

1. INTRODUCTION

1.1 The Convention On The Elimination Of All Forms Of Discrimination Against Women

Following the International Women's Year Conference in Mexico City in 1975, at which the **World Plan of Action and Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace** were adopted, the United Nations Decade for Women 1976-1985, with its central themes of equality, development and peace, was launched by a resolution of the United Nations General Assembly in 1975. A second World Conference of the United Nations Decade for Women was held in Copenhagen in 1980, focusing not only on the themes of the Decade but also on three subthemes: employment, health and education. This Conference adopted the Programme of Action for the Decade, which together with the earlier World Plan of Action provided the framework for further contributions towards the advancement of women.

In July 1985 a third conference was held in Nairobi, Kenya to Review and Appraise the Achievements of the United Nations Decade for Women and to develop Forward-looking Strategies to the Year 2000 to overcome obstacles still remaining. Like the Plan of Action and the Programme of Action, the **Nairobi Forward-looking Strategies for the Advancement of Women** were addressed to Governments, to international and regional organisations and also to non-governmental organisations.

A further document of importance to women was adopted during the United Nations Decade for Women, namely the **Convention on the Elimination of All Forms of Discrimination Against Women**. Adopted by the UN General Assembly in December 1979, it was opened for signature during the Copenhagen Conference and came into force in September 1981 once it had been ratified by 20 countries. Currently over 90 countries have ratified and become "states Parties" to the Convention.

The **Convention on the Elimination of All Forms of Discrimination Against Women** is the most comprehensive international legal instrument to date dealing with the rights of women, spanning a wide range of issues directly related to their role and status. While ratification allows a State Party to adopt and interpret the Convention in ways most suitable to its social structure and culture, it does imply that the State Party is committed to the elimination of discrimination against women. In contrast, documents, such as Plans and Programmes of Action or the Forward-looking Strategies, are usually adopted as the result of resolutions of the UN General Assembly. They are adopted by consensus and are based on principles on which States are in general agreement. They are not, however, binding on any State with regard to their implementation.

In ratifying the **Convention on the Elimination of All forms of Discrimination Against Women**, therefore, a country enters into a legally binding commitment to work for the elimination of discrimination against women. It also agrees to submit reports on the progress made in implementing the Convention on a regular basis to an outside body, namely the Committee on the Elimination of Discrimination Against Women (CEDAW). This Committee, made up of 23 experts elected in their personal capacities with a "high moral standing and competence in the field covered by the

Convention" receives and examines reports submitted by States Parties at their annual meetings which take place alternately in New York and Vienna.

As countries which have ratified must report at the end of the first year and then every four years, or as required by the Committee, an ongoing basis for monitoring the **Convention on the Elimination of All Forms of Discrimination Against Women** is provided and this can be used within the respective countries. As CEDAW will pay careful attention to these reports, it is important that they are as accurate and as comprehensive as possible. Governments, women's national machineries and non-governmental organisations have an important role to play in collecting information and presenting it so that the report reflects the true situation within the country concerned. In addition, Government departments, women's national machineries and non-governmental organisations can all use the reports to monitor the progress achieved to date, evaluate the obstacles which still remain and develop strategies to overcome them.

In order to assist Governments and women's bureaux in implementing, monitoring and reporting on the **Convention on the Elimination of All Forms of Discrimination Against Women**, this manual has been produced by the Commonwealth Secretariat drawing on the expertise of a Group of representatives from various Commonwealth countries which represented CEDAW, women's national machineries, legal experts and non-governmental organisations (NGOs). The manual seeks, therefore, to make suggestions as to possible activities to implement the **Convention on the Elimination of All Forms of Discrimination Against Women**, and give guidance with regard to the reporting process.

Inequality between women and men has been recognized and considered by the United Nations since the adoption of the Charter which includes in the preamble the goal of reaffirming "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women."

Many resolutions, declarations and conventions have been adopted which refer to the role and status of women. They include general instruments such as the Universal Declaration of Human Rights and the International Covenants on Economic, Social and Cultural Rights, the Declaration on the Elimination of Discrimination Against Women; the Convention on the Political Rights of Women (1952); the Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (1962); and the Convention on the Nationality of Married Women (1957) which address the status of women directly. The specialised agencies, such as UNESCO and the ILO, have also adopted international instruments which directly relate to the status of women.

In 1947 the Commission on the Status of Women was established to consider and make recommendations with regard to the role and status of women. A separate **Committee on the Elimination of Discrimination against Women (CEDAW)** has been established, however, to monitor the implementation of the Convention.

CEDAW is made up of 23 individuals, elected for terms of four years in their personal capacities by meetings of States Parties which are held every two years.

The Convention is divided into a preamble and six parts. Part I defines discrimination and lists areas in which States agree to pursue a policy to eliminate discrimination. Part II focusses on the elimination of discrimination in political and public life and the question of nationality. Part III considers the elimination of discrimination in education, employment, health care, economic and social life and for rural women in particular. Part IV includes equality before the law and in marriage and family life. Part V is devoted to the establishment and function of CEDAW and Part VI is concerned with ratification and accession to the Convention and details regarding its administration.

1.2 A Detailed Analysis Of The Convention On The Elimination Of All Forms Of Discrimination Against Women

PART I

Article 1 provides the definition of discrimination for the purpose of the Convention. It deals with discrimination against women rather than discrimination on the basis of sex, and it affirms that the right to equality applies to all women "irrespective of their marital status".

Article 2 describes policy measures to be implemented by States Parties to eliminate discrimination. The principle of equality shall be embodied in national constitutions or other laws and legislative and other measures, including sanctions, shall be adopted as appropriate. Legal protection against discrimination shall be established through competent national tribunals and other public institutions. Public authorities and institutions shall refrain from discriminatory practices and all appropriate measures shall be taken to eliminate discrimination by any person, organisation or enterprise. Existing laws, customs and practices which discriminate against women are to be modified or abolished and penal provisions, which constitute discrimination against women, repealed.

Article 3 provides for a general obligation which guarantees basic human rights and fundamental freedoms. States Parties shall take legislative and other appropriate measures "to ensure the full development and advancement of women".

Article 4 allows State Parties to adopt temporary special measures to accelerate equality for women. This allows for the introduction of affirmative action (positive discrimination) until its objectives are achieved. It states, moreover, that special measures for protecting maternity shall not be considered discriminatory.

Article 5 states that State Parties shall take all appropriate measures to eliminate sex role stereotyping and practices which derive from a concept of the inferiority or the superiority of one sex over the other. Family education should teach the common role of both men and women in the care and upbringing of children.

Article 6 urges States Parties to take all appropriate measures including legislation to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7 refers to women in political and public life. It reaffirms the right to vote and be eligible for election, to participate in the formulation of government policy, hold office and to take part in non-governmental organisations.

Article 8 is concerned with the right of women to represent their Governments at the international level and to participate in the work of international organisations such as the United Nations and its specialised agencies.

Article 9 provides equal rights for women to acquire, change or retain their nationality indicating that they will neither be forced to change their nationality nor be rendered stateless through marriage to an alien or because of a change of nationality on the part of their husbands. Women shall also have equal rights with respect to the nationality of their children.

PART III

Article 10 is concerned with equal rights in education. Women and girls shall be provided with career and vocational guidance at all levels, access to curricula, examinations, teaching staff, premises and equipment on the same basis as men. Stereotyping shall be eliminated, particularly through the revision of textbooks and school programmes and adaptation of teaching methods. They shall have the same opportunities to benefit from scholarships and other study grants and for access to programmes of continuing education, including adult and functional literacy programmes. Efforts are to be made to reduce numbers of female students who drop out and to provide programmes for those who have left school prematurely. The same opportunities to participate actively in sports and physical education shall be provided as well as access to health and family planning information.

Article 11 relates to the elimination of discrimination in employment. It asserts that the right to work is an inalienable right of all human beings and that women have the right to the same employment opportunities as men. They also have the rights to free choice of profession and employment, job security, benefits and vocational training and retraining. States Parties should ensure the right to equal pay and equal treatment in respect to work of equal value, social security and paid leave. Women shall have the right to protection of health and safety in working conditions. To prevent discrimination, States Parties shall prohibit dismissal on grounds of pregnancy, maternity leave or marital status. Paid maternity leave shall be introduced without loss of employment, seniority or social allowances and provision of such support services, for example child-care facilities, made to enable parents to combine family life, employment and participation in public life. Special protection shall be provided for women during pregnancy and any protective legislation with regard to employment shall be reviewed periodically and revised, repealed or extended as necessary.

Article 12 is concerned with health care and family planning. Women shall have equal access to health care and family planning and will be ensured appropriate pregnancy and post-natal services.

Article 13 defines three particular areas of economic and social life in which women shall have the same rights as men. These are the right to family benefits; the right to bank loans, mortgages and other forms of financial credit and the right to participate in recreational activities, sports and in all aspects of cultural life.

Article 14 deals specifically with the problems of rural women including their rights to participate in development planning; have access to health care facilities; benefit from social security programmes; obtain formal and non-formal education and training; organise self-help groups and co-operatives; participate in community activities; and have adequate living conditions including housing, sanitation, electricity, water transport and communications.

PART IV

Article 15 provides for equality before the law according to women of the same legal capacity as men with regard to civil matters. They shall have the right to conclude contracts, administer property and receive equal treatment in courts and tribunals. Any contract or other private instrument which limits the legal capacity of women shall be deemed null and void. Women shall also have equal freedom of movement and rights to choose their residence and domicile.

Article 16 refers specifically to marriage and family law. Women shall have equal rights with men to choose a spouse. They will be accorded equal rights during a marriage and at its dissolution. Moreover, they shall have equal rights to their children and in the number and spacing of their families, including access to the information and means to enable them to decide. The same rights will exist in cases of guardianship, wardship and adoption. Women will also have the same rights as their husbands in choosing a family name, profession or occupation and in ownership, management and disposal of property. There shall be a minimum age for, and registration of, all marriages.

PART V

Article 17 describes elections by States Parties of CEDAW which is comprised of "23 experts of high moral stature and competence in the field covered by the Convention". CEDAW members are elected for four year terms on a rotating basis.

Article 18 states that States Parties shall report to the United Nations Secretary-General within one year of ratification and then every four years or when requested to do so by CEDAW on the legislative, judicial, administrative or other measures which they have adopted to implement the Convention and on the progress made. The reports may "indicate factors and difficulties which hinder their fulfilment of obligations."

Article 20 provides for the Committee to meet for two weeks each year (normally alternately in New York and Vienna).

Article 21 states that the Committee shall report through the United Nations Economic and Social Council to the General Assembly. The

Secretary-General will then transmit the reports to the Commission on the Status of Women for information.

Article 22 allows for specialised agencies (e.g. Food and Agricultural Organisation (FAO) and United Nations Industrial Development Organisation (UNIDO)) to be represented when provisions of the Convention within the scope of their activities are considered. They may also be invited by the Committee to submit reports.

PART VI

Article 23 states that any provisions which will not affect any provision within a State Party's legislation or any other international agreement which is more favourable to the achievement of equality.

Under **Article 24** States Parties shall adopt all necessary measures at the national level for the achievement of the rights recognised in the Convention.

Article 25 states that the Convention, which will be deposited with the United Nations Secretary-General will be open for signature and ratification by States.

Article 26 allows any State Party to request a revision of the Convention by notifying the U.N. Secretary-General in writing, after which the General Assembly will decide on steps, if any, are to be taken.

Article 27 provides that the Convention shall enter into force thirty days after the twentieth document of accession or ratification is deposited with the Secretary-General. It will come into force for countries ratifying after that date thirty days after their instrument of ratification or accession has been deposited with the Secretary-General.

Article 28 states that the Secretary-General will receive and circulate reservations to all States. If a reservation is incompatible with the object and purpose of the Convention it shall not be permitted. Reservations may be withdrawn by informing the Secretary-General who will then notify States.

Article 29 concerns any dispute between two or more States Parties with regard to the interpretation or application of the Convention. In the event of this happening, the dispute will be submitted to arbitration, or failing this, it will be referred to the International Court of Justice. Upon ratification or accession any State Party may declare that it does not consider itself bound by this article. It may also withdraw this reservation at any time.

Article 30 permits the Convention to be deposited with the United Nations in any of the official languages: Arabic, Chinese, English, French, Russian and Spanish.