

# Session 12

## Women's Rights in International Instruments Drafted Explicitly for the Protection of Women

### OBJECTIVES:

- To review the UN's Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- To review the goals of the Beijing Declaration and Platform for Action drafted at the Fourth World Conference on Women in 1995.

### In This Session:

In this session, we will read and discuss the two most important international instruments that focus explicitly on the rights of women. Their very existence demonstrates the international community's tacit acknowledgment that most of the world's women live in patriarchal societies in which the status quo represents the interests of men above women. In this session, we will consider the objectives of the UN's Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified in 1981, and discuss its shortcomings in addressing violence against women, including domestic and other violence. The Beijing Declaration and Platform for Action, which followed in 1995, was an amalgam of rights demands and humanitarian goals, including goals around eradicating violence against women. We will read and discuss the Platform's goals and form our own conclusions about its impact and efficacy worldwide.

### Reading Assignments:

#### Advancing the Human Rights of Women

Despite the progress made over the last century at the international level and locally to advance human rights, equal application of rights for women still has not been achieved. While the UN's international legal instruments define human rights as being universally applicable, in practice women's rights are not protected equally. Culture, tradition, and religion frequently trump humanitarian appeals to redress rights violations against women. Even within this century's new democratic movements, which routinely call for greater social and political

freedom, women's rights are largely accepted as being conditional. Changing the meaning of human rights to encompass women's rights is a work in progress and has many forms, including affirmative action, gender mainstreaming, gender audits, eliminating gender disparity, and women's empowerment campaigns.

The UN International Bill of Human Rights, encompassing the Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and International Covenant on Civil and Political Rights (ICCPR), affirms that everyone, regardless of sex, has an equal right to the enjoyment of human rights and fundamental freedoms. However, the general directives in these three documents have proved inadequate for drawing the world's attention to women's entrenched second-class status, and in particular to the extensive instances where women are victims of violence – in their homes, at work, in their communities, and in times of war. Moreover, the international instruments do not explicitly address situations where women's victimization is actively promoted by cultural norms and religious authorities.

On December 5, 1963, the UN General Assembly adopted Resolution 1921, calling for a declaration that would combine international standards articulating the equal rights of men and women into a single instrument. The UN's Commission on the Status of Women prepared, and adopted in 1967, the Declaration on the Elimination of Discrimination against Women, which over the next decade evolved into a legally binding treaty. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the General Assembly in 1979 with 130 votes in favor, and none against, with 10 abstentions. On September 3, 1981, the twentieth member state ratified CEDAW and the Convention entered into force, faster than any previous human rights convention. By ratifying CEDAW, a country agrees both to protect specific women's rights and to take positive steps to end discrimination and violence against women.

CEDAW's articles cover women's civil rights and legal status, the right to equality in the workplace, access to education, right to participate in government and public life, healthcare and reproductive rights, and rights within the family. Significantly, CEDAW calls for states to “modify the social and cultural patterns of conduct of men and women” that lead to discrimination: “*State Parties shall take appropriate measures: to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.*” (Article 5)

The UN General Assembly went on to underscore the states' responsibility to address gender-based violence in its 1993 Declaration on the Elimination of Violence against Women. The following year, a Special

Rapporteur on violence against women,<sup>60</sup> was appointed. In 1995, representatives from all over the world attended the UN Fourth World Conference on Women in Beijing and created the Beijing Declaration and Platform for Action, which reaffirmed women's rights as human rights and provided guidelines for participating nations.

The Beijing Platform for Action identified 12 main areas of concern that need to be addressed to achieve political, social, economic, cultural, and environmental security for all. The Platform calls for governments to address women's human rights, poverty, education, health, violence, armed conflict, the economy, power and decision-making, mechanisms for women's advancement, mass media, the environment, and the girl child. It also acknowledged that women face unique barriers to equality in addition to those faced by men, further exacerbated by age, race, language, culture, religion, and legal (if they are refugees, indigenous, immigrants, etc.), family, education, and economic status.

For the next five years, there was movement around the globe by states to systematically create laws and mechanisms that could protect women's rights. NGOs played an enormously important role in holding governments accountable to their human rights treaty obligations and in pressing governments to ratify additional human rights treaties. However, economic and political factors in the new century (particularly post-9/11) have led to an increasing ambivalence by states towards the UN human rights instruments. One manifestation of this ambivalence is that nearly a third of the countries that have signed and ratified CEDAW have signed *with reservations* to some of its articles (the Convention permits ratification subject to reservations, "provided that the reservations are not incompatible with the object and purpose of the Convention"<sup>61</sup>). Among many Muslim-majority countries, the reservations to CEDAW have been quite substantial, negating much of CEDAW's promise and potential for progress. Another example of this ambivalence is the UN's Millennium Development Goals (established following the UN Millennium Summit in 2000), which were largely framed as humanitarian objectives rather than human rights.

But even if governments are ignoring their obligations to the human rights treaties, legally the treaties still stand, and they powerfully document the progress of humanity towards the full recognition of women's equality. In particular, CEDAW and the Beijing Platform for Action are worth revisiting: the values and commitments made in these instruments were agreed to by most nations of the world, and they still stand. One remarkable grassroots campaign taking place in the MENA (Middle East/North Africa) region is Equality without Reservation initiative, which advocates for the removal of all reservations to CEDAW.<sup>62</sup> Equality without Reservation is comprised of more than 120 organizations from

60 The Rapporteur's full title is Special Rapporteur on violence against women, including its causes and consequences.

61 <http://www.un.org/womenwatch/daw/cedaw/reservations.htm#>

62 <http://www.learningpartnership.org/lib/equality-without-reservation-campaign>

17 Arab states; collectively through this campaign these organizations are pressing their governments to withdraw their reservations to CEDAW and to integrate the principles of gender equality into their constitutions and action plans.<sup>63</sup>

### Convention on the Elimination of All Forms of Discrimination against Women

*As of 2015: 189 countries have made this treaty law.*<sup>64</sup>

*An additional 2 countries have signed the treaty;*

*6 countries have taken no action on this treaty.*

The full text of the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** can be found in **Appendix D** of this manual. The following excerpts demonstrate the Convention's breadth and depth:

The Preamble to CEDAW begins with reminders that the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights already reaffirm the rights of women. It goes on to say that despite the several UN instruments designed to protect women, *“extensive discrimination against women continues to exist...”*

#### Selected quotes from the Preamble include:

*“Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights...”*

*“Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil, and political rights...”*

*“Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society, and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity...”*

CEDAW Article 1 clarified that, *“for the purposed of the present Convention, the term ‘discrimination against women’ shall mean 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. . .”*

63 <http://play.learningpartnership.org/en/advocacy/campaign/equality/arab-women-call>

64 Many countries ratified CEDAW with significant reservations. See the description of CEDAW above in “Advancing the Human Rights of Women.”

Articles 2 and 3 enjoin all participating states to “**pursue a policy of eliminating discrimination against women,**” and to adopt measures to remedy current discrimination and protect against future discrimination.

Article 4 makes a provision for states to establish “temporary special measures” to accelerate the progress of women, without those measures being considered discriminatory. It also categorically excludes special measures aimed at protecting maternity from being considered discriminatory.

Article 5 calls for states to modify social and cultural patterns that lead to discrimination against women. In the Article’s second paragraph, the treaty identifies “family education” as critical to the advancement of women. “**To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children. . . [in] the interest of the children...**”

Article 6 calls for states to end all forms of trafficking in women and the exploitation of women through prostitution.

Articles 7 and 8 commit states to eliminate discrimination against women in political and public life, including in elections, in forming government policy and holding government office, and in participating in local and international non-governmental organizations.

Article 9 calls for women having the same, equal, rights with men to acquire, change, or retain their nationality and the nationality of their children, regardless of marital status.

Article 10 outlines the educational rights of women that states must ensure, including equal access to vocational training, higher education, scholarships, and physical education. It also encourages co-education and other measures to mitigate stereotypes of the roles of men and women in society.

Article 11 addresses measures to eliminate all discrimination against women in employment, promotions, and supporting services, to make employment possible for women.

Article 12 commits states to eliminate discrimination against women in the field of healthcare. The article takes special note of women’s need for pregnancy-related services.

Article 13 enjoins states to ensure the same rights for women relating to economics and social life, including the right to benefits, bank loans, and mortgages, and the right to participate in recreational activities, sports, and all aspects of cultural life.

Article 14 addresses the special needs of rural women and the responsibilities incumbent upon states to protect the human rights of rural women and support their survival and that of their families and communities.

Article 15 calls for states to accord women and men equality before the law in all civil and criminal matters, including the right to form contracts

and own or administer property. The article further states that women must have the same rights as men relating to movement of persons and the freedom to choose their residence and domicile.

Article 16 – the most frequently challenged of all the treaty’s provisions – relates to the rights of women in matters of marriage and family matters. The article provides that women and men have, “*a) the same right to enter into marriage; b) the same right to freely choose a spouse and to enter into marriage only with their free and full consent...*” Article 16 also states that men and women have the same rights and responsibilities as parents, irrespective of their marital status. Women have the right to decide on the number and spacing of their children and the right to education, to enable them to exercise their right to making such decisions. The article also calls on states to make child marriage illegal, and to set an appropriate minimum age for marriage.

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### Questions for Group Discussion:

- Why do you think that the framers of CEDAW felt that the International Bill of Human Rights did not go far enough in protecting women’s rights? What do you think they hoped CEDAW would accomplish?
- Where do you think CEDAW’s authority comes from? On what basis does CEDAW claim women’s rights?
- Is your country a signatory to CEDAW? Does your government work to protect all the rights enumerated in the treaty? If not, which ones do you think are the most often violated in your country? Why?
- Why do you think Article 16, which relates to women’s rights in a marriage and in her family, is the most frequently disputed by governments, many of which signed the treaty with the reservation that Article 16 does not apply?
- Who do you think has the right to determine a woman’s role in the family? Why?
- Significantly, CEDAW does not directly address violence against women. Why do you think this happened? Later UN declarations and the Fourth World Conference on Women’s Platform for Action tackled this monumental concern head-on. If you had been among the drafters of CEDAW, what language would you have chosen to articulate women and girls’ right to be free from violence (consider domestic violence, violence in times of war, and violence generally)?

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### Reading Assignment:

#### Beijing Platform for Action

At the 1995 World Conference on Women in Beijing, more than 6,000 government delegates participated in the creation of the Platform for Action, the culmination of nearly 50 years of refining international

human rights instruments to address the equality of women and men. In attendance was then-U.S. First Lady Hilary Clinton, who memorably declared, “*If there is one message that echoes forth from this conference, let it be that human rights are women’s rights and women’s rights are human rights once and for all.*”

The Platform for Action document, the result of carefully negotiated consensus, was drafted to be an affirmation by participating states of their *moral obligation* to press for the rights of women – it was not a legally binding commitment. The Platform’s Mission Statement describes the Platform as “an agenda for women’s empowerment.” In agreeing to the Platform, the delegates (representatives of 189 countries, with some stating reservations) formally declared their intention to “***hereby adopt and commit ourselves as Governments to implement the following PLATFORM FOR ACTION, ensuring that a gender perspective is reflected in all our policies and programs. . .***”

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### Group Exercise:

The Beijing Platform for Action covers 12 critical areas of concern that weave human rights and humanitarian goals together. In 1995, the delegates envisioned measurable progress taking place in each of the areas over the next decade. Now, 20 years later, it is instructive to review the 12 areas and to consider where there has been progress, where there has been stagnation, and where there has been back-sliding.

For this exercise, ask the group to review the Platform’s 12 Critical Areas of Concern (below) and discuss each one. Begin by asking for volunteers to talk about each Critical Area in their country and globally, and how they believe governments have addressed each of the issues.

It is helpful to have a volunteer take notes of the discussion on a board or large sheet of paper, so that participants can refer back to earlier comments.

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### PLATFORM FOR ACTION: The Critical Areas of Concern

1. The persistent and increasing burden of poverty on women;
2. Inequalities and inadequacies in, and unequal access to, education and training;
3. Inequalities and inadequacies in, and unequal access to, health care and related services;
4. Violence against women;
5. The effects of armed or other kinds of conflict on women, including those living under foreign occupation;
6. Inequality in economic structures and policies, in all forms of productive activities and in access to resources;
7. Inequality between men and women in the sharing of power and decision-making at all levels;

8. Insufficient mechanisms at all levels to promote the advancement of women;
  9. Lack of respect for and inadequate promotion and protection of the human rights of women;
  10. Stereotyping of women and inequality in women's access to and participation in all communication systems, especially in the media;
  11. Gender inequalities in the management of natural resources and in the safeguarding of the environment;
  12. Persistent discrimination against and violation of the rights of the girl child.
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### **Reading Assignments:**

#### **Violence against Women: A Final Note on the Fourth Area of Concern**

Unlike the CEDAW treaty drafted 30 years earlier, the Beijing Platform is unequivocal in stating that violence against women violates women's enjoyment of their human rights. The Platform's paragraphs 112-113 explain the connection between women's human rights and states' obligations to end violence against women. (Platform paragraphs 112 through 130 that address Violence against Women are reproduced in **Appendix E** of this manual.):

#### **Paragraph 112.**

Violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed. Knowledge about its causes and consequences, as well as its incidence and measures to combat it, have been greatly expanded since the Nairobi Conference. In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. The low social and economic status of women can be both a cause and a consequence of violence against women.

#### **Paragraph 113.**

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 private life.

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### Questions for Group Discussion:

- The Beijing Platform for Action was drafted in 1995 at the Fourth World Conference on Women. Do you think that the conference helped advance the rights of women in your country? What about the Platform? Why or why not?
- The Platform's 12 areas of concern are a blend of rights and humanitarian and policy concerns. Is the list of concerns useful in helping you frame gender policy objectives?
- The Platform's Item 1 frames poverty as a humanitarian concern. Item 2 frames education in both rights language (citing "inequalities") and policy language (citing "inadequacies"). Item 7 frames decision-making and power-sharing as an equal rights issue. What is the difference between framing an issue as a *rights violation* rather than as a *policy objective*? Is one more powerful than the other? Why?
- States frequently explain that their inability to comply with the objectives of the Platform and CEDAW is due to lack of resources. Human rights advocates argue that where economic limitations undermine the progress on compliance with the Platform and CEDAW, states are still not exempted from their obligation to implement human rights policies so that men and women are treated equally. What are some examples of rights and policy objectives that promote women's freedom and equality that states might claim are too expensive to implement? Do you agree? Are there measures that can be taken with limited resources that still allow for progress on equality and rights?