

# THE PROTECTION OF WOMEN IN INTERNATIONAL LAW



# UNITED NATIONS

First area in which the process of specification regarding women's rights began.

- 1946- United Nations Commission on the Status of Women (UNCWS) .
- 1953- Women's Political Rights Convention.
- 1957- Convention on the Nationality of Married Women.
- 1967- Declaration on the Elimination of Discrimination against Women.

# UN Conferences

- 1972 UN General Assembly accepts proposal launched by UNCSW to proclaim 1975 International Year of Women



Focusing international community attention and debate on obstacles in the path to full affirmation of women's rights.

Themes: equality, development, peace

# Mexico Conference (1975)

- Giving substance to the purpose of the International Year
- Representatives from 133 states and more than 6,000 representatives from 80 NGOs and civil society organizations

Divergences between countries:

- Eastern Bloc= peace;
- Western bloc= equality;
- Southern countries= development;



Mexico City Declaration; Resolutions; World Programme of Action ; International Decade on Women

# Copenhagen Conference (1980)

- Representatives from 145 states and more than 8000 NGO representatives from 187 countries
- Discrepancy between formal and substantive equality due to discriminatory social structures and customs
- Conference focus: education, health and labor



Presentation of Convention for the Elimination of Discrimination against Women (CEDAW); Copenhagen Global Action Program.

# Nairobi Conference (1985)

- End of International Decade for Women
- 1900 delegates from 157 states, over 14000 NGO representatives
- Benefits of the Decade for Women restricted to Western countries



Nairobi Forward-looking Strategies to the Year 2000

Equality= not only absence of discrimination but opportunity to realize and enjoy their rights and participate in social progress.



UNITED NATIONS  
FOURTH WORLD CONFERENCE ON WOMEN  
BEIJING, 4-15 SEPTEMBER 1995



# Conferenza di Pechino (1995)

- 5307 delegates from 189 governments and representatives of more than 2000 organizations from 200 different countries

1. Women's human rights
2. Violence
3. Healthcare
4. Armed Conflict
5. Economy
6. Positions and decision-making processes
7. Mechanisms for promoting equality
8. Poverty
9. Education and training
10. Environment
11. Media
12. Girls

## Beijing Platform for Action

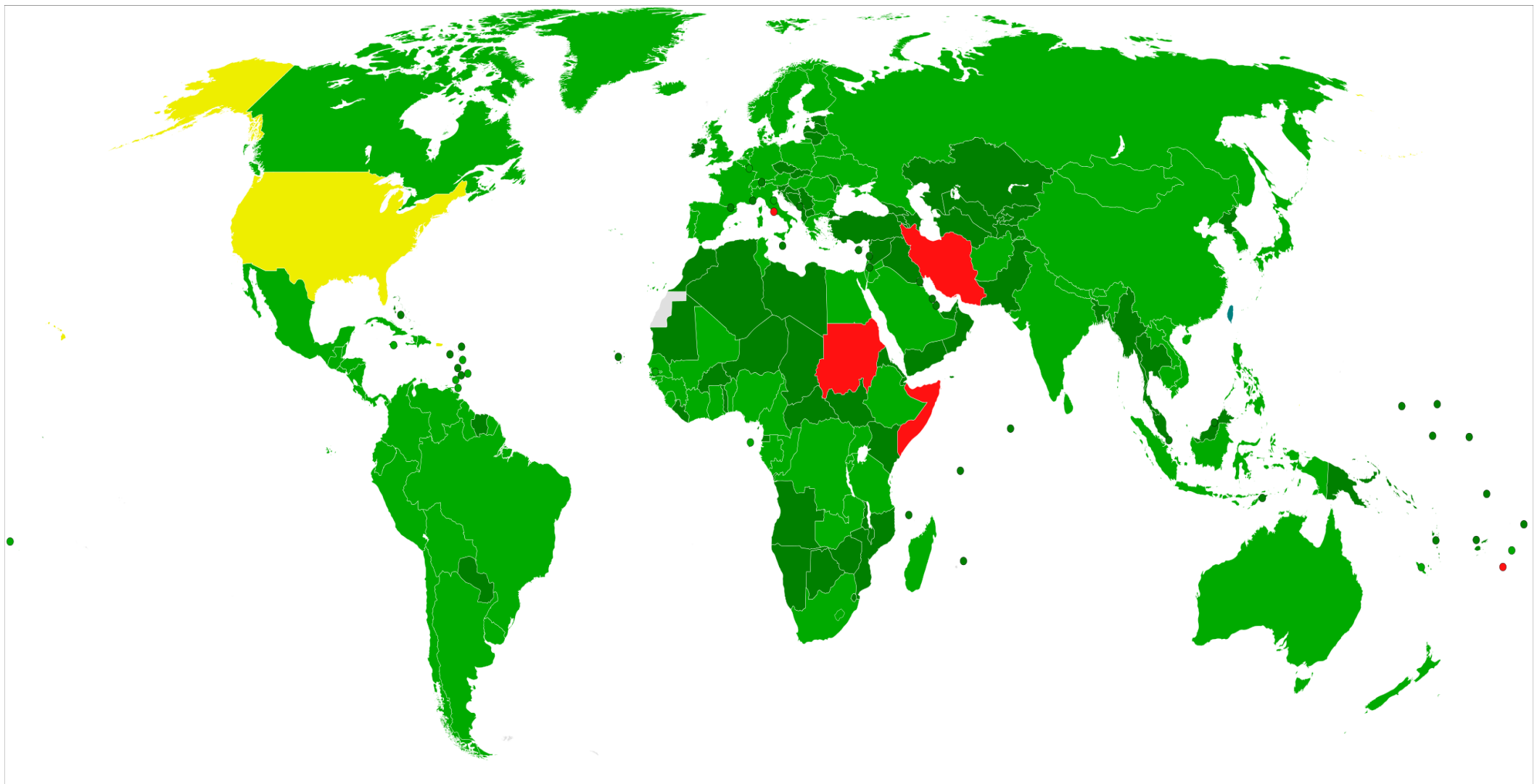
empowerment and gender mainstreaming

# CEDAW

- Resolution 34/180 (1979): Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)
- First binding instrument to combat discrimination against women from a global perspective

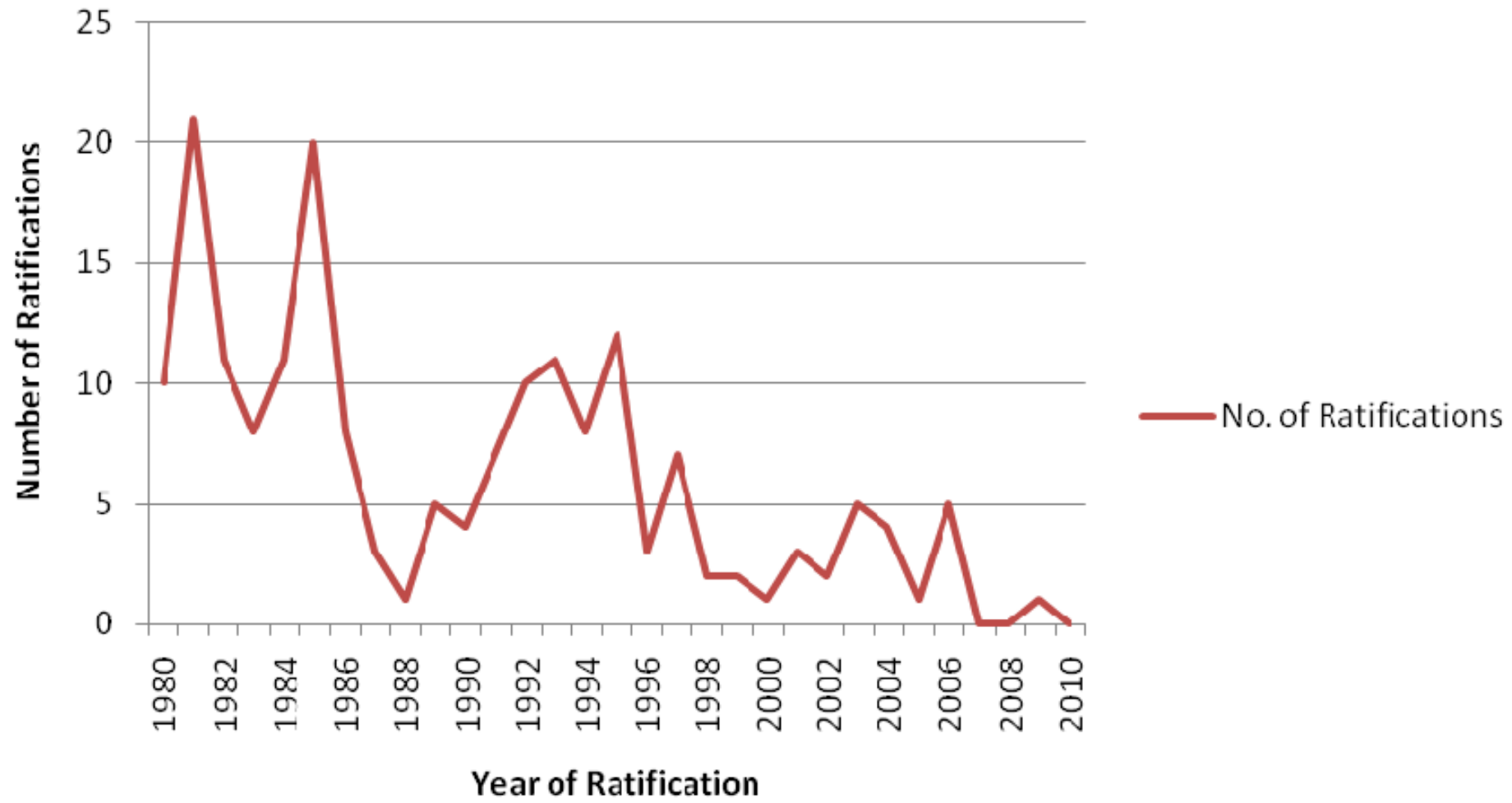
## **Article 1**

For the purposes of this Convention, the expression "discrimination against women" shall cover any distinction exclusion or limitation based on sex, which has as its consequence, or purpose, to impair or destroy the recognition, enjoyment or exercise by women, whatever their marital status, of human rights and fundamental freedoms in the political, economic, social, cultural and civil fields or in any other field, on the basis of equality between men and women.



- Firmato e ratificato
- Aderito o succeduto
- Stato non riconosciuto che rispetta il trattato
- Solo firmato
- Non firmato

## No. of Ratifications



- Specific Obligations for States (**Article 3**)

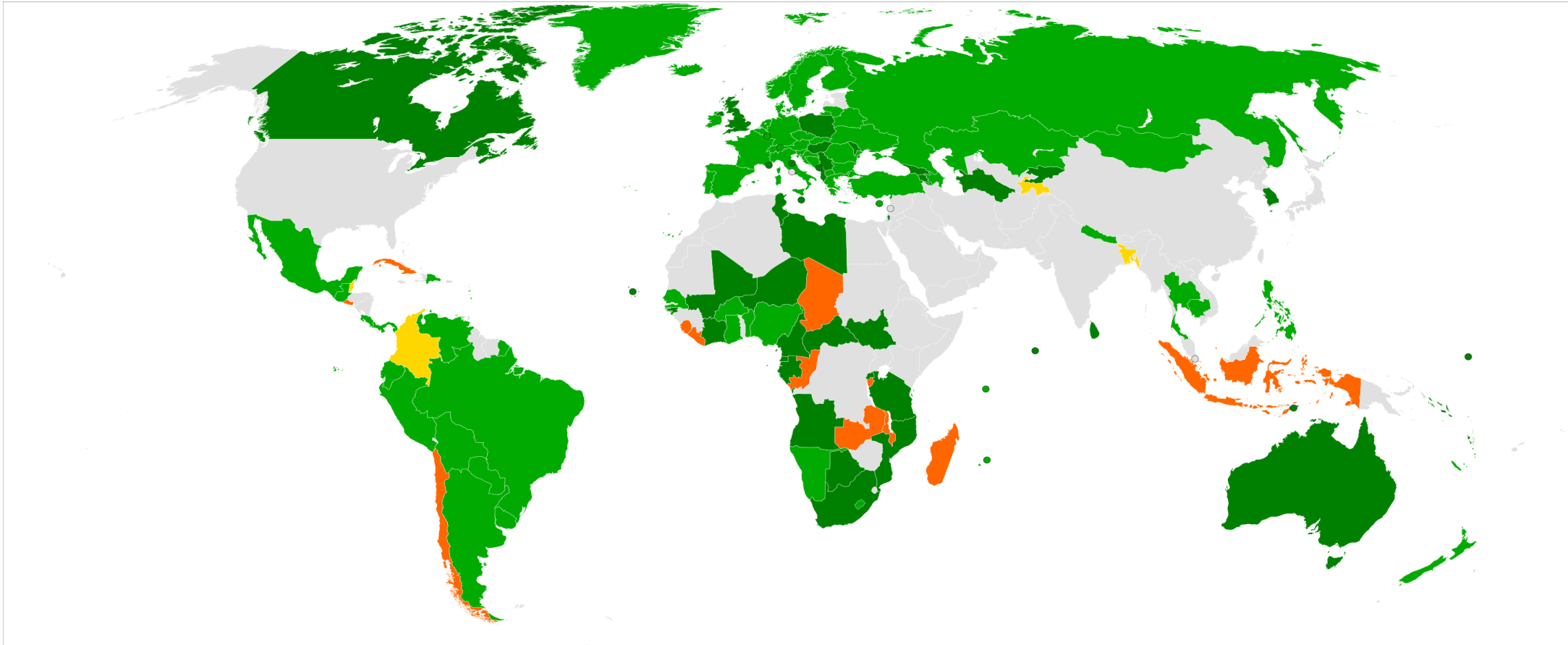
States Parties shall take in every field, and particularly in the political, social, economic and cultural fields, all appropriate measures, including legislative provisions, to ensure the full development and advancement of women, and to secure for them on a basis of full equality with men, the exercise and enjoyment of human rights and fundamental freedoms.

- 189 States Parties (almost all UN Member States). The 6 UN States that have not ratified it are: Iran, Palau, Somalia, Sudan, Tonga and the United States.
- Optional Protocol 1999= enlargement of powers Committee.

# CEDAW




# Optional Protocol (1999)



- Stati che riconoscono la competenza per gli articoli 8 e 9
- Stati che non riconoscono la competenza per gli articoli 8 e 9
- Stati che hanno firmato il Protocollo, ma non lo hanno ratificato
- Stati non firmatari

# CmEDAW

- Article 17
- In order to review the progress made in the implementation of this Convention, a Committee on the Elimination of Discrimination against Women shall be established [...].
- Committee on the Elimination of All Forms of Discrimination against Women
- Periodic reports Concluding observations
- Shadow Report  General recommendations
- Examine petitions (individual and group)
- Initiate investigations

# CEDAW in Japan

- Japan= absence of laws generally prohibiting discrimination; particular constitutional history

- Ratification Convention in 1985



- Amendment of Nationality Law and student educational pathway
- Enactment of "Equal Employment Opportunity Act" (EQA-1985)
- Impact in the formation of civil society and NGOs:
  - EQA Amendments (1997 and 2006)
  - Basic Act for a Gender Equal Society (1999)
  - Act on the Promotion of Female Participation and Career Advancement in the Workplace.
  - Act on Promotion on Gender Equality in the Political Field (2018+ amendments 2021)

# CEDAW in Italy

- Rarely applied by judges and legislature
- Constitutional Court Ruling No. 286/2016 (Ruling No. 61/2006):



- Illegitimacy of the principle that prohibited attribution of maternal surname to the child
- The Constitutional Court, in Judgment No. 286/2016, recalled what it had stated in 2006 for the part in which it recalled that "the constraint [...] posed by the conventional sources, and, in particular, by Article 16, paragraph 1 (g), cannot be obliterated" CEDAW "which commits States Parties to take all appropriate measures to eliminate discrimination against women in all matters arising out of marriage and family relations." Indeed, states that have ratified it cannot be considered contracting parties "unless they submit to the obligations arising from Article 16, with all that this entails in terms of implementation in and by the domestic legal system."

# CEDAW in USA

- The United States has never ratified CEDAW, although it signed it in 1980 thanks to the support of President Carter
- Between 1990s and early 2000s, various attempts at ratification. Strong domestic political and legal opposition
- In 1998, San Francisco pioneered the idea of using CEDAW to advance the status of women at the local level



- Binding ordinance integrating CEDAW into city and county governance (<https://sfgov.org/dosw/node/229>)



To date, 55 cities and 14 U.S. states are part of the "cities for CEDAW" program.»

# CEDAW and Gender-Based Violence.

- CEDAW does not include explicit reference to violence against women
- In 1990s attempt to introduce "Convention for the Elimination of Violence against Women and Girls"
  - Expenditure of time and resources
  - No guarantee same success CEDAW
  - CEDAW discrediting
- CmEDAW dynamic interpretation activities of CEDAW gradually supplemented this gap:
  - Interlocution States during reports, initial and periodic
  - General recommendations

# General Recommendation No. 12

## [1989]

The Committee on the Elimination of Discrimination against Women,

Considering that articles 2, 5, 11, 12 and 16 of the Convention require States Parties to endeavour to protect women from violence of any kind perpetrated within the family, in the workplace or in any other area of social life

Taking into account Economic and Social Council Resolution 1988/27, Recommends that States Parties include in their periodic reports to the Committee information on:

- Legislation in force aimed at protecting women from the incidence of all types of violence in daily life (including sexual violence, family abuse, sexual harassment in the workplace, etc.);
- The other measures taken to eradicate such violence;
- The existence of support services for women who are victims of assault or abuse;
- The statistical data on the incidence of violence of all kinds against women and on women who are victims of violence.

# General Recommendation No. 19

## [1992]

- Gender-based violence is a form of discrimination that severely inhibits the ability of women to enjoy rights and freedoms on an equal basis with men.
- In 1989, the Committee recommended that states include in their reports information on violence and measures introduced to address it (General Recommendation No. 12, Eighth Session).
- During the tenth session in 1991, it was decided to devote part of the eleventh session to the discussion and study of Article 6 and other articles of the Convention relating to violence against women, sexual harassment and exploitation of women. This topic was chosen in anticipation of the 1993 World Conference on Human Rights, convened by General Assembly Resolution 45/155 of December 18, 1990.
- The Committee concluded that not all reports from States Parties adequately reflected the close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms. Full implementation of the Convention required states to take concrete measures to eliminate all forms of violence against women.
- The Committee suggested that States Parties, in reviewing their own laws and policies, and in submitting their reports in accordance with the Convention, should take into account the following observations of the Committee regarding gender-based violence.

# General Recommendation No. 35

## [2017]

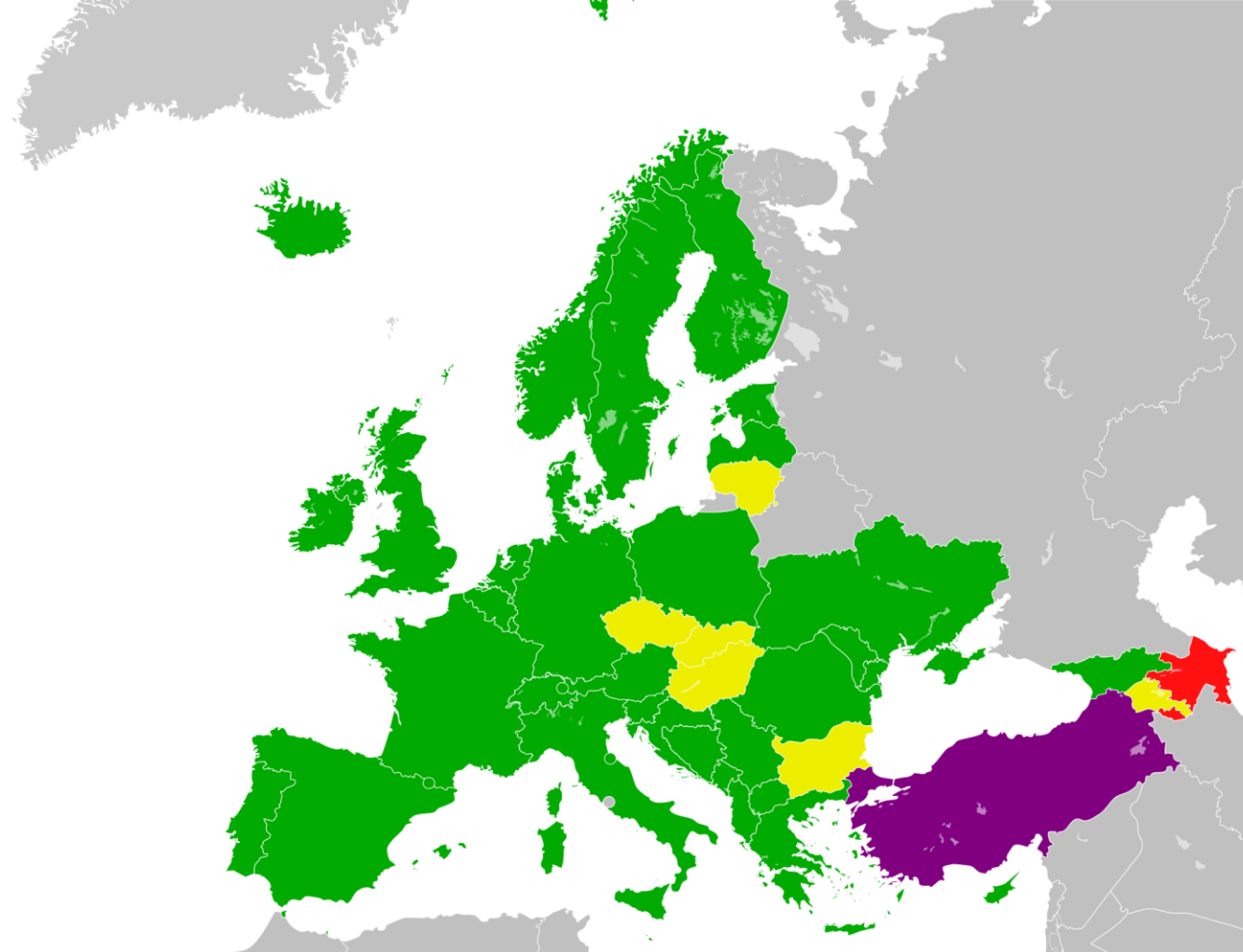
- Update Recommendation No. 19
- Introducing the concept of intersectionality in gender-based violence.
- Recognizes the prohibition of gender-based violence as a norm of customary international law and broadening the phenomenology of violence to include violations of sexual and reproductive rights.
- Then identifies changing social norms as a key step in interrupting the spiral that allows the recurrence of violence, including on the basis of cultural or religious practices or traditions that effectively deny the principle of gender equality and convey plural forms of violations of women's human rights.
- Recognizing different forms of gender-based violence, such as online violence
- Linking gender-based violence to the phenomenon of torture

# Gender-Based Violence in the European Context

- Jurisprudence European Court of Human Rights.
- Opuz v. Turkey (2009):
  - Turkey sentenced for violations of Articles 2(right to life), 3(prohibition of inhuman and degrading treatment) and 14(prohibition of discrimination) ECHR
  - In cases of violence against women to assess responsibility authorities need to assess foreseeability harmful acts actually carried out and adequacy measures taken "to avoid a real and immediate risk to life of which they have or ought to have knowledge"
  - Domestic violence is no longer considered a "private matter"
  - "Vulnerable groups approach" to protect the position of women

# Convenzione di Istanbul

- In 2011 the Council of Europe approves the Convention on preventing and combating violence against women and domestic violence
- Influence of ECHR jurisprudence + provisions contained in CEDAW
- Holistic approach based on the 4 Ps
  - Prevention
  - Protection
  - Criminal proceedings
  - Integrated policies
- Open for signature and ratification towards both non-Council of Europe states and international and supranational organisations
- EU signed the Convention in 2017 and completed the ratification process in 2023



- ■ Ratificato
- ■ Sottoscritto, non ratificato
- ■ Non sottoscritto, non ratificato
- ■ Revocato

# States' obligations

- Negative obligations: state authorities and other actors acting on behalf of the state must refrain from acts of violence against women
- Positive obligations: obligation of states to "prevent, investigate, punish perpetrators, and compensate victims of acts of violence committed by non-state actors" (Art. 5)



- Duty of "due diligence" → essential in the case of domestic violence that is often perpetuated by private actors

- **Article 3** explains that under the convention, 'gender' means 'the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men'.
- It is also explicitly recognised that violence against women is a violation of human rights.
- **Article 12.1** defines the eradication of prejudices, customs, traditions and other practices based on the idea of women's inferiority or stereotyped gender roles as a general obligation to prevent violence.
- **Chapter VII** of the Convention is dedicated to the protection of migrant and asylum-seeking women:
  - Gender-based violence as persecution according to the Geneva Convention
  - Prohibition of refoulment

# Monitoring

- The Convention establishes a monitoring mechanism to monitor the proper implementation of its provisions.
- 2 separate but interacting pillars

## **GREVIO**

Composed of experts appointed by the Committee of the Parties

Various mechanisms:

- Reports submitted by states
- Urgent investigation procedure
- General recommendations

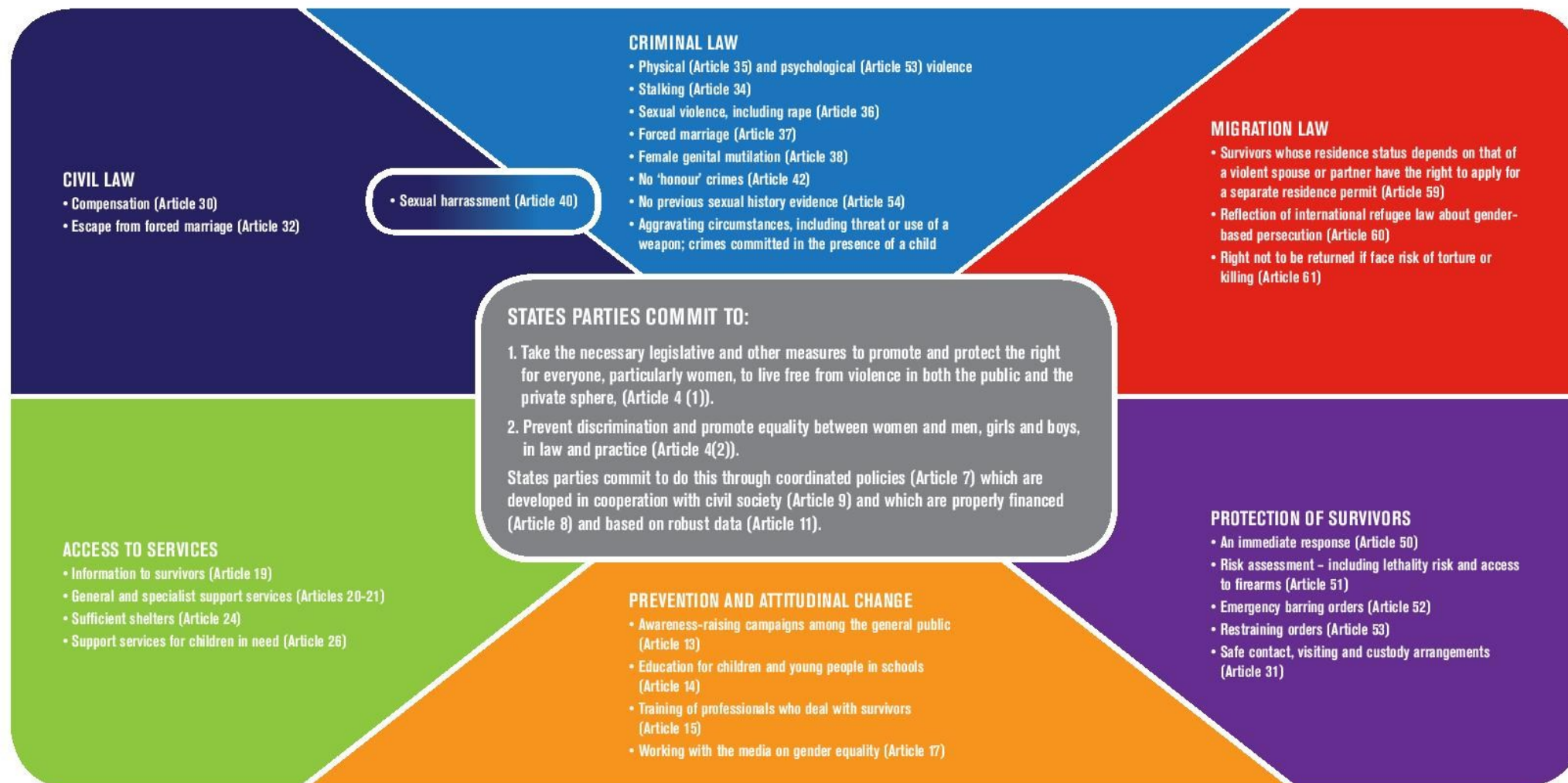
## **Committee of the Parties**

Political body composed of representatives of countries that have ratified the Convention

Issues Recommendations to states on areas GREVIO has deemed most urgent : more concise than GREVIO

# THE COUNCIL OF EUROPE CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (ISTANBUL CONVENTION)

The purpose of the **Istanbul Convention** is to prevent, prosecute and eliminate violence against women and domestic violence and to contribute to the elimination of all forms of discrimination against women and girls in law and practice (Article 1)



# Istanbul Convention and Italy

- Italy signed the Istanbul Convention in 2011 and ratified it in 2013
- Istat began, in 2017, to collect data pertaining to the System of Protection of Women Victims of Violence. Law No. 53 of 2022, "Provisions on Statistics on Gender-based Violence," specifically requires Istat to conduct these Surveys on the characteristics of the users of Anti-Violence Centers, including the perpetrator-victim relationship, the type of violence suffered, the presence of children, and the types of assistance provided.
- The measure that has most impacted the fight against gender-based violence is Law No. 69 of 2019 (so-called «Codice Rosso»), which strengthened the procedural protections of victims of violent crimes, with particular reference to crimes of sexual and domestic violence, introduced a number of new crimes into the Criminal Code

# Istanbul Convention in case law

- *Talpis v. Italy* (2017)= the Strasbourg Court, emphasizing precisely the role of the aforementioned Convention, issues a real "warning" judgment against Italy, declaring the violation of Articles 2 and 3 ECHR (and Article 14 in conjunction with the previous two articles) and clarifying some key concepts related to the relationship between the obligations of States and the fight against gender-based violence.
  - violence suffered by the applicant can be considered as a consequence of a discriminatory attitude based on gender, perpetrated by the Italian authorities themselves
  - the case in question would not go to constitute an isolated episode, but rather a structural dysfunction that demonstrates the extent of the problem of domestic violence in Italy and the discrimination suffered by women in this context, and that despite all the reforms implemented in Italy, "the socio-cultural attitudes of tolerance of domestic violence persist."
- CJUE 621/21= Gender-based violence impacts on the recognition of refugee status ex. Geneva Convention. For the first time, the CJEU interpreted UE law in accordance with the Istanbul Convention.

# CEDAW and Istanbul Convention compared

CEDAW	ISTANBUL
PURPOSE	PURPOSE
<ul style="list-style-type: none"><li>• Human rights treaty focused on women and girls.</li><li>• Key international legally binding instrument that provides standards to prevent and combat discrimination against women.</li><li>• Aims to eliminate all forms of discrimination against women.</li></ul>	<ul style="list-style-type: none"><li>• Human rights treaty focused on women and girls.</li><li>• First legally binding pan-European instrument that provides standards to prevent and combat violence against women and domestic violence. Also serves as a tool to promote greater equality between women and men</li><li>• Aims to create a Europe free from violence against women and domestic violence by defining a set of targeted goals (Article 1).</li></ul>

CEDAW	ISTANBUL
SCOPE	SCOPE
<ul style="list-style-type: none"> <li>• It applies to all forms of discrimination against women in the political, economic, social, cultural, civil or any other field (Article 1).</li> <li>• It does not contain a specific provision on violence against women and/or domestic violence. It addresses violence indirectly with reference to gender stereotypes, practices and laws that perpetrate gender inequality and make violence against women acceptable. By interpretation, the CEDAW Committee has read gender-based violence as discrimination in the Convention (see General Recommendation No. 19).</li> </ul>	<ul style="list-style-type: none"> <li>• It applies to all forms of violence against women and girls, including domestic violence (Article 2(1)), but leaves it up to the State Party to decide the extent to which its provisions apply to men, the elderly, and children who are victims of domestic violence (Article 2(2)).</li> </ul>

CEDAW	ISTANBUL
DEFINITIONS	DEFINITIONS
<ul style="list-style-type: none"> <li>• Contains a definition of discrimination against women (Article 1)</li> <li>• Does not include a definition of: <ul style="list-style-type: none"> <li>○ gender</li> <li>○ gender-based violence</li> <li>○ violence against women, including domestic violence</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Contains definitions of (Article 3): <ul style="list-style-type: none"> <li>○ violence against women</li> <li>○ domestic violence;</li> <li>○ gender</li> <li>○ gender-based violence against women.</li> </ul> </li> <li>• The Convention defines the following forms of violence against women: <ul style="list-style-type: none"> <li>○ psychological violence (article 33)</li> <li>○ stalking (article 34)</li> <li>○ physical violence (article 35)</li> <li>○ sexual violence, including rape (article 36)</li> <li>○ forced marriage (article 37)</li> <li>○ female genital mutilation (article 38)</li> <li>○ forced abortion and forced sterilization (article 39)</li> <li>○ sexual harassment (article 40)</li> </ul> </li> </ul>

CEDAW	ISTANBUL
<ul style="list-style-type: none"> <li>Entirely dedicated to the elimination of discrimination against women and the achievement of de facto equality between women and men. It is in this context that the CEDAW Committee addresses VAW in its concluding comments.</li> <li>It condemns discrimination against women in all its forms (Article 2) and requires States Parties to undertake a range of measures to do so</li> </ul>	<ul style="list-style-type: none"> <li>Entirely dedicated to the elimination of violence against women, which is impossible without achieving equality between women and men. It is in this context that it calls for the adoption of measures to achieve de facto equality between women and men.</li> <li>It condemns all forms of discrimination against women (Article 4 (2)) and requires taking different measures to that end.</li> </ul>

CEDAW	ISTANBUL
<ul style="list-style-type: none"> <li>Article 4 (1) states that temporary special measures to ensure de facto equality between women and men shall not be considered discrimination.</li> <li>Article 5 (a) obliges States Parties to change patriarchal attitudes and stereotypes and change mindsets.</li> <li>Article 10 (c) requires Parties to eliminate stereotypes based on the roles of women and men in educational materials at all levels.</li> </ul>	<ul style="list-style-type: none"> <li>Seeks to prevent violence against women by promoting changes in attitudes and practices (Chapter III - Prevention):</li> <li>Article 12 (4) requires States Parties to encourage all members of society, particularly men and boys, to actively contribute to the prevention of all forms of violence against women.</li> <li>It is the first treaty to require the application of a gender perspective in the design and evaluation of measures taken for its implementation (Article 6). Article 6 also calls for the promotion of gender equality policies.</li> </ul>

CEDAW	ISTANBUL
G. R. n. 19	
<ul style="list-style-type: none"> <li>• Gender-based violence = a form of discrimination against women (para. 1).</li> <li>• Gender-based violence = violence that is directed against a woman because she is a woman or that disproportionately affects women. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may violate specific provisions of the Convention, regardless of whether those provisions expressly mention violence" (paragraph 6).</li> </ul>	<ul style="list-style-type: none"> <li>• Violence against women: violation of human rights and form of discrimination (Art. 3).</li> <li>• Violence against women=All acts of gender-based violence that cause, or are likely to cause, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life" (Article 3(a)).</li> <li>• The definition of violence against women goes further by including "economic harm" and explicitly defining such violence as a violation of human rights.</li> </ul>

CEDAW	ISTANBUL
G. R. n. 19	
<ul style="list-style-type: none"> <li>Establishes the principle of due diligence = state responsibility for gender-based violence perpetrated by public authorities but also by private actors.</li> <li>Establishes that CEDAW applies to "violence perpetrated by public authorities. Such acts of violence may violate that State's obligations under general international human rights law and other conventions, in addition to violating this Convention."(paragraph 8)</li> <li>Establishes that "under general international law and specific human rights covenants, States may also be liable for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and to provide redress."</li> </ul>	<ul style="list-style-type: none"> <li>Establishes the principle of due diligence = state responsibility for gender-based violence perpetrated by public authorities but also by private actors.</li> <li>Art. 5 requires states to: <ul style="list-style-type: none"> <li>"refrain from committing any act of violence against women and ensure that state authorities, officials, agents, institutions and other actors acting on behalf of the state act in accordance with this obligation" (para. 1)</li> <li>"to exercise due diligence to prevent, investigate, punish and redress acts of violence within the scope of this Convention that are perpetrated by non-state actors" (paragraph 2).</li> </ul> </li> </ul>

CEDAW	ISTANBUL
G.R. n 19	
<ul style="list-style-type: none"><li>• Paragraph 24 includes a set of (non-binding) recommendations for States Parties to address gender-based violence under CEDAW.</li></ul>	<ul style="list-style-type: none"><li>• All of its (legally binding) measures offer a holistic response and can be grouped into 4 areas: prevention, protection and support, prosecution and integrated policies, and data collection.</li></ul>