

# The Use of CEDAW to Invalidate Discriminatory Laws and Promote Gender Equality

Examples of domestic case law from around the world

## CEDAW: Background

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination against women and requires states not only to prohibit discrimination but also to take affirmative steps in order to achieve gender equality. The Convention is legally binding upon States that have ratified the Convention and any laws in violation of CEDAW must be struck down.

CEDAW has been used to support affirmative action policies and programs as well as to strike down laws that are in violation of the Convention. These cases carry significant import: the application of CEDAW in domestic courts gives CEDAW legitimacy globally and reinforces the principal that domestic courts are bound by international treaties such as CEDAW.

### INDIA: Supreme Court of India - *Municipal Corporation of Delhi v. Female Workers*

The court, in determining the contractual right of female employees to maternity benefits, declared: "Delhi is the capital of India. No other city or corporation would be more conscious that the City of Delhi that India is a signatory to various international covenants and treaties...[the principles of CEDAW] which are contained in art 11...have to be read into the contract of service between Municipal Corporation of Delhi and the women employees...and so read these employees immediately become entitled to all the benefits conceived under the Maternity Benefit Act 1961."

Article 11: Requires States to eliminate discrimination against women in employment and to ensure, *"The right to work as an inalienable right of all human beings; The right to the same employment opportunities...; The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service...; The right to equal remuneration, including benefits...; The right to social security...; The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction."*

### SOUTH AFRICA: Constitutional Court of South Africa - *Bhe v. Magistrate*

The court overruled a law that excluded women and extra-marital children from inheriting property. The court acknowledged that given the development "of African communities into urban and industrialized communities, and the role that women play in...society, the exclusion of women from succeeding to the family head can no longer be justified. These developments must also be seen against the international instruments that protect women against discrimination, namely: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)...[which] requires South Africa to ensure, amongst other things, the practical realization of the principle of equality between men and women and to take all appropriate measures to modify or abolish existing laws, regulations, customs and practices that constitutes discrimination against women."

Article 2: Requires State parties to undertake: *"To embody the principle of the equality of men and women in their national constitutions...; To adopt appropriate legislat[ion]...prohibiting all discrimination against women; To establish legal protection of the rights of women on an equal basis with men...; To refrain from engaging in any act or practice of discrimination against women...;*

*To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;...[T]o modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; To repeal all national penal provisions which constitute discrimination against women."*

**NIGERIA: Nigerian Court of Appeal - *Muojekwo & Ors v. Ejikeme & Ors***

The court found two Nigerian customs that effectively prevented female family members from inheriting property "repugnant to the principles of natural justice, equity and good sense " and a violation of *Article 5* of CEDAW, which calls on States Parties to modify prejudices, customs and practices that discriminate.

Article 5: Requires States Parties to 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 the superiority of either of the sexes...; To ensure that family education includes a proper understanding of maternity...and the recognition of the common responsibility of men and women in the upbringing and development of their children..."*

**UGANDA: High Court of Uganda at Kampala - *Uganda v. Matovo***

The court held that a rape law requiring a victim's testimony to be corroborated violated *Article 1* of CEDAW as well as Uganda's constitution because it unfairly discriminated against women as the most frequent victims of rape.

Article 1: "*[D]iscrimination against women'... mean[s] 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."*

**COLOMBIA: Colombian Constitutional Court - Decision C-355/2006**

The court struck down a law banning abortion in all cases, including rape, incest and when the health of a pregnant woman was at risk. The court used CEDAW to explicate how such a total ban violated women's international human rights. Abortion in these three cases is now legalized.

*"To conclude, women's sexual and reproductive rights have finally been recognized as human rights, and as such, they have become part of constitutional rights, which are the fundamental basis of all democratic States.*

*The right to health, which includes the right to reproductive health and family planning, has been interpreted by international bodies on the basis of international treaties, including CEDAW, to include the duty of all States to offer a wide range of high quality health services which must include sexual and reproductive health services.*

*CEDAW has emphasized that laws criminalizing medical intervention that specifically affect women constitute a barrier to women's access to needed medical care, compromising women's right to gender equality in the area of health, and amounting to a violating of States' international obligations to respect those internationally recognized rights."*