CEDAW:
RESTORING RIGHTS TO WOMEN
UNIFEM is the women’s fund at the United Nations. It provides financial and technical assistance to innovative programmes and strategies that promote women’s human rights, political participation and economic security. UNIFEM works in partnership with UN organizations, governments and non-governmental organizations (NGOs) and networks to promote gender equality. It links women’s issues and concerns to national, regional and global agendas, by fostering collaboration and providing technical expertise on gender mainstreaming and women’s empowerment strategies.

Partners for Law in Development (PLD) is a resource group on human rights and the law. It works to promote and secure social justice for marginalised groups and issues, with a focus on women’s rights. This is done through building organisational and individual capacities through field based collaborations between lawyers and community groups, training programmes, knowledge creation and technical assistance. It approaches law as a resource in social action; and supports the integration of law in social justice initiatives in the community.
CEDAW

CONVENTION ON
THE ELIMINATION
OF ALL FORMS OF
DISCRIMINATION
AGAINST WOMEN

RESTORING RIGHTS TO WOMEN

UNITED NATIONS
DEVELOPMENT FUND FOR WOMEN
SOUTH ASIA REGIONAL OFFICE

PARTNERS FOR LAW IN DEVELOPMENT
ACKNOWLEDGMENTS

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The term "CEDAW" is commonly used to refer to both the Convention on the Elimination of all Forms of Discrimination Against Women and to the Committee on the Elimination of all Forms of Discrimination Against Women. However, in this publication the Convention on the Elimination of all Forms of Discrimination Against Women has been referred to as "CEDAW" or as "the Convention" whereas "the CEDAW Committee has been referred to as "the Committee."
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As the principal treaty on women's human rights, CEDAW is relevant to all work on women's rights, ranging from policy and law on the one hand to field-based programming on the other. It is not surprising then that those working on implementing the Convention should focus on disseminating the information and integrating its normative standards into actual work in the field relating to women's rights. This endeavour has been a struggle in view of the assumptions attached to CEDAW as a law and, more particularly, as an international treaty. Attached to these characteristics is the assumption of technical specialisation and a limited sphere of operation: that of the international arena or the municipal courts. The challenge consequently has been one of transforming CEDAW from a treaty law into a conceptual framework capable of application in different thematic sectors and levels of work.

Given the broad range of actors influencing work on women's rights, from activists working in the community to policy makers, bureaucrats, lawyers and judges, the challenge requires transforming CEDAW from a legal document into an understanding of gender equality whilst retaining its legal underpinnings. The combination of norms and concepts in this publication help define women's human rights and establish normative standards as a starting point in understanding CEDAW. Such a focus provides knowledge and resources on CEDAW that help ground its applications at any level.

This publication is an effort towards building such a resource. It principally aims at enhancing and deepening the understanding on CEDAW, its coverage and potential. It therefore covers conceptual, substantive and contextual issues, addressing complexities within each, to provide information as well as encourage dynamic inquiry and application of the Convention. Maintaining a focus necessarily limits
coverage of the Convention; as a result, this publication does not cover the review mechanisms, domestic application and Optional Protocol of CEDAW, although all these are relevant dimensions of the Convention. Instead, this publication serves as a foundational knowledge on CEDAW that connects with and leads to knowledge on other specialized dimensions in relation to its implementation and monitoring.

The focus on concepts and principles cuts across sectors and fields of application to make this publication relevant for a wide user range. Effort has been made to lucidly and coherently structure the content such that it serves as a reference and resource book. Importantly, the presentation helps build a holistic understanding of women’s human rights with references to the Articles that correspond and contribute to the perspective outlined rather than follow an Article-wise presentation of information.

The publication is divided into four principal parts with sub-sections. The first part contextualises CEDAW as a women’s human rights document, drawing attention to its relevance by contrasting it with the dominant human rights framework. The second part outlines the progression of women’s rights in international law and introduces CEDAW. The third examines three foundational principles embodied in CEDAW: equality, non-discrimination and state obligation - which together constitute the framework of women’s human rights. Finally, the fourth section looks at the substantive coverage of the Convention first through the thematic scope of its Articles, followed by a more complex look at the features that expand their substantive scope. This section moves beyond a simplistic reading of single Articles in isolation to develop an interactive and integrated reading of the provisions of the Convention - drawing attention to issues of conflict of rights and CEDAW’s capacity to address emerging and cross-cutting concerns. In doing so, this publication encourages and provides tools that expand the application and frontiers of CEDAW, to emphasise and affirm its dynamic nature and potential in every level of work on women’s rights.

Madhu Mehra

October 2004
Human rights are the rights that a person has simply because s/he is a human being. Human rights seek to ensure the dignity of every person. They provide a moral force for the guarantee and protection of human dignity through law, rather than leaving it to goodwill, circumstance or political preference. These rights and freedoms are typically described as inalienable, universal, interconnected and indivisible. Simply stated, all human beings are concurrently entitled to freedom, security and a decent standard of living.

The overarching human rights document of the 20th century is the Universal Declaration of Human Rights [UDHR], adopted by the United Nations in 1948. The UDHR declares a range of rights as inalienable and inviolable. These rights correspond with five categories: civil, political, economic, social and cultural, and constitute an obligation for members of the international community to fulfil. Examples of the rights enumerated in the Universal Declaration are the right to life, non-discrimination, housing and shelter, healthcare, work, education and a reasonable standard of living. The principles of the UDHR have been enacted into two primary treaties on human rights: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). Although the treaties divide the rights into separate categories, they comprise a composite body of human rights laws that are inalienable, universal, indivisible, interconnected and interdependent. These characteristics, discussed below, define human rights and also distinguish them from other categories of rights and entitlements.
Universal
The principle of universality refers to those rights that belong to and are to be enjoyed by all human beings without distinction of any kind, such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth or other status. In other words, human rights grant equal rights and dignity to all human beings to be enjoyed wherever they are and at all times. Human rights are recognised internationally and form the basic minimum code to be observed for all human beings everywhere and without regional differences. As a minimum, all governments should adhere to and implement these human rights standards that they have adopted under international law. Governments do not have the discretion to decide which rights they will observe and which they will not. As a result, a selective or discretionary approach to implementation of human rights is seen as a state’s failure to fulfil its obligations.

Inalienable
Rights are inalienable; in other words, every person has rights by virtue of being human. Rights cannot be bought, sold, inherited or negotiated, i.e. they cannot be granted or withdrawn and cannot be taken away. Human rights are inherent in every person regardless of their status in a given culture, law or political system. The existence of human rights depends on the existence of the human person rather than the context or system in which the person exists.

Indivisible, Interconnected and Interdependent
The principle of indivisibility and interdependence of human rights means that civil, political, economic, social and cultural rights are interrelated and are equal in importance. They form an indivisible whole and only if all these rights are guaranteed can an individual live decently and with dignity. This finds affirmation in both law and policy internationally. The International Covenant on Civil and Political Rights recognises that enjoyment of civil, political, economic, social and cultural rights are interconnected and interdependent.1 Subsequent affirmations are found in Declaration on the Right to Development, 1986 and The Vienna Declaration 1993.2

These intrinsic attributes of human rights have not been adopted by nor are they reflected in the approaches of the government or practitioners of human rights. The construction of human rights, like any other principle, has been shaped by the dominant interests and politics of the time. The cold-war politics of the mid-20th century separated the civil political rights from socio-economic cultural rights. They came to be seen as mutually exclusive, where one set could be prioritised over the other - to correspond to the political priorities of a nation. The extensive monitoring of civil political rights violations by human rights groups in that period was ironically influenced by the politics of its time even as it continued to reinforce the latter. Despite the existence of principal treaties outlining basic rights, human rights came to be limited to addressing civil and political violations by the state on
its citizens. The dominant construction of human rights therefore, truncated the fundamental principles of universality, inalienability and indivisibility.

**BARRIERS TO WOMEN’S RIGHTS WITHIN THE DOMINANT HUMAN RIGHTS FRAMEWORK**

The separation of civil political rights from the socio-economic and cultural emerged from cold-war politics, fragmenting the indivisible bundle of rights. The human rights discourse thereafter has been ridden with the following barriers and dilemmas that have marginalised their economic, social and cultural dimensions.

**Fragmentation of Human Rights**
The principles of indivisibility and interdependence imply that all rights operate concurrently. The categories of civil, cultural, political, economic and social broadly describe the cluster of rights they collectively encompass. They are not discrete categories as is evident in their interdependence and overlap in actual situations. For example, the case of women seeking to defy a dress code or seeking to publicly debate cultural rules affecting them is, in its broadest form, an assertion of their freedom of expression - a civil political right. However, the subject of assertion is social and cultural in nature. To represent it within just one category to the exclusion of the others would be an incomplete representation of the case that will not facilitate justice. In any given situation more than one category of rights intersect and operate simultaneously. Yet, these descriptive categories have come to be treated as discrete, autonomous and of varying importance.

**Prioritisation and Hierarchy of Rights**
The primacy of civil political rights in the western world has led to the marginalisation of social, economic and cultural rights - which continue to be treated as developmental problems rather than human rights issues. This has generated debates on prioritisation within human rights - with the moot issue not being whether prioritisation is permissible, but rather, which categories of rights are central to human dignity, and which are not. This prioritisation has impaired the recognition of women’s rights since often the attainment of right to life for women is conditional upon and mediated through the realm of socio-cultural and economic rights. For example, the lack of complete reproductive rights is known to be life threatening to women in many parts of the world; this is reflected in the high maternal mortality rate and deaths from unsafe abortion services. Despite the linkage between reproductive rights with the life and survival of women, they continue to be viewed as negotiable and subject to cultural practices or religion. In contrast, there is no such ambiguity attached to recognising violations of the right to life (violations in the civil political arena), such as through extra judicial killings.

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State Vs. Non State Actors
The centrality of civil political rights narrowed the focus of human rights inquiry to actions of the state and state agents only. The private sphere along with the actions of private actors went beyond the purview of human rights. It created an anomaly where human dignity was seen to need protection from the abuse of state power but did not seem to need protection from abuse of power by non-state institutions and actors who exercised considerable control and influence over the lives of human beings, particularly the disadvantaged. The scrutiny remained on direct action by the state and state actors but not on violations and abuse resulting from the failure of the state to regulate private conduct. The state failed to and resisted taking note of private actors contributing to systemic and structural discrimination against women in the private sphere. Domestic violence is a case in point.\(^5\) This constitutes one of the most universal and systemic forms of gender-based discrimination, but state accountability for it has only recently gained recognition.

Individual Rights Vs. Group Rights
Another fallout of the dominant construction of human rights has been to focus on individual rights and to neglect group rights. It has undermined efforts and abilities to recognise and address group rights on the same footing as individual rights.

Violation based
A consequence of the focus on civil political issues in the public arena has been to construct human rights solely in terms of violations and victims. This is linked to the notion that human rights impose only negative obligations\(^6\) that restrain the state from encroaching upon certain personal and fundamental freedoms of individuals which are protected as civil and political rights. Such emphasis has neglected the role of the state in creating conditions for promoting and respecting human rights - a positive obligation of the state. This entails resource inputs to build institutional and human capacity for the recognition, enjoyment and exercise of human rights - a positive obligation\(^7\) of the state rather than providing a belated cure for violations.

Restricting Rights to the Public Sphere
The focus on state action limited the understanding of human rights to violations...
in the public domain. The profile of the human rights subject in this context is of a person who is active in the public arena. The unhindered access of men to the public/political sphere, and the contrasting impediments to women’s participation in the public sphere, has resulted in the construction of human rights solely in terms of male experiences. As a result, gender-specific violations experienced by women have remained beyond the purview of human rights protection. The restrictions on civil liberties of women within the private sphere such as those on movement, speech, conscience and freedoms within the family is beyond the domain of traditional human rights inquiry. Women’s public status, participation, rights and resources continue to be mediated through, if not contingent upon, social and cultural value systems in the private sphere. In terms of human rights, the consequence of this notional segregation of life into public and private has restricted their scope and application in the following ways:

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<thead>
<tr>
<th>Categories of Violations</th>
<th>Violators</th>
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<tr>
<td>Public</td>
<td>Civil, political</td>
<td>State actors</td>
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<td></td>
<td>rights</td>
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<tr>
<td>Private</td>
<td>Economic, social</td>
<td>Non - state actors</td>
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<td>rights</td>
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Despite claims of the human rights discourse to universality and indivisibility of rights, the dominant human rights framework is based on a male model of rights violations. It fails to take into account the historical discrimination against women, and consequently reproduces and reinforces dominant interests while being blind to marginalised interests. When violations of women's rights failed to fit this framework, they were, and often continue to be, dismissed as 'social' or 'developmental' problems. As a result, the application of a public-centric male model of human rights has further inflicted rather than alleviated the discrimination against women.
Since the mere ‘extension’ of general human rights to women has been fraught with difficulties, there was a need to formulate a special law to specifically promote and protect women’s human rights. A special law helps to exemplify and contextualise general standards to a specific situation or group. The Convention on the Elimination of all Forms of Discrimination Against Women, CEDAW contextualises the neutral human rights standards to the situation of women. The significant difference that CEDAW has introduced is that it has not been limited to securing women’s human rights but is also expanding the understanding of human rights itself. In doing so, it underscores the need to consciously and consistently expand and extend rights to special contexts and identities. To that extent, the long-term task of integrating gender-specific forms of violations into the general human rights framework still remains.

CEDAW departs from the general human rights instruments that address ‘sex-based discrimination’ in neutral terms, by naming women as the group disadvantaged from sex-based discrimination. Instead it foregrounds the social and cultural underpinnings of such discrimination thereby extending the application of human rights to the private sphere for women, and more importantly, highlighting the connection of the public sphere with the private sphere. The inequality of women within the family, the workplace and in public life derives its ideological basis from the social construction of women’s capabilities and roles.

The journey from the neutral to the specific and from the public to the private was not easy, but a slow and strongly contested struggle. The calendar of legal flag-posts leading towards CEDAW is a story of small inroads and limited gains over three decades that finally led to a world consensus on comprehensive human rights for women.
JOURNEY TOWARDS EQUALITY

International instruments on women, adopted prior to CEDAW, reflect a clear progression in recognising the different aspects of life in which women face discrimination. Women’s inequality in the civil arena and violence in the public domain attracted international concern, albeit in a piecemeal manner, as is evident from the early treaties on women. The steps leading towards CEDAW are reflective of the journey taken in recognising gender discrimination comprehensively and in acknowledging it as a human rights issue. The women’s rights movement had an immense contribution in taking this journey forward.

Women’s rights developed gradually, through persistent long drawn out struggles led by women in different parts of the world. These struggles emerged in different contexts, engaging with the diverse economic, political and social realities of the times. Women were claiming spaces in matters relating to labour rights, equal wages, civil rights and freedom from colonialism - re-defining their roles and transforming societies. By the end of the Second World War women had made a significant headway in getting their voices heard. It was these efforts that resulted in the inclusion of “equal rights of men and women” in the Universal Declaration of Human Rights, 1948. Thereafter, the two main Human Rights Instruments signed in 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), prohibited discrimination on the basis of sex. However, there are some instruments which go beyond a statement of non-discrimination by enunciating the principles in the context of specific groups of women or specific circumstances in which women are more vulnerable to denial of rights. The Convention on the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949 was one of the first Conventions to address the vulnerability of women in special circumstances. Soon after the ILO recognised the prevalence of discrimination against women workers and in 1951 spearheaded an agreement between nations to ensure equal remuneration for men and women for work of equal value. At a later point in time, but prior to the adoption of CEDAW, the United Nations also recognised the vulnerability of women especially in situations of armed conflict and thus prohibited their inhuman treatment in such situations through the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 1974.

Moving away from the instruments targeting these special groups, the Convention on Political Rights of Women, 1952, guaranteed political participation to women. Until the 1952 Convention, efforts towards eliminating discrimination against women had remained limited to the public sphere. Subsequently, the Supplementary Convention on the Abolition of Slavery, 1956, sought to abolish practices and institutions whereby women were given or transferred like chattel (in marriage, on payment of a consideration, inheritance of woman by another person

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on the death of her husband, etc.) To the limited extent of addressing norms and practices akin to slavery within the private sphere, this Convention entered into the primary sphere of society - the family. It can also be seen as the earliest precursor (especially as far as inequality in the private sphere is concerned) to the series of Conventions leading towards the comprehensive agreement in the form of CEDAW. Close on heels to the Supplementary Convention on Abolition of Slavery, came the Convention on the Nationality of Married Women, 1957, which entered the private sphere of marriage to the extent that it affected the rights of women in the public sphere and sought to delink the two from each other. This instrument recognised that the nationality of women is not dependent on their marital status and is thus independent of the nationality of their husbands.

Thereafter, the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964, marked the first major step in addressing the issue of inequality within the private sphere as a matter of concern in itself, irrespective of its impact on other rights. It not only recognised the equal right of women to choose a spouse but also the right to enter into marriage with full and free consent. Persistent efforts by women’s groups together with all these multilateral agreements set the stage, which soon witnessed a comprehensive treaty with respect to women - CEDAW.

Keep on marching on....
Dateline of Developments at the UN

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<th>S. No</th>
<th>Year</th>
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<tr>
<td>1</td>
<td>1949</td>
<td>Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others</td>
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<tr>
<td>2</td>
<td>1951</td>
<td>ILO Convention 100 on Equal Remuneration</td>
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<td>3</td>
<td>1952</td>
<td>Convention on Political Rights of Women</td>
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<td>4</td>
<td>1956</td>
<td>Supplementary Convention on the Abolition of Slavery</td>
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<tr>
<td>5</td>
<td>1957</td>
<td>Convention on the Nationality of Married Women</td>
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<tr>
<td>6</td>
<td>1962</td>
<td>Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriage</td>
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<tr>
<td>7</td>
<td>1974</td>
<td>Declaration on the Protection of Women and Children in Emergency and Armed Conflict</td>
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<tr>
<td>8</td>
<td>1979</td>
<td>Adoption of Convention on Elimination of All Forms of Discrimination Against Women</td>
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<tr>
<td>9</td>
<td>1981</td>
<td>CEDAW comes into force9</td>
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<tr>
<td>10</td>
<td>2000</td>
<td>Optional Protocol to CEDAW10</td>
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CONSTITUENTS OF CEDAW

While the Convention principally refers to the text of the treaty, its content and substance is derived from much more. As with any law, CEDAW is a living and dynamic document that derives and develops its meaning from applications, engagements and contestations that deepen and expand the understanding of women’s human rights. The General Recommendations and Concluding Comments that form a part of the Convention, transform the static provisions of the treaty codified in 1979 into a vibrant law that absorbs and responds effectively to emerging challenges. The General Recommendations and Concluding Comments together with the Articles of the treaty comprise the Convention.

Text of the Convention
The Convention has a preamble followed by 30 Articles. The preamble states the
general premise of eliminating discrimination, Article 1 defines discrimination while Articles 2-4 cover the general obligations undertaken by State Parties. The Articles from 5-16 cover the substantive provisions - they specify the different areas that particularly affect women and the state obligations in that regard; some of the common areas of discrimination listed under the Articles are education, employment, health and political participation. This is an indicative list of areas and not an exhaustive coverage of areas of gender discrimination that CEDAW addresses. The later Articles, 17-30, detail the constitution and functioning of the Committee, the review process and the Committee’s reporting and communication procedures with other UN bodies.

**General Recommendations**
General Recommendations are based on the Committee’s examination of reports and information received from State Parties. They are interpretative comments on specific Articles of the Convention that the Committee considers to be of concern during the review of reports. General Recommendations is one means by which the Committee addresses contemporary and cross-cutting issues to explain and expand the scope of the Convention. Until now, there have been 25 Recommendations.

Among the Recommendations, the significant ones are: General Recommendation 19 on violence against women that places accountability on the State Parties to take "appropriate and effective measures to overcome all forms of gender-based violence, whether private or public acts;" General Recommendation 21 on women’s equality within marriage and family relations; General Recommendations 16 and 17 that address discrimination flowing from sexual division of labour in family enterprises and at home; and Recommendations 23 and 24 that aim at eliminating discrimination against women in political and public life and in accessing health services.

**Concluding Comments**
An important part of any law is its application to specific cases. This constitutes the body of knowledge that is derived from application of the law to real situations. Each application is a ‘precedence’ that contributes to the meaning of a particular provision of the law, thereby constructing the law. The Concluding Comments are recommendations issued by the Committee following the review of reports by State Parties. They comment on the progress made by the State Party in implementing its obligations under the treaty and make recommendations for improvement. These are applications of CEDAW to the context of different countries, equivalent of "legal precedence." They also reflect the assessment of state performance by the Committee.

Metaphorically speaking, the text is the tree trunk and the General Recommendations are the branches that refine and expand the meaning of the Convention in relation to emerging and cross-cutting issues. The Concluding Comments is the Convention at work in the context of different countries under

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12 Id., Article 11.
13 Id., Article 12.
14 Id., Article 7.
15 For the constitution and functioning of the Committee constituted under CEDAW see the glossary.
16 This is the position as of October 2004. The deliberations on the General Recommendation 26 pertaining to state obligations under Article 2 of CEDAW are currently underway.
review. The process of formulating both the General Recommendations and Concluding Comments is an interactive one that contributes to the construction of CEDAW. The treaty frames the standards against which a government’s actions and progress is measured. The country reviews throw up new issues, challenges and cross-cutting concerns. The Committee engages with these concerns at two levels - first, through directly addressing them in its country reviews as Concluding Comments issued to the State Party; and second, in relation to the issue rather than a country, through the General Recommendations. General Recommendations are addressed to all State Parties in terms of stipulating the requirements of reporting to the Committee. Therefore the Convention is not constructed by the text of the treaty alone, but also through country reviews and General Recommendations, that are products of the 'treaty-at-work.'
Women's human rights under CEDAW are constructed on three principles: equality, non-discrimination and a framework of state obligation. On these three principles rests the 'prism' of women’s human rights, providing the lens through which all sites of gender discrimination must be interrogated and corrected. More importantly, the framework of goals, duties, rights, arrangements and accountability can only be constructed from an understanding of these foundational concepts. While each concept is distinct and nuanced in itself, it nonetheless interacts and mutually reinforces the others to build the core of CEDAW.

**EQUALITY**

What does the aspiration to equality mean in a world where people are born with differences such as sex, physical abilities/disabilities, size and colour and are differently situated in terms of the culture they are born into, their economic status and the political systems they live under as well as the privilege or disadvantage that accrues from the above attributes. What then does equality seek to achieve - is it to make everyone conform to a single type of grouping? Or is it to enable the fulfillment of human capability to promote and expand the freedom to achieve and to exercise choices and rights? In other words, does equality determine the outcome or is it a process that provides the means and expands opportunities for individuals to choose and determine, thereby leaving the outcome to choice.\(^\text{17}\) The primary issue here is the meaning of the term "equality."

The traditional and most common approach to equality has been one of "treating..."
likes alike." Its principle aim is to avoid differential treatment of similarly situated persons. Differential treatment is seen as a problem in and of itself, primarily because it subjects members of a similar group to different treatment, rather than guarding against unfair advantage or disadvantage within the same group of persons. By logical extension, different treatment in law is justified for those who are not "alike" or for those differently situated. The main challenge in operationalising this approach to equality has been in the determination of whether a group is "alike" or "different." The identification of the differences within a group and not the origins, basis and results of these differences, is seen as central to the implementation of equality. Once 'difference' is acknowledged or recognised, then different treatments can follow. Conversely, if no difference is seen, then different treatment must not be allowed.

On the basis of this traditional understanding of equality two approaches are most commonly used for gender equality. The first ignores the gender difference between men and women and treats them 'alike'; the second recognises these differences and reinforces them by sanctioning different treatment. These two dominant practices in relation to women’s equality are called the 'formal' and the 'protectionist' models of equality respectively. There is a third approach which focuses on assumptions behind the differences and their outcomes for women that helps to identify and correct disadvantage. This is the 'corrective' approach or the substantive model of equality that has been adopted by CEDAW. This section outlines all three approaches, contrasting the differences between each to enhance the conceptual understanding of equality for women under CEDAW.  

The formal or the *sameness* approach treats women the same as men. It believes that any recognition of gender difference in law amounts to an admission of the negative stereotypes attached to women that reinforce their subordination to men. Its principle aim is to achieve "equal treatment" rather than equality of outcomes. Since women and men are regarded as being the same, a legislation treating women differently is seen to violate the principle of equality. Hence, the law must be gender neutral and rules be of "single standard." However, there are problems with this approach in that it does not take into consideration biological and gender differences between women and men and disadvantages to women in the long run.  

In its desire to treat men and women equally, it promotes "gender blindness" which reinforces
dominant standards based on male experiences and interests. The predominance of men in law-making along with the ideology of gender combine to contribute in developing and sustaining male standards. As a result, there is an additional burden on women to achieve male standards when in fact the social and economic reality of women is not similar to that of men. Disadvantaged by gender roles, responsibilities and resources, only very few and privileged women are likely to achieve male standards.

The difference or protectionist model of equality sees men and women as differently 'situated' and therefore not needing the same treatment. This model views biological difference and social assumptions as a standard for the roles and capacities attached to men and women. This difference for them justifies differential treatment of men and women, since only "likes are to be treated alike."

Indian Constitutional law is informed by this interpretation of equality. The problem in relation to this approach arises not in the recognition of difference, but in how it treats the difference.

This approach recognises women as a group different from men because of the social assumptions that perceive women as weak, subordinate and in need of protection. The different treatment this approach proposes is based on this assumption. Rather than focussing attention on the external, structural or systemic causes of the subordination of women and in trying to correct them, this approach endorses the negative gender values attached to women. It is called 'protectionist' because it accepts women's subordination as natural, inherent and unchangeable, rather than challenging the prevalent assumptions about women.

The third approach is the substantive or the corrective approach. This is not simply concerned with equal treatment in law, but rather, with equality in terms of the actual impact of the law. A substantive definition of equality takes into account and focuses on diversity, difference, disadvantage and discrimination. This approach recognises
difference between men and women - but instead of accepting this difference as given, it examines the assumptions behind the difference in trying to assess the disadvantage resulting from it and to develop a 'different treatment' or a response that dismantles the disadvantage. It seeks to eliminate existing discrimination faced by disadvantaged groups at the individual, institutional and systemic levels through corrective and positive measures. Its principle concern is to ensure that the law corrects the imbalance and impacts on the outcome by assuring equal opportunities, access and benefits for women. In doing so it seeks a paradigm shift from "equal treatment" to "equality of outcomes."

A 'protectionist' response is distinct from a 'corrective' one although both may result in special provisions for women. Protectionist would tend to exclude women from areas perceived as 'unsafe' or 'inappropriate' for them. In contrast, the substantive approach would facilitate equal opportunity by enhancing women’s capabilities to expand their choices in non-traditional pursuits and by putting in place special measures to overcome handicaps they might face. For example, in a case of women holding positions of wardens in a prison for violent criminals or sex offenders, a protectionist response would be to exclude them from these posts on the basis that they are unsafe for women. A formal approach would not recognise any special dangers for women and expect individual women to take the post at their own risk. A corrective approach would examine the risks - specific or general, and implement appropriate security measures for their protection and thereby ensure equal opportunity in employment. Its focus would be to address risks to women rather than to exclude women or ignore any specific risks to them. The protectionist approach actually perpetuates gender discrimination in law in the guise of protecting women rather than challenging the source of discrimination.

CEDAW adopts a substantive model of equality. The objective of equality according to CEDAW is to deliver outcomes that ensure equality of opportunity (law, policy, programmes), equality of access and equality of benefit. The Convention requires states to ensure equality of outcomes, thereby imposing an obligation upon the state to demonstrate results. In other words, the Convention is more concerned with equal access and equal benefits rather than equal treatment.

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When does gender difference and differential treatment amount to discrimination? Two of the approaches to equality (discussed above), advocate that different treatment is necessary for the achievement of equality. When does different treatment amount to discrimination and when does it become a measure towards equality? And more to the point, what is the meaning and scope of discrimination?

Discrimination is prohibited in more than one human rights treaty. The International Covenant on Civil and Political Rights (ICCPR) prohibits differentiation in the guarantee of rights to individuals on the basis of race, colour, sex or language. Differential allocation of rights on any of these grounds is discriminatory and not different treatment that facilitates equal recognition, enjoyment and exercise of the same rights for all. CEDAW provides a more comprehensive meaning of discrimination under Article 1 which reads as:

*For the purpose 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, of the same rights as men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*
While the above Article clearly defines discrimination, its depth and scope is better understood through the substantive provisions of the Convention. Article 4 makes positive or ‘corrective’ discrimination an important aspect for eliminating discrimination and General Recommendation 19 extends its scope to include gender-specific forms of violence. The sites of operation and duty holders are wide ranging, covering the public and private sphere as well as state and non-state actors respectively. In fact the definition under Article 1 can even be applied to the grounds of discrimination listed under the ICCPR. According to CEDAW, discrimination occurs when the following elements exist in conjunction with each other:

**Ideology**

**Gendered Assumptions about Women’s Roles and Capacities**

Discrimination under CEDAW is not limited to different treatment on the basis of sex alone but extends to discrimination resulting from the negative socio-cultural assumptions attached to being ‘female’ - or what is called the “ideology of gender.” The ideological construction about women’s roles and capacities impact their access to equal opportunities at the individual, institutional and systemic levels. For example, the employment of women in large numbers in certain jobs and their corresponding absence in other jobs, occurs as a result of the ideological assumptions that stereotype women as being fit only for certain jobs. The presence of a large number of women in nurturing, serving and subordinate jobs is explained by the preference and opportunities given to women at these jobs, and not because women do not apply to or are not competent for other jobs. This gendered assumption restricts equal opportunities for women at the workplace.

**Action**

**Different Treatment, Restriction or Exclusion**

Gendered assumptions about women have a negative bearing on their rights and freedoms and this constitutes discrimination which could manifest itself in any of the following ways:

- **Different treatment of women as compared to men:** Under Article 1 of CEDAW different treatment of men and women does not amount to discrimination per se, but different treatment that results in impairment or nullification of the rights and freedoms of women does. Therefore, affirmative action that seeks to correct contemporary or historic disadvantage to women in trying to achieve substantive equality would not fall within the scope of this definition.

- **Restriction in relation to the rights and freedoms of women:** A restriction is a curtailment or limitation imposed upon an otherwise recognised right. Restriction on hours of work, restriction on mobility, making employment or transfer in employment contingent upon a husband or guardian’s permission are examples of such discrimination.

- **Exclusion:** Exclusion is a denial of rights and freedoms to women on the basis of sex or gendered assumptions. Examples of exclusion would include not permitting
women to be ordained as priests of religious orders, the right to inherit ancestral property, to vote, or hold a particular post.

Policy changes may involve a shift from one form of discrimination to another, or even cause all three to operate simultaneously. For instance, after the 1979 revolution in Iran, women were prohibited from playing sports. Later, the political leaders allowed women to participate in a broad range of sports, with the exception of soccer, on the condition that they dress modestly and have their bodies fully covered. However, this condition was not applicable to women playing in private or sex-segregated facilities. This approach reflects a clear shift from the complete exclusion of women from all sporting activities to a situation where all the three forms of discrimination, i.e. exclusion, restriction and differential treatments, came into operation simultaneously.

Intention
DIRECT OR INDIRECT DISCRIMINATION
Direct discrimination is that which results from actions that are designed and intended to treat women differently. A law that bestows guardianship rights to fathers whilst assigning these rights to the mother only in the absence [literal or functional] of the father subordinates women in their capacity as mothers, to men in their capacity as fathers. CEDAW covers indirect discrimination that results from apparently neutral conditions or requirements that have a discriminatory effect on women even though unintended. Indirect discrimination is that which results from an action or inaction that assumes men and women are

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22 See Githa Hariharan v. Reserve Bank of India, AIR 1999 SC 1149.
equally placed in a situation where they are not, thereby imposing male standards on women - standards that disable or dis-entitle women from accessing the opportunity equally. For instance, a credit condition that requires immovable property or land as collateral in a context where women’s inheritance rights to land are limited by legal or cultural restrictions would deny or restrict their access to financial credit, although such an exclusion is not intended.

**Result**

**IMPAIRMENT OR NULLIFICATION OF THE RECOGNITION, ENJOYMENT OR EXERCISE OF RIGHTS OR FREEDOMS**

To constitute discrimination, the different treatment, exclusion or restriction must not be based only on a gendered assumption about women but must result in the impairment or nullification of the recognition, enjoyment or exercise of their human rights and fundamental freedoms. Impairment occurs when a qualification or conditionality is attached to a right, and results in a limited or diminished acknowledgement of that right or the ability to assert it. A nullification implies the complete abrogation of rights and freedoms for women, through a rejection of such rights or the lack of circumstances and mechanisms that would enable women to assert or claim them. An act is discriminatory only when it impacts women’s human rights and fundamental freedoms by:

- Impairing or nullifying their recognition
- Impairing or nullifying their enjoyment
- Impairing or nullifying their exercise
DISCRIMINATION IN EVERY ARENA AND BY ANY ACTOR
The arena of discrimination for the purposes of CEDAW is not limited to the public sphere of life (that which relates directly to the state and its agents). It covers actions in the "political, economic, social, cultural, civil or any other field." 23 It covers actions of private actors ranging from individuals to business corporations, the family and the community. It covers the written law, the socio-cultural assumptions about women and the norms they are subjected to.

Discrimination may be historic, current and cross-cutting. Historic discrimination occurs when a group suffers from the effect of past discrimination, or when discriminatory treatment further oppresses a group that has historically experienced institutional or systemic oppression. Clearly, CEDAW aims to target discrimination regardless of its location or origin. To ensure that the coverage is wide enough, Article 1 extends its application to "any other field." The expanse covered by CEDAW thus includes de jure 24 arenas of discrimination such as the formal or legal position of women. It also includes de facto 25 arena of discrimination covering informal practices that are not sanctioned by law but regulate women’s rights and freedoms.

24 See glossary.
25 Ibid.
STATE OBLIGATION

State obligation must not be read as just one element of the treaty but as a concept integral to and defining of the framework of equality and non-discrimination embodied in the Convention. Just as it lends to the construction of equality and non-discrimination for women, it draws from them to define its own scope of operation. The relationship of state obligation with equality and non-discrimination is as a result interactive, where all three combine to construct the approach to women’s human rights.

The principal Articles that outline the scope of state obligation are Articles 1 to 4. The definition of discrimination under Article 1 brings within the ambit of state obligation, discrimination in the political, social, economic, cultural, civil or any other field. Articles 2 (f) and 5 reinforce and develop state obligation in relation to discriminatory practices arising from social norms and customary laws - clearly expanding state accountability to a wider realm than what is generally accepted under municipal law. Articles 2 and 3 construct the framework of state obligation in relation to eliminating discrimination and ensuring substantive equality respectively. In doing so, Article 2 (c) places upon the state the responsibility to eliminate discrimination by "any person, organization or enterprise," bringing private actors, whether individuals or groups, within the ambit. Both Articles include corrective action, programmes, laws, policy and any other measure within the range of obligations to be fulfilled by the state. Finally, Article 4 advances state accountability not just to formal action but also to the results achieved on the ground, and recommends affirmative action to accelerate equality.

Each of the defining elements of state obligation with references to the Articles that correspond to them are discussed below:

Obligation of Means and Obligation of Results
CEDAW outlines two types of obligations - that of means and that of results. The first is to create the means, through state resources, that enable equality. Implicit in this obligation is women’s claim to allocation or redistribution of national resources that go into creating a framework of substantive equality. CEDAW recognises that gender differences limit and restrict women’s status, opportunities, access and resources, and believes that state policy and laws can address this imbalance through provisions of compensatory or corrective measures. State resources - normative, institutional, regulatory and most importantly, compensatory - must be dedicated to meeting their obligation to provide the means that deliver equal opportunity, access and benefit to women.

The second obligation under CEDAW, extends beyond merely providing the means to ensure equality of results (obligation of results). In the context of political participation, women may, by de jure or formal statement of law, have the right to
vote. However, the de facto situation may be vastly different if women are not able to exercise this right effectively, that is, based on informed and independent judgment. At the very least it would call into question the information regarding registration of women voters, candidates, party politics, and such other aspects that determine the exercise of the right to vote. Article 4 stresses this "obligation of results" by emphasising the need for affirmative action to achieve de facto or substantive equality. In other words, the Convention is more concerned with equal access and equal benefits than with equal treatment.

Respect, Fulfillment and Protection
Full realisation of human rights require states to take on three levels of responsibilities: those of respecting, fulfilling and protecting rights and freedoms. Each level is indivisibly linked to the next. Respect requires affirmation through enactment of normative standards recognising women’s human rights. This is the starting point for facilitating enjoyment of rights and freedoms, by creating environments, including institutional frameworks that enable fulfilment of the normative standards. Finally, enforceable mechanisms that can effectively protect those standards from threats of violation or redress violations. These three roles correspond to the full "recognition, enjoyment and exercise" of rights and freedoms by women as envisaged in Article 1 of the Convention.

The performance of state responsibility therefore goes beyond mere Constitutional affirmation, to undertaking a range of programmes, policies and initiatives that address public and private action in every field. Most importantly, it includes the establishment of institutional frameworks and mechanisms that effectively protect rights and freedoms from even partial infringement.

Affirmative Action
Affirmative action is the means by which disadvantage to women can and must be offset. International law and Indian law recognise such corrective or compensatory discrimination. It is premised on the idea that equality and non-discrimination do not mean identical treatment. Article 4 and the thematic provisions of CEDAW oblige State Parties to offset past and existing discrimination by undertaking special measures, both temporary and continuing in nature. For instance, a historic disadvantage in political participation can be offset by quota or reservation - a temporary device to enable equality of results/outcomes. Similarly, a policy that gives priority in offering jobs and promotions to women in situations where women are under-represented because of historical disadvantage or deep-rooted prejudices is a form of affirmative action. Article 4 covers special measures to overcome not just historic handicaps or current discrimination but also those situations that address women’s biological or physiological needs, such as maternity functions. Such special measures are not temporary but continuing in time. Special measures, whether temporary or continuing, are important to level an uneven playing field. The term ‘special measure’ does not correlate to women’s

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27 Although positive discrimination is commonly used to denote affirmative action, General Recommendation 25 states its preference for the term ‘corrective’ or ‘compensatory’ discrimination over ‘positive’ discrimination. Privilege must be distinguished from corrective or positive discrimination. Whereas privilege is based on social convention and tradition, positive discrimination is based on the rationale that historical barriers faced by certain groups on any enumerated ground of discrimination must be overcome and eliminated.

"needs," as this "sometimes casts women and other groups who are subject to discrimination as weak, vulnerable and in need of extra and 'special' measures." The term ‘special’ correlates not to weakness but to measures that are required to compensate discrimination. It therefore correlates to a specific goal to be fulfilled by the measure. The word 'temporary' does not indicate a predetermined timeframe, but rather the fact that discrimination is reversible and can be eliminated by the implementation of specific steps. It would, as a consequence, need to continue until inequality exists.

Unequal Playing Field
Due Diligence
The Convention holds the State Party accountable for violations committed by private actors in any sphere, public or private. State Parties are therefore required not only to demonstrate that they have exercised "due diligence" in meeting formal or de jure responsibilities but also that they have undertaken the "means" that enable, regulate and protect them. General Recommendation 19 of CEDAW stipulates that State Parties be duly diligent in regulating and protecting women against systemic forms of violence such as domestic violence and sexual harassment at the workplace. The extent of fulfillment of due diligence can be assessed through the existence of laws, policies and programmes, and the effectiveness of access to redress mechanisms.
Municipal Incorporation

Ratification of the Convention by a state conveys its acknowledgment and agreement on the goals of the treaty along with the commitment to implement it in good faith. The principle of sovereignty allows the State Party to assess the means, steps and time-frame required to fulfill these obligations. State Parties, as a result, can qualify or modify their obligations with respect to particular provisions of the treaty through the devise of reservations\(^\text{30}\) or declarations.\(^\text{31}\) To ensure responsible exercise of sovereign right, reservations are required to adhere to certain guidelines.\(^\text{32}\) Ratification entails accountability at two levels - first, at an international level - to the UN system through the country review procedure of the treaty body;\(^\text{33}\) second, it also carries the responsibility of domestic implementation of the treaty - through incorporation into domestic law, whether by legislation, policy, harmonious interpretation, or any other measure.\(^\text{34}\)

In situations where the domestic law is silent or even inconsistent, it has been successfully argued that since the recipient of a human rights treaty is the human being, ratification gives rise to a *legitimate expectation* of fulfillment of such rights in every person; and that such an expectation can be successfully asserted against a State Party in municipal courts.\(^\text{35}\) The rights flowing from ratification of international human rights law are therefore not dependant on the political system, federal or unitary structure of a government - but are an obligation undertaken by the state as a whole giving rise to legitimate expectation for fulfillment of human rights within its jurisdiction.

\(^{\text{30}}\) See glossary.


\(^{\text{32}}\) Convention on the Elimination of all Forms of Discrimination Against Women, 1979, Article 28 (2) and Vienna Law of Treaties, 1969, prescribes conditions for valid reservations. It stipulates that they be consistent with the object and purpose of the treaty, be specific and not vague, and be made in good faith by the State Party.

\(^{\text{33}}\) State Parties are required to submit periodic reports every four years to the Committee for reviewing progress in relation to its obligations under the treaty.


\(^{\text{35}}\) Although domestic incorporation requires legislative enactment, there have been judicial precedents that support enforcement of International standards on grounds of legitimate expectation. Minister of Immigration and Ethnic Affairs v. Teoh, (1994) 128 ALR 353 (High Court of Australia) and *Vishaka v. State of Rajasthan* (1997) 6 SCC 241 (Supreme Court of India).
The Convention applies its foundational framework to twelve sites of gender discrimination in Articles 5 to 16. These represent some dominant sites of discrimination and not a conclusive coverage of the Convention. A combined reading of the treaty provisions together with the General Recommendations and Concluding Comments establishes that the areas covered in the treaty are only illustrative and not exhaustive.

The text doesn’t and could not possibly cover all situations in which discrimination against women may occur. It principally sets out a framework of equality, non discrimination and state obligation - applying these to dominant areas of discrimination such as health, political participation, education, marriage and so on. This framework must necessarily be applied to varied situations and emerging issues to eliminate discrimination in "any field." There are a number of issues and situations which are not explicitly mentioned in the text of the treaty but which find mention in the General Recommendations, such as discrimination against women in national strategies for the prevention of AIDS, violence against women, and the special situation of women with disability. Similarly, diverse situations like the migration of women, internal displacement and internal conflict have been of concern, as is evident from the consideration of country reports and in the extraordinary interventions made by the Committee.
This chapter looks at the scope and coverage of the Convention. The first section highlights the main features of the substantive provisions of CEDAW in Articles 5 to 16, together with the General Recommendations that pertain to those Articles. The second section presents significant features that define CEDAW - features that are drawn from a joint reading of the provisions of the text. While the first section illustrates how the Convention has been contextualised in the substantive Articles of the treaty, the second part draws attention to features of CEDAW that are not neatly contained in the Articles but are drawn from a holistic reading of the text. They provide an essential guide to understanding not just the Convention, but how the Convention views gender discrimination.

**SUBSTANTIVE COVERAGE IN ARTICLES**

**Social Equality**

**ARTICLE 5**

The achievement of de facto equality for women in the social sphere requires elimination of those attitudes and practices that are based on women's subordination or gender stereotypes. Article 5 requires that an obligation be placed upon the state to modify discriminatory socio-cultural stereotypes, norms, practices and customs. This includes the responsibility of transforming the 'family' - the most primary and private site of inequality - to lead the changes in customary and social attitudes that stereotype and limit women's roles and capacities. Article 5 (b) extends this specifically with respect to redistribution of child-rearing responsibilities between men and women through family education based on the recognition of maternity as a social function. Such an understanding frees women from the customary role of child-rearing thereby challenging the sexual division of labour and allowing recognition and space for other choices.

**GEN.REC.19**

Traditional attitudes, prejudices and practices that justify gender-based violence such as domestic violence, forced marriage, dowry deaths, female circumcision etc. perpetuate the subordination of women, not just in the home and the community, but in every field. The impact of these values and practices goes far beyond their area of operation as they retard women’s knowledge of human rights and impair the larger recognition of these rights.\[Clause 11]\n
**GEN.REC.3**

It recommends the adoption of education and public information programmes to achieve social equality.
Suppression of Trafficking and Exploitation of Prostitution

ARTICLE 6
State obligations are different with respect to trafficking of women and prostitution. The Article requires states to suppress trafficking but does not address prostitution in the same terms. Its language targets neither prostitution nor women in prostitution but rather the exploitation of the prostitution of women.

GEN.REC.19
In order to design gender specific measures to counter situations that enhance women’s vulnerabilities there is a need to recognise that contexts like poverty, unemployment, wars etc. increase risks to women. State obligation for protective and preventive measures should extend and apply to all situations that make women as a group more vulnerable to sexual exploitation. The emergence of new forms of sexual exploitation like sex tourism also needs to be recognised. [Clauses 13,14,15,16,24(g)]

Political and Public Life

ARTICLE 7
This Article aims at non discrimination in all aspects of political and public life by ensuring the following rights:
> To vote and contest in elections to public bodies, and to hold public office;
> To make decisions and implement them; and
> To participate in NGOs and associations (concerned with public and political life).

GEN.REC.23
It must be recognised that social-economic barriers, cultural stereotypes and limited access to information confine women to the private sphere and exclude them from political life and high-ranking positions in public offices. States are obliged to identify and overcome barriers to women’s participation not just by enacting legislation and ensuring that women understand their right to vote and how to exercise it but also by addressing social and cultural attitudes and encouraging women in public life through the following measures:
> Changing discriminatory attitudes;
> Appointing women to senior decision making positions and achieving a balance between men and women in elected positions;
> Seeking the advice of women on various issues;
> Encouraging political parties, trade unions, NGOs etc to embrace the principle of equal opportunity; and
> Introducing temporary special measures to ensure enjoyment of the right to participate in public life.
[Clauses 15,18,22,26,28,29,32,34,42,43,45,47]
International Representation and Participation
ARTICLE 8
The Article aims to ensure equal opportunity for women in representing the state at the international level as well as in working for international organisations. It extends participation and representation of women from the local and national arenas to the international arena.

GEN.REC.8 & GEN.REC.23
Immediate implementation and direct use of 'temporary special measures' is particularly recommended for increasing women’s representation. [Clause 43]

GEN.REC.23
Under-representation or concentration of women working at junior levels in diplomatic and foreign services, international or regional organisations and conferences, emanates primarily from assumptions of gender roles which get reflected in the absence of objective criteria and processes for appointment. Adequate representation of women is necessary for the integration of gender perspective in international affairs including international negotiations, humanitarian assistance etc. For this purpose certain temporary special measures have been specifically designed to ensure better gender balance in all these spheres. [Clauses 35,36,37,38,39,40,49.]

Nationality
ARTICLE 9
The issue of nationality is of great concern especially to women who marry men of other nationalities. CEDAW recognises that the nationality of women must be independent of the nationality of their husbands. States must grant women equality in terms of acquiring, changing or retaining their nationality and not make it contingent on that of their respective husbands or fathers. It also mandates equal rights to women with regard to the transmission of nationality to their children.

GEN.REC.21
The nationality of women is critical to full participation in society and access to public benefits like health services, education etc. It should therefore be capable of change by adult women and not determined by or dependent on the nationality of their respective husbands or fathers.[Clause 6]

Education
ARTICLE 10
The Article aims to achieve equality and eliminate discrimination against women in the field of education in the following ways:
> By creating same conditions for career and vocational guidance regarding both access to and achievement at all levels of education;
> By having equal access to studies/ education at different levels, the same standard of education, educational infrastructure, programmes of continuing education and specific educational information with respect to health and family planning;
> By eliminating gender stereotypes in education and reducing the female student drop-out rate; and
> By creating same opportunities for scholarships, study grants and to participate in sports and physical education.

**GEN.REC.19**
It recommends that education and public information be geared towards elimination of prejudices against women. [Clause 24(f)]

### Employment

**ARTICLE 11**
Protective legislation is particularly important in ensuring equality in employment, especially in relation to:
> Right to work, free choice of profession and same employment opportunities;
> Right to equal remuneration, benefits and conditions of service;
> Right to social security, protection of health and safe working conditions including accommodating the reproductive function of women by introducing maternity leave with pay and other benefits; and
> Prevention of discrimination against women on the grounds of marital status or pregnancy whilst simultaneously creating a model of substantive equality that strengthens maternity related support services at the workplace.

**GEN.REC.13**
This recommends ratification of ILO Convention 100 for implementation of the principle of equal remuneration for work of equal value.

**GEN.REC.16**
The state is obliged to take steps to guarantee social security and social benefits to women working in enterprises owned by a family member.

**GEN.REC.19**
This defines sexual harassment as a form of gender discrimination at the workplace and recognises that it impairs equality for women in employment. It specifically recommends training, employment opportunities and monitoring the conditions of domestic workers to protect them from violence. [Clauses 17,18,24 (p)]
Health Care

**ARTICLE 12**

It seeks to eliminate discrimination in the access to healthcare for women and necessitates gender-specific healthcare services such as those related to pregnancy and post-natal care. Some of the contexts highlighted in the General Recommendations for their impact on women's health are mentioned below.

**GEN.REC.14**

It recommends several measures to eradicate female circumcision, such as monitoring and collection of data; dissemination of the data to change attitudes; supporting efforts of women's organisations, public education; appropriate health policies and cooperation with the UN system.

**GEN.REC.15**

In view of the risk and effect of AIDS especially among women and children it recommends that AIDS-combat programmes that incorporate the rights and needs of women especially in relation to their reproductive role and subordinate position be adopted. The participation of women in healthcare and HIV infection prevention programmes is to be encouraged.

**GEN.REC.19**

It recognises that violence against women in general puts their health and life at risk. Similarly, certain traditional practices harmful to the health of women and children, for example, female circumcision, dietary restrictions on pregnant women and preference of the male child, must be addressed. It also seeks to prevent coercion of women with respect to fertility and reproduction, and recommends fertility control to help avoid unsafe medical procedures. [Clauses 19, 20, 24(m)]

**GEN.REC.24**

Unequal power relations based on gender and harmful traditional practices like female genital mutilation, polygamy and marital rape make women vulnerable to AIDS. Therefore, states are called upon to ensure women's right to sexual health information, education and services (including illegal women residents and those who have been trafficked with due regard to confidentiality).

It recognises specific healthcare needs of women in difficult situations such as those in armed conflict, prostitution or trafficking, and women with vulnerabilities like older women and women with disabilities. It also calls upon the states to ensure healthcare services that address the needs of these special groups of women. [Clauses 16, 18, 24, 25]
Economic and Social Life

ARTICLE 13
Equality in the economic and social spheres within and outside the family is to be ensured. Thus states are obliged to eliminate discrimination in social and economic life perpetrated not only by the government but also by private actors like financial institutions and the family. As a result, equality in economic and social life includes:

- Family benefits;
- Financial credit; and
- Participation in recreational and cultural activities.

Rural Women

ARTICLE 14
Contextual specificities determine women’s status and extent of vulnerability. Disadvantages and privileges are attached to contexts in much the same way as gender ideology privileges men over women. Contexts and identities as a result, combine to produce inequalities amongst women. Recognising the significance of contexts, Article 14 draws attention to rural women whose economic contribution, survival needs and disadvantages require distinct recognition for designing an appropriate framework to attain substantive equality with respect to them. States should be obliged to act upon the following areas requiring attention for rural women:

- Participation in community activities, in planning and implementing development programmes so as to integrate their needs in all aspects of these programmes and
- Access to healthcare facilities, education, training, adequate living conditions, economic opportunities including support for agri-business and benefits of social security.\[Clauses 2\]

GEN.REC.19
Rural women are at a special risk of gender-based violence because of traditional attitudes and forced migration to towns for employment. Therefore access to services for victims of violence and special services to rural women and isolated communities is urged. \[Clauses 21,24 (o)\]

Equality Before Law

ARTICLE 15
This Article necessitates equality before the law in civil, procedural and contractual matters and prohibits restriction on legal capacity (for example, equal rights to movement and freedom to choose residence and domicile) and in accessing the law. Similarly, any private or contractual
restriction on legal capability and status of women must be treated as null and void.

**GEN.REC.21**

Restrictions on women’s capacity to contract, to access financial credit, lesser evidentiary value given to statements of women witnesses, their choice of domicile all amount to denial of equality. Limiting, nullifying or making capacity contingent or subordinate to men even through a private agreement amount to a restriction. [Clauses 7,8,9,10]

**Marriage and Family Law**

**ARTICLE 16**

It addresses discrimination and inequality in the primary unit of the private sphere - the family. Regardless of the origin of inequality (cultural or social norms, traditional or modern law), equality in marriage with respect to the rights to enter into marriage, during its subsistence and upon its dissolution is to be ensured.

- **Entry related rights:** Minimum age of marriage, the choice of if, when and whom to marry, requirement of free and full consent of women, registration of marriage, to render betrothal or marriage of children as invalid and illegal. Marriage should be permitted only among majors as early marriage affects women’s well-being and limits their development. The same minimum age for marriage should be prescribed for both men and women and it must be mandatory for all marriages to be registered.

- **Rights during and upon dissolution of marriage, pertain to the following:**
  - Reproductive rights and choice in number and spacing of children, equal rights and responsibilities in respect of marital status, equal rights in adoption, guardianship and similar matters.
  - Personal freedom - equal rights to choose a family name, profession, occupation, to own and dispose off property.

General Recommendations draw attention to cross-cutting issues such as domestic violence, reproductive rights and the impact of these on women’s participation in public life.

**GEN.REC.19**

Compulsory sterilisation and abortion infringes on the right of women to decide on the number and spacing of children. [Clause 22]

Violence against women within family impairs their right to participate in family and public life. [Clause 23]
To overcome family violence through civil and criminal remedies, support services like establishment of shelters and rehabilitation crisis centres is recommended. [Clause 24 (r)]

GEN.REC.21

Laws and customs that grant men a greater share of property (upon inheritance, dissolution of marriage or de-facto relationship) are discriminatory. States must recognise and facilitate the endowment of equal right to own, dispose off and earn profit from property owned by parties during marriage or de-facto relationship. On division of such property, the financial and non-financial contributions should be accorded the same weight. [Clauses 28,30,31,32,33]

Rights of women should be secured irrespective of their marital status. [Clause 29]

DEFINING FEATURES OF CEDAW

Not all features of CEDAW are neatly contained in single Articles. Many of its features defining the nature and complexity of gender discrimination emerge from a joint reading of the Articles and the General Recommendations. Substantive equality, for instance, is not defined under any single provision of CEDAW but is pieced together from a close reading of the substantive content of the Convention, with 'temporary special measures' (Article 4) providing the crucial underpinnings to the "corrective approach" to equality. Principles drawn from the interaction between the different provisions of CEDAW help construct the discourse on women's human rights, and therefore are essential to the discussion under this section.

Interconnectedness of Ideology, Structure and Individual Action

CEDAW recognises that individuals operate within a framework and that their actions are influenced by prevalent ideology. Article 5 of the Convention explicitly provides for "modification of social and cultural patterns . . . based on the idea of the inferiority and superiority of either of the sexes or on the stereotyped roles of men and women." This recognition of the role of ideology and social values in conditioning individual action is an outstanding contribution of CEDAW, and is unique to this treaty over the other human rights instruments. By recognising the need to modify ideologies and structures that influence and perpetuate the subordination of women, CEDAW acknowledges that these, together with individual action, constitute an indivisible unit. Consequently all three constituents of this unit need to be addressed simultaneously in order to eliminate subordination of women. For instance, women along with men have "the same right to decide freely and responsibly on the number and spacing of their children."41 However, the experience of women from "countries as diverse as Mexico, South Africa and Bangladesh have found that partner approval is the
single greatest predictor of women’s contraceptive use.” As reflected in this example, patriarchal ideology and structures have conditioned women into subordination and privileged men.

**Breaking Distinction between the Public and Private Sphere**

Public and private spheres are artificially constructed categories that segregate certain facets of life like family, home, social relations, community etc from political and economic activities undertaken outside the four walls of homes. The demarcation is constructed to justify the "attribution of lesser economic, social or political value to the activities of women within what is defined as the private sphere" because of the "gendered nature of this division." The separation also helps treat the two arenas as discrete to side-step the application of similar values or comparison between the two. Hence, women’s work at home which enables their husbands to go out to earn and create assets is not attributed any economic value only on account of being carried on within the four walls of the house, i.e. within the private sphere. On the other hand, the work of men outside their homes is attributed greater economic value since it contributes to the growth of GDP of the country.

In its construction of discrimination and treatment of issues, the Convention simultaneously addresses the public and the private arenas of discrimination, emphasising the interconnectedness between the two. In doing so it views discrimination within the family, the community, the workplace and the state laws and policies, as interconnected and as subjects of state intervention. For example, the notion of women as skilled in housekeeping and feminine jobs finds reflection in the stereotyping of jobs available for women in the workplace, and the unequal wages attached to such jobs, as compared to 'masculine' jobs of equal worth. Similarly, discrimination against women within the family in relation to their access to and control over family resources often finds resonance in family laws relating to inheritance and succession. Alongside breaking the public-private dichotomy, the Convention dismantles similar divisions between the civil political and the socio-economic and cultural rights, to recover human rights for women.

**Linkage between Non-discrimination and Equality**

Non-discrimination is integral to the concept of equality. The principle of non-discrimination is the preventive dimension that addresses wrongs while the need for equality provides aspiration and design for structural reform or arrangements that will fulfill human rights. Equality carries the promise of resources, obligations and arrangements that deliver equal access, opportunities and benefits to women and marginalised groups without discrimination. These outcomes are possible only if the model of equality is one that offsets existing, cross-cutting and historical disadvantage through special measures and by prohibiting actions and arrangements that perpetuate disadvantage. These two operate simultaneously to reinforce each other and delineate distinct obligations that fulfill one goal.
Gender based violence
Although no specific Article of the Convention is dedicated to violence against women, General Recommendation 19 views it as a form of gender discrimination that cuts across many of the substantive provisions of the Convention. It defines gender based violence as that which is "directed against a woman because she is a woman" or that which "affects women disproportionately."\(^{46}\) Such violence constitutes a form of gender discrimination, because it is different from generic forms of violence - in its intent, nature and consequences. The intention behind such violence, its execution and description, as well as its short and long term impact on women, is the basis for its differential classification, mandating special understanding of the problem. This imposes upon the State Parties an obligation to recognise and be informed about gender based violence and to design appropriate measures to address it. Gender neutral responses to such violence only perpetuate and reinforce discrimination, inflicting further injury instead of redress through the justice delivery system. For instance, a workplace that does not recognise sexual harassment as misconduct invisibilises the hostility, oppression and harm women experience and reasons that drive them out of the workplace. This invisibility not only bestows impunity for sexual harassment, increasing women’s vulnerability to harm but also forces women to opt out, thereby undermining equal opportunity to work and equal protection from harm at the workplace.

Intersectionality and Compounded Discrimination
References in the Convention together with the General Recommendations and Concluding Comments of specific groups of women like rural women, Dalit women,\(^{47}\) HIV positive women, women in situations of conflict, trafficked women, women in prostitution etc. clearly indicate that the Convention does not view women as a monistic entity. It recognises that gender intersects with other identities of women or with their context to compound or distinguish one experience of discrimination from another. Women’s experiences of discrimination therefore vary with the privilege or disadvantage attached to their other identities and their circumstances. For instance the experience of a woman from an ethnic minority in a multicultural urban context would differ from that of a similar woman in a caste-segregated rural context. Similarly, the situation of a single working mother would differ from an upper-caste woman with wealth. The Convention draws attention to the intersectional discrimination to guide responses that correspond to the distinct type of disadvantage rather than assume one solution for all women. This approach is an extension of the substantive equality model that promotes responses designed to achieve results in every situation of discrimination rather than ensure same treatment for all women.

Culture and Women’s Rights
CEDAW seeks to modify legal norms, social patterns and cultural practices that are discriminatory to women. Cultural and religious freedom is guaranteed under the

\(^{46}\) General Recommendation 19, Para 6.

\(^{47}\) Concluding Comment to India’s initial review (January 2000), at paras 75 and 76, the Committee has urged the Government of India to enforce laws preventing discrimination against dalit women and expressed concern about exploitation of girls in prostitution.
principal human rights treaties, ICCPR and ICESCR. CEDAW goes a step further in providing a more complex view of culture to resolve areas of conflicting rights in relation to culture and women’s equality, particularly through, though not limited to, Article 5. The contestation between women’s equality and culture is evident from the large number of reservations to CEDAW by State Parties cutting across political, regional and cultural diversities. Egypt has placed a reservation on Article 9 paragraph 2, concerning women’s equality with respect to nationality of their children on the ground that, "... it is customary for a woman to agree upon marrying an alien that her children shall be of the father’s nationality." India’s declaration with respect to Article 16 (2) concerning registration of marriages mentions that it would be impractical to implement it in a vast country like India, with its variety of customs, religions and levels of literacy." Kuwait placed a reservation on Article 16(f) on the ground that "it conflicts with the provisions of the Islamic Sharia, Islam being the official religion of the state." Niger has placed a blanket reservation on Article 5 paragraph (a) "with regard to the modification of social and cultural patterns of conduct of men and women."

In viewing complexities and contradictions in culture, CEDAW clearly recognises that culture is not static or monolith. It is an area of competing interests and contestations, much like modern law, some which are gender-just, others that are regressive and discriminatory. Further, that culture, like modern law, is one source of norm-setting and regulating conduct. What CEDAW strikes down, in relation to both cultural and modern law is only that which is discriminatory to women. In doing so, it submits both norms and practices to standards of equality and non-discrimination against women. CEDAW’s approach to resolving such conflict has not always been adopted in judicial contestations on the subject. Contrasting judicial approaches from the Supreme Courts of India and Vanuatu are examples of both culture over women and the CEDAW approach, respectively. In Madhu Kishwar v. State of Bihar the Supreme Court of India refused to strike down a customary law of succession that was discriminatory against tribal women, despite equality being a fundamental right under the national Constitution. However, in a similar case, John Noel v. Obed Toto, the Supreme Court of Vanuatu established the principle that the equality provisions of the Constitution take precedence over customary law, if the two systems are in conflict. This was done despite a Constitutional provision that required application of customary laws with respect to disputes regarding ownership and use of land.

Indicative and not Conclusive
Perhaps the most significant feature of CEDAW is that it puts the goal of women’s equality above itself. Article 23 of the Convention expressly privileges any law, municipal or international, over itself, if such a law is "more conducive to the achievement of equality" than CEDAW. That its substantive coverage of issues is only illustrative and not comprehensive is clear, but that even in relation to its existing areas, the Convention clearly prioritises other existing laws that may be
more progressive is noteworthy. The Convention is grounded in real concern for women’s equality and the reality of its own history - where consensus and progress was achieved incrementally. This is recognition that the march for women’s equality has not culminated with CEDAW but rather, that the Convention has set the tone and accelerated the pace of change.

While Article 23 leaves the sites of application of equality open-ended, it is not uncertain about the foundational framework of CEDAW. In this regard, the goal of eliminating discrimination through corrective equality approaches is not brought into question, although standards and mechanisms that better advance these goals are welcomed through this Article.

CONCLUSION

Signing of CEDAW in 1979 and its coming into force in 1981 represent only a notional recognition of women’s equality. However, it took another decade for acceptance and consequent declaration by the states to affirm women’s rights as human rights. It was only in 1993 that women’s human rights were accepted as “inalienable, integral and indivisible part of universal human rights” that “should form an integral part of the United Nations human rights activities.”

Each stage of the journey has been a hard won victory for women: be it the adoption of CEDAW at the global level or the challenges of domestic implementation such as ratification by State Parties, engaging with the state to implement its obligations at home or monitoring state performance at home to ensure effective country review by the Committee.

In addition to the continuing challenges of implementation of CEDAW, the goal of eliminating gender discrimination requires extending the Convention to emerging contexts and challenges of our times - to ensure that it dynamically responds to the realities of women’s lives. CEDAW holds the potential to address new frontiers of gender discrimination. Future activism must therefore aspire to combine concerns of implementation of existing standards to situations covered by CEDAW along with extending horizons of non-discrimination to contemporary contexts, concerns and issues. Incorporation in relation to sexuality rights, internal conflicts, in relation to internally displaced persons, are some concerns awaiting explicit attention. In that sense, CEDAW signals not only a culmination of the march towards women’s equality but also the beginning of a process of applying the equality framework, inclusion and solidarity building across intersecting concerns that disadvantage women.

Accession
Accession has the same legal effect as ratification. It is the act whereby a state accepts the offer or the opportunity to become party to a treaty, after the treaty has entered into force. Both ratification and accession obligate governments to pursue a policy towards fulfilling the objectives of the treaty in the terms laid out in the treaty.

CEDAW and the Committee
CEDAW, in this booklet, has been used as referring to just the Convention and the treaty body constituted under the Convention has been referred to as the Committee.

Declaration
A declaration outlines the interpretation given to a particular Article by the State that makes it, and therefore what that state considers itself bound to. Unlike reservations, declarations merely clarify the State's position and do not purport to exclude or modify the legal effect of a treaty.

De Jure and De Facto
The obligation of results finds resonance in Article 4 that foregrounds the linkage between ‘compensatory’ measures or affirmative action with ‘de facto’ equality. De jure refers to what is contained in written laws whereas de facto refers to what happens in fact, in reality. The results or the reality is for CEDAW the real measure of state performance.
Municipal/ Domestic Law:
It is domestic law that is applicable within a nation. Although nationally it is referred to as National law in International law parlance it is commonly referred to as Municipal law.

Negative Obligations
Negative obligations are those where the state does not have the right to encroach on the sphere of private liberty. In other words, these rights serve as a protection for individuals against arbitrary exercise of state power. Right to freedom of conscience or expression is an example of negative obligation.

Optional Protocol
Optional Protocol is a supplementary treaty that exists as an adjunct of a "mother" treaty. It is open to ratification by States that have already ratified the mother treaty. The Optional Protocol to CEDAW, if ratified by a State Party, provides two additional procedures for monitoring state obligation under the Convention by the Committee – that of examining individual complaints and of instituting inquiries into grave and systematic violations. Essentially, the Optional Protocol expands the powers of the Committee beyond the periodic country review to investigate and examine communications and reports of violations. In doing so, the Optional Protocol provides individuals direct access to the Committee.

Positive Obligations
Positive obligations are those where the state is under an obligation to guarantee certain basic needs. They are therefore rights concerned with the material, social and cultural welfare of the person which require resource investment. Right to an adequate standard of living for the health and well-being of the person and his/her family is an example of positive obligation.

Ratification
Ratification constitutes the act by which a state conveys its written consent to be bound to a treaty. Only after ratification does a state become a party to the treaty, commonly referred to as a 'State Party'. A minimum number of ratifications is important for a treaty to 'come into force'. CEDAW required a minimum of 20 states to ratify it before it came into force [Article 27].

Reservation
A reservation is a formal declaration that the state does not accept as binding upon it a certain part of the treaty; the reservation can be entered provided it is not incompatible with the object and purpose of the Convention.

Signature/ Signing
Signing obligates governments to do nothing that will contravene the principles set forth in the specific Articles of the Convention but does not expressly obligate
them to implement the Convention. It gives states an opportunity to examine the extent of similarity or consistency of the domestic/municipal laws with the treaty, and to assess the quantum of work that will follow from ratification.

State Parties
State Parties are Governments that have ratified the Convention.

The Committee
The Committee is constituted under Article 17 of CEDAW for the purpose of monitoring compliance with the present Convention. It consists of 23 experts who are nominated and elected by State Parties. They serve in their personal capacity and not as Government representatives. They come from various disciplinary backgrounds, but are all persons of "high moral standing and competence in the field covered by the Convention." In the election of these experts, consideration is given to equitable geographical distribution and to the representation of different cultures and legal systems. Experts serve for four years and are eligible for re-election. Every two years half the Committee is changed.

Treaty
Treaty, in a generic sense, is a legal instrument that is concluded by states or international organisations that hold the power to make treaties. It is the most binding form of International law. Being part of International law, states and not individuals are party to it. A treaty is also referred to as a Convention or Covenant.
CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The States Parties to the present Convention
Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial
discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

**PART I**

**ARTICLE I**

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.

ARTICLE 2
States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:
(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
(g) To repeal all national penal provisions which constitute discrimination against women.

ARTICLE 3
States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

ARTICLE 4
1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not
be considered discriminatory.

ARTICLE 5
States Parties shall take all appropriate measures:
(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and custom and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

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

PART II

ARTICLE 7
States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:
(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

ARTICLE 8
States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

ARTICLE 9
1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force
upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

ARTICLE 10
States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in preschool, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

ARTICLE 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion,
job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

ARTICLE 12
1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

ARTICLE 13
States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of
equality of men and women, the same rights, in particular:
(a) The right to family benefits;
(b) The right to bank loans, mortgages and other forms of financial credit;
(c) The right to participate in recreational activities, sports and all aspects of cultural life.

ARTICLE 14
1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
(a) To participate in the elaboration and implementation of development planning at all levels;
(b) To have access to adequate health care facilities, including information, counselling and services in family planning;
(c) To benefit directly from social security programmes;
(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
(f) To participate in all community activities;
(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV
ARTICLE 15
1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in
ARTICLE 16
1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
(a) The same right to enter into marriage;
(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
(c) The same rights and responsibilities during marriage and at its dissolution;
(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

ARTICLE 17
1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and,
after ratification of or accession to the Convention by the thirty-fifth State
Party, of twenty-three experts of high moral standing and competence in the
field covered by the Convention. The experts shall be elected by States Parties
from among their nationals and shall serve in their personal capacity,
consideration being given to equitable geographical distribution and to the
representation of the different forms of civilization as well as the principal legal
systems.

2. The members of the Committee shall be elected by secret ballot from a list of
persons nominated by States Parties. Each State Party may nominate one person
from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force
of the present Convention. At least three months before the date of each
election the Secretary-General of the United Nations shall address a letter to the
States Parties inviting them to submit their nominations within two months.
The Secretary-General shall prepare a list in alphabetical order of all persons
thus nominated, indicating the States Parties which have nominated them, and
shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States
Parties convened by the Secretary-General at United Nations Headquarters. At
that meeting, for which two thirds of the States Parties shall constitute a
quorum, the persons elected to the Committee shall be those nominees who
obtain the largest number of votes and an absolute majority of the votes of the
representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years.
However, the terms of nine of the members elected at the first election shall
expire at the end of two years; immediately after the first election the names of
these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in
accordance with the provisions of paragraphs 2, 3 and 4 of this article, following
the thirty-fifth ratification or accession. The terms of two of the additional
members elected on this occasion shall expire at the end of two years, the names
of these two members having been chosen by lot by the Chairman of the
Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to
function as a member of the Committee shall appoint another expert from
among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General
Assembly, receive emoluments from United Nations resources on such terms
and conditions as the Assembly may decide, having regard to the importance of
the Committee’s responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff
and facilities for the effective performance of the functions of the Committee
under the present Convention.
ARTICLE 18
1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:
(a) Within one year after the entry into force for the State concerned;
(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

ARTICLE 19
1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.

ARTICLE 20
1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

ARTICLE 21
1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

ARTICLE 22
The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.
PART VI

ARTICLE 23
Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:
(a) In the legislation of a State Party; or
(b) In any other international convention, treaty or agreement in force for that State.

ARTICLE 24
States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

ARTICLE 25
1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE 26
1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

ARTICLE 27
1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

ARTICLE 28
1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

ARTICLE 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

ARTICLE 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.