



# CEDAW briefing –

**The obligations of public bodies in the UK  
under the Convention to Eliminate all  
forms of Discrimination Against Women**

November 2011

Understanding and supporting  
women and their organisations

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**This briefing forms part of an online toolkit on CEDAW including international links and resources – see [www.wrc.org.uk/cedaw/toolkit](http://www.wrc.org.uk/cedaw/toolkit) for the full toolkit.**

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## Contents

What is the Convention on the Elimination of all forms of Discrimination Against Women?.....	4
What is the Optional Protocol? .....	6
What are 'temporary special measures' .....	7
What are the duties of public bodies under CEDAW?.....	8
In context: how does CEDAW operate alongside other equality and human rights duties?.....	10
More information.....	12

## Introduction

### Glossary

**The Convention:** The UN Convention to Eliminate all forms of Discrimination Against Women. A 'convention' is a formal agreement between States.

**State parties:** countries that have agreed to the Convention.

**Articles:** sections setting out different subjects covered by the Convention.

In 1986 the UK Government ratified the United Nations' Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). UN Conventions are binding under international law and the UK Government must report to the UN CEDAW Committee every four years to demonstrate what efforts have been made to improve women's equality in the UK. The Government submitted its most recent report in June 2011 and is due to be examined in 2013.

This briefing describes the duty placed on public sector organisations by CEDAW. It focuses on explaining what CEDAW is and how it fits in with other equality and human rights obligations.

### **What is the Convention on the Elimination of all forms of Discrimination Against Women?**

The preamble to the Convention on the Elimination of All Forms of Discrimination Against Women (**the Convention**) says that:

*"...the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields".*

The Convention places obligations on **state parties**, to eliminate discrimination against women, which is defined as:

*"...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." (Article 1)*

The Convention outlines a comprehensive set of rights for women in all fields (civil, political, economic, social and cultural). CEDAW also targets culture and tradition as influential forces, which shape gender roles and family relations.

By signing-up to the Convention, States commit themselves to undertaking a series of measures to:

- End all forms of discrimination against women;
- Protect women's rights; and
- Promote equality within the legal system, public institutions and other organisations and amongst individuals.

## Why have I not heard of CEDAW before?

One major reason there has not been much focus on CEDAW in the UK is that European legislation against gender discrimination allows cases to be decided on in high profile European courts. This has meant that cases involving public bodies and gender discrimination have mainly focussed on European rules.

However, in 2005 the UK Government ratified the Optional Protocol to CEDAW, which is a separate, new section of the Treaty that allows individual women to bring a legal challenge against public bodies or the Government if they feel they have suffered gender discrimination.

An Optional Protocol case takes approximately the same length of time as appealing a case to a European Court, but it is potentially a cheaper route for the applicant and so it seems likely that these types of cases will increase in future.

## What does the Convention say?

The Convention has a preamble (introduction) and 30 **Articles** (clauses). Articles 1-5 describe the Convention's general framework, Articles 6-16 focus on specific issues and Articles 17 – 22 explain the administration of the Convention (and are less relevant to public bodies).

Article	Summary
1. Definition of discrimination	Any distinction on the basis of sex that impairs enjoyment of rights in any area of life. (See p.4 for full definition)
2. Policy measures to be undertaken to eliminate discrimination	States must make laws and regulations, implement policies and change practices to bring about equality for women across all public authorities.
3. Guarantees basic human rights and fundamental freedoms	States should take action to ensure women's <i>"exercise and enjoyment of human rights and fundamental freedoms is on a basis of equality with men"</i> .
4. Temporary special measures to achieve equality	Affirmative action or <b>temporary special measures</b> should and can be used (e.g. quotas or women-only services) until women are equal to men.
5. Sex roles and stereotyping	States should <i>"modify the social and cultural patterns of conduct of men and women"</i> , especially in relation to <i>"stereotyped roles"</i> for either sex. They must also promote family education that recognises <i>"the common responsibility of men and women in the upbringing and development of their children"</i> .
6. Trafficking and prostitution	Creates a state obligation to suppress the exploitation of women through trafficking, prostitution and sex work.
7. Political and public life	Ensure women vote, are eligible for election, participate in the formulation of policy, hold office, and work with NGOs on an equal basis to men.
8. Participation at the international level	Women should be able to represent their country internationally and work with international organisations on an equal basis with men.
9. Nationality	Women have equal rights with men to acquire, change, or retain their nationality and that of their children. Issues around

	immigration and asylum are often discussed under this article.
10. Equal rights in education	There should be equality throughout the education system, including for vocational training opportunities, sport and scholarships. The content of the curriculum should prevent the repetition of negative stereotypes and sexual health education should be available.
11. Employment	Women have the right to work, employment opportunities, equal remuneration, free choice of profession and employment, social security, and protection of health. Discrimination on the grounds of marriage or maternity is prohibited.
12. Healthcare and family planning	There should be equality across the healthcare system. The state should provide sexual health and family planning services. A pregnant woman should have access to: <i>"appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation"</i> .
13. Economic and social benefits	There should be equality in benefits like unemployment benefits or family allowances. Women's access to mortgages and bank accounts and their access to recreational benefits like sports also fall under this article.
14. Rural women	This includes women's participation in development planning, access to adequate health care, credit, education, transport and adequate living conditions.
15. Equality before the law	Women should have <i>"equality with men before the law"</i> , with the same rights to free movement and in civil matters <i>"women should have a legal capacity identical to that of men and the same opportunities to exercise that capacity"</i> . Any civil agreement <i>"directed at restricting the legal capacity of women shall be deemed null and void"</i> .
16. Marriage and family law	Women should have the same rights as men to freely choose to enter into a marriage and to leave it. They should have the same rights as parents, and to choose the spacing and education of their children. They should have the same rights to choose their occupation, name and administer property as men.

## What is the Optional Protocol?

The CEDAW Optional Protocol allows a woman, who feels her rights under CEDAW have been violated, to take her case to the UN CEDAW Committee. A woman can take her case directly or a relevant organisation (for example a legal charity) can take it on her behalf.

A woman will usually have to argue her case before national courts first (she must have exhausted all legal measures before the CEDAW Committee will hear her case), but, once she has done this, the Optional Protocol creates the procedures for women to appeal their case at a UN level.

This appeal procedure is called the **Communications Procedure** and each appeal is called a **Communication**. One successful Communication was a case where two Austrian women were murdered by violent ex-partners and the CEDAW Committee

found that the courts and police had not provided adequate protection.<sup>1</sup> Other examples include a case where a Roma woman in Hungary was sterilised without her full consent<sup>2</sup> and cases relating to employment and pension discrimination.<sup>3</sup>

Following the Austrian case, the CEDAW Committee required Austria to report in six months time on how they had changed policy and local authority responses to domestic violence. Where an individual is at risk when a Communication is brought, the CEDAW Committee can order interim measures to be put in place to protect them (for example requiring a country to halt immigration removal proceedings).

In addition to the Communications Procedure, the CEDAW Optional Protocol also includes an **Inquiry Procedure**. This allows the CEDAW Committee to initiate an inquiry where they have reason to believe that there are 'grave or systematic' violations of women's rights under the Convention. This procedure has been less frequently used, but it allows the Committee to confront issues, which affect larger groups of women.<sup>4</sup>

## What are 'temporary special measures'?

Article 4 of the Convention protects the right of governments and public bodies to use 'temporary special measures' *"aimed at accelerating de facto equality between men and women"*. Temporary special measures include quotas and women-only shortlists, as well as other affirmative action. Article 4 states that these types of measures should not be considered unlawful discrimination.

There is a great deal of misunderstanding about this concept and it is important to emphasise that these measures are 'temporary'. Article 4 states that *"these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved"*.

These temporary measures are 'special' because they aim to serve a special goal (e.g. equality in public life) and disaggregated data should be kept to track their success. The CEDAW Committee recommends that women are involved in designing, implementing and evaluating programmes involving temporary special measures, in collaboration with women's groups and civil society.<sup>5</sup>

Temporary special measures are not a blunt instrument. They can involve anything from 50% quotas for MPs (as has taken place in Rwanda<sup>6</sup>) to initiatives designed to help train and support women to stand for public office (as has occurred in Sweden<sup>7</sup>). For example, an employer in a male dominated area of work could run women-only training courses before advertising a new job post. This would help women attain the skills and

### Glossary

**De facto equality:** substantive, realised equality; equality of outcomes.

**De jure equality:** equality in legislation and policy; equality of rights.

**Temporary special measures:** positive actions and policies designed to remedy present inequality (affirmative action, positive discrimination and quotas are types of special measures).

<sup>1</sup> Full text available at: [http://www.unifem.org/cedaw30/success\\_stories/#austria](http://www.unifem.org/cedaw30/success_stories/#austria)

<sup>2</sup> Full text available at: [http://www.unifem.org/cedaw30/success\\_stories/#hungary](http://www.unifem.org/cedaw30/success_stories/#hungary)

<sup>3</sup> All communications can be found here: <http://www2.ohchr.org/english/law/jurisprudence.htm>

<sup>4</sup> The full text of the Inquiry report is available at: <http://www.un.org/womenwatch/daw/cedaw/cedaw32/CEDAW-C-2005-OP.8-MEXICO-E.pdf>

<sup>5</sup> For more information see General Recommendation No.25 on Article 4.

<sup>6</sup> C.f. <http://www.un.org/ecosocdev/geninfo/afrec/voll8no1/181women.htm>

<sup>7</sup> C.f. <http://www.sweden.gov.se/content/1/c6/13/07/15/8a48fb6.pdf> and <http://www.db-decision.de/CoRe/Sweden.htm>.

confidence to make strong applications for the position without an employer having to resort to quotas.<sup>8</sup>

*“Temporary Special Measures are an expression of equality, rather than an exception to it. Adopting such an approach affirms a primary commitment to the remedying of widespread, deeply entrenched and identifiable group-based patterns of inequality...according to this principle [de facto equality] temporary special measures become a manifestation of the right to equality”.*<sup>9</sup>

## What are the duties of public bodies under CEDAW?

The overall object and purpose of the Convention is to eliminate all forms of discrimination against women with a view to achieving women’s *de jure* and *de facto* equality (defined above) with men in the enjoyment of their human rights and fundamental freedoms.

The role of the State under CEDAW stems from the three main principles underlying the Convention, which are:

- Substantive Equality
- Non-discrimination
- State Obligation.

### Substantive Equality

Substantive or *de facto* equality includes equality of opportunity, equality of access to opportunity and equality of results: it means real, actual equality. CEDAW requires states to ensure substantive equality through a **state obligation of means**. The State must put funding in place to ensure women have equal access with men to all aspects of life, including legal remedies, healthcare, transport, employment, education and safety from violence.

Formal or *de jure* equality – where equality is imposed and realised through equality legislation and policy – is one way states can work to achieve this. However, CEDAW goes beyond ‘paper’ equality and requires the implementation of policy to ensure results. If, despite changes in law and policy, women are still not equal then there is not yet substantive equality. This can be referred to as the **state obligation of results**, where states are required to keep track of their progress by collecting data to monitor achievement against national indicators.

CEDAW recognises that entitlements, opportunities and access are not equally distributed throughout the community and there may be barriers to service provision resulting in unequal outcomes for particular groups. It acknowledges that where service delivery agencies tailor their services to the needs of the majority group, other people with different needs may miss out on essential services.

Equal treatment, therefore, is not about treating all people the same, but about treating

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<sup>8</sup> An approach which has been taken by the Olympic Delivery Authority. For more information see The Olympic Delivery Authority (March 2009) *Integrated Equality Scheme 2009-2012*. p.17: <http://www.london2012.com/documents/oda-equality-and-diversity/london-2012-integrated-equality-scheme-2009-2012.pdf>

<sup>9</sup> Sheppard, C (1993) *Study Paper on Litigating the Relationship between Equity and Equality*, Ontario Law Reform Commission.

people differently in order to cater for different needs. As the European Court of Human Rights has established, it can be discriminatory to “fail to treat differently persons whose situations are significantly different”.<sup>10</sup> The Canadian Supreme Court has ruled that the “accommodation of differences . . . is the essence of true equality”.<sup>11</sup>

## Non-Discrimination

The Convention focuses on discrimination against women, emphasising that women have suffered, and continue to suffer from various forms of discrimination because they are women. (See Article 1 on page 4 for the CEDAW definition of discrimination)

Discrimination can be direct (e.g. sacking a woman because she is pregnant) or indirect (e.g. where the no recourse to public funds immigration rule disproportionately affects women fleeing domestic violence, but the rule itself is gender neutral).

Discrimination can be deliberate (e.g. sexual harassment) or accidental (e.g. planning work meetings at times that conflict with childcare arrangements). It can also be institutional (e.g. women in the prison system experience a criminal justice system originally designed for men).

Under CEDAW, public bodies have an obligation to ensure there is no direct or indirect discrimination in their laws and to ensure women are protected from discrimination in society by legal sanctions. This does not mean policies should be gender neutral, since this can result in indirect or accidental discrimination with a detrimental impact on women, where a law is inadvertently modelled on male lifestyles and does not take account of women’s experiences.

CEDAW also requires the State to challenge the causes and consequences of discrimination to overcome cultural beliefs and practices that impede women’s enjoyment of their human rights and fundamental freedoms.

## State Obligation

The State should use integrated approaches to implement *de jure* and *de facto* equality. These will include concrete and effective policy and legal innovations, implementation and training, data collection and scrutiny, creation and support of services from the third sector, education and training programmes and public-awareness campaigns.

Under Article 5, states and public bodies have an obligation to address gender-based stereotypes that affect women throughout society. They should find creative ways to challenge sexist portrayals of women in the media, in employment, in religion and in the home to develop new confidence in women’s rights.

The use of temporary special measures, affirmative action to combat inequality, is one tool public bodies can use to challenge inequality. See p.7 for more information on temporary special measures.

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<sup>10</sup> Thlimminenos v Greece [2000], 31 E.H.R.R. 411

<sup>11</sup> Andrews v. Law Society of British Columbia, [1989] 1 SCR 143. This principle is discussed further in Jackman and Porter, *Women’s Substantive Equality*, at: <http://www.equalityrights.org/cera/docs/MJ&BP.htm>.

## **In context: how does CEDAW operate alongside other equality and Human Rights duties?**

### **Nationally**

CEDAW is legally binding under international law, but is not directly binding in UK law. However, it is used in UK courts as an interpretive tool. For example, if an employment tribunal were deciding a difficult sex discrimination case then they could look at CEDAW to help them make their decision about how they should apply the Sex Discrimination Act 1975.

#### The Human Rights Act

The Human Rights Act 1998 makes the European Convention of Human Rights binding under UK law. This means that an individual can take a public body to court if they believe their human rights have been breached and public bodies must take positive action to protect human rights. Article 14 of the European Convention of Human Rights makes it illegal to discriminate by sex when applying other human rights (e.g. privacy).

If someone's human rights have been affected because they are a woman, then the court can use CEDAW to interpret the Human Rights Act. CEDAW gives more comprehensive coverage of women's rights than the Human Rights Act, which makes CEDAW a valuable interpretive instrument for the UK courts.

#### The Equality Act

The Equality Act 2010 consolidates previous discrimination legislation. It provides for equal treatment of women in employment (including while on maternity leave) and in the provision of services. Sex discrimination in an employment context occurs if an employee receives 'less favourable treatment' due to her sex.

The Equality Act also replaces the Gender Equality Duty with an umbrella Equality Duty. The Equality Duty requires public authorities to 'pay due regard' to eliminating discrimination and advancing equality of opportunity by meeting the needs of women and encouraging their participation in public life.

By meeting obligations under CEDAW, public bodies will be meeting their obligations to 'pay due regard' under the Equality Duty. CEDAW can be used as a map, guiding public bodies on how they should approach their duty to gender under the Equality Act.

### **Internationally**

#### In Europe

All the countries in the European Union (EU) have ratified CEDAW. The EU is dedicated to passing its own laws around gender equality (for example Directive 2002/73/EC).<sup>12</sup> The EU might be influenced by CEDAW when deciding what rules on discrimination to pass, but CEDAW has no direct effect on EU law.

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<sup>12</sup> On employment and working conditions: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:269:0015:0020:EN:PDF>

## In the United Nations

At UN level there are a whole range of international treaties, bodies, conferences and goals focussed around women's rights. CEDAW was adopted by the UN Assembly in 1979 and since then other international initiatives have led innovation and debate on equality at an international level.

For example, the UN Convention on the Elimination of all forms of Racial Discrimination (CERD<sup>13</sup>) discusses legal, social and cultural rights (in Article 5) in a similar way to CEDAW, CERD General Recommendation 25 is on gender and the UN Convention on the Rights of Persons with Disabilities (CRPD<sup>14</sup>) includes a whole section on the rights of women with disabilities (Article 6). States report on these Conventions to UN Committees in a similar way to CEDAW. The different UN conventions are designed to be interlocking and intersect on key issues to promote improvements to diversity worldwide.

UN Women is the new UN women's rights organisation (launched January 2011), which can commission research on behalf of the UN and provide strategic international support and scrutiny. To learn more about their work visit their website at: [www.unwomen.org](http://www.unwomen.org).

Other international women's rights initiatives include:

- The Millennium Development Goals (international development targets set for 2015, where women's empowerment is central)<sup>15</sup>
- The Beijing Platform for Action (an agenda for women's empowerment that was produced at the fourth world conference on women in 1995, which focuses on mainstreaming women's rights)<sup>16</sup>
- The Commission on the Status of Women (a UN commission that holds a yearly women's rights event where states can evaluate their progress and delegates can network and attend workshops).<sup>17</sup>

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<sup>13</sup> Available online at: <http://www2.ohchr.org/english/law/cerd.htm>

<sup>14</sup> Available online at: <http://www.un.org/disabilities/convention/conventionfull.shtml>

<sup>15</sup> For information see: <http://www.beta.undp.org/undp/en/home/mdgoverview.html>

<sup>16</sup> The Beijing Declaration is online at: <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm> and more information on the Platform for Action is available here: <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm#statement>.

<sup>17</sup> More information about CSW is available here: <http://www.un.org/womenwatch/daw/csw/>. Their theme for March 2012 is 'Rural Women'.

## More information

### Women's Resource Centre

*"I had an excellent day. The training was well delivered and full of valuable tools and information. I feel equipped to make practical changes to implement CEDAW in my workplace, making improvements for staff and the public."<sup>18</sup>*

The Women's Resource Centre (WRC) has more than 25 years experience in the women's, voluntary and community sectors. They have provided advice and support on the implementation of the Equality Duty (formerly the Gender Duty), Human Rights obligations and CEDAW to public bodies across the UK.

WRC are also experienced in delivering training on gender equality and have run training days nationally on CEDAW supported by the Equality and Human Rights Commission, alongside Rights of Women and the British Institute of Human Rights.

WRC Research is the Women's Resource Centre's research arm, providing high-quality qualitative and quantitative research, headed by the experienced Dr Michelle Myall.

If you would like further information on the ways that WRC can help your organisation implement their obligations under CEDAW or create an action plan for the future, then please contact us on: 0207 324 3030 or email [info@wrc.org.uk](mailto:info@wrc.org.uk).

### Other links

The full text of the UN CEDAW Convention is available at: [www.un.org/womenwatch/daw/cedaw/text/econvention.htm](http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm)

CEDAW **General Recommendations** (including number 25 on domestic violence): [www.un.org/womenwatch/daw/cedaw/recommendations/index.html](http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html)

The full text of the CEDAW Optional Protocol is available at: <http://www.un.org/womenwatch/daw/cedaw/protocol/text.htm>

UK **reservations** to CEDAW (for example creating an exception for front line military action): [www.un.org/womenwatch/daw/cedaw/reservations-country.htm](http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm)

2008 **Concluding Observations** from the CEDAW Committee to the UK Government: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/555/92/PDF/N0955592.pdf?OpenElement>

UK Government report for the 2013 CEDAW Committee examination: [www.homeoffice.gov.uk/publications/equalities/international-equality/7th-cedaw-report?view=Binary](http://www.homeoffice.gov.uk/publications/equalities/international-equality/7th-cedaw-report?view=Binary)

### Glossary

#### General

**Recommendations:** written after the main Convention, which give detailed information on how the Convention applies to specific areas (e.g. violence against women). These apply to all state parties.

**Reservations:** are made when a State does not want to comply with a certain provision in a convention. Reservations must not be incompatible with the object and purpose of the treaty.

**Concluding observations:** the comments and recommendations the CEDAW Committee make after reading a state report and examining a country on their compliance.

<sup>18</sup> Detective Inspector Jim Blair from the Metropolitan Police at CEDAW training in Newcastle, 2011.

More information on CEDAW is available at: [www.wrc.org.uk/cedaw](http://www.wrc.org.uk/cedaw)

Further guidance for public bodies on meeting the Equality Duty and engaging with women's services is available at:

[http://www.wrc.org.uk/resources/guidance\\_for\\_public\\_bodies.aspx](http://www.wrc.org.uk/resources/guidance_for_public_bodies.aspx)

## **About the Women's Resource Centre**

WRC is a unique charity which supports women's organisations to be more effective and sustainable. We provide training, information, resources and one-to-one support on a range of organisational development issues. We also lobby decision makers on behalf of the women's not-for-profit sector for improved representation and funding.

Our members work in a wide range of fields including health, violence against women, employment, education, rights and equality, the criminal justice system and the environment. They deliver services to and campaign on behalf of some of the most marginalised communities of women.

There are over ten thousand people working or volunteering for our members who support almost half a million individuals each year.

For more information about this briefing, contact:

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