

Excerpt from: A/53/38/Rev.1

Statements on reservations to the Convention on the Elimination of All Forms of Discrimination against Women adopted by the Committee on the Elimination of Discrimination against Women

1. The Committee adopted the following statement on reservations to the Convention which it wishes to bring to the attention of States parties as its contribution to the commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights.

Introduction

2. The Committee on the Elimination of Discrimination against Women wishes to mark the fiftieth anniversary of the Universal Declaration of Human Rights and the five-year review of the Vienna Declaration and Programme of Action with a statement concerning the adverse impact that reservations to the Convention on the Elimination of All Forms of Discrimination against Women have on the achievement by women of full and substantive equality with men. The Committee has extensive experience of the impact of reservations gained from the examination of States parties' reports. It has also noted the increasing concern expressed by other human rights treaty bodies, the International Law Commission, some Member States, the World Conference on Human Rights and the Fourth World Conference on Women, as well as scholars and non-governmental organizations, at the number and extent of reservations to human rights treaties, and to this Convention in particular.

Background

3. The Committee has, on a number of occasions, expressed its views and concerns regarding the number and extent of reservations to the Convention.¹ It has also noted that some States parties that enter reservations to the Convention do not enter reservations to analogous provisions in other human rights treaties. A number of States enter reservations to particular articles on the ground that national law, tradition, religion or culture is not congruent with

Convention principles, and purport to justify the reservation on that basis. Some States enter a reservation to article 2, although their national constitutions or laws prohibit discrimination. There is therefore an inherent conflict between the provisions of the State's constitution and its reservation to the Convention. Some reservations are drawn so widely that their effect cannot be limited to specific provisions in the Convention.

4. Several States parties have entered interpretative declarations to the Convention on ratification or accession. While it is not always easy to distinguish a declaration from a reservation, any statement, irrespective of its title, which seeks to modify the legal effect of the Convention in respect of a State party, will be considered by the Committee to be a reservation.² The Committee has noted, in this regard, that a number of States parties have entered general declarations which constitute, in fact, general reservations.

Reservations to the Convention

5. As at 1 July 1998, 161 States parties had ratified the Convention on the Elimination of All Forms of Discrimination against Women. Fifty-four States had entered reservations to one or more articles in the Convention including permissible reservations to article 29 (1) and (2).

6. Articles 2 and 16 are considered by the Committee to be core provisions of the Convention. Although some States parties have withdrawn reservations to those articles, the Committee is particularly concerned at the number and extent of reservations entered to those articles.

Impermissible reservations

7. Article 28, paragraph 2, of the Convention adopts the impermissibility principle contained in the Vienna Convention on the Law of Treaties. It states that a reservation incompatible with the object and purpose of the present Convention shall not be permitted.

8. Although the Convention does not prohibit the entering of reservations, those which challenge the central principles of the Convention are contrary to the provisions of the Convention and to general international law. As such they may be challenged by other States parties.

9. States parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other

appropriate legislation, if not yet incorporated therein, and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

10. Reservations affect the efficacy of the Convention, whose objective is to end discrimination against women and to achieve *de jure* and *de facto* equality for them. Reservations prevent the Committee from assessing the progress of States parties' implementation of the Convention, limit its mandate and potentially affect the entire human rights regime. Some States are concerned about a perceived conflict between article 2 and the Islamic shariah law. In other instances, States have entered reservations, which, although unspecific, are broad enough to encompass article 2. These reservations pose an acute problem for the implementation of the Convention and for the Committee's ability to monitor compliance with it. Several have entered reservations to article 2 to protect rights of succession to the throne and to chiefly and other traditional titles. This too is discriminatory against women.

11. In general recommendation 20, the Committee, *inter alia*, sought to resolve the problem of impermissible reservations. And, in June 1993, the Vienna Declaration and Programme of Action encouraged States to consider limiting the extent of any reservations they lodged to international human rights instruments, to formulate any reservations as precisely and narrowly as possible, to ensure that none is incompatible with the object and purpose of the relevant

treaty and to regularly review any reservations with a view to withdrawing them. In spite of these recommendations, to date few reservations to article 2 have been modified or withdrawn by any State party.

Article 16

12. The Committee has previously analysed article 16 in its general recommendation 21. In the course of the analysis of factors impeding compliance with article 16, it said:

Reservations

"The Committee has noted with alarm the number of States parties which have entered reservations to the whole or part of article 16, especially when a reservation has also been entered to article 2, claiming that compliance may conflict with a commonly held vision of the family, based, *inter alia*, on cultural or religious beliefs or on a country's economic or political status.

"Many of these countries hold a patriarchal belief in the structure of a family which places a father, husband or son in a favourable position. In some countries where fundamentalist or other extremist views or economic hardship have encouraged a return to old values and traditions, women's place in the family has deteriorated sharply. In others, where it has been recognized that a modern society depends for its economic advance and for the general good of the community on involving all adults equally, regardless of gender, these taboos and reactionary or extremist ideas have progressively been discouraged.

"Consistent with articles 2, 3 and 24 in particular, the Committee requires that all States parties gradually progress to a stage where, by their resolute discouragement of notions of the inequality of women in the home, each country will withdraw its reservation, in particular to articles 9, 15 and 16 of the Convention.

"States parties should resolutely discourage any notions of inequality of women and men which are affirmed by laws or by private law or custom, and progress to the stage where reservations, in particular to article 16, will be withdrawn."³

13. The Committee again emphasizes these recommendations and encourages States parties to note, adopt and implement them.

Impact of reservations

14. Reservations to any human rights treaty limit the application of internationally accepted human rights norms at the national level. They will also indicate clearly the degree of commitment of the reserving State to full compliance with the particular treaty.

15. When reservations are made to the Convention on the Elimination of All Forms of Discrimination against Women, there can be a double impact. By entering a reservation, the State indicates its unwillingness to comply with an accepted human rights norm. It also ensures that women's inequality with men will be entrenched at the national level. The promise given to its women when the State ratifies the Convention is not therefore fulfilled. This not only affects women's ability to exercise and enjoy their rights, but also guarantees that they will remain inferior to men and have less access to the full range of civil, political, economic, social and cultural rights enjoyed by men. The ramifications for women are significant. They must compete with men on an unequal footing for such fundamental rights as equality of income, access to education, housing and health care, and equality of rights and responsibilities within the family. Reservations to articles 2 and 16 perpetuate the myth of women's inferiority and reinforce the inequalities in the lives of millions of women throughout the world. They continue to be treated in both public and private life as inferior to men, and to suffer greater violations of their rights in every sphere of their lives.

16. The Committee holds the view that article 2 is central to the objects and purpose of the Convention. States parties which ratify the Convention do so because they agree that discrimination against women in all its forms should be condemned and that the strategies set out in article 2, subparagraphs (a) to (g), should be implemented by States parties to eliminate it.

17. Neither traditional, religious or cultural practice nor incompatible domestic laws and policies can justify violations of the Convention. The Committee also remains convinced that reservations to article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn.

Removing reservations

18. The Committee considers that those States parties which have entered reservations to the Convention have certain options open to them. According to the Special Rapporteur appointed by the International Law Commission

to report on the law and practice relating to reservations to treaties a State party may:

- (a) After having examined the finding in good faith, maintain its reservation;
- (b) Withdraw its reservation;
- (c) "Regularize" its situation by replacing its impermissible reservation with a permissible reservation;
- (d) Renounce being a party to the Treaty.

19. The Committee has already noted that to date, few reservations to article 2 have been withdrawn or modified by any State party and that reservations to article 16 are rarely withdrawn.

20. While article 29 provides an inter-State dispute procedure, a number of States have entered reservations to article 29 itself, thereby limiting its effect. Some States formally lodge objections to reservations to articles 2 or 16. The Committee recognizes and appreciates the positive impact that the use of this procedure can have in encouraging States to withdraw or modify reservations and the empowering effect these objections have for women in the State party. It is optimistic that more States parties will rigorously review and object to impermissible reservations to the Convention.

21. The Committee also acknowledges the view of the Special Rapporteur appointed by the International Law Commission that objections by States are not only a means of exerting pressure on reserving States, but also serve as a useful guide for the assessment of the permissibility of a reservation by the Committee itself.

The role of the Committee

22. The Committee has an important role to play, one which has been mandated by the Vienna Declaration and Programme for Action, which, in paragraph 39, states that the Committee should continue its review of reservations.

23. The Committee concludes that it has certain responsibilities as the body of experts charged with the consideration of periodic reports submitted to it. The Committee, in its examination of States' reports, enters into constructive dialogue with the State party and makes concluding comments routinely expressing concern at the entry of reservations to articles 2 and 16 or the failure of States parties to withdraw or modify them.

24. The Special Rapporteur considers that control of the permissibility of reservations is the primary responsibility of the States parties. However, the Committee again wishes

to draw to the attention of States parties its grave concern at the number and extent of impermissible reservations. It also expresses concern that, even when States object to such reservations there appears to be a reluctance on the part of the States concerned to remove and modify them and thereby comply with general principles of international law.

Conclusion

25. Fifty years after the adoption of the Universal Declaration of Human Rights, the great majority of Member States have signified their commitment to the Convention by ratification or accession. It is now time to re-examine States' self-imposed limitations to full compliance with all the principles in the Convention by the entry of reservations. Removal or modification of reservations, particularly to articles 2 and 16, would indicate a State party's determination to remove all barriers to women's full equality and its commitment to ensuring that women are able to participate fully in all aspects of public and private life without fear of discrimination or recrimination. States which remove reservations would be making a major contribution to achieving the objectives of both formal and de facto or substantive compliance with the Convention – a laudable and appropriate contribution to the commemoration of 50 years of compliance with the Universal Declaration of Human Rights, as well as implementation of the 1993 Vienna Declaration and Programme of Action.

Notes

¹ General recommendations 4, 20 and 21.

² Article 2, subpara. 1 (d), Vienna Convention on the Law of Treaties, 1969.

³ General recommendation No. 21 (thirteenth session, 1994), *Equality in marriage and family relations*, paras. 41-44.