

OPTIONS PAPER

ON THE BEST PRACTICES OF FOREIGN COUNTRIES ON IMPLEMENTATION (REFERRAL TO) PROVISIONS OF THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) BY CIVIL/ECONOMIC COURTS AND RECOM- MENDATIONS FOR POSSIBLE DIRECT IMPLEMENTA- TION OF PROVISIONS OF INTERNATIONAL CONVEN- TIONS IN UZBEKISTAN



*“Мнения, выражаемые автором данной публикации, могут не совпадать
с официальной позицией ООН, ее подведомственных организаций,
включая ПРООН и стран участниц”*

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EXECUTIVE SUMMARY

Uzbekistan has ratified more than 70 international conventions and covenants, however the implementation of the conventions remains uneven and incomplete. In particular, courts seldom (if ever) make reference to international conventions in their judgments.

Uzbekistan formally signed the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW)¹ in July 1995. However, awareness of human rights systems and the U.N. human rights system—treaty bodies, special procedures, and the Universal Periodic Review (UPR), which can be used as tools for facilitating the improved implementation of international norms, remains very low and fragmented in Uzbekistan. In addition, there is much scepticism regarding the direct application of International Conventions, especially their core principles, by the judiciary in Uzbekistan.

This paper will seek to look at the application of international conventions in general, international conventions in Uzbekistan, how to apply the principles of CEDAW and finally it will make some conclusions and provide a package of recommendations on how Uzbekistan can enhance the direct implementation of international conventions and in particular, CEDAW.

CEDAW can be a powerful tool for change. However, it must be recog-

nized as such and embraced by governments and civil society. While legislative and other measures to protect women's rights should be undertaken once States ratify CEDAW, these actions towards gender equality do not happen automatically. Implementing CEDAW requires commitment by governments to gender equality and strategic efforts by civil society to hold States accountable to their obligations under CEDAW.

Clarity is still lacking in many countries, including Uzbekistan, on the role of CEDAW in advancing women's human rights. Confusion remains around what exactly is meant by 'women's empowerment', 'gender equality' and 'gender mainstreaming'. Many laws and policies in Uzbekistan do not conform to CEDAW standards for gender equality, and many, while seemingly focused on the advancement of women, fall short of their objectives because of poor enforcement, limited capacity, and weak accountability.

Duty-bearers in Uzbekistan generally lack sufficient technical capacity and expertise to implement CEDAW – for example, many duty-bearers regard CEDAW simply as a 4-yearly reporting obligation, and do not fully understand or utilize it as a comprehensive framework and implementation tool to advance the human rights of women, which the Government has also committed to in the form of the Beijing Declaration and Platform for Action and the MDGs. Many civil society groups' efforts to promote gender equality also fail to use the important rights-based framework that CEDAW provides. Further, at the level of the

rights-holder or individual, many women do not understand what their rights are, and how to claim and exercise them.

Discrimination against women is still deeply rooted in spheres of life such as culture, family and interpersonal relations. The persistence of strong gender stereotyping in these areas characterizes much of the region, including Uzbekistan. Patriarchal attitudes and deep-rooted practices regarding the roles and responsibilities of women and men in family and the society help legitimize discrimination against women, and underlie women's disadvantaged position in areas such as education, employment and public and political life. They are also a root cause of violence against women, a problem that is significantly widespread across the region.

In this context, the authors have attempted to analyse the application of International Conventions, considering how International Conventions affect domestic laws based on the best practices of foreign countries and show the importance of the judiciary and the role of domestic courts in the de-facto incorporation of international norms and standards of the Convention on the Elimination of all forms of Discrimination Against Women.

The paper was drafted as a result of an international mission of Ms Joanna Brooks to Uzbekistan to undertake a mid-term evaluation of the results of a Joint UNDP-Supreme Court of Uzbekistan "Civil Justice Reform: Effective Court Management" Project.

¹Convention on the Elimination of All Forms of Discrimination Against Women, adopted 18 Dec. 1979, entered into force 3 Sept. 1981, G.A. Res. 34/180, 34 UN GOAR, Supp. (No. 46), UN Doc. A/34/46, at 193 (1979), 1249 U.N.T.S. 14 (hereinafter CEDAW).

1. INTRODUCTION



1.1 OBJECTIVE

The objective of this paper is to provide recommendations, which if followed, will enhance the domestic application of international conventions, with special reference to CEDAW, in Uzbekistan.

1.2 METHODOLOGY

The methodology that was adopted was a combination of interviews and consultations with key stakeholders in Uzbekistan, including members of the Supreme Court and wider judiciary, representatives of the Senate, the Ministry of Justice, lawyers, Tashkent State University and the Training Centre for Lawyers under the Ministry of Justice, representatives from NGOs as well as UNDP staff and representatives from other International Organisations and donors. This was combined with extensive desk research and Internet and document review.

1.3 TARGET GROUPS

The paper is targeted for a future open dialogue among lawyers, judges, experts, relevant state authorities and donors and international organizations (especially during the Universal Periodic Review process), which could have a catalytic effect on the further development of the jurisprudence in Uzbekistan for the enhanced protection of the rights and freedoms of ordinary citizens.

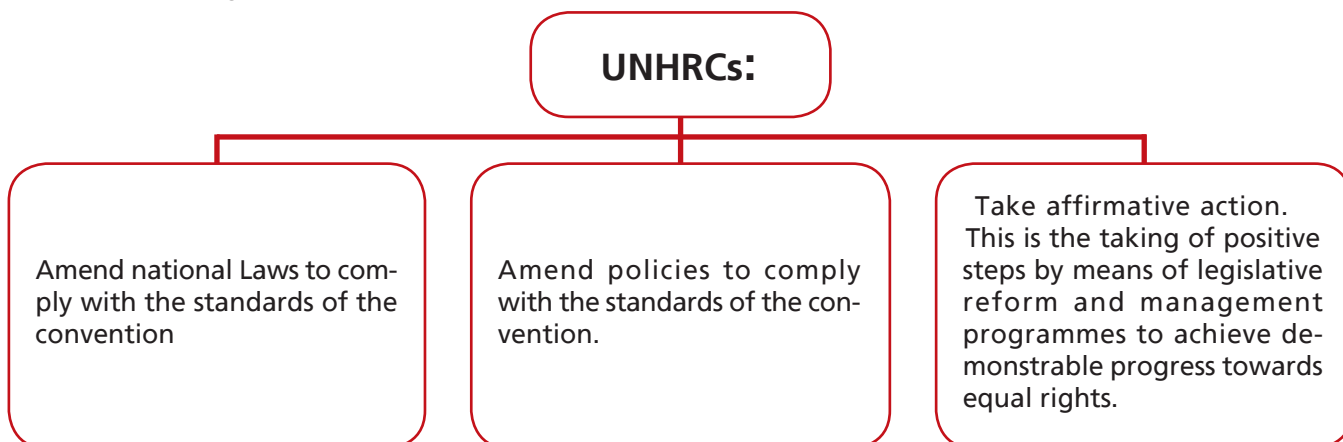
This Paper has benefited from the careful guidance and advice of many persons and different open sources. The Paper does not provide a specific step-by-step guide on how to start using CEDAW in practice because it could be different from one jurisdiction to another depending on the status of international law within a domestic legal framework.

2.

BACKGROUND AND CONTEXT

The United Nations Human Rights Conventions (UNHRCs) are a part of international law that set out the human rights values and how they are to be protected and enforced. They address civil, political, economic, social, cultural, gender and other specific rights for women, children and other vulnerable groups.

Countries that have ratified a convention have the obligation to fulfil ratification in the following manner:



Many states including Uzbekistan that have ratified international treaties and conventions and even those who have accepted the jurisdiction of international human rights courts and treaty bodies, have not sufficiently developed the domestic infrastructure needed to ensure the implementation of treaty obligations as well as judicial recommendations and decisions.

Some states have sought to develop novel approaches to the execution of judgments, including high level inter-ministerial committees and working groups, standing parliamentary committees, enabling legislation, and direct enforcement through national court systems. Such approaches, however, remain the exception. Instead, implementation, including in Uzbekistan, is largely an ad hoc process driven by mid-level bureaucrats who lack the political standing to make implementation a priority. Moreover, disorganization, duplicated efforts, and delay too often characterize decisions implicating multiple agencies because executive ministries frequently lack established frameworks for communication and cooperation.²

Political will and social-economic conditions remain the most important factor for the successful implementation of international conventions including CEDAW. Implementation involves disparate state actors who operate in different institutional settings and often have different or competing political and social-economic interests. A state can have sophisticated domestic enforcement structures at its disposal but, without a genuine commitment by key decision makers to reform, their promise will remain illusory. This remains the case in Uzbekistan with numerous conventions.

²From Rights to remedies: Implementing International Human Rights Decisions, Open Society Foundation, June 2013, <http://www.opensocietyfoundations.org/reports/rights-remedies-structures-and-strategies-implementing-international-human-rights-decisions>

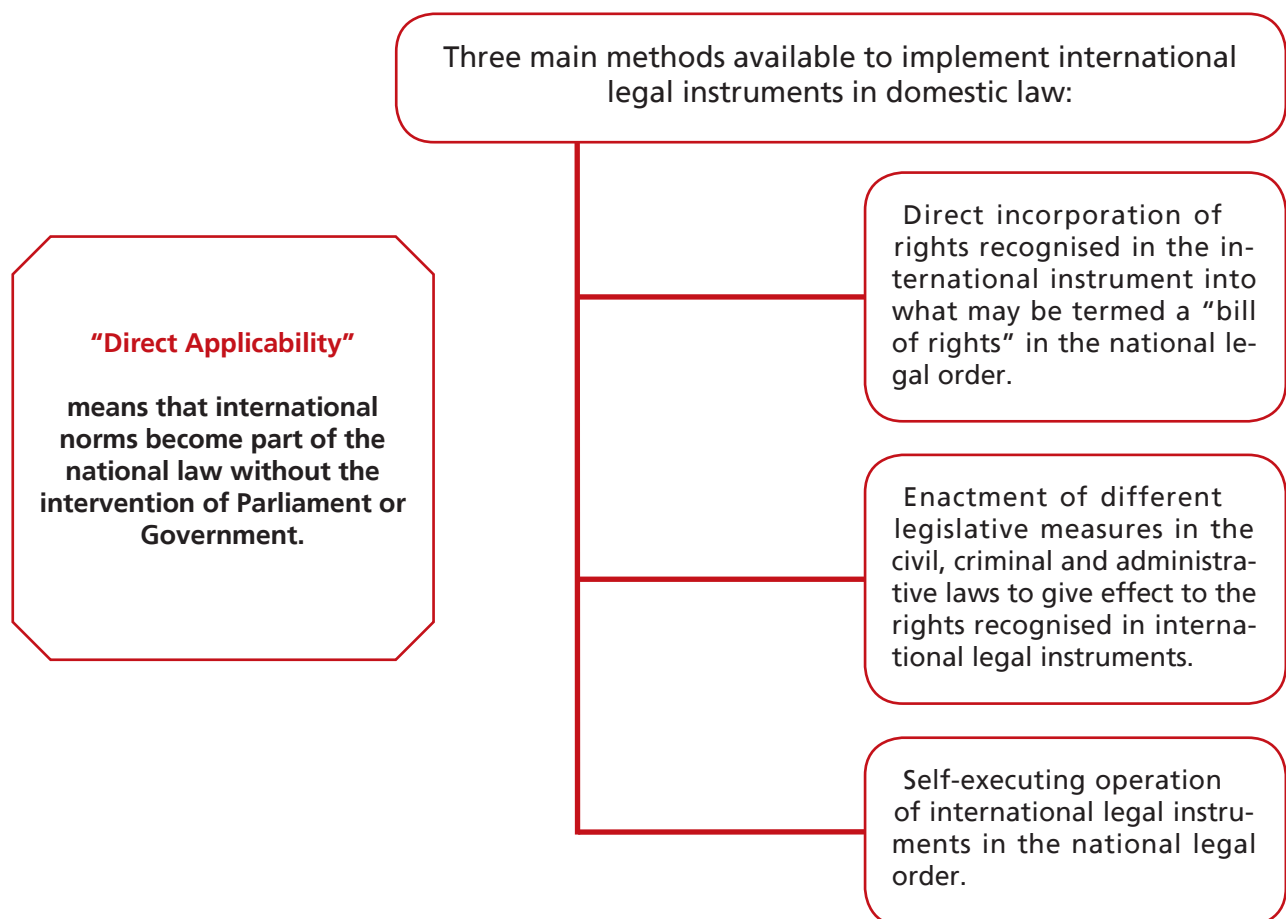
2.1

APPLICATION OF INTERNATIONAL CONVENTIONS.

Translation from an international convention, standard or norm to national law and then to local implementation is slow and complex but fundamental. States are primarily responsible for transforming legislative, administrative and judicial practices. States that

have become Parties to an international convention are legally bound to implement the provisions contained in the convention in their domestic jurisdiction. International law leaves it to States to adopt such legislative and other measures, consistent with their

constitutional and law-making processes, to give effect to the obligations, which they undertake to implement and ensure that any person whose rights or freedoms are violated has an effective remedy justifiable before independent and impartial tribunals.



The course of the legislative process will differ according to the relevant domestic legal systems. For instance, incorporation of international human rights basic principles and norms in national constitutions, laws and bylaws remains the most important way of bringing national laws in conformity with international standards.

In relation to economic, social and cultural rights, implementation will differ from one country to another, depending on their level of development. Yet, all countries require major programme efforts. The obligation of States Parties in the international human rights instruments to promote progressive realization of the relevant rights to the maximum of their available resources clearly requires Governments to do much more than merely abstain from taking measures which might have a negative impact.

2.2

ROLE OF DOMESTIC COURTS – INCORPORATION OF INTERNATIONAL NORMS AND STANDARDS BY DOMESTIC COURTS.

Direct application of international law by domestic courts

also can play an important role in implementing international human rights norms by means of compliance with relevant international standards and citing precedents in other jurisdictions. Due process of law has to be followed. Furthermore, judicial initiatives may propel executive and legislative branches of Governments to act with regard to drafting, enforcing and evaluating specific convention related legislation. Courts may also encourage various interest groups to take up action on certain issues.

The greater the extent to which international norms are widely known, the greater the possibility of domestic courts complying with these norms. This allows courts to play a major role in interpreting and developing international norms and standards, by applying international standards to domestic issues.

Many of the countries in the Europe and CIS region, including Uzbekistan, have increased the ratification of international human rights treaties – reinforcing the acceptance of the rule of law and the enforceability of fundamental human rights, as opposed to the authoritarian past that was characterised by a massive violation of human rights. The ratification of international treaties may be seen as an expression of confidence in the international human rights system, which in the past was the forum where serious violations of human rights could be denounced. At the same time, ratification of international treaties was a message to the international community regarding the state's commitment to the enforcement of the rule of law and respect for human rights.

Human Rights need the promotion by government, the protection of the laws and the enforcement by the courts. The former Chief Justice of India stated that:

*"...more specifically, constitutions, conventions or governments do not confer human rights. They are the instruments, the testaments, of their recognition; they are important, sometimes essential, elements of the machinery for the protection and enforcement of human rights, but they do not give rise to human rights."*³

³"Application of Human Rights Conventions in the Pacific Islands courts" by Laitia Tamata, Research Assistant, Institute of Justice and Applied Legal Studies", 2009 <http://www.paclii.org/journals/fJSPL/vol04/12.shtml>

2.3

HOW DO INTERNATIONAL CONVENTIONS AFFECT DOMESTIC LAWS?



International conventions can be applied and they affect domestic laws in the following ways:

a. Effect on the Constitution

1. Ratified treaties provide a legitimate guide in interpreting constitutional provisions. In *The State v. Mark Lawrence Mutch*, the High Court of Fiji used the CRC when interpreting the Bill of Rights provision of Chapter 4 of the 1997 Constitution.
2. Where two Constitutional provisions conflict and cannot be harmonised, the Court must favour the realisation of fundamental rights. This was illustrated in the Vanuatu case of *John Noel v. Obed Toto* where the court preferred the Constitutional provisions of Fundamental Rights over Customary law.

b. Effect on Legislation

1. Where a statute is capable of two interpretations, the courts will pre-

sume that parliament intended to legislate consistently with the UNHRCs.

2. When construing statutes enacted to fulfil a Convention obligation, the courts will assume the Act achieves that end.

c. Effect on common law

1. If the common law is uncertain, unclear or incomplete, the courts will rule where possible, in manner, which conforms to the convention. In the Samoa case of *Wagner v. Radke*, the court had regard to the principles and the philosophy of the convention in applying common law rules.

2. Where the courts have discretion, they seek to act in a way, which does not violate the Convention. The case of *Molu v. Molu* had the Supreme Court of Vanuatu take

into account the obligations of ratifying a treaty when exercising its discretion.

3. When courts have to decide what public policy demands, regards will be had to international obligations as a source of guidance.
4. In matters covered by the law of UNHRCs, courts may be bound to give effect to Convention rights where they are recognised as part of the United Nations. In recognition of the United Nation's principles and philosophies, the court in the Samoa case of *Wagner v. Radke* applied Convention principles, which Samoa was not a signatory.

At the Commonwealth Judicial Colloquium in 1998 at Bangalore, the principles of the Colloquium of 1988 were re-formulated to include the following statements:

- It is the vital duty of an independent, impartial and well-qualified judiciary, assisted by an independent, well-trained legal profession, to interpret and apply national constitutions and ordinary legislation in harmony with international human rights codes and customary international law, and to develop the common law in the light of the values and principles enshrined in international human rights law.
- Fundamental human rights form part of the public law of every na-

tion, protecting individuals and minorities against the misuse of power by every public authority and any person discharging public functions. It is the special province of Judges to see to it that the law's undertakings are realised in the daily life of the people.

- Both civil and political rights and economic, social and cultural rights are integral, indivisible and complementary parts of one coherent system of global human rights. The implementation of economic, so-

cial and cultural rights is a primary duty for the legislative and executive branches of government. However, even those economic, social and cultural rights, which are not justiciable can serve as vital points of reference for Judges as they interpret their constitutions and ordinary legislation and develop the common law. Likewise, even where human rights treaties have not been ratified or incorporated into domestic law, they provide important guidance to law-makers, public officials and the courts.

3.

INTERNATIONAL CONVENTIONS IN UZBEKISTAN

Uzbekistan has ratified more than 70 international conventions and covenants, however the implementation of the conventions remains uneven and incomplete. In particular, courts seldom (if ever) make reference to international conventions in their judgements and if lawyers try to refer to international conventions during the course of proceedings they are invariably dismissed by the court. In part, this is due to lack of knowledge surrounding the conventions and how they can be applied in domestic proceedings, and also out of fear of the possible implications for the justice system in Uzbekistan.

Uzbekistan formally signed CEDAW in July 1995. However during the last reporting procedure to the CEDAW Committee, when asked if there are any court rulings referring to CEDAW in Uzbekistan and if so, the exact number of such court rulings, the response from the Shadow Report was as follows: *"According to the information from the practising lawyers, judges do not welcome references to international conventions and CEDAW in particular."* Awareness of human rights systems and U.N. human rights system – treaty bodies, special procedures, and the Universal Periodic Review (UPR), which can be used as tools for facilitating the improved implementation of international norms, remains very low and fragmented in Uzbekistan.

In December 2013, Uzbekistan disseminated information on its judicial reforms in the country, to the headquarters of the United Nations in New York, as an official document of the 68th session of the UN General Assembly. However, no specific mention was made in relation to CEDAW or the rights of women. Despite numerous references during the Universal Periodic Review to CEDAW and a number of recommendations for Uzbekistan to follow in order to fully implement the Convention, little progress has been made in this respect and women still do not enjoy equal rights with men. Uzbekistan still does not have a separate law on gender-based violence and gender issues are not mainstreamed into national policies.



3.1

THE POSITION OF WOMEN IN UZBEKISTAN

One of the main problems faced by women in Uzbekistan is domestic violence. Traditionally, women in Uzbekistan are treated as being subordinate to their husbands and a woman's husband and his close relatives control her.⁴ Domestic violence has different forms including social, financial and psychological abuses, and physical and sexual assaults. There is still no law on domestic violence in Uzbekistan, and the term of domestic violence is not defined in criminal law. Moreover, aspirations for protection from domestic violence, non-discrimination and gender are included in the list of "western values" and perceived as breaching the traditional values of Uzbekistan, being therefore taboo in the official vocabulary.⁵

Furthermore, a literal translation of "domestic violence" is not found in the official Uzbek language; instead the government uses the term "family conflict", thus recasting the phenomenon as a family issue in which government should not intervene. For example, Uzbekistan's 2009 State report to the Committee on Elimination of Discrimination against Women (CEDAW), refers to the patriarchal matrix in family relations, where the traditional role of a mother is to raise her children whilst a father is absent most

⁴Shadow Report to the Universal Periodic Review by the Uzbek Bureau on Human Rights and Rule of Law, March 2013

⁵Ibid.

of time at work. This reflects deeply rooted cultural stereotypes regarding the roles and responsibilities of women and men in the family and society in Uzbekistan.

In effect, Uzbek women have no protection against domestic violence in the family. The Uzbek government refers such issues to Mahallas – local autonomous institutions of self-government based on family ties and Islamic rituals. Thus, before applying to the civil courts for divorce all women was supposed to go to the Mahalla, but this was changed recently. In most cases, women live in the family and neighbourhood of their husbands. When a divorce is sought, a woman is therefore forced to appeal to the Mahalla of her husband, which is usually composed of the perpetrator's family.

Today, the Mahalla is responsible for family reconciliation. A reconciliation committee is created within the structure of every Mahalla in Uzbekistan. No court could accept a petition for divorce without a conclusion from a reconciliation committee, despite the fact that this is not required under the legislation of Uzbekistan.⁶ This practice was recently overthrown by the Supreme Court of Uzbekistan. The purpose of the Mahalla is the preservation of the family and preventing divorce.

The legal minimum age for marriage differs between men and women. For

men this is set at 18 years, while for women it is 17 years. Moreover, in exceptional circumstances (pregnancy, childbirth, and when a minor is fully capable (emancipation)) a family can force their daughter/son to marry even at 16/17, as Uzbek law allows the minimum age of marriage for girls to be lowered to 16 and for boys to 17⁷ based on the decision of the district or city khokim (governor).⁸

Uzbekistan enjoys a high rate of employment among both women and men, but gender divisions remain at work and at home. Men are more likely to hold management roles, and work in higher-paid professions, while women are more likely to marry early and spend more time completing unpaid household tasks. UNDP in Uzbekistan's 'Women and Men in Uzbekistan – Employment Gaps' info-graphic illustrates these trends, and suggests how they may be overcome

<http://www.undp.org/content/uzbekistan/en/home/media/infographics/women-and-men-in-uzbekistan-employment-gaps/>.

Taking into account its mandate, UNDP and other UN Agencies have been involved in the gender promotion, media campaign,⁹ reporting, analysis¹⁰ and review of the legislation¹¹ as well as a number of trainings at all levels from Mahalla, police, lawyers, to the Government and Parliament.

Moreover, UNDP in cooperation with the line ministries and state authorities developed a draft Law *"On equal rights and opportunities between men and women"*, which has been agreed to be considered by the Parliament for a long time. UNDP has supported two shelters that provide services to domestic violence victims.¹²

In September 2013, during the Human Rights Council Plenary Session 203 recommendations were provided to Uzbekistan. Out of those, 115 were accepted, 58 rejected and 30 considered implemented. Those accepted included accelerating the process for adopting the Law *"On equal rights and opportunities between men and women"*, and adopting a Law *"On gender based violence"*. Numerous recommendations were also made referencing CEDAW, including signing the Optional Protocol-CEDAW, awareness raising among both professionals and the public as well as a package of measures related to strengthening the protection of women against gender based violence.

⁶ Thus, in most cases women face serious psychological pressure during its sessions. Mahalla Committees act as courts on family issues and deny women who have experienced GBV permission to file for divorce, making them return home to their husbands and in-laws. Women are often blamed for disobedience and impatience, and it is therefore seen that they deserve punishment. Thus, the Mahalla fosters traditional values where women play a second-class role.

⁷ Universal Periodic Review of Uzbekistan, Uzbek Bureau on Human Rights and Rule of Law http://www.fidh.org/IMG/pdf/ubhrrl_report_2013.pdf

⁸ For additional information on the situation of women in the country - issues of equality in education (in the highest and by sector), labour market (by sector, the level of decision-making, discrimination in hiring, excessive protectionism, etc.), at the level of decision-making (from local to higher education) and domestic violence please visit - http://www.undp.org/content/dam/uzbekistan/img/mediaspace/infographics/EngInfographic/UN_img_infographic%20Gender%20Education_Eng.pdf, <http://www.undp.org/content/uzbekistan/en/home/media/infographics/supply-and-demand-in-the-labour-market/>

⁹ <http://www.undp.uz/en/publications/publication.php?id=217>

¹⁰ For example, the "Women's rights in questions and answers" publication explains the main provisions of the Convention on the Elimination of All Forms of Discrimination against Women. The content of the Convention and national legislation on the rights of women is revealed in the book in the form of questions and answers covering the most important aspects of the rights and freedoms of women. The publication is designed not only for women but also for those who influence the creation of an enabling environment for the effective implementation of physical, intellectual, spiritual and moral capacities of women, <http://www.undp.uz/en/publications/publication.php?id=260>

¹¹ <http://www.undp.uz/en/publications/publication.php?id=221>, <http://www.undp.uz/en/publications/publication.php?id=92>

¹² <http://www.undp.uz/en/publications/publication.php?id=319>

4. INTRODUCTION TO CEDAW



Although constituting a commitment on the part of a country, becoming party to CEDAW, will not in itself ensure that women's rights are respected within the State party. Implementing the Convention is necessary to ensure respect for the principles and the rights set out in it. **The 1969 Vienna Convention on the Law of Treaties provides that every treaty in force is binding on its parties and must be enforced by them in good faith. It also provides that a party to a treaty may not invoke the provisions of its internal law as a justification for its failure to comply with a treaty. States parties to the Convention are accordingly bound to bring their domestic laws and policies into conformity with its terms. States parties commit themselves to *de facto* as well as *de jure* compliance with the whole range of civil, cultural, economic, social and political rights addressed by the Convention.** They undertake to put in place a series of measures to end discrimination against women in all forms, including:



■ Incorporating the principle of equality of men and women in their constitution and legal systems;



■ Ensuring elimination of all acts of discrimination against women by persons, organizations or enterprises;



■ Repealing all discriminatory laws and adopting laws prohibiting discrimination against women;



■ Reporting in accordance with the Convention to the Committee on the Elimination of Discrimination against Women on progress in implementing the Convention.

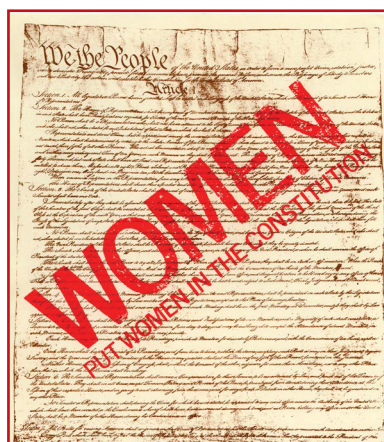
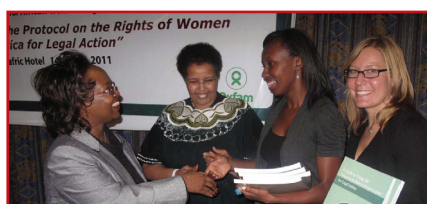


■ Establishing tribunals and other public institutions to ensure the effective protection of women against discrimination;

CEDAW takes international jurisprudence beyond the formal equality model contained in the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which together constitute the international Bill of Rights. CEDAW contains provisions that are directed towards the realization of substantive equality, obligating States to undertake measures to respect, protect, promote and fulfil the recognition of equality of rights for women.

4.1

INCORPORATING THE CONVENTION INTO NATIONAL LEGAL SYSTEMS



Ratification of or accession to the Convention imposes duties on States parties in international law, but the question of enforceability of its provisions at the national level depends on the place of international law in the domestic legal system of each State party. The constitutional law of individual States parties governs the way the Convention takes effect.

In many countries, the status of treaties at the domestic level is addressed in the national constitution, with some providing **that treaties become part of domestic law as a result of ratification or accession. This is referred to as “automatic incorporation.”** The constitutions of some of these countries provide that **treaties take precedence over national law**, while others indicate that treaties have the same status as domestic law. Many countries that provide for the automatic incorporation of treaties into domestic law also require their proclamation or publication in the official gazette before treaties have the force of national law. Even in countries where treaties are automatically incorporated, national implementing legislation may be required before an individual is able to invoke the treaty provisions before a domestic court.

The constitutions of many countries make it clear that the provisions of treaties do not become part of the national legal system unless, and until, they have been enacted by appropriate legislation. In those countries where treaty obligations must be incorporated by legislation in order to have domestic effect, an individual is unable to claim the benefit of provisions in the treaty, which have not been legislated and those provisions will not prevail over inconsistent domestic law.

The constitutions of some other countries, including several which require legislative incorporation of treaties, provide **that international standards should be considered in their interpretation.** In cases where these countries are States parties to the Convention, its provisions must be considered when the constitution is interpreted. **Judges in a number of countries, including those that require incorporation, have increasingly taken account of the Convention in decision-making.**

For example, in Costa Rica, the Constitutional Chamber of the Supreme Court, which has the authority to interpret the Costa Rican Constitution, has interpreted Article 7 of the Constitution¹³ as according supra-constitutional status to ratified human rights treaties such as CEDAW,¹⁴ and as making them self-executing, or of immediate applicability.¹⁵ Accordingly, Costa Rican opinions frequently cite and rely upon CEDAW and other international treaties among other sources of law in gender discrimination cases. Gender norms from CEDAW and other international treaties have also played a role in shaping the understanding of the general equality guarantee of Article 33 of the Costa Rica Constitution.¹⁶

¹³ Article 7 states “Public treaties, international conventions and agreements, duly approved by the Legislative Assembly, shall have, from their promulgation or from the date that they designate, authority superior to the laws”.

¹⁴ Costa Rica ratified CEDAW in 1984. Law No. 6969 (2 October 1984). Voto No. 5759-93

¹⁵ Equity or Equality for Women? Understanding CEDAW’s Equality Principles, IWRAW Asia Pacific Occasional Papers Series, No. 14 Bangkok 2009

4.2

NATIONAL IMPLEMENTING LEGISLATION

Legislation translates the principles and objectives of the Convention into concrete legal provisions and sets out the principles, objectives and priorities for national action to establish equality between men and women. It is an essential element in ensuring the proper implementation of the Convention.

“The introduction of mechanisms for adapting the domestic juridical system to the norms of international law is essential in order to ensure that the rights guaranteed by international human rights texts, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ... can be safeguarded at the national level.”¹⁷

4.2.1

ENFORCEMENT MEASURES

Legislation is meaningless if it is not enforced. In some cases, laws addressing discrimination against women are not respected due to the fact that enforcement measures have not been adequately incorporated. Thus, willingness to comply or the perception that promoting and respecting gender equality offers some advantage become the main factors which motivate respect for the law.

It is important to launch awareness-raising campaigns in order to strengthen efforts to pass or amend legislation. Women must be informed about their legal entitlements before they can claim them. **The judiciary, the administrative and other Government officers and employees, including police departments, must also be informed and respect these new entitlements in order for these claims to be enforced.**

A number of steps are necessary for the introduction of such legislation.

(I) Review of existing legislation to:

- Identify those that are discriminatory. All laws must be included in the review (i.e. not only those which are discriminatory on their face, but also laws which appear to be “gender-neutral” but have a different impact on men and women);
- Identify existing legal loopholes for full implementation of the Convention;
- Identify situations in which:
 - ▶ Inconsistencies between different kinds of laws (constitutional, penal, civil, administrative) result in gender bias;
 - ▶ Administrative procedures discriminating against women undermine the law; and
 - ▶ Harmful traditional practices and negative customs run counter to existing law.

The review process should concern all the issues and sectors covered by the Convention (political rights, right to education, access to health, and access to property, etc.)

(II) Review and drafting of new legislation. Once this inventory is done, the following steps must be taken:

- Review and reform laws that is discriminatory in order to remove inequalities.
- Draft new laws to fill legal loopholes. Affirmative action measures in order to eliminate and rectify inequalities should also be considered. In some countries, commissions have been established to review legislation and propose reform.

¹⁷ Guidelines adopted by participants to the IPU seminar on “The Process of Engendering a New Constitution for Rwanda” (Kigali, Rwanda, June 2001)

4.2.2

ROLE OF THE JUDICIARY IN SECURING RESPECT FOR THE RIGHTS SET OUT IN THE CONVENTION

The judiciary has a key role in promoting and ensuring respect for the Convention's principles. International human rights standards, including those in the Convention, can be drawn on by national courts in their decision-making in relation to constitutional or statutory interpretation, and in the development of general legal concepts even in States where the Convention does not automatically become part of the national legal system as a result of ratification or accession.

Judges therefore need to be aware of the principles of international human rights law, generally and the provisions of the Convention in particular, to take these into account in their work. Including international human rights law and gender perspectives in the basic training and continuing legal education of judges and lawyers, as well as ensuring that they have access to recent developments in these areas, are critical strategies in providing judges and legal practitioners with the information they need to incorporate these areas into their work.

Box No 1

How judges draw on the Convention in their decision-making: Some examples

In *The State v Godfrey Baloyi*, decided in 1999, the Constitutional Court of South Africa considered the constitutionality of the section 3(5) of the 1993 Prevention of Family Violence Act, which provided that a person charged with breaching a family violence interdict was required to prove his innocence. Drawing on the Universal Declaration of Human Rights, the Declaration on the Elimination of Violence against Women and the Convention on the Elimination of All Forms of Discrimination against Women, which it noted imposed positive obligations on States to pursue policies of eliminating discrimination against women by, amongst other things, adopting legislative and other means which prohibit discrimination, the Court held that the provision was constitutional as it was necessary to ensure the right to equality and non-discrimination in the context of the gross denial of human rights resulting from pervasive domestic violence.

In *Dow v Attorney-General of Botswana*, decided by the Botswana Court of Appeal in 1992, judges relied on international treaties, including the Convention, which had not been ratified by Botswana at the time, to uphold a challenge to the provisions of Botswana's nationality law which did not permit a Botswanan woman married to a non-Botswanan national to pass on her nationality to the children of the marriage, although a Botswanan man married to a non-Botswanan woman was able to do so.

In 1995, in *Dhungana and another v the Government of Nepal*, the Supreme Court of Nepal relied on the Convention in deciding to order the Government to introduce a bill to Parliament to address discriminatory laws providing that while a son was entitled to a share of his father's property at birth, a daughter was able to obtain a share only when she reached the age of 35 and was still unmarried.

In 1996, the Constitutional Court of *Guatemala* upheld a challenge to provisions in the Penal Code which treated men and women differently on the basis that these contradicted the equality provisions in the Constitution, and amounted to a failure by Guatemala to fulfil its obligations under the Convention and other international instruments (Case No. 936-95) (Source: Andrew Byrnes, "The Convention on the Elimination of All Forms of Discrimination against Women" in *The Human Rights of Women: International Instruments and African Experiences*).

In 1999, the Supreme Court of Canada drew on the Convention and the Committee's general recommendation 19 on violence against women in *R v Ewanchuk*, a case of alleged sexual assault, to conclude that violence against women is as much a matter of equality as it is an offence against human dignity and a violation of human rights, and that stereotypical attitudes about the nature of sexual assault have created the myth that women are sexually accessible until they resist.

4.2.3

OTHER MECHANISMS TO PROTECT WOMEN FROM DISCRIMINATION



Some best practice examples taken based on other countries' experiences are as follows:

- (I) Amend laws or enact new laws on domestic violence, sexual harassment and rape and anti-trafficking;
- (II) Develop over-arching legislation or bills on gender equality;
- (III) Develop and implement local and national legislation to improve women's participation in decision-making, particularly in electoral and political processes.
- (IV) Mainstream gender equality perspectives into national economic and social planning, requiring that national development plans include gender equality provisions;
- (V) Allocate resources to develop national action plans focused on anti-discrimination and women's empowerment.

Several countries have developed other mechanisms to ensure effective protection of women's rights. These can take many forms as they correspond to the needs and practices of the countries concerned, often providing flexible systems focusing on women's rights.

Some countries have established an Ombudsperson on gender equality issues, under the authority of Parliament. The function of this office is to hear and treat complaints of executive or bureaucratic incompetence or injustice (but not illegality) through mediation, and subsequently report to Parliament and make recommendations.

In some countries a specific Government section or office in charge of women's affairs has been created. The establishment of a post of Secretary of State for Women to coordinate official policies like in Uzbekistan, where Deputy Prime Minister and at the same time Chairperson of the Women's Committee of Uzbekistan is entitled with these functions, or ministries for women's affairs or assigned gender focal points in already existing ministries have been other options that have been chosen.

Some countries have established a Commission on Gender Equality to

oversee implementation of the Convention. In South Africa, for instance, the Commission is an independent body, which reports to Parliament. Its functions include: monitoring and reviewing gender policies of all publicly-funded bodies; advocacy, information and education; reviewing legislation to ensure that it protects the equality of women; recommending new legislation; investigating complaints on any gender-related issue and, where necessary, referring them to the Human Rights Commission or the Public Protector; and monitoring and reporting on compliance with international conventions.



4.2.4

GOVERNMENT POLICIES AND NATIONAL PROGRAMMES

Government policies or national programmes aimed at implementing the rights set out in the Convention and redressing inequalities are also important.

Such policies or programmes often cover a period of several years. They set out commitments and objectives and elaborate measures to reach those goals. They can bring about important and sometimes immediate changes, especially when they include detailed recommendations and measures to be taken (budget allocations; quota laws, etc.) to redress a specific situation and often have a long term, sustainable impact.

Access to detailed data on the situation of women in various sectors of society can facilitate the policy-maker's work in developing appropriate programmes and subsequently assessing their impact. The Government's obligations under the Convention as well as the Committee's recommendations, should be taken into account, during the formulation of any policy or programme.

Finally, progress should be monitored, on a regular basis, in order to assess results and obstacles and determine what steps should be taken next.

Box No 2

Mainstreaming gender perspectives in national policies: the example of Fiji

In 1997, a document entitled Development Strategy for Fiji: Policies and Programmes for Sustainable Growth stated that government policies and strategies of Fiji would include:

- ▶ Ensuring a gender-balanced partnership at all levels of decision-making;
- ▶ Striving for equal partnership in political, economic and social development;
- ▶ Promoting equal opportunity in employment;
- ▶ Assisting disadvantaged women and young women in their economic activities;
- ▶ Promoting safe domestic and workplace environments for women and children;
- ▶ Examining legislation with a view to safeguarding the human rights of women; and,
- ▶ Integrating women's concerns into all planning and policy areas.¹⁸

¹⁸ Source: Initial reports of States parties: Fiji, March 2000



4.2.5

RAISING AWARENESS AND MOBILIZING PUBLIC OPINION

Without public support and the backing of the main political, economic and social forces in society, public authorities can make very little progress in promoting and enforcing women's rights.

In order to mobilize public opinion, a Communications strategy must be developed to convince all sectors of the population that respect for women's rights as enshrined in the Convention is beneficial to men and women alike. It is therefore essential for each and every member of society to be sensitized to women's rights and for everyone to contribute to the Convention's implementation. The establishment of a genuine partnership between men and women calls for action from all and awareness raising in this field must be strengthened. Apart from awareness-raising campaigns, the development of a comprehensive human rights education programme to raise awareness among women of their human rights and raise awareness among others of the human rights of women could be very useful.

Box No 3

Disseminating the Convention and providing legal education: Some examples

The Government of the Republic of Korea issued a number of publications on the Convention, including a booklet containing the English and Korean versions of the Convention, and the Government's first two reports to the Committee. Other publications on international conventions relating to women included information notes on the Convention were also published. These materials were disseminated to the public at large and used by public employee training institutions and various social education establishments to sensitize such personnel as public prosecutors, police officers, prison administrators and guards.

The Ministry of Gender, Labour and Social Development of Uganda pioneered a paralegal training programme in one district (Kamuli) to improve the delivery of legal services in communities. Simplified booklets and manuals, including on the Convention, were prepared by the Ministry on various laws to make them more accessible to the public. The Ministry's efforts to sensitize the population on their rights were subsequently supplemented by other governmental and non- governmental legal education and sensitizations programmes in other districts of the country.¹⁹

¹⁹ Fourth periodic report of States parties: Republic of Korea, March 1998 and Third periodic report of States parties: Uganda, July 2000

5.

APPLYING THE PRINCIPLES OF THE CEDAW CONVENTION

It is important to take into account the cumulative effect of domestic difficulties and outside dangers on the course and quality of the implementation of the provisions of international human rights agreements. Domestic difficulties are reflected in the transition to a democratic system of legislative, executive and judicial power. Overcoming these difficulties is also linked to the objectives of raising the level of legal culture, adapting mentalities to the requirements of a further development of civil society and promoting a better knowledge of the law and human rights culture on the part of the staff of government, judicial and law enforcement authorities.²⁰

An analysis of the CEDAW Convention reveals that its provisions can be broadly allocated to two groups: those which set the principles through which the CEDAW Convention should be applied (Articles 1–4) and those which enshrine actual rights and prohibit violations of those rights (Articles 5–16). In order to understand how the provisions relating to health or education or political participation, for example, ought to be applied, it is necessary to be aware of the spirit through which the CEDAW Convention should be applied and how this treaty defines discrimination and provides for the realisation of women's equality.

5.1

UNDERSTANDING DISCRIMINATION AND EQUALITY: BREAKING DOWN THE LANGUAGE OF CEDAW'S ARTICLE

The CEDAW Convention requires an understanding of the concept of discrimination in its broad sense. It seeks recognition for forms of discrimination that are not so obvious or direct. It points out, for example, that in areas where women face disadvantages not applicable to men, applying a neutral, narrow rule providing for equality of access for women and men may still constitute discrimination. According to the spirit of the CEDAW Convention, the elimination of all forms of discrimination against women is necessary to ensure substantive (real) equality between men and women. Therefore, an understanding of the framework of discrimination is a starting point for applying the provisions of the CEDAW Convention to address actual situations comprehensively.

5.1.1

DIRECT AND INDIRECT DISCRIMINATION

The CEDAW Convention includes both direct (intended) and indirect (unintended) discrimination. From the outset, Article 1 states that discrimination occurs when the distinction, exclusion or restriction made on the basis of sex has the "intention" or "effect" of nullifying or impairing the recognition, enjoyment or exercise by women of their rights.

Women as compared to men face many obstacles sanctioned by culture and religious practice and by entrenched male interests in key institutions such as political parties, trade

unions, religious institutions and the courts; hence, neutral rules or laws may disadvantage them. Not putting in place enabling conditions nor altering rules to enable women to access their rights and opportunities is considered discrimination under the CEDAW Convention, because of its discriminatory effects even if such was unintentional.

5.1.2

DE JURE AND DE FACTO DISCRIMINATION

Discrimination can stem from both law (de jure) or from practice (de facto). The CEDAW Convention recognises and addresses both forms of discrimination, whether contained in laws, policies, procedures or practice.

5.1.3

PAST AND PRESENT DISCRIMINATION

The CEDAW Convention also recognises not only current discrimination but also historic or past discrimination, its variations and results. This is also commonly referred to as structural discrimination. Where a previous policy or practice has resulted in entrenched, accepted or structured discrimination against women, it is recognised that measures must be taken to address the inherent disadvantage that results.

²⁰ Para 167 National Report on UPR" available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/106/40/PDF/G1310640.pdf?OpenElement>

5.2

STATE OBLIGATIONS AND THE CEDAW CONVENTION: GENERAL UNDERTAKINGS

5.1.4

CROSSCUTTING DISCRIMINATION

Discrimination women experience in one field may affect their rights and opportunities in another. For example, discrimination in access to education and training might result in lack of access to decision-making in the area of public policy. Discrimination in access to credit opportunities may be directly related to discrimination in civil laws ownership of property, inheritance and ability to enter into contracts.

5.1.5

INTERSECTIONAL OR CONTEXTUALISED APPROACH TO DISCRIMINATION

The intersectional approach realises that discrimination that arises from a combination of grounds produces a kind of discrimination that is unique and distinct from any one form of discrimination standing alone. It takes into account the historical, social and political contexts and thus recognises the unique experience of women who have been targets of discrimination on more than one ground. That is, women who have been discriminated because of their sex and other grounds such as race, ethnicity, age, disability-status, citizenship, marital status, religion, sexuality, socio-economic status, etc.

One of the main principles informing the CEDAW Convention is **the principle of State obligation**. By becoming parties to the CEDAW Convention, States undertake responsibilities towards women from which they cannot withdraw. CEDAW obligates States to undertake measures to respect protect and fulfil the equal rights of women. States are obliged to ensure that there is no direct or indirect discrimination against women in their laws, and that women are protected against discrimination. States are obligated to improve the *de jure* and *de facto* position of women through concrete and effective policies and programmes, and to address prevailing gender inequality and persistent gender stereotypes that are perpetuated in law, societal structures, institutions, and by individual actors.

The Convention's aim is the elimination of all forms of discrimination against women both *de jure* and *de facto*, resulting from the activities or omissions on the part of States parties, their agents, or committed by any persons or organizations in all fields of life, including in the areas of politics, economy, society, culture, civil and family life. A primary requirement for States parties is to "*embody the principle of equality of men and women in their national constitutions or other appropriate legislation*" and "*to ensure... the practical realization of this principle*" (Article 2 (a)). This requirement of practical realization of equality makes clear that the Convention envisages substantive equality between women and men in the enjoyment of all human rights.

The forms of discrimination or violations on which a communication or inquiry must be based will have to be linked to the principle of State obligation. In this connection, it is important to emphasise that the views and recommendations of the CEDAW Committee when considering communications and inquiries under the Optional Protocol-CEDAW would be aimed at strengthening the domestic implementation of the CEDAW Convention, however Uzbekistan is still not part to Optional Protocol-CEDAW.

Articles 2–4 of CEDAW set out the broad principles of State obligation, while Articles 5–16 provide the substance and context to which these obligations of positive and negative actions of the State should be applied.

When a country becomes a State party to CEDAW, it voluntarily accepts a range of legally binding obligations to eliminate discrimination against women and bring about equality between women and men.

A State party to CEDAW essentially enters into a contract with all other States parties that:

- ▶ It will abide by norms and standards collectively agreed upon by the States parties.
- ▶ It is offering itself to a scrutiny by an international expert committee on the basis of these norms and standards.

The Convention establishes a treaty body, entitled the Committee on the Elimination of Discrimination against Women (CEDAW) for the purpose of considering progress made in its implementation. The Committee's primary means of considering progress in implementation is through the consideration of reports which the Convention obliges States parties to undertake to submit on the legislative, judicial, administrative and other measures which they have adopted to give effect to the provisions of the Convention.

Every State party is obliged to present an initial report to the United Nations one year after accession on the obstacles to the equality status of women and the actions it intends to take to remove such obstacles. Thereafter, the States party is required to submit a periodic report on the progress made every four years. Under the CEDAW treaty, the State has responsibilities to women from which it cannot withdraw, and to which it will be held accountable at the national and international levels.

Some basic principles of State obligation are:

- ▶ An obligation of means through the law, or the formal guarantee of the provision of rights.
- ▶ An obligation of results, or ensuring the practical realisation of rights.

Articles 2-4 of CEDAW spell out the broad State obligation:

- ▶ Article 2 obligates the State to enact a policy of non-discrimination through legislation, institutional mechanisms and regulatory policies.
- ▶ Article 3 obligates the State to promote equality through all appropriate means. This includes proactive measures and enabling conditions to ensure the full development and advancement of women.
- ▶ Article 4 obligates the State to put in place affirmative action to accelerate de facto equality.

Articles 5–16 provide substance and context in which the principles of State obligation have to be applied. These substantive articles may not show all the context of women's lives, but the very fact that the CEDAW Convention obligates States to eliminate all forms of discrimination against women means that every context is included. Article 1 which defines discrimination helps to include all contexts.

5.2.1

THE OPTIONAL PROTOCOL TO CEDAW

The human rights guarantees established by the CEDAW Convention are far-reaching. The treaty seeks to eliminate discrimination against women in the exercise of their economic, social and cultural rights as well as civil and political rights; eliminate discrimination against women in public and private or family life; and sanction discrimination perpetrated by both government officials and non-gov-

ernmental individuals, groups or enterprises. However, the gap between the promise of the CEDAW Convention and the reality of women's lives remains significant. Despite the challenges ahead, the OP-CEDAW goes a long way towards bridging this gap.

The OP-CEDAW creates access to justice for women at the international level. In itself, this treaty does not create new substantive rights. What it does is allow women who have been denied access to their rights as enshrined in

the CEDAW Convention at the national level to have their claims reviewed by a committee of independent experts that monitors compliance with the CEDAW Convention. The OP-CEDAW constitutes a separate treaty and must be independently ratified or acceded to by governments that are already CEDAW Convention States parties. As stated above, Uzbekistan has yet to sign up to OP-CEDAW, although this has been recommended during the UPR process.

5.3

CEDAW AND GENDER-BASED VIOLENCE



Uzbekistan is obliged, through its ratification of CEDAW to treat gender-based violence as a violation of human rights and to incorporate international standards into domestic legislation. Under CEDAW obligations, States parties should take legal (criminal and civil remedies) and other measures to prevent further acts of violence and provide services to survivors (such as refuge, counselling and medical assistance). States may also implement broader preventive measures, such as public information and education programmes, to eliminate domestic violence. The civil remedies adopted by different countries include injunctive orders, such as 'stop violence' or 'non-molestation' orders aimed to prevent future acts of violence; remedial orders, which take into account medical expenses, damages to property, impact on mental health; and, among others, custody orders and orders for maintenance or financial support. The criminal remedies that recognise domestic violence as an offence include mandatory arrest and 'no drop' prosecution policies, and measures to encourage survivor participation in criminal proceedings, such as the implementation of witness protection programmes. In addition to civil and criminal remedies, some countries have introduced other legal devices, such as tort action and judicial decisions on Battered Women's Syndrome.

Globally there are examples of some good practices with regard to implementation of gender-based violence legislation and practices that together create a "gender-based violence response system".

The good practices may be divided into six categories:

- I. Inter-agency coordination;
- II. Survivor-focused approach;
- III. Strengthening the justice system;
- IV. Legislating the provision of funding;
- V. Monitoring and evaluation of implementation of legislation or policies;
- VI. Initiatives focusing on needs of special groups.

I Good practices in inter-agency coordination focus on developing a common vision and action plan, enabling better communication between agencies, and establishing a body to oversee the implementation. The Duluth Model (Duluth Domestic Abuse Intervention Programme), based on victim safety, represents a good practice. Its main goal is to bring together criminal and civil justice agencies

in responding to women's needs. Another example is the Australian Capital Territory Family Violence Intervention Programme, whose main goals are ensuring survivor safety and accountability and rehabilitation of offenders through coordination between the justice system and other service providers. The London Domestic Violence Forum should also be considered a good example due to the effective

coordination between the individual components of the justice delivery system. The Indian Andhra Pradesh Public Model is also worth mentioning. This model involves various agencies (police, protection officers, legal aid services) and service providers, and introduces the Domestic Incident Report Index, which aids agencies in case tracking and enables follow-up even after the actions of protection officers.

II Survivor – focused practices aim to support and enable women's specific needs in a situation of violence. A good example is the provision relating to federal public housing in the American Violence Against Women Act, which provides protection specifically to survivors of domestic violence. Another example is the system of 30-day mandatory court review of batterer compliance with intervention programmes, which is a suitable tool particularly in jurisdictions that provide for mandatory batterer counselling. The Indian "Dilassa" Model, which is a model of health service delivery, should also be mentioned. The Model is based on a preventive approach and aims to integrate violence against women in intimate relationships within health care services.

III Strengthening the justice system is a fundamental goal. A women-friendly justice system can change the attitude of institutional intervention in domestic violence cases. For example, after the battered women's movement campaign in the United States for a stronger criminal justice response on the issue of domestic violence, many states began to provide for "mandatory" arrest and prosecution of domestic

violence offenders in their policies. Multi-Agency Risk Assessment Conference Model of coordinated response (MARAC) should also be mentioned. MARACs are regular conferences on particular cases of domestic violence, which bring together the agencies involved in the cases to discuss the actions taken, the problems, measures to be taken to improve safety and access to justice. Another good practice is the establishment of special domestic violence courts based on the principle of therapeutic jurisprudence, such as the Dade County Domestic Violence Court and the Vancouver Domestic Violence Court. **Alternative Dispute Resolution models,**

where the survivor and offender meet at a safe and neutral setting in the presence of a mediator to discuss the abusive behaviour, also represent a good practice.

IV The USA Violence Against Women Act of 1994, subsequently reauthorized in 2000 and 2005, is a good practice in terms of a legislation providing funding to criminal law enforcement and various assistance programmes to survivors of domestic violence. Another example is the Women's Safety Agenda, established in 2005 by the Australian government.

Box No 4

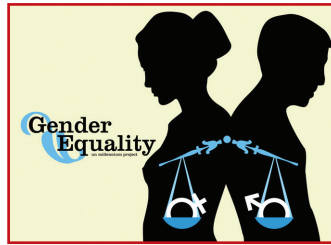
What are State obligations?

- (I) It is the State's obligation to ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination perpetrated by public and private actors;
- (II) It is the State's obligation to improve the position of women in reality (de facto) through concrete and effective policies and programmes; and
- (III) States are obligated to address prevailing gender relations and the persistence of gender stereotypes that affect women, not only through individual acts by individuals, but also in law, legal and societal structures and institutions.²¹



²¹ Ms Indira Jaising, Presentation at the ASEAN Workshop on DV legislation, October 2008, Hanoi

6.

CONCLUSION

Sufficient understanding and awareness of the human rights systems and international conventions and the decisions they render present challenges to implementation. Many times national courts fail to refer to international conventions or decisions, either because they are unaware of relevant jurisprudence or because they are reluctant to supplant an international court's opinion with their own. Part of this is about awareness – national judges often do not know about relevant international conventions or decisions because of a failure to translate and/ or disseminate them – but there are larger challenges as well, ranging from a lack of clarity as to what position international conventions and the rulings of international courts hold in national law to concerns that international conventions represent a threat to sovereign judicial decision making. National courts and judges are clearly vital actors in implementation; however, the fact that international human rights decisions often point to a failing on the part of these very actors, may impede their willingness to abide by international decisions. The institutional independence of judicial actors also challenges implementation, even when executive or legislative actors support it.

In Poland, for instance, special units exist within the Constitutional Court, the Supreme Court, and the Supreme Administrative Court devoted to analysing and educating judges on European Convention standards; as a result, all of these courts quite naturally refer to European Court on Human Rights (ECHR) jurisprudence.²² Notably, however, Strasbourg standards (particularly with respect to pre-trial detention) remain largely ignored by the country's lower courts, requiring *"continuous support by the Ministry of Justice and the National Council of the Judiciary"*.

Ukraine's implementation law transforms ECHR judgments by making the court's jurisprudence a direct source of law. This compels Ukrainian courts to consider Strasbourg jurisprudence, which they had previously applied, only occasionally and inconsistently.²³

Like other branches of government, national legal systems have a critical role to play in ensuring compliance with international conventions and the decisions of international courts and human right norms. Yet despite the potential of courts and judges to serve as national agents for implementation, a variety of potential factors – ranging from institutional constraints to restrictive interpretative canons – limit the role of domestic courts in this process.

²² From Rights to remedies: Implementing International Human Rights Decisions, Open Society Foundation, June 2013,

²³ Ibid.

7. RECOMMENDATIONS



Based on the analysis of the previous text, the following recommendations are made, that if followed, will enhance the domestic application of international conventions, including CEDAW, in Uzbekistan.

- (I) **National judicial systems should develop programmes to monitor the implementation of international decisions and actively entrench international human rights norms within national legal frameworks.** The judiciary should institute efforts at the national level to clarify the application of international decisions and the de facto status of international law within Uzbekistan's domestic legal framework. Where there is ambiguity as to the application of human rights norms and case law, its relationship to national constitutional law, or the competence of national courts to implement international judgments, the Supreme Court or the Constitutional Court should seek to clarify these issues (in a manner that conforms with Uzbekistan's international treaty obligations). If legislation could better clarify these questions, the Uzbek domestic courts should encourage legislative actors to provide such clarification.
- (II) **Judges should have stronger awareness, training, and education on international conventions and their case law.** Uzbek courts and judges know too little about international conventions and the decisions of international commissions, courts and treaty bodies. To that end, they should receive copies of such judgments (or at least summaries) in Uzbek (or Russian) and regular training related to conventions, their application and relevance in domestic proceedings and case law.
- (III) **Legal Education** – The judiciary has a key role in promoting and ensuring respect for the Convention's principles. International human rights standards, including those in the Convention, can be drawn on by national courts in their decision-making in relation to constitutional or statutory interpretation, and in the development of general legal concepts even in States where the Convention does not automatically become part of the national legal system as a result of ratification or accession. Judges therefore need to be aware of the principles of international human rights law, generally and the provisions of the Convention in particular, to take these into account in their work. Including international human rights law and gender perspectives in the basic training and continuing legal education of judges and lawyers, as well as ensuring that they have access to recent developments in these areas, are critical strategies in providing judges and legal practitioners with the information they need to incorporate these areas into their work. To that end, the Tashkent State University of Law and the Training Centre's curricula and continuing legal education should incorporate and teach international conventions standards.



(IV) Advocates must also be trained and should also make domestic judges aware of their duty to know, and take due consideration of, current human rights case law and decisions by relevant international courts and treaty bodies. Capacity building of advocates in Uzbekistan should be undertaken to ensure that they are able to fulfil this.

(V) Foster judicial dialogue and engagement between international and domestic courts. Constructive engagement between Uzbek and international courts presents a key challenge for improved implementation. International human rights bodies need to induce, and not merely exhort, the support of the regional community of states. Implementation of international conventions and judgments depends on this kind of connection. Efforts should therefore be made to improve judicial dialogue and engagement between Uzbekistan's domestic courts with international courts.

(VI) Develop complementary and strategic enforcement litigation at the national and international level. Anchoring the rights stipulated in human rights conventions within the legitimacy of national level judgments could strengthen human rights protection enormously. To that end, human rights litigators and advocates in Uzbekistan should pursue strategic enforcement litigation at the domestic level – particularly, where possible, through fast-track constitutional challenges – in order to bring domestic judicial pressure to the implementation of international judgments. This approach can also help develop complementary domestic case law, expand judges' opportunities to directly enforce international treaty commitments, and better integrate treaty norms into the practice of national courts. For this to happen, the capacities of human rights litigators and advocates in Uzbekistan needs to be strengthened.

(VII) The greater the extent to which international norms are widely known, the greater the possibility of domestic courts complying with these norms. It is therefore important to launch awareness-raising campaigns in Uzbekistan, in order to strengthen efforts to pass or amend legislation. Women must be informed about their legal entitlements before they can claim them. The judiciary, the administrative and other Government officers and employees, including police departments, must also be informed and respect these new entitlements in order for these claims to be enforced.

(VIII) In order to mobilize public opinion, a communications strategy must be developed to convince all sectors of the population in Uzbekistan that respect for women's rights as enshrined in the Convention is beneficial to men and women alike. It is therefore essential for each and every member of society to be sensitized to women's rights and for everyone to contribute to the Convention's implementation.



(IX) The **principle of equality** of men and women should be further implemented into the constitution and legal systems, including adopting a Law "On equal rights and opportunities between men and women" in Uzbekistan.

(X) **Review of existing legislation** All laws in Uzbekistan should be reviewed to identify those that are discriminatory. All laws must be included in the review (i.e. not only those which are discriminatory on their face, but also laws which appear to be "gender-neutral" but have a different impact on men and women); The review process should concern all the issues and sectors covered by the Convention (political rights, right to education, access to health, access to property etc.)

(XI) **Drafting of new legislation** Once the review process detailed under point (x) above has been completed any laws that are discriminatory should be identified in order to remove inequalities. New laws will then need to be drafted to fill any legal loopholes. Affirmative action measures in order to eliminate and rectify inequalities should also be considered. For example, in some countries, commissions have been established to review legislation and propose reform.

(XII) Uzbekistan should consider **using an alternative mechanism of dispute settlement (mediation)** or other public institution to ensure the effective protection of women against discrimination.

(XIII) Measures should be taken to ensure the elimination of all acts of discrimination against women by officials, persons, organizations or enterprises.

(XIV) A **package of gender-based violence measures** should be adopted in order to strengthen the normative framework, create coordination and communication mechanisms between different institutions and agencies, and ensure the protection of women from this violation of their rights.