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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women
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Ways and means of expediting the work of the Committee

Report by the Secretariat

Contents

* CEDAW/C/1999/II/1.

I. Introduction

1. The present report[1] addresses a number of issues raised by the Committee on the Elimination of Discrimination against Women in discussions held during its twentieth session (19 January–5 February 1999). These include:

(a) Focused periodic reports;

(b) A revised reporting schedule for States parties whose initial reports are long overdue;

(c) The practice of other treaty bodies in cases where the next periodic report of a State party which is considered by the pre-session working group is due or due shortly after its earlier periodic report is considered by the pre-session working group;

(d) Relations between the Committee and the Special Rapporteur on Violence against Women;

(e) The practice of other treaty bodies with regard to the comments of States parties on concluding comments.

The report also contains relevant matters discussed by the Commission on the Status of Women.

2. Recommendations for the Committee to consider in regard to ways and means of expediting its work are highlighted throughout the report.

3. A list of States parties whose reports are more than five years overdue is contained in annex I to the present report. As requested by the Committee at earlier sessions, the report also contains a list of States parties whose reports are to be considered in order of receipt, taking into account geographical balance (see annex II).

4. At its nineteenth session, the Committee requested that the Secretariat prepare a study on the enforceability of the Convention in domestic legal systems, to be submitted to the Committee at its twenty-first session. The study is set out in annex III to the present report.

II. Focused periodic reports

5. At their tenth meeting, in September 1998, the persons chairing the human rights treaty bodies reiterated their view that it was desirable to strive for focused periodic reports that would examine a limited range of issues that might be identified by the relevant treaty body in advance of the preparation of the report. The chairpersons noted that such an approach would greatly reduce the need for very lengthy reports, minimize duplication of reports, help to eliminate long delays between the submission and the examination of reports, allow problem areas to be dealt with in depth and facilitate the follow-up of concluding comments or observations, both for the State party and for the committee concerned.

6. The Committee on the Elimination of Discrimination against Women currently formulates comprehensive concluding comments on periodic reports, identifying areas of concern in regard to the implementation of the Convention by a particular State party, and proposing concrete recommendations in that regard. Concluding comments could therefore serve as the framework or issue-oriented guide for more focused periodic reports, by identifying issues of particular interest or concern to be addressed in future reports.

7. **Recommendation**. The Committee may wish to consider the issue of focused periodic reports, and the use of concluding comments as a framework or issue-oriented guide for preparing such reports.

III. Revised reporting schedule for States parties whose initial reports are long overdue

8. Currently, the initial reports of 29 States parties to the Convention have been overdue for five years or more, while the periodic reports of 42 States parties have been overdue for five years or more (see annex I). At its twentieth session, the Committee reiterated its decision 16/III, in which it decided, on an exceptional basis, and as a temporary measure, to invite States parties to combine a maximum of two reports.

9. By virtue of article 18 (1) of the Convention, States parties undertake to submit reports on implementation of the Convention within one year after the entry into force for the State concerned and thereafter at least every four years and further whenever the Committee so requests. Since the Convention entered into force in 1981, the practice has been to maintain the reporting periodicity outlined in article 18, irrespective of whether the State party concerned falls behind in its reporting obligations, or if the consideration of a State party's report by the Committee is delayed.

10. At its twentieth session, the Committee decided that where a State party's initial report was long overdue, it would consider a revised reporting schedule with regard to that State party's periodic reports at the session at which it presented its initial report, and it would inform the State party accordingly.

11. In the five other United Nations human rights treaties reporting obligations vary. Article 9 (2) of the International Convention on the Elimination of All Forms of Racial Discrimination provides that reports are to be submitted within one year of the entry into force of the Convention for the State party concerned and thereafter every two years, and whenever the Committee so requests. Article 40 of the International Covenant on Civil and Political Rights provides that reports are due within one year of the entry into force of the Covenant for the State party concerned and thereafter whenever the Committee so requests. Article 17 of the International Covenant on Economic, Social and Cultural Rights provides for the submission of reports by States parties within one year of the entry into force of the Covenant for the State party concerned and thereafter in accordance with a programme to be established. At its second session, in 1988, the Committee on Economic, Social and Cultural Rights established that States parties' reports were to be presented at five yearly intervals. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in article 19 (1), provides for reporting within one year of the entry into force of the Convention for the State party concerned, and thereafter every four years or as the Committee may request. Article 44 (1) of the Convention on the Rights of the Child provides for the submission of reports within two years of the entry into force of the Convention for the State party concerned and thereafter every five years.

12. The practice of other treaty bodies with respect to the periodicity of reporting also varies. In 1998, the Human Rights Committee amended its decision on periodicity of reporting[2] to provide that "In accordance with article 40, paragraph 1 (b) [of the Covenant], the date for the submission of the following periodic report should generally be up to five years after the consideration of the previous report. The criteria to be used in that regard are the following: (i) delays in submission of reports, (ii) delays in the consideration of these reports if attributable to the State, (iii) quality of the reports and of the dialogue, and (iv) nature of

the concerns and recommendations expressed in the concluding observations".[3] The Human Rights Committee establishes the date that the next report of individual States parties should be submitted after consideration of the current report, and that date is reflected in the concluding observations adopted with respect to the State party.[4] In cases where more than one report is outstanding, dates for submission are designated that allow the State party to become up to date with its reporting obligations. For example, the Committee requested Jamaica, whose second periodic report had been delayed for over 15 years, to submit its third periodic report in 2001, or four years after the consideration of the second report at its sixty-first session in October 1997, thus adjusting the reporting schedule.

13. The Committee on the Elimination of Racial Discrimination schedules outstanding reports irrespective of whether they have been submitted, and allows all outstanding reports to be consolidated for review. The Committee against Torture does not schedule a review of States parties in the absence of a report, nor does it allow for the consolidation of reports. In 1998, it decided that it would forward to States parties whose reports were overdue, information the Committee had received from other sources, requesting a response, which, if forthcoming, would be considered as a report.[5] If an overdue report does not cover the full period up to the time the Committee considers it, it may request updated information within three to six months, as an additional report. Rescheduling of dates for submission is, however, agreed on an ad hoc basis.

14. The Committee on Economic, Social and Cultural Rights allows rescheduling of reporting dates where this is requested by States parties, but it does not allow the consolidation of reports. Since 1990, it has considered the situation concerning the implementation of the Covenant in respect of each State party whose initial or periodic reports were significantly overdue. A four-step procedure has been adopted in this context: (a) identification of those States parties whose initial or periodic reports were long overdue; (b) notification to those States parties whose situation the Committee intends to consider at a subsequent session; (c) consideration of the status of economic, social and cultural rights in that country on the basis of all available information; and (d) the adoption of concluding observations.[6] It is to be noted that in situations where a State party is notified that it will be considered in the absence of a report, the Chairperson is authorized to defer consideration of the situation for one session, but no longer.

15. In the light of the practice of other human rights treaty bodies, the Committee on the Elimination of Discrimination against Women might wish to consider, in cases where the initial report is not submitted on time, but, once submitted, fully and comprehensively meets the requirements of the Committee's reporting guidelines and, in addition, provides an assessment of the implementation of the Convention from the date that the initial report fell due to the date at which the State party submitted its initial report, that the report satisfies the State party's reporting obligations to that date. In such cases, however, the Committee may wish to ensure that the dialogue between it and the State party is sustained by requiring its next periodic report in less than four years. Thereafter, the Committee may decide that the reporting State should revert to the regular reporting cycle of four years indicated in the Convention.

16. **Recommendations**. (a) The Committee may wish to consider that, in cases where a long-delayed initial report comprehensively meets requirements of its reporting guidelines and provides an assessment of the implementation of the Convention from the due date of the initial report to the date of submission, such a report meets the reporting obligations of that State party;

(b) In these circumstances, the Committee may also wish to ensure that the dialogue between it and the State party is sustained by requiring its next periodic report, which may be a more focused report, be submitted in less than four years.

IV. Practice of other treaty bodies when the reports of States parties considered by the pre-session working group are due or are due shortly after the meeting of the pre-session working group

17. In addition to the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child meet to draw up lists of issues and questions with regard to reports at the end of the session prior to that at which the reports will be considered.

18. The first set of periodic reports due under the Convention on the Rights of the Child fell due after September 1997, and it has thus not developed any practice in this regard. The Committee on Economic, Social and Cultural Rights was scheduled to consider the issue in the context of Ireland, whose initial report was to be considered at its twentieth session, in April 1999. The pre-session working group for the twentieth session met in December 1998 and drew up questions with regard to Ireland's initial report. Ireland's second periodic report fell due on 29 June 1997. The Committee was expected to consider whether the comprehensive reply of Ireland to the list of issues and questions posed on its initial report could fulfil its second and subsequent reporting obligation.

V. Responses to concluding comments

19. Several States parties have commented on or responded to concluding comments of the Committee on the Elimination of All Forms of Discrimination against Women that were adopted after the consideration of those States parties' reports. Currently, the Committee's practice is for the Chairperson to acknowledge receipt of such comments and responses, and for the Committee to discuss them at its next session. As appropriate, the Chairperson forwards the Committee's views to the State party concerned.

20. The practice of other human rights treaty bodies with regard to comments or responses to concluding observations or comments varies. The Committee on the Elimination of Racial Discrimination has adopted the practice of including States parties' responses in its reports to the General Assembly.[7] The Human Rights Committee acknowledges observations of States parties on the Committee's concluding observations in its reports to the General Assembly.[8] Selected observations are referred to its working group for examination.[9] On several occasions, observations have been reproduced as official documents, separate from the Committee's report.[10] The Committee on the Rights of the Child sometimes acknowledges the receipt of such comments in its annual report, but does not publish them in full.

21. The Committee against Torture has sometimes included responses to concluding observations[11] in public documents of the Committee, while the Committee on Economic, Social and Cultural Rights includes such responses in its report when the State party specifically requests it.

22. **Recommendation**. The Committee may wish to consider the practice of other treaty bodies with regard to States parties' observations on concluding comments, with a view to developing its own practice in this regard.

VI. Commission on the Status of Women

23. The Commission on the Status of Women held its forty-third session from 1 to 12 March 1999. The open-ended working group on the elaboration of a draft optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women met in parallel to the forty-third session of the Commission. From 15 to 19 March, the Commission met in its capacity as preparatory committee for the special session of the General Assembly, "Women 2000: gender equality, development and peace for the twenty-first century", to be held from 5 to 9 June 2000.

24. The Commission adopted agreed conclusions on women and health and institutional mechanisms, as well as six resolutions. Notably, the agreed conclusions on women and health refer to the Committee's general recommendations 12 and 24 and acknowledge that the realization of women's health-related rights is an integral part of the realization of all human rights.

25. Acting as the preparatory committee for the special session of the General Assembly, the Commission adopted a draft resolution for submission to the General Assembly dealing, *inter alia*, with the preparatory process, documentation and participation of non-governmental organizations. Among the reports considered was that of the Committee on the Elimination of Discrimination against Women on progress in the implementation of the Platform for Action of the Fourth World Conference on Women based on the review of reports.[12]

26. In the draft resolution, the General Assembly would call upon the Committee to be involved actively in preparatory activities and to participate at the highest level in the special session, including through presentations on best practices, obstacles encountered and a vision to accelerate implementation of the Platform for Action and address new and emerging trends.

27. The Commission also adopted an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The protocol, which is expected to be adopted by the General Assembly at its fifty-fourth session, in 1999, would enter into force three months after the receipt of the tenth instrument of ratification or accession to the protocol from States parties to the Convention.

28. The protocol would provide for two procedures: a petition procedure and an inquiry mechanism. The petition procedure would entitle individuals and groups of individuals who had exhausted domestic remedies to submit communications to the Committee. Such petitions might be presented on behalf of individuals or groups of individuals in situations where they consented. Petitions might also be presented on behalf of individuals or groups of individuals if the author could justify acting on their behalf without their consent. The inquiry mechanism would permit the Committee to inquire of its own motion into grave or systematic violations of the Convention. No reservations would be permitted to the Protocol, but States parties might opt-out of the inquiry procedure.

29. **Recommendation**. The Committee may wish to begin to consider the implications of the adoption of the optional protocol for its work; it may also wish to request that an assessment of these implications be included in the report on ways and means of expediting the work of the Committee, which will be prepared for its twenty-second session in January 2000.

VII. Special Rapporteur on Violence against Women

30. At its twentieth session, the Committee on the Elimination of Discrimination against Women met with the Special Rapporteur on Violence against Women, who noted that her main focus in 1999 was on trafficking in women. The Committee and the Special Rapporteur discussed ways and means to enhance collaboration with the Special Rapporteur, and it was agreed that:

(a) Prior to country missions, the Special Rapporteur would inform the Division for the Advancement of Women which would inform the Committee, so that relevant information could be forwarded to the Special Rapporteur;

(b) During country missions, the domestic implementation of the Convention would be discussed;

(c) Following missions, the Special Rapporteur would inform the Committee of any relevant findings;

(d) Recommendations of the Special Rapporteur in mission reports would contain reference to ratification, reservations and/or implementation of the Convention;

(e) The Special Rapporteur would forward to the Committee selected communications relating to alleged violence against women;

(f) The Special Rapporteur would inform the Committee of the specific themes or areas of work that she would be taking up on a yearly basis, and she would consult with the Committee so as to ensure coherent policy and approach. To that end the Committee would designate one of its members to carry out liaison with the Special Rapporteur on those specific themes or areas of work;

(g) The Committee would inform the Special Rapporteur of which report of States parties it would consider at forthcoming sessions;

(h) The Special Rapporteur would forward any relevant information on States parties to be considered by the Committee in advance of sessions at which the reports of those States parties would be considered;

(i) The Committee would bring pertinent information, including its concluding comments, to the attention of the Special Rapporteur.

31. **Recommendation**. The Committee may wish to discuss these suggestions and may wish to designate one of its members to carry out liaison with the Special Rapporteur on the issue of trafficking in women in 1999, and in future to name a member to carry out liaison on other priority issues on which the Special Rapporteur will focus.

VIII. Reports to be considered at the twenty-second, twenty-third and twenty-fourth sessions

32. At its seventeenth session, the Committee adopted decision 17/II, in which it decided that the maximum number of reports to be considered at each session would normally be 8, drawn from a proposed list of up to 10 countries.[13] At its twentieth session, the Committee proposed a list for the twenty-second and twenty-third sessions.[14]

33. **Recommendation**. The Committee may wish to review its proposed list for the twenty-second session and, in drawing up the list for the twenty-third and twenty-fourth sessions,

it may wish to take into account annex II to the present report, which indicates reports of States parties that are available, particularly those available in the official languages of the United Nations.

Notes

[1] At its twelfth session, the Committee on the Elimination of Discrimination against Women decided that the Secretariat should prepare a report on ways and means of improving the work of the Committee every year (see *Official Records of the General Assembly, Forty-eighth Session, Supplement No.38* (A/48/38), para. 632). Pursuant to General Assembly resolution 51/68 of 12 December 1996, in which the Assembly authorized the Committee to hold two sessions annually, the Secretariat has provided the Committee with a report on ways and means for each session.

[2] CCPR/C/19/Rev.1.

[3] *Official Records of the General Assembly, Fifty-third Session, Supplement No. 40* (A/53/40), vol. I, annex VIII, para. 7.

[4] See, for example, the concluding observations with respect to Ecuador, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 40* (A/53/40), vol. I, para. 296.

[5] See CAT/C/SR.330, paras. 35–55.

[6] *Manual on Human Rights Reporting*, 2nd edition, 1997 (United Nations publication, Sales No. E.GV. 97.0.16) pp. 159–160.

[7] See *Official Records of the General Assembly, Fifty-first Session, Supplement No. 18* (A/51/18), annex IX, for the preliminary observations of the Government of India on the concluding comments adopted by the Committee on the Elimination of Racial Discrimination on the tenth to fourteenth periodic reports of India presented during the forty-ninth session of the Committee; and *Official Records of the General Assembly, Fifty-third Session, Supplement No. 18* (A/53/18), annex VII, for the comments of Yugoslavia on the concluding observations of the Committee on the eleventh to fourteenth periodic reports of Yugoslavia.

[8] *Official Records of the General Assembly, Fifty-first Session, Supplement No. 40* (A/51/40), vol. I, para. 41; ibid., *Fifty-second Session, Supplement No. 40* (A/52/40), vol. I, paras. 49 and 50; *Fifty-third Session, Supplement No. 40* (A/53/40), vol. I, paras. 43 and 44.

[9] See, for example *Official Records of the General Assembly, Fifty-third Session, Supplement No. 40* (A/53/40), vol. I, para. 44, regarding the comments of Peru on the Committee's concluding observations.

[10] See, for example, CCPR/C/116 for the observations of Sri Lanka on the Committee's observations on the third periodic report of Sri Lanka.

[11] See, for example, CAT/C/SR. 240, paras. 58–73 for the response of Italy.

[12] E/CN.6/1999/PC/4.

[13] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 38* (A/52/38/Rev.1), part two, chap. I, sect. B.

[14] (a) **Twenty-second session**:

Initial report
India
Jordan

Second report
Equatorial Guinea
Uruguay

Combined second and third reports
Burkina Faso
Combined second and third reports and fourth report
Belarus
Luxembourg
Finland

Third report
Belarus
Luxembourg
Finland

Fourth report
Sweden

(b) **Twenty-third session**:

Initial report
Republic of Moldova

Second report
Austria
Netherlands

Third report
Egypt
Jamaica
Libyan Arab Jamahiriya

Fourth report
Denmark
Romania

Annex I

States parties whose reports are more than five years overdue

State party	*Date due*
A. Initial reports	
Angola	17 October 1987
Benin	11 April 1993
Bhutan	30 September 1982
Brazil	2 March 1985
Burundi	7 February 1993
Cambodia	14 November 1993
Cape Verde	3 September 1982
Central African Republic	21 July 1992
Congo	25 August 1983
Costa Rica	4 May 1987
Dominica	3 September 1982
Estonia	20 November 1992
Gambia	16 May 1994
Grenada	29 September 1991
Guinea	8 September 1983
Guinea-Bissau	22 September 1986
Haiti	3 September 1982
Lao People's Democratic Republic	13 September 1982
Latvia	14 May 1993
Liberia	16 August 1985
Malta	7 April 1992
Saint Kitts and Nevis	25 May 1986
Saint Lucia	7 November 1983
Samoa	25 October 1993
Seychelles	31 March 1994
Sierra Leone	11 December 1989
Suriname	31 March 1994
Togo	26 October 1984
Trinidad and Tobago	11 February 1991

State party	*Date due*

B. Second periodic reports

Angola	17 October 1991
Bhutan	30 September 1986
Brazil	2 March 1989
Cape Verde	3 September 1982
Congo	25 August 1987
Costa Rica	4 May 1991
Dominica	3 September 1986
Gabon	20 February 1988
Guinea	8 September 1987
Guinea-Bissau	22 September 1990
Guyana	3 September 1986
Haiti	3 September 1986
Lao People's Democratic Republic	13 September 1986
Liberia	16 August 1989
Madagascar	16 April 1994
Malawi	11 April 1992
Mali	10 October 1990
Saint Kitts and Nevis	25 May 1990
Saint Lucia	7 November 1987
Sierra Leone	11 December 1993
Togo	26 October 1988

C. Third periodic reports

Bhutan	30 September 1990
Brazil	2 March 1993
Cape Verde	3 September 1990
Congo	25 August 1991
Dominica	3 September 1990
El Salvador	18 September 1990
France	13 January 1993
Gabon	20 February 1992
Guatemala	11 September 1991
Guinea	8 September 1991
Guyana	3 September 1990

State party	*Date due*
Haiti	3 September 1990
Kenya	8 April 1993
Lao People's Democratic Republic	13 September 1990
Liberia	16 August 1993
Mauritius	8 August 1993
Saint Lucia	7 November 1991
Senegal	7 March 1994
Sri Lanka	4 November 1990
Togo	26 October 1992
Viet Nam	19 March 1991

Annex II

States parties whose reports have been submitted but have not yet been considered by the Committee

State party	*Date due*	*Date received*	*Document symbol*
A. Initial reports			
Democratic Republic of the Congo[a]	16 November 1987	1 March 1994	CEDAW/C/ZAR/1
India	8 August 1994	2 February 1999	CEDAW/C/IND/1
Jordan	31 July 1993	27 October 1997	CEDAW/C/JOR/1
Lithuania	17 February 1995	4 June 1998	CEDAW/C/LTU/1
Maldives	1 July 1994	28 January 1999	CEDAW/C/MDV/1
Myanmar	21 August 1998	14 March 1999	CEDAW/C/MNR/1
Republic of Moldova	3 July 1995	26 October 1998	CEDAW/C/MDA/1
B. Second period reports			
Burkina Faso[bc]	13 November 1992	11 December 1997	CEDAW/C/BFA/2–3
Lithuania	17 February 1995	4 June 1998	CEDAW/C/LTU/1
Democratic Republic of the Congo[a]	16 November 1991	24 October 1996	CEDAW/C/ZAR/2
Equatorial Guinea[b]	22 November 1989	6 January 1994	CEDAW/C/GNQ/2–3
Germany[c]	9 August 1990	8 October 1996	CEDAW/C/DEU/2–3
Iraq	12 September 1991	13 October 1998	CEDAW/C/IRQ/2–3
Jamaica	18 November 1989	17 February 1998	CEDAW/C/JAM/2–4
Libyan Arab Jamahiriya	15 June 1990	18 February 1999	CEDAW/C/LBY/1
Netherlands	22 August 1996	10 December 1998	CEDAW/C/NET/2/ Add.1 and 2
Slovenia	5 August 1999	26 April 1999	CEDAW/C/SVN/2
Uruguay	8 November 1986	3 February 1998	CEDAW/C/URY/2–3
C. Third period reports			
Austria	30 April 1991	25 April 1997	CEDAW/C/AUT/3–4
Belarus[c]	3 September 1990	1 July 1993	CEDAW/C/BLR/3
Belgium	9 August 1994	29 October 1998	CEDAW/C/BEL/3–4
Burkina Faso[bc]	13 November 1996	11 December 1997	CEDAW/C/BFA/2–3
Democratic Republic of the Congo[a]	16 November 1991	24 October 1996	CEDAW/C/ZAR/3
Egypt	18 October 1990	30 January 1996	CEDAW/C/EGY/3
Equatorial Guinea[b]	22 November 1993	6 January 1994	CEDAW/C/GNQ/2–3
Finland	4 October 1995	28 January 1997	CEDAW/C/FIN/3
Germany[c]	9 August 1994	8 October 1996	CEDAW/C/DEU/2–3
Iceland	3 July 1994	15 July 1998	CEDAW/C/ICE/3–4
Iraq	12 September 1991	13 October 1998	CEDAW/C/IRQ/2–3
Jamaica	18 November 1993	17 February 1998	CEDAW/C/JAM/2–4
Luxembourg[bc]	4 March 1998	12 March 1998	CEDAW/C/LUX/3
Mongolia	3 September 1990	8 December 1998	CEDAW/C/MNG/3–4
Uruguay	8 November 1990	3 February 1998	CEDAW/C/URY/2–3
Yugoslavia	28 March 1991	14 October 1998	CEDAW/C/YUG/3
D. Fourth periodic reports			

State party	*Date due*	*Date received*	*Document symbol*
Austria	30 April 1995	25 April 1997	CEDAW/C/AUT/3–4
Belgium	9 August 1994	29 October 1998	CEDAW/C/BEL/3–4
Denmark[b]	21 May 1996	9 January 1997	CEDAW/C/DEN/4
Germany[c]	9 August 1998	27 October 1998	CEDAW/C/DEU/4
Iceland	3 July 1998	15 July 1998	CEDAW/C/ICE/3–4
Japan	25 July 1998	24 July 1998	CEDAW/C/JPN/4
Jamaica	18 November 1997	17 February 1998	CEDAW/C/JAM/2–4
Mongolia	3 September 1994	8 December 1998	CEDAW/C/MNG/3–4
Nicaragua	26 November 1994	16 June 1998	CEDAW/C/NIC/4
Romania	6 February 1995	10 December 1998	CEDAW/C/ROM/4–5
Sweden[bc]	3 September 1994	21 May 1996	CEDAW/C/SWE/4
E. Fifth periodic reports			
Romania	6 February 1995	10 December 1998	CEDAW/C/ROM/4–5
Russian Federation	3 September 1998	3 March 1999	CEDAW/C/USR/5

Notes

[a] By a communication dated 20 May 1997, the Secretariat was informed by the Member State formerly known as Zaire that the name of the State had been changed to the Democratic Republic of the Congo.

[b] Report has been translated, reproduced and made available in all official languages.

[c] Report to be considered by the Committee at its twenty-second session, to be held in New York in January 2000.

Annex III

Enforceability of the Convention in domestic legal systems

1. The question of the enforceability of the Convention in domestic legal systems depends on the place of international law standards in those systems. International law is comprised of customary international law norms and treaty norms. The status of customary international law and treaties is frequently distinguished in national legal systems, it being widely accepted that customary international law may be invoked before domestic courts.[1]

2. The place of international treaty law in municipal law is different in different countries. Commentators have traditionally drawn a distinction between countries with a "monist" legal tradition, and those whose tradition is "dualist".[2]

3. In monist legal systems, international law and domestic law together form a unified legal system, within which international norms may have a superior status, sometimes equivalent to that of the national constitution.

4. In dualist legal systems, domestic law and international law constitute two separate legal systems existing side by side, with international law operating in the international context, and national law operating in the domestic sphere.

5. The Vienna Convention on the Law of Treaties, 1969, states that every treaty in force is binding upon the parties to it and must be performed by them in good faith.[3] It also provides that a party to a treaty may not invoke the provisions of its internal law as a justification for its failure to perform a treaty.[4] States parties to international treaties are thus required under international law to bring their domestic legal order into conformity with their treaty obligations.[5]

6. International law does not, however, determine the status of treaties in the domestic legal system. This status is determined by the constitutional law of individual States parties to treaties. Accordingly, the national legal system will determine whether national judges and administrators are obliged to apply the norms established in a treaty in a given case. The national legal system will also determine whether individuals in States parties to treaties acquire rights that can be enforced before national courts and tribunals as a result of ratification of or accession to treaties. Insofar as the domestic enforceability of the Convention is concerned, therefore, this is a matter for individual domestic legal systems.

7. The Committee on Economic, Social and Cultural Rights has stated that "in general, legally binding human rights standards should operate directly and immediately within the domestic legal system of each State party, thereby enabling individuals concerned to seek enforcement of their rights before national courts and tribunals".[6] The Committee indicated that the International Covenant on Economic, Social and Cultural Rights does not oblige States parties to incorporate its provisions comprehensively in national law, or require it to be given any special status in national law. The Committee has pointed out, however, that "although the precise method by which Covenant rights are given effect in national law is a matter for each State party to decide, the means used should be appropriate in the sense of producing results which are consistent with the full discharge of its obligations by the State party. The means chosen are also subject to review as part of the Committee's examination of the State party's compliance with its obligations under the Covenant".[7]

8. In many countries, the status of treaties is addressed in the national constitution. Some national constitutions provide that treaties become domestic law as a result of ratification or accession. This is referred to as "automatic incorporation" and applies in France, Switzerland,

the United States of America,[8] many Latin American countries and some Asian and African countries.[9]

9. Several national constitutions accord treaties an important hierarchical status in the municipal legal system. Thus, article 55 of the French Constitution of 4 October 1958 provides that treaties and agreements that have been duly ratified or approved take precedence from the date of their publication over laws, subject in the case of each agreement or treaty to its application by the other party. Where French law is concerned once signed, ratified and published, treaties take precedence over domestic statutes, whether concluded prior to,[10] or after, the ratification of the treaty.[11] A treaty obligation may therefore be invoked as a reason for not applying the statute. Greece,[12] Guatemala,[13] Spain,[14] Mexico,[15] Côte d'Ivoire and Mali [16] take a similar approach, with treaties or agreements that have been duly ratified, or approved, having greater authority than municipal law from the time of their publication. Articles 93 and 94 of the Netherlands Constitution go further and extend the precedence accorded to treaties over municipal law to international decisions, including those of the Human Rights Committee in respect of communications under the first optional protocol of the International Covenant on Civil and Political Rights.[17] Where treaties are accorded a superior hierarchical status, their provisions take precedence over inconsistent domestic laws.[18]

10. Several constitutions provide that international treaties have the same status as domestic laws, and that there is no priority given to their provisions over other laws. For example, the Portuguese Republic Constitution of 1976 in article 8, paragraph 1, provides that the rules and principles of general or ordinary international law shall be an integral part of Portuguese law. Paragraph 2, article 8, also stipulates that rules derived from international conventions duly ratified or approved shall, following their official publication, apply in municipal law in so far as they are internationally binding on the Portuguese State. Where treaty provisions conflict with the text of other laws in these systems, the conflict is resolved in accordance with the standard principles of statutory interpretation. These rules include the rule that specific laws take precedence over general laws and more recent laws over older laws. The application of such rules may, thus, result in an earlier treaty obligation being superseded by more recent legislation.

11. Many countries which provide for the automatic incorporation of treaties into domestic law require the proclamation or publication of the treaty in the official gazette, or national official bulletin before the treaty has the force of national law. This is the approach taken by France, Algeria,[19] Mauritania[20] and Chile.[21]

12. Even in States that provide for automatic incorporation, some treaty provisions require implementing legislation before an individual may invoke these provisions before national courts. These provisions are categorized as non-executing. Provisions that can be applied directly by the courts are described as self-executing. The decision as to whether a treaty or treaty provisions falls into the self-executing category is for the national parliament, which may declare the provision or provisions self-executing, or for the national courts.[22] In general, treaty provisions are considered by national courts to be self-executing when they lend themselves to judicial or administrative application without further legislative implementation. Considerations that are taken into account in this determination include whether the treaty provision is sufficiently clear and unambiguous to be directly applicable.[23]

13. The constitutions of many countries make clear that the provisions of ratified treaties do not become part of the national legal system, unless and until they have been enacted as legislation. For example, the Irish Constitution in article 29 indicates that no international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas. Judicial decisions have confirmed that until incorporated by statute no treaty is part of Irish domestic law, and the courts are precluded from giving effect to the provisions

of any treaty where this would be contrary to, or would impose obligations beyond, those existing in Irish domestic law.[24]

14. Countries whose constitutions are silent on the issue, including the United Kingdom of Great Britain and Northern Ireland, most Commonwealth and Scandinavian countries also require legislative enactment of the provisions of the treaty before they become part of domestic law. In these systems, an individual is unable to claim the benefit of the provision of the international treaty domestically, except in those cases it has been incorporated into national law by legislation.[25]

15. In those countries where treaty obligations must be implemented by legislation to have domestic effect, the provisions of a ratified treaty will not prevail over domestic law that is inconsistent with treaty provisions that have not been incorporated by legislation.[26] This principle was articulated in *R v Secretary of State for the Home Department, ex parte Brind* by Lord Ackner who stated that it was a constitutional principle that if Parliament had legislated and the words of the statute were clear, the statute must be applied even if its application was in breach of international law.[27] When the treaty obligation is incorporated into the national legal system, it has the same status of other legislation, and can be overruled by subsequent legislation which conflicts with its terms.

16. In legal systems that require legislative incorporation for a treaty to have effect at the domestic level, it is nonetheless accepted that any statute that deals with the same subject matter that is passed after the acceptance of a treaty obligation is to be construed, if reasonably capable of bearing such a meaning, as intended to carry out the treaty obligation, rather than being inconsistent with it.[28] It is also accepted that in construing any provision in domestic legislation that is ambiguous, the courts will presume that the legislature intended to legislate in conformity with the treaty.[29] Judges in several legal systems that require legislative incorporation have also indicated that unincorporated treaties can be drawn on to interpret the law generally.[30]

17. Several national constitutions, including from jurisdictions that require legislative incorporation of treaties, require that regard be had to relevant international standards in their interpretation. For example, the Constitution of Papua New Guinea provides that in interpreting the Constitution, a court may have regard to a wide range of international sources, including the Universal Declaration of Human Rights and any other declaration, recommendation or decision of the General Assembly of the United Nations concerning human rights and fundamental freedoms.[31] Relying on this provision, the Court in *The State v Kule* [32] interpreted the meaning of slavery, and the slave trade in the light of United Nations treaties relating to slavery to include the custom of giving a daughter in compensation and reparation for murder.[33] The Constitution of South Africa also provides that in interpreting the Bill of Rights in chapter 2 of the Constitution, a court must consider international law, a provision which has allowed interpretation in the light of treaties, as well as customary international law, decisions of international courts and other international bodies responsible for monitoring treaties.[34]

18. Courts in a number of jurisdictions have increasingly been prepared to draw on international treaties, even in the absence of incorporation or a clear constitutional provision that entitles such reference. One commentator has noted that the membrane separating the national legal system from the unincorporated treaty is by no means impermeable[35] and outlines six situations where courts may be prepared to make reference to unincorporated treaties. These are: (a) as an aid to constitutional or statutory interpretation, either generally or in order to resolve an "ambiguity"; (b) as an aid to statutory interpretation, such as where the statute implements the treaty, refers to the treaty or uses language from the treaty; (c) as a relevant consideration to be taken into account when a decision-maker is exercising a

discretion; (d) as giving rise to a legitimate expectation that the provisions of the treaty will be applied by the decision-maker; (e) as a factor that may be taken into consideration in the development of the law, where the law is unclear; and (f) as a factor that may be taken into account when identifying the demands of public policy.[36]

19. For example, although legislation is required for treaties to be incorporated into domestic Indian law, the Supreme Court of India has been prepared to hold that international conventions are relevant to constitutional interpretation. In *Vishaka v State of Rajasthan*[37] where a writ was lodged with the Indian Supreme Court requesting it to direct the State to form a committee to frame guidelines for the prevention of sexual harassment and abuse of women following an alleged gang rape and the failure of officials to investigate complaints of rape of State employees, the Court stated that there was no reason why those international norms and conventions could not be used for construing the fundamental rights expressly guaranteed in the Constitution of India.[38] The Court referred to article 11 of the Convention on the Elimination of All Forms of Discrimination against Women and the Committee's general recommendation 11, indicating that in the absence of domestic law occupying the field and to formulate effective measures to address sexual harassment of working women, the contents of international conventions are significant for the interpretation of the guarantee of gender equality and other rights in the Constitution.[39] Courts in other jurisdictions, including Botswana, Zimbabwe,[40] the United Republic of Tanzania [41] and Costa Rica, [42] have also been prepared to refer to international treaties, including the Convention, in the interpretation of national constitutional guarantees.[43]

20. Courts are generally prepared to interpret statutes that enact the provisions of treaties, give effect to its provisions or make reference to the treaty in some way, in the light of the treaty. Local courts frequently seek to interpret statutes in a way that is compatible with international treaty obligations.[44] They are also sometimes prepared to refer to unincorporated treaties as an aid to interpretation of a statute that deals with the same subject matter covered by the treaty where that statute is regarded as ambiguous. The question of whether an ambiguity exists is frequently controversial, with judges in dualist systems often being wary of drawing on unincorporated treaties.[45]

21. One commentator has suggested, however, that even in dualist legal traditions, a changing legal culture is encouraging courts to find more imaginative ways of allowing reference to international treaties, and particularly international human rights treaties.[46] Thus, the courts of the States members of the Council of Europe have treated the European Convention on Human Rights as a source of domestic law even where their legal systems require legislative incorporation of treaties.[47] Courts in other jurisdictions have also come to view international law, although not necessarily binding, as a legitimate and important influence on the development of national law or assistance in that context,[48] especially in those cases where international law declares the existence of universal human rights.

22. Irrespective of whether a treaty becomes part of the national legal system on ratification, or must be incorporated by legislation to become part of this system, the enforceability of individual treaties, or treaty provisions, will be determined on a case-by-case basis, thereby making generalizations difficult. The courts of all systems — where treaties form part of the national legal system, are described or determined to be self-executing, or require incorporation through legislation — have all attracted similar criticisms as a result of failure to take account of international treaty law. These criticisms highlight the fact that the constitutional framework is not the only factor that determines whether international law, including international human rights treaty law will have an influence in the national legal systems. This will also depend on other issues, including the knowledge and openness of the national judiciary to international law. It will also be influenced by whether the State

concerned has accepted the possibility of review by a regional or international judicial or quasi-judicial body.

Notes

[1] Rosalyn Higgins, *Problems and Process, International Law and How We Use It* (Oxford, Clarendon Press, 1994), pp. 210–214.

[2] M. Scheinin, "International Human Rights in National Law", *An Introduction to the International Protection of Human Rights*, edited by Raija Hanski and Markku Suksi, Institute for Human Rights, Abo Akademi University, 1997, p. 343 at p. 344, suggests that this classification is outdated. B. Conforti, *International Law and the Role of Domestic Legal Systems* (Dordrecht, Martinus Nijhoff Publications, 1993), p. 6; Erica-Irene A. Daes, *Status of the Individual and Contemporary International Law: Promotion, Protection and Restoration of Human Rights at National, Regional and International Levels* (United Nations publication, sales No. E.91.XIV.3), paras. 4–44; Higgins, *Problems and Process* ..., pp. 203–209.

[3] Article 26.

[4] Article 27.

[5] General comment 9 of the Committee on Economic, Social and Cultural Rights concerning domestic application of the Covenant (E/C.12/1998/24).

[6] Ibid., para. 4.

[7] Ibid., para. 5.

[8] Constitution of the United States, article VI, clause 2.

[9] Virginia Leary, *International Labour Conventions and National Law* (Netherlands, Kluwer Academic Publishers, 1982), p. 1.

[10] Rosalyn Higgins, *Problems and Process* ..., p. 215.

[11] *Ministry of Finance v Chauvineau*, *International Law Reports*, vol. 48, p. 213.

[12] Constitution, 1975, article 28, para. 1: "The generally acknowledged rules of international law, as well as international conventions as of the time they are sanctioned by law, become imperative according to the conditions of reciprocity."

[13] Constitution, article 46.

[14] Daes, op. cit., para. 132.

[15] Constitution, article 133.

[16] Constitution, article 64.

[17] Rosalyn Higgins, "The Relationship between International and Regional Human Rights Norms and Domestic Law", *Developing Human Rights Jurisprudence* (Commonwealth Secretariat and Interights, 1992), vol. 5, p. 16 at p. 18.

[18] For example, case No. 963-95 of the Constitutional Court of Guatemala, where the Guatemalan Constitution and international conventions, including the Convention on the Elimination of All Forms of Discrimination against Women, to which Guatemala is a party, were invoked to strike down a clause of the Penal Code relating to adultery and concubinage.

[19] Article 158 of the 1976 Constitution.

[20] Article 78, Constitution, 1991.

[21] Opinion No. 2 of the Legal Adviser of the Ministry of Foreign Affairs, 5 January 1968, Memoria del Ministerio de Relaciones Exteriores, 1968, paras. 346–348.

[22] See, for example, with regard to the United States, *Islamic Republic of Iran v Boeing, American Journal of International Law*, 1986, vol. 80, p. 374, and J. J. Paust, *International Law as Law of the United States* (Carolina Academic Press, 1996), chap. I; note the history of ratification of the International Covenant on Civil and Political Rights by the United States, Paust, op. cit., chap. 9; see the Declaration entered on ratification: "The United States declares that the provisions of articles 1 through 27 of the Covenant are not self-executing"; see article 50.2 of the Austrian Constitution, which states that Parliament may decide upon ratification that a treaty is to be implemented through legislation; Adamovich, Funk, *Osterreichisches Verfassungsrecht* (Vienna, Springer Verlag, 1982), 17.II and 38.II noting that both Covenants were ratified with a non-self-executing clause.

[23] Scheinin, op. cit., pp. 349 and 350.

[24] *Re O'Laighleas*, *Irish Reports*, 1960, p. 93; *Norris v Attorney-General*, *Irish Reports*, 1984, p. 36.

[25] For an example of incorporating legislation, see New Zealand, Bill of Rights Act, 1990, which concerns the International Covenant on Civil and Political Rights; New Zealand, Human Rights Act, 1993.

[26] Daes, op. cit., paras. 35, 38, 39 and 111–143.

[27] *Appeal Cases*, 1991, vol. 1, pp. 696 at p. 733; see also Lord Justice Diplock in *Saloman v Commissioner for Customs and Excise, Queens Bench*, 1967, vol. 2, p. 143 at p. 166: "If the terms of the legislation are clear and unambiguous they must be given effect to whether or not they carry out Her Majesty's treaty obligations".

[28] Lord Diplock in *Garland v British Rail Engineering*, *Queens Bench*, 1982, vol. 1, p. 770, Court of Appeal.

[29] *Re O'Laighleas*, *Irish Reports*, 1960, p. 93.

[30] *Attorney-General v Guardian Newspapers (No. 2), Appeal Cases*, 1990, vol. 1, p. 109; Lord Goff, pp. 283 and 284.

[31] Constitution of Papua New Guinea, section 39(3).

[32] *Papua New Guinea Law Reports*, 1991, p. 404.

[33] Tracy Doherty, "Litigation Raising relating to Women's Human Rights: International and Regional Standards — the Papua New Guinea Experience" in *Advancing the Human Rights of Women: Using International Human Rights Standards in Domestic Litigation*, E. Byrnes, J. Connors and Lum Bik, eds. (Commonwealth Secretariat, 1996), pp. 154–160.

[34] John Dugard, "International Law and the South African Constitution", *European Journal of International Law*, 1997, vol. 1, p. 77.

[35] Andrew Byrnes, "Human Rights Treaties Before Domestic Courts: The Case of the Convention on the Elimination of Discrimination against Women", unpublished article, 1999.

[36] Ibid., see also Lord Justice Balcombe in *Derbyshire County Council v Times Newspapers*, *Weekly Law Reports*, 1992, vol. 3, p. 49.

[37] *All India Reports*, 1997, Supreme Court, p. 3011 (1998).

[38] Ibid., p. 3015.

[39] Ibid., pp. 3013 and 3014.

[40] *Attorney-General of Botswana v Unity Dow*, *Law Reports of the Commonwealth* (Constitutional), 1991, p. 574 (High Court of Botswana); *Law Reports of the Commonwealth* (Constitutional), 1992, p. 623 (Court of Appeal of Botswana); *Rattigan v Chief Immigration Officer of Zimbabwe*, *Law Reports of the Commonwealth*, 1994, vol. 1, p. 343 (Supreme Court of Zimbabwe).

[41] *Ephrahim v Patory*, *Law Reports of the Commonwealth (Constitutional)*, 1990, p. 757 (High Court of the United Republic of Tanzania).

[42] Case No. 716-98 (Constitutional Chamber of the Supreme Court of Justice of Costa Rica), *Boletin de la Sala Contitucional de la Corte Suprema de Justicia*, No. 59, April 1990, p. 10, cited in Byrnes, op. cit.

[43] Bart Rwezaura, "Protecting the Rights of the Girl Child in Commonwealth Jurisdictions" in *Advancing the Human Rights of Women*, op. cit., p. 114; pp. 115–117 describe the use of such treaties in Commonwealth Africa.

[44] Higgins, *Problems and Process* ..., pp. 214 and 215.

[45] Michael Kirby, "The Role of International Standards in Australian Courts", P. Alston and M. Chiam, eds., *Treaty-Making and Australia* (Sydney, Federation Press, 1995), p. 81.

[46] Higgins, *Problems and Process* ..., p. 216; see also Scheinin, op. cit., pp. 346 and 347 with regard to the courts of Finland, Iceland, Norway and Sweden.

[47] Higgins, *Problems and Process* ..., "The Relationship between International and Regional Human Rights...", p. 19.

[48] See, for example, Justice Cartwright in *Northern Regional Health Authority v Human Rights Commission*, *Human Rights New Zealand*, 1997, vol. 4, p. 37 and pp. 57 and 58 (New Zealand High Court).