THE IMPACT OF THE CEDAW CONVENTION: PATHS TO EQUALITY

Byrnes, Andrew, and Marsha Freeman

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INTRODUCTION

The Convention on the Elimination of All Forms of Discrimination against Women (the “CEDAW Convention”, or “the Convention”) was adopted by the United Nations over thirty years ago. Described by some as an “international bill of rights for women”, the Convention has been an important tool used by national and international advocates for the equality of women, while the Committee established under the Convention to monitor its implementation has played a significant role in encouraging the implementation of the treaty.

* Australian Human Rights Centre, Faculty of Law, University of New South Wales, Sydney, Australia.
** Director, International Women's Rights Action Watch and Senior Fellow, University of Minnesota Human Rights Center.
# We would like to thank Eleanor Bath and Taylor Pierce for their research assistance in the preparation of this report.
This paper provides an overview of the Convention’s impact resulting from its use by Governments and civil society. There is considerable evidence that the Convention has contributed to increasing women’s enjoyment of the right to equality in many countries. It is clear, however, that this impact is variable, and that an enormous amount remains to be done before women enjoy full equality with men in all States.

The first section of the paper provides an overview of the challenges involved in identifying and evaluating the impact of human rights treaties, and sets out the indicators used to evaluate the Convention’s impact on domestic law and practice in the States and areas chosen for this analysis. The second section describes the status of Convention and Optional Protocol ratification, patterns of reservations to the Convention and of their withdrawal, and of States parties’ discharge of their reporting obligations under the treaty. The third section of the paper is the core examination of the Convention’s impact in specific areas of law and practice in selected States.

I. MEASURING THE IMPACT OF HUMAN RIGHTS TREATIES

Human rights treaty impact assessment has become a significant subfield in the social sciences as the number of treaties and the number of States parties has increased dramatically in the last two decades. This concern reflects the somewhat unusual nature of human rights treaties, which provide obligations that run from the government to individuals within the jurisdiction, as opposed to other types of treaties, which provide for reciprocal rights and obligations as between the States parties.

A considerable body of evaluative literature has emerged, employing both quantitative and qualitative methods.¹ The quantitative literature has identified factors that are conducive to treaty ratification and that influence the impact of ratification, and most conclude that ratification has an impact in the presence of other factors—and that demonstrating correlation does not allow a conclusion of causation. The qualitative studies present narratives, including case examples, that trace factors that influence change upon or after treaty ratification. A number of studies combine both quantitative and qualitative approaches.

The authors of this study have proceeded on the basis that while the factors identified by quantitative approaches may contribute to understanding the circumstances under which treaties are ratified and have an impact, identification of specific changes resulting from the CEDAW Convention requires a close examination of the reporting and review processes in the context of individual States.

Significant methodologicial challenges arise in attempting to identify and isolate the effect of a particular human rights treaty on the enjoyment of rights at the domestic level. A number of factors, identified by the authors and other studies may influence whether the

¹ For a comprehensive overview, see Todd Landman, Studying Human Rights (New York: Routledge, 2006).
treaty ratification has caused or contributed to women’s increased enjoyment of their human rights:

- the State may be a party to other human rights treaties that contain similar obligations to those contained in the CEDAW Convention (the Convention on the Rights of the Child, the ICCPR, the ICESCR, or a regional human rights treaty), as well as being subject to other human rights mechanisms, such as the Universal Periodic Review mechanism of the United Nations Human Rights Council or the Council’s thematic and country procedures;

- the State may have accepted international policy commitments under non-binding documents such as the Beijing Platform for Action or the Millennium Development Goals, which overlap with obligations under the CEDAW Convention;

- ratification may be the result of an underlying commitment by a government and the population to equality of women and men, rather than its cause;

- existing constitutional and legislative guarantees of gender equality may lead to ratification as a matter of course rather than as a special commitment; and

- the depth and strength of civil society freedoms and engagement.

Methodology and indicators adopted in this paper

This paper takes as its starting point that it is possible through qualitative examination of individual countries to identify cases in which the ratification of the CEDAW Convention, and the related reporting and advocacy processes, have stimulated or contributed to domestic reform. The purpose is relatively modest: to identify and trace historically a number of cases in which the impact of the CEDAW Convention is seen in legal reform. The authors acknowledge that legal reform does not of itself mean reform in practice and that many changes that are necessary to ensure full equality for women are not legal in nature. Nevertheless, the removal of discriminatory laws or the adoption of laws to enhance women’s equality are fundamental steps and have both practical and symbolic significance.

In seeking to identify whether the Convention has had an identifiable impact in the selected countries, we take as indicators of impact the following non-exhaustive list:

- post- or pre-ratification review of existing laws with specific reference to the Convention as the reason for it and reference to Convention standards in the formulation of proposed reforms, including new legislation;

- withdrawal or modification of a reservation to the Convention by a State party following a review of a State party’s report by the CEDAW Committee and/or in
response to a domestic advocacy campaign to withdraw reservations, and related legislative amendments to remove any inconsistency between domestic law and the Convention’s standards;

• amendment of a law adopted after the review by the CEDAW Committee of a State party’s report that corresponds to specific recommendations made by the Committee (and in relation to which CEDAW-consistency has been invoked by the government and or advocacy groups as the reason for the change);

• reference by a legislature, a Parliamentary committee or a law or policy reform body to CEDAW standards\(^2\) in considering the adoption or amendment of a law;

• reference by advocates in public policy discussion, before Parliamentary or other bodies, or before courts and tribunals, to the standards of the Convention in putting forward a case;

• reference by domestic courts and tribunals to CEDAW standards and output of the Committee, such as general recommendations, in their decision and judgments.

**Human rights treaty and CEDAW impact studies**

As noted above, there has been a significant interest in political science literature to test through quantitative studies the assumption that the adoption and ratification of human rights treaties leads ultimately to improvement in the enjoyment of human rights at the domestic level.\(^3\) There is much debate in the literature over almost every aspect of the undertaking: the theoretical models of compliance with international norms that underlie the quantitative studies, the methodological soundness of certain statistical approaches, the adequacy of the indicators for assessing enjoyment of human rights and the reliability of the datasets, the challenge of identifying negative impact (whether human rights treaties may have prevented worse violations from occurring), whether the findings based on particular rights (especially civil and political rights) hold for other rights, and the strategic and policy implications that can be drawn from the findings of such studies.\(^4\)

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\(^2\) In this report we use the term “CEDAW standards” to include the provision of the Convention, the Committee’s general recommendations, its concluding observations/comments on State party reports, its views on communications, and its reports of inquiries.


Nonetheless, a number of studies support the assumption of the human rights community that the process of formulating and ratifying a treaty, and advocacy and monitoring of State performance drawing on human rights frameworks, can contribute to changes in law, policy and practice at the national level (or the form that such change takes). While many factors have been identified as playing a role, one of those most regularly mentioned is the role of an articulate and active civil society drawing on these international norms in the processes of domestic political debate.

In addition to studies looking at the impact of human rights treaties more generally, a number of analyses focus specifically on the impact of the CEDAW Convention. They show mixed results, but they do provide a basis for concluding that under certain circumstances ratification of CEDAW and reporting under it are correlated with significant improvements in women’s enjoyment of at least some of the rights guaranteed by the Convention. A number of these studies are summarised in the Appendix, along with references to literature providing examples of the use and impact of the CEDAW Convention in individual countries.

II. THE CONVENTION AND THE OPTIONAL PROTOCOL: RATIFICATION, RESERVATIONS, REPORTING

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly on 18 December 1979. It was opened for signature on 1 March 1980 at the mid-decade conference of the United Nations Decade for Women. Following the deposit of the twenty required ratifications, the Convention entered into force on 3 September 1981.

As of 31 December 2010 there were 186 States parties to the Convention. The States that had not become party to the Convention at that time were Somalia, Sudan, Islamic

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5 A number of these are referred to at p Error! Reference source not found.68 below.

6 A number of these are referred to at p 57 below and are summarised in the Appendix at pp 59-68.


9 In its national report submitted under the Universal Periodic Review in 2010, Somalia indicated its intention to ratify the CEDAW Convention and other human rights treaties: A/HRC/WG.6/11/SOM/1, para 46 (2010).
Republic of Iran, Nauru, Palau, Tonga, Holy See, and the United States of America. Of these non-ratifying States, only the United States of America has signed the Convention.

On 6 October 1999 the United Nations General Assembly adopted an Optional Protocol to the Convention (the OP), which contains a procedure for consideration by the Committee on the Elimination of Discrimination against Women (CEDAW Committee) of individuals’ complaints of violations of their Convention rights, as well as a procedure under which the Committee may undertake an inquiry into “grave or systematic” violations of Convention rights in a State party. The OP entered into force on 22 December 2000, following the receipt of the necessary ten ratifications or accessions by States parties. As of 31 December 2010, there were 100 States parties to the OP. Three States parties opted out of the OP articles 8 and 9 inquiry procedure as provided for in the OP.

States which become parties to the Convention accept wide-ranging obligations to eliminate direct and indirect discrimination against women and to promote formal and de facto equality of women and men in all fields of life in the public and private spheres. The substantive articles of the Convention obligate States parties to undertake the necessary legal, policy and programmatic measures to ensure women’s equal enjoyment of all human rights and fundamental freedoms. The treaty sets out specific obligations in relation to fields such as education, employment, exploitation of prostitution, nationality, political life, health, participation in economic and cultural life, the situation of rural women, equality before the law, marriage and family life, and the elimination of customary and traditional practices or stereotypes that discriminate against women. The independent expert body established by the Convention, the CEDAW Committee, has summarised the obligations of States parties as follows:

Firstly, States parties’ obligation is to ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination — committed by public authorities, the judiciary, organizations, enterprises or private individuals — in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies. Secondly, States parties’ obligation is to improve the de facto position of women through concrete and effective policies and programmes. Thirdly, States parties’ obligation is to address prevailing gender relations and the persistence of gender-based

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10 The Convention was submitted to the United States Senate for its advice and consent on ratification in 1980. Despite several Foreign Relations Committee hearings, it remains before the Senate, requiring a 2/3 majority of the full Senate to ratify.


12 Ghana ratified the Optional Protocol on 3 February 2011 and the Seychelles on 1 March 2011.

13 Bangladesh, Belize, and Colombia. When Cuba signed the Optional Protocol in 2000, it declared that “it does not recognize the competence of the committee established by virtue of articles 8 and 9 of the Protocol”. However, Cuba has yet to ratify the Optional Protocol.

14 CEDAW, General Recommendation 25, para 7.
stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.

Ratification of the Convention and the Optional Protocol

The Convention

The pattern of Convention ratification has been influenced by external events on the international level, in particular by major international conferences relating to women and/or human rights.

Table 1 shows the progress towards the Convention’s current almost universal ratification. Table 2 shows that the number of ratifications has naturally enough declined as the overall number of States parties has increased to this current state. Table 2 also shows a number of spikes in ratifications: 1981, 1985, 1992-93, 1995 and 2003. The first period reflects the opening for signature of the Convention at the Copenhagen mid-decade conference of the United Nations Decade for Women; 1985 was the Nairobi Third World Conference on Women. 1993 the Vienna World Conference on Human Rights, 1994 the Cairo World Conference on Population and Development, and 1995 the Beijing Fourth World Conference on Women. This pattern of increased ratifications around such international conferences is consistent with the many reports of States taking action to show tangible progress towards increasing human rights protection around a major international conference. Treaty ratification is a relatively easy step for many countries to take to mark such occasions.

Table 1

Cumulative number of CEDAW ratifications (1980-2010)

Table 2

No. of Ratifications

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A similar pattern can be seen in relation to States parties’ ratification of the Optional Protocol to the Convention. Table 3 shows the increasing number of ratifications of the OP, while Table 4 shows the pattern of ratification from 2000 up to the end of 2010. As of the end of 2010, over half the States parties to the Convention were parties to the OP, but the initial rapid pace of ratification has dropped off steadily since its adoption. More than 80 States parties have yet to ratify or accede to the Optional Protocol.
Table 4

<table>
<thead>
<tr>
<th>Year</th>
<th>Ratifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>15</td>
</tr>
<tr>
<td>2001</td>
<td>20</td>
</tr>
<tr>
<td>2002</td>
<td>10</td>
</tr>
<tr>
<td>2003</td>
<td>5</td>
</tr>
<tr>
<td>2004</td>
<td>2</td>
</tr>
<tr>
<td>2005</td>
<td>5</td>
</tr>
<tr>
<td>2006</td>
<td>8</td>
</tr>
<tr>
<td>2007</td>
<td>3</td>
</tr>
<tr>
<td>2008</td>
<td>2</td>
</tr>
<tr>
<td>2009</td>
<td>1</td>
</tr>
<tr>
<td>2010</td>
<td>1</td>
</tr>
</tbody>
</table>

Reservations

When a State ratifies the Convention, it may enter reservations that limit its obligations under the treaty, provided that the reservations are not “incompatible with the object and purpose of the Convention” (article 28). Many States parties have entered reservations, some of them wide-ranging in their formulation and impact.

As of the end of 2010, 52 States parties had entered reservations to substantive provisions of the Convention when they ratified or acceded to it. Conversely, 134 States parties had ratified the Convention without reservation. Of the 52 States parties with reservations, 32 had removed some or all of them, and of these 13 had removed all the reservations they had entered at the time of ratification or accession to the treaty. The lapse of time between ratification and entry of reservations, and their subsequent modification or withdrawal varies considerably, as Table 5 illustrates.
Table 5

Lapse of time between ratification of Convention and modification or removal or reservations

<table>
<thead>
<tr>
<th>Time since ratification or accession</th>
<th>No of reservations amended or removed(^{16})</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 5 years</td>
<td>10</td>
</tr>
<tr>
<td>6-10 years</td>
<td>13</td>
</tr>
<tr>
<td>11-15 years</td>
<td>22</td>
</tr>
<tr>
<td>16-20 years</td>
<td>10</td>
</tr>
<tr>
<td>21-25 Years</td>
<td>3</td>
</tr>
<tr>
<td>&gt;26 years</td>
<td>0</td>
</tr>
</tbody>
</table>

This suggests that the process of review and withdrawal of reservations, often under pressure from civil society and from the CEDAW Committee, can be prolonged and that the period may involve two or more appearances before the CEDAW Committee at which the issue is the subject of recommendations by the Committee. A number of the case studies of States parties included in this report illustrate the persistence and advocacy required at the national level and by the CEDAW Committee to bring about such changes; the length of time it takes is reflected in these figures, which underline the need to support sustained effort in relation to particular issues over more than one reporting cycle.

On the other hand, some reservations have subsisted for long periods without modification or removal. Of the 39 States parties which retain some or all of their reservations, the lapse of time since the entry of the reservations is considerable.

Table 6

Length of time for which reservations not yet withdrawn or modified have been in force

<table>
<thead>
<tr>
<th>Time since ratification or accession</th>
<th>No of reservations not amended</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 5 years</td>
<td>4</td>
</tr>
<tr>
<td>6-10 years</td>
<td>6</td>
</tr>
<tr>
<td>11-15 years</td>
<td>7</td>
</tr>
<tr>
<td>16-20 years</td>
<td>7</td>
</tr>
<tr>
<td>21-26 Years</td>
<td>7</td>
</tr>
<tr>
<td>&gt;26 years</td>
<td>6</td>
</tr>
</tbody>
</table>

Most of these longstanding reservations relate to the most contested articles of the Convention, those referring to marriage and the family (articles 15 and 16) and related

\(^{16}\) These figures treat the modification or withdrawal by the same State of more than one of its reservations as separate events, so the number of modifications/withdrawals is greater than the number of States parties which have modified or withdrawn reservations.
articles (such as article 9), or are general reservations to the Convention or article 2 which are justified by reference to claimed religious or constitutional incompatibilities with Convention provisions.

**Reporting**

Many commentators have underlined the role that the reporting procedure can play in furthering implementation of the Convention’s norms. The process of reporting focuses governments’ attention on the treaty obligations and requires them to evaluate progress, and it also provides an opportunity for civil society to engage with government during the preparation of the report and the Committee’s review, as well as in following up on the Committee’s concluding observations. The reporting procedure provides an international forum where the government is on display globally and nationally, and provides the occasion for a UN-designated group of experts to make targeted substantive recommendations on steps that must be taken to advance women’s equality.

The submission of reports can be viewed both as an indicator of a government’s commitment to the Convention at a certain level (including at a substantive policy level), and as an indicator of the impact that the review by the CEDAW Committee may have on implementation in the particular State party, though this must be assessed against concrete steps taken (or not taken) by the State party.

Tables 7 and 8 provide an overview of the number of reports overdue by region, noting the number of overdue reports, the number of States parties that owe reports, and the total number of States in each World Bank region.\(^{17}\)

Table 7 provides an overview of the relative proportions of overdue reports from each World Bank region.

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\(^{17}\) In this report we have categorised States according to World Bank regional classifications rather than the different classifications generally used within the United Nations human rights system. The number of States parties to the Convention in each of the World Bank’s regions is:

<table>
<thead>
<tr>
<th>Region</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Europe and Central Asia</td>
<td>21</td>
</tr>
<tr>
<td>East Asia and the Pacific</td>
<td>22</td>
</tr>
<tr>
<td>Latin American and the Caribbean</td>
<td>30</td>
</tr>
<tr>
<td>Middle East and North Africa</td>
<td>11</td>
</tr>
<tr>
<td>South Asia</td>
<td>8</td>
</tr>
<tr>
<td>Sub-Saharan Africa</td>
<td>44</td>
</tr>
<tr>
<td>High income countries</td>
<td>50</td>
</tr>
</tbody>
</table>
Many States parties are overdue in the submission of more than one report. Table 8 sets out the number of overdue reports by region.
Table 8

No. of Overdue Reports

Table 9 provides an overview of the length of time by which reports are overdue, broken down regionally.

Table 9

Report Status by Region
Period between ratification and first report submitted

The period that elapses between ratification and the submission of a State’s initial report may be an indicator of the depth of the State party’s commitment to the treaty. In addition, because the submission of a report has, until recently, been necessary to commence the process of review by the CEDAW Committee, preparation and review of the report has generally been the occasion which permits national NGOs to engage with the Committee and the government at the international level.

Table 10 shows the lapse of time between the ratification of the treaty and submission of initial report, broken down by World Bank region. It shows that States parties in sub-Saharan Africa have had the lengthiest delay overall in submission of their initial reports and the highest number of initial reports still to be submitted. This may represent a lack of political commitment to treaty reporting in general, to reporting under the CEDAW Convention, or to the advancement of women’s human rights; it may also reflect a capacity and resources problem, something frequently seen in smaller States.

Table 10

<table>
<thead>
<tr>
<th>Axis Title</th>
<th>Initial Report Submissions by Region (1980-2010)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SA</td>
</tr>
<tr>
<td>Initial Reports submitted on time</td>
<td>0</td>
</tr>
<tr>
<td>≤5 years late</td>
<td>2</td>
</tr>
<tr>
<td>5-10 years late</td>
<td>5</td>
</tr>
<tr>
<td>&gt;10 years late</td>
<td>1</td>
</tr>
<tr>
<td>Never submitted</td>
<td>1</td>
</tr>
</tbody>
</table>

18 Of course, this is not necessarily so: States may be efficient in discharging their reporting obligations while failing to implement the substantive provisions of the Convention. This underlines the importance of a contextual evaluation of individual States’ performance.

19 The treaty monitoring bodies are experimenting with a process of preparing a List of Issues and requesting that the State party submit a report that primarily responds to this List. The trigger therefore becomes the treaty body request for the report rather than the submission of a State party report. This process poses some problems for civil society engagement in the report preparation.
The role of the CEDAW Convention and the monitoring procedures: paths to equality

The CEDAW Convention provides both a normative and policy framework and a treaty-based reporting procedure (as well as the individual communications and inquiry procedures in the Optional Protocol). Either or both may influence developments at the domestic level. As illustrated by the examples described in this report, the path to equality may be forged by one or more actions:

- a commitment (and subsequent action) by the executive or the legislative branch to the adoption of CEDAW standards in the development of legislation or policy generally or in specific sectors, and to review existing law and practice against the standards of the Convention (Rwanda, Kenya, Maldives, Laos PDR, Kyrgyzstan, Venezuela, Ecuador);

- through the CEDAW reporting process, the dialogue involving government and the CEDAW Committee, and follow-up action by governments in response to CEDAW recommendations, in conjunction with domestic political advocacy (Kyrgyzstan, Morocco, Fiji, Laos PDR, Ecuador);

- through other international supervisory or enforcement procedures which refer to CEDAW standards or which apply standards which are in substance the same as CEDAW’s (eg other UN human rights treaty bodies, the Universal Periodic Review, special procedures, regional human rights bodies, international or regional courts and tribunals) (Bangladesh);

- through the adoption of CEDAW standards by civil society groups as a basis for advocacy and critique of government and private action (Fiji, Morocco, Kenya, Bangladesh);

- through the adoption by courts and tribunals of CEDAW standards in the interpretation of constitutional or legislative provisions (or the determination of their validity) or as the basis for the development of the law (Kenya);

- through the adoption of a CEDAW framework by an international agency as the basis for its cooperation with countries generally or with a specific country – for example, UNDP, FAO, UNFPA, UNIFEM, WHO, UNICEF, World Bank, regional development banks (Kyrgyzstan).

III. COUNTRY EXAMPLES

The examples in this paper describe cases in which the CEDAW standards or process have played a role in change—in particular legal change—that contributes to the elimination of discrimination against women. The issues selected include the review and
withdrawal of reservations, and discrimination in laws relating to nationality and to marriage and divorce.

The countries examined are:

- Fiji
- Maldives
- Lao People’s Democratic Republic
- Rwanda
- Kenya
- Ecuador
- Venezuela
- Serbia
- Bangladesh
- Kyrgyzstan
- Morocco
- Singapore

**FIJI**

**Accession:** 28 August 1995 (with reservations)

**Initial report:** 2000 (reviewed 26th session, 2002)

**Combined second, third and fourth periodic reports:** 2009 (reviewed 46th session, 2010)

Fiji acceded to the Convention on 28 August 1995 with reservations to articles 5(a) and 9 (withdrawn in January 2000). It has not ratified the Optional Protocol. According to the accounts of both the State party delegation to the 2010 CEDAW review and a leading NGO expert, Fiji’s ratification of CEDAW and its constitutional commitment to adhere to the Convention were critical factors in its adoption of a new, egalitarian family law in 2003. The enactment of a CEDAW-based family law is remarkable particularly in light of Fiji’s patriarchal culture and its difficult history of racial division and political upheaval, including four coups since independence, three of them prior to 2003.

Family law reform was started in 1995, when Fiji acceded to the Convention, but was stalled by a civilian uprising in 2000. When relative calm returned, it was fiercely resisted in powerful quarters. Imrana Jalal, who had been the Family Law Reform Commissioner in the mid-1990s and largely designed the bill, credits the state’s ratification of CEDAW and the 2002 CEDAW review as significant impetus for overcoming the resistance.\(^{20}\) Supporters’ arguments were bolstered by the constitution then in force,\(^{21}\) which


\(^{21}\) The 1997 constitution, which was suspended in 2009.
specifically prohibits discrimination on the basis of gender (article 38(2)) and also recognizes “public international law applicable to the protection of the rights” in the bill of rights as a guide to constitutional interpretation (article 43(2)).

Fiji’s first report to the Committee was submitted in 2000 and reviewed in 2002. At that point the government had little progress to report, and the Committee expressed concern that the family law reform bill had not been adopted. Under the law in force at the time, the principles of equal partnership as to property and unpaid contribution to property were not recognized; divorce was difficult to obtain; women could be excluded from the home; post-divorce maintenance was limited and not reliably enforceable.

The reformed family law was adopted in 2003. In its next report to the Committee, submitted in 2010, the government specifically noted that the adoption of the bill was consistent with CEDAW and noted several specific provisions as meeting CEDAW norms: property division taking into account non-financial as well as financial contributions; presumption of equal contribution; and enforceable post-marital maintenance from either spouse, depending on relative circumstances.

In addition, the age of marriage was raised to 18 years for both men and women by the Marriage Act (Amendment) Decree of 2009. The Attorney General noted that this is in compliance with the Convention on the Rights of the Child. The State party report to CEDAW had noted that the change in marriage age would comply with CEDAW.

In its 2010 review, the Committee commended the state for adopting family laws in compliance with the Convention but noted that patriarchal attitudes remain a problem, particularly as to inheritance.

Conclusion: The CEDAW process clearly had an impact—combined with expert, passionate and persistent advocacy and a constitution that clearly prohibits discrimination and supports international law.

23 Initial state party report to CEDAW, CEDAW/C/FJI/1, paras 16.3-16.11 (2000).
26 Combined second to fourth periodic reports: Fiji, CEDAW/C/FJI/2-4, para 346 (2010).
MALDIVES

Accession CEDAW: 1 July 1993 (with reservations)
Accession to OP: 13 March 2006

Initial report: 1999 (reviewed 24th session, 2000)
Combined second and third periodic reports: 2005 (reviewed 37th session, 2007)

Maldives entered significant reservations upon its accession to the Convention:

The Government of the Republic of Maldives will comply with the provisions of the Convention, except those which the Government may consider contradictory to the principles of the Islamic Sharia upon which the laws and traditions of the Maldives is founded.

Furthermore, the Republic of Maldives does not see itself bound by any provisions of the Convention, which obliges to change its Constitution and laws in any manner.

This was modified to limit the reservation to article 7(a) (women in public life) and 16 (equality in the family), by a notification dated 29 January 1999. On 31 March 2010, the Government of the Republic of Maldives notified the Secretary-General of its decision to withdraw its reservation regarding article 7(a). The reservation had been entered because the constitution prohibited women from being President or Vice-President; withdrawal reflects adoption of a new constitution in 2008 that did not include this limitation.

Despite the reservation to article 16, Maldives enacted a family law reform in 2001 that, on paper, alters traditional Islamic rights and responsibilities between the spouses. However, the Government has not yet withdrawn or modified its initial reservation to article 16.

The initial report of Maldives to the Committee refers consistently to Sharia as the basis for the family law and for exceptions to equal capacity as to inheritance and testimony in court. The family law includes all the rights and limitations generally experienced under Sharia, with one significant exception:

In the event of divorce, any property, which has been registered as joint property, is divided equally. Any property which is seen by the court to have been acquired by the couple during their joint partnership in marriage (the woman’s domestic and child-care contributions are taken into account) is also divided between the two (emphasis added).28

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28 Initial report of States parties: Maldives, CEDAW/C/MDV/1, para 169 (1999). Notably, this is prior to the family law reform.
While “seen by the court” may result in few instances of equal division of marital property (no information is available about this), the statement is somewhat startling in view of the State party’s reservation. It also suggests considerably more flexibility than commonly seen in States in which Islamic law affects even part of the population.

The Combined Second and Third Report to the Committee does not offer detail about the changes enacted by the Family Code of 2001 (the first codification of family law in the State’s history). The Committee seems to have relied on the description of the proposed changes offered by the delegation during the review of the initial report in 2001 and had some discussion with the delegation in the second review (2007) about a review of the Family Code that was apparently in process.

In neither review did the Committee give the State much credit for the progress made to date in enhancing equality in the family, perhaps because the delegation itself in both reviews emphasized social resistance to change and the failure of many to use the provisions that already existed, such as prenuptial agreements in which women could negotiate terms that would protect their interests in case of marital breakdown.

In addition, despite a change in the law raising the age of marriage to 18 for both males and females, in 2007 the number of underage marriages, while reportedly small, was of concern to the Committee.

A comprehensive report submitted by a coalition of NGOs for the Committee’s 2007 review outlined the many areas in which the law does not actually foster equality, or women do not know about it, or the generally conservative and male-dominated culture and judicial system skew outcomes against them. The shadow report also noted a “rise in a socio-religious movement that favours separation of women and men in public life and public space,” including a growing emphasis on Islamic dress.

Maldives ratified the Optional Protocol in 2006, one of the few Muslim states to have taken this step so far.

All these developments have taken place against a backdrop of political change and reform as well as a growing fundamentalism in certain sectors of the population, engendering considerable uncertainty about the direction of both the state and the culture.

**Conclusion:** Maldives appears to be a state in which the government has demonstrated political will to take the Convention seriously in terms of evolving law, but it has stopped short of investing in implementing reforms that are socially difficult.

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30 CEDAW/C/MDV/CO/3 para 35.
LAO PEOPLE’S DEMOCRATIC REPUBLIC

Ratification: 14 August 1981 (without reservation)

Combined initial, second, third, fourth, and fifth periodic reports: 2003 (reviewed 32\textsuperscript{nd} session, 2005)
Combined sixth and seventh periodic reports: 2008 (reviewed 44\textsuperscript{th} session, 2009)

Lao PDR ratified the Convention on 14 August 1981 without reservation. It has not ratified the Optional Protocol. Lao PDR failed to submit its initial report to the CEDAW Committee until twelve years after ratification. It then submitted a combined report to bring its record almost up to date, as permitted under the Committee’s procedures. The family code was adopted after ratification, and at a time when the state was undertaking various “modernization” measures, moving toward a more open economy. It would be a leap to conclude that the family code is a result of ratification, but it is clear that from about 2000 the state took on its accountability under the Convention, and it made additional changes in the law between the 2005 and 2009 reviews. Between the 2005 and 2009 reviews the government made several changes in the law that directly addressed the Committee’s concerns expressed in 2005.

The 1990 Family Code in many respects meets the requirements of article 16. Marital property is defined as assets acquired during the marriage, with equal division upon divorce—unless a spouse is deemed to be at fault, in which case the share would be one-third,\textsuperscript{33} or more than half the property may be given to a custodial parent to care for the child(ren); marriage is only by registration, and customary marriage ceremonies are not recognized as legal marriage, although they are not prohibited. Disposition of marital assets during the marriage must be by mutual consent. Polygamy is not permitted. Both spouses have equal right to choose family name and may choose either family name, or each may continue to use family of origin name. The State party report did not discuss custody; the law provides for equal right of both parents to the custody of their children.

Males and females have equal inheritance rights by law, although property inherited by women from their parents is frequently registered to their husbands. In some ethnic groups inheritance is patrilineal or matrilineal irrespective of the law.

In its concluding observations on the combined initial, second, third, fourth, and fifth periodic report,\textsuperscript{34} the Committee expressed concern over:

- the role of fault in marital property allocations
- failure to criminalize marital rape (rape law specifically excluded “wife” from the definition of rape)

\textsuperscript{33} The Committee noted this; see below.
\textsuperscript{34} CEDAW/C/LAO/CC/1-5 (2005).
the age of marriage, required to be 18 for both males and females, but a court may give special permission for marriage of persons 15-17 years old. In practice, 18% of women aged 15-19 were married.\textsuperscript{35}

In its subsequent (combined sixth and seventh) periodic report, submitted in 2008, the government indicated that it had changed the marital rape law to eliminate the “wife” exclusion from the definition of rape. The Committee failed to note this in its concluding observations on the report (2009).\textsuperscript{36}

The government also reported that the Convention’s definition of discrimination is included in the 2004 Law on Development and Protection of Women, “which also included requirements that the Convention must be incorporated into domestic law and cover public and private sectors.”\textsuperscript{37}

According to the Committee’s concluding observations the age of marriage law was amended in 2008 to eliminate the possibility of marriage for persons younger than 18.

An NGO report submitted to the Committee for the 2009 review indicated that polygamy has not been entirely abolished, as “there are many instances of ‘minor wife.’”\textsuperscript{38} The State party delegation, reiterating that polygamy was illegal, acknowledged this and stated that it is practiced by a number of ethnic groups but is on the decline.

Conclusion. The various reports and exchanges since 2000 indicate that the Lao PDR has made significant policy efforts in response to the Convention and the Committee’s reviews, by adopting or changing laws, but that the \textit{de facto} situation remains difficult for women as the government has not had a good grip on improving conditions such as female literacy and maternal mortality.

KENYA

Accession: 9 March 1984 (without reservation)

\textbf{Combined initial and second periodic reports}: 1990 (reviewed, 12\textsuperscript{th} session, 1993)
\textbf{Combined third and fourth periodic reports}: 2000 (reviewed 28\textsuperscript{th} session, 2003)
\textbf{Combined fifth and sixth periodic reports}: 2006 (reviewed 39\textsuperscript{th} session, 2007)
\textbf{Seventh periodic report}: 2009 (reviewed 48\textsuperscript{th} session, 2011)

\begin{itemize}
  \item According to OECD Social Institutions and Gender Index (SIGI): Lao PDR, a significant number of both males and females marry at less than 18 years. www.genderindex.org/country/lao-pdr.
  \item CEDAW/C/LAO/7 (2009).
  \item CEDAW/C/SR.892 (A) (2009).
  \item Gender and Development Group, statement to CEDAW presession, 2008, http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/GDG_Laos_44.pdf; SIGI: Lao PDR indicates that the Hmong (a hill tribe) still practice polygamy.
\end{itemize}
Kenya ratified the CEDAW Convention in 1984, just prior to its hosting the Third World Conference on Women in Nairobi in 1985.\(^{39}\) It has not ratified the Optional Protocol.

The 16-page combined initial and second periodic report submitted in 1990\(^{40}\) acknowledged that sex discrimination was not constitutionally prohibited and that the constitution specifically protected discriminatory customary law as to personal status issues. The report and the State party’s presentation during the Committee’s review\(^ {41}\) referred frequently to the nature of Kenyan society, in which individuals’ identification with their ethnic group is extremely important, and defended the extreme “caution” with which the government approached law reform to eliminate discrimination.\(^ {42}\) The State party representative also was not entirely clear about the content and limitations of the one piece of legislation that purported to eliminate significant discrimination in inheritance, and the Committee requested clarification. The Committee noted that the State party had a great deal of work ahead of it to bring its laws into compliance with the Convention and urged it to “take strong measures” to deal with awareness and attitudes.\(^ {43}\)

The Combined third and fourth periodic reports (2003), the Combined fifth and sixth periodic reports (2006), and the Seventh periodic report (2010), and their associated reviews, provide a record of accelerating attention to the provisions of the Convention. With the adoption of a new constitution in 2010 that clearly reflects developments such as cases decided since 2000 that rely on CEDAW, and incorporates specific Convention language, the State seems to have awakened to its human rights obligations under the Convention. As pointed out by NGOs and conceded by its own delegations, however, full implementation is far from accomplished and is severely challenged by the conditions of devotion to patriarchal custom and religion and traditional gender roles, uneven educational attainment, poverty, and political upheaval. Nevertheless, the situation in 2011 provides grounds for optimism.

**Article 2**

The Constitution of Kenya adopted at independence did not include a prohibition of sex discrimination in its guarantee against discrimination (article 82(3)). Moreover, article 84 exempted matters of personal status law (marriage, divorce, child custody, adoption and inheritance) from the general discrimination prohibition. This provided for the preservation of customary law that discriminates against women, depriving them entirely of child custody, marital property and inheritance rights. The courts may refuse to apply custom in cases where it is “is repugnant to justice and morality or results in outcomes

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\(^{39}\) Sub-Saharan African State ratifications trended slightly upward just before and just after the Nairobi conference. Like Kenya, many made little progress for the ensuing fifteen years or more.

\(^{40}\) CEDAW/C/KEN/1-2.


\(^{42}\) Ibid, para 95. The State party representative also noted that a Marriage Bill that would have unified the multiple marriage laws and eliminated many discriminatory laws and customary practices, was shelved: A/48/38, para 139.

\(^{43}\) A/48/38 (1993), para 143.
that are repugnant to justice or morality” (known as “the repugnancy clause”)\textsuperscript{44}, but women rarely litigated and the clause was not applied to protect them in any event.\textsuperscript{45}

The Law of Succession Act 1981—predating CEDAW ratification—was the State’s only effort to remedy this discrimination. It provided for a life estate in marital property for widows, including those in polygamous marriages. It also provided that daughters inherit on an equal basis with sons. The Act was not unequivocally egalitarian: a widow lost her life estate if she remarried, while widowers did not lose their inherited spousal property if they remarried. Property held under customary tenure (if so designated by the State) was excluded from the provisions of the Act, a major problem as the population was largely rural, and most property outside the cities and towns was held under customary tenure. A Marriage Bill that sought to unify Kenya’s five personal law systems and remedy much of the discrimination in those systems was tabled at the same time but was never adopted.

Aside from the Succession Act, the first major change that implemented article 2 obligations did not occur until 1997, when an amendment to article 82(3) of the Constitution was adopted to add sex to the categories of prohibited discrimination. A Kenyan court has indicated that this was in response to the State’s ratification of the Convention and other international treaties.\textsuperscript{46} In its Combined third and fourth report to the Committee (2000), the State rather unapologetically acknowledged that articles 82(4)(b) and (c) of the Constitution still preserved the right to discriminate with respect to personal status law.\textsuperscript{47} It reported some progress in equality as to conditions of employment. But between the time that report was submitted and the appearance of the State for its review, a major shift had taken place. In its presentation at the State party review in 2003, the delegation announced the preparation of a draft constitution that would expand and clarify the definition of discrimination to include the basis of sex, pregnancy, and marital status as well as to require remedies.\textsuperscript{48} While commending this intention, the Committee expressed concern about both the superficial nature of the State party report and the continuing lack of effort to address the discriminatory personal status laws and the persistence of discriminatory customs and attitudes.\textsuperscript{49}

Kenya failed to adopt the proposed new constitution, largely because of controversial articles relating to political process and distribution of power. However, the State began

\textsuperscript{44} Preserved in in article 159(3)(b) of the 2010 Constitution.

\textsuperscript{45} Eg, Otieno v Ougo and Another, Civil Appeal No 31 of 1987, (2008) 1 KLR (G&F) 948. In this famous case the Court refused to apply the repugnancy clause to abrogate burial customs to which the widow and the deceased did not subscribe.


\textsuperscript{47} e, CEDAW/C/KEN/3-4 (2000).


to see some progress through the actions of the judiciary. In 2005, in the landmark case *Rono v Rono*, the Court of Appeal cited the CEDAW Convention in holding that daughters have an equal right to inheritance even of property held under customary law, which was exempted from the provisions of the Succession Act. This became an important precedent for other intestate succession cases involving rights of widows and daughters to inherit.

The Committee in its 2007 review once again expressed concern over the lack of constitutional protections, the State’s lack of effort to address discriminatory customs and attitudes, the discriminatory nature of the personal status laws and the State’s failure to “harmonize” them with articles 15 and 16 of the CEDAW Convention.

In 2010 Kenya adopted a new constitution that with respect to the Convention is an improvement over the draft that failed in 2005. It includes critical elements of the Convention article 1 definition of discrimination against women (in Article 27) as well as specific provisions relating to equality in the family that use the language of the UDHR and Convention article 16. The State’s delegation reported at the January 2011 review that this Constitution requires legislative action within a fixed period and that bills to implement the personal status law standards are in process for introduction in Parliament in 2011.

*Articles 15 and 16*

The persistence of sex discrimination in the family, while attributable in large measure to attitudes and stereotypical thinking that are very difficult to change, has been supported at the State level by a total failure to provide a formal legal structure that promotes equality in the family. The system of multiple personal status laws has remained unchanged since the colonial era despite civil society efforts and disapproval by the Committee. But with the new constitution, this may very well change.

Article 45(3) of the new constitution is a direct reference to article 16(1) of the CEDAW Convention: “Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.” Article 45(4) provides that Parliament may enact laws to recognize marriage, under any system, “to the extent that any such marriages or systems of law are consistent with this Constitution.” This provision requires the State to enact legislation that provides for equality between the spouses in all marriage systems, and the delegation reported to the Committee during the 2011 review that such legislation has been prepared and will be submitted to Parliament in 2011. Article 159(3) requires that traditional dispute resolution mechanisms render

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54 Ibid. Khadi (Muslim) courts are exempt, however.
decisions according to the norms of the Constitution, curbing their ability to impose discriminatory customary law.

As noted in the report of FIDA-Kenya and COHRE to the Committee, the State has made such promises before and failed to fulfil them. The Committee pressed the delegation on this point and received assurances of submission to Parliament, but of course the fate of any legislation is not assured until it is adopted. The Constitution also treats the Muslim community differently from all the other communities—allowing the preservation of discriminatory religious law—in that it establishes Khadi courts, does not require that their decisions meet the article 45 standards of equality, and does not set out a clear appeal process.

**Conclusion and context note**

The new constitution and apparent intention to act on long-ignored equality issues is born out of a very difficult historical passage. A full account of Kenya’s development as a multi-party democracy, and the impact of that history on both Convention implementation and constitutional development, is beyond the scope of this analysis.

Low representation of women in Parliament, coupled with a constitution that did not support equality and a political atmosphere that favoured the status quo, prevented significant action with respect to discrimination against women and many other issues for many years. Civil society, including women’s groups, has experienced undue pressure and clear human rights violations for decades.

The conversation about equality and constitutional change appeared to shift after the first truly multi-party elections, held in 2002: witness the diffident State party report submitted in 2000 as contrasted with the lively engagement by the delegation in 2003. Groups such as FIDA-Kenya have continued to press for progress and accountability, and they were positioned to participate when the opening appeared.

As noted in the introduction to this report, implementation of the Convention at the formal level is only a beginning. The Convention requires *de facto* equality as well—State party efforts to implement the laws fully and to ensure that women’s lives are not circumscribed by obstacles to their enjoyment of human rights. Kenya is progressing through the stage of establishing formal equality—only the necessary beginning for attaining full substantive equality for women in law and practice.

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57 The delegation briefly described the upheaval after the 2008 elections (without noting the subsequent accountability issues). See e/C/SR.963, para 15 (2011).
RWANDA

Ratification: 2 March 1981 (without reservation)
Accession to OP: 15 December 2008

Initial report: 1984 (reviewed 3rd session, 1984)
Combined fourth, fifth and sixth periodic reports: 2007 (reviewed 43rd session, 2009)

Initial review, 1984. Rwanda submitted its initial report to CEDAW in 1984, three years after ratification. The report was relatively brief, and the Committee’s concluding comments were accordingly short. The Committee expressed concern that

- marriage law was a combination of civil law inherited from the colonial era and customary law, its application confusing;
- statutory law did not refer to inheritance rights of women; under customary law women had no inheritance rights;
- the age of marriage was 18 for males and 15 for females (the consent of parents was required if spouses were under 21). 58

Second review, 1991. The state adopted a new Family Code (part of the Civil Code) as of 1988, which meets some of the standards of article 16. The age of marriage was raised to 21 for women and 25 for men, “due to women’s earlier maturation.”59 Marriage of persons under those ages was prohibited, and could be prosecuted as forced marriage.

The Family Code was an attempt to eliminate confusion between the inherited colonial statutory law and custom.60 The Code moved away from the custom that marriage was an alliance of families, to marriage as a partnership between individuals, and declared that all marriages shall be monogamous (the Constitution also declared that the State only recognizes monogamous marriage). This was unusual for African states at the time—and remains so. However, the population continued to practise marriage customs not recognized by law, and the registration infrastructure was poor, so the Code could not be said to be truly effective as a move toward equality.

Under the Code married women have full legal capacity to manage their financial affairs and to enter into contracts.

Either spouse can petition for divorce, on the same grounds. If divorce is by consent, half the marital assets are set aside for the children. Custody under the Code is to be determined on the basis of the interest of the children; however, this stipulation is rarely observed as the children generally go to the family of the father according to patrilineal custom (regardless of other observance of the Code).

The Code did not cover all aspects of marriage and divorce, leaving matters of property ownership, division upon divorce, and inheritance, to the customary law. However, the Civil Code covers management of the conjugal community, assigning it to the husband and also giving him right to declare domicile.\textsuperscript{61} The Committee was particularly concerned about women’s lack of inheritance rights. The delegation informed it that inheritance law was under review. The Committee noted that the government had demonstrated significant political will to “adopt the principles of equality.”\textsuperscript{62}

Further developments in the laws and practices were sidelined in the mid-1990s as the genocide recovery took precedence as an international concern.


\textbf{Third full review, 2009.} The government submitted a combined fourth, fifth, and sixth periodic report in 2007, which was reviewed in 2009. By that time a new constitution had been adopted, as well as a new inheritance law that provided for equal rights of women (daughters, wives) and men to inherit.

The 2003 Constitution prohibits discrimination on the basis of, \textit{inter alia}, sex. It also prohibits polygamy, requires consent to marriage, and states that “[p]arties to a marriage have equal rights and duties upon and during the subsistence of a marriage and at the time of divorce.”\textsuperscript{63} It provides for equal right of parents to raise their children, a major departure from custom.\textsuperscript{64} However, the husband remains head of household and registers the children’s birth.\textsuperscript{65} In addition, divorce remains fault-based, and the “winner” can be awarded “compensation.”

According to the Committee’s concluding observations for the 2009 review, the State party had made remarkable progress in a relatively short time with respect to adopting the new constitution and new laws and policies; abolition of polygamy was noted in particular.\textsuperscript{66}

\textsuperscript{61}Namaka, p. 18.
\textsuperscript{64}Constitution of Rwanda 2003, Art. 27.
\textsuperscript{65}State party report: Rwanda, CEDAW/C/RWA/6, para 276, 277 (2007).
\textsuperscript{66}CEDAW/C/RWA/CO/6, paras 5, 8 (2009).
The Committee negatively commented on the dilatory nature of the law reform process, noting with particular concern that certain elements of the Family Code remained discriminatory. The government delegation had assured the Committee that a Family Code reform bill was in process.

Every review has noted the persistence of traditional attitudes and stereotypes, which impede de facto implementation of the Convention.

**Conclusion.** While the State party’s initial and second periodic reports were relatively short, the Committee found early on that it had exhibited considerable political will to meet its obligations under the Convention. It ratified early (admittedly without closely examining all the necessary legislative changes)\(^{67}\) and was the first sub-Saharan African state to report. Despite the devastation of the genocide, the Government has continued to make progress on at least the formal level, for example making significant changes in 1999 to provide for women’s inheritance rights. In recent years Rwanda has been cited as an example of women’s success in public life. Its progress on matters that are traditionally much more private is also an example of the Convention’s principles being woven into the political discourse.

**VENEZUELA**

**Ratification CEDAW:** 2 May 1983  
**Ratification OP:** 13 May 2002

**Initial report:** 1984 (reviewed 5\(^{th}\) session, 1986)  
**Second periodic report:** 1989 (reviewed 11\(^{th}\) session, 1992)  
**Third periodic report:** 1995 (reviewed 16\(^{th}\) session, 1997)  
**Combined fourth, fifth, and sixth reports:** 2004 (reviewed 34\(^{th}\) session, 2006)

Venezuela’s record of implementing women’s human rights in the family reflects little action specifically related to the Convention. However, its early ratification suggests that the government was attuned to the significance of the Convention as a measure of its accomplishment in overhauling the family law provisions of the Civil Code in 1982.

According to Elizabeth Friedman, an expert on women’s human rights in Latin America, the successful campaign to reform the family law was a product of the energized atmosphere, particularly in Latin America, that resulted from the International Decade for Women and its initial conference in Mexico City, as well as internal political opportunity. She cites the 1967 Declaration on the Elimination of All Forms of Discrimination against Women as a factor in the advocacy context\(^{68}\) rather than the Convention, which came into

\(^{68}\) Elizabeth Friedman, “The Effects of “Transnationalism Reversed” in Venezuela: Assessing the Impact of UN Global Conferences on the Women’s Movement,” *1 International Feminist Journal of Politics*
force in 1981. The process of moving from the Declaration to the Convention, which gained impetus and visibility at Mexico City and was progressing to its adoption in 1979, arguably was a factor as well.

According to the Government’s reports, the provisions of the family code met the standards of article 16(1), and the Committee offered little commentary on it.\(^69\) An NGO report submitted for the 2006 review includes no information at all on family law, suggesting that the 1982 reform addressed all the significant issues that were of concern.\(^70\) The first review of Venezuela briefly describes the general content of the law. Subsequent reviews refer primarily to the continuing failure to change the very low age of marriage, which remains at 14 for females and 16 for males. The reviews also continue to focus on the State’s failure to deal effectively with violence against women and the deeply ingrained attitudes that impede progress in other areas.

**ECUADOR**

**Ratification CEDAW:** 9 November 1981 (without reservation)

**Ratification OP:** 5 February 2002

**Initial report:** 1984 (reviewed 5\(^\text{th}\) session, 1986)

**Combined second and third periodic report:** 1990 (reviewed 13\(^\text{th}\) session, 1994)

**Combined fourth and fifth periodic reports:** 2002 (reviewed 29\(^\text{th}\) session, 2003)

**Combined sixth and seventh periodic reports:** 2007 (reviewed 42\(^\text{nd}\) session, 2008)

**Initial review (1986):** As was common at this point in the Committee’s development, the review was largely a presentation, with few evaluative comments by the Committee. One matter that stood out was the phenomenon of early marriage; with parental consent, girls could contract marriage at 12 and boys at 14.\(^71\)

**1995 review:** The delegation reported that major changes to family law had been made in 1989, over considerable opposition.\(^72\)

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\(^71\) Concluding comments, A/41/45, para 257 (1986).

\(^72\) Concluding comments, A/49/38, para 515 (1994).
2003 review: The delegation reported that “the reforms of the Civil Code had given married women full legal rights, and the 1998 Constitution incorporated the principle of gender equality and non-discrimination.”\(^73\) However, as noted in the State party report, “where no specific declaration has been made [as to administering marital property], ‘it shall be understood’ that the ordinary administrator of such conjugal society is the husband.”\(^74\) The Civil Code reforms apparently had not changed this, as it was reported in the Third Periodic Report (1991) as well.

2008 review: The State party reported on numerous laws, a few of which had already been adopted but of which many were still pending.\(^75\) It noted that legal reforms reported earlier were in direct response to past CEDAW reviews.\(^76\) It noted that it was engaged in gender budgeting in response to its obligations under the Convention. Indeed, the tenor of much of the report is that of earnest effort to meet the specific comments and recommendations of prior CEDAW reviews, as well as candor about challenges. This contrasts with the unapologetic statements as to equality in the family, that the husband’s right to manage the marital estate remains the default (if the wife’s or joint management is not designated at the time of marriage) and that although the age of marriage is 18, adolescents may marry with permission of the court, a situation that has remained unchanged since the initial report.\(^77\)

Conclusion: Ecuador’s reporting history and the many efforts to change laws suggest that on the level of formal equality, the State has paid considerable attention to the Convention. Certainly the family law reform would suggest a certain level of courage on the part of the government. However, the Committee in its reviews consistently takes the government to task over the failure to address structural inequality based on deeply held attitudes.

SERBIA

Succession to CEDAW: 12 March 2001 (The former Yugoslavia ratified on 26 February 1982)
Accession to OP: 31 July 2003

Initial report (Yugoslavia): 1983 (reviewed 4\(^{th}\) session, 1985)
Exceptional report (Federal Republic of Yugoslavia (Serbia and Montenegro): 1993 (reviewed 13\(^{th}\) session, 1994)

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\(^74\) State party report, CEDAW/C/ECU/4-5, para 313 (2002).

\(^75\) State party report, CEDAW/C/ECU/7, paras 109, 110 (2007).

\(^76\) State party report, CEDAW/C/ECU/7, para 100 (2007).

\(^77\) State party report, CEDAW/C/ECU/7, paras 385, 387 (2007).
Third periodic report (Yugoslavia): 1998 (no review)

The record of what is now Serbia is, of course, historically complex. It is included in this selection as it offers an indication of the continuity of the Convention and its processes.

**Second review, 1992.** This report was presented as Yugoslavia was experiencing the transition to an open democratic system but had not yet broken up. The presentation by the delegation was perfunctory and indicated a strong level of state decision making about women, their role in society, and families, clearly the approach of a centralized Communist state.\(^{78}\)

**Exceptional report review, 1994,** dealing with the impact of the conflict.

**Initial report of Serbia, 2007.** Between the submission of the report under the name of Serbia and Montenegro and the time of the review, Montenegro had separated from the State of Serbia and Montenegro. The presentation is a litany of laws, policies and plans, with little information on their implementation and impact. It refers to article 16 in relation to practices of polygamy and early marriage in outlier communities (Roma and unspecified others) but indicates no effort to address the problems. The Committee was quite clear about the deficiency:

> While welcoming recent legislative activities, including significant law reform, in areas covered by the Convention, the Committee is concerned that the normative legal framework for protection against discrimination against women is insufficient and that implementation of existing legislation is weak. It is also concerned that policies and programmes generally do not lead to sustainable results conducive to the achievement of substantive gender equality in practice.\(^{79}\)

**Conclusion:** The succession of reports and reviews in this most confusing and conflict-ridden situation is remarkable for its very existence. While the Committee offered an exasperated comment in 2007 to the effect that Serbia seemed to be more concerned with living up to EU accession standards than to the Convention,\(^{80}\) the submission of a report at this point suggests that it sees engaging with CEDAW as an act of normalcy.

**BANGLADESH**

**Accession:** 6 November 1984 (with reservations)
**Ratified OP:** 6 September 2000

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\(^{78}\) e, A/46/38, paras 334-359 (1992).

\(^{79}\) Concluding observations, CEDAW/C/SCG/CO/1, para 15 (2007).

\(^{80}\) Id, para 13.
Initial report to CEDAW: 1986 (reviewed, 6th Session 1987)
Second report to CEDAW: 1990 (reviewed, 12th Session, 1993)
Combined third and fourth reports: 1997 (reviewed 17th Session, 1997)
Combined sixth and seventh periodic reports: 2010 (reviewed 48th Session, 2011)

Bangladesh acceded to the CEDAW Convention on 6 November 1984 with reservations. It ratified the Optional Protocol on 6 September 2000, accepting the individual communications procedure under the Optional Protocol but opting out of the inquiry procedure. As of early 2011, Bangladesh had appeared on five occasions before the CEDAW Committee. This discussion focuses on three selected issues that have been dealt with as part of the reporting process: reservations, citizenship laws, and family law.

Reservations

When Bangladesh acceded to the Convention in 1984, its instrument of accession stated:

The Government of the People's Republic of Bangladesh does not consider as binding upon itself the provisions of articles 2, 13 (a) and 16 (1) (c) and (f) as they conflict with Sharia law based on Holy Quran and Sunna.

When the Committee considered the initial report of Bangladesh in 1987, its members expressed their concern about these reservations, in particular the reservation to article 2. 81 The Government representative told the Committee that its comments had already been conveyed to the Government and “assured them that there would be positive action to be reported in the next periodic report.” 82

The second periodic report of Bangladesh, submitted in 1990, 83 was reviewed by the Committee in 1993. No information was provided by the Government representative to the Committee about the foreshadowed “positive action” towards the withdrawal of the reservations to article 2. The Committee questioned the Government representative on the issue, 84 but simply received the response that “the government had ratified the Convention with some reservations . . . because the provisions of personal law could not be changed easily as they were based on religion.” No indication was given of a timetable for reviewing the reservations.

Four years later there had been some movement on reservations. On 23 July 1997, the Government of Bangladesh notified the Secretary-General that it had decided to withdraw the reservations relating to articles 13(a) and 16(1)(f). This was the same day on which it appeared before the CEDAW Committee as part of the review of its combined third and fourth periodic reports. The Government informed the Committee of

81 Concluding observations on the initial report of Bangladesh, A/42/38, para 512 (1987). See also CEDAW SR.96.97 and 99.
82 Concluding observations on the initial report of Bangladesh, A/42/38, para 543 (1987).
the withdrawal of the reservations, stating that “[t]he women’s movement in Bangladesh had begun to lobby for full withdrawal of reservations in the context of the preparations for the Beijing Conference.”

The Committee welcomed the partial withdrawal of the reservations, but pressed the Government on when it proposed to withdraw the remaining reservations, to articles 2 and 16(1)(c), these being of greater significance than the two reservations that it had withdrawn. The Government representative responded positively:

The Government of Bangladesh acknowledged that article 2 of the Convention was of fundamental importance and it had not refused to withdraw its reservation. It would review the various paragraphs of the article in order to determine whether there were any conflicts with Islamic law. The Government also intended to examine article 16, paragraph 1(c) very closely with a view to removing its reservation.

The matter returned to the agenda when Bangladesh presented its fifth periodic report (2003), reviewed by the Committee in 2004. The Government reported that it “has already taken steps with an effort to address the remaining two reservations (article 2 and 16.1c) and those are under active consideration of the government now.” Committee members pressed the Government representative on the issue, with one member commenting that, while she “welcomed the news that withdrawal of the State party’s reservations to the Convention was under active consideration by the Cabinet”, she hoped that “‘active consideration’ meant a decision would be taken sooner rather than later.”

Once again the Committee expressed its concern about the retention of the reservations and urged Bangladesh “to expedite the decision on the withdrawal of the remaining reservations to the Convention within a concrete time frame.”

However, in its combined sixth and seventh periodic reports submitted in 2010, Bangladesh once again informed the Committee that withdrawal of the remaining reservations was still “under consideration”, and added that “[d]espite the reservations the Government has taken several positive steps that may be considered to be in conformity

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86 Concluding comments on the combined third and fourth periodic reports of Bangladesh, A/52/38/Rev.1, part II, para 424 (1997).
87 Article 13(a) of the Convention requires the elimination of discrimination in the enjoyment of the right to family benefits, while article 16(1)(f) provides for the same rights in relation to guardianship, adoption and similar institutions.
89 Fifth periodic report of Bangladesh, CEDAW/C/BGD/5, p 51 (2003)
with withdrawal of the reservations”\textsuperscript{92} In this regard it referred to the inclusion in the National Strategy for Accelerated Poverty Reduction-II (NSAPR II) policy agenda for 2009-2011 the specific goals of withdrawal of the remaining reservations and full ratification of the Convention. However, it gave no further details of concrete steps taken other than this indication that withdrawal had formally been designated as a goal to be achieved.

This lack of progress over more than 20 years appears to have stretched the Committee’s patience. In its list of questions in relation to the 2010 report, the Committee note the continuing retention of the reservations, despite its earlier recommendations to “urgently expedite ... within a concrete timeframe” the withdrawal of the reservations. While noting that the report indicated that withdrawal was “under consideration”, the Committee asked: “Please indicate when a decision will be taken.”\textsuperscript{93} In response, the Government informed the Committee that the Government “is actively considering” the withdrawal of the reservations,\textsuperscript{94} but provided no timetable for a decision on the matter. At the review session with the Committee, Committee members were critical of the Government’s failure to remove the reservations and urged it to do so. In response the Government representative merely expressed the hope that this might be possible in the next few years.\textsuperscript{95} In its concluding observations the Committee recalled its earlier concluding comments and urged Bangladesh “to expedite its efforts towards the withdrawal of its reservations to article 2 and 16.1(c) within a concrete timeframe.”\textsuperscript{96}

\textit{Citizenship Act}

While progress in withdrawal of the remaining reservations has been glacial, developments relating to the discrimination in Bangladesh’s citizenship laws have been more positive. In its review of the State party’s second periodic report in 1993, the Committee raised concerns about the provisions of the Citizenship Act 1951 which discriminated against Bangladeshi women in their ability to transmit their nationality both to their children and to their spouses (an issue not addressed in the report), and

\textsuperscript{92} Combined sixth and seventh periodic report of States parties: Bangladesh, CEDAW/C/BGD/6-7, para 68 (2010).

\textsuperscript{93} List of issues and questions with regard to the consideration of periodic reports: Bangladesh, 48\textsuperscript{th} Session (2011), CEDAW/C/BGD/Q/7, par 1 (2010).

\textsuperscript{94} Responses to the list of issues and questions with regard to the consideration of the combined sixth and seventh periodic report: Bangladesh, 48\textsuperscript{th} Session (2011), CEDAW/C/BGD/Q/7/Add.1, para 1 (2011).

\textsuperscript{95} “It was to be hoped that, in the remaining three years of the current Prime Minister’s mandate, action could be taken to withdraw the reservations, in particular the reservation to article 2; article 16, paragraph 1 (c), was somewhat more problematic. The Government was considering the experiences of other countries which had withdrawn their reservations to see how it had worked for them and whether there was any conflict with their domestic law.” CEDAW/SR.969, para 27 (2011) (Government representative).

\textsuperscript{96} Concluding comments on the combined sixth and seventh periodic report of Bangladesh, CEDAW/C/BGD/CO/7, para 12 (2011).
inquiring whether the Government intended to address the discrimination.\textsuperscript{97} The Government representative noted that “some women’s organizations had taken up the issue.”\textsuperscript{98}

In its combined third and fourth report submitted in 1997, the State party assured the Committee that “measures are being taken by Government to ensure equality between men and women with regard to citizenship rights. In fact the laws in this area are part of the colonial legacy and have not recently been reviewed or revised.”\textsuperscript{99} The Committee did not take up the issue on this occasion in its conclusions,\textsuperscript{100} but when the State party reported again in 2003, it suggested that there might be movement on the issue, reporting that it was “actively considering bringing necessary amendments to bring equal opportunities for both men and women”.\textsuperscript{101} However, the civil society view, expressed to the CEDAW Committee by a coalition of women’s groups, was that “the Government has not responded to repeated calls from women’s and human rights activists to amend the citizenship laws in conformity with the Constitution,” and had also failed to give effect to the recommendations of the High Court Division of the Supreme Court that the law be amended to eliminate the inequality.\textsuperscript{102}

In its 2004 written questions to the State party on its fifth report, the Committee sought information as to whether it had in fact decided to amend the 1951 Citizenship Law to eliminate the sex discrimination in its provisions.\textsuperscript{103} The Government responded that the matter was under consideration.

At the oral hearing before the CEDAW Committee the representative of the Ministry of Women and Children Affairs stated:\textsuperscript{104}

> [h]er Ministry had brought the matter to the attention of the National Council for Women’s Development, headed by the Prime Minister, and was actively lobbying for amending the relevant portion of the Citizenship Act.

A number of Committee members quizzed the Government representatives on the lack of progress and urged them to adopt a timetable for amendment of the law. One member referred to the Supreme Court decision on the issue which had recommended the repeal

\textsuperscript{97} Concluding comments on the second periodic report of Bangladesh, A/48/38, para 298.

\textsuperscript{98} Concluding comments on the second periodic report of Bangladesh, A/48/38, para 298.


\textsuperscript{101} Fifth periodic report of Bangladesh, CEDAW/C/BGD/5, para 2.9 (2003).


\textsuperscript{103} CEDAW/PSWG/2004/II/CRP.1/Add 1.

\textsuperscript{104} CEDAW/C/SR.653, para 14 (2004).
of the discriminatory nationality laws, noted that although the Government acknowledged the discriminatory nature of the laws, there did not seem to have been any progress, and requested details of the “efforts [. . .] being made to initiate the repeal process.” 105

The State party representative responded that the Government had prepared a bill to amend the Act “that would eventually eliminate all forms of discrimination with regard to the transfer of citizenship.” 106 The Committee urged Bangladesh “to ensure that a new citizenship law, which is in line with article 9 of the Convention, is adopted without delay, in order to eliminate all provisions that discriminate against women in the area of nationality.” 107

Finally, in 2009 there was significant movement on the issue. As stated in its 2010 report, the Government informed the Committee that the Parliament had enacted the Citizenship (Amendment) Act 2009, “amending Section 5 of the Citizenship Law of 1951 to give a Bangladeshi woman the right to transmit her citizenship to her children.” 108

However, the Government report made no reference to the other outstanding issue under article 9, the discrimination between males and females in relation to the acquisition of Bangladeshi nationality by a non-Bangladeshi spouse. 109 The CEDAW Committee took this up in its written questions to the Government about the content of the 2010 report, seeking clarification as to whether the new amendments mean that a woman could transmit her citizenship to her foreign husband. 110 This elicited the response from the Government that “[t]he case of transmitting Bangladeshi citizenship to a woman’s foreign husband is still under process.” 111

In its 2011 concluding observations the Committee welcomed the changes that had been made but was critical of the failure to fully comply with article 9. 112

The pressure applied by CEDAW, in combination with the sustained advocacy by domestic organisations contributed to the amendment of the law to the extent that a major

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109 This issue was referred to in the main NGO shadow report submitted to the Committee, Combined Sixth and Seventh Alternative Report to the UN CEDAW Committee, submitted By Citizens’ Initiatives on CEDAW-Bangladesh (CiC-BDF), July 2010, 34-35, available on OHCHR website, CEDAW, 48th Session.
110 List of issues and questions with regard to the consideration of periodic reports: Bangladesh, 48th Session (2011), CEDAW/C/BGD/Q/7, para 24.
111 Responses to the list of issues and questions with regard to the consideration of the combined sixth and seventh periodic report: Bangladesh, 48th Session (2011), CEDAW/C/BGD/Q/7/Add.1, para 73.
112 Concluding observations on the sixth and seventh periodic reports of Bangladesh, CEDAW/C/BGD/CO/7, paras 25-26 (2011).

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discriminatory provision has been reformed. The Committee and advocates continue to focus on the remaining problems with the law, and the next cycle of reporting may well lead to amendments to those provisions as well.

Adoption of a uniform family code

The issue of reservations to articles 2 and 16(1)(c) is closely bound up with the question of discrimination in the law relating to marriage, and the CEDAW Committee has consistently pressed Bangladesh (as well as other countries) to eliminate discrimination against women in this field. For example, in the Committee’s 2004 concluding comments it urged Bangladesh to “adopt without delay a Uniform Family Code that fully complies with the provision of the convention and general recommendation 21 on equality in marriage and family relations.”

In its next report to CEDAW (2010) the Government responded to the Committee’s recommendation by stating that “[t]his issue is under consideration by the Government,” and that its National Strategy for Accelerated Poverty Reduction-II (NSAPR-II) “specifically mentions policy agenda related actions for 2009-2011 that include among others, adoption of a Uniform Family Code in order to protect the rights of all women. It is also stated that section 1(2) of the Family Courts Ordinance, 1985 will be amended to include the whole of Bangladesh.” The Committee sought further details of the steps that had been taken towards the development of the draft law. The Government’s response made no reference to any steps that had been taken in this respect to implement the NSAPR-II. The Government representative stated to the Committee that a uniform family code “could not be ruled out”, but this response suggested no great

115 Combined sixth and seventh periodic report of States parties: Bangladesh, CEDAW/C/BGDF/6-7, para 113 (2010).
116 Combined sixth and seventh periodic report of States parties: Bangladesh, CEDAW/C/BGDF/6-7, para 114 (2010). NSAPR-II, Policy Matrix 14 included the following items as part of its policy agenda for 2009-2011: “Withdraw reservation and ensure full ratification of CEDAW; implement CEDAW: amend Section 1(2) of the Family Courts Ordinance of 1985 to include the whole of Bangladesh; amend citizenship act to ensure equality between women and men citizens; adopt a uniform family code in order to protect the rights of all women.”
117 List of issues and questions with regard to the consideration of periodic reports: Bangladesh, 48th Session (2011), CEDAW/C/BGD/Q/7, para 29 (2010).
118 Responses to the list of issues and questions with regard to the consideration of the combined sixth and seventh periodic report: Bangladesh, 48th Session (2011), CEDAW/C/BGD/Q/7/Add.1, para 87 (2011).
commitment to bringing this about sooner rather than later.\textsuperscript{119} The Committee urged the Government to undertake educational measures in the community on the importance of adopting a uniform family code.\textsuperscript{120} Little progress has been made on this issue despite the Government’s repeated assurances that it is an area where it is committed to undertake reform.

\textbf{Conclusion}

The issues discussed above are just a selection of the many that have been taken up by CEDAW with the Government of Bangladesh through the reporting procedure over more than two decades, involving five appearances before the CEDAW Committee. These and other issues have been the subject of advocacy and activism at the domestic level by women’s and civil society groups which have also used the Convention’s reporting procedure as a complement to their domestic strategies for law reform; indeed the Committee generally relies heavily on NGOs to provide additional detailed information about shortfalls in treaty implementation. The domestic advocacy and CEDAW processes are thus closely linked. The regular appearances of Bangladesh before CEDAW has permitted regular scrutiny of progress, but the results plainly demonstrate that the main contribution of the CEDAW process is likely to be support of domestic activism, using the opportunity of international scrutiny for both the Committee and civil society groups to put pressure on reluctant or unwilling governments to live up to their commitments.

A striking feature of the developments on these issues has been the relatively slow rate of progress in making reforms that appear to be relatively easy—in legal, policy and political terms—as well as the virtual lack of progress on issues that raise more fundamental issues. While the government was able to respond relatively easily to CEDAW and NGO urging to remove some reservations (to articles 13(a) and 16 (1)(c)), the foot-dragging in relation to adopting some of the required amendments to the citizenship laws has been surprising. Here the combination of sustained NGO advocacy and the insistence by CEDAW on full reform (as well pressure from other UN human rights bodies), appear to have played a role in pushing the Government towards partial reform. The contribution of the CEDAW process to bringing about complete conformity of citizenship laws with the Convention is likely to be seen in the next cycle of reporting. CEDAW has provided both a (supplementary) normative framework of equality (used not just by NGOs but also by the courts of Bangladesh) and a deliberative political process at the international level which has been used by domestic NGOs to influence national developments.

\textsuperscript{119}CEDAW/C/SR.969, para 30 (2011):

The report had given the mistaken impression that there was no possibility of introducing a uniform family code. In actual fact, there had been considerable discussion on matters which lent themselves to uniform codification, such as marriage and divorce. If the various religions could come to an agreement, a step could be taken in that direction. Thus, a uniform family code could not be ruled out.

\textsuperscript{120}CEDAW/C/BDG/CO/7, para 40(a) (2011).
While citizenship laws are both symbolically and practically important, the related issues of discrimination in marriage and family relations, and the general reservation to article 2 of the Convention, are fundamental to the attainment of women’s equality. The ratification of CEDAW and the review process appear to have contributed modestly to the extremely limited progress in moving towards the adoption of a uniform family code.

While progress on these issues has been very slow (or non-existent on some accounts), there are other areas in which greater progress in implementing the Convention has been seen (though the practical implementation of the legislative reforms is still to be achieved). One example is the enactment of a number of pieces of legislation relating to violence against women.

KYRGYZSTAN

Accession: 10 February 1997
Accession to OP: 22 July 2002

Initial report to CEDAW: 1998 (reviewed 20th Session, 1999)
Third report to CEDAW: 2007 (reviewed 42nd Session, 2008)

The Kyrgyz Republic acceded to the Convention on the Elimination of All Forms of Discrimination against Women on 10 February 1997 without reservation. It acceded to the Optional Protocol on 22 July 2002, accepting both the individual communications procedure and inquiry procedure.

Since accession to the Convention, there has been a very significant level of legal and institutional reform as well as the establishment of procedures to improve and monitor the gender impact of laws and policies. As a result a number of significant laws have been amended or enacted to advance women’s equality. Notwithstanding these advances, a significant gap remains in many areas between the provisions of the Convention and the stipulations of domestic law, and women’s enjoyment of their right to equality in practice. The Government, civil society and the CEDAW Committee have all recognised both the progress and the continuing deficiencies in practice.

Kyrgyzstan’s experience exemplifies the relationship between CEDAW and other international processes, in particular the implementation of the Beijing Platform for Action. It reminds us that these processes often reinforce each other. It also underlines the important role that civil society plays in harnessing international norms and procedures as part of the domestic political debate.

121 The Convention had previously applied to the territory of the former Kyrgyz SSR by virtue of ratification by the USSR in 1981.
The last decade or so has seen considerable legislative and institutional activity in relation to women’s equality in Kyrgyzstan. A number of the institutional developments and legislative reforms have followed Committee reviews and in some cases have employed Convention standards as part of their normative framework. While it may be too much to claim that the Convention and the reporting procedure have been the exclusive or primary cause of these changes, it does appear that the Convention content and process have added stimulus in certain cases and have provided a helpful normative framework and external analysis for domestic policy development.

The implementation of the Beijing Platform for Action and its relevance to Convention implementation

The Beijing Conference and efforts to implement the BPFA have played an important role in influencing developments in the gender equality policy of Kyrgyzstan, including playing a catalytic role leading to the ratification of the Convention. In 1997 Kyrgyzstan adopted a national program (the “Ayalzat” program) to implement BPFA recommendations. This ambitious programme included a number of objectives in relation to harmonisation of existing laws with international commitments (including the Convention) and strengthening national machinery for the development of equality policies.

122 A/54/38/Rev.1, para 101 (1999) and CEDAW/C/SR.413, para 2 (statement of representative of government of Kyrgyzstan)
125 “1. Improvement of basic legislation and legal norms

Women’s rights are inalienable human rights, which they possess simply because they are human beings. However, there is no modern society in which women have the same opportunities as men. Despite the proclamation of the equal rights of women, equal opportunity in Kyrgyzstan has yet to be achieved.

1.1 Short-term objectives

Improvement of Kyrgyzstan’s basic legislation in accordance with the international Convention on the Political Rights of Women and the Convention on the Elimination of All Forms of Discrimination against Women:

- Submission of Kyrgyz legislation for an expert opinion on gender issues (see attached list);
- Improvement of the machinery for monitoring observance of the law in cases where women’s rights have been violated (forced early marriage);
- Development of women’s information networks and gender studies;
- Monitoring of compliance with legislation containing State standards for labour safety and compliance with working conditions for women, as well as annual preparation of information on this issue.

2. Development of an institutional mechanism for improving the status of women

The national mechanism for improving the status of women is the State Commission for the Family, Women and Youth attached to the Government of Kyrgyzstan. The principal tasks of the State Commission are to elaborate and implement State policy on the family and family relations,
The reference to undertaking a gender impact analysis (designated in Kyrgyzstan as employing “gender expertise” in analysis of laws and policies) of a number of important laws reflected an ongoing concern in Kyrgyzstan. In 1997 such analyses prepared of four laws were prepared, relating to the civil service, labour regulation, health protection, and the mass media. This practice has now been formalised and all new legislation is meant to be subject to such scrutiny.

Subsequent expansion of the coverage of gender impact analysis of existing and proposed legislation, and the enactment of a number of new laws to cover gaps in existing legislative coverage, have been notable. The CEDAW reporting process and Convention standards have played a role in contributing to the discussion of these issues and to the impetus for government to make some of these changes, while the role of NGOs, academics and some civil servants in taking up these standards and recommendations have, of course, been critical.

The Beijing-inspired process has also continued with the adoption of National Action Plans for Gender Equality, for the period 2002-2006 and then 2006-2010. As part of the implementation of these plans, the government prepared a Matrix of Measures on Implementation of each plan. In the Matrix for the 2002-2006 Plan, a specific objective was included under “Improvement of National Legislation” of bringing national legislation into line with the commitments of Kyrgyzstan under international treaties. The means for achieving this goal included analysis of national legislation for compliance with relevant international standards and the presentation of an annual report to the

establish national gender-development programmes and implement the Ayalzat national programme. The measures contained in this subsection are essential for ensuring a vertically structured national institutional mechanism for improving the status of women, that is, one that operates in regions, districts, towns and other populated areas and in enterprises, institutions and other organizations.”

126 Secretariat of the National Council for Women’s, Family and Gender Development under the President of the Kyrgyz Republic, Gender Expertise Manual of the Legislation of the Kyrgyz Republic (Bishkek, 2004) [Gender Expertise Manual], Annex 5, 94-105. A further example of this – and an illustration of the role that international organizations and agencies can play in encouraging or assisting in the implementation of the Convention – was a report prepared in 2000 pursuant to a MOU between the Kyrgyz government and OIDHR of the OSCE, to provide a CEDAW-based analysis of Kyrgyz laws. Drawing on the CEDAW Committee’s concluding observations, this report identified a number of areas where there were discrepancies between the State’s obligations under the Convention and national law and practice, or areas in which the Convention might be more fully given effect. Report on the Compliance of Kyrgyz Law with the UN Convention on the Elimination of All Forms of Discrimination against Women, Summary of Findings and Recommendations, in id, Annex 2, 66-83. One of the present authors (Byrnes) was responsible for the preparation of this report.


128 Id at 1.2.1.

129 Id at 1.2.3.
legislature on implementation of these treaties;\(^{130}\) it also set as an objective the adoption of a gender equality law.\(^ {131}\) Under the heading “Reduction of All Forms of Violence against Women” the Matrix set out the objective of continuing the implementation of the CEDAW Committee’s concluding comments from its 1999 review of Kyrgyzstan, to be the subject of a regular report prepared by the government.\(^ {132}\) The Matrix contained a large number of other objectives consistent with implementation of the Convention, though they did not specifically refer to it.

In 2004 following the review of the second periodic report, the Government adopted a further Matrix\(^ {133}\) focusing specifically on the concluding comments of the CEDAW Committee.\(^ {134}\)

The following section traces the engagement of Kyrgyzstan with the CEDAW reporting process and identifies a number of issues on which CEDAW made recommendations which have been taken up to a greater or lesser extent at the national level and have led to change (or at least increased scrutiny and pressure for change).

**Nationality law**

In its initial report under the Convention (1998) Kyrgyzstan noted that its nationality law discriminated between male and female Kyrgyz citizens as to the transmission of Kyrgyz nationality to their children and thus was inconsistent with article 9(2) of the Convention.\(^ {135}\) The report informed the Committee that “as a result of ratification of the Convention “the Ministry of Justice is currently drafting a new law on nationality that will conform to the provisions of the Convention and of other international instruments ratified by the Kyrgyz Republic.”\(^ {136}\) However, when the Committee reviewed the initial report in 2002, it did not address this issue explicitly, either in its discussions with the State party’s representatives or in its concluding observations on the report.

In its second report under the Convention\(^ {137}\) Kyrgyzstan reported under article 9 that the law had not been amended in the meantime, and did not mention the draft law referred to

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\(^{130}\) *Id* at 1.2.1 and 1.2.2.

\(^{131}\) *Id* at 1.2.4.

\(^{132}\) *Id* at 6.1.1.


\(^{134}\) *Third periodic report*, CEDAW/C/KGZ/3, para 3 (2007). For details, see *id* at paras 11-20.


\(^{137}\) CEDAW/C/KGZ/1 (2002).
in the State’s 1998 report. The Committee nonetheless took up the nationality issue.\textsuperscript{138} The Kyrgyz representative acknowledged the “imbalance” in the law,\textsuperscript{139} but offered no further information on its possible revision. In its concluding comments the Committee called on the State party “to take immediate steps to amend the nationality law and bring it into conformity with article 9 of the Convention.”\textsuperscript{140}

By the next time Kyrgyzstan reported to the Committee (in 2007), a new law had been drafted that addressed some of the discrimination issues noted by the Committee.\textsuperscript{141} The Kyrgyz government noted that “[p]ursuant to international obligations, changes were made to bring the Kyrgyz Republic law on citizenship into line with the Convention on the Nationality of Married Women”.\textsuperscript{142} That Convention of 1957 does not encompass the full range of obligations contained in CEDAW Convention article 9 (although its substantive provisions are essentially reproduced in the CEDAW Convention), since the earlier treaty does not address the question of the equal right of women to transmit their nationality to their children. Nonetheless, the government delegation claimed that the law “had been brought into line with article 9 of the Convention: Kyrgyz nationality could be transmitted to a child by written agreement between the parents, irrespective of the child’s place of birth.”\textsuperscript{144}

One member of the Committee asked what would happen if the parents did not agree and noted that while the law might correspond formally to article 9, “in practice the provision might not be given full effect, given the patriarchal structure of society,” and that “it would be better to stipulate that women had the same right as men to pass on Kyrgyz nationality to children.”\textsuperscript{145} The government representative reiterated the content of the law but “agreed, however, that work was still needed on the legislation and that a mechanism for judicial resolution of disagreements might need to be developed,”\textsuperscript{146} though the State did not undertake to revisit the matter. In its concluding observations the Committee made no reference to the issue of continuing problems with the law on nationality,\textsuperscript{147} notwithstanding that the amended law still gave rise to concern that the

\begin{itemize}
  \item \textsuperscript{138} CEDAW/C/SR.632, para 55 (2004) and later CEDAW/C/SR.633 (2004) (Ms Morvai)
  \item \textsuperscript{139} CEDAW/C/SR.632, para 59 (2004)
  \item \textsuperscript{140} A/59/38 part I, paras 173-174 (2004).
  \item \textsuperscript{141} Kyrgyzstan, \textit{Third periodic report}, CEDAW/C/KGZ/3, para 222 (2007).
  \item \textsuperscript{142} Kyrgyzstan, \textit{Responses to the list of issues and questions with regard to the consideration of the third periodic report}, CEDAW/C/KGZ/Q/3/Add.1, p 6 (2008).
  \item \textsuperscript{144} CEDAW/C/SR.856 (B), para 20 (23 October 2008).
  \item \textsuperscript{145} CEDAW/C/SR.856 (B), para 29 (23 October 2008) (Ms Schöpp-Schilling), and later CEDAW/C/SR.857 (B), para 8 (23 October 2008) (Ms Šimonović).
  \item \textsuperscript{146} CEDAW/C/SR.856 (B), para 34 (23 October 2008). See also CEDAW/C/SR.857 (B), para 17 (2009) (Government representative).
  \item \textsuperscript{147} CEDAW/C/KGZ/CO/3, 42\textsuperscript{nd} Session (2008).
\end{itemize}
formally gender neutral provisions on agreement relating to children’s nationality may have been substantively discriminatory against women.

Thus, the Committee’s concern with the discriminatory provisions of the nationality law, repeated over two reviews, appears to have kept the issue on the international agenda of the Kyrgyz government. It is likely to have contributed to the process of legislative amendment, as evidenced by the government’s desire to assure the Committee that the amended law was consistent with the provisions of the CEDAW Convention. However, despite the attention given to the issue, the government does not appear to have addressed all the issues of equality to which the amended nationality law may give rise (though the Committee’s failure to raise the matter in its concluding observations can be seen as reducing pressure [or eliminating pressure?] on this issue).

Gender impact analysis of legislation

As noted above, one of the features of the Kyrgyz approach to gender equality has been a concern to establish procedures for the vetting of all new legislation with a gender impact analysis. The process has now been formalised, by law and Presidential Decree,148 but it is not clear that the formal requirements are being followed for all new laws. In its 2008 concluding observations, the CEDAW Committee expressed concern that “although the Law on State Guarantees for Equal Rights and Equal Opportunities provides for gender-based legal analysis of all legislation and regional and local programmes, such analysis has rarely been conducted” and urged the introduction of “a mechanism for systematic gender-based analysis for draft laws and programmes using a framework based on the normative standards of the Convention.”149

Further steps have now been taken to try to ensure that such impact analysis is carried out before Government decisions on proposed legislation are finalised.150

Adoption of gender equality law

Another significant area of activity in Kyrgyzstan in the period since accession to the Convention has been the enactment of gender equality legislation, as well as a law relating to violence in the family.

In its 1999 concluding comments on the initial report of Kyrgyzstan the CEDAW Committee recommended that “the principle of the equality guaranteed by law should also refer to non-discrimination on the grounds of sex. It also recommends the introduction of a procedure for enforcing rights through effective judicial and other

148 Presidential Decree 20 March 2006 stipulates that all laws are to be subject to gender impact analysis


150 Government of the Kyrgyz Republic and UNDP Kyrgyzstan, Functional Review of the National Gender Mechanism in the Kyrgyz Republic (Bihske, 2009) 30 (referring to steps taken in 2009 to strengthen procedures to ensure gender impact analysis, eg by Government resolution No 1, 19 February 2009).
In 2003 Kyrgyzstan adopted a gender equality law, the Law on the Bases for State Guarantees of Gender Equality 2003. At its 2004 review of the second periodic report in which Kyrgyzstan reported on the enactment of this law (and the Law on Social and Legal Protection against Violence in the Family 2003), the Committee welcomed the legislation but expressed its concern about ensuring that these laws provide practical and effective remedies to women who were subject to discrimination or violence. Information about the number of cases of various sorts was provided in 2008, but it does not appear that it was subjected to any analysis or that such statistics were being kept as a matter of course. The 2003 law was replaced in 2008 by a new law, the Law on State Guarantees for Equal Rights and Opportunities for Men and Women.

**Land law reforms**

One of the major features of the transition from the former communist regime to a new independent State was land reform. There were concerns that women’s interests would be overlooked or neglected as part of this process. At its review of the second periodic report, the Committee expressed its concern that provisions in the laws on land and agrarian reform and in other laws, as well as customs and traditional practices, regarding ownership, transfer and inheritance of land discriminate against women and called on the State party “to take appropriate measures, including review and amendment of legislation, awareness-raising and adequate enforcement of the law, to eliminate all forms

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151 A/54/38/Rev.1, para 114 (1999)
152 Translation in Gender Expertise Manual, above n 126, Annex 4, 88-93. Also available at at http://www.legislationline.org/documents/id/15487
155 “A summary of cases related to gender-based violence is rarely conducted, and is usually only done upon request of the interested parties. This usually occurs when reporting on the implementation of the CEDAW Convention or other international or national normative and legal acts. And in such cases the judicial system only comments on the data and does not provide analysis. At the same time, the information provided by the courts mainly relates to Articles 124, 153, 154 and 155 of the Criminal Code and Article 66-3 of the Code of Administrative Responsibility, and does not cover the entire extent of crimes and offences where victims are women. The existence of gender indicators on victims and perpetrators of all crimes and offences reviewed by the courts and making the indicators available for a wide range of interested parties would create the opportunity for a better and more in-depth analysis of gender discrimination and violence, the development and adoption of adequate programmes of intervention and evaluation of the legislations’ effectiveness.” Government of the Kyrgyz Republic and UNDP Kyrgyzstan, Functional Review of the National Gender Mechanism in the Kyrgyz Republic (Bishkek, 2009) 46-47.

"The development of judges’ gender sensitivity is an important mechanism to ensure the effective protection of men’s and women’s rights. The CEDAW Committee recommended improving gender skills and familiarizing judicial system staff with international and national laws on gender. The Supreme Court did not include this into its NAP work plan, which was specified in the NAP Matrix (section 5.5.1.1), focusing on raising the gender awareness for civil servants through training events, and developing and publishing informational materials and manuals." Government of the Kyrgyz Republic and UNDP Kyrgyzstan, Functional Review of the National Gender Mechanism in the Kyrgyz Republic (Bishkek, 2009) 46.

of discrimination against women with respect to ownership, transfer and inheritance of land.” 157

At the review of the third periodic report, the Government representative stated that the Committee’s comments had been influential in fashioning aspects of the land reform, 158 referring in particular to change in legislation providing that plots of land could be divided. 159 Further details were provided in the third periodic report. 160

MOROCCO

Accession: 21 June 1993 (with reservations)

Initial report to CEDAW: 1994 (reviewed 16th session, 1997)
Third and fourth periodic report: 2006 (reviewed 40th session, 2008)

Morocco acceded to the Convention on 21 June 1993 with reservations to a number of articles, including articles 9(2) and 16.

Article 9(2). The Moroccan Nationality Code contained provisions which gave Moroccan women married to non-Moroccan husbands lesser rights than Moroccan men in a similar situation in relation to transmitting their nationality to their children or to enabling their foreign spouse to become a Moroccan national. 161 In its 1997 review of Morocco’s initial report, the Committee expressed its concern about the discrimination. 162 In its 2003 review the Committee reiterated its concern and urged the Government to amend the law to rectify the discrimination; the Government stated that there was a bill before the legislature to do this. 163 The matter had been raised by women’s groups in their alternative report to the Committee, 164 which reflected a vigorous campaign for reform on this and other issues at the domestic level.
Legislative changes were made in 2006, and Morocco withdrew its reservation to article 9(2). Notwithstanding the amendments, the new version of the Nationality Code still distinguished between male and female Moroccan citizens, making the acquisition of Moroccan nationality more difficult for foreign husbands of Moroccan women than for foreign wives of Moroccan men. It also introduced a new discriminatory feature in relation to loss of nationality by a Moroccan woman who married a non-Moroccan man, despite protestations by women’s groups that this was not consistent with the Convention. Women’s NGOs once again addressed this issue in their alternative report to the Committee submitted in November 2007. In its 2008 review of the third report of Morocco the Committee accordingly urged the Moroccan Government “to amend without delay all discriminatory provisions affecting women’s rights in the Nationality Code, in order to harmonize it fully with the Convention.” On 8 April 2011 the United Nations Secretary-General received a notification from the Government of Morocco that it had decided to remove the reservation to article 9(2) of the Convention.

**Article 16.** Morocco’s 2004 revision of its family law, the *Moudawana*, has been cited by the United Nations as a “CEDAW success.” This accomplishment is the result of over a decade of civil society organizing and advocacy, coupled with the accession of a young reform-minded king, Mohamed VI, in 1999.

The review of Morocco’s initial report in 1997 was relatively brief but pointed. The Committee expressed considerable concern over both the scope of the reservations and the State party’s apparent determination to retain them. It noted the pervasive discrimination against women in the family and in the public sphere, and the lack of any machinery to coordinate programs for women and inform them of their rights. The Committee did note that preliminary efforts to revise the Personal Status Code were under way and urged the State party to “persevere in using *ijtihad*, which was the

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166 See CEDAW/C/SR.824, para 71 (Mr Flinterman) and para 72 (Ms Belmihoub-Zzerdani) (2008).
168 *Id* at paras 102-108.
170 *Multilateral Treaties deposited with the Secretary-General*, Chapter IV.8, n 72.
172 A comprehensive history of the effort to reform the *Moudawana* is Alexandra Pittman (with the support of Rabéa Naciri), “Cultural Adaptations: The Moroccan Women’s Campaign to Change the Moudawana” (UK: Institute for Development Studies, University of Sussex, 2007)(hereafter Pittman).
evolving interpretation of religious texts so as to give the necessary impetus to the improvement of the status of women and thus gradually to change attitudes.”

In 1997 the political leadership of Morocco changed as a socialist party was elected to a parliamentary majority. The party’s agenda included family law reform in compliance with CEDAW. In 1999 King Hassan died, and his son King Mohamed VI succeeded to the throne. Mohamed was young and progressive. He supported reform, but in the face of considerable backlash the government withdrew its support for a reform plan. When the women’s advocacy community responded with a more focused approach, he appointed a royal commission to address the Moudawana (2001). In his capacity as “Commander of the Faithful,” he issued guidelines for the commission’s work that included following the State’s international human rights obligations as well as the Qur’an. Most significantly, his acceptance of the product carried extraordinary influence.

In its 2003 review of Morocco’s second report, the Committee was critical of the “slow progress” in implementation and the “modest responses to the Committee’s concluding comments” on the initial report. It took note of the work on the Moudawana that was under way but remained highly critical of the family code as it stood.

Five years later, in its review of the third and fourth periodic reports, the Committee offered its appreciation of the adoption of the reformed Moudawana—but it had some pointed questions on the retention of polygamy and the default separate property regime. The Committee pressed the delegation on the question of withdrawing reservations and was assured that they would be withdrawn. Implementation of the law has been slow because of women’s illiteracy and male judges’ opposition. On 8 April 2011 the United Nations Secretary-General received a notification from the Government of Morocco that it had decided to remove the reservation to article 16 of the Convention.

**Conclusion:** CEDAW ratification provided the framework for a long-sought reform of family law; civil society advocates were extremely well informed, well organized, and passionate about CEDAW; and the ascent of enlightened leadership opened opportunity. All the factors came together, but the advocacy organizations had to be flexible and strategic in responding to fierce opposition in a number of quarters.

**SINGAPORE**

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174 *Concluding comments: Morocco, A/52/38, Part I, para 71 (1997).*


176 *Concluding observations: Morocco, A/58/38, Part II, paras 162, 178 (2003).*

177 *Concluding observations: Morocco, CEDAW/C/MAR/CO/4, e4-15 (2008).*

178 Pruzan-Jorgensen, n 175 above.

179 *Multilateral Treaties deposited with the Secretary-General, Chapter IV.8, n 72.*
Accession: 5 October 1995 (with reservations)

Initial report to CEDAW: 2000 (reviewed 25th session, 2001)
Second periodic report: 2001 (reviewed 25th session, 2001)
Third periodic report: 2004 (reviewed 39th session, 2007)

Singapore acceded to the Convention on 5 October 1995 with reservations to a number of articles, including article 9. In its initial report to the Committee in 1999, Singapore explained that the reservation was necessary because of the provisions of Singaporean nationality law which discrimination between women and men in relation to the right to transmit nationality to their children born outside Singapore. The report explained that the reservation was necessary “to ensure that our immigration policy remains in line with our Asian tradition where husbands are the heads of households.” The report gave no indication that the matter was under active review. The CEDAW Committee urged Singapore to further amend the nationality law so as to eliminate discrimination against women, and withdraw its reservation to article 9. The explanation that a Singaporean woman cannot transfer nationality to her child when she marries a foreigner and the child is born overseas, since dual nationality is not recognized, is unconvincing. The Committee wishes to point out that since both mother and father can transfer nationality to children born within the country in many countries, including Singapore, the same problem can arise with respect to the children born of Singaporean men and foreign women.

Three years later when Singapore submitted its third periodic report to the Committee it reported that the citizenship law had been changed by an amendment to the Constitution so that it was “gender neutral” in relation to transmission of nationality to children born after 15 May 2004. This permitted the withdrawal of the reservation to article 9. The Committee welcomed the change and the withdrawal of the reservation.

IV. CONCLUSIONS

180 Initial report of Singapore, CEDAW/C/SGP/1, para 2.3 (1999).
181 Initial report of Singapore, CEDAW/C/SGP/1, para 2.3 (1999).
182 Concluding observations on the initial report of Singapore, A/56/38, para 75 (2001). The CRC also drew attention to the issue in its Concluding observations on the initial report of Singapore under the CRC, CRC/C/133, para 413-414 (2003).
A number of conclusions can be drawn from these selected examples. The first is that change has often been slow and hard-won—ratification of the Convention does not necessarily lead to immediate reform even of laws which should be relatively easy to amend. In many cases change is only observed over a number of reporting cycles when the CEDAW Committee, informed by local NGOs and its own expertise, has pressed government to comply with the Convention. Initial response has often been slow and partial, with governments making only some of the recommended changes, requiring further scrutiny and lobbying to bring laws into full compliance.

The second point is the essential role of domestic NGOs in the process of reform, and in enhancing the impact of the CEDAW reporting process. In most cases domestic NGOs that have been campaigning on equality issues bring their issues to the CEDAW Committee to strengthen their domestic campaign by putting international pressure on governments and exploiting the desire (at least of some) to be seen as constructive in their engagement with human rights. Many of the NGOs, in addition to submitting reports, have been present at CEDAW sessions to brief the Committee on their priority issues. The treaty body experts frequently note that NGO contributions are essential to their effectiveness. More important, perhaps, is the NGOs’ on-the-ground use of the Convention and of CEDAW’s work to generate awareness and promote change.

A third and related point is that international reporting does provide an occasion for governments to reflect on their record in the light of the Convention’s standards and the Committee’s recommendations—now seen in the many government reports that specifically detail the measures they claim to have taken in response to, or consistent with, the Convention’s requirements and the Committee’s recommendations.

Finally, the impact of CEDAW standards and the CEDAW reporting procedure must be seen in the context of States’ other international treaty commitments and State party reviews by other bodies. If States are parties to other human rights treaties with overlapping obligations, they will have multiple accountability for certain issues, and sex discrimination cuts across all the human rights treaties. For example, the issue of discrimination in Morocco’s nationality laws has been taken up by other treaty bodies. In 2003 the Committee on the Rights of the Child was critical of the provisions of the law that resulted in a child’s inability to claim Moroccan citizenship if she was born of a Moroccan mother and a non-Moroccan father (while the converse was not the case). The Human Rights Committee voiced similar criticisms in 2004. In 2010 the Committee on the Elimination of Racial Discrimination urged the Government to amend the provisions of the nationality law that did not allow women of Moroccan nationality to transmit their nationality to husbands of foreign origin on an equal basis with Moroccan men. The cumulative impact of such assessments is not measurable; as to such issues, CEDAW could be said to multiply the impact of the other treaties as well as their underscoring CEDAW obligations. The Universal Periodic Review mechanism of the

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185 CRC/C/15/Add.211, paras 25 (2003).
Human Rights Council is assuming increasing importance in holding States to account for the performance of their human rights treaty obligations. This peer-review mechanism has the potential to amplify the recommendations of the CEDAW Committee and other human rights bodies, and provides States with an opportunity and incentive to respond to specific suggestions in front of its peers and a broader international audience. The UPR itself and its outcomes also provide additional opportunities and material for domestic advocacy using the Convention and other treaties, as well as for the CEDAW Committee and other treaty bodies to follow up at subsequent reviews of State party reports.
APPENDIX

CEDAW impact studies: an overview

In addition to the growing body of studies examining the impact of human rights treaties generally, a number of studies address the specific impact of the CEDAW Convention on various aspects of women’s equality. This section summarises a number of those studies, and refers to other accounts of the impact of CEDAW in individual countries.

Simmons: Mobilizing for Human Rights

The most wide-ranging study and one that has been very favourably received in the literature is that undertaken by Harvard political scientist Beth A. Simmons. In a major study of the impact of international human rights treaties at the domestic level published in 2009 which combined quantitative analysis and case studies, Simmons explored the impact at the national level of a number of different human rights treaties including the CEDAW Convention. Simmons notes at the outset of her discussion of the CEDAW Convention that “there is some plausibility to the argument that CEDAW ratification has had an influence on domestic politics by stimulating the formation of women’s organizations, at least in some cases,” with the effects concentrated “not in the stable democracies or the stable autocracies but rather in the transitional countries.” She also notes “significant evidence that membership in women’s international NGOs grew in the first and second years after CEDAW ratification,” concluding that the Convention “has given women a stronger stake in organizing to demand nondiscrimination and basic rights, due at least in part to its influence on expectations and mechanisms (e.g., reporting requirements) that invite these groups to critique government policies.”

Simmons selects three rights to examine: education, reproductive health and employment. Her analysis leads her to conclude that “ratification of CEDAW has a positive and statistically significant effect” on enjoyment of the right to non-discrimination in education, contributing to an “improvement of the ratio of girls to boys in primary and secondary education.” The effects are to be seen immediately after ratification and continue for at least five years, though may then fall off. Simmons also notes that CEDAW has not had the same impact everywhere, with the greatest impact in transition countries, in countries without a State religion, countries “reputed for their well-developed rule of law institutions,” or in countries where there is an active presence of women’s international NGOS.

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189 Id at 210.
190 Id at 217.
191 Id at 222.
192 Id at 222.
193 Id at 221-222.
Simmons also analyses the data to ascertain whether CEDAW ratification improves women’s enjoyment of the right to reproductive health (to be found in articles 10(h), 12(1) and 16(1)(e) of the Convention). She uses as the indicator of compliance the extent to which “government policy facilitates general access to contraception.” Simmons concludes that “making a CEDAW commitment makes it much more likely that a government will support access to modern means of contraception.” She notes that while such access is better in secular States, “even as among secular States, CEDAW has made a real difference in access policy”, while in States with a stable State religion CEDAW has made virtually no difference.

The final right examined by Simmons is the right to non-discrimination in employment (article 11 of the Convention). She focuses on paid employment in the public sector, and finds that CEDAW has a marginally statistically significant effect on the share of women in public employment. This is also distributed unevenly, though in this case “the big difference is between countries in which women might reasonably expect to access the courts – the high rule of law states – to enforce their rights”.

After noting that CEDAW ratification “has an important effect on policies and outcomes that the treaty is designed to influence,” Simmons then explores the mechanisms by which this impact occurs, noting that statistical analysis “can take us only so far in trying to answer this question.” She examines two cases – the development of employment law and policy in Japan, and of law and policy in Colombia with respect to reproductive health and autonomy. In the case of Japan Simmons traces the important role played by national women’s groups and other advocates within and outside the government bureaucracy who used the occasion of ratification of the Convention and subsequent appearances before the CEDAW Committee to maintain pressure on government to introduce laws on sex discrimination in employment and then to strengthen what were initially fairly weak laws. Simmons notes the overwhelming assessment in the literature that the equal employment opportunity law that was adopted in 1985 to enable Japan to ratify the Convention, would not have been adopted without the Convention.

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194 Id at 225.
195 Id at 227.
196 Id at 230.
197 Id at 230-231.
198 Id at 233.
199 Id at 236.
200 Id at 236.
201 Id at 236.
202 Id at 237-245.
203 Id at 240-241.
Furthermore, the Law gave rise to increased mobilization and litigation, with a number of major cases being won or settled.\footnote{Id at 242-243.}

In her discussion of the impact of Colombia’s law and practice relating to reproductive rights,\footnote{Id at 245-253.} Simmons traces the impact of advocacy by local women’s groups around CEDAW (and their use of the CEDAW reporting procedure), which led to the inclusion of extensive guarantees in the new Colombian Constitution adopted in 1990 which ultimately, along with the Convention itself, underpinned the expansion of access to contraceptives, and a major Constitutional Court decision which overrode the absolute ban on abortion, allowing it in certain cases.\footnote{Id at 251-252.}

Simmons concludes her discussion by stating that gender equality does not automatically flow from democratisation or development, but “involves political agency and demands for change, and arguably CEDAW has strengthened the prospects for meeting those demands in many countries around the world ... Women mobilize strategically ... Where they have both the motive and the means to use international law to improve their rights chances, the CEDAW has proved to be a powerful tool in their hands.”\footnote{Id at 254-255.}

\textit{Other studies employing statistical analysis}

A number of other studies examine the impact of the CEDAW Convention on various aspects of women’s human rights. One study sought to identify the impact of the Convention on women’s empowerment through an analysis of variables related to women’s rights and gender equality for 177 countries between 1980 and 2005.\footnote{The rights and indicators used to assess the level of empowerment related to physical integrity and health rights, family and marriage rights, literacy and education rights, economic rights, and civil and political rights.} The author, Andrea den Boer, concluded that while ratification of the treaty alone appeared to have a significant effect only on women’s literacy (of the indicators measured in the study), “higher levels of reports to the CEDAW Committee were a significant predictor of higher female life expectancy, higher literacy, lowered female mortality rate, and increased shares in parliament and in the labour force, improved physical security of women, less discrepancy between laws and practices relating to women, greater equity in family law, legal rights to inheritance and land ownership, and great share of paternal authority.”\footnote{Den Boer, Andrea, “Evaluating CEDAW’s Impact of Women’s Empowerment”, Paper presented at the annual meeting of the ISA’s 49th Annual Convention, Bridging Multiple Divides, San Francisco, CA, USA, Mar 26, 2008, p 25.} Den Boer notes that while the study suggests a correlation between participation in the Convention and women’s empowerment, it does not address questions of causality, and also notes the potential impact that Convention participation may have even on countries with high levels of sexual equality. She concludes:

\footnote{Id at 242-243.}
But the question remains, has participation in CEDAW led to improvements in women’s empowerment? A deeper answer to this question requires a closer examination between the women’s rights committee that oversees the convention and the state parties to the convention. Further research into the “dialogue” that takes place between states, NGOs, and the CEDAW committee would help to shed light on this question.210

In another empirical study analysing data relating to 126 States parties to the Convention over the period 1981-2007,211 Cho Seo-Young explored whether the Convention improves the level of women’s enjoyment of their human rights, in particular whether any such effects are enhanced if a State party has a higher level of democracy, and also whether any positive impact was greater in the area of social rights. She concluded that

The interaction effect of commitments to the CEDAW with the level of democracy is positive and significant for women’s social rights, regardless of choices of control variables and methods of estimation, but not for women’s political and economic rights. The positive effects of commitments to the CEDAW on women’s rights are partially detected but the findings are not consistent across the different estimation methods and test for robustness.

My results conclude that the CEDAW is effective in improving women’s social rights if implemented by democratic institutions. This effect may seem partial as the CEDAW aims at addressing multiple dimensional issues of women’s rights. However, women’s social rights have been arguably most neglected by previous efforts to improve women’s status, given their cultural and habitual nature. Also, improvement in women’s standing in private spheres such as family matters tends to be slower than that in public spheres such as franchise rights and (legal) equal rights for employment. With this regard, this finding of the (conditional) positive effect of the CEDAW on women’s social rights is inspiring. The positive interaction effect over the 27 year-period implies that, under the joint efforts of the commitments to the Convention and democratic institutions, social patterns and cultures of discrimination against women can be changed before one generation passes, although the practice is deeply rooted and habituated in the hundred and thousand years of tradition.

The findings suggest important policy implications in promoting women’s rights. To improve women’s rights, collaborative efforts between international human rights regimes and domestic institutions are crucial. As seen above, neither the CEDAW nor the level of democracy alone creates any positive effect on women’s rights. It means that the international legal frame itself could be merely a ‘cheap

210 Id at 26.

talk’ if not carried out by proper domestic executors. Also, the democratic development of a country may not be automatically translated into positive development in women’s rights. This study on the CEDAW indicates that international human rights regimes, which have shaped international norms and values of fundamental rights, could become a ‘meaningful promise’ only with joint efforts of sound domestic institutional conditions.\textsuperscript{212}

Another study of the impact of globalisation on women which examined the factors affecting improvements in women’s living conditions (life expectancy, literacy, and participation in the economy and parliamentary office) found that international trade, foreign direct investment, membership in the United Nations and World Bank, and ratification of the Convention were associated with improved conditions for women. The authors, Gray, Kittilson and Sandholtz, concluded:

\begin{quote}
[T]he most consistently important factor across models is ratification of CEDAW. Participation in this agreement has played a role in increasing female levels of literacy, participation in the economy, and representation in parliament. Further, our analysis confirms that the effects of CEDAW are independent; ratification of CEDAW and positive changes for women on the dependent variables cannot be attributed to underlying domestic factors.\textsuperscript{213}
\end{quote}

\textit{Further studies or accounts}

In addition to these large-scale studies, there is a range of other literature in which the use and impact of the Convention in specific instances has been documented by scholars, commentators and advocates in the field. Many of these documents show how the Convention or the work of the CEDAW Committee in the reporting procedure has provided the impetus for or added momentum to calls for changes in laws at the national level. Many NGOs have been able to build the Committee’s review of national reports into their campaigns for change with some success. A 1998 UNIFEM study\textsuperscript{214} documented the changes to constitutions, legislation and government policy that ratification of the Convention and use of its standards and the reporting procedure had brought about in a number of countries, and a report published in 2000 demonstrated the impact that the Convention and the work of the Committee had had in 10 countries form several regions.\textsuperscript{215}

Shanthi Dairiam, a human rights advocate and former CEDAW Committee member, cites cases in which the interaction of the Committee’s review of a State party report and the national NGOs’ use of the concluding comments has contributed to reform – for example, the 1992 reform of more than twenty discriminatory provisions in the Country Code

\textsuperscript{212} Id at 21-22.


(Muluki Ain) of Nepal, changes to provisions of the Hindu Succession Act in India relating to inheritance, amendments to the Personal Status Code of Morocco in 2004, and amendments to laws in Kyrgyzstan on land rights in 2004.216 Savitri Goonesekere, emeritus professor of law and former CEDAW Committee member, refers to the impact of the Committee’s concluding comments on promoting the removal of discriminatory provisions in nationality laws in Fiji, Jamaica, Liechtenstein, Thailand, Burundi, India and Sri Lanka, as well as influencing reforms to family law in Fiji and the Maldives.217 She concludes that “the Committee’s concluding comments on the need for a holistic review of family law, and its critique of discrimination, have clearly provided an impetus for many countries to repeal received colonial laws, transform customary laws, and initiate a process of local law reform based on commitments to CEDAW.”218

The output of the Committee—in particular its General Recommendations (most prominently its General Recommendation 19 on violence against women) has also begun to have an influence on the work of national courts and tribunals, having been cited in a number of important cases.219

There are also accounts of how CEDAW has been used in relation to reforming employment equality laws in Japan,220 sexual harassment laws in India, property laws in


218 Id at 60.


Nepal,\textsuperscript{221} health laws in Colombia, and equality in appointments to public bodies in Costa Rica.\textsuperscript{222}

The use of CEDAW Convention and the jurisprudence of the Committee (its general recommendations in particular) by courts and tribunals in many countries has also been documented.\textsuperscript{223} In some countries the provisions of the Convention itself form part of domestic law (sometimes with constitutional status) and have been invoked directly before the courts to challenge discriminatory laws and practices, often in conjunction with constitutional guarantees of equality. In other countries, where the Convention has been transformed into domestic legislation, the Convention and the Committee’s output has been relevant to the interpretation of that domestic legislation.

The Convention and the Committee’s jurisprudence have also been drawn on by regional human rights tribunals in interpreting the scope of guarantees such the rights to equality, life, bodily integrity and freedom from torture or cruel, inhuman or degrading treatment.

\textsuperscript{221} See, eg, Nutan Chandra Subedi, “Elimination of Gender Discriminatory Legal Provisions by the Supreme Court of Nepal with Reference to Women’s Rights to Property” (2009) 26(1) Tribhuvan University Journal 37, 45-51.


Byrnes and Freeman – The impact of the CEDAW Convention

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