Netherlands) is a member.

37. General Assembly Resolution 56/272, 27 March 2002. This is a concern of all treaty bodies, see A/58/350, Report of the Chairpersons of the human rights treaty bodies on their fifteenth meeting, par. 57.

38. Rules of procedure of the Committee on the Elimination of Discrimination against Women, in: A/56/38, Report of the Committee on the Elimination of Discrimination Against Women, Twenty-fourth session (15 January-2 February 2001) - Twenty-fifth session (2-20 July 2001), General Assembly Official Records, Fifty-sixth Session, Supplement No. 38, Annex I.

39. A/58/350, supra note 37, par. 45.

40. The Human Rights Committee normally meets twice a year in Geneva, and once in New York.

41. A/50/38, Report of the Committee on the Elimination of Discrimination Against Women, fourteenth session, General Assembly Official Records, Fiftieth session, Supplement No. 38, New York: United Nations, 2000, Decision 14/II, in which the CEDAW Committee requested the Secretary-General to locate the Committee at Geneva with service provided by the Centre for Human Rights. See also on this issue Dame Silvia Cartwright, 'The Committee on the Elimination of Discrimination Against Women', in: Kelly D. Askin and Dorean M. Koenig, *Women and International Human Rights Law*, Volume 2. Ardsley, New York: Transnational Publishers, 2000, p. 169.

42. Letter of the Secretary-General to the chairperson of the CEDAW Committee, 8 February 1996, quoted in the CEDAW/C/1997/5, Ways and means of expediting the work of the Committee, Report by the Secretariat, par. 3.

43. A/51/482, Annex, Report of the seventh meeting of persons chairing the human rights treaty bodies, par. 46.

44. See for example E/CN.4/2004/65-E/CN.6/2004/7, Joint work plan of the Division for the Advancement of Women and the Office of the United Nations High Commissioner for Human Rights.

45. General Assembly Resolution 51/68, 12 December 1996, par. 6.

46. CEDAW/SP/1995/2, Annex, Proposed amendment to article 20, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination Against Women, 22 May 1995.

47. General Assembly Resolution 50/202, 22 December 1995.

48. A/59/38, supra note 13, Part Two, Annex II.

49. A/59/38, supra note 13, Part Two, Chapter I, Decision 31/I.

50. See for more details Carmel Shalev, 'State reporting and the Convention on the Elimination of all forms of Discrimination Against Women', in: Anne F. Bayefsky (ed.), *The UN human rights treaty system in the 21<sup>st</sup> century*. The Hague: Kluwer Law International, 2000, pp. 23-34.

51. Revised reporting guidelines, in: A/57/38, Report of the Committee on the Elimination of Discrimination Against Women, Twenty-sixth session (14 January-1 February 2002); Twenty-seventh session (3-21 June 2002); Exceptional session (5-23 August 2002), General Assembly Official Records, Fifty-seventh session, Supplement No. 38, New York: United Nations, 2002, Part Two, Annex.

52. Overview of the current working methods of the Committee on the Elimination of Discrimination Against Women, in: A/59/38, supra note 13, Annex X, par. 5.

53. Revised reporting guidelines, supra note 51, par. G.1.

54. Overview of the current working methods, supra note 52, par. 19.

55. A/59/38, supra note 13, Part Two, par. 438 (h).

56. A/59/38, supra note 13, Part Two, Annex VI.

57. On the CEDAW Committee's attitude towards NGOs, see Wouter Vandenhoele, *The procedures before the UN human rights treaty bodies. Divergence or convergence?* Antwerp/Oxford: Intersentia, 2004, p. 37. See extensively on the role of NGOs, section IV of Anne F. Bayefsky, supra note 50.

58. Michael O'Flaherty, *Human rights and the UN practice before the treaty bodies*. The Hague: Martinus Nijhoff, 2002, p. 3.

59. See <http://iuraw.igc.org>

60. Overview of the current working methods, supra note 52, par. 18.

61. Jane Connors, 'An analysis and evaluation of the system of state reporting', in: Anne F. Bayefsky, supra note 50, pp. 3-22 at p. 6.

62. A/57/38, supra note 51, Part Two, par. 374.

63. A/57/38, supra note 51, Part Two, par. 92 (concluding comments on Saint Kitts and Nevis).

64. A/59/38, supra note 13, Part Two, par. 331 (concluding comments on Spain).

65. A/59/38, supra note 13, Part One, par. 101-102 (concluding comments on Bhutan).

66. A/59/38, supra note 13, Part One, par. 74-75 (concluding comments on Kuwait).

67. A/59/38, supra note 13, Part One, par. 169-170 (Kyrgyzstan).

68. A/59/38, supra note 13, Part One, par. 216-217 (Nepal).

69. A/59/38, supra note 13, Part Two, par. 152-153 (Angola).

70. Revised reporting guidelines, supra note 51, par. E.1.(a).

71. A/58/350, supra note 37, par. 49.

72. A/59/254. Annex, supra note 22, par. 16.

73. A/58/40 (Vol. I), Report of the Human Rights Committee, Volume I, Seventy-sixth session (14 October – 1 November 2002); seventy-seventh session (17 March – 4 April 2003); Seventy-eighth session (14 July – 8 August 2003), General Assembly Official Records, Fifty-eighth session, Supplement No. 40, New York: United Nations, 2003, Chapter VII.

74. For an overview of the situation under CEDAW see A/59/38, supra note 13, Annex VI.

75. HRI/CORE/1, Annex, Preparation of the initial parts of State party reports (“core documents”) under the various international human rights instruments.

76. A/57/387, Strengthening of the United Nations: an agenda for further change. Report of the Secretary-General, par. 52-54.

77. HRI/ICM/2003/4-HRI/MC/2003/4, Report of a brainstorming meeting on reform of the human rights treaty body system (Malbun, Liechtenstein, 4-7 May 2004), par. 18-19.

78. For a proposal on an expanded core document (now commonly called “common core document”), HRI/MC/2004/3, Guidelines on an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties.

79. Overview of the current working methods, supra note 52, par. 27.

80. Overview of the current working methods, supra note 52, par. 18.

81. For a compilation of all general comments and general recommendations of all treaty bodies see HRI/GEN/1/Rev.7, Compilation of general comments and general recommendations adopted by Human Rights Treaty Bodies.

82. Ineke Boerefijn et al. (eds.), *Temporary special measures. Accelerating de facto equality for women under article 4(1) UN Convention on the Elimination of All Forms of Discrimination Against Women*. Antwerpen: Intersentia. 2003.

83. Overview of the current working methods, supra note 52, par. 33.

84. Overview of the current working methods, supra note 52, par. 34.

85. A/59/38, supra note 13, Part One, Annex II.

86. For a compilation of all relevant documents, see Division for the Advancement of Women, Department of Economic and Social Affairs, *The Convention on the Elimination of All Forms of Discrimination Against Women. The Optional Protocol: text and materials*. New York: United Nations, 2000.

87. A/CONF.157/23, supra note 8, Chapter II, par. 40.

88. Draft Optional Protocol to the Convention on Elimination on All Forms of Discrimination Against Women, published in *Netherlands Quarterly of Human Rights*, 1995 pp. 85-93.

89. A/50/38, supra note 41, p. 8-11.

90. The inclusion of an inter-state complaints procedure has never been discussed.

91. General Assembly Resolution 54/4, 6 October 1999.

92. Information from the DAW website (last visited on 26 January 2005) see <http://www.un.org/womenwatch/daw/country/OptionalProtocoltbl-17.12.04.pdf>

93. The CEDAW Committee has completed the consideration of one communication, which was declared inadmissible for non-exhaustion of domestic remedies and as incompatible with the provisions of the Optional Protocol *ratione temporis*. See Communication No.: 1/2003, Ms. B.-J. v. Germany, Decision adopted on 14 July 2004. A/59/38, supra note 13, Part Two, Annex VIII.

94. Supra note 93.

95. A/59/38, supra note 13, Part Two, Annex III.

96. A/59/38, supra note 13, Part Two, Chapter V.