

PARTICIPANT'S HANDBOOK

MODULE 1 - INTRODUCTION TO THE UNITED NATIONS CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

DESCRIPTION

This module provides an introduction to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

TIME: 3.5 HOURS

MODULE AIMS

The aim of the module is to provide participants with an understanding of the structure and content of CEDAW, and how it defines and addresses discrimination against women.

- The first part of the module looks at the structure and function of CEDAW, the Optional Protocol to CEDAW, and the CEDAW Committee.
- The second part of the module examines the key principles of the Convention and places these within the context of the global debates around gender equality. The purpose of this section is to deepen participants' understanding of CEDAW conceptual framework for defining and addressing discrimination against women.
- The final part of the module addresses the specific provisions of CEDAW, and the General Recommendations made by the Committee.

LEARNING OUTCOMES

On the completion of this module, participants should have:

1. An understanding of the structure and content of CEDAW and the Optional Protocol.
2. An understanding of the role and operation of the CEDAW Committee, and the purpose and content of its General Recommendations.
3. An understanding of CEDAW definition of discrimination against women and how the State can address it so that women are able to claim their rights on an equal basis with men.

SECTION HEADINGS

- 1.1 Women's Human Rights: a Brief Introduction
- 1.2 CEDAW: Introduction
- 1.3 The CEDAW Committee
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- 1.5 The Structure and Key Provisions of CEDAW
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1.1 Women's Human Rights: a Brief Introduction

Human rights are basic freedoms that belong equally to every single person in the world. All human beings have exactly **the same** human rights, regardless of their age, gender, race, or any other form of difference.¹ Human rights become meaningful and enforceable when they are translated into systems of law, policy and practice, which provide individuals and groups of individuals with specific legal and social guarantees to protect their freedom, autonomy and dignity.² Unfortunately, attempts to implement human rights principles at the national and local levels have consistently failed to address human diversity appropriately. Therefore, **in practice**, human rights are not fulfilled equally for all human beings.³



The women's human rights 'movement' developed out of the realisation that, whilst women and men share a common humanity, women are often unable to claim their human rights on an equal basis with men due to social power structures.⁴

The Charter of the United Nations and the Universal Declaration of Human Rights were the first major international documents to translate ideas about human rights into legal principles.⁵ Both of these documents contain the basic principle that human beings have equal rights regardless of their sex. Nevertheless, it gradually became apparent that the general 'sex

¹ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (II) available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 17 April 2013].

² Steiner, H., Alston, P., Goodman, R., *International Human Rights in Context, Law Politics Morals*, Oxford University Press, 2008.

³ Steiner, H., Alston, P., Goodman, R., *International Human Rights in Context, Law Politics Morals*, Oxford University Press, 2008.

⁴ Anderson, Bonnie S., *Joyous Greetings: The First International Women's Movement, 1830 1860* (2000).

⁵ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (II) available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 17 April 2013]

equality' principle contained in these documents was insufficient to guarantee women around the world the full enjoyment of their internationally agreed rights. It was recognised that an additional treaty addressing and correcting discrimination against women was needed to ensure the fulfilment of women's human rights.⁶

Women's human rights are not about assuring **separate** or **different** rights for women. Women and men have the same human rights because they have the same human dignity. Promoting women's rights means fulfilling *human rights* for women on an equal basis with men.

1.2 CEDAW: Introduction

The adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was a landmark moment in the promotion of women's human rights worldwide. CEDAW, otherwise known as the 'Women's Convention', was adopted in 1979 and entered into force in 1981. It is commonly understood as the International Bill of Rights for Women. The Convention prohibits all forms of discrimination against women whether in public or private life, and obligates governments to put in place measures to advance the situations of women in their jurisdictions.

CEDAW is the second most widely ratified treaty after the United Nations Convention on the Rights of the Child (CRC), with 188 States Parties, leaving just 7 States in the world who have not ratified it. **Every State in the Caribbean except Puerto Rico (a territory of the USA), has ratified CEDAW.**

In some States, ratification of an international treaty entails the automatic incorporation of the provisions of that treaty into domestic law so that they can be enforced in domestic courts (**the monist legal system**). In other States, additional steps must be taken to bring the treaty into domestic law (**the dualist legal system**).

In a dualist system, the State needs to pass **legislation**, by either incorporating the Convention as a whole document or incorporating particular provisions of the Convention. Such examples are the passing of a Gender Equality Act, of a Domestic Violence Act or of a Equal Pay Act. Moreover, States may need to amend existing legislation in order to facilitate implementation of the international treaty and **allow its enforcement in domestic courts**.

Both the monist and the dualist legal systems are present in the Caribbean. If the State has a civil law background, i.e. French or Dutch, it is usually a monist State, such as Haiti. If the State has a common law background, i.e. British or American, it is generally a dualist State, such as Jamaica. The States of the Eastern Caribbean have a dualist legal system. It is therefore **essential** for them to incorporate the Convention through domestic laws or to amend existing laws.

⁶ UN Women, "Short History of the CEDAW Convention", available at <http://www.un.org/womenwatch/daw/cedaw/history.htm>, last accessed 17 April 2013.



The CEDAW Committee has consistently noted States' failure to incorporate the Convention's provisions into national legislation. For example, in the latest 'Concluding Observations' to Caribbean State reports to the CEDAW Committee, the Committee noted the following:

In **Barbados**, outdated legislation discriminates against women and does not prohibit marital rape.

In **Saint Kitts and Nevis**, there is no legislation to protect women from trafficking or to prosecute traffickers.

In **Saint Lucia**, the Civil Code prescribes that a wife should 'obey' her husband.

In **Jamaica**, there is no legal definition of direct and indirect discrimination in the Constitution or in other legislation in accordance with Article 1 of CEDAW.

In **Haiti** there is no domestic law prohibiting discrimination against women and providing sanctions for such discrimination.

Whilst it is widely ratified, CEDAW has been ratified with the **highest number of reservations** compared to any other human rights treaty in the world. A 'reservation' is a caveat to a State's acceptance of a treaty. It allows States to ratify a treaty whilst excluding particular provisions to which it refuses to be legally bound.

Many of the reservations made by States Parties to CEDAW are problematic as they often violate the fundamental principles of the Convention, such as equality before the law and equality within marriage and family life. Nevertheless, by ratifying the Convention, States indicate that they wish to be 'part of the conversation'. *The number of ratifications and accessions to CEDAW indicates that, to a large extent, non-discrimination against women has become a universal norm.*

With regards to the Caribbean, the Bahamas, Jamaica, Trinidad and Tobago made reservations upon the ratification of CEDAW.

Trinidad and Tobago declared on ratification:

"The Republic of Trinidad and Tobago declares that it does not consider itself bound by article 29 (1) of the said Convention, relating to the settlement of disputes".

Article 29 (1) provides that parties may refer disputes under the Convention to the **International Court of Justice** for arbitration.

It is important to note as well that a number of these states, such as The Bahamas and Jamaica, withdrew some of the reservations entered. For example, upon ratification, the Government Jamaica did not consider itself bound by the provisions of article 9, paragraph 2 and article 29, paragraph 1, of the Convention. However, on 8 September 1995, it withdrew its reservation with respect to article 9 (2) CEDAW.

1.3 The CEDAW Committee

Implementation of the Convention is monitored by the **CEDAW Committee**. The Committee was established in 1982 and is composed of 23 experts on women's issues from around the world. They monitor the implementation of CEDAW. Members of the Committee are nominated by States Parties to the Convention and they work as independent experts.

All States Parties are obliged under Article 18 of CEDAW to present an initial report to the CEDAW Committee a year after ratification, and periodically every 4 years on how the Convention's provisions are being implemented. The Committee meets three times a year to consider State Party Reports and to address its concerns and recommendations to the State in the form of **Concluding Observations**. It considers about 24 State reports each year, which given the high level of ratification, has resulted in a backlog of reports to be considered.

Many States in the Caribbean have consistently failed to meet their reporting obligations under CEDAW. The Committee has now considered or has scheduled examination of States who are more than 10 years overdue with their report. These States have been asked to submit a report, but in the absence of a report, the CEDAW Committee will still go ahead and review the implementation of the Convention, as happened with Dominica.

General Recommendations

To provide clarification and promote understanding of the Convention's substantive content and the specific nature of discrimination against women, the Committee also produces General Recommendations. These are best regarded as authoritative statements by the CEDAW Committee on the meaning of the provisions in the Convention with respect to the rights of women and the obligations of the State Party. They also describe what kind of information should be included in periodic reports. Up until 2014, 32 General Recommendations have been adopted by the Committee covering a range of topics (see page 13). The CEDAW Committee has started work on a General Recommendation on access to justice for women.

The General Recommendations interpret the Convention in the light of contemporary contexts, emergent issues and new debates, reflecting the fact that CEDAW is a "living document". For example, General Recommendations no. 28 clarifies that *'discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity.'*⁷ It highlights that States must condemn *'all forms of discrimination, including forms that are not explicitly mentioned in the Convention or that may be emerging'*.⁸ This General Recommendation was developed out of the 47th meeting of the Committee. During this session, the Committee discussed emergent evidence from State reports that highlighted discrimination against *older women* as a recurrent theme (particularly in terms of access to services and

⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 19 October 2010, CEDAW/C/2010/47/GC.2

⁸ Ibid.

resources).⁹ It is important to note that, whilst violence against women (VAW) is not explicitly addressed in the Convention, General Recommendation No. 19 makes it clear that VAW is a form of discrimination against women as prohibited under article 1 CEDAW. Therefore VAW is prohibited by other articles in the Convention.¹⁰



The General Recommendations are useful because they offer guidance to States about the **practical steps that can be taken to implement provisions in the Convention.**

They describe **what** kind of **information** should be included in State parties periodic reports, and **how** and **where** it should be included



States must be aware of the General Recommendations issued by the CEDAW Committee when producing their reports, as the Committee will themselves use these as a tool for evaluating a State's progress in implementing the Convention. General Recommendations to CEDAW are outlined below in Part 8.



For more information about CEDAW's General Recommendations, refer to Section Heading 1.7 on page 26 of this Handbook.

1.4 The Optional Protocol

CEDAW is accompanied by an Optional Protocol, which was adopted on 6th October 1999 and entered into force on 22nd December 2000. States can choose whether or not to become parties to the Optional Protocol, which is a subsidiary agreement to the Convention. It does not establish any new rights, but rather allows the rights guaranteed in the Convention to be legally enforced. For this reason it is highly important.

A State that signs the Optional Protocol recognises the competence of the CEDAW Committee to receive and consider communications from individuals or groups (within the State's jurisdiction) concerning violations of CEDAW provisions. Complainants must, however, have 'exhausted all domestic remedies'. This means that a complainant must have used all of the procedures available to them in their own State (e.g. police, courts, etc.) to seek protection of their rights or to seek justice for a violation of their rights, before they submit their communication to the CEDAW Committee. Further, anonymous communications or communications referring to an event that happened before a State signed the Optional Protocol will not be considered.

⁹International Service for Human Rights: 'CEDAW Adopts Two New General Recommendations', available at <http://www.ishr.ch/treaty-bodies/937-cedaw-adopts-two-new-general-recommendations>, last accessed 14 May 2013.

¹⁰ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992 (contained in Document A/47/38)*, 1992, A/47/38

In addition to receiving communications, the Committee may initiate inquiries into situations of grave or systematic violations of women's rights. If they wish, States may 'opt-out' of the inquiry procedure upon ratification of the Optional Protocol.

To date, February 2015, there are 105 States Parties to the Optional Protocol. Anguilla, Antigua and Barbuda, Dominican Republic, Montserrat, and Saint Kitts and Nevis are the only countries in the Caribbean that have ratified the Optional Protocol.

The Optional Protocol has great value and potential as an interpretative tool and as a mechanism for allowing individuals and groups within a State's jurisdiction to challenge what they regard as a failure to implement their rights under the Convention through the communication or individual complaint procedure. NGOs, women's organisations and human rights groups, may use the Protocol to enforce the Convention. Upon hearing a communication, the Committee can request information from and make observations to a State party. However these are not legally binding.

Since the Optional Protocol came into force and up until the end of November 2012, the CEDAW Committee had registered 41 communications, 13 of which had been decided on their merits. In 12 of the communications the State was found to have violated the complainant's rights relating to issues such as domestic violence, parental leave and forced sterilization. 11 of the communications were declared inadmissible and four communications were discontinued.

None of these communications have involved Caribbean States. A further two communications have been examined, but the decisions were not public at the time of writing this handbook. A significant proportion of communications decided on the merits have concerned either gender-based violence against women (e.g. domestic violence) or reproductive and sexual health (e.g. preventable maternal mortality, access to abortion services).

The two grounds cited most frequently by the CEDAW Committee for declaring a communication inadmissible are: failure to exhaust domestic remedies (Optional Protocol, art. 4(1)); and, alleging facts that occurred prior to the entry into force of the Optional Protocol for the State Party concerned (Optional Protocol, art. 4(2)(e))

Up until now, The Committee has carried out one inquiry on the systematic killing of women in Mexico, finding the killings to be a result of the Government's tolerance of severe and systematic abuses of women's rights. Two other inquiries have been received but have not as yet been completed.¹¹

For a Table of Ratification of CEDAW and Optional Protocol by Caribbean States see Annex B at the end of this module.

¹¹ For further information on the use of the Optional Protocol, see Simone Cusack, *Mechanisms for Advancing Women's Rights: A Guide to Using the Optional Protocol to CEDAW and Other International Complaints Mechanisms* (Australian Human Rights Commission 2011), 9-23.

1.5 The Structure and Key Provisions of CEDAW

The first article of the Convention defines discrimination against women. It provides a fundamental framework for understanding the core purpose of all actions taken under the Convention and ensures the comprehensive elimination of all forms of discrimination against women.

Article 1: defines discrimination.

“For the purposes of the present convention, the term ‘discrimination against women’ shall mean 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”.

“Any distinction”: means any *difference* that is made between men and women. For example, the laws of a State may allow a husband to initiate divorce proceedings, but not a wife.

For Example:



In the CEDAW Committee’s 2006 Concluding Observations on the periodic report submitted by St. Lucia, the Committee expressed its concern that there was a lack of provision for divorce by mutual consent, and that the Civil Code provided that the wife should obey her husband. These provisions were considered by the Committee to be examples of discrimination against women and areas where the State of St. Lucia was failing to meet its obligations under the Conventions.

To fulfil their obligations under CEDAW, States must ensure that women and men have the same rights and responsibilities within marriage and family life (also see Article 16).

“Exclusion”: covers any aspect of (social, cultural, political, economic, family) life, where women are not included equally with men.

For example:



In its 1999 Concluding Observations to Barbados, the CEDAW Committee expressed concern that there were very few women in politics, and that there was cultural opposition against quotas to encourage women to enter politics.

To fulfil their obligations under CEDAW, States must implement ‘temporary special measures’ e.g. quota systems to ensure that women have equal office/status in political life (see also Articles 4 & 9).

“Restriction”: refers to any limitation on women’s access to their human rights on an equal basis with men. For example, in some States girls or women are not permitted to access family planning services without permission from their husband or father.

For example:



In its Concluding Observations to Saint Kitts and Nevis in 2002 the CEDAW Committee expressed concern that women are not able to exercise their right to reproductive choices “due to religion and custom”.

To fulfil their obligations under CEDAW, States must take all necessary measures to eliminate harmful social norms and stereotypes that prevent women from enjoying their rights on an equal basis with men (see also Article 5). They must also ensure women have access to healthcare, including sexual and reproductive healthcare (see also Article 12).

“Impairing or nullifying the recognition, enjoyment or exercise by women...on a basis of equality of men and women, of human rights and fundamental freedoms”: this covers any barrier to equality, even if it is only a small or partial barrier.

“Irrespective of the marital status”: women have the same rights as men, and the same rights as each other, whether they are married or unmarried.



In its Concluding Observations to Saint Kitts and Nevis in 2002, the CEDAW Committee noted with concern that unmarried female partners of men have more limited rights than spouses.

To fulfil their obligations under CEDAW, States must ensure that both married and unmarried women have exactly the same rights within the contexts of their relationships (e.g. rights to share of property on separation etc.)

“In the political, economic, social, cultural, civil or any other field”: this covers discrimination in every aspect of life: at home, in the family, at church, at school, at the workplace, in the media, in the government and so on.



The Committee is particularly concerned about the role that adverse and persistent socio-cultural norms and gender-based stereotypes play in perpetuating discrimination against women, and regularly brings this up in its Concluding Observations to States parties.

Articles 1-5 provide the general, interpretative framework of the Convention, and set out the obligation on States to undergo general legal, policy and programmatic reform to eliminate discrimination against women.

Articles 6-16 are substantive provisions, which address the different areas within which discrimination must be addressed through measures described in Articles 1-5. These include prostitution and sexual exploitation (Article 6), political and public life (Article 7), participating at the international level (Article 8), nationality rights (including rights to pass on nationality to children) (Article 9), education (Article 10), employment (Article 11), health (Article 12), economic and social benefits (Article 13), protecting rights of rural women (Article 14), equality before the law (Article 15) and marriage and family life (Article 16).

Articles 17-22 provide for the establishment of the CEDAW Committee and set out its functions.



Articles 23-30 detail the administrative and procedural aspects of the Convention.

More detail on these provisions can be accessed at the end of this Module, in part 7 below.

1.6 The 3 Key Principles of CEDAW

There are several key principles and features of CEDAW that make it useful for addressing women's human rights.

CEDAW PRINCIPLE 1: *the principle of substantive equality*

CEDAW calls for 'substantive equality' between men and women. The principle of 'substantive equality' means that there must be actual equality in practice, not just formal equality. In other words, it is not enough to provide for equality in and before laws, through policies and through institutions. There must be equality of **results**. Indicators of equality lie not only in the adoption of appropriate policies, laws or institutions, but also in the **outcomes** of these policies.



In State Party Reports, States must be able to demonstrate to the Committee that changes in law, policy and practice have **actually resulted** in concrete improvements within the everyday lives of girls and women.

Substantive equality can be understood to have three elements (which are explored in more detail in the sections below):

- Equality of *opportunity*
- Equality of *access*
- Equality of *results* and *benefits*.

It can also be characterised by the distinction between '*de jure*' equality (equality in and before the law), and '*de facto*' equality (equality in practice).

Q. Why is the principle of substantive equality so important?

There is growing international consensus that gender equality is essential for peace, security, economic progress and poverty reduction. The widespread ratification of CEDAW is itself an indicator of this. Nevertheless, whilst many jurisdictions around the world have made considerable progress in reforming law, policy and practice to eliminate gender discrimination, the reality remains that women's political, cultural and economic status is distinctly disadvantaged compared to that of men in every country around the world.¹²

¹² Hausmann, R, Tyson, L, Zahidi, S, *The Global Gender Gap Report 2012*, World Economic Forum 2012.

Developing gender-neutral policies and advocating for ‘equal treatment’ of men and women is not enough to realise true equality in practice. Steps must be taken to address the underlying causes of discriminatory social processes that drive unequal outcomes for girls and women.¹³

For example, a State’s legal and policy position may emphasise that men and women have the same rights and opportunities to employment, and that it is illegal for employers to discriminate on the basis of gender. Nevertheless, in practice, for a whole range of reasons, women may find it extremely difficult to realise the same successes and outcomes in their careers as men. Due to the status of girls in the family or other reasons, a woman may not have achieved the necessary education and qualifications required for a particular post. In addition, she may face discrimination during the interview process, harassment in the workplace, or other prejudicial treatment that impairs her ability to perform professionally.

The CEDAW principle of *substantive equality* is a call to States to reform their total environment to remove the disadvantages women face in all aspects of their lives.

The ‘Formal Equality’ approach

This approach focuses on the importance of realising legal or *de jure* equality between men and women.¹⁴ It is founded on the premise that men and women are the same, and should be treated identically in law, policy and practice. It is presumed that once this is achieved the result will be equality of opportunity for all individuals regardless of their gender. The theory posits that, if perfect equality of opportunity can be achieved, then any differences in outcomes are legitimate and unavoidable. Differences in results are presumed to be based on essential, permanent differences between individuals, and therefore, are also presumed to be objectively justifiable. A State may argue, having taken this approach, that it has done all it can to promote equality and does not have to make any further adjustments.¹⁵

e.g

For example:

An employer has a policy in place that says that there should be no discrimination made on the basis of sex in recruitment processes. Despite this policy, 80% of the Senior Management Team are male and only 20% are female.

The Workers Union challenges the Board of the company about the lack of representation of women in the Senior Management Team. The Board responds that there is a policy in place to protect against sex discrimination, and that there is no evidence that this policy has not been followed properly; in each case the most qualified and appropriate candidates were hired. They argue that this therefore means that the sex-imbalance in the Senior Management Team is justified and unavoidable.

This argument would not satisfy the CEDAW Committee. Substantive equality requires equality of results. It is not enough that there is a policy in place that is being followed.

¹³ IWRAW Asia Pacific, “CEDAW Knowledge Resource” available at <http://www.iwraw-ap.org/convention/equality.htm>, last accessed 18 April 2013.

¹⁴ International Women’s Rights Action Watch Asia Pacific, “The CEDAW Principles” available at <http://www.spp.nus.edu.sg/ips/docs/events/all/The%20CEDAW%20Principles.pdf> last access 18 April 2013.

¹⁵ Ibid.

The employer must ensure that there are equal numbers of men and women in the Senior Management Team.

Limitations of the formal equality approach

The problem with the formal equality approach is that it fails to acknowledge the social and biological realities of gender difference. It assumes that women are able to access opportunities on an equal basis to men and according to the same rules as men. In doing so it uses, by default, male (existing, dominant) modes of operation and considers these as ‘givens’.¹⁶

For example:

State ‘X’ has decided after public pressure that women will be permitted to join the armed forces on an equal basis to men. In order to be accepted, women must undertake the same basic training as men, including the same physical training which involves marching with full packs weighing 30 kilos in order to ensure their fitness to serve.

The formal equality approach helps to increase the opportunity for women to participate in social, economic, political and cultural life, but it can only do so to a limited extent. The presumed gender ‘neutral’ standards of this approach are, in reality, shaped and modelled on male experiences and interests.¹⁷ This approach, therefore, fails to acknowledge and address the ways in which social inequalities and gendered power structures interplay with biological differences to subject women to multiple forms of discrimination and exclusion in all aspects of their lives. Nevertheless, in order to achieve substantive equality, it is essential to have equality between women and men recognised in and before the law. Therefore, formal equality is just one step towards the full achievement of equality.

The ‘Equity Approach’

The ‘equity approach’ combines certain aspects of the formal and protectionist approaches. Like the protectionist approach, the equity approach places central importance on recognising and addressing gender differences and inequalities. Nevertheless, the equity approach is founded on a more conceptually sophisticated understanding of gender differences, compared to the protectionist approach, focusing on how social, political and economic forces systematically deny rights to girls and women in ways that are both unjust and *avoidable*.¹⁸

Like the formal equality approach, the equity approach *does not require equality of results*. Equity requires everyone to have *the opportunity* to access the same resources, regardless of gender. Where a perfect state of ‘equity’ is realised, gender inequalities may still remain, but these can be understood to be the result of unavoidable, biological factors.¹⁹ The equity

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ UNICEF, Re-focusing on Equity: Questions and Answers, November 2010.

¹⁹ Ibid.

approach, therefore, combines the idea of legitimate (natural) inequality with recognition of gender differences.

Here is a useful explanation of the “equity approach” from a 2010 UNICEF Paper:

“Inequities generally arise when certain population groups are *unfairly* deprived of basic resources that are available to other groups. Whether a disparity is ‘unfair’ or ‘unjust’ depends on the context. For example, young adults tend to be healthier than elderly adults, and female newborns generally have lower birth weights than male newborns. These disparities cannot be described as *inequities* since they are caused by *unavoidable biological factors*. If, however, girls and boys showed *dramatic differences* in nutritional status or immunization levels, the disparity would likely be due to social rather than biological factors, and would therefore be considered unnecessary and avoidable...

It is important to emphasize that *equity is distinct from equality*. Equality requires everyone to have the same resources. Equity requires everyone to have the *opportunity* to access the same resources. The aim of equity-focused policies is not to eliminate all differences so that everyone has the same level of income, health, and education. Rather, the goal is to eliminate the unfair and avoidable circumstances that deprive children of their rights....” (Emphasis added)

Limitations of the equity approach

The problem with the principle of ‘equity’ is its elusive and subjective character. Equity does **not require that men and women are equal** in practice. It merely requires the elimination of the ‘unfair’ and ‘avoidable’ circumstances that deprive women of their rights. The equity approach, therefore, is reliant on political concepts such as ‘fairness’ and ‘justice’, concepts, which mean widely different things to different people, particularly in the context of gender roles, rights and responsibilities. Who is to determine which circumstances can be considered ‘unfair’ and ‘avoidable’ and by what criteria they are to determine this? It is also unclear how progress towards a perfect state of ‘equity’ can be monitored or measured.²⁰

The subjective and ambiguous character of the concept of ‘equity’ means that States could potentially apply this concept to justify a range of different policies which are clearly incompatible with the provisions of CEDAW.²¹ For example, CEDAW’s principle of substantive equality demands that women are equally represented in senior positions in politics (equality of *results*). An “equity” approach, however, may not require this. Although an equity approach would require that all “unfair” or “artificial” barriers to women entering politics are removed, it may allow some differences to remain, because some people might think that

²⁰ IWRAW, *Equity or Equality for Women? Understanding CEDAW’s Equality Principles*, IWRAW Asia Pacific Occasional Paper Series, no. 14, 2009.

²¹ Ibid.

natural (and therefore unavoidable) differences between men and women make the men more likely to excel in positions of political leadership and authority.



In your State report you *must* address the principle of *substantive equality*. The Committee urges States not to use the concepts of equity and equality as interchangeable. Equity is one step towards achieving equality. In other words, States must strive for the larger concept of equality, which encompasses i.e. formal/de jure equality, substantive/de facto equality and transformative equality.

E.g.: “*The Committee requests the State party to take note that **the terms ‘equity’ and ‘equality’ are not synonymous or interchangeable**, and that the Convention is directed towards eliminating discrimination against women and ensuring de jure and de facto (formal and substantive) equality between women and men. The Committee therefore recommends that the State Party expand the dialogue among public entities, civil society and academia in order to clarify the understanding of equality in accordance with the Convention.*” Concluding Observations, Vanuatu, 2007.



CEDAW’s principle of substantive equality **incorporates an understanding of gender difference and diversity**; nevertheless, by focusing on equality in practice it provides **broad and objective standards** for measuring progress towards the elimination of discrimination against women.

The ‘Protectionist Approach’

In contrast to the ‘Formal Equality’ approach, the ‘Protectionist Approach’ places central importance on differences between men and women.²² Recognising gender differences, and the disadvantaged position of women, this approach seeks to treat women differently in order to protect their rights.

Why doesn’t CEDAW use the ‘protectionist approach’?

The problem with this approach is that its methods of coping with gender difference fail to address the structural or systemic causes of gender inequalities. The protectionist approach is inherently limiting as it focuses on the ways in which women need to be subjected to ‘special’ treatment compared to men. In doing so it reinforces existing cycles of gender difference and disadvantage. Reproducing the same stereotypes about women’s weakness and lack of capacity, protectionist approaches often seek to curtail women’s freedom and limit their spheres of activity.²³ Examples of ‘protectionist approaches’ could be a law that prohibits women from working in night shifts at certain jobs because they are at greater risk of becoming victims of gender based violence on their way home, or a preference for appointing women to jobs such as nursing or nursery teachers/carers due to a belief that women are more suited to working with children, which is an assumption about different gender roles.

²² International Women’s Rights Action Watch Asia Pacific, “The CEDAW Principles” available at <http://www.spp.nus.edu.sg/ips/docs/events/all/The%20CEDAW%20Principles.pdf> last access 18 April 2013.

²³ International Women’s Rights Action Watch Asia Pacific, “The CEDAW Principles” available at <http://www.spp.nus.edu.sg/ips/docs/events/all/The%20CEDAW%20Principles.pdf> last access 18 April 2013.

Q. How can substantive equality be achieved?

The Convention calls on States to take two broad types of action in order to make progress towards substantive equality.

- Actions to achieve equality of opportunity between men and women
- Actions to correct the inequalities of power between men and women

Therefore, CEDAW requires more than equal protection for women under the law. It requires States to put in place ‘**temporary special measures**’ to promote women’s rights (see Article 4 CEDAW). This may include quota systems that require employers to hire at least a certain number of women or special benefits or scholarships for girls entering higher education.



At this point, the facilitator will conduct Exercise 1.6.1: The Principle of Substantive Equality: Women in Government.

CEDAW PRINCIPLE 2: *The principle of non-discrimination*

The second principle of CEDAW is the principle of ‘**non-discrimination**’. CEDAW approach to understanding discrimination against women is founded on the recognition that discrimination on the basis of sex is not a natural or permanent feature of human society. Rather it is the consequence of human choices that are both changing and changeable. Discrimination against women is understood to be the consequence of a particular way of organising political and social institutions that both reflect and perpetuate harmful socio-cultural constructs of gender.

Article 1 of CEDAW defines discrimination as “*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose*” of restricting women’s enjoyment of their rights.

Direct and Indirect discrimination

CEDAW provisions, therefore, place obligations on States to eliminate laws, policies, and practices that discriminate against women both *purposefully* (direct) and by *effect* (indirect). Purposeful discrimination is when a State adopts a law or policy, which directly and intentionally disadvantages women. Discrimination by effect is when a law or policy is not deliberately discriminatory, but ends up disadvantaging women in practice.

De jure and De facto Discrimination

Discrimination against women may be determined by law (*de jure* discrimination) and/or may be the result of practice (*de facto* discrimination). The CEDAW obliges states to take action to address all discrimination whether by the result of law, policy, procedure or practice.

Past and Present Discrimination

The CEDAW requires States parties to recognise that centuries of discrimination, oppression and exclusion of women have resulted in **deeply entrenched** and **accepted** forms of **structural discrimination**. States parties must address the ways in which **previous** policies, practices and prejudicial norms continue to affect the present position of women in society, and find ways to reverse these social processes.²⁴

Crosscutting Discrimination

The discrimination that women experience in one aspect of their lives is likely to affect other aspects of their life in ways that might not be immediately obvious. For example, discrimination in access to education, might affect women's ability to be involved in and influence public policy²⁵ and discrimination against women within relationships, marriage and family life might affect their ability to access education.

 For example, the CEDAW Committee noted in relation to St. Lucia that there is a perception that a woman with “too much education” will “not find a husband”.²⁶ This is likely to discourage and deter girls from accessing and excelling within education. Therefore it is example of how stereotypical and discriminatory ideas about gender within family life can affect a girl's experiences in relation to her right to education.

The CEDAW requires States to collect evidence on the position of women across different sectors (in prison, in politics, within the migration system, within sport, within employment, within family life, within the health system, etc.) and to develop a **cross-cutting government strategy** to address discrimination against women in all contexts.

 In its Concluding Observations to Jamaica in 2006, the CEDAW Committee noted its concern that “that the national machinery for the advancement of women may not have the capacity and authority to coordinate the effective implementation of the Convention, and of a comprehensive gender mainstreaming strategy in Jamaica.”²⁷

The Committee called on the Government of Jamaica to **prioritize** strengthening of national machinery to promote **effective gender mainstreaming across all line of ministries and sectors**.

²⁴ IWRAW, “Applying the Principles of the CEDAW Convention”, available at <http://www.iwraw-ap.org/protocol/practical.htm> last accessed 19 April 2013.

²⁵ Ibid.

²⁶ Saint Lucia, Summary Record of 730th Meeting CEDAW/C/SR.730 (2006) p.2, para.7

²⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW), *UN Committee on the Elimination of Discrimination against Women: Concluding Comments, Jamaica*, 25 August 2006, CEDAW/C/JAM/CO/5

Intersectional Discrimination

CEDAW requires State parties to address the fact that many women experience **multiple and overlapping forms of discrimination and exclusion** that result not only from their gender, but also their ethnicity, social and economic status, disability status, health status and many others. An “intersectional” perspective examines the ways in which oppressive institutions are interconnected and cannot be examined separately from one other²⁸; to identify the discrimination that a woman experiences it is not sufficient to know that she lives in a “sexist” society, it is also important to think about her ethnicity, her class, her sexual orientation, her health status and other aspects of her experience and identity, and dominant social attitudes towards each of these.

Recognition of intersectional forms of discrimination can be found both in CEDAW and in the CEDAW Committee’s General Recommendations to States parties. For example, **article 14** of the Convention **specifically addresses the rights of rural women** and **General Recommendations 15 and 18 address the rights of women living with HIV and women with disabilities (respectively)**. Finally, **General Recommendation no. 25** provides that:

“Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.”



In the Committee’s 2003 Concluding Observations to Antigua and Barbuda, the Committee expressed concerns about the situation of rural women and their access to credit. In addition the Committee noted the lack of special measures for women living with HIV and AIDs.²⁹

Discrimination vs. Temporary Special Measures

CEDAW does not consider all different treatment of men and women as forms of discrimination. Differences in treatment are permitted where they are designed to correct existing inequalities that are preventing barriers to achieving equality of results in practice (e.g. quota systems for women entering employment and politics).



At this point, the facilitator will conduct Exercise 1.6.2: “The Principle of Non-Discrimination”.

²⁸ Crenshaw, Kimberlé W. (1991). *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, Stanford Law Review, Vol. 43, No. 6

²⁹ CRC Committee, Concluding Observations: Antigua and Barmuda, CEDAW A/52/38/Rev.1 (1997) paras 233 & 257.

State Obligations/Accountability

Along with the concepts of equality and non-discrimination, the principle of ‘**State obligation**’ is an integral part of CEDAW.

When a State ratifies CEDAW it accepts responsibility for eliminating discrimination against women and bringing about equality between women and men. This transforms the relationship between women and the State: women are no longer simply dependent on the good will of the State, but rather the State has obligations towards women for which it will be held accountable at both the national and international levels.

The principle of State obligation contained in CEDAW requires States to be accountable for eliminating discrimination against women in all spheres of life, whether this is at work, in the family, in the media, in the government, and so on. Reporting to the CEDAW Committee gives States the opportunity to demonstrate the steps that they have taken to eliminate discrimination.

1.7. Referencing table: Articles of CEDAW

Below is a referencing table that contains a selection of key articles from the Convention.

Reference Table: Articles of CEDAW

<p>Article 1: defines discrimination as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.</p>
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<p>Article 2: calls for States to condemn discrimination and to adopt laws and policies to realise equality between men and women. This may require repealing existing laws and policies as well as developing new ones.</p>

<p>Article 4: allows States to take ‘temporary special measures’ to eliminate existing inequalities. For example, States may require employers to ensure that they include at least a certain percentage of women in their work force.</p>

<p>Article 5: addresses sex stereotyping in cultural and family life: e.g. gendered division of labour based on ideologies of the inferiority and superiority of either of the sexes. It also emphasises that men and women share parenting responsibilities.</p>
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One of the most original features of CEDAW is its emphasis on the impact of constructed ideas about women’s subordination and gender inequality that derive from social identities and cultural norms; and the obligation on States to reshape these norms and identities in order to realise rights and equality for women.

<p>Article 6: calls on States to address trafficking of women and the exploitation of prostitution.</p>
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Article 7: provides for equal rights for women to acquire or change their nationality, and, crucially, to pass on their nationality to their children. (Many States have made reservations to this Article, particularly with respect to the right of women to pass on their nationality to their children.)

Article 8: provides for women's equal participation in political processes, the right to vote and to hold political office (on an equal basis with men).

Article 9: provides for the equal participation of women in international politics (as government representatives or otherwise).

Article 10: comprehensively provides for equality within education (including vocational and career opportunities). Importantly, this article calls for the elimination of 'sex-stereotyping' within education (for example, requiring girls to take cooking and sewing lessons whilst boys play sport).

This Article specifically mentions the equal right of girls and boys to play sport and enjoy physical education; the right of all children to access education about reproductive health; and the need for States to address higher dropout rates of girls than boys.

Article 11: protects women's equal right to employment, and right to equal pay. This also sets out employers' obligations to women to protect their health and safety, which includes "safeguarding of the function of reproduction" (i.e. not having to lift things whilst pregnant).

Part 2 of Article 11 also protects women from discrimination on the grounds of marriage or maternity to ensure their equal right to work. For example, States must pass legislation to prevent a woman from losing her job because she has become pregnant.

Article 12: provides for women's equal access to healthcare, including equal access to sexual and reproductive services. Article 12 also calls on States to ensure the provision of special services related to pregnancy, childbirth and postnatal care.

Article 13: provides for women's equal rights to social and economic benefits, such as family benefits, bank loans, and the right to participate in recreational activities and all other aspects of family life.

Article 14: protects the particular rights of rural women, including participation in planning and access to training, social security and other services.

Article 15: protects women's equal rights before the law, and recognition of the equal legal status between women and men in all legal and contractual matters. Article 15 also protects their equal right to freedom of movement, and to decide where they live.

Article 16: provides for women's equal rights within marriage and family life, including women's right to choose to get married or divorced and freely choose a spouse (i.e. this article prohibits forced marriage).

Article 16 also states that men and women must have exactly the same rights and responsibilities within marriage including over their reproduction, their children, and regarding their name, occupation and property.

States have widely made reservations to Article 13 as in many States around the world women and men have different legal rights within marriage and family life. Many States have justified this on the basis that men and women must have ‘different’ but ‘*equivalent*’ rights and responsibilities within marriage and the family in order to ensure equality. This position does not satisfy the requirement of equality under CEDAW. The CEDAW Committee has sought to address this problem in two of its General Recommendation 20 (outlined below) and has consistently called on States to withdraw their reservations which are contrary to the fundamental purposes of the Convention.

Articles 17 – 30: cover more procedural issues, such as the establishment of, and procedures of, the CEDAW Committee (Articles 17, 19, 20, 21 and 22), States’ reporting requirement and procedures (Article 18), interactions with other instruments (Article 23), procedural articles relating to the Convention and the UN (Articles 25-30), and Article 24 which establishes an obligation on States to “*adopt all necessary measures at the national level aimed at achieving the full realisation of the rights recognised in the present Convention*”.



At this stage, the facilitator may ask participants to carry out Exercise 1.7.3: “CEDAW’s provisions: eliminating sex discrimination within education”.

1.8 Referencing Table: General Recommendations of CEDAW

Reference Table: A Selection of General Recommendations of the CEDAW Committee

General Recommendations 1 and 2: the first two Observations concern reporting. The Committee emphasises that States should report to the Convention every four years, and that reports should include information on barriers to implementing the Convention and steps taken to address these.

General Recommendation 3: calls for the implementation of public education programmes to eliminate harmful gender stereotypes.

General Recommendation 5: recalls Article 4 of the Convention and urges states to initiate “*positive action, preferential treatment or quota systems to advance women’s integration into education, the economy, politics and employment*”.

General Recommendation 6: calls for States to strengthen capacity at the national level to promote policy development and planning, and monitor progress made towards achieving equality between men and women.

General Recommendation 9: emphasises the importance of national data collection disaggregated by gender.

The Committee emphasises that statistical information is **absolutely necessary in order to understand the real situation of women** in each of the States parties to the Convention, and that many States parties present their reports without statistics.

The Committee requests that state parties design surveys and censuses so that they provide data broken down by gender, with regard to both absolute numbers and percentages, so that “interested users can easily obtain information on the situation of women in the particular sector in which they are interested”.

General Recommendation 11: recommends that States seek technical advisory services to assist them in fulfilling their reporting obligations, including undergoing a training on reporting to the Convention.

General Recommendation 12: relates to the elimination of violence against women (VAW). CEDAW does not have an article that explicitly and comprehensively addresses VAW. However, General Comment no. 12 states that articles 1, 2, 5, 11, 12 and 16 of the Convention require States parties “*to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life*”.

The Committee emphasizes that CEDAW applies to violence perpetrated by public authorities, but that it is not restricted to actions by government. States parties may be responsible for private acts of violence committed by any person, organisation or enterprise, in cases where they have failed to act with due diligence to prevent, investigate and punish acts of violence.

In General Recommendation 12, CEDAW emphasises how violence against women can be understood to both effect and be affected by harmful gender stereotypes, poverty, unemployment, health care, rurality, limited access to sexual and reproductive health services, and inequalities within families.

The Committee makes a number of recommendations to States parties for fulfilling their obligations under the Convention to eliminate violence against women including: legislative reforms (to address family violence and abuse, rape, sexual assaults and others whether occurring in public or private life); training of judiciary and law enforcement personal; delivery of support services (including for rural women); compilation of statistics and research on the extent, causes and consequences of violence; addressing the portrayal and treatment of women in the media; addressing social norms that condone violence against women; combating trafficking and sexual exploitation; establishment of complaints procedures and remedies; addressing harassment and violence in the workplace; combating harmful traditional practices; ensuring access to sexual and reproductive health services; monitoring conditions of domestic workers;

General Recommendation 13: emphasises the need for States to implement measures to ensure the realisation of the principle of “equal remuneration for work of equal value” in practice. The Committee also recommends that States (who have not already done so) sign the International Labour Organisation Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

General Recommendation 15: concerns programmes to combat HIV/AIDS. The Committee notes that women (and children) are particularly vulnerable to HIV infection and calls on States to adopt special programmes to address this, and to ensure the active participation of women in public health initiatives.

The Committee recommends that States include in their report **under Article 12 of the Convention**, information on the effects of AIDS on the situation of women, and action taken to address any issues.

General Recommendation 16: General Recommendation 16 notes that State Party Reports generally miss the problem of unpaid women workers of family enterprises, a common form of exploitation of women. Recommendation no. 16, therefore, urges States to collect data on this issue and include such information in their reports.

General Recommendation 17: the Committee calls on States to support research and experimental studies to measure and value the unremunerated domestic activities of women and to include this in calculations of Gross National Product (GNP).

The Committee emphasizes that this will help to reveal the *de facto* economic role of women, and that such measurement and quantification offers a basis for the formulation of further policies related to the advancement of women.

General Recommendation 18: calls on States to ensure that they provide information on disabled women in their periodic reports, and on measures taken to ensure that they have equal access to education and employment, health services and social security and to ensure that they can participate in all areas of social life.

General Recommendation 19: The text of the Convention does not **expressly** mention gender-based violence (although it does address particular types of GBV such as trafficking). General Recommendation no 19, however, comprehensively addresses gender-based violence defining it as “*a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men*”. In other words, the Committee emphasizes that the definition of discrimination in Article 1 encompasses acts of gender-based violence. The Committee then proceeds to elaborate how and why gender-based violence can be understood as a direct violation of Articles 2, 3, 5, 10, 6, 11, 12, 14 and 16 of the Convention. The Committee then goes on to make a series of explicit Recommendations to States for addressing forms of gender-based violence as well as their causes. The Committee emphasizes that States should include information about gender-based violence in their State Party Reports.

General Recommendation 20: again (recalling General Recommendation 4) refers to reservations to the treaty. The Committee recommended that States should consider whether their reservations could be considered legal and valid; and to consider introducing a procedure on reservations to the Convention comparable with that of other human rights treaties.

General Recommendation 23: this Recommendation focuses on the content of the right to equal participation for women in public and political life. The Committee emphasises that there is no political system in the world that has yet achieved this. The Committee

emphasizes that while removal of *de jure* (legal/formal) barriers helps, it is not enough, there is a need for ‘temporary special measures’ to be taken to ensure that women are represented in politics (e.g. recruitment, financial assistance, training, campaigns, targets and quotas including in the judiciary and other professional groups).

General Recommendation 24: Concerns access to sexual and reproductive health care.

General Recommendation 25: Concerns temporary special measures.



The facilitator will carry out Exercise 1.8.4: “CEDAW’s provisions: ending gender based violence” to close the module.

FURTHER READING

Simone Cusack, *Mechanisms for Advancing Women’s Rights: A Guide to Using the Optional Protocol to CEDAW and Other International Complaints Mechanisms* (Australian Human Rights Commission 2011), 9-23.

Marsha A Freeman, Christine Chinkin and Beate Rudolf: *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press).

International Women’s Rights Action Watch, *Equity and Equality for Women? Understanding CEDAW’s Equality Principles*, IWRAW Asia Pacific Occasional Papers Series no. 14, 2009.

Ateneo Human Rights Centre, *CEDAW Interactive Benchbook*, available at: http://www.cedawbenchbook.org/?page_id=36 [accessed 15 May 2013]