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Gender and Constitutions

Comparative Law
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Class within the Jean Monnet Module
EUGENIA, Coordinator Prof. Tania Groppi



How can public law ensure the equal enjoyment of basic rights and freedoms for both man and women?

- Incorporation of gender equality commitments into national constitutions + domestic law, policies and practices
- Importance of regional framework. In particular, one should consider the role of the European Union on the topic
- Importance of international instruments, which played a significant role in influencing the draft and design of new constitutions



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- A. International dimension
- B. National dimension
- C. European Union dimension



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CEDAW, 1979

CEDAW

**CONVENTION ON THE
ELIMINATION
OF ALL FORMS OF
DISCRIMINATION
AGAINST
WOMEN**





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CEDAW

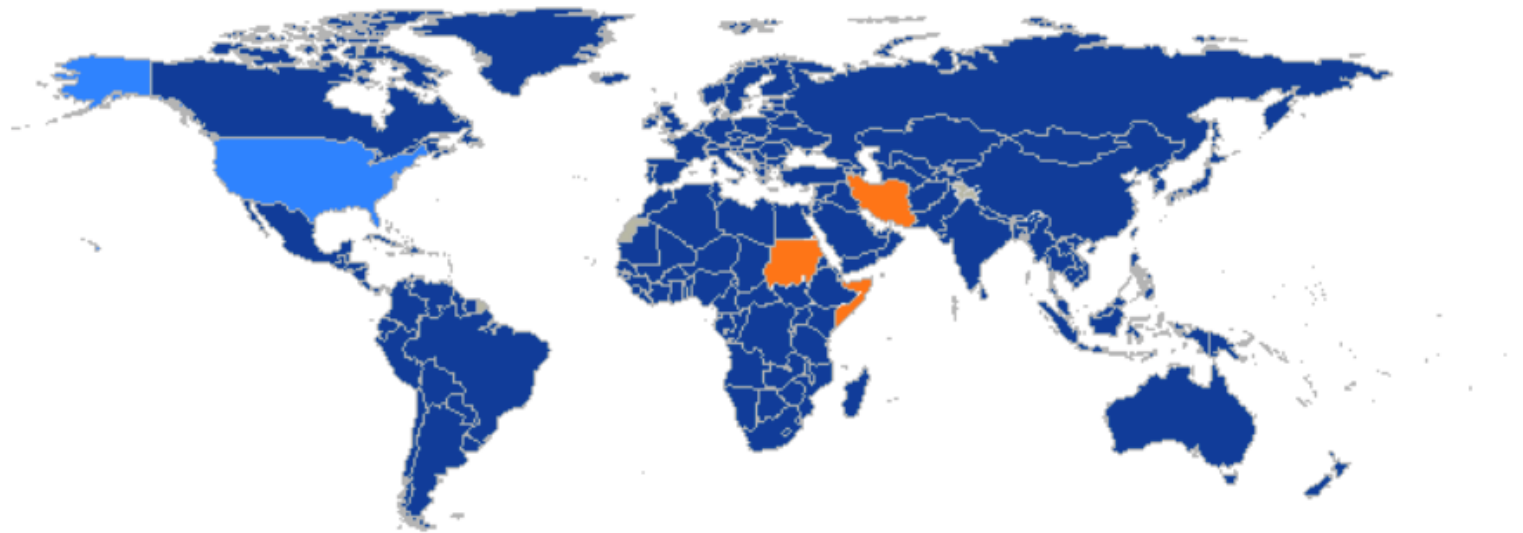
- The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is an international treaty adopted in 1979 by the United Nations General Assembly.
- Also known as international bill of rights for women
- It has been ratified by 189 states. Over fifty countries that have ratified the Convention have done so subject to certain declarations, reservations, and objections, including 38 countries who rejected the enforcement article 29.





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CEDAW

Convention on the Elimination of All Forms of Discrimination against Women



Country Status

 State Party (189)  Signatory (2)  No Action (6)

 Individual communications procedure

 Inquiry procedure



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CEDAW

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.



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Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 2 makes explicit the nature of the obligations accepted by States parties



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CEDAW

Article 3

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

Article 3 provides further guidance on the general obligations of state parties under the treaty



CEDAW – Algeria as example of reservations

Art. 2: The government of the people’s Democratic Republic of Algeria declares that it is prepared to apply the provisions of this article on condition that they do not conflict with the provisions of the Algerian family code.

Art. 16: The government of the people’s Democratic Republic of Algeria declares that the provisions of article 16 concerning equal rights for men and women in all matters relating to marriage, both during marriage and at its dissolution, should not contradict the provisions of the Algerian family code.



CEDAW

Excerpt from: A/53/38/Rev.1

Statements on reservations to the Convention on the Elimination of All Forms of Discrimination against Women adopted by the Committee on the Elimination of Discrimination against Women

1. The Committee adopted the following statement on reservations to the Convention which it wishes to bring to the attention of States parties as its contribution to the commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights.

Introduction

2. The Committee on the Elimination of Discrimination against Women wishes to mark the fiftieth anniversary of the Universal Declaration of Human Rights and the five-year review of the Vienna Declaration and Programme of Action with a statement concerning the adverse impact that reservations to the Convention on the Elimination of All Forms of Discrimination against Women have on the achievement by women of full and substantive equality with men. The Committee has extensive experience of the impact of reservations gained from the examination of States parties' reports. It has also noted the increasing concern expressed by other human rights treaty bodies, the International Law Commission, some Member States, the World Conference on Human Rights and the Fourth World Conference on Women, as well as scholars and non-governmental organizations, at the number and extent of reservations to human rights treaties, and to this Convention in particular.

Background

3. The Committee has, on a number of occasions, expressed its views and concerns regarding the number and extent of reservations to the Convention.¹ It has also noted that some States parties that enter reservations to the Convention do not enter reservations to analogous provisions in other human rights treaties. A number of States enter reservations to particular articles on the ground that national law, tradition, religion or culture is not congruent with

Convention principles, and purport to justify the reservation on that basis. Some States enter a reservation to article 2, although their national constitutions or laws prohibit discrimination. There is therefore an inherent conflict between the provisions of the State's constitution and its reservation to the Convention. Some reservations are drawn so widely that their effect cannot be limited to specific provisions in the Convention.

4. Several States parties have entered interpretative declarations to the Convention on ratification or accession. While it is not always easy to distinguish a declaration from a reservation, any statement, irrespective of its title, which seeks to modify the legal effect of the Convention in respect of a State party, will be considered by the Committee to be a reservation.² The Committee has noted, in this regard, that a number of States parties have entered general declarations which constitute, in fact, general reservations.

Reservations to the Convention

5. As at 1 July 1998, 161 States parties had ratified the Convention on the Elimination of All Forms of Discrimination against Women. Fifty-four States had entered reservations to one or more articles in the Convention including permissible reservations to article 29 (1) and (2).

6. Articles 2 and 16 are considered by the Committee to be core provisions of the Convention. Although some States parties have withdrawn reservations to those articles, the Committee is particularly concerned at the number and extent of reservations entered to those articles.

Impermissible reservations

7. Article 28, paragraph 2, of the Convention adopts the impermissibility principle contained in the Vienna Convention on the Law of Treaties. It states that a reservation incompatible with the object and purpose of the present Convention shall not be permitted.

8. Although the Convention does not prohibit the entering of reservations, those which challenge the central principles of the Convention are contrary to the provisions of the Convention and to general international law. As such they may be challenged by other States parties.

9. States parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other

to draw to the attention of States parties its grave concern at the number and extent of impermissible reservations. It also expresses concern that, even when States object to such reservations there appears to be a reluctance on the part of the States concerned to remove and modify them and thereby comply with general principles of international law.

Conclusion

25. Fifty years after the adoption of the Universal Declaration of Human Rights, the great majority of Member States have signified their commitment to the Convention by ratification or accession. It is now time to re-examine States' self-imposed limitations to full compliance with all the principles in the Convention by the entry of reservations. Removal or modification of reservations, particularly to articles 2 and 16, would indicate a State party's determination to remove all barriers to women's full equality and its commitment to ensuring that women are able to participate fully in all aspects of public and private life without fear of discrimination or recrimination. States which remove reservations would be making a major contribution to achieving the objectives of both formal and de facto or substantive compliance with the Convention – a laudable and appropriate contribution to the commemoration of 50 years of compliance with the Universal Declaration of Human Rights, as well as implementation of the 1993 Vienna Declaration and Programme of Action.



Other international tools

ICCPR, Art. 2:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Art. 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

ICESCR, Art. 2:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Art. 3:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.



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EUROPEAN UNION

Art. 8 TFEU:

In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

So-called “principle of gender mainstream”, introduced for the first time with the Treaty of Amsterdam of 1999. Positive obligation on Member States to dismantle persisting inequalities between men and women.

The principle of gender mainstreaming demonstrates a shifting approach of the European Union moving away from treating gender equality as a special issue, towards integrating it into all the areas of the policy-making. This means that a gender equality perspective is to be introduced into every issue and policy area, at all levels and all stages of the decision-making, process thus mobilizing all general policies and measures specifically for the purpose of achieving equality.



EUROPEAN UNION – CHARTER OF FUNDAMENTAL RIGHTS

18.12.2000

EN

Official Journal of the European Communities

C 364/13

CHAPTER III

EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.



EU – Legislative interventions

- Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC
- Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU

However, gender gaps remain and in the labour market women are still over-represented in lower paid sectors and under-represented in decision-making positions.



GENDER EQUALITY STRATEGY, 2020-2025



GENDER EQUALITY STRATEGY, 2020-2025

Main goals:

- End gender-based violence;
- Combat gender stereotypes;
- Close the gender gap in the labor market;
- Achieve equality in participation in different economic sectors;
- Address the wage and pension gap between men and women;
- Closing the gap and achieving gender balance in decision-making;
- Decision-making and policy making.

The implementation of this strategy will proceed on a dual track: measures targeted to achieve gender equality, combined with increased gender mainstreaming. The Commission will enhance such mainstreaming by systematically including a gender perspective at every stage of policy development in all areas of EU action, both internal and internal and external. The strategy will be implemented using, as a principle cross-cutting, intersectionality, that is, the combination of gender with other personal characteristics or identities and how these intersections contribute to specific discrimination experiences.