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**Women's human rights
and elimination of all forms of violence against women and girls
as defined in the Beijing Platform for Action
and the outcome documents of the twenty-third special session
of the General Assembly**

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[English only]

**Recent Key Trends and Issues
in the
Implementation of CEDAW**

by

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The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Basic Premises

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

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

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

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

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

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

Today, 20 some years after the coming into force of CEDAW one of the six core UN Human Rights Conventions, our perceptions and attitudes all over the world are significantly different. I believe, despite problems and challenges (to which I will be referring to a little later) the fact that basic premises of CEDAW are accepted by the large number of states (170) that have ratified this Convention is a gigantic step in the right direction for humankind.

What, then, are these basic premises of CEDAW? Let me briefly underline them.

First and foremost, this Convention does not operate with an abstract concept of equality. Instead, Article 1 of the Convention provides a clear definition of discrimination and, reflects the recognition that discrimination against women is a universal reality that is to be eradicated. In other words, this Convention is neither vague nor neutral with respect to its

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

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

This premise of CEDAW is certainly a very bold step that could only be built on the gains of the international women’s movement. It, none-the-less continues to constitute a major challenge to implementation worldwide (as the nature of so many of the reservations by state parties to CEDAW demonstrates). The issue of traditions and culture is inevitably raised, be it as an “obstacle” or an “excuse” during the CEDAW Committee’s dialogue with state parties when they report. There is no doubt that discriminatory traditions and prejudicial cultural practices continue to be major impediments to women’s human rights in most societies around the world.

Another, very salient and radical aspect of CEDAW is the fact that this convention clearly states (Article 4.1) that affirmative action (called ‘temporary special measures’ in the language of the Convention) taken by states, political parties or employers to speed up de facto equality of women and men is not to be considered discriminatory. The Convention, at the same time, rules out very clearly the permanent maintenance of unequal and separate standards for sexes as discriminatory. This, I believe is a critically important stand and most relevant to the realization of gender equality in the world. In this very important article, (Article 4.1) the Women’s Convention says that encouragement and incentive policies are needed to accelerate attainment of equality but that these can not be allowed to turn into permanent standards of judgment, achievement, remuneration etc. separate for women and men. Our experience around the world testifies to the relevance of this approach.

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

Another very basic tenet of the Women’s Convention is that it covers not only state and public actors but individuals, organizations and enterprises. Thus, this Convention holds the state responsible for prohibiting any discrimination against women by third parties. The state is to ensure through its laws, policies and monitoring mechanisms, that such

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

The Convention and the Beijing Platform for Action

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

Furthermore, the Convention's monitoring process enables the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) to look for states' compliance with the Platform as well as the Convention itself. While it is the Commission of the Status of Women (CSW) that has the primary mandate for monitoring the implementation of the BPA, the CEDAW Committee also has a salient role in this respect. The Platform specifically asks States parties to the Convention to include information on measures taken to implement it when reporting for CEDAW and the Committee is tasked to take the Platform into account when considering these reports. This is a responsibility the CEDAW Committee takes very seriously and has been systematically carrying out through its review of state party reports, since the Fourth World Conference on Women. Since that time the CEDAW Committee in its Concluding Comments has also routinely included a recommendation to the reporting state party to widely disseminate the BPA. In its review of state reports the Committee has also often highlighted the commitments made by state parties at Beijing and in its Concluding Comments, noted if and where states have failed to address the BPA in their reports. The Committee has often requested adoption of overall plans for implementation of the BPA within a clear time frame and in its "constructive dialogue" with the states representatives; it always inquires into the results of implementation of the Platform. Those issues and areas addressed more specifically by Beijing+5 process, such as marital rape, crimes of honor and crimes of passion and racially motivated violence against women have also increasingly found their way into the Committee's review agenda in the years since 2000. Thus, the CEDAW Committee is accorded a unique opportunity to systematically observe and evaluate what is happening around the world with respect to human rights of women.

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

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

There are those who see ratification with such serious reservations to substantive articles as merely political ploy by states who may want to jump on the band-wagon of international 'political correctness' without necessarily having a genuine political will to implement women's human rights. Perhaps, some of the reservations to the Women's Convention give justification to these views. It is a fact that some states, contrary to

international law, have placed reservations that are not only extensive in scope but also undermine the “meaning and purpose” of the Convention. The Committee as well as some other state parties and international women’s voices (particularly BPA & B+5) have expressed, time and again serious concern over such reservations. I am pleased to say that in the recent years there have been a few withdrawals of such incompatible reservations and/or limitation of their scope. Yet, many such reservations still remain and some new ones are added.

What is more, some states continue to indicate that they have no intention of withdrawing incompatible and sweeping reservations that seriously impede the implementation of the Convention. This is a true dilemma not only for the Committee but also for all defenders of women’s human rights around the world.

One is left at the highly uncomfortable position of having to decide which is less damaging. Ratification with reservations that may be contrary to the “meaning and purpose” of the Convention which seriously renders the instrument ineffective in terms of impact on women in that country or no-ratification which means no reporting obligation and consequent absence of any international monitoring or scrutiny of women’s human rights in that state? While the Committee’s attitude has been to support the first option and hope to use the reporting process and the “constructive dialogue” opportunity with the state party, in patient and determined manner, to encourage and pressure for removal or trimming of such incompatible reservations; it is essential that the international community systematically press for change of attitude on the part of state parties on this matter.

The progress in the world, in the area of recognition and implementation of women’s human rights is obvious. New legislation, growing awareness and sensitivity, strengthening of machineries at both state and civil society levels are universal phenomena. Yet there is also sufficient evidence to imply that the international community is still far from having reached a shared notion of women’s human rights as contained in CEDAW; formulated into policy guidelines and programmes in the BPA and further elaborated and updated in Beijing+5.

National implementation remains as the bottleneck for human rights of women. Strikingly wide differences in political will as well as actual capacity, and resources available for national mechanisms and most importantly, the extent to which the harmonization of principles of women’s human rights into the social and cultural climate at the national level has been achieved constitute fundamental axes along which national implementation varies among states.

Let me first take a look at legal rights.

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

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

ownership and employment frequently lag behind.

At the national level, with regard to mechanisms, some countries have instituted specific gender ombuds (notably Nordic countries and some Eastern European states) and others have a deputy ombuds and/or a women's rights commissioner in the Human Rights Commission to specifically respond to women's human rights issues. In most countries, however, women's human rights continue to be "lost" in ombuds or law commission structures and suffer from lack of sufficient attention at the national level.

It is noteworthy that in several Muslim countries law reform measures, implementing the Convention and the Beijing Platform for Action, have included the revision of personal status laws, establishment of family courts, and the adoption of family code and reform of citizenship laws. However, much more needs to be done in this area in order to make women's human rights as they are depicted in CEDAW 'real' for women at home in these countries.

A relatively new area of law where women's human rights are increasingly being taken into consideration is migration and refugee legislation. Several states have recognized gender-based persecution in their refugee laws; provisions in immigration legislation to protect the human rights of immigrant women have also been adopted by a few.

Report after report we, in the CEDAW Committee, observe that discriminatory laws, particularly those governing marriage, administration of marital property, divorce and the family, persist. Many states also continue to have laws discriminating against women in relation to nationality whereby women can not pass their nationality to their children on an equal basis with men. Blatant discrimination in penal law, particularly where prosecution of sexual crimes and rape and penalties for crimes committed in the name of 'honor' are concerned can be found in many countries. Marital rape is recognized as a crime punishable by law in only a very small number of countries.

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

These observations provide sufficient evidence that at the national level even de jure discrimination is still far from being eradicated.

It has also been the Committee's observation that women experience more discrimination as a result of the coexistence of multiple legal systems. In some countries, customary and religious laws, which govern personal status and private life, exist side by side with positive law. This situation often provides legal grounds for discrimination. Such laws sometimes prevail over nondiscrimination provisions of even the Constitution of the country and they often constitute a powerful foundation for non-implementation of women's human rights.

Let me now turn my attention to the topic of violence against women. Having been drafted in the 1970's when the state parties convened under the roof of the UN were not yet ready to admit to the reality of violence against women as a form of gender-based discrimination, the text of the CEDAW Convention makes no explicit reference to violence against women, conceptually and theoretically, the Convention could readily accommodate it. So, since its establishment, the CEDAW Committee has taken it upon itself to make clear, in a number of General Recommendations, that gender-based violence falls within the meaning of discrimination against women. In 1989, the Committee adopted General Recommendation ¹ 12 on violence against women which recommended that States include information in their reports to the Committee on the incidence of violence against women. In 1990, General Recommendation ¹ 14 addressed "female circumcision" and other traditional practices harmful to the health of women.

In 1992, the Committee adopted General Recommendation ¹ 19, which defines gender-based violence that is directed against a woman because she is a woman or that affects

women disproportionately and declares it to be “a form of discrimination against women that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men”. The general recommendation makes clear that “states may be ...responsible for private acts if they fail with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.

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

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

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

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

A critical emerging fact about the implementation of women’s human rights in the globalized world is that, in a number of culturally or ethnically plural societies or in countries that have large immigrant populations (many of which are developed societies) what is called “respect for traditions, culture or religion of minorities” appears to impede vigorous protection of women’s human rights. This is particularly with respect to the prosecution and punishment of perpetrators in the religious and ethnic communities. This is an extremely grave situation because it adds a new dimension to an already existing serious challenge to women’s human rights.

It is a fact that crimes which are committed against women in their communities, their workplace and in their own families are often excluded from the purview of much human rights protection, even if these violations are sustained by a state structure which tolerates or

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

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

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

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

Last but not least, let me also point to a most relevant emerging issue. There is a growing recognition, in the international arena, that discrimination is multifaceted and complex, and that few individuals are affected by only one form of discrimination. The rise to prominence of women's issues had a significant role in drawing attention to multiple discrimination, at the international level. The multiple forms of discrimination that women may experience, indicating that cross-cutting factors such as age, disability, socio-economic position or belonging to a particular ethnic or racial group could combine with discrimination on the basis of sex and create specific barriers for women gave visibility to the phenomenon and made clear that women so affected would experience multiple disadvantages.

The BPA emerges as a landmark document in that respect. The impact of multiple forms of discrimination in education and training, participation in decision-making, enjoyment of economic benefits and human rights, including in times of armed conflict, as well as with regard to the right to be free from violence was addressed in a number of the BPA's critical areas of concern.

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

Over the years, through its consideration of states parties' reports, the CEDAW Committee has also seen that various types of discrimination do not always affect women and

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

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

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

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

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