

IWRAW ASIA PACIFIC EXPERT GROUP MEETINGS (EGM) PUBLICATIONS

POSSIBLE ELEMENTS FOR INCLUSION IN A GENERAL RECOMMENDATION TO ARTICLE 2 OF CEDAW

**Outcome Document of the Expert Group Meeting on CEDAW Article 2:
National and International Dimensions of State Obligation**

**International Women's Rights
Action Watch Asia Pacific**



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International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific) is an independent, non-profit NGO in Special consultative status with the Economic and Social Council of the United Nations.

The IWRAP Asia Pacific makes available emerging discussions and debates related to the organisation's areas of work. The views here reflect those of the author(s) and do not necessarily always reflect the views of the organisation.

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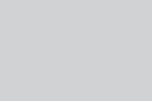
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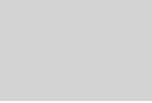
Preface

The International Women's Rights Action Watch Asia Pacific, in collaboration with the Australian Centre for Human Rights of the Faculty of Law, University of New South Wales, convened an expert group meeting from 14 to 16 February 2007 in Kuala Lumpur, on the theme *CEDAW Article 2: National and International Dimensions of State Obligation*. The participants in the meeting included women's human rights activists and advocates, international law experts, academics, and past and present members of the Committee on the Elimination of Discrimination against Women.

The meeting was in the context of the decision of the CEDAW Committee to elaborate a general recommendation on Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. The purpose of the meeting was to explore the possible form and content of such a general recommendation, and to put forward for the consideration of the CEDAW Committee a series of elements and issues that participants thought would be usefully addressed in the Committee's deliberations. The participants had available a number of background materials for the meeting, as well as the benefit of presentations made by participants and discussion. This document is the key outcome of the meeting.

This paper, the *Possible Elements for a General Recommendation on Article 2 of the CEDAW Convention* represents the range of issues which participants recommended that the CEDAW Committee take into consideration in its deliberations on the proposed *General Recommendation on Article 2¹ of the CEDAW Convention*.

¹ Article 2 is one of the core articles of the CEDAW Convention. It enumerates the general obligations of the State under the Convention, and lists legal and practical steps, which a State party must take to implement it and to achieve actual realisation of women's human rights. In order to assist States to fulfil their obligations under the Convention, the CEDAW Committee has consistently used the reporting process to clarify the content of States parties' general obligations under the Convention ("State obligation"). The Committee has interpreted the provisions contained in Article 2 as they relate to specific contexts and circumstances. Activists, lawyers, and academics working at the national level have been trying to address the gap that frequently exists between international standards on women's rights accepted by States and the domestic implementation of those standards.



POSSIBLE ELEMENTS FOR INCLUSION IN A GENERAL RECOMMENDATION ON ARTICLE 2 OF THE CEDAW CONVENTION

A. GENERAL

1. The *General Recommendation* on Article 2:
 - (a) should underline the binding nature of the legal obligation accepted by States when they become parties to the Convention, and provide specific guidance to States parties as to the types of steps which they should take into order to give effect to their obligations under the Convention;
 - (b) should be formulated with the goal of making it a useful, focused, and practical juridical tool for government officials, activists, advocates, courts and tribunals, and other institutions; and
 - (c) should be firmly based in the practice of the CEDAW Committee (and other relevant practice under the Convention), and take into account the progressive developments in the practice of other human rights bodies (including the other UN human rights treaty bodies and regional human rights bodies), and seek to develop the practice of the Convention in a dynamic way to reflect the fact that the convention is a living instrument.

B. SCOPE OF APPLICATION OF THE CONVENTION

2. A *General Recommendation* on the nature and extent of State obligation under the Convention:
 - (a) should consider not only Article 2 of the Convention, but also Articles 3 and 24 in defining the scope and content of State parties' obligations, and the relevance of the Preamble to the Convention to the content of obligations under the Convention; and
 - (b) should refer to the differing formulations of obligation that appear in the various provisions of the Convention (for example, the obligations under Article 15 that States "shall accord" legal equality and the

obligations under various articles to take all “necessary” or “appropriate” measures).

3. The Convention should be seen not only as an international legal instrument but should also be understood as setting out a framework for development. The Convention is one of a family of human rights instruments; many States are parties to more than one of the UN human rights treaties and their obligations under this Convention need to be understood in the light of other conventional and customary international law obligations.

Territorial and personal scope of the Convention

4. Under international law the jurisdiction of States is primarily territorial, but the State may exercise its jurisdiction outside its national territory in certain cases, and in some cases the State will be obliged to fulfil its obligations under the Convention in relation to territory outside because of the nature of its control over that territory or the persons affected. For example, the obligations of States parties under the Convention apply where a State party is in effective control of a territory outside its borders. Similarly, the obligations of States parties under Article 2 (c) and (e) of the Convention also extend to acts of national corporations operating extraterritorially. The obligations of States parties may also extend to regulating the acts of its nationals when they are outside the territory of the State party (for example, in situations where nationals are perpetrators of trafficking). A *General Recommendation* should also include consideration of the obligations of a State party in relation to its nationals abroad who may have been subject to violations of their rights (for example, in relation to migrant workers or women who have been subjected to forced marriages and wish to return to their home country), and should take into account in particular the practice of the Committee and States parties in relation to migrant workers.

5. The obligations of the State party under the Convention apply both to its citizens and to non-citizens in its territory or under its jurisdiction. Aliens should in general receive the benefit of the rights guaranteed by the Convention without discrimination, although there are a number of rights in the sphere of political life that may be limited in the case of non-citizens, provided that there is no discrimination between male and female non citizens in these areas.

Private actors

6. The coverage of the Convention is not limited to the prohibition of discrimination against women directly by the State, but also imposes obligations

on the State in relation to the acts of private actors. In some cases (in particular where a public function has been privatised and its performance contracted to a private actor), these acts may be viewed as the acts of the State under international law. In other cases, the obligations of the State party under Article 2(e) and (f) make it clear that the State party must take all appropriate measures to eliminate discrimination against women by private actors. Although this obligation has been elaborated by the Committee under the concept of the obligation of due diligence in the context of violence against women, it is not limited to that area. States parties are required to take appropriate preventive, investigative, punitive and remedial measures in relation to discriminatory acts or practices of private persons more broadly.

7. States parties are thus under an obligation to ensure that private actors do not engage in discrimination against women as defined in the Convention. The appropriate measures a State party is obliged to take include regulating the activities of private actors in regard to employment policies, working conditions and work standards, and other areas where private actors provide services or facilities.

8. A State party has an obligation to take steps to modify gender-based stereotypes and to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women discriminatory cultural practices which may exist in mainstream social relations or in specific communities. This obligation includes the requirement to take appropriate measures to initiate debate on cultural change generally and within relevant communities, specifically ensuring the participation of women and women's groups in these discussions.

The Convention and other bodies of international law

9. The obligations of States parties under the Convention do not cease in periods of armed conflict, or in states of emergency (in which derogations from the enjoyment of other rights are permitted under Article 4 of the ICCPR). The Convention and other human rights treaties are complementary to and operate alongside other bodies of international law, including international humanitarian law, international criminal law and refugee law.

Development assistance

10. States parties must ensure that they and their development partners take gender impact into account in the design and delivery of overseas development

assistance policies and programmes. Similarly, a State party should refrain from accepting development assistance that would manifestly have a negative impact on the enjoyment by women of their human rights. All development assistance a State party receives should be utilised in a manner that is non-discriminatory against women.

Participation of States parties in international organisations

11. A State party is under an obligation:
 - (a) to take into account the rights guaranteed under the Convention when it negotiates with international financial institutions in relation to loans and other forms of financing for national projects.
 - (b) to ensure that when entering into international agreements relating to trade liberalisation or other subjects, these agreements do not have an adverse impact on protected rights protected under the Convention;
 - (c) to take steps in its capacity as a member of international organisations, including the various international financial institutions, to ensure that due account is taken of rights protected under the Convention in the activities of those institutions and to take all reasonable measures to assess, foresee and prevent any adverse consequences for the enjoyment of women of their human rights.

C. DEFINITIONS, SCOPE AND NATURE OF OBLIGATIONS

Definitions

13. The *General Recommendation* on Article 2 should make it clear that the concept of equality and non-discrimination is a universal one. The guidance should state that:

- (a) the Convention embodies the concept of substantive equality;
- (b) substantive equality includes equality of opportunity, equality of access and equality of outcome/results; and
- (c) guarantees of “equality before the law” (which require the equal and

even-handed application of the law without regard to its substantive content), while necessary, are insufficient to fully meet the obligations imposed by Article 2.

14. The *General Recommendation* should provide clear and specific guidance on the form that constitutional and legislative guarantees of equality and non-discrimination as specified in Article 2 (a) should take. These guarantees should:

- (a) contain a definition of discrimination which embodies the definition of discrimination in Article 1 (which encompasses indirect as well as direct discrimination);
- (b) extend both to the substantive content of laws and to their administration;
- (c) extend to the actions of public authorities and institutions as stipulated in Article 2(d);
- (d) extend to the actions of any person, enterprise or organisation, including private and non-state actors, as stipulated in Article 2(e); and
- (e) provide for effective sanctions, including appropriate remedies as provided for in Article 2(b).

15. The *General Recommendation* should also recall the views of the Committee – in particular as elaborated in its *General Recommendation 25* – that temporary special measures will be required to achieve substantive equality and eliminate discrimination in many instances.

Intersectionality

16. The *General Recommendation* should clarify that the Convention covers intersectional discrimination against women (where women experience discrimination on the basis of their sex combined with other grounds of discrimination, for example ethnicity, sexual orientation, HIV/AIDS etc).

17. The text of the Convention and the practice of the Committee show that the Convention covers intersectional discrimination. The Convention refers to intersections of different bases of discrimination in various places, for example:

- (a) the Preamble, which states that “everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex”, emphasises that “in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs” and notes that the “eradication of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women”;
- (b) Article 1, which expressly includes marital status;
- (c) Article 2, which condemns discrimination in *all* its forms, refers to prohibiting *all* discrimination, and refers to *any* act of discrimination; and
- (d) Article 14, which requires States Parties to take into account the particular problems faced by *rural* women.

18. The Committee has previously recognised the need to consider intersections of discrimination in:

- (a) *General Recommendation 15*, which recommends that States Parties adopt measures to prevent specific discrimination against women in relation to HIV/AIDS;
- (b) *General Recommendation 18*, which states that women with disabilities suffer from a “double discrimination linked to their special living conditions”; and
- (c) *General Recommendation 21*, which states that the form and concept of the family can vary and recommends recognition of de facto relationships.

Rights covered by the Convention

19. The *General Recommendation* should include a clear statement that the Convention guarantees women’s equal enjoyment not only of the rights explicitly dealt with in the fields covered in Articles 6-16 of the Convention, but also extends to the equal enjoyment of all internationally recognised human rights and fundamental freedoms. This is clear from the Preamble, the definition

of discrimination in Article 1, the terms of Articles 2, 3 and 24, and the practice of the Committee (for example, *General Recommendation 19*)² This broad coverage has been articulated most clearly by the Committee in relation to violence against women, but also applies more generally. The rights covered would include those rights recognised in the Universal Declaration of Human Rights, the International Covenants on Human Rights, other UN and regional human rights treaties, and other human rights instruments.

D. NATURE OF THE OBLIGATIONS UNDER THE CONVENTION

(a) Nature of obligations – Article 2 chapeau:

20. The chapeau of Article 2 expresses the general legal obligation of States parties to implement the Convention. Its substantive requirements provide the framework for the implementation of the specific legal obligations identified in paragraphs 2 (a)–(f).

(b) “States Parties condemn discrimination against women in all its forms”

21. The first substantive commitment undertaken by States parties in the chapeau is to “condemn” discrimination against women in all its forms. The language of condemnation is the strongest wording used by the international community in this context (this language is based on similar language in the Racial Discrimination Convention), expressing deep abhorrence of discrimination against women and acknowledging it is as intolerable as racial discrimination. It is an undertaking by each State Party to make it very clear – immediately, and continuously – to all levels and arms of government, to their domestic population and to the international community that they are totally opposed to discrimination against women in all its forms, and determined to bring about its elimination.

² See also CERD *General Recommendation XX on Article 5 of the Convention* (1996), para 1 (noting that the list of rights in Article 5 of the Racial Discrimination Convention is not exhaustive but extends to human rights and fundamental freedoms recognised in the UN Charter, the Universal Declaration of Human Rights and the International Covenants on Human Rights).

(c) “agree to pursue ... [a policy of eliminating discrimination against women]”

22. States parties also agree to “pursue ... a policy of eliminating discrimination against women”. The obligation to “pursue” such a policy is both immediate and continuing. The State party must immediately take concrete steps to formulate and implement a policy that is targeted as clearly as possible towards the goal of fully eliminating all forms of discrimination against women and achieving women’s substantive equality with men. The emphasis is on forward movement, from the initial adoption of a comprehensive range of measures to building on them continuously, in light of their effectiveness and new or emerging issues, towards the Convention’s goals.

(d) “by all appropriate means”

23. States parties undertake to pursue the policy of eliminating discrimination against women “by all appropriate means”. This gives the State party a great deal of flexibility in devising a policy that will be appropriate to its particular legal, administrative and political framework, and which can respond to its particular history of obstacles and resistances to the elimination of discrimination against women. However, each State Party must be able to justify the appropriateness of the particular means it has chosen and ultimately it is for the Committee to determine whether all appropriate means have been adopted.

24. The types of means that might be considered appropriate are not limited to constitutional or legislative measures, although the Convention emphasises the importance of such means and gives them some priority. In addition, the Committee expects States parties to have adopted measures that ensure the practical realisation of the elimination of discrimination against women and women’s equality with men. These will include measures which ensure women are able to make complaints about violations of the Convention and have access to effective remedies, which enable women to be actively involved in the formulation and implementation of measures, which ensure governmental accountability domestically, which promote education and support for the goals of the Convention throughout the education system and in the community, which encourage the work of women’s rights NGOs, establish the necessary national human rights institutions and/or other machineries and that provide adequate administrative and financial support to make the measures adopted make a real difference in women’s lives in practice.

25. In order to satisfy the requirement of “appropriateness”, the means adopted by a State Party must also address all aspects of its legal obligations

under the Convention to respect, protect, promote and fulfil women's right to non-discrimination and to the enjoyment of equality with men. Thus "appropriate means" will include measures which ensure that the State party:

- (a) abstains from performing, sponsoring or tolerating any practice, policy or measure that violates the Convention (*respect*);
- (b) takes steps to prevent, prohibit address violations of the Convention by third parties, including in the home and in the community (*protect*);
- (c) fosters wide knowledge about and support for its Convention obligations (*promote*); and
- (d) adopts positive measures that achieve sex non-discrimination and gender equality in practice (*fulfil*).³

(e) "and without delay"

26. The words "without delay" make it clear that the State party's obligation to pursue its policy, by all appropriate means, is immediate. This language is unqualified, and does not allow for any delay in the implementation of the legal obligations that State parties assume on ratification of the Convention. It follows that delay cannot be justified on any grounds, including by reference to political, social, religious, cultural, economic, resource or other considerations within the State. Where a State party is facing resource constraints or needs technical or other expertise to facilitate its implementation of its obligations, it may be incumbent on it to seek international cooperation in order to overcome these difficulties.

(f) "a policy of eliminating discrimination against women"

27. The requirement to adopt a policy is an essential and critical component of a State party's general legal obligation. Such a policy must comprise a resolute, detailed and comprehensive action plan that provides a framework for designing, coordinating and integrating the more specific undertakings that follow the chapeau in paragraphs 2 (a)-(f). The policy must ensure that the State party's obligations under the Convention are given effect. To this end, all elements of the policy must be scrupulously directed towards achieving the Convention's

³ See CEDAW *General Recommendation 25*, para 4.

goals of eliminating discrimination against women and ensuring that women enjoy equality with men in all spheres of life.

28. The policy should incorporate *clear definitions* of discrimination against women and gender equality that are consistent with the spirit and substance of the Convention, including the definition in Article 1, as outlined above.

29. The policy should be *comprehensive* in that it should apply to all fields of life, including the political, economic, social, cultural and civil fields. It should apply to both public and private spheres of life, including the domestic sphere. It should also ensure that all arms of the State (executive, legislative and judicial) and all levels of government assume their respective responsibilities for implementation. It should incorporate the entire range of measures that are appropriate in the particular circumstances of the State Party.

30. The policy should identify women within the jurisdiction of the State party (including non-citizens) *as the rights-bearers*, with particular emphasis on those groups of women who are most marginalised. It should ensure that women, as individuals and groups, have access to information about their rights under the Convention and are able to effectively promote and claim those rights. The State party should also ensure that women are able to participate actively in the development and implementation of the policy. To this end, resources must be devoted to ensuring that women's NGOs are well-informed, adequately consulted and generally able to play an active role in the initial and subsequent development of the policy. Women must also be empowered to present their views, in the form of shadow/alternative reports and oral statements, to the Committee when it considers a State party's periodic report, and be actively involved in the domestic dissemination of the Committee's concluding comments.

31. The policy should be *action-oriented* in that it should establish benchmarks and timelines, and ensure that all relevant actors are adequately resourced and otherwise enabled to play their part in achieving the agreed benchmarks and goals. To this end, the policy must be linked to budgetary processes in order to ensure that all aspects of the policy are adequately funded. The policy should provide for mechanisms, that collect relevant sex-disaggregated data, that enable progress and effectiveness of measures to be monitored, that facilitate continuing evaluation, and allow for revision, supplementation and the identification of any new measures that may be appropriate.

32. The policy should ensure that there are strong and focused bodies within the executive government (national women's machineries) to coordinate and oversee the development of legislation, policies and programmes necessary to

implement the Convention. These institutions should be empowered to provide advice and analysis directly to the highest levels of government, such as the Cabinet and Attorney General. The policy should also ensure that there are independent monitoring institutions such as national human rights commissions or independent women's commissions established, or that existing national institutions have conferred on them a mandate with respect to the rights guaranteed in the Convention.

33. The policy must *engage the private sector*, including business enterprises, organisations, community groups and individuals, and enlist their partnership in adopting measures that will fulfil the goals of the Convention in the private sphere. The policy should also provide a focal point for government regulation of private actors, to ensure that they act consistently with its obligations under the Convention, in the marketplace and elsewhere in the private sphere.

34. The policy should be *result-driven* in that it should be targeted as clearly as possible towards the goal of eliminating all forms of discrimination against women and providing for women's equal enjoyment of all human rights and fundamental freedoms.

E. LEGAL INCORPORATION OF THE CONVENTION

Legal protection

35. States parties should ensure that through constitutional amendments or by other legislative means the principle of equality of men and women and of non-discrimination is incorporated into domestic law with overriding and enforceable status. They should also enact legislation which prohibits discrimination contrary to the Convention.⁴

36. States parties should undertake a continuing review of all existing and planned legislation, laws, regulations, public policies and programmes with the view to removing, repealing, revoking, or abolishing all the discriminatory elements and of ensuring harmonisation with international human rights obligations. States parties should involve all branches of governments in this process: the executive, the judiciary (to draw attention to discriminatory laws) and the legislature (for

⁴ See Human Rights Committee (HRC), *General Comment 31*, paras 13, 15; Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 3*, para 3, and *General Comment 9*, paras 2 and 4.

example, a Parliamentary Committee could be established to continue the review process).⁵

37. States parties should ensure that the courts are bound to apply the principle of equality as embodied in the Convention and to interpret law, to the maximum extent possible, compatibly with Convention obligations. However, where it is not possible to do so, courts should draw the inconsistency between national law and the State party's international obligation to the attention of the appropriate authorities since the supremacy of domestic law under the national legal system does not justify a failure to carry out an international obligation.⁶

38. States parties should ensure that women can invoke the principle of equality in the courts in support of complaints of discrimination contrary to the Convention by public officials or by private actors, and that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, determined in a fair hearing by a competent and independent court or tribunal with access to a mediation process,⁷ where discrimination constitutes a serious abuse of human rights (for example, in cases of violence), penal sanctions should be applied and there should be no impunity.⁸

39. States parties should ensure that legislation prohibiting discrimination and promoting equality legislation provides for appropriate remedies for women who are subjected to discrimination contrary to the Convention, including reparation, compensation, restitution, rehabilitation, and reinstatement.⁹ The power to order temporary special measures or other systemic remedies should be included.¹⁰

40. States parties should support women's legal resource centres in their work to educate women about equality rights and to assist them in pursuing remedies for discrimination.

⁵ See HRC, *General Comment 4*, para 4; CESCR, *General Comment 16*, paras 16 and 24; CERD, *General Recommendation 31*; Committee on the Rights of the Child (CRC), *General Comment 5*, para 15.

⁶ See *The Bangalore Principles on The Domestic Application of International Human Rights Norms*, adopted by a Judicial Colloquium held in Bangalore, India from 24-26 February 1988, para 8.

⁷ HRC, *General Comment 31*, para 15.

⁸ HRC, *General Comment 28*, para 11, 12 and 5.

⁹ HRC, *General Comment 31*, paras 15-17; CESCR, *General Comment 9*, para 2; *General Comment 4*, paras 4, 5, 16 and 33; CERD, *General Recommendation 26*, para 2; *General Recommendation 25*, para 2; CRC 4 para 25.

¹⁰ HRC, *General Comment 31*, para 18; CESCR, *General Comment 3*, para 5.

Mass Violence

41. Many existing penal codes do not address the commission of mass crimes of a sexual and gender-based nature and the particular difficulties of evidence and procedure to which efforts to identify and bring to justice perpetrators are subject. In addition to adopting the principles of *General Recommendation 19*, States parties should institute effective measures to prevent, punish, eradicate and provide reparation for such crimes. States are therefore obliged to:

- (a) report to the Committee on the occurrence of mass crimes in all contexts;
- (b) enact appropriate legislation to address offences of mass crimes and to provide appropriate redress mechanisms;
- (c) enact a remedial system, including the provision of reparation, for individual and group victims of mass crimes and their family members left behind;
- (d) develop appropriate procedural and evidentiary rules for the prosecution of and reparation for mass crimes; and
- (e) prosecute state officials for inaction or complicity in mass crimes.

F. OTHER MEASURES OF IMPLEMENTATION

42. States parties should also adopt other appropriate measures of implementation such as:

- (a) promoting equality of women through the formulation of and implementation of National Plans of Action and other relevant policies and programmes, and allocating to them adequate human and financial resources;
- (b) establishing codes of conduct for public officials to ensure respect for the principles of equality and non-discrimination;
- (c) ensuring reports of court decisions applying the equality principle are widely distributed;

- (d) undertaking specific education programmes about the principles of the Convention and women's human rights directed to all government agencies, to public officials, and in particular to the education and training of the legal profession and the judiciary;¹¹
- (e) enlisting all media in public education programmes about the equality of men and women and to ensure in particular that women are aware of their right to equality without discrimination and of the measures taken by the government to implement the Convention including reports of the Committee;¹² and
- (f) establishing valid indicators of the status and progress of women for inclusion in data disaggregated by sex and relevant to the specific provisions of the Convention (including the other categories necessary to identify forms of intersectional discrimination).¹³

G. ACCOUNTABILITY ISSUES

The State

43. Effective implementation of the Convention requires a State party to be accountable not only at the international level, but also at the national level to its citizens and other members of its community. In order for this accountability function to work effectively, appropriate mechanisms and institutions must be put in place.

44. The obligations under the Convention fall on all three branches of government; accordingly, the responsibility to give effect to a State party's obligations under the Convention lies equally with the executive, legislature and the judiciary.

45. The decentralisation of power, through devolution and delegation of government, does not in any way reduce the direct responsibility of the State

¹¹ HRC, *General Comment 3*, paras 1 and 2; CESCR, *General Comment 16*, para 21; CERD *General Recommendation 13*.

¹² HRC, *General Comment 3*, para 1; CESCR, *General Comment 16*, para 21; CRC, *General Comment 5*, para 67; CEDAW, *General Recommendation 3*.

¹³ CESCR, *General Comment 16*, para 39; CESCR, *General Comment 31*, para 1.

party to fulfil its obligations to all women within its jurisdiction, regardless of the State structure. In all circumstances the State that ratified or acceded to the Convention remains responsible for ensuring the full implementation of the Convention throughout the territories under its jurisdiction. In any process of devolution, States parties must ensure that the devolved authorities have the necessary financial, human and other resources to effectively discharge responsibilities for the implementation of the Convention. The governments of States parties must retain powers to require full compliance with the Convention by devolved administrations or local authorities and must establish permanent monitoring mechanisms to ensure that the Convention is respected and applied for all women and men within its jurisdiction without discrimination. Further, there must be safeguards to ensure that decentralisation or devolution does not lead to discrimination in the enjoyment of rights by all people in different regions.

Institutions

46. If they have not already established such a body, States parties should set up national institution (and equivalent provincial or state-level institutions in the case of a federal system), which will be an independent specialised statutory body with powers to oversee compliance with and implementation of the Convention. Where such a body already exists, the Convention and the rights it guarantees should fall within the mandate of the institution. When designating or establishing such a mechanism, State Parties should comply with the *Paris Principles relating to the status and functioning of national institutions for protection and promotion of human rights*.¹⁴ Independent human rights institutions are complementary to national machineries for women.

47. The establishment of such institutions flows from the commitments undertaken by the State party upon ratification to ensure the implementation of the Convention and advance the practical realisation of women's rights. The role of such institutions is to independently monitor the state's compliance and progress towards implementation and to do all it can to respect, protect and fulfil women's rights.

48. These institutions should be empowered and have adequate resources to oversee the implementation of the Convention, investigate complaints of discrimination, provide mediation or pursue remedies behalf of women, to promote

¹⁴ Adopted by General Assembly Resolution 48/134 of 20 December 1993.

equality, undertake education programmes and to coordinate with other agencies responsible for women's affairs.¹⁵

49. These institutions should be composed of members who have demonstrated knowledge and expertise in women's human rights. These members shall be appointed in a transparent manner. Where these functions with respect to the Convention are conferred on national institutions with a broader mandate, it is important that a significant proportion of members should be women and have expertise in women's human rights and the fields covered by the Convention. Knowledge of the workings of this institution and how to engage with it must be made widely known using all available means.

The community

50. The obligation to implement the Convention lies primarily with States parties, but States parties need to engage all sectors of society, including women themselves, in fulfilling this obligation. The State needs to work closely with NGOs in the widest sense, while respecting their autonomy; these include, for example, human rights NGOs, women's organisations, academic institutions and professional associations. NGOs played a crucial part in the drafting of the Convention and their involvement in the process of implementation is vital. The development of NGO coalitions and alliances committed to promoting, protecting and monitoring women's human rights is important to the implementation of the Convention. Government should provide them with non-directive support and should develop positive formal as well as informal relationships with them. The engagement of NGOs in the reporting process under the Convention is also important to the process of implementation as well as to the process of reporting. The media can also be valuable partners in this process.

H. RESERVATIONS

51. Article 2 is the "very essence of obligations under the Convention" and reservation to Article 2 will "impede full implementation of the Convention".¹⁶

¹⁵ CEDAW, *General Recommendation 6*; CESCR, *General Comment 10*, para 23, *General Comment 16*, paras 21 and 38; CERD, *General Recommendation 31*, para 5 (j); CRC, *General Comment 2*, para 1, *General Comment 4*, para 27, and *General Comment 5*, para 65.

¹⁶ CEDAW, *Concluding Comments (Singapore)*, 25th session, July 2001.

Therefore, as the Committee has previously stated, a reservation to Article 2 is in principle incompatible with the object and purpose of the Convention – a view with which a number of States parties have expressed their clear agreement by stating that in their view certain reservations to Article 2 are incompatible with the objection and purpose of the Convention. States parties that have entered reservations to article 2 should be pressed to explain their detailed effect and to keep the reservations under review with the goal of withdrawing them as soon as possible.

52. The fact that a State party has entered a reservation to the Convention does not obviate the need for that State party to comply with its other obligations under international law, including its obligations under other treaties and under customary international law relating to the elimination of discrimination against women. Where there is a discrepancy between reservations under the Convention and similar obligations under other conventions, the State party should review its reservations under to the Convention with a view to removing them.

I. CONCLUSION

This paper has sought to identify a number of the major substantive and procedural issues that could be usefully addressed in a *General Recommendation on Article 2* of the CEDAW Convention and possibly also enumerate on the nature of the obligations contained in the Convention.

Many of the ideas and suggestions brought together in this document remain the joint product of the participants of the *Expert Group Meeting on CEDAW Article 2: National and International Dimensions of State Obligations* held for the purposes of providing a paper on possible elements for inclusion in a General Recommendation to Article 2 of CEDAW.

As the CEDAW Committee is already working on a draft General Recommendation to Article 2 and this document has already been shared with the Committee we hope to see these suggestions reflected in the final General Recommendation to be adopted. This process will certainly provide the CEDAW Committee an opportunity to consider legal and policy issues relating to Article 2 in an integrated way. As a result, States parties will be able to improve processes relating to the effective implementation of the Convention at the domestic level. Also, through a better understanding of their obligations, States parties should be in a position to perform better and in accordance to international processes stemming from the procedures contained in CEDAW and the Optional Protocol.



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