

THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

A COMMENTARY

EDITED BY

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OXFORD

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

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THE UN CONVENTION ON THE ELIMINATION
OF ALL FORMS OF DISCRIMINATION
AGAINST WOMEN

A Commentary

Foreword

Few causes championed by the United Nations have generated as wide and strong support as that to promote and protect the equal rights of women. The Charter of the United Nations reaffirms the equal rights of men and women. The United Nations has created a strong framework of internationally agreed norms, strategies, and programmes to eliminate discrimination against women in all its manifestations wherever it occurs, and guarantee their equal enjoyment with men of all human rights. The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol form the basis of this framework. The Convention was adopted by the General Assembly in 1979 and by the end of 2010, had been accepted by 186 States parties from all regions of the world. Of these, 100 had ratified or acceded to its Optional Protocol which provides for petitions and inquiries.

The Convention is the result of the determination of international women's rights activists—inside and outside government—to ensure that a comprehensive treaty setting out women's human rights and the obstacles to their full implementation is at the core of international human rights law. Its Optional Protocol resulted from that same determination, carried through to the next generation.

Setting out the steps that States are obliged to take to eliminate discrimination against women and ensure their equality with men in the civil, cultural, economic, political, and social spheres, the Convention is one of the first human rights treaties to incorporate the ideas of universality, indivisibility, and interdependence of all human rights. It is a milestone in bridging human rights and development, in particular through requiring States parties to take all appropriate measures to eliminate discrimination against rural women and ensure that they participate in, and benefit from, rural development on an equal basis with men. The Convention pioneered recognition of the concept of substantive equality for women by requiring that they enjoy equality with men in real terms, as well as formal equality in law and policy. By requiring States parties to take all appropriate measures to modify the social and cultural patterns of conduct of women and men to eliminate prejudices and practices based on ideas of inferiority or superiority of either of the sexes or stereotyped roles for them, the Convention requires the transformation of States, communities, and families to achieve full gender equality.

Progress made by States in implementing the Convention is overseen by the Committee on the Elimination of Discrimination against Women, which from its first session in 1982, has provided a distinct and dynamic interpretation of the treaty's terms. The Committee has contributed to our understanding of human rights, placed women's human rights high on the international agenda, and empowered individual women to claim them. Its jurisprudence, developed through general recommendations which provide the Committee's collective view of the measures States should take to fulfil their Convention obligations, and 'views' adopted after consideration of petitions have been profoundly influential. Indeed, its jurisprudence has guided regional and national courts and tribunals. Most importantly, the Committee has sought to identify solutions and examples of best practices so that the Convention will benefit all women.

Since its adoption, the Convention has captured the imagination of women worldwide, and has been used by many to transform their lives. Recognizing this, one of the Committee's longest-serving members, Hanna Beate Schöpp-Schilling, became determined to make the Convention, the Optional Protocol, and the work of the Committee as widely known as possible through a substantive commentary. She brought together the scholars and activists who have contributed to this volume, and gained their commitment to the project. Under Dr Schöpp-Schilling's guidance and inspired by her vision of the Convention as a living instrument, the authors began work on this volume in 2008. Sadly, Dr Schöpp-Schilling passed away in July 2009 after a short illness. Her vision and commitment motivated the authors to complete the commentary.

I am convinced that this commentary will be an important tool for States, human rights mechanisms, intergovernmental agencies, and civil society, especially women's groups, to advance their understanding of how the Convention and its Optional Protocol can be used to achieve true equality for women. It also highlights the promise these instruments hold, that the standards and procedures they set out will be brought home to all women in every community and every country in the world. I acknowledge the expertise of those who contributed to the commentary and the quality of their work. I believe the world will be indebted to the care and passion they brought to their task.

Navi Pillay

United Nations High Commissioner for Human Rights

May 2011

Dedication

This Commentary is the inspiration of Hanna Beate Schöpp-Schilling, who served as a member of the Committee on the Elimination of Discrimination against Women from 1989 through 2008. Beate envisioned the Commentary as a summation of and a tribute to the Committee's work in establishing the Convention on the Elimination of All Forms of Discrimination against Women as the international standard for women's human rights and a continuing inspiration for women and men working towards equality throughout the world. She and her co-editor Beate Rudolf organized the project and recruited the authors to reflect the breadth and depth of the Committee's work and of the Convention's content and potential.

A few months after the first authors' meeting, held in Berlin in September 2008, Beate Schöpp-Schilling was diagnosed with pancreatic cancer. Among all the obligations she had taken on as she ended her twenty years of work on the Committee, her first concern was continuity of the Commentary project. At her request, Marsha Freeman took on the sharing of editorial tasks with Beate Rudolf. A few months later Christine Chinkin joined the editorial team.

Beate Schöpp-Schilling passed away in July 2009, when the Commentary was barely under way. The editors and authors have missed her knowledge, her passion, her vision, and her good sense, at every stage of the project.

We have lost not only one of the great experts, but a great friend. In dedicating this Commentary to her, we recall her dedication to equality for women everywhere.

Thank you, Beate.

Preface

This Commentary reflects thirty years of work by the United Nations Committee on the Elimination of Discrimination against Women to establish the framework for applying the norms of the Convention on the Elimination of All Forms of Discrimination against Women. In that time, 104 independent experts have served on the Committee, from all the regions of the world and, as the Convention states, representing the ‘different forms of civilization as well as the principal legal systems’. Those thirty years have also seen dramatic change in the global political and economic context—the ‘civilizations’ mentioned in the Convention—greatly affecting both the make-up of the Committee and the issues that come before it.

The Commentary also reflects thirty years of authors’ and editors’ experience, first and foremost, that of Hanna Beate Schöpp-Schilling. She and her co-editor Beate Rudolf organized the project as a collaboration, commencing with a meeting in Berlin in 2008 in which all but one of the original fourteen authors participated. Representing five regions and a broad range of knowledge, the authors worked out a common framework for all the chapters and a list of cross-cutting historical and conceptual issues to be discussed in the introduction. They also established a process for sharing comments on each chapter as it was produced and decided that the original plan of holding introductory and wrap-up meetings should be expanded to allow for discussion of all the chapters and exploration of additional issues as they came up. Consequently, authors met again in The Hague in May 2009, Berlin in August 2009, and Bellagio in July 2010. The editors finalized the substantive production in London in December 2010.

As the project progressed through the latter three authors’ meetings, the most difficult issue was the one we can only refer to as Missing Beate. When Beate Schöpp-Schilling passed away in July 2009, it was clear that it would take more than one person to succeed her as an editor—and certainly nobody could replace her. Accordingly the editorial team was expanded to three, adding Marsha A. Freeman and Christine Chinkin. Beate Rudolf remained the literal anchor, as the editorial support staffing was established through her post at the Free University of Berlin. In 2010, she became the Director of the German Institute for Human Rights, and during the final months of the project we benefited from the German Institute hosting a graduate research fellow who became a valuable member of the editorial support team. Throughout the process, we have missed Beate Schöpp-Schilling’s comprehensive knowledge, clear judgement, and above all, her vision.

The Commentary is designed as an in-depth account of the Convention norms, and their meaning and application, as developed by the CEDAW Committee. For reasons of both space and focus, we leave to others the detailed exploration of substantive issues as experienced by women in various systems and spaces. The Committee’s work is informed by accounts of these experiences, from NGOs, UN agencies, and sometimes from the States parties themselves. Its primary purpose is to develop the legal standards against which States parties’ actions are measured, and to engage them in a dialogue under both the review process and the Optional Protocol, that explains to them where they have met the standards, where they fall short, and how to move forward. The Commentary documents the achievement of that purpose. The individual chapters include references

to works of scholarship, United Nations and other organizations' reports, and regional and domestic jurisprudence that have advanced the substantive discussion of particular issues, but its focus is on the work of the Committee. The Introduction reflects contextual and cross-cutting issues and concerns that inform the application of the Convention as a whole. Bibliographies and tables are included as Appendices for further reference.

In producing this book, the editors and authors have consulted many colleagues around the globe. Acknowledgments are listed in each author chapter. In addition, CEDAW expert Cees Flinterman contributed significantly to the early stages of the project. The editors have received encouragement and thoughtful responses from former CEDAW Chairpersons Elizabeth Evatt and Ivanka Corti, for which we are truly grateful.

We are also grateful to the institutions that have provided support for the Commentary project: The Free University of Berlin, for our staff and for supporting meetings in Berlin in September 2008 and August 2009; the German Institute for Human Rights for hosting the September 2008 meeting; the German Federal Foreign Office for financing the August 2009 meeting; the Netherlands Ministry of Foreign Affairs and the Hague campus of Leiden University for the Hague meeting of May 2009; the Rockefeller Foundation Bellagio Conference Center for hosting our meeting in July 2010, and the Women in Law Program of American University Washington College of Law for its extensive work on the Bellagio application. The University of Minnesota Law School and the London School of Economics Faculty of Law have provided significant infrastructure and collegial support for Dr Freeman and Prof Chinkin respectively. Our editors at Oxford University Press, John Louth and Merel Alstein, have been supportive of the entire project and extremely helpful as we sorted out technical and schedule issues.

Special mention must be made and thanks given to our editorial staff, who have dealt promptly and professionally with special, frequently unforeseen requests requiring additional research as well as the mundane toil of correcting citations and formatting text. Two assistant editors, Sarah Wittkopp and Susann Kroworsch, also are authors—the rising generation, whom we have been very happy to have working with us. Susann especially rose to the occasion of taking on chapters when their original author left the project. Assistant editor Allison Sherrier joined the staff in September 2010 as part of her research fellowship with the German Institute for Human Rights, and she has proven to be not only a quick study but an extremely good-natured one, exhibiting great equanimity in dealing with multiple chapter versions and the minutiae of punctuation styles. Throughout the project we had excellent help from student research assistants at the Free University of Berlin: Sahrah Al-Nasrawe-Sözeri, Benjamin Feyen, Ines Franke, Michael Gläsner, Anna-Maria Paulus, and Eric Veillerobe.

We also thank Jane Connors for taking on the Reservations chapter when the original author became unavailable. The most profound thanks, however, go to Frances Raday and Ineke Boerefijn, who agreed to write the chapters that Beate Schöpp-Schilling had been planning to produce—and met a challenge well beyond the intellectual.

Marsha A. Freeman

Christine Chinkin

Beate Rudolf

Minneapolis, London and Berlin,

April 2011

Preface to the Paperback Edition

The Commentary editors are delighted with the opportunity to provide this preface to the softcover edition, which Oxford University Press decided to offer unusually soon after publication of the hardcover. The hardcover edition has been extraordinarily well received, and all involved have had many requests for a more economically accessible version. We know that this edition will find its way into many more hands and help many more women and organizations in their advocacy and research to promote women's human rights.

The softcover edition is an exact replica of the hardcover, with minor text corrections made by the authors. The publication process, requiring that pagination remain the same as that of the hardcover, regrettably does not allow for major revision or addition of material relating to State party reviews and events that occurred after the original publication cutoff date of December 31, 2010. We note for the record, however, that since then the Committee has adopted views on several individual complaints and has adopted General Recommendation 29, on Economic Consequences of Marriage and Family Relationships and Their Dissolution. These documents are of course available on the Web site of the Office of the High Commissioner for Human Rights.

We thank our OUP editors for making this edition possible so quickly. And once again we express our gratitude for the inspiration of our late friend and mentor Beate Schoepp-Schilling, who envisioned the *Commentary* as a resource for those who care about, or should care about, equality—NGOs, scholars, UN human rights experts, government officials. We hope that this edition will truly become a source of inspiration for all.

Marsha A Freeman
Christine Chinkin
Beate Rudolf

Authors' Contributions

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A Note on the Authors

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Ineke Boerefijn, PhD, is an associate professor at the Netherlands Institute of Human Rights, held the Opzij Chair at the Centre for Gender and Diversity at Maastricht University, and was Julius Stone Visiting Researcher at the University of New South Wales and the Australian Human Rights Centre. She is an editor of the *Nederlands Tijdschrift voor de Mensenrechten* and of the *International Studies Journal (Iran)*, and a member of the Advisory Board of the Institute for Human Rights of Åbo Akademi University. She is Rapporteur of the Committee on International Human Rights Law and Practice of the International Law Association (ILA).

Andrew Byrnes, BA (Hons), LLB (Hons), LLM, is Professor of Law at the University of New South Wales and Chair of the Australian Human Rights Centre, and was previously at the Universities of Sydney and Hong Kong, and the Australian National University. He is a member of the editorial boards of the *Australia Yearbook of International Law* and the *Australia Journal of Human Rights*. His publications include *International Women's Rights Cases* (co-editor) and *Bills of Rights in Australia – History, Politics and Law* (co-author).

Christine Chinkin, LLB, LLM, PhD, is Professor of International Law at the London School of Economics and Political Science and William W. Cook Global Law Professor, University of Michigan. She is a member of Matrix Chambers, a Fellow of the British Academy and Director of Studies of the International Law Association. She is author of *Third Parties in International Law*, co-author of *The Boundaries of International Law: a Feminist Analysis* and of *The Making of International Law*, and an editor of the *American Journal of International Law*.

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Jane Connors, LLM, is the Chief of the Special Procedures Branch at the Office of the High Commissioner for Human Rights (OHCHR). From 1980 to 1996, she taught law at universities in Australia and the United Kingdom, spending fourteen years at the School of Oriental and African Studies, London. In 1996, she joined the UN Division for the Advancement of Women as the Chief of the Women's Rights Section. In 2002, she took a position in the Human Rights Treaty Bodies Division at the OHCHR. She has

written extensively on women's rights, including in respect of violence against women, and CEDAW.

Rebecca J. Cook, JD, JSD, holds the Faculty Chair in International Human Rights at the University of Toronto Law Faculty and is Co-Director of the International Programme on Reproductive and Sexual Health Law. She is editor of *Human Rights of Women: National and International Perspectives*, co-editor of *Health and Human Rights*, and co-author of *Reproductive Health and Human Rights*, and *Gender Stereotyping: Transnational Legal Perspectives*. She serves as an editor for the *International Journal of Gynecology and Obstetrics*.

Marsha A. Freeman, PhD, JD, is Senior Fellow at the University of Minnesota Human Rights Center, where she is Director of the International Women's Rights Action Watch. She also is Adjunct Professor of Law at the University of Minnesota Law School. Dr. Freeman is editor of *Assessing the Status of Women*, a guide for reporting under the Convention. She has published numerous articles, reports, and technical papers on the Convention's content and procedures and on advocacy using its provisions, and supervised production of shadow reports on more than fifty States parties from 1992 through 2002.

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Susann Kroworsch, works as a graduate research fellow and is a PhD candidate at Freie Universität Berlin. She studied law at Humboldt Universität zu Berlin and Université Montesquieu Bordeaux (first and second state exam in law). During her legal clerkship (*Referendariat*) she worked, *inter alia*, at the Federal Foreign Office and the Human Rights Committee of the German Federal Parliament (*Bundestag*).

Frances Raday, LLB, LLD, who was a member of the CEDAW Committee 2000–2003, is Director of the Concord Research Center for Integration of International Law in Israel, Haim Stricks Law School, COLMAN; Chair, Advisory Board of Israel's Equal Employment Opportunity Commission; member of the UN Human Rights Council Working Group on Discrimination against Women; Lieberman Chair of Labour Law (emerita) Hebrew University, Jerusalem; Honorary Professor University College London; and Doctor Honoris Copenhagen University. She is the author of numerous academic books and articles on human rights, labour law, and feminist legal theory.

Beate Rudolf, Dr. iur., Professor of Law, is Director of the German Institute for Human Rights, the National Human Rights Institution of Germany according to the UN Paris

Principles. Until 2010, she was Junior Professor of Public Law and Equality Law at the Faculty of Law of Freie Universität Berlin. She is a vice-president of the European Women Lawyers Association (EWLA) and a member of the ILA Committee 'Feminism in International Law'.

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Sarah Wittkopp, is a PhD candidate at Freie Universität Berlin and law clerk (*Referendarin*) at the Higher Regional Court of Berlin, including a traineeship at the Federal Ministry for Economic Cooperation and Development. She studied law at Freie Universität Berlin and Stockholms Universitet, Sweden. She was a research fellow at the Collaborative Research Center 'Governance in Areas of Limited Statehood' and at Freie Universität Berlin.

A Note on Citation Formats

The primary material on which the Commentary relies is the CEDAW Committee's concluding observations on State party reviews. As the Optional Protocol has been in force only for ten years, relatively few cases have been decided under it. Because of the very large number of citations to the Committee's conclusions on State party reviews, the editors adopted a short form of citation to the concluding observations, approved by the Oxford University Press.

The designation system for CEDAW documents has changed over the years. After the Committee began to formulate specific conclusions and recommendations, they were designated as Concluding Comments through the Fortieth Session in January 2008. Since the Forty-first Session in July 2008, the conclusions have been designated as Concluding Observations, in conformity with the usage of the other human rights treaty bodies. However, some search protocols produce documents labelled 'Concluding Observations' in a general heading and 'Concluding Comments' per State party. For purposes of simplicity, the Commentary uses the term Concluding Observations (or CO) for most of these citations.

From its inception through 2008, the Committee's conclusions have been included in an annual report to the General Assembly (UN Doc. A/ numbers), and since 1997 divided into parts corresponding to the first, second, and, where relevant, third session held in each calendar year. In 2005, the Committee's secretariat began to provide individual document numbers for the conclusions for each State party in each session (using CEDAW/C/ numbers). Search tools, including the United Nations' Universal Index to Human Rights Documents, may designate the documents with either number. Accordingly, the citations in this Commentary to documents published in those years may use either number format. Since 2009, the CEDAW documents carry only CEDAW/C numbers.

The Commentary reflects the Committee's record through 31 December 2010.

A Note on Citations to the Commentary

The authors suggest that citations to the Commentary be as follows:

Author, Article [No], p [No], in Freeman, Chinkin, Rudolf (eds), CEDAW Commentary (Oxford: OUP, 2012)

eg A Byrnes, Article 1, p xx in Freeman, Chinkin, Rudolf (eds), CEDAW Commentary (Oxford: OUP, 2012)

Table of Acronyms

ACHR	American Convention on Human Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCPR	Human Rights Committee
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CESR	Center for Economic and Social Rights
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSW	Commission on the Status of Women
DAW	Division for the Advancement of Women
DEDAW	Declaration on the Elimination of Discrimination against Women
DEVAW	Declaration on the Elimination of Violence against Women
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
ECOSOC	Economic and Social Council
FAO	Food and Agricultural Organization
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
ILO	International Labour Organization
IWRAW	International Women's Rights Action Watch
NGO	Non-governmental organization
OHCHR	Office of the High Commissioner for Human Rights
OP	Optional Protocol
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UDHR	Universal Declaration of Human Rights