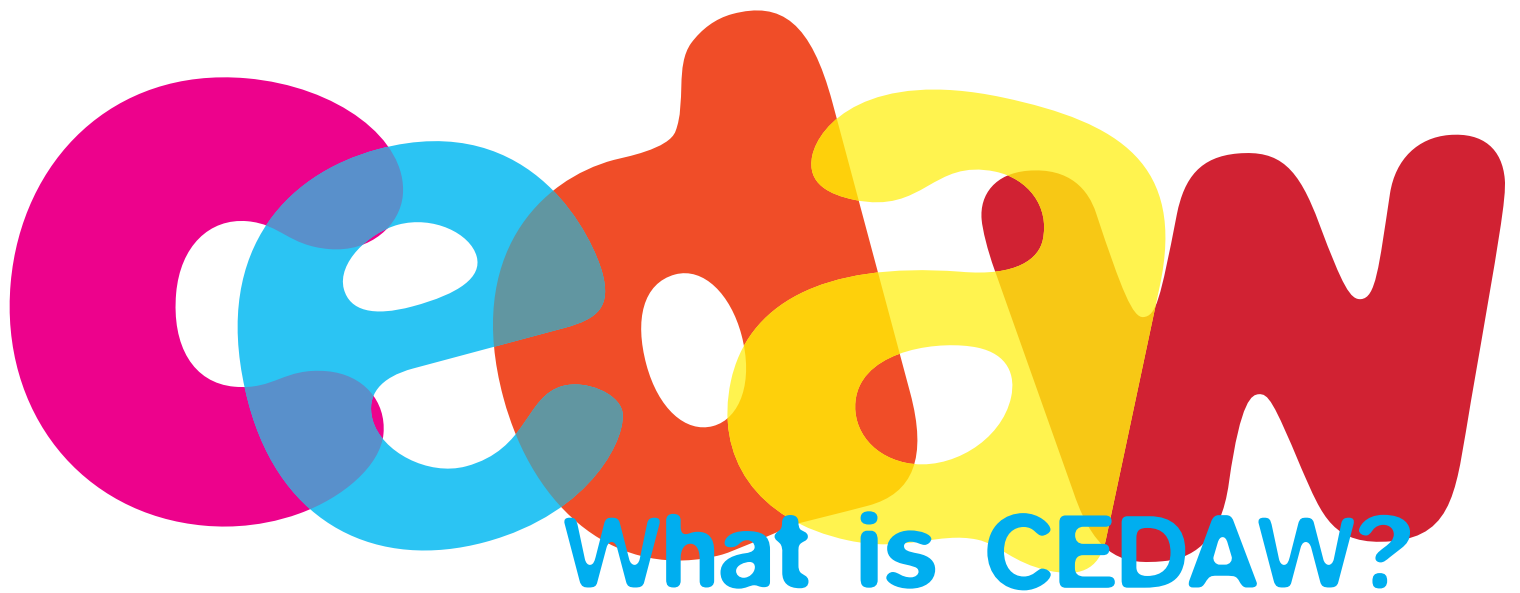




What is CEDAW?

The UN Convention on the Elimination
of All Forms of Discrimination against Women
The human rights of women and what they mean



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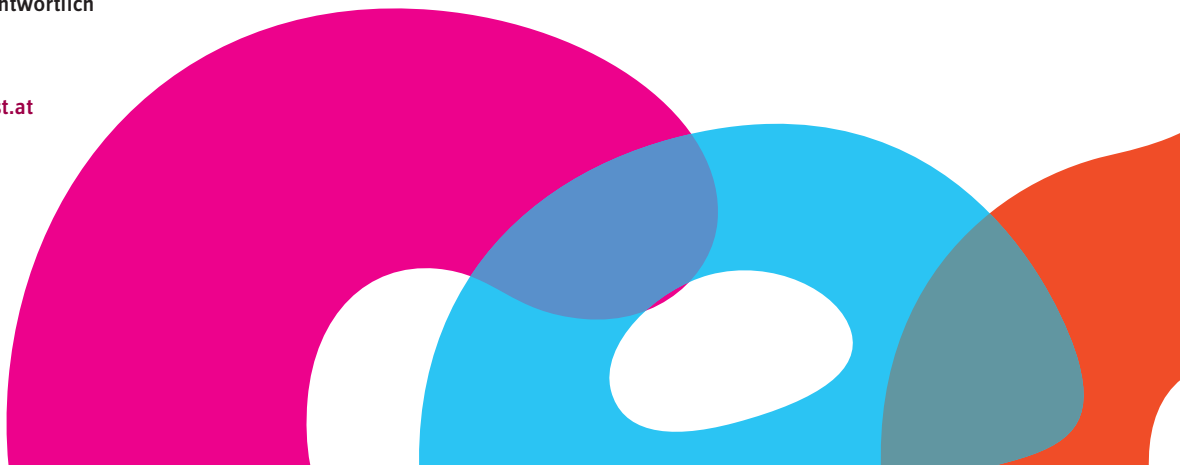
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Dear readers,

25 years ago Austria was amongst the first countries to ratify the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Today, this Convention still represents the most important international legal instrument for enforcing women's rights, as the States Parties have committed themselves to implementing its provisions. Since the ratification of the Convention in 1982, Austria has adopted a series of new laws for the advancement of the equal status of women and the elimination of discrimination against women and has taken a number of steps in order to meet its obligations.

For me as Minister for Women's Affairs, this Convention acts as a powerful stimulus for our efforts to identify remaining areas of discrimination and newly emerging problems as well as social inequalities between women and men and to strive for improve-

ments and seek solutions together with the people in government responsible for these issues.

I should like to take the 25th anniversary of the ratification of CEDAW as an opportunity to present this important legal instrument to the Austrian public once again: the historical background of the Convention, its objectives and its meaning for all women in Austria. CEDAW not only aims at advancing women's rights, but also at heightening the understanding of political measures in order to achieve this goal.

Democracy means creating equal rights and equal opportunity for all. The implementation of the Convention on the Elimination of All Forms of Discrimination against Women makes a significant contribution to ensuring or attaining de jure and de facto equality of women in this country.

A handwritten signature in black ink that reads "Doris Bures". The signature is written in a cursive, flowing style.

Doris Bures

Federal Minister for Women, Media and Civil Service

On the occasion of the 25th anniversary of the ratification of the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) by Austria, this brochure is intended for making CEDAW better known among the general public. It contains four chapters which were written by Austrian and international women experts.

In the chapter "What is CEDAW?" Hanna Beate Schöpp-Schilling describes the Convention and explains how the CEDAW Committee works. In the chapter "The history of CEDAW" Dorothea Gaudart explains the history of CEDAW in the context of human rights developments in the United Nations. In the chapter "What is the meaning of CEDAW?" Karin Tertinegg elaborates on the rights of women in practice as defined in CEDAW, illustrates the obligations Austria assumed under this Convention and describes the significance of CEDAW for women in Austria and non-governmental organizations (NGOs). Under the heading "How can women use CEDAW?" Karin Tertinegg presents the Optional Protocol and explains how women can make individual complaints in order to enforce the rights guaranteed under CEDAW. The section "Links and literature" is intended as a guide for women in gaining access to further information. At the end of this brochure you will find a section entitled "Abbreviations and glossary" and a presentation of the authors.

What is CEDAW?

Introduction to the UN Convention on the Elimination of All Forms of Discrimination against Women

**Hanna Beate
Schöpp-Schilling**

Human Rights are inalienable. They are inherent in the dignity of every individual. Alongside the preservation of international security and peace as well as the advancement of the economic and social development of the States Parties, the protection of human rights constitutes one of the three main tasks of the United Nations (UN). The Charter of the United Nations, which was adopted back in 1945, reaffirms in its Preamble the “dignity and value of human personality” as well as the “equal rights of men and women” and imposes a ban on discrimination on the grounds of sex (Article 1, para. 3). These provisions are repeated in the General Declaration of Human Rights (GDHR of 1948) and in the UN Covenants on Civil and Political Rights as well as on Economic, Social and Cultural Rights of 1966, to the effect that men and women must be able to enjoy all rights defined in these Covenants on the basis of equality and without any discrimination.

If a state desires to apply an international convention on human rights, i.e. if it signs and subsequently ratifies or accedes to it, it becomes a State Party and thus commits itself vis-à-vis the other States Parties and its citizens to respect, protect and grant the human rights set forth in the relevant convention. For the human rights treaties of the United Nations, committees are set up which consist of independent experts monitoring the compliance of States Parties with the provisions of these conventions by applying various procedures. Why was a convention needed that deals exclusively with women? The answer is that until the late 1960s all activities of the United Nations, especially the work done by the Committee on the Status of Women and the monitoring

practices of the expert committees till then were inadequate to prevent and reduce worldwide discrimination against women on the grounds of their sex and marital status. The details of this development are described later by Dorothea Gaudart.

As compared to discrimination on the grounds of race, this type of violation of human rights in practice was not sufficiently identified and especially punished. Unfortunately this still holds true today, despite the existing additional legal instruments. Furthermore, discrimination against women cannot be equated with the discrimination against other persons or on other grounds. In no other relationship in which discrimination occurs do the perpetrator and the victim interact in the intimate sphere of a family. Nor may women be labelled as a particularly vulnerable group amongst a number of groups exposed to discrimination (children, old people, individuals of a particular ethnic background or race, individuals with special needs, etc). Women represent half the world's population and can therefore not be compared to such other groups because of their sheer numbers. In addition, women also belong to such groups as well and are therefore discriminated against both as women and as members of such groups, which means they are victims of multiple discrimination.

The United Nations laid the foundations for a new development with the comprehensive, but legally not binding Declaration on the Elimination of Discrimination against Women (DEDAW)¹ of 1967. On December 18, 1978 this evolution culminated in the adoption of the broadly based and this time legally binding UN Convention on the Elimination of all Forms of Discrimination against

1 Declaration on the Elimination of Discrimination against Women.

Women (CEDAW) which already took effect as of September 3, 1981. In October 1982, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) held its first meeting in Vienna. The General Assembly of the United Nations supplemented the Convention by a so-called Additional or Optional Protocol which entered into force on December 22, 2000. The procedures for monitoring violations of the human rights of women defined in this Optional Protocol are explained in detail in the fourth chapter below.

By autumn 2007, 185 member states of the United Nations had ratified this Convention or acceded to it. Only very few states have not done so. However, at present even a ratification or accession by all countries would not mean worldwide compliance with the dual ban of discrimination against women on the grounds of sex and marital status or with the demand for equality, equal treatment and equal status of women and men, since the existing States Parties have not yet accepted all Articles of the Convention. For political, legal and religious reasons some states have entered so-called reservations against certain Articles. Under the Convention, such reservations are permissible (Article 28, para. 1), but they must not impair the "objects and purpose" of these (Article 28, para. 2). In the opinion of the Committee and some States Parties, including Austria, many reservations run counter to the objective and purpose of the relevant Articles. Of 185 States Parties, 88 have so far endorsed the Optional Protocol, against which no reservations may be made, although States Parties may opt out of the investigation procedure defined as one part of it.

At the second UN World Women's Conference in Copenhagen, Austria signed the Convention on July 17, 1980 and ratified it on March 31, 1982 with reservations concerning Articles 7, b (armed military service of women) and 11 (protective measures for night work of women and other protective measures for working women). Austria signed the Optional Protocol on December 10, 1999 and

ratified it on September 6, 2000. The reservations concerning the Convention's Article 7, b and the protection of women doing night work were withdrawn in 2000 and 2002 respectively as a result of amendments to previous laws, whereas the reservation concerning other protective measures for working women still exists.

No doubt, CEDAW represents the most important international legal instrument for protection of human rights. It defines the civic, political, economic, social and cultural rights of women which are contained in the two international treaties in detail in two provisions: the ban on discrimination against women on the grounds of sex and marital status and the obligation to grant women equality, equal treatment and equal status to men. The Convention consists of a preamble and thirty articles. The preamble states clearly that all forms of discrimination constitute a violation of respect for human dignity. It also contains many approaches which have been further developed in the Articles and in other legal instruments and programmes of the United Nations since 1979, such as the idea that "the largest possible participation of women based on equality in all spheres is the prerequisite for the complete development of a country, the wellbeing of the world and the cause of peace".² Another fundamental element of this document is the pledge that full equality of women and men can be attained only if "the traditional roles of men and women in society and in the family" change. This means that women's capacity to bear children must not lead to discrimination and that "the upbringing of children is a task which men and women as well as society as a whole must share".

The Articles can be subdivided into those dealing with subject matter and those defining procedures (for detailed explanation of Articles dealing with subject matter see Karin Tertinegg's chapter in this brochure). The Articles belonging to the first category (Articles 1 to 16, Article 24) set forth the relevant obligations of the states with

² See, for example, the resolution of the UN Security Council on "Women, Peace and Security" (2006).

regard to their compliance with the ban on discrimination and the principle of equality in general (so-called core Articles 1 to 5 and 24) as well as for the individual spheres of life of women (specific subject-matter-related Articles 6 to 16). The procedure-oriented Articles (17 to 23, 25 to 30) describe the structure and work of the Committee, the reporting obligation of the States Parties, the procedures concerning accession to the Convention or modifications to it, as well as reservations and dispute settlement mechanisms to be applied in the event of conflicts between the States Parties arising out of the Convention.

The most important elements of the "core" Articles of the Convention are the following:

- **Definition of discrimination:** The Convention defines and prohibits both direct and indirect discrimination against women on the grounds of sex and the gender-specific role assigned to them, including their marital status (Article 1). In this context, it is worth noting that the Convention also refers indirectly to multiple discrimination to which women can be exposed.³
- **Definition of equality:** The Convention defines equality, equal treatment and the equal status of women and men not only **formally**, i.e. in law and before the law but also in the **substantive sense**, i.e. in the exercise and enjoyment of human rights, women must **de facto be equal**, be treated equally and have equal opportunities to those of men, so that they can attain equal outcomes. (Articles 2, 44, para one, 24)
- **Endorsement of special measures:** The Convention recognises both the biological and man-made social differences between women and men; i.e. it allows the "States Parties" and the bodies directly representing state power as well as other actors to treat women and men differently, so as to make sure that women can enjoy de facto equality, equal treatment and equal status.

Therefore, special measures for the protection of women, i.e. maternity protection provisions taking into account women's capacity to bear and breast-feed children are permissible, but should be checked from time to time for their necessity and content. Time-limited special measures which serve the advancement of women or even the preferential treatment of women in order to accelerate the process of attaining de facto equality of women and men are also permitted, and in the eyes of the Committee are necessary in order to reach this objective. (Article Four).

- **Reference to all forms of discrimination in all spheres of life:** The Convention covers **all** forms of discrimination in **all** spheres of life, including discrimination that occurs in the family. This is particularly important as the rules of equality, equal treatment and equal status, including protection against violence within marriage and the family were not applied for decades because of patriarchal concepts - and in a series of countries are still today disregarded (Article 1).⁴
- **The influence of culture:** The Convention calls for the modification or abolition of practices, customs and patterns of conduct imposed by a culture or faith which seek to promote prejudices concerning inferiority of women to men as well as sex-stereotyped roles and to justify discrimination against women (Article 2, letter f; Article 5, letter a)
- **Obligations of the "States Parties":** The Convention illustrates the obligations that the "States Parties" must meet. These include, amongst other things, immediate action in the form of legal or other measures in order to ensure the full development and advancement of women for the purpose of guaranteeing them the enjoyment of human rights without discrimination on the grounds of their sex and marital status. Further-

3 Groups of Women are exposed to multiple discrimination, i.e. not only as women on the grounds of their sex or marital status, but also because of other life circumstances and factors. By devoting a separate article (14) to women in rural areas in which the majority of women live worldwide, the awareness is heightened too, of multiple discrimination against other groups of women, for instance on the grounds of a certain "race" or ethnic group, their age or health status.

4 See General Recommendation no. 25.

more, the States Parties assume responsibility for the implementation of the Convention not only by civil servants, but also by private individuals, companies and organisations. Although a State Party may freely choose the way in which it implements the Convention, it must at all costs attain the outcomes by granting the rights de facto and meeting the obligations defined in the Convention. (Articles 2, 3, 24)⁵

The States Parties must also take into account all elements of the “core Articles” when implementing measures relating to the specific contents of Articles six to sixteen. These Articles cover the prohibition of trafficking in women and the exploitation of women through prostitution as well as the ban on discrimination of women in public and political life and in the representative bodies of their countries, in nationality laws, education, training and working life, in health care, in all spheres of economic and social life, in their legal status and legal capacity as well as in marriage and family life. In accordance with these core Articles, the States Parties must always raise the question, when cases of discrimination as defined in these Articles have been identified, as to whether direct or indirect discrimination has occurred. Furthermore, the States Parties have to analyse to what extent these forms of discrimination are rooted in concepts imposed by their culture, which must be made obsolete through laws, information and education. It must also answer the question as to whether protective or time-limited special measures are necessary and whether the selected measures result in significant outcomes, i.e. achieving equality of women and men in women’s everyday lives.

The Committee has described in detail the significance of the individual Articles, explained the obligation of the States Parties and pointed to cases of discrimination which are not expressly mentioned in the text of the present 25 General Recommen-

ations. With the General Recommendations nos. 12 (1989), 14 (1990) and especially 19 (1992), the Committee was the first body in the United Nations to raise its voice to draw attention to violence against women and genital mutilation as a specific form of violence, which it interpreted as a form of discrimination and it made clear that the States Parties must prevent such human rights violations through legislation and other measures, punish the perpetrators, rehabilitate and indemnify the victims and resocialise the offenders.⁶ The final documents of the various UN world conferences in the 1990s, especially the Platform for Action of the Fourth World Women’s Conference in Beijing (1995), which are not legally binding, must also be read in order to gain deeper insights into the individual, legally binding, substantive Articles of CEDAW. These documents contain profound problem analyses and detailed recommendations for action.

The CEDAW Committee monitoring the implementation of CEDAW consists of 23 members from all continents. The Committee members are nominated by the States Parties and elected for a period of four years. Re-election is permitted. These members serve in an honorary capacity and are independent of possible instructions from the countries that nominated them. They are familiar with the diverse legal systems and cultures which must be adapted to the rights and obligations of the States Parties set forth in the Convention. These experts come from different professional backgrounds and therefore can identify the widely ranging forms of discrimination in various spheres of women’s lives. Since 1982 only three male experts have served on the Committee. To date no Austrian experts have worked on the Committee. The Committee meets several times a year for several weeks. It is supported in its work by the administration of the United Nations. In the period from 1982-2007 this support was given by the UN Department for the Advancement of Women, first in Vienna and

5 Articles 9 and 15 provide for the immediate, full equality of women and men in law and with respect to rights to “acquire, change or retain their nationality”.
6 Pursuant to Article 21, para. one, the Committee may make such General Recommendations. These can be accessed in all UN languages on the internet site of the Committee (see links and literature).

later in New York. From 2008 onwards, the Office of the High Commissioner for Human Rights in Geneva and New York will perform this task for the Committee.

The Convention and the Optional Protocol indirectly define the main tasks of the Committee, namely to check by means of three different procedures whether the States Parties implement and comply with the Convention. The first procedure, which has been applied since 1983, consists of receiving reports. In accordance with the Convention, each State Party must submit written reports to the Committee at regular intervals, starting one year after the entry into force of the Convention and subsequently every four years or as often as the Committee demands such reports (Article 18). The Committee evaluates these reports and addresses further questions to the respective government in writing. The report and the written answers to these questions are then discussed in a five hour meeting with a government delegation from the respective State Party. In accordance with current practice, the Committee will subsequently summarise the findings of the audit and the outcome of the discussion in a "Concluding Comment" which points out the positive and negative aspects of the implementation of the Convention by the State Party and makes recommendations for further action to be taken through the adoption of laws or other measures and programmes. In the event that the respective State Party fails to take action, the Committee can only exhort the state to comply with these demands when the following report is discussed, as it does not have the power to impose sanctions. However, today these reports and the "Concluding Comments" are accessible for the general public and can easily be down-loaded from the internet so that a State Party can be "put to shame". To date, Austria has submitted six national reports which were discussed with the Committee at a total of four sessions.

The Optional Protocol also provides for complaints and investigation procedures. In

the first case individual women or groups of women may address themselves to the Committee if they believe that their rights under the Convention have been violated by the state, a private person, organisation or business enterprise and that these violations have not been (properly) prosecuted by the national courts. With its third procedure, the Committee can conduct an investigation on the basis of reliable information on severe or systematic violations of human rights in a particular state.⁷ In both of these cases, the Committee does not act as a tribunal but merely issues recommendations.

Each of these three procedures has the aim of improving the situation of women with regard to equal rights, equal treatment and equal status with men in the exercise and enjoyment of their human rights in the respective State Party. Today the Committee can look back on twenty-five years of activity characterised by success.⁸ Pursuant to the respective Articles of the Convention, the Committee, in analysing the national reports, expresses a clear opinion on the situation of women in all spheres of life. In the complaints procedure, the Committee evaluates potential violations of one or several rights of individual women or groups of women. In the investigation procedure, the Committee addresses systematic and structural violations of women's human rights in selected areas. In all three procedures the Committee is supported in its work by the specialised agencies of the United Nations, primarily by national and international human rights and women's associations, which supply additional information in their so-called "shadow reports". Women's and human rights associations also demonstrate the practical value of the Convention in the everyday lives of women. They do so through lobbying with the governments of the States Parties, by assisting women who submit complaints or by drawing the Committee's attention to severe and systematic violations of women's human rights in their respective countries.

7 From Austria, to date two complaints were submitted by associations on behalf of two women, to which the Committee responded with positive decisions in August 2007.

8 See Schöpp-Schilling/Flinterman 2007.

What are the origins of CEDAW?

The history of the UN Convention on the Elimination of all Forms of Discrimination against Women

Dorothea Gaudart **Historical developments in the United Nations**

Towards the end of the Second World War, the victorious allied powers took the first steps towards founding a world organisation for international co-operation and the preservation of peace and security. At the founding conference of the United Nations in San Francisco in 1945 some of the participating women insisted that the principle of equal rights for men and women be enshrined in the Charter of the United Nations. Since that time, women worldwide have drawn attention to the fact that “the fundamental rights of individuals, the dignity and value of human beings, **equal rights of men and women** as well as of nations big and small” are specified in the Preamble of the UN Charter.

In response to a motion submitted by Bertha Lutz, the Brazilian delegate, the Economic and Social Council of the United Nations (ECOSOC) set up a Commission which was entrusted with the task of analysing the political status of women. Initially, this Commission was established as a sub-unit of the Human Rights Commission.

The delegate of the US, Eleanor Roosevelt, together with 16 female delegates and advisers from eleven states, prepared an open letter to the world's women which she read out in their names on the occasion of the First General Assembly of the United Nations in London in February 1946: “We recognise that women in various parts of the world are at different stages of participation in the life of their community, that some of them are prevented by law from assuming full rights of citizenship, and that they therefore may see their immediate problems

somewhat differently. Finding ourselves in agreement on these points, we wish as a group to advise the women of all our countries of our strong belief that an important opportunity and responsibility confront the women of the United Nations: first, to recognise the progress women have made during the war and to participate actively in the effort to improve the standards of life in their own countries and in the pressing work of reconstruction, so that there will be qualified women ready to accept responsibility when new opportunities arise; second, to train their children, boys and girls alike, to understand world problems and the need for international cooperation, as well as the problems of their own countries; third, not to permit themselves to be misled by anti-democratic movements now or in the future; fourth, to recognise that the goal of full participation in the life and responsibilities of their countries and of the world community is a common objective toward which the women of the world should assist one another.”

The seven members of the “sub-Committee” (from Denmark, the Dominican Republic, Lebanon, Poland, France, India and China) met in May 1946, protested against their subordination to the Human Rights Commission, started to work out their terms of reference and to continue their work at any rate “until women will have reached the point where they are on a par with men. In practice, priority should be given to political rights because without these little progress is possible.” At that time, women in 30 of 51 states did not have the right to vote (in Austria women's general right to vote had been introduced in 1918). On March 29, 1947, these women

succeeded: the Commission on the Status of Women (CSW) was established and enjoyed equal status with the Human Rights Commission within the system of the United Nations. The scope of responsibilities of the Commission on the Status of Women was defined as follows: "Preparing recommendations and reports for the Economic and Social Council with a view to advancing women's rights in the fields of politics, business, social life and education, and to treat problems in the sphere of women's rights urgently which call for immediate attention in order to assert the principle that men and women have equal rights, to prepare proposals to this end and to issue relevant recommendations." (ECOSOC Resolution 48(IV) of March 29, 1947)

Some figures illustrate the further developments within the UN. Since the founding conference in 1945, the number of member states of the United Nations has risen from 51 originally to 192. At the beginning, the Commission on the Status of Women consisted of representatives from 15 member states which were elected by the UN Economic and Social Council. Since 1990 the Commission on the Status of Women has consisted of 45 members. Its regional composition is as follows: 13 African states, 11 Asian, 4 Eastern European, 9 Latin American and Caribbean states as well as 8 Western European and other states. The members, who are elected for a term of four years, determine the admission of government delegates; observer states are also admitted. Austria joined the United Nations after the allies had left the country and the State Treaty had been signed in 1955. Austria was a member of the Commission on the Status of Women in the years 1965 to 1967, 1970 to 1972, and 1989 to 1996.

International co-operation

The Commission on the Status of Women gathers information on gaps between the de jure and de facto situation as well as on

women's circumstances of life in the member states and evaluates this material. All information is compiled with extensive questionnaires which are sent to the member states and non-governmental organisations (NGOs). These documents are supplemented by expert interviews, statistical analyses and expert opinions. After one to two years of such surveys, the results of these evaluations are submitted to the Commission on the Status of Women in the form of country comparisons. The respective government representatives then have to deliberate and draw conclusions with a view to drafting agreed texts for resolutions, recommendations, declarations and agreements. Subsequently, the Commission on the Status of Women communicates these final texts via the Economic and Social Council to the senior body of the United Nations for decision-making, namely the General Assembly, which convenes in September each year.

Deliberations on the final conclusions about the individual technical areas take place in the Special Agencies of the United Nations, such as the International Labour Organisation (ILO) which deals with economic and social issues and UNESCO (UN Educational, Scientific and Cultural Organisation) which analyses questions relating to the education of women.

Since its inception, the Commission on the Status of Women has maintained good working relationships with international non-governmental organisations. Hence national women's organisations have been involved in the worldwide joint efforts to improve the status of women through these international umbrella organisations.

Reasons for the creation of separate agreements and legal instruments for women

The kind of non-discrimination provision traditionally added to human rights treaties which ban discrimination on the grounds of

race, language, religion, origin, political convictions and also because of sex, ignores the fact that women do not constitute a sub-category of humanity. Human beings are neither sexless nor abstract. For a long time the idea of the universality of human rights as well as law per se conveyed the impression that human beings were sexless and abstract. One consequence of this concept which is still widespread today is exclusive use of the male form in language.

The General Declaration of Human Rights and the International Human Rights Conventions are based on the fundamental principle of equality and non-discrimination. Although non-discrimination was a precept that was recognised worldwide, the elimination of discrimination on the grounds of sex fell far short of being translated into reality in every part of the world even after the adoption of the human rights treaties.

For this reason, the Commission on the Status of Women proposed additions to the human rights conventions as drafted in order to draw world public attention to problems and existing inequalities between women and men - even in times of the Cold War. The central task of the Commission on the Status of Women is the elaboration of universal, i.e. generally valid standards concerning the equal status of the sexes in all spheres, especially in politics and public life, in education, in the labour market, in the health sector, in economic and social life, in cities and rural areas, and in marriage and the family. Comprehensive information and the evaluation of data on the legal status of women allow the Commission on the Status of Women to define progressively in greater detail women's human rights and enshrine these in various treaties and legal instruments.

Thanks to the efforts of the Commission members, women's rights have been integrated into a host of international declarations and treaties, as reflected in the list below:

- Convention on the Political Rights of Women, 1952
- Convention on the Nationality of Married Women, 1957
- Convention and Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962 and 1965
- Declaration on the Elimination of Discrimination of Women, 1967
- Convention on the Elimination of all Forms of Discrimination of Women, 1979
- Declaration on the Elimination of Violence against Women, 1993
- Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, 1999

It should also be noted that international "recommendations" and "declarations" are not directly binding for states, although they serve as guidelines for future action. In contrast, international "treaties" and "conventions" impose an obligation on the states that have ratified them to comply with the principles defined in these legal instruments and to transpose the accepted provisions into their national constitutions or legislation.

The UN Convention on the Elimination of all Forms of Discrimination against Women

The UN Convention on the Elimination of all Forms of Discrimination against Women adopted on December 18, 1979 constituted a very important step towards the realisation of the principle of equality of men and women in all spheres of life. The Convention represents an especially significant document as it bans discrimination of women in all spheres of life and imposes on the States Parties the obligation to ensure de jure and de facto equality. It states that the principle of equal rights applies to all women, irrespective of their marital

status. Opened for signature on March 1, 1980, the Convention was signed by 51 states during the inaugural ceremony of the Second World Women's Conference and took effect on September 3, 1981. The growing political will of the member states to implement the Convention worldwide is mirrored by the ever larger number of ratifications.

Elaboration of longer-term programmes for the advancement of women

Since the 1960s the number of states that have become members of the United Nations has risen sharply. Programmes, consultancy services and technical support for the advancement of women are especially focused on women in the Third World and their integration into the development processes in their home countries. Upon the initiative of the Commission on the Status of Women, 1975 was declared the "International Women's Year" in order to draw world public attention to this problem area. The objective of this year was to

- promote the equality of men and women,
- ensure the integration of women into development processes in their home countries, and
- to heighten the contribution of women to international co-operation and to safeguard and advance world peace.

Since that time, UN World Women's Conferences have taken place in four world regions: 1975 in Mexico, 1980 in Copenhagen, 1985 in Nairobi, 1995 in Beijing. At these World Women's Conferences, programmes were adopted, which had been prepared by the Commission on the Status of Women. These include, for example, the declaration and the Platform for Action of the Fourth Women's Conference in Beijing which deal with strategies for removing hurdles for women in 12 crucial areas, also in the

human rights field, and areas covered by the CEDAW Convention. In Beijing, the government representatives committed themselves to drawing up National Action Plans for the implementation of the findings of the Conference. To this end, the scope of tasks of the Commission on the Status of Women was enlarged: since 1996 it has thus also been responsible for implementing the Beijing Declaration and Platform for Action.

In the 1990s, the CEDAW Committee maintained a special relationship with all UN World Conferences by making topical statements on the human rights situation of women and through active participation of the chairperson or individual experts of the Committee in these conferences. Conversely, these World Conferences upgraded the CEDAW Committee's status worldwide, as did the World Conference on Human Rights held in Vienna in 1993, for example.

In June 1993, 2100 government representatives from 172 states participated in the World Conference on Human Rights, and 2700 representatives of 1529 organisations took part in the NGO Forum "All Human Rights for All" which was held at the Vienna International Centre. Half of the NGO representatives were women from all regions of the world.

The general objectives of these events were, for example, the auditing and assessment of progress in the field of human rights since the adoption of the General Declaration of Human Rights in 1948 as well as the evaluation of the efficiency of the methods and mechanisms used by the United Nations in the enforcement of human rights standards.

During the preparations for this conference, some governments were not prepared to put an item on the agenda dealing with violations of women's human rights as explicitly demanded by the Commission on the Status of Women and the CEDAW Committee.

At that time the dilemma was that the traditional human rights organisations had not yet acquainted themselves with women's

rights in the light of international legal instruments, and the traditional women's organisations had insufficient knowledge of the human rights activities of the United Nations.

In this area, the support resulting from the numerous parallel activities of the NGOs working in this field before and after the conference proved extremely valuable.

There was a symbolic tribunal at which 25 women from different countries and world regions gave evidence of human rights violations to which they had been exposed before an audience of 1000 persons and a body of four judges. These violations of human rights ranged from domestic violence to violence in armed conflicts, genital mutilation, political persecution and forced prostitution. These testimonies, which were widely covered by the media, were prepared in the context of a worldwide petition and campaign which had been initiated by the Center for Women's Global Leadership, Rutgers University, and the International Women's Tribune Center in New York and supported by more than 200 international women's NGOs.

The World Conference on Human Rights held in 1993 in Vienna adopted the Vienna Declaration and a Programme of Action. Article 18 of this Declaration reads as follows: "The human rights of women and girl-child are an inalienable and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community. Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated." The Programme of Action calls, inter alia, for "the promotion of the equal status and human rights of women as a priority" issue. Furthermore, the governments of the States Parties are called upon to ratify the Convention and to withdraw reservations. Ultimately, the States Parties and the United Nations itself are exhorted to disseminate information on the Convention and to carry out special training programmes for persons working in the judiciary, law enforcement and the public health sector and offer targeted training in this area for peace-keeping operations of the United Nations.

What is the meaning of CEDAW?

Women's human rights and obligations for Austria

Karin Tertinegg

What has a treaty under international law got to do with the everyday lives of women? How does such a treaty influence the opportunities of women in Austria to shape their lives according to their wishes? The UN Convention on the Elimination of all Forms of Discrimination against Women (Federal Law Gazette no. 443/1982) affects the everyday lives of women in Austria as it provides concrete answers to the following questions: What do human rights mean for women? What does discrimination against women mean? What has discrimination got to do with violence against women in their private relationships, with residence and work permits, with their access to safe methods of abortion, with the family names of couples? What can women do if their rights are disregarded? The Convention and the statements of the CEDAW Committee clarify the rights of women in all spheres of life, in the public and in the so-called private domains. Furthermore, CEDAW imposes concrete obligations on the current Austrian government and on future governments of this country: 25 years ago, Austria committed itself to taking all necessary steps in order to assure that women in Austria can de facto exercise and benefit from all rights in all spheres of life, and all forms of discrimination are eliminated.

What do human rights mean for women in Austria?

As illustrated by Hanna Beate Schöpp-Schilling in this brochure, human rights are the fundamental rights to which every individual is entitled on the basis of his/her human dignity. Human rights are enshrined in

the constitution of states and in international law. They restrict the power of the state and ensure, at the same time, that states automatically guarantee all people the enjoyment of human rights. By exercising their human rights, individuals can shape and influence their lives on the basis of freedom, equality, and respect for human dignity. Governments and other bodies have the obligation to respect, protect and guarantee human rights. Human rights constitute the basis for legal entitlements and sanctions in case of non-compliance.

The chances of individuals to exercise the human rights to which they are entitled and to shape their own lives are, to a great extent, determined by various circumstances. In most cases, these are gender, nationality, financial status, sexual orientation, ethnic or "racial" background or origin, faith, special needs, marital status, etc.

In many cases, women suffer from multiple disadvantages in their claims to, or exercise of human rights because they belong to an ethnic minority, are handicapped, live in poverty, or have a particular nationality. Under the Convention the States Parties are obliged to guarantee the de jure and de facto equality of women and men and the opportunity for every woman to exercise and enjoy the human rights to which she is entitled.

How is discrimination against women defined?

Article 1 of the Convention defines discrimination against women as follows: ...**"the term discrimination against women shall mean any distinction, exclusion or restric-**

tion 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 the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Discrimination against women on the ground of sex may occur in direct or indirect form. This means that on the one hand, women may be exposed to discrimination if the language used put them at a disadvantage vis-à-vis men (direct discrimination), or if, on the other hand, so-called gender-neutral language is used which results in a de facto discrimination against women in practice (indirect discrimination). Discrimination “on the grounds of sex” implies that the label “female”, “girl” or “woman” is applied to individuals because of physical traits on the one hand (sex), and, under the Convention “on the grounds of sex” also means society’s concepts as to what characteristics girls and women have or should have or what roles they play or should play (gender). To date, the ideas about the features and roles of women and the relationship between the sexes – although these differ widely – have led to a situation in which women, in comparison to men, do not have the same opportunities and rights to shape their lives, in Austria just as in all other states worldwide.

Article 2 of the Convention stipulates that all States Parties condemn **discrimination against women in all its forms**, and agree **to pursue by all appropriate means and without delay** a policy of eliminating discrimination against women and, to this end, undertake:

- to embody the principle of equality of men and women in their national constitutions and to ensure, through law and other means, **the practical realisation of this principle**;
- to adopt measures **prohibiting** all discrimination against women;
- to **ensure** (through national tribunals

and other public institutions) the effective protection of women against any act of discrimination;

- to take all appropriate measures to **eliminate** the discrimination against women by any person, organisation or enterprise;
- to take all appropriate measures, including legislation, to 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.

Therefore, States Parties must ensure that women can enjoy equality in all spheres of life without being hampered to do so by any individual acting on behalf of a state or by private persons, organisation or enterprises.

Article 3 obligates all States Parties to ensure the full development and advancement of women, especially in the political, social and economic areas.

Article 4, para.one, imposes the obligation on States Parties to adopt temporary special measures aimed at accelerating de facto equality between men and women which are not to be considered discrimination as defined in the Convention. This refers, for example, to statutory quotas, which aim at affirmative action in areas in which women have been underrepresented to date until they enjoy de facto equal participation and representation in these areas.

Article 5 imposes the obligation on States Parties to take all appropriate measures to modify the social and cultural patterns of conduct with a view to achieving the elimination of prejudices, traditions, practices and customs related to the conventional role models and stereotypes of men and women. One example is the idea that women are mainly responsible for house-keeping, the upbringing of children and the care of family members. These tasks which are related to household, child-care and family obligations must be fairly

shared between men and women in accordance with Article 5 of the Convention.

What other spheres of women's lives are additionally addressed by the Convention?

Apart from the comprehensive core Articles, the Articles relating to subject matter address various spheres of women's lives.

Article 6 obligates the States Parties to take all appropriate measures to suppress all forms of trafficking in women and exploitation of prostitution of women. Hence the States Parties have the obligation to ensure that women trafficked into all types of precarious employment (i.e. domestic employees, seasonal temporary jobs, sex work) can exercise all human rights to which they are entitled. In addition, the States Parties must create the conditions under which sex work is done in such a way as to prevent the exploitation of sex workers and to ensure the preservation of all their rights.

Article 7 deals with the discrimination of women in the political and public life of the country. This means the right to vote in all elections and to be eligible for election, to participate in the formulation of government policy and the implementation thereof and to hold public office, perform all public functions and participate in non-governmental organisations.

Article 8 imposes the obligation on the States Parties to ensure women on equal terms with men the opportunity to represent their governments at the international level and to participate in the work of international organisations.

Article 9 refers to the discrimination of women in acquiring, changing or retaining their nationality and stipulates that women are granted equal rights with men with respect to the nationality of their children.

Articles 10, 11 and 12 deal with the elimination of discrimination against women in education, in the labour market and in the field of health care. These provisions

are very comprehensive and refer to vital spheres in the life of every woman, i.e. education, training and free choice of profession and employment, working conditions, access to health care, which take into account the specific needs of women in different life situations.

Article 13 prohibits discrimination in other areas of economic, social and cultural life.

Article 14 addresses the advancement of women in rural areas.

Article 15 guarantees women, in civil law matters, a legal capacity identical to that of men. This, for example, implies equal treatment of women in court proceedings.

Article 16 deals with the equal treatment of women in all matters relating to marriage and family relations. The most important provisions of this Article are the equal right of women to enter into marriage, the same right freely to choose a spouse and to enter into marriage only with their free and full consent, the same rights and responsibilities during marriage and at its dissolution; the same rights to decide freely and responsibly on the number and spacing of their children and all matters related to their children. This Article also provides for the same personal rights for husband and wife, including the right to choose a family name, a profession and an occupation.

The provisions of Articles 2, 4, 5 and 16 are of particular relevance for a fundamental change in the status of women in society.

What has discrimination to do with violence against women?

Violence against women, in all of its forms, constitutes a very severe violation of human rights. As pointed out by Hanna Beate Schöpp-Schilling in her contribution, the CEDAW Committee, by issuing three "General Recommendations" to date, especially

the General Recommendation no.19, has been instrumental at the international level in achieving the recognition of violence against women in the family or other relationships as a violation of human rights and as discrimination within the meaning of the Convention. Only as a result of this recognition was it rendered possible to hold states responsible for preventing and punishing acts of violence in the private sphere which are in most cases committed by men against women. The States Parties to the Convention are obliged to ensure that women are effectively protected against such acts of violence and to create conditions under which the victims can escape such violence. In Austria, this concerns, at present, provisions of aliens' law, social and marriage laws as well as labour market policies. Under the current Austrian legislation it is clearly very difficult or even impossible for many women who want to escape violence on a permanent basis to do so. But it is a fundamental human right of every woman and girl to live without being exposed to any form of violence, also within relationships.

What does this mean for Austria?

When Austria ratified CEDAW 25 years ago, it assumed the obligation at the international level to take all necessary measures in order to ensure that no woman will be discriminated against because she is a woman.

Many legal provisions which because of their wording directly discriminated against women were amended or repealed over the past 25 years. One example of persisting provisions discriminating against women directly is, for example, the provision that children will automatically adopt their father's family name, if no common family name was chosen. This provision represents a violation of the obligations assumed under the Convention and must be lifted in the course of the Convention's implementation. Furthermore, many examples persist which demonstrate that women are indirectly

discriminated against on account of their sex and thus must be amended. The Concluding Comments of the CEDAW Committee give a survey of the most urgent measures for the elimination of all forms of discrimination against women, which Austria was exhorted to adopt on the occasion of the last assessment of the implementation of the Convention there (website of the Minister for Women's Affairs, see links and literature).

Under the Convention, Austria has the obligation to guarantee, protect and assure human rights, and in doing so, to exercise due diligence. This due diligence must also be applied by persons who act on behalf of the state. If, for example, individuals in public administration, judges, public prosecutors, police officers - male or female - take decisions which will impair the exercise of women's rights in practice, Austria has the obligation under the Convention to prevent such action and to impose appropriate sanctions.

Under the Convention, Austria has committed itself to taking all necessary steps in order to eliminate discrimination by private individuals, organisations and enterprises, and to apply due diligence in all of these cases.

What does this mean for women who live in Austria?

Do migrant women living in Austria have the right to obtain their own residence and work permits, irrespective of the fact that they are married? Do female asylum seekers and refugees have the right to claim that gender-specific reasons for their persecution are recognised? Do women in Austria have the right to be represented in decision-making positions in business, education and politics on a par with men? Do they have unrestricted access to contraceptives and to medically safe abortion? Can they live in relationships free from violence? Is the work typically done by women remunerated?

ated with equal pay as such work typically done by men? Are women in Austria who have done unremunerated work in the household, in the upbringing of children and care of family members adequately covered by social insurance, without depending on marriage or life companionship for such social insurance coverage?

Under CEDAW, every woman who lives in Austria has the right to the recognition, enjoyment and exercise of the human rights and fundamental freedoms to which she is entitled without being hampered or impaired in doing so on the grounds of sex by a public institution, a private person, organisation or enterprise.

Under CEDAW, every woman can claim the rights and obligations to which Austria has committed itself as a State Party to the Convention. Any woman who believes that her rights which are guaranteed by the Convention have been violated may submit an individual complaint to the CEDAW Committee, once all national legal remedies have been exhausted.

CEDAW clearly defines that violence against women in whatever form it occurs, either in the domestic sphere or in public, constitutes a violation of human rights. Austria has the obligation to effectively protect women against violence and to punish acts of violence. CEDAW also states unequivocally that men resorting to violence against women must be held liable for their behaviour and that the right of women to life and physical and mental integrity takes precedence over any other right (i.e. the offender's right to respect of his privacy).

CEDAW also clearly points out that traditional concepts or stereotypes of the roles of women and men, such as the concept that women are mainly responsible for the education and care of their children and men are primarily the bread-winners in the family, constitutes discrimination within the meaning of the Convention.

What does this mean for non-governmental organisations (NGOs)?

Active equality policy and the elimination of discrimination against women is not a national concern to which political parties and governments may or may not devote their efforts arbitrarily but is an obligation towards a community of states and citizens. The CEDAW Committee stresses the need for the involvement of NGOs which are active in shaping women's policies at the national level and for the provision of the required finance. The Convention and documents produced by the CEDAW Committee ("General Recommendations" and "Concluding Comments") represent an excellent framework within which a stronger involvement of NGOs and concrete progress in equality policies - also with regard to women exposed to multiple discrimination - can be demanded as an expression of Austria's international obligations. This policy must be pursued until women enjoy equal participation in the political, economic, social and cultural spheres, in public life, in their interactions with public authorities, in the labour market, in private relationships, in education, in their access to social security benefits, and in the family.

Eleanor Roosevelt summed this up appropriately: Any of these places is a place where human rights matter. As long as human rights do not matter there, they do not matter anywhere - and as long as women in Austria are discriminated against in any of these places, Austria, being a State Party to the Convention, is responsible for taking active steps in order to change the situation.

How can women use CEDAW?

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

Karin Tertinegg⁹

What possibilities do women have in order to enforce their rights enshrined in the UN Convention on the Elimination of all Forms of Discrimination against Women? After the Convention entered into force - in Austria in 1982 - for a long time women did not have the option to submit a complaint to the CEDAW Committee, when they felt that their rights as defined in the Convention were violated. Thanks to an addition to the Convention, the so-called "Optional Protocol" which took effect on December 22, 2000 (Federal Law Gazette III 206/2000), this opportunity was created for every woman living under the sovereign power of the Republic of Austria, irrespective of her nationality.

Why was an Optional Protocol worked out?

With a view to monitoring violations of women's human rights, the Convention stipulates as a matter of principle that the CEDAW Committee must give an expert opinion on the regular reports submitted by the States Parties and issue recommendations. When the Convention was drafted, a proposal was made that women should be granted an individual right of complaint, but this proposal was not adopted. At that time some delegates believed that the discrimination against women did not constitute a "severe crime under international law" for the prosecution of which such a procedure would be required, like apartheid and racial discrimination. Only the final document of the Vienna Human Rights Conference in 1993 as well as the Beijing Platform for Action of the Fourth World Women's Con-

ference in 1995 did urgently call for such a complaint procedure. The UN Women's Committee set up a working group in 1996 which it entrusted with the preparation of an optional protocol, in which, under the chairwoman Aloisia Wörgetter, several experts from Austria, such as Anna Sporrer and Lilly Sucharipa-Behrmann, played a major role. Some of the objectives that were to be achieved with the elaboration of an optional protocol are listed below:

- to ensure a more effective enforcement of women's human rights
- to disseminate knowledge of CEDAW and women's rights enshrined in it in the States Parties and amongst individuals
- to prompt the States Parties to implement CEDAW more effectively and to amend discriminatory laws and change the administration of these
- to upgrade gender-specific complaints procedures in the UN system as well as other existing human rights complaints procedures
- to heighten public awareness of women's human rights

The Optional Protocol was finally adopted by the UN General Assembly on October 6, 1999. It entered into force in all States Parties, also in Austria, on December 22, 2000. The States Parties to the Convention may declare, on a voluntary basis, that they wish to adhere to the Optional Protocol. It provides for two additional procedures for the enforcement of women's rights: an **individual complaints procedure (the Communications Procedure)** and an **inquiry procedure**. The States Parties may restrict their obligations under the Optional Protocol only by

⁹ At this point I should like to express my special appreciation for, and pay tribute to Anna Sporrer, expert on the Optional Protocol.

excluding the inquiry procedure through evoking the opt-out clause.

How can the CEDAW Committee monitor violations of women's human rights?

The CEDAW Committee may initiate an **inquiry procedure** if it has received reliable information of grave or systematic violations by a State Party of rights established in the Convention. The first such inquiry was completed in 2004. The cause for this investigation were abductions, rapes and murder of women in Ciudad Juárez, Chihuahua (Mexico). Austria did not opt out of the Protocol. Hence in principle the inquiry procedure does apply to Austria.

How can a complaint be submitted to the CEDAW Committee?

Under the Optional Protocol a woman (or a group of women) may submit a communication to the Committee if she/they believe(s) that a right established in the Convention has been violated by a State Party. Such a communication may be submitted by the woman/en concerned or:

- on behalf of individuals or groups of individuals with their consent or
- on behalf of a woman (women) if the author of the complaint can furnish valid reasons why she/they act(s) on her/their behalf without having received her/their consent.

Accordingly, a communications procedure can be not only submitted by the woman concerned but also by other persons or women's organisations. Additional prerequisites for complaints are:

- Communications must be submitted in writing and may not be anonymous.
- The communication will be considered by the Committee only if it concerns a

country that has ratified the Optional Protocol.

- The woman or women concerned must be subject to the jurisdiction of the State Party but need not be nationals of it.
- All available domestic remedies must have been exhausted. This does not apply to cases in which the procedure for obtaining such remedies is unreasonably lengthy or if no effective remedy can be expected.

The Protocol also stipulates that the complaint is admissible only if: it has not been examined by the CEDAW Committee or has been or is being examined under another procedure of international investigation or settlement; it is compatible with the provisions of the Convention; it is obviously not unfounded or the claimant's allegations can be substantiated; and it is not an abuse of the right to submit a communication. In addition, the facts described in the communication must have occurred in the respective State Party after the entry into force of the Protocol or persisted thereafter. For Austria, this date is December 22, 2000.

A guide on the Optional Protocol can be obtained from the Frauenbüro Wien (Vienna Women's Office); an English language version of a communication can be downloaded from the CEDAW web site (see links and literature).

What happens after the CEDAW Committee has received a complaint?

After receipt of a communication the CEDAW Committee has the option of contacting the State Party with an urgent request that the State Party **take steps** to protect the alleged victim or victims from irreparable harm if the victim or victims is/are exposed to imminent danger. Where a communication has been found admissible, the Committee will bring the commu-

nication to the attention of the State Party provided that the victim or victims has/have consented to disclosure of her/their identity to the State Party. The State Party is given six months to submit a written explanation or statement on the complaint to the Committee which, after examination of all information, will transmit its **views and recommendations** to the parties concerned. The Committee will determine whether a woman's right established in the Convention was violated by a State Party and will issue recommendations concerning remedial steps to be taken by the State Party in order to meet its obligations under the Convention. The State Party has six months to provide a written response including the remedial steps taken on the basis of the Committee's views and recommendations.

Under international law, every State Party has the obligation to accept the views and follow the recommendations of the CEDAW Committee.

What complaints have been handled by the CEDAW Committee to date?

By October 2007, the Committee had dealt with a total of ten complaints (web site, see links and literature). Of the four communications in which the Committee found violations of the rights established in the Convention, one referred to the forced sterilisation of a woman (Hungary 4/2004). The three other communications referred to the violations of fundamental human rights of women due to acts of violence by men in relationships (Hungary 2/2003, Austria 5/2005 and 6/2005). In the case of a complaint from a woman in Hungary (2/2003), whose husband had committed acts of severe violence and had threatened to kill her, the Committee ruled that Hungary had failed to afford this woman effective and immediate protection against the grave violence of her husband that had lasted for years. The Committee found that Hungary

as a State Party had not set up effective mechanisms for such protection and hence had failed as a State Party. It recommended that Hungary take immediate and effective action in order to assure the physical and mental integrity of this woman, to offer her safe accommodation and to give adequate support for the care of her children, to make available legal aid and to pay indemnification commensurate with the physical and mental damage suffered by this woman and the severity of the wrong inflicted on her. Furthermore, the Committee issued comprehensive recommendations for an immediate improvement of the legal and institutional mechanisms for the protection against violence in Hungary.

The communications concerning cases in Austria were submitted by the Verein Frauen-Rechtsschutz (Association for Women's Access to Justice) and the Vienna Intervention Centre against Domestic Violence. Both communications referred to women who were murdered by their husbands in 2002 and 2003, with both offenders having committed a series of violent acts against their wives and having repeatedly threatened to kill them. These women had sought actively to liberate themselves from these situations of violence. The threats and violent acts had been reported to the police and the public prosecutor's office; both offenders had been evicted from their flats and they had been forbidden to re-enter the flats or stay in the immediate vicinity of their wives. In the criminal proceedings, however, the public prosecutors did not take the danger emanating from the offenders seriously. The offenders were not imprisoned and killed their wives as they had threatened to do.

The Committee stated in these two cases that:

- The murder of both women constituted a violation by Austria of the rights established in the Convention, as both women's rights to life and to physical and mental integrity were violated;
- Despite the existence of numerous legal mechanisms for the protection against violence, the steps taken by the state were insufficient for protecting these women against murder by their husbands; and
- The police and judicial authorities were responsible for failing to exercise due diligence in the protection of these women.

As regards communication 6/2005 the Committee stipulates that state bodies must in any case exercise due diligence, to which Austria is committed as a State Party to the Convention. It stresses that every individual woman who is a victim of violence must be empowered to exercise her human rights and enjoy her fundamental freedoms and the **perpetrator's rights can not supersede women's human rights to life and to physical and mental integrity**. In particular, the Committee pointed out that failure of the public prosecutors to imprison the perpetrators constituted a violation of Austria's obligation of due diligence. The Committee also drew attention to the fact that the dangerousness of one of the criminals probably also resulted from his fear of losing his residence permit in Austria in case of a divorce. The Committee drew attention to the current Austrian Alien law which significantly affects human rights and fundamental freedoms and pointed out that in cases of domestic violence women are often exposed to special threats as a result of the effects of the provisions of the Austrian Alien Act.

On the basis of those two communications, the Committee recommended to Austria, inter alia:

- to exercise due diligence in all acts aimed at assuring the security of women;
- to enforce and monitor more effectively the Act for the Protection against Violence and the relevant criminal law provisions;
- to persecute perpetrators of violent acts attentively and promptly in criminal law proceedings, in order to demonstrate to criminals and the general public that society condemns domestic violence;
- to make sure that criminal and civil law remedies are applied in actual practice, if the perpetrator represents a danger to the victim and to see to it that police officers, public prosecutors and judges co-operate routinely with NGOs active in the protection against violence;
- to improve co-operation between law enforcement and judicial authorities;
- to improve basic and further training with respect to domestic violence for judges, lawyers and law enforcement officers and to incorporate information on the Convention, the General Recommendation no. 19 on Violence against Women and the Optional Protocol into such training programmes.

Austria will prepare a written response to both communications within a period of six months, including a description of all measures taken, with due regard for the Committee's views and recommendations. In addition, the expert opinions of the Committee on the two communications are currently being translated into German and will be widely published in order to disseminate knowledge about CEDAW, about the established human rights of women and about the option of individual complaints to the widest possible number of people.

Links and literature

English language links

<http://www.un.org/womenwatch/daw/cedaw/>

CEDAW web site with comprehensive information on the CEDAW Convention, the CEDAW Committee and the Optional Protocol

<http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>

General Recommendations of the CEDAW Committee, such as no. 12 and no. 19 (Violence against Women), no. 21 (Marriage and Family), no. 24 (Health), no. 25 (Temporary Special Measures)

<http://www.un.org/womenwatch/daw/cedaw/protocol/dec-views.htm>

Expert opinions of the CEDAW Committee on submitted communications (individual complaints) and investigations conducted

<http://www.un.org/womenwatch/daw/cedaw/protocol/modelform-E.PDF>

Model form for communications to the CEDAW Committee in English

German-language links

<http://www.frauen.bka.gv.at/site/5548/default.aspx>

Text of the CEDAW Convention and the Optional Protocol in German

<http://www.frauen.bka.gv.at/DocView.axd?CobId=20860>

Sixth Report of Austria to the CEDAW Committee (2004)

<http://www.frauen.bka.gv.at/DocView.axd?CobId=24129>

Concluding Comments of the CEDAW Committee on the Sixth Report of Austria (2007)

<http://www.frauenrechtsschutz.at>

Web site of the Association for Women's Access to Justice

<http://www.interventionsstelle-wien.at>

Web site of the Vienna Intervention Centre against Domestic Violence with contact addresses of all intervention centres in the Federal Provinces

English-language literature

Inter-Parliamentary Union, 2003. **The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol.** Handbook for Parliamentarians. United Nations

Hanna Beate Schöpp-Schilling, Cees Flinterman (eds), 2007. **The Circle of Empowerment: Twenty-five Years of the UN Committee on the Elimination of Discrimination against Women.** New York: The Feminist Press.

German-language literature

Deutsches Institut für Menschenrechte, 2005. **Die 'General Comments' zu den VN-Menschenrechtsverträgen: Deutsche Übersetzung und Kurzeinführungen.** Baden Baden: Nomos Verlagsgesellschaft. [General Recommendations - Allgemeine Empfehlungen - des CEDAW-Komitees in deutscher Sprache]

Doris König, Joachim Lange, Ursula Rust, Hanna Beate Schöpp-Schilling (Hg.), (publisher), 2004. **Gleiches Recht - gleiche Realität? Welche Instrumente bieten Völkerrecht, Europarecht und nationales Recht für die Gleichstellung von Frauen?** Loccumer Protokoll Nr. 71/03. Rehburg-Loccum. See also <http://www.loccum.de>

Brita Neuhold, Renate Pirstner, Silvia Ulrich, 2003. **Menschenrechte - Frauenrechte.** Innsbruck: Studien-Verlag.

Anna Sporrer, 2002. **Das Fakultativprotokoll zur UN-Konvention zur Beseitigung jeder Form von Diskriminierung der Frau.** In Ursula Floßmann (Hg.), **Fragen zum Geschlechterrecht,** Linz: Trauner-Verlag, 203-258.

Anna Sporrer, 2001. **Leitfaden zum Fakultativprotokoll der UN-Konvention zur Beseitigung jeder Form von Diskriminierung der Frau.** Wien: Frauenbüro der Stadt Wien. Copies may be obtained from the ordering service of the Office for Women's Concerns of the City of Vienna: <https://www.wien.gv.at/formulare/frauen/bestellen/>

Abbreviations and glossary

General recommendation	General recommendations of the CEDAW Committee for the implementation of women's human rights
Federal Law Gazette	Bundesgesetzblatt, official publication for Austrian laws
CEDAW Convention	United Nations Convention on the Elimination of All Forms of Discrimination Against Women
CEDAW Committee	Body consisting of twenty-three experts responsible for monitoring the implementation of the Convention
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
Optional Protocol	Annex to the CEDAW Convention to which states may voluntarily commit themselves
Convention	A treaty concluded by various states generating obligations under international law. Synonyms for such conventions: covenants or treaties
Preamble	First introductory section of an international agreement
Ratification	A procedure through which a state assumes its obligation to be bound to a treaty under international law (= to ratify)
Implementation	Procedure by means of which the contents of a treaty under international law are transposed into national law and made applicable
United Nations (UN)	An international, worldwide organization at present consisting of 192 states. One of the organisation's main tasks is the protection of human rights.

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