

DEPARTMENT
OF STATISTICS



SAPIENZA
UNIVERSITÀ DI ROMA



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The SPEAK-UP Jean Monnet Module

a.a. 2022-2023

Department of
Statistical Science



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*Gender discrimination and violence:
Concepts and definitions in International
Legislation and EU Policies*

Lesson 1

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9th March 2023

Personal introduction



- a) Sociologist, expert in methodology
Dpt. Statistical Sciences*
- b) Research activity focused on
gender studies, violence against
women, and stereotype formation
processes*

- c) Member of Minerva Laboratory on Diversity and Gender
inequality*
- d) Gender advisor for the Ministry of the Defense*
- e) Member of the scientific Committee of the Diversity Foundation
of Francesca Vecchioni*

1st Lesson outline

- ✓ *Women's discrimination and violence in the International framework of human rights protection → a special focus on the "Convention on the Elimination of All Forms of Discrimination against Women" Cedaw 1979*
- ✓ *An in-depth analysis of the Optional Protocol to the Cedaw – 1999*
- ✓ *The Declaration on the Elimination of Violence against Women - Devaw 1993*

1.

**Women's discrimination and violence in the International
framework of human rights protection**

A special focus on the

“Cedaw 1979 and its Optional Protocol 1999”



The Cedaw 1979 – The Convention on the Elimination of All Forms of Discrimination against Women

- ✓ The Convention was the culmination of more than thirty years of work by the United Nations Commission on the Status of Women, a body established in 1946 to monitor the situation of women and to promote women's rights
- ✓ The Commission's work has been instrumental in bringing to light all the areas in which women are denied equality with men.
- ✓ These efforts for the advancement of women have resulted in several declarations and conventions, of which the Convention on the Elimination of All Forms of Discrimination against Women is the central and most comprehensive document.

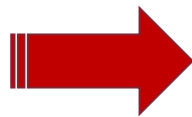
The Cedaw 1979 – *The Convention on the Elimination of All Forms of Discrimination against Women*

- ✓ The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity, and worth of the human person, in the equal rights of men and women.
- ✓ In its **preamble**, the Convention explicitly **acknowledges** that "**extensive discrimination against women continues to exist**", and emphasizes that such discrimination "**violates the principles of equality of rights and respect for human dignity**"
- ✓ In **article 1**, **discrimination** is understood as "**any distinction, exclusion or restriction made on the basis of sex...in the political, economic, social, cultural, civil or any other field**".

The Cedaw 1979 – *The Convention on the Elimination of All Forms of Discrimination against Women*

- ✓ The Convention requires States parties **to take** "all **appropriate measures**, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men" (**article 3**)

**14
articles**



**Civil rights and the legal status of
women**

Women's reproductive rights

**The impact of cultural factors on
gender relations**



The Cedaw 1979 – *The Convention on the Elimination of All Forms of Discrimination against Women*

Civil rights and the legal status of women

- ✓ Concern over the basic rights of political participation has not diminished since the adoption of the Convention on the Political Rights of Women in 1952.
- ✓ **Article 7** restates that women are guaranteed the rights to vote, to hold public office and to exercise public functions
- ✓ This includes equal rights for women to represent their countries at the international level (**Article 8**)

The Cedaw 1979 – *The Convention on the Elimination of All Forms of Discrimination against Women*

Civil rights and the legal status of women

- ✓ The Convention on the Nationality of Married Women - adopted in 1957 - is integrated under **article 9** providing for the statehood of women, irrespective of their marital status.
- ✓ The Convention, thereby, draws attention to the fact that often **women's legal status has been linked to marriage**, making them dependent on their husband's nationality rather than individuals in their own right.
- ✓ **Articles 10, 11 and 13**, respectively, affirm women's rights to **non-discrimination in education, employment and economic and social activities**.

The Cedaw 1979 – *The Convention on the Elimination of All Forms of Discrimination against Women*



Civil rights and the legal status of women

- ✓ **Article 15** asserts the full equality of women in civil and business matters, demanding that all instruments directed at restricting women's legal capacity "shall be deemed null and void".

Women's reproductive rights

- ✓ The preamble sets the tone by stating that "**the role of women in procreation should not be a basis for discrimination**"
- ✓ The link between discrimination and women's reproductive role is a matter of recurrent concern in the Convention

The Cedaw 1979 – *The Convention on the Elimination of All Forms of Discrimination against Women*



Women's reproductive rights

- ✓ Provisions for **maternity protection and child-care** are proclaimed as essential rights and are incorporated into all areas of the Convention, whether **dealing with employment, family law, health care or education**
- ✓ Special measures for maternity protection are recommended and "shall not be considered discriminatory" (article 4).
- ✓ "The Convention also affirms **women's right to reproductive choice**. Notably, **it is the only human rights treaty to mention family planning at art. 10.h** where it states *“Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning”*

The Cedaw 1979 – *The Convention on the Elimination of All Forms of Discrimination against Women*



Women's reproductive rights

- ✓ The Convention also adds in Art. 16.e the guarantee to **women's right** “to decide freely and responsibly **on the number and spacing of their children** and to have access to the information, education and means to enable them to exercise these rights”

The impact of cultural factors on gender relations

- ✓ These forces take shape in **stereotypes, customs and norms** which give rise to the multitude of legal, political and economic constraints on the advancement of women

The Cedaw 1979 – *The Convention on the Elimination of All Forms of Discrimination against Women*



The impact of cultural factors on gender relations

- ✓ The preamble of the Convention stresses "that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women“
- ✓ States parties are therefore obliged to work in order to eliminate "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" (**Article 5**).
- ✓ **Article 10.c.** mandates **the revision of textbooks, school programmes and teaching methods** with a view to eliminating stereotyped concepts in the field of education.

The Cedaw 1979 – *The Convention on the Elimination of All Forms of Discrimination against Women*



Monitoring the implementation of the Convention

- ✓ The Convention is monitored by a Committee, whose mandate and administration of the treaty are defined in the **Articles 17 to 30** of the Convention
- ✓ The Committee is composed of **23 experts nominated by their Governments** and elected by the States parties as individuals "*of high moral standing and competence in the field covered by the Convention*"
- ✓ At least **every four years**, the **States parties** are expected to **submit** a national **report to the Committee**, indicating the measures they have adopted to give effect to the provisions of the Convention



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What is at the moment the status of ratification of the Cedaw?

The Status of ratification of a core international human rights treaty or its optional protocol

Metadata

Indicator

- ✓ The indicator refers to the expression by the State of its consent to be bound by a human rights treaty under international law. This indicator is a **structural indicator** in the OHCHR methodology for human rights indicators (HRI/MC/2008/3)

Definitions

- ✓ A “**State party**” to a treaty is a State that **has expressed its consent, by an act of ratification, accession or succession**, and where the treaty has **entered into force** (or a State about to become a party after formal reception by the United Nations Secretariat of the State’s decision to be a party)

The Status of ratification of a core international human rights treaty or its optional protocol

- ✓ A “**Signatory**” to a treaty is a State that provided a **preliminary endorsement** of the instrument and its intent to examine the treaty domestically and consider ratifying it
- ✓ “**No action**” means that a State **did not express its consent**

Rationale

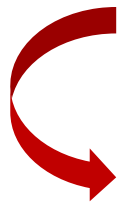
- ✓ **When a State ratifies** one of the international human rights treaties, it **assumes a legal obligation** to implement the rights recognized in that treaty

The Status of ratification of a core international human rights treaty or its optional protocol

- ✓ Through ratification, States **undertake** to put in place domestic **measures and legislation** compatible with their treaty obligations.
- ✓ The State also **commits to submitting regular reports** on how the rights are being implemented **to the monitoring committee** set up under that treaty
- ✓ Most of the **committees can**, under certain conditions, **receive petitions from individuals** who claim that their rights under the treaties have been violated.

The Status of ratification of a core international human rights treaty or its optional protocol

- ✓ The **State party must have recognized the competence of the committee** to consider such complaints from individuals either by becoming a party to an optional protocol or by making a declaration to that effect under a specific article of the treaty.



Optional Protocol to the Cedaw 1999

The Status of ratification of a core international human rights treaty or its optional protocol

Source and data collection

- ✓ The indicator **is produced by OHCHR** based on data obtained from and regularly updated by the United Nations Office of Legal Affairs, **every six months** or after a new ratification.
- ✓ It **does not capture actual implementation** (*process indicator*) or **its results** (*outcome indicator*)
- ✓ The indicator **does not reflect possible “reservations”** entered by a State on a treaty.

*Vienna Convention on the Law of Treaties
1969 – Art. 19*



Formulation of reservations

*A State may, when signing, ratifying, accepting, approving or acceding to a treaty, **formulate a reservation unless:***

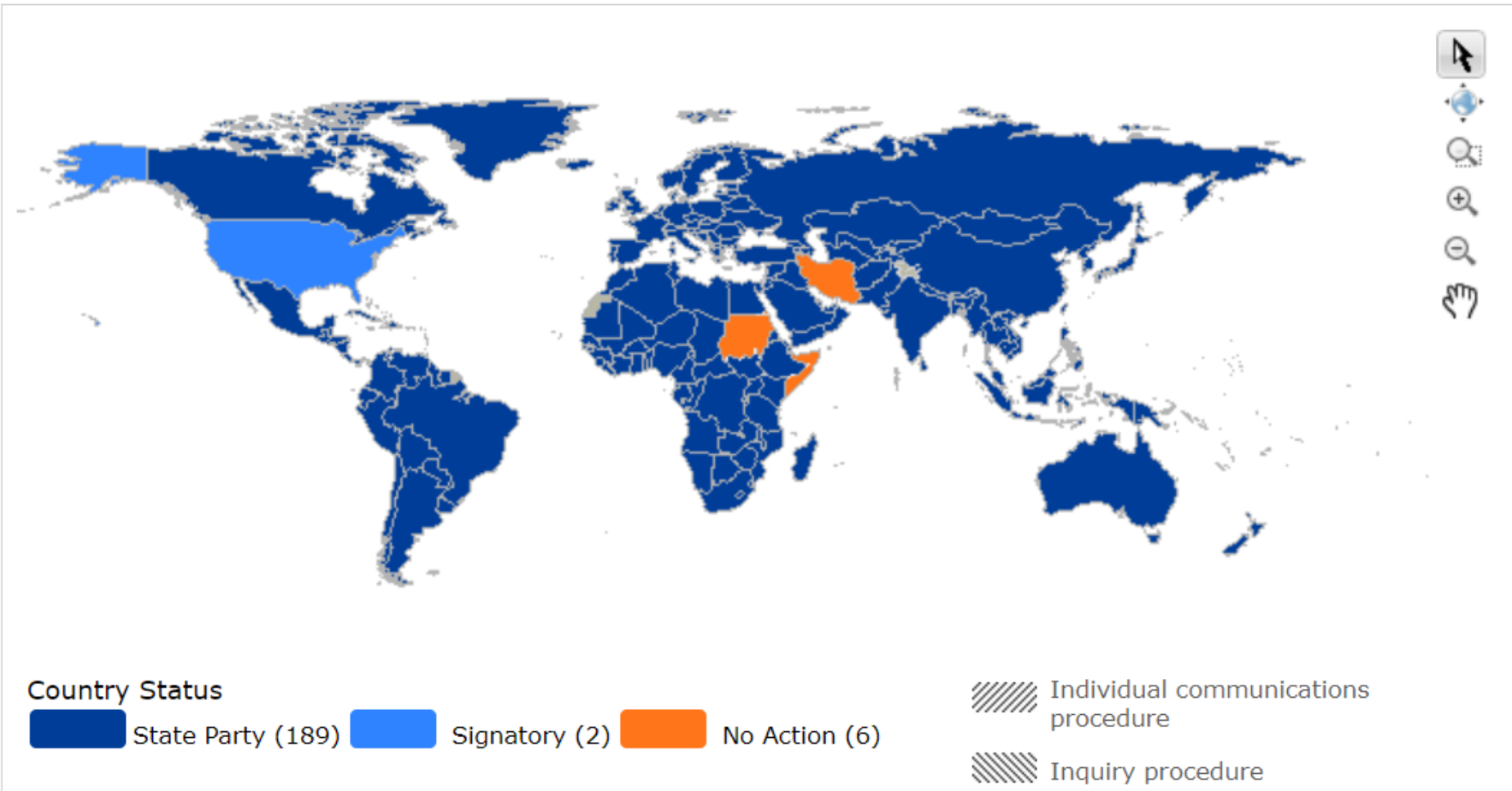
- (a) the reservation is prohibited by the treaty;*
- (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or,*
- (c) in cases not failing under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty*

Status of ratification of the Cedaw 1979



<https://indicators.ohchr.org/>

Convention on the Elimination of All Forms of Discrimination against Women



The Cedaw 1979 – *Status of ratification*



https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=179&Lang=en

✓ *Signatory*

Palau (2011), United States of America (1980)

✓ *No Action*

Holy See, Islamic Republic of Iran, Niue, Somalia, Sudan, Tonga

Insights about Italy, Türkiye, Uganda, and Kenya

✓ *Italy signed in July, 17th 1980 ratified in June, 10th 1985*

✓ *Türkiye ratification in December, 20th 1985 (accession)*

✓ *Uganda signed in July, 30th 1980 ratified in July, 22nd 1985*

✓ *Kenya ratifications (accession) in March, 9th 1984*

The Cedaw 1979 – *Status of ratification*



<https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

Italy adds a Declaration

Upon signature: **Reservation:** Italy reserves the right to exercise, when depositing the instrument of ratification, the option provided for in article 19 of the Vienna Convention on the Law of Treaties of 23 May 1969.

Türkiye adds a Declaration

Reservations: " *With respect to article 29, paragraph 1* In pursuance of article 29, paragraph 2 of the Convention, the Government of the Republic of Turkey declares that it does not consider itself bound by paragraph 1 of this article." [.....]

Uganda No declarations or reservations available on the website

Kenya No declarations or reservations available on the website

The Cedaw 1979 – *Status of ratification*



Art. 29 paragraphs 1 and 2

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation. 10

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

The Optional Protocol to the Cedaw – 1999



- ✓ It does not establish any new rights, but rather **allows the rights guaranteed in the convention** to be enforced
- ✓ A serious problem that has had a profound impact on the effectiveness of CEDAW is that States Parties expressed a great number of reservations concerning certain provisions (Gomez, 2003)
- ✓ Many reservations seem to go against the object and purpose of the Convention, which is expressly prohibited both by the Vienna Convention on the Law of Treaties and by CEDAW Article 28.2 → concern expressed by the Cedaw Committee

The Optional Protocol to the Cedaw – 1999



- ✓ The Committee issued a General Recommendation suggesting States Parties to reconsider their reservations and withdraw them (Gomez, 2003)
- ✓ World Conference on Human Rights held in Vienna in June 1993 decided that “ways and means of addressing the particularly large number of reservations to the Convention should be encouraged”
- ✓ The Conference also urged the States to “withdraw reservations that are contrary to the object and purpose of the Convention or which are otherwise incompatible with international treaty law”
- ✓ Due to the weakness of the protection mechanisms for women’s rights established by CEDAW since the beginning of the 1990s the demand for their expansion increased

The Optional Protocol to the Cedaw – 1999



- ✓ The **Commission on the Status of Women** created a Working Group for the purpose of finding solutions to strengthen these mechanisms
- ✓ Both the Vienna Declaration and Plan of Action, and the Fourth International Conference on Women held in Beijing triggered this process
- ✓ **The Optional Protocol to the Cedaw** resulted from this process
- ✓ The Optional Protocol to CEDAW is the **result of a delicate negotiation**; it reflects the **balance, compromise, and consensus** among the different opinions expressed by the members of the Working Group (Gomez, 2003:309)

The Optional Protocol to the Cedaw – 1999



- ✓ The Optional Protocol to CEDAW includes a procedure for individual communications as well as an inquiry procedure

Points of matter

Active Legitimation

**The need for consent when presenting
Communications on behalf of the victim**

Justiciability

The Optional Protocol to the Cedaw – 1999



Active Legitimation

- ✓ **Art. 1** *A State Party to the present Protocol (“State Party”) recognizes the competence of the Committee on the Elimination of Discrimination against Women (“the Committee”) **to receive and consider communications** submitted in accordance with article 2.*
- ✓ **Art. 2** *Communications may be submitted **by or on behalf of individuals or groups of individuals**, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. **Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.***

The Optional Protocol to the Cedaw – 1999



Active Legitimation

- ✓ *Who can present an individual communication to the CEDAW Committee?*
- ✓ **Article 1** simply supposes that every State that ratifies the Optional Protocol will accept the Committee's competence to receive communications
- ✓ **Article 2**, is much more controversial because it establishes **who** will be able to submit a communication
- ✓ The disagreements were based on whether **communications could be submitted on behalf of a person**; and, in this case, whether that specific **person's consent** should be required (Gomez, 2003: 311)

The Optional Protocol to the Cedaw – 1999



Active Legitimation

- ✓ Communications may be presented by individuals or groups of people, on their own or on behalf of someone. This means that a woman, or a group of women, whose rights have been violated by a State Party to the Optional Protocol can submit a communication to the Committee, either by themselves or through another person or organization acting on their behalf.

The need for consent when presenting Communications on behalf of the victim

- ✓ Therefore, **consent will be essential** in submitting a communication to the Committee on someone's behalf.

The Optional Protocol to the Cedaw – 1999



The need for consent when presenting Communications on behalf of the victim

- ✓ For the sake of consensus, accepting the **inclusion of the need for consent into the Protocol's text instead of into the Committee's rules of procedure** was necessary
- ✓ Different interpretative statements
- ✓ **EU, Canada, Denmark and some African countries** → Committee has the authority to determine the question of consent according to the particular circumstances of each case and that the Committee should interpret Article 2 in a way no less favorable than the existing practice and procedures of other human rights treaty bodies.” and they allow NGOs to bring a communication to the attention of the Committee

The Optional Protocol to the Cedaw – 1999



The need for consent when presenting Communications on behalf of the victim

- ✓ **China:** China wanted Article 2 to be as restrictive as possible, arguing that this article should prevent certain persons “from taking advantage of the special situation of the victims for their own purposes by acting in the name of the victims . . . the will of the victims should be fully respected, and . . . their representatives, if any, should be from the same country as the victims.” → China’s opinion is worth restricting any organization, especially international organizations, from representing a potential victim (Gomez, 2003: 313)
- ✓ **India:** interprets the word “consent” as “not acting contrary to the wishes of the victim and without violating her right to privacy should she so desire.”

The Optional Protocol to the Cedaw – 1999



Justiciability

- ✓ *Which of the rights included in the Convention are eligible for individual communications, since many establish obligations of a programmatic nature for the States Parties?*
- ✓ Different opinions but less conflictual as in the previous case
- ✓ Communications may be presented when there is an alleged violation of “any of the rights set forth in the Convention.” but only provisions of the Convention that include rights, as established by Article 2 of the Protocol, may be defended before the Committee

The Optional Protocol to the Cedaw – 1999



Justiciability

- ✓ Danish delegation, Finland, Iceland, and Norway, opposed this compromise, and as a consequence just in these countries the Committee will be able to accept communications from victims of those states concerning **“each and every substantive provision set forth in the Convention”**

The Optional Protocol to the Cedaw – 1999



- ✓ An individual communication submitted to the CEDAW Committee must go through four stages:

4 steps

The admission of the communication

**In-depth
examination of the matter**

The Committee's decision

**The follow-up to
this decision**

The Optional Protocol to the Cedaw – 1999



The admission of the communication

- ✓ **Articles 3 and 4** of the Optional Protocol establish the procedure for admission of individual communications
- ✓ **Art. 3** specifies: *Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.*
- ✓ Hence, communication must refer to a **State** that **has ratified both CEDAW and to its Optional Protocol.**

The Optional Protocol to the Cedaw – 1999



The admission of the communication

- ✓ **Art. 4 states that 1.** *The Committee shall not consider a communication unless it has ascertained that **all available domestic remedies have been exhausted** unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.*
- ✓ Finally, if the alleged violation occurred prior to the entry into force of this Protocol for the State Party concerned, the communication is not admissible, unless the violation continued after that date.
- ✓ **Victim protection Art. 5** states that “...the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation”

The Optional Protocol to the Cedaw – 1999



In-depth examination of the matter

- ✓ **Art. 6 and 7** of the Optional Protocol concern in-depth examination of the communication
- ✓ **Art. 6 states that** *the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.*
 2. *Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.*

The Optional Protocol to the Cedaw – 1999



In-depth examination of the matter

✓ **Art. 7 states that...**

1. The Committee shall consider communications received under the present Protocol in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications under the present Protocol.

The Optional Protocol to the Cedaw – 1999



The Committee's decision

- ✓ **Art. 7.3** states that...

After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

- ✓ The State Party must give “*due consideration to the views of the Committee, together with its recommendations, if any.*”

The Optional Protocol to the Cedaw – 1999



The follow-up to this decision

- ✓ The State must respond with a report and actions to implement the recommendations.

4. *The State Party shall give **due consideration to the views of the Committee**, together with its recommendations, if any, and shall **submit to the Committee, within six months, a written response**, including information on any action taken in the light of the views and recommendations of the Committee.*

5. *The Committee may invite the **State Party to submit further information** about any measures the State Party has taken in response to its views or recommendations, if any...”*

The Optional Protocol to the Cedaw – 1999



The inquiry procedure

- ✓ The inclusion of an inquiry procedure is one of the most sensitive matters for many States, due to the implications that such a procedure may have
- ✓ Diverse opinions → Compromise of the **Opt Out Clause**
- ✓ The inquiry procedure is a protection mechanism for the rights of women that demands cooperation and transparency from the States.
- ✓ This provision gives the CEDAW Committee ample power to open an inquiry in those countries where it believes grave or systematic violations of women's rights are being committed (Gomez, 2003: 316)

The Optional Protocol to the Cedaw – 1999



The inquiry procedure

- ✓ Spain sustained its introduction
- ✓ Countries such as Cuba, China, India, and Egypt firmly opposed → The solution consisted in the proposal of inclusion of **Art. 10 → Opt-out clause**

Art. 10

- 1. **Each State Party may**, at the time of signature or ratification of the present Protocol or accession thereto, **declare that it does not recognize the competence of the Committee provided for in articles 8 and 9.***
- 2. **Any State Party** having made a declaration in accordance with paragraph 1 of the present article **may, at any time, withdraw this declaration** by notification to the Secretary-General*

The Optional Protocol to the Cedaw – 1999



The inquiry procedure

- ✓ This inquiry procedure is included in Articles 8, 9, and 10 of the Protocol.
- ✓ *8.1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.*
- ✓ *8.2 The Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee...[...] the inquiry may include a visit to its territory.*

The Optional Protocol to the Cedaw – 1999



The Prohibition Against Reservations to the Optional Protocol

✓ **Art. 17 states that:**

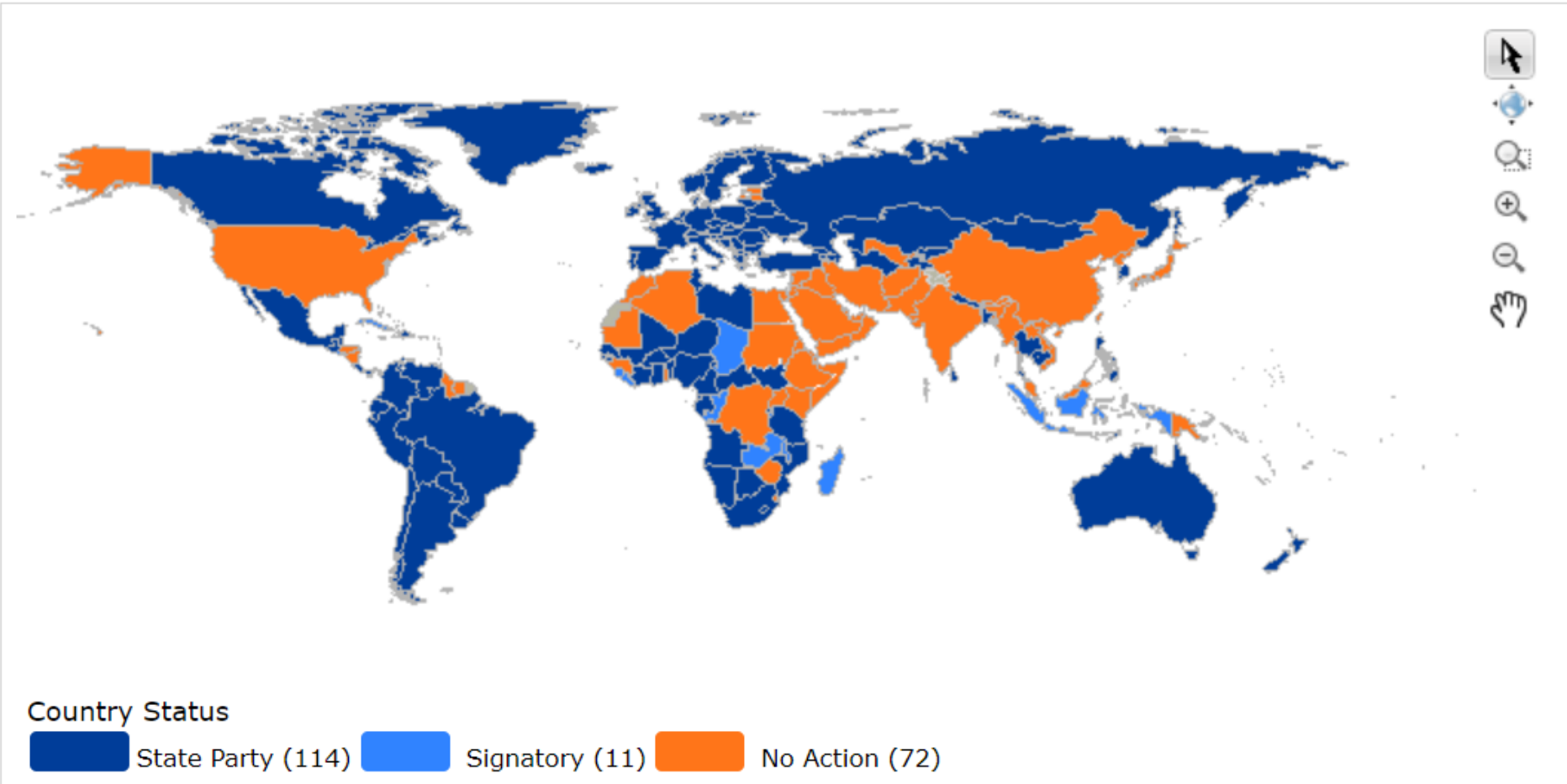
No reservations to the present Protocol shall be permitted

- ✓ Allowing **reservations could** seriously **weaken the Protocol**, contrary to its aim of increasing the efficacy of CEDAW
- ✓ Anyway it was accepted just to not break the consensus about the Protocol
- ✓ In fact, there were various interpretations of this clause

Status of ratification of the Optional Protocol to the Cedaw - 1999



Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women



Status of ratification of the Optional Protocol to the Cedaw - 1999

✓ *Signatory*

Burundi, Chad, Congo, Cuba, El Salvador, Indonesia, Liberia, Madagascar, Malawi, Sierra Leone, Zambia

✓ *No Action (72) – Among them, we have:*

Afghanistan, Algeria, China, Democratic People's Rep. Of Korea, Egypt, Eritrea, Estonia, Etiopia, Holy See, India, Iran, Iraq, Israel, Japan, Kuwait, Myanmar, Nicaragua, Palau, Qatar, Saudi Arabia, Singapore, Sudan, Togo, Uganda, United Arab Emirates, United States of America, Yemen, Zimbabwe

Insights about Italy (2000) and Türkiye (2002) Uganda Tanzania and Kenya

Status of ratification of the Optional Protocol to the Cedaw - 1999

- ✓ **Uganda** *No acceptance of individual procedure complaints*
No data available about the acceptance of the inquiry procedure - CEDAW-OP, Art. 8-9 - Inquiry procedure under the Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women

- ✓ **Kenya** *No acceptance of individual procedure complaints*
No data available about the acceptance of the inquiry procedure

- ✓ **Italy** *CEDAW-OP acceptance of Individual Complaints procedure in September, 22nd 2000 – In the same date acceptance of the procedure of Inquiry*

- ✓ **Türkiye** *CEDAW-OP acceptance of Individual Complaints procedure in October, 29th 2002 – In the same date acceptance of the procedure of Inquiry*



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A question for all of you...

Which is the missing word in this Convention?



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It is

“Violence against Women”

The Declaration on the Elimination of Violence against Women – Devaw 1993

UN General Assembly resolution 48/104 of 20 December 1993

- ✓ It expresses concern that **violence against women** is an obstacle

to the achievement of equality, development and peace

to the full implementation of the Cedaw

- ✓ Affirming that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms

The Declaration on the Elimination of Violence against Women - Devaw 1993

- ✓ It expresses concern about the **long-standing failure to protect and promote those rights** and freedoms in the case of violence against women
- ✓ Recognizing that violence against women is a manifestation of **historically unequal power relations** between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women → patriarchal system – power unbalance and asymmetry
- ✓ Social dimension of violence → violence against women is one of the **crucial social mechanisms** by which women are forced into a subordinate position compared with men

The Declaration on the Elimination of Violence against Women - Devaw 1993

- ✓ It expresses concern about some **groups of women, such as women belonging to minority groups**, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, **female children**, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence
- ✓ It recalls the paragraph 23 of the **annex to Economic and Social Council resolution 1990/15 of 24 May 1990** and the recognition that violence against women in the family and society was pervasive and cut across lines of income, class and culture had to be matched by urgent and effective steps to eliminate its incidence

The Declaration on the Elimination of Violence against Women - Devaw 1993

- ✓ It recalls the Economic and Social Council resolution 1991/18 of **30 May 1991**, in which the **Council recommended the development of a framework** for an international instrument that would **address explicitly the issue of violence against women**
- ✓ It shed light on **the role** that **women's movements** are playing in drawing increasing attention to the nature, severity and magnitude of the problem of violence against women
- ✓ It expresses concern about the limited opportunities for women in the legal, social, political and economic spheres

The Declaration on the Elimination of Violence against Women - Devaw 1993

- ✓ Last but not least, the importance of a clear **definition of violence against women**, a **clear statement of the rights** to be applied to ensure the elimination of violence against women in all its forms,
- ✓ A call to a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women

ART.1

*...the **term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.***

The Declaration on the Elimination of Violence against Women - Devaw 1993

- ✓ Art. 2 make this definition more precise

ART.2

*Violence against women shall be understood **to encompass, but not be limited to**, the following:*

1. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

The Declaration on the Elimination of Violence against Women - Devaw 1993

ART.2

2. *Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, **sexual harassment and intimidation at work**, in educational institutions and elsewhere, trafficking in women and forced prostitution;*

3. *Physical, sexual and psychological **violence perpetrated or condoned by the State**, wherever it occurs.*

- ✓ Enlarged definition – not limited
- ✓ The inclusion of the workplace, and other spaces and contexts
- ✓ The responsibility of the State as an actor of violence

The Declaration on the Elimination of Violence against Women - Devaw 1993

ART.3

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia :

The right to life;

The right to equality;

The right to liberty and security of person;

The right to equal protection under the law;

The right to be free from all forms of discrimination;

The right to the highest standard attainable of physical and mental health;

The right to just and favourable conditions of work;

The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

The Declaration on the Elimination of Violence against Women - Devaw 1993

- ✓ Art. 3 remind us a connection to the **ten Central Human Capabilities** of **Martha Nussbaum**

Life

Being able to live a complete and satisfying life into old age. Not having life cut short or being made such that it hardly seems worth living.

Not everyone has a good life. People scrape by in humdrum and dismal situations. They may be regularly threatened and may have their life cut short unnecessarily.

Bodily Health

Living with good health, and not in a state where ill health seriously affects the quality of life. Having access to medical help as needed. To have good food and be able to exercise in ways that sustain health.

The Declaration on the Elimination of Violence against Women - Devaw 1993

Bodily Integrity

Being able to go where you want to go. Being free from attack and abuse of any kind. Being able to satisfy healthy bodily needs.

Senses, Imagination and Thought

Being able to use all of one's senses. Being free to imagine, think and reason. Having the education that enables this to be done in a civilized, human way. Having access to cultural experiences, literature, art and so on and being able to produce one's own expressive work. Having freedom of expression, including political and religious.

Emotion

Being able to become attached to other things and people outside of ourselves, loving and caring for them. Experiencing grief, longing, gratitude and justified anger. Not being subject to fear and anxiety or blighted by trauma or neglect.

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Practical Reason

Being able to consider and develop understanding of good and evil, and to think critically about the world and one's own place in it. Being able to live with one's conscience.

Affiliation

Being able to associate with others, living with them and acting for them. Showing concern for people in general and interacting with others. Having sympathy and compassion, acting to help people. Seeking justice and making things right. Protecting others and the rights of people, including freedom of speech and freedom from fear.

Other Species

Being able to live with the full range of creatures and plants that inhabit the world around us. To be able to enjoy nature and appreciate its beauty.

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Play

Being able to laugh, play games and generally have fun. Not having one's enjoyment and recreation criticized or prevented.

Control Over One's Environment

Being able to participate in political activities, making free choice and joining with others to promote political views. Being able to own property and goods on the same basis that others do so. Being able to seek and accept work, and to be treated reasonably at work. Being free from unwarranted search and seizure.

Anyway, M. Nussbaum states that

“...the best way of thinking about what rights are is to see them as ‘combined capabilities’.” (Nussbaum, 2000)

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What ‘combined capabilities’ are in the Nussbaum approach?

*The right to political participation, the right to religious free exercise, the right of free speech —these and others are all best thought of as capacities to function. In other words, **to secure a right to a citizen** in these areas is to **put them in a position of combined capability to function in that area.** (Nussbaum, 2000)*

By defining rights in terms of **combined capabilities**, we make it clear that a right is not guaranteed just because this **language exists on paper**: people really have that right only **if there are effective measures to make people truly capable to exercise that right**

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- ✓ E.g. **Women** in many nations have a **nominal right of political participation** without having this right in the sense of capability: for example, they may be threatened with violence should they leave the home. In short, thinking in terms of capability gives us a benchmark as we think about what it is really to secure a right to someone (Nussbaum, 2000)
- ✓ The language of capabilities has one further advantage over the language of rights: it is not strongly linked to one particular cultural and historical tradition, as the language of rights is believed to be.
- ✓ **'Rights' are not exclusively Western**, in the sense that matters most; they can be endorsed from a variety of perspectives

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- ✓ The language of capabilities enables to bypass this debate. When we **speak simply of what people are actually able to do and to be**, we do not even give the appearance of privileging a Western idea.
- ✓ **Ideas of activity and ability are everywhere**, and there is no culture in which people do not ask themselves **what they are able to do, what opportunities they have for functioning.**
- ✓ This does not mean that we do not need the language of rights, that plays four fundamental roles

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The fundamental roles of rights:

- ✓ reminds us that people have justified and urgent claims to certain types of urgent treatment, no matter what the world around them has done about that
- ✓ when we are talking about rights guaranteed by the state, the language of rights places great emphasis on the importance and the basic role of these spheres of ability
- ✓ rights language has value because of the emphasis it places on people's choice and autonomy
- ✓ in the areas where we disagree about the proper analysis of rights talk, the language of rights preserves a sense of the terrain of agreement

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How these principles may be applied to women's empowerment and agency?

Martha Nussbaum states that *“legitimate concerns for diversity, pluralism and personal freedom are not incompatible with the recognition of cross-cultural norms, and indeed that cross-cultural norms are actually required if we are to protect diversity, pluralism, and freedom, treating each human being as an agent and an end”* (Nussbaum, 2000: 240)

- ✓ The capabilities framework offers an opportunity to answer demands women are already making in many global and national political contexts

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- ✓ We should leave women pose their own questions
- ✓ Women's issues, however, are not only worthy of focus because of their remarkable urgency; they also help us see more clearly the inadequacy of various other approaches to development more generally, and the reasons for preferring the capabilities approach
- ✓ Preference-based approach limits
- ✓ Resource-based approach limits
- ✓ Human rights approaches limits

Thank you!

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