

The Impact of CEDAW on Women's Marital Rights: An Overview of
Recent International Legislative Developments



Bachelor Thesis

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Date: July, 2018

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I. Introduction

“Men, their rights, and nothing more; women, their rights, and nothing less”

Susan B. Anthony

Marriage is a centuries-old institution. Although, it significantly differs from contemporary traditions, marriage was already being practiced in ancient times. During the era of Antiquity, ancient Greek marriages were commonly arranged by their parents and served the purpose of producing an heir for the family (Hays, 2013a). In ancient Rome, Romans did not consider marriage to be of high importance but did do so to bring forward legitimate children (Hays, 2013b). Babylonians set up a marriage contract, where the father and husband-to-be agreed upon the terms of the arrangement, such as the financial requirements upon entry and divorce (Mark, 2014). The first recorded marriage ceremonies happened in Mesopotamia, of which Babylon was a part, around 2350 B.C. (The Week, 2007). Nowadays, marriage takes place for several reasons, including out of tradition and custom, family, love, and financial gain. In 2011, the countries of the European Union had 55.3% of those aged 20 years and older to be married (Corselli-Nordblad & Gereoffy, 2015). Chinese women are generally married by 30, and in 2011, India saw 91% of their women in marriage by 25-years-old (Varma, 2016). Marriage has changed and evolved over the times, per country and region, and can vary across cultures and religions. A universal definition is, therefore, difficult to give, but it can generally be regarded as a legally or culturally recognized union between parties, which establishes certain rights and obligations for them (Gendler, 2014). Legislation, rules and customs regulate marriage and that what is related to it, from entry into marriage to the divorce. These are considered to be *marital rights*, which distribute and protect rights of those who are to marry or are in a marriage. These have not been, and oftentimes still are not, equally divided between men and women (K4Health, 2010). For centuries, a wife was regarded to be the property of the husband, being denied any legal or economic independence. In 1979, the United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), from here on out CEDAW, or the Convention, which came into force in 1981, in an attempt to promote equality, including in marriage. Considered to be the

‘international bill of rights for women’ (UN Women, 2009a), the treaty has been based on the principle of non-discrimination, with a specific focus on granting women access to equal rights. It is meant to ensure the protection of women in the public, as well as the private sphere, the latter being personal life, marriage and family. Article 16 of CEDAW, also known as the ‘marriage article’, establishes the basis for equality of women within marriage, as well as the family. With this, the treaty requires its State Parties to end all discrimination against women in marriage, upon entry and at its dissolution.

In this thesis, I will examine the impact CEDAW has had on the rights of women within and to marriage and whether there has been a positive development in regard to the rights of married women since it came into force in 1981. The research question will, therefore, be: *To what extent did the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) affect the state of marital rights for women?* To answer this, the development of marital rights for women prior to the Convention, as well as after it had come into force, need to be considered in order to establish whether any change has occurred at all. In addition, it is imperative to the question to see, when the rights between men and women have become equal, if CEDAW is responsible, or that other influences have played an influential role. Furthermore, to be able to give a more detailed consideration of the impact of CEDAW, which the international overview might be unable to offer, two case studies will be closely looked at: Morocco and Kenya. To note, this thesis will primarily consider the legislative developments, which include national documents, acts and reforms, and will not necessarily focus on customs and traditions, or how these rights translate to practice, only where it has proven relevant. Following this, Chapter II will start off with the explanation of the concept of marital rights and how they should be interpreted in the light of the research done. It will introduce Feminist Legal Theory and the equality principle, which have been an inspiration for the content of CEDAW, including article 16, and the importance of marital rights. The next few chapters follow a chronological time-line, with III, IV and V being subsequent to one another. Chapter III takes a mix of an historical and legal

approach, evaluating the marital rights of women during the 20th century, ending just before the Convention came into force in 1981. It will conclude with a short overview of the positive and negative practices of marital rights in relation to equality, acknowledging that some countries do not necessarily share these. Chapter IV will study CEDAW itself, considering its formation and mechanisms, as well as addressing some of the criticism it has faced. This chapter will also look more into article 16, the 'marriage article' and the considerable amount of reservations that have been made on it. The next chapter, Chapter V, will give an overview of the legislative developments that occurred after CEDAW had come into force. It will consider the changes that have been made, as well as the lack of improvement. In addition, the influence of other actors, such as feminist activists and women's rights movements, on these reforms will also be considered. Lastly, Chapter VI will look at two different case studies, Morocco and Kenya, and will give a time-line of the reforms that have happened before and after acceding to CEDAW. These case studies will provide a detailed account of the extent of the impact by the Convention and will enable to confirm some of the generalizations made in earlier chapters.

Relevance

It remains important to do extensive research on international human rights law, as well as the development of women's rights. It will help examine the effectiveness of treaties such as CEDAW and allows to see whether they have positively influenced the progress in a country, fulfilling the aim of the legal texts. In addition, this thesis combines different studies and scholarly articles to give a comprehensive international overview of women's marital rights, which will serve the purpose of mapping out equality within marriage. It will evaluate how far, or not, the world has come in terms of equality. This thesis will add to the feminist conversation of equality between men and women and that we should perhaps not take equality for granted.

Methodology

In order to answer the research question adequately, several research methods will be used, mainly that of literature review, which will provide the evidence to complete the research. Consequently, it will help in drafting the international overview of the legislative developments prior to and after CEDAW has come into force, as well as laying down the principles of the Convention itself. It will also assist in considering the different positions within the literature of international law. The literature review will include scholarly articles, opinion pieces and several studies. It will also consider documents that have been published by the Committee of CEDAW, the main body of the Convention that examines the efforts made by the State Parties to comply with the treaty. Furthermore, the two case studies will, besides the just mentioned literature, look at the country reports, more specifically the comments given by the Committee of CEDAW on the countries' work done. This will show CEDAW's perspective on the changes made, or lack thereof, consequently, stating whether they consider there to have been any effect.

Throughout the thesis, a combination of the historical and legal approach will be used. It will consider the past, as well as contemporary, legislation on women's marital rights, internationally and within the two case studies. Consequently, it will not specifically consider any other perspectives, such as any social explanations, because this will go beyond the interpretation of the research question.

Lastly, the research question will be supported by the Feminist Legal Theory and equality principle. This theory believes that women and men should be regarded as equals before the law and, thus, be granted equal rights, contrasting several other legal theories that argue for 'difference' to be accounted for in the struggle for women's rights. The equality principle joins the Feminist Legal Theory in so far that it also strives for equality. These have served as an inspiration for international human rights law, including CEDAW. Therefore, I will use this framework of equality throughout, applying it to the research in the period before the Convention, as well as after it.

Limitations

This thesis will have several limitations, restricting the research to retain a specific focus throughout. Firstly, it will generally have an international focus, which will reduce the ability to give a thorough consideration of the exact impact CEDAW has had on the marital rights of women in each State Party. It will, therefore, only be able to give a general overview. The two case studies, however, will offer some insight into the effect the Convention has had on the countries, not saying that this has occurred alike in all State Parties. Nevertheless, this thesis will give important information on the workings of international law, as well as the state of women's marital rights worldwide. Secondly, the marital rights that will be discussed are to be defined, noting that not every specific right concerned in marriage can be mentioned here. It will follow the premises of article 16 of the Convention and the principle of equality on which it has been based. Furthermore, I will not dive into the interconnections between marriage and religion and culture per se, acknowledging that this is of great complexity, but seeing that these concepts might play an intrinsic part, they will be considered where necessary. Lastly, this thesis will solely devote its attention to the equality of women in marriage, from the perspective of women. It will, therefore, not consider the women's right to children or family, or, for example, same-sex marriage, or any related topics, as these appear to be complicated issues of which it would be impossible to do it justice here.

II. The Concept of Marital Rights

In this chapter, the concept of marital rights will be set out. Feminist Legal Theory will be used to explain the equality of rights, as is applied throughout the Convention. It will also examine the rights involved in the entry of, during and at the dissolution of marriage that will be used in the gathering of the research and answering of the research question. Later chapters explore the history of women's marital rights (Ch.II), or marriage law, as well as the 'marriage article', article 16, of the Convention in greater depth(Ch.III, Ch.IV & Ch.V). This chapter introduces these concepts to set up a framework that will aid in the understanding.

Equality of Rights: Feminist Legal Theory

Feminism has long been involved in the public discussion. It is generally defined as the belief in the social, economic and political equality of men and women. Over the years, Feminist movements have fought successfully for women's rights, such as the right to vote, and has adapted itself with time to the needs of society. Feminism has also brought forward several theories of which I will predominantly discuss the Feminist Legal Theory. Legal Feminism has developed different approaches to law, but during the 1970s and 1980s it was primarily equality-based. This theory "assumed no legally relevant differences between men and women" (Albertson Fineman, 1992, p. 1). As a result of the long-standing discriminatory legislation towards women, legal feminists believed that this 'difference' should be done away with completely, and, thus, equality of rights should be what to strive for. Some allow for a level of 'difference', accounting for a few circumstances like pregnancy, but do uphold the principle of equality as the main focus (Cain, 1989).

International human rights are also based on these egalitarian theories. The human rights theories "all enshrine the principle of "equality" as a goal which States are legally obligated to achieve" (Facio & Morgan, 2009, p.1136). They have incorporated the ideas of individualism and universalism,

creating the notion that human rights apply the same to every person (Henkin, 1989). The CEDAW Convention, like other human rights treaties, is framed by these beliefs of universal equality. It is considered to be the “international bill of rights for women” (UN Women, 2009a), which lays down specific rules to bring about equality between men and women. In the 1970s, the women’s movement became more influential, which brought forward and inspired different feminist theories, including the Feminist Legal Theory on equality. Although, the United Nations had enshrined the principle of equality, also between men and women, in their international human rights treaties from 1945 onwards, the calls made by women’s rights activists during this period translated, among other things, into the global recognition of the importance of women’s rights (United Nations, 2004). This discourse on gender equality demanded for a separate Convention that would adequately address the specific inequalities women face and combat discrimination against them, which previous treaties had failed to do (Zwingel, 2016) (LawTeacher, 2013).

Despite the devotion to the equality principle, the CEDAW Convention has been thought to represent a monolithic idea of a woman. Many have criticized that CEDAW has failed to consider the intersectionality of identities, as well as the discrimination women are up against. It rather sees women as one, regardless of culture, race or religion. Although, the Convention does recognize some identities, such as the separate article specifically protecting rural women, it does not generally account for such intersectionality (Raday, 2012). The Committee, however, has in their responses “identified many groups of women to whom [CEDAW] extends protection to on the basis of their sex in combination with another status” (Campbell, 2018, p.104). Since the Convention, as well as article 16, are framed by the principle of equality, this thesis will not consider this lack of representation, but rather analyse the research accordingly, which will be explained further in the next section.

Marital Rights

Whenever one enters into marriage, during it and at its possible dissolution, there are certain legal rights and obligations that will become applicable. Even before the marriage occurs, there can exist certain protections, for example the freedom in choice of partner. These are considered “marital rights”, and are often laid down in the marriage law, or family law of a country. The phrases “marital rights” and “women’s rights in marriage”, as such, as well as “marriage law” and “family law” will be used interchangeably.

Throughout this thesis, the equality principle as laid down in the Convention will be applied to the research. Article 16 of the Convention stipulates several marital rights which are deemed important in realizing equality between men and women in marriage. Although, the article will be discussed in more detail in Chapter IV, it is necessary to quickly mention it here, as the framework of equal rights in marriage laid down there will be followed in the international overview of women’s marital rights given in Chapter III. Generally, several rights upon entry, during and at the dissolution of a marriage will be considered. Firstly, forced marriage will be looked at. The rights during marriage will include the so-called obedience clause or marital power, where a wife was considered to be the husband’s property and needed his permission if she wanted to undertake anything, but also marital rape, where a non-consensual act between a husband and wife is not regarded to be rape, something which is a form of violence mainly directed at women (Hanson Frieze, 1983). The right of divorce will be considered as the equal right to divorce between men and women. Furthermore, the Convention recognizes the right to property and work as separate rights in marriage. They will, therefore, be given the same amount of attention as the rights mentioned previously.

Since this thesis will consider the marital rights solely from the women’s perspective, it will not consider certain rights and obligations that are also often associated with marriage. Family or the right over children are often connected to marriage, but they do not always co-exist, meaning that these

have been drawn up irrespective of marital status. In addition, the issue of child marriage will also not be discussed here. Recognizing the severity of this complex problem, as well as the fact that girls are mostly affected by this, with 1 in 5 girls having married as a child (Unicef, 2018), it simply goes beyond the scope of this thesis, certainly as it cannot do the justice it deserves. Furthermore, practices like the transaction of a dowry upon the entry of the marriage, which puts the man under an arguable unequal responsibility, but also harms the woman in the process, as she is being displayed as property (United Nations, 2004) will not be considered. Lastly, culturally sensitive practices, such as polygamy will also not be reviewed. Considering the criticism of the Convention's Eurocentric or universal approach to women, polygamy is often regarded to be an area of tension. According to cultural relativism, but also feminist movements that consider culture to be crucial in women's rights, it is faulty to force certain norms and values upon others, just because they do not fit their own. Although, it is recognized that polygamy can be disadvantageous to women, the outright prohibition of polygamy might be restrictive to freedom, as well as forcing certain principles, such as monogamy, upon others (Cryan, 2017).

Marriage Law or Family Law

Domestic law

Marriage and the regulation of it within law has been around for centuries. During Antiquity, the Greek cities were each governed by legislation that stipulated the grounds for marriage, as well the rights and obligations attached to it, for example, a woman was forced to marry a close male relative if she had become an heiress to property (Gill, 2017). The Code of Hammurabi (c. 1754 B.C.) informed Babylonians of their marital rights, stressing the importance of a contractual agreement in marriage (Nakata, 2013). Marriage has, however, not always been regulated by legislation, but rather through custom and tradition, which would often later be codified. The state of marital rights for women and legislative reforms during the 20th and 21st century will be discussed in Chapter III and V respectively.

Historically, the rights in marriage have not been equally divided between men and women. Women were not allowed to choose their own spouse and often married for the economic or social benefit of the family (Coontz, 2006). When a woman would enter into a marriage, she would immediately become the property of her husband. This is also often called “marital power”, where a husband would have the control and power over his wife (Webster, 1998). He would have full financial, legal and social control over his wife, and she could not acquire property, work, or decide how money was spend, sometimes even when the husband gave permission (Zielinski, 2015) (Offen, 2018).

International law

International human rights law has recognized the importance of marital rights for women in multiple treaties. It started with the Universal Declaration on Human Rights (UDHR) of 1948 and has continued on into the International Covenant on the Civil and Political Rights (ICCPR) of 1966. They have both put in a specific article requiring equality between men and women in marriage. These two central treaties to international law will be discussed more extensively in Chapter III.

The Convention on the Elimination of All Forms of Discrimination Against Women, however, was the first international human rights treaty specifically aimed at women. As explained above, the Convention, as well as the previously mentioned international human rights treaties, have based their content on the ‘equality principle’, aiming for men and women to have the same rights. Laid down in article 16 of the Convention are the equal marital rights of women. It stipulates that “State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage... on a basis of equality of men and women”. This has to be done so in relation to the entry into marriage, during and at the ending of a marriage. The Convention and Article 16 will be discussed further in Chapter IV and Chapter V.

Despite this, marriage is a concept that has considerably developed overtime, and can differ greatly across countries, cultures and religion. It is, therefore, expected that marital rights are not necessarily universally alike. The Convention on the Elimination of All Forms of Discrimination Against Women, nevertheless, tries to reconcile these rights towards an internationally established equality of men and women in and to marriage.

Importance of Marital Rights

The protection of women's rights in marriage is important in realizing full equality between men and women. If women do not have the same rights as men in marriage, it severely restricts their activities and their ability to participate fully in society. They will become economically and socially dependent upon their husband and have little way to change this. According to the Committee of the Convention, "inequality in the family underlies all other aspects of discrimination against women" (Brems, Desmet & Vandenhole, 2017). Marital rights grants women independence from their husband within marriage, it empowers them and gives them the choice to do what they want.

III. The History of Women's Rights in Marriage: An International Overview of the 20th Century (1900-1981)

Chapter III will give an international historical overview of the status of women's marital rights before the adoption of the Convention in 1981. This will enable a later comparison between the development of marriage rights of women in the period before the Convention and those changes that have happened years after. In this chapter, I will mainly look at the legislative developments or reforms made to marital rights in the 20th century, which will be the period from 1900-1981. If any developments mentioned that happened prior to the 20th century, such as the Napoleonic Code of 1804, they have proven important for the overall account of marital rights of women. I have chosen to limit the focus to this period, because it saw the start of fundamental changes to the marriage equality between men and women, whereas that had not happened before, as well as allowing for a clearer and closer narrative.

Admittedly, the available literature on women and marriage during the 20th century, especially that of the first half (1900-1950s), appears to be Western-oriented. It has proven rather difficult to find detailed accounts of the status of women's marital rights on the continents of Africa and Asia specifically. Therefore, generalization of these is sometimes necessary, but will still add to the analysis as a whole later on. Despite this, I will attempt to provide a complete picture of the status of women's rights across the world in the period of 1900 to 1981, with the limited resources that are of use.

1900s-1950s: A Rise in the Recognition of Marital Rights

During the period of the 1900s to 1950s, the recognition of the importance of women's rights had started to enter the political conversation in many countries. In pre-dominantly Europe and North-America, but also parts of South-America, the first wave of feminism at the end of the 19th century and beginning of the 20th century had ignited the demand for equal rights for women. Their main

aim was to extend the right to vote to women, but many also advocated for the economic autonomy of a woman, as well as their property rights, including those of married women (Dorey-Stein, 2018). The latter will extensively be discussed in this section.

Patriarchal Societies

At the beginning of the 20th century, most societies and their legal systems were set up in a patriarchal way. The *pater*, usually the father or the husband, was regarded to be the head of the family. They were commonly in charge of the finances, owned the property and carried the legal identity, while the wife was to be under the control of her husband (Htun & Weldon, 2018)

National Codes: Prohibition of Forced Marriage and Divorce

An example of this patriarchal hierarchy was laid down in the French Napoleonic Code of 1804. It put women at a substantial disadvantage to men, illustrated in, amongst others, article 213, which required a wife to be obedient to her husband (Napoleonic Code, 1804 p.59). According to Napoleon himself, a woman belonged to their husband “with body and soul” (Htun et al, 2018, p.292). The code did, however, establish some basis for the equality between men and women in marriage. A marriage required the consent of all parties involved and granted for a divorce to occur in special circumstances, such as when both agreed to it. Although, the code had been established at the start of the 19th century, it would prove to be an inspiration for several other documents and countries across Europe, as well as South-America. Considering this, many of these countries were Catholic, who did not allow for divorce until the mid-, and sometimes even late-, 20th century.

The Napoleonic Code of 1804 inspired the German Civil Code of 1900. Although, it was structured differently and included more comprehensive provisions than the French Code, they shared many similarities. The German Code, however, did slightly further expand the rights of married women, especially those regarding the acquisition and possessing of property. This code, in turn, influenced

other documents, and besides further developing those in Europe, it also reached several central Asian countries, such as China and Japan (Htun et al., 2018).

In 1917, the Ottoman Law of Family Rights was the first modern codification of Muslim Family Law, which principles were based in the Islam. These beliefs held the husband to be the head of the family, similar to other patriarchal societies across the world, but were different in a way that the wife's and husband's roles were supposed to complement each other within the family. The Ottoman Empire prohibited forced marriage and granted women greater access to divorce. These laws influenced later legislation in other Islamic countries, especially in the Middle East, such as Egypt, who in the 1920s extended the grounds for divorce (Htun et al., 2018).

Right to Property

A positive change to the marital rights of married women happened relatively early on in Europe and the Americas, specifically to that of their right to property. Even before the turn of the 19th to 20th century, some countries had already adopted legislation that allowed wives to manage and obtain property. In 1882, the United Kingdom passed the Married Women's Property Act, which gave women full autonomy over their possessions. Five years later, Costa Rica followed suit as the first Latin American country to automatically separate the property of a husband and wife upon the entry into marriage. Many of the European countries shortly after the United Kingdom granted married women these same rights, either on their own initiative, or because their legislation was based upon the German Civil Code of 1900. Exceptions to this include Spain, who would not see great changes to the inequalities within marriage until the 1970s, because of the presence of a dictatorship under general Franco (Sponsler, 1982), and France, which long held on to the principles laid down in the Napoleonic Code of 1804, even reversing prior changes made, such as the granting of married women the control over their income (Christofferson & Christofferson, 2006). South and Central American countries also changed their property rights system in the first half of the 20th century.

Where the Mexican Revolution of 1917 established further marital rights of women in the country, including that of owning property, several civil code reforms in El Salvador (1902), Nicaragua (1904) and Honduras (1906) maintained a separation of property between wife and husband (Deere & de Leal, 2014). The so-called *patria potestas*, the husband's control over their wife, however, remained in force in most countries of both of the continents throughout the first, and well into the second half of the 20th century (Smith, 2008). The table below, produced by Carmen Diana Deere and Magdalena Leon de Leal in their book *Empowering Women* (2014), gives an overview of several countries in South and Central America and the year in which they enhanced the property rights of women. Of importance here, are the data gathered in the third column, *administration of own property*, which mostly occurred in the first half of the 20th century and sometimes even before that, with a few exceptions, such as Guatemala in 1986.

TABLE 2.1. Enhancing Married Women's Property Rights, Selected Latin American Countries

	<i>Civil Code Reformed</i>	<i>Legal Capacity of Married Women</i>	<i>Administration of Own Property</i>	<i>Gender Equality in Household Representation and Management</i>
Argentina	1869	1968	1926	No
Bolivia	1830	1972	1972	1972
Brazil	1916	1962	1962	1988
Chile	1855	1979	1925	No
Colombia	1873	1932	1932	1974
Costa Rica	1841	1887	1887	1973
Cuba	1889	1917	1917	1975
Ecuador	1860	1970	1949	1989
El Salvador	1859	1902	1902	1994
Guatemala	1877	1963	1986	1998
Honduras	1898	1906	1906	No
Mexico	1866	1917	1870	1928
Nicaragua	1867	1904	1904	No
Peru	1852	1984	1936	1984
Uruguay	1868	1946	1946	1946
Venezuela	1847	1942	1942	1992

External Influences: Colonialism & The Spreading of Religions

With the arrival of European settlers during the 16th to 19th century, women in many African and Asian countries lost most of the economic control they had, as they were forced to follow the imposed colonial rules. Prior to colonialism, Africa and Asia were both home to many different cultures, customs and religions. In these multiple societies, there was generally a specific role prescribed to women, which came with her own rights, duties and advantages and while not necessarily equal, this position was also not completely inferior to that of men (Tripp, 2017). Many African communities encouraged women to work and they even made up the majority of those present in the agriculture (Smith, 2008). When several European countries started to forcibly take land across the world, they brought over their patriarchal rules and regulations, as partly discussed under *patriarchal societies*. This resulted in the compulsory man-woman divide, whereas it might not have been that way initially (Magdoff, Webster & Nowell, 2017; Sheldon, 2016).

Furthermore, the emergence and spreading of male-dominant religions, such as Christianity and Islam, had a certain impact on the access of equal rights for married women. For example, many countries in Africa and Asia saw the introduction of the Islamic religion, of which the principles were partially or fully brought into legislation. As mentioned previously under the section on *national codes*, the husband was in control of his wife's activities and such, which, thus, has been interpreted and enforced as male-dominance into the national rules of the country (Htun, et al., 2018).

To note, however, these developments did not necessarily install a patriarchal system, or similar beliefs, into these countries. Oftentimes, there already existed some form of a male-dominated society, which the arrival of foreign rulers and the spreading of religion had only strengthened or had further constrained the influence women previously had (Hirschman, 2016).

Decolonization

During the first half of the 20th century, decolonization took place in most African and Asian countries, consequently directing the attention away from the fight for equal marital rights for women (Eyoh & Zeleza, 2005). In Tunisia, for example, women's rights activists started to expose the inequalities between men and women in the 1920s and 1930s, but the struggle for independence side-lined these concerns (Salem, 2010). When in 1956 the country was no longer under French rule, the newly introduced legislation laid down some rights for women in marriage and was successfully amended over the years to include consensual marriage and the possibility of divorce.

1960s-1980s: Second Wave Feminism and Marital Power

Where the first wave of Feminism of the late 19th and early 20th century pre-dominantly fought for the right to vote, the movement in the 1960s and 1970s focussed on, among other issues, greater rights for women in marriage (Sheber, 2017). Second wave Feminism was brought about in the aftermath of World War II, during which the traditional role of women had considerably changed from the private into the public sphere but were forced back into the home shortly after (Burkett, 2016). This wave coincided with other movements that demanded greater freedom, such as the anti-War and the pro-LGBTQ+ demonstrations, which were fuelled by the general dissatisfaction of the political discourse. Feminists in the 1960s and 1970s advocated for equality between men and women in marriage, which included the wife's ability to work without their husband's consent, as well as doing away with the obedience clause. The ideas of the second wave of Feminism spread quickly across the world, reaching most continents by the end of the 1970s (Nour, 2013).

A Married Women's Right to Work

As mentioned previously, second wave feminism demanded the ability for a married woman to work, especially without the husband's permission, and would generally do so successfully. During the Second World War, many men went off to fight, leaving their jobs unattended. Women were

often asked to help out in the now empty work place, and, thus, entered a formerly male-dominated environment. After the war had ended, the men returned to their work, which forced women back into the home and their family responsibilities (Evans, 1995). Nevertheless, the efforts made by women's rights activists and the general call for greater equality during this period, lead to the acceptance of legislation in the 1960s and 1970s that would allow married women to work, without the husband's permission. China had already done so in 1950, among other changes, which vastly expanded the equality between men and women in marriage. In 1965, France would pass a law that would do away with the need for a husband's consent, while Ireland would not reform its rules until 1973, with Germany doing the same 3 years later (Allwood, 2016). Notably, many countries have adopted such a rule together with other laws that would ensure the equality between men and women, such as doing away with the obedience clause, which will be discussed in the following section.

Obedience to the Husband

The 'obedience clause', or oftentimes also defined as marital power, was being done away with in many countries in the 1970s and 1980s to achieve greater equality between men and women. Marital power was held by the husband, meaning that the wife was under the control of her husband and had to obey his wishes (Treas & Kim, 2016). As explained in the previous section, many countries tried to eliminate inequalities within marriage, such as the prohibition to work without the husband's consent, by getting rid of this obedience clause. Consequently, women would then have the ability to choose and represent themselves. Although, some countries had already abolished this principle in the first half of the 20th century, such as Sweden, which had granted women equal rights in marriage already in 1920, there have been numerous countries that have done so only in the beginning of the second half of the 20th century. The Netherlands got rid of marital power in 1958, where countries like Spain (1981), Peru and Switzerland (1984) had adopted 'packages of rights', which also lifted the obedience clause from married women (Htun, et al., 2018). To note, however, is

that several countries started to restrict the power of a husband, sometimes early on, sometimes during the 1970s, but did not get rid of it entirely until the late 20th, beginning of 21st century. For example, South Africa had already put certain restrictions on the obedience clause in 1953 but would not abolish it until reforms in the late 1980s and 1990s (Albertyn, 1993).

Customary, Religious and National Law: Contradictory Legislation

An obstacle to the development of women's marital rights is the often-contradicting legislation present in a country. During the colonial period, the European invaders, besides bringing in their own legal system, usually permitted the already existing rules to survive to some degree. This was done to divide and conquer, but ultimately led to a plurality of sources of law. The formal law system, customary law and religious law, thus, continued to be used in one country, making it difficult to realize the equality of women to men in marriage in a country (Cohen, 2006). In addition, customary or religious law often regulated matters of the private life, which includes that of marriage. These are, as mentioned before, generally also patriarchal in nature, with a more powerful role to men than women. Later authorities usually did not manage to have a grip over these rules, resulting in a disarray of rights. Practices like this, have carried on into the late 20th century, and oftentimes even into the 21st century. An example of this is Kenya, which will be closer looked at in Chapter VI, when I will be discussing the case studies of Kenya and Morocco.

International Concern: UDHR & ICCPR

Even before the Convention on the Elimination of All Forms of Discrimination Against Women was drafted in 1981, international attention was directed towards the global inequalities between men and women to marriage. In 1948, the United Nations adopted the Universal Declaration of Human Rights (UDHR) just 3 years after it had been founded. Besides the general, but inclusive first article, laying down that everyone has equal rights, article 16 stipulates the equal marital rights between men and women. It is very similar to article 16 of the Convention, where it discusses forced marriage

and equal rights before and during marriage, as well as divorce, however, the latter is seemingly more comprehensive. The International Covenant on Civil and Political Rights (ICCPR) of 1966 considers marriage in article 23, where it recognizes, in line with the UDHR, that consent is required, and that equal rights in all stages of marriage should be realized. The inclusion of the importance of marital rights for women in these two significant documents, among others, shows that the concern about the equality between men and women in marriage had already been on the agenda from the beginning.

Concluding Remarks on the History of Women's Rights in Marriage

To put it shortly, when CEDAW had come into force in 1981, the marital rights of women had already seen some positive developments. Although, many societies in the beginning of the 20th century were set up according to a patriarchal society, several national codes, such as the Napoleonic Code of 1804, they prohibited forced marriage and granted some rights to divorce. These codes influenced many other laws across the world, consequently, spreading these principles. However, they did retain other discriminatory rules, such as the wife's duty to obey her husband. Another change to women's marital rights came to that of a married women's right to property, which mainly occurred in Europe and the Americas in the first half of the 20th century. In Africa and Asia, colonialism and the spreading of religions caused many countries to be controlled by patriarchal legislation, such as the codes mentioned earlier, which imposed a compulsory man-woman divide that might not have been that way initially. The struggle for independence within these countries would set the fight for women's equality within marriage back, which resulted in the lack of reforms until the second half of the 20th century.

During the 1960s and 1980s, second wave feminism would advocate for greater rights within marriage, such as doing away with the obedience clause, as well as the prohibition to work without a husband's permission. This came in the aftermath of the Second World War, which had allowed

women more economic freedom by default. Many countries followed the demands by civil society, granting married women independence from her husband in work and her activities.

An obstacle to these developments, however, is the often-contradicting legislation within a country. During the colonial period, European settlers brought in their legal systems, but also allowed these communities to be governed by their own rules and principles. This led to a multitude in sources of law, where customary, religious and national law started to exist along-side each other. Such practices have created a significant issue to the realization of women's marital rights, which will be further discussed in Chapter V and VI.

It should be noted, however, that these changes have not been uniform, with some countries having developed equal marital rights relatively early on, while others have lacked behind. This chapter had to rely on several generalizations, either to make it more comprehensible and discover 'trends', or because the literature did not allow for more information. Chapter V will also shortly look at this lack of homogeneity within legislative developments.

IV. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

In this chapter, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) will be looked at more closely. It will consider the events that have led up to the creation of the Convention, the content and what mechanism it uses to uphold it, which is considered to be the Committee. Furthermore, it will discuss article 16, which has been dubbed the 'marriage article', as well as the reservations that have been put on it. The full text of the Convention has been added in Appendix I.

The History of CEDAW

Chapter II already shortly introduced the Convention and the principle of equality it has been established on. It also mentioned the influence of Feminism and Feminist Legal Theory, who advocated for the woman's equality to a man during the 1970s and 1980s, on the need for and the development of a treaty on women's rights. Since previous international human rights law had failed to adequately address the inequalities faced by women, it was believed that a separate Convention was needed to combat discrimination and violence against women. The significance of women's rights activists input on the Convention was seen early on, with their presence within the Commission on Status of Women, who would eventually draft CEDAW, which will be discussed in the following sections.

The Commission on the Status of Women

Established in 1946, the Commission on the Status of Women (CSW) had been tasked by the United Nations with the "promotion of gender equality and empowerment of women" (UN Women, n.d.). Although, the Commission was initially designed to be a sub-body of the Commission on Human Rights, it was given a separate status after international pressure by women's rights activists, such as Bodil Bergtrup. A true pioneer that would later play a critical role in the content of the Universal

Declaration of Human Rights (UDHR), she became the first Chairperson to the commission (Linder, 2001). The CSW was asked to make recommendations on women's political, economic, civic and social rights to the Economic and Social Council (ECOSOC) and was to give general recommendations on pressing issues involving women (UN, n.d.). Notably, this commission has been involved with several landmark documents regarding women's rights, including the Convention on the Nationality of Married Women. It would eventually also be responsible for the foundation of what later was to become CEDAW. Although, it was long thought that the general human rights treaties, such as the UDHR, protected the rights of women adequately, they failed to cope with the particular violence and discrimination perpetuated against women. Together with the pressure of women's rights activists and feminism, who had started to gain momentum in the 1960s, the General Assembly of the United Nations, would, in 1963, therefore, request the commission to draw up a document that would deal with the equal rights of men and women. Four years later, they would adopt the CSW's Declaration on the Elimination of Discrimination Against Women. Despite the treaty not being legally binding on its State Parties, much controversy and reluctance surrounded article 16, the equality within marriage and family life. Another issue with this declaration was the implementation of its content, especially since it was seen as a mere political statement. In 1974, it was decided that the commission was to draw up a single, internationally binding treaty that had the aim to end all discrimination against women. Working groups within the commission drafted up the text of the Convention, with the help of the Third Committee of the General Assembly (Social, Humanitarian & Cultural issues) (United Nations, 2009b). In 1979, the General Assembly adopted the Convention with 130 votes in favour and 10 abstaining to vote. When on September 3, 1981, 30 days had passed since the twentieth State had ratified the Convention, which had been set up as the requirement for passing, CEDAW entered into force. Notably, the convention was recorded to be one of the fastest human rights conventions to become effective so soon after it had been accepted by the UN (UN Women, 2009b).

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

CEDAW is often considered the “international bill of rights for women” (UN Women, 2009a). It is the principal treaty that deals with the protection and realization of women’s rights in the public, as well as the private sphere. When a country decides to accept CEDAW, they agree to take the actions necessary to end any discrimination against women. They will need to rid their laws and legal system of all inequalities between men and women, adopt legislation and institutions that protect the interests of women, and make sure that no person or organization acts in a discriminatory way towards women. To date, 189 countries have ratified the Convention, with South Sudan being the latest country to accede to the treaty in 2015 (UN News, 2014). Only 7 countries are not a member to the Convention: The United States and Palau, having signed but not ratified, and The Holy See, Iran, Somalia, Sudan and Tonga have not signed, nor ratified the Convention (United Nations Treaty Collection, 2018). The treaty is legally binding upon those who have ratified or acceded to it and are, thus, meant to translate these provisions into legislation and promote the principles to their civil society. Member States are also obligated to report on their efforts to achieve the goals set in the Convention, they have to do so at least every four years. Figure 1, shown below, gives a clear overview of the mechanism of CEDAW, illustrating the Committee and its tasks, as well as the Optional Protocol. These particularities will be looked at in greater detail in later sections within this chapter.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

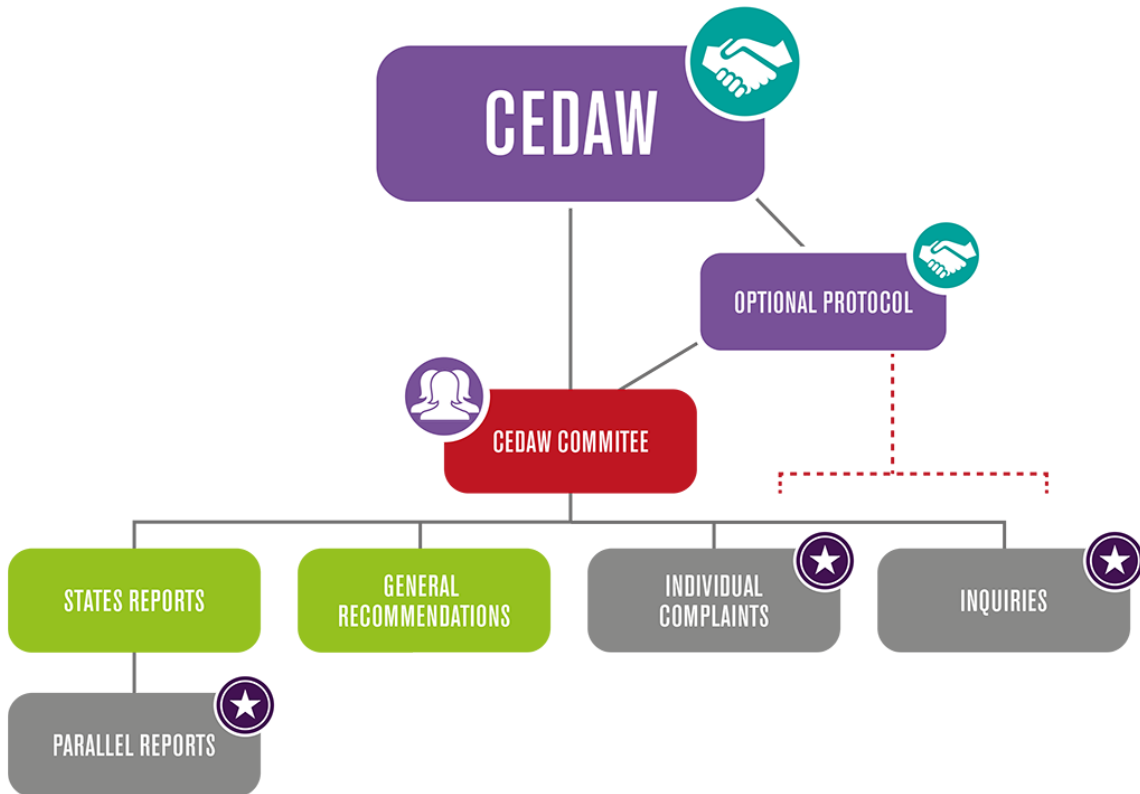


Figure 1: The mechanism of the Convention on the Elimination of All Forms of Discrimination Against Women, published by LSE, Centre for Women, Peace and Security (n.d.).

A Widely Accepted Convention: Explained by International Relations Theories

The Convention has been considered to be one of the fastest adopted human rights treaties, which currently has 189 State Parties, with only 7 countries that are not a part of it. Over the years, several international relations theories have tried to explain the reasons for accepting, or not accepting of human rights treaties. Where the theory of Realism considers human right treaties to be acceptable in as long as they are beneficial to the State and see the commitment to such documents oftentimes as ‘just talk’, Liberalism regards international human rights law as the embodiment of universal rights, which is what should ultimately be strived for. Constructivists, on the other hand, argue that human rights have become the international standard for States to follow, this due to the importance attached to universal values of equality. They say that “if states reject universal values outright, they

will have to pay a price: this could take the form of condemnation, exclusion..." (Dunne & Hanson, 2008, p.64).

Following this, there can be multiple reasons identified as to why the Convention has been so positively welcomed. According to research done by Oona Hathaway (2007), the level of enforcement laid down in a treaty can be of significance. If a human rights convention, like CEDAW, lacks the accountability, State Parties are more likely to accept it, even if their behavior does not match up with what has been laid down, knowing that they will not be held responsible for their actions. This seems to follow the theory of Realism, where the conversation on human rights is empty and considered to be play-pretend. CEDAW generally lacks these effective enforcement mechanisms, with the treaty body being the only source for accountability. Additionally, States might want to accept international human rights treaties to 'signal' to the international community that they are willing to comply with these standards, which will seemingly help their reputation. Constructivism explains this reasoning, which is trying to avoid social repercussions within the community (Trachtman, 2012) The amount of parties to the Convention, regardless, shows a level of willingness to promote equality between men and women. These assumptions will be further considered in the next chapter, where the withdrawal of reservations to article 16 are discussed (Ch.V).

Content of the Convention

A preamble and 30 articles set out what discrimination against women exactly entails, calls upon the end of this and demands the principle of equality to apply to women's rights. The first article to the Convention gives a definition of the term "discrimination against women":

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Following articles outline the State Parties responsibilities to ensure equal rights between men and women and the forms of discrimination against women that have to be combatted. To quickly summarize:

- Articles 2 – 4: lay out the general obligations, allowing for, for example, a government to adopt temporary special measures to speed up equal opportunities (art.4);
- Article 5: Member States need eliminate any use of stereotypical inferiority of women and emphasizes the importance of both men and women in a child’s upbringing;
- Article 6: prohibits the trafficking and exploitation of women for prostitution;
- Article 7 and 8: the political rights, such as the right to vote or participate in a nation’s government;
- Article 9: equal right to nationality between men and women, and a woman’s ability to pass their nationality on to their children;
- Articles 10 and 11: right to work and education for girls and women;
- Articles 12 and 13: equality in health care and economic and social life
- Article 14: protects women in rural areas.
- Article 15: establishes women’s legal equality;
- Article 16: safeguards the women’s equal rights in marriage and family life, being the main focus of this thesis;
- Articles 17 – 30: determine the exact workings of the treaty, with art.17 establishing the Committee of the Convention, which will be discussed later on.

Optional Protocol

On October 6, 1999, the General Assembly adopted, without a vote, an Optional Protocol to the Convention, which would come into force in 2000. It consists of 21 articles and currently has 109 State Parties, 80 short of the original Convention. The Protocol permits the treaty body of the Convention to “receive and consider complaints from individuals or groups within its jurisdiction” (UN Women,

2009d). It maintains two procedures: 1) an individual complaint mechanism for women to report the violation of rights laid down in the Convention, and; 2) an inquiry procedure, giving the Committee the power to start an investigation into grave violations of women's rights. State Parties can, however, upon ratification, decide not to allow the inquire procedure within their territory. Despite the Optional Protocol offering further accountability of State Parties' actions, it will not be considered in the research of Chapter V. This because the lack of ratification from the States who were already Party to the Convention.

The Committee

When CEDAW was adopted, it not only included articles on the elimination of discrimination against women, but also regulated the implementation of the treaty. Article 17 established the Committee on Elimination of Discrimination Against Women (from here on out *the Committee*) and their capabilities in regard to the Convention. From 1982 onwards, the Committee was meant to ensure the realization of the rules set out in the Convention. It consists of 23 people who are experts on the problems women face. They are elected by the State Parties, but the Committee requires them to be diverse and equally distributed across the world. Each expert serves a term of four years, with half of them being replaced every two years. Their mandate requires the Committee to keep an eye on the progress made for the equality between men and women in the CEDAW Member States (United Nations, 2006; UN Women, 2009e).

Firstly, the Committee can make general recommendations on prevalent issues women might face that they think all the State Parties should pay more attention to. An example of this is general recommendation no. 19 in which the Committee wanted the State Parties to include data on violence against women and how they would combat this problem in their national reports. Secondly, the Committee reviews these national reports, which the Convention demands the State Parties to hand in one year after the ratification of (or accession to) the treaty and from then on out every four years.

They consider these reports at each of its sessions, the latest session, the 70th, having lasted from July 2nd to July 20th of 2018 (UNHR, 2018). These reports include the efforts made by a country to improve the equality between men and women and, where applicable, the reasons for not wanting or being able to implement a certain provision.

The Reporting Cycle

As mentioned above, the Committee is tasked with considering national reports, or so-called country reports. Figure 2 highlights the different steps of the reporting cycle used by the treaty bodies of the United Nations, which includes the Committee. Firstly, a State Party has to submit a country report detailing the actions that have done to comply with the Convention. After the Committee has considered this report, a conversation between the Committee and the State Party starts, communicating and responding to a list of concerns. Of importance to the compliance with CEDAW are the last two steps, namely the Committee's reports containing their concluding observations and recommendations. These will show whether the Committee thinks the reforms made, or lack thereof, are to the standard of the Convention.

Criticism: Lack of Enforcement and Reporting Issues

Although, the CEDAW Convention is regarded to be legally binding, it lacks any effective enforcement mechanism. The Committee can assess the compliance with the Convention through the country reports, but this happens on a voluntarily basis and the recommendations made by the Committee are not enforceable (Purvis, 2011). Furthermore, the Committee relies on the State Parties to self-report, but this does not always happen consistently, like in the case study of Morocco in Chapter VI. It, thus, sometimes experiences difficulty with retaining the overview of which country has complied and which have not (Burrill, Roberts, Thornberry, 2010). It should also be noted that the country reports submitted to the Committee do not always contain reliable data and evidence, either because it is not available, or the country is unwilling to do so. This casts a shadow of doubt on the credibility

of these reports. Nevertheless, the concluding comments or observations by the Committee on the country reports, will prove to be valuable in determining whether a country has followed the principles of CEDAW (Shin, 2004).

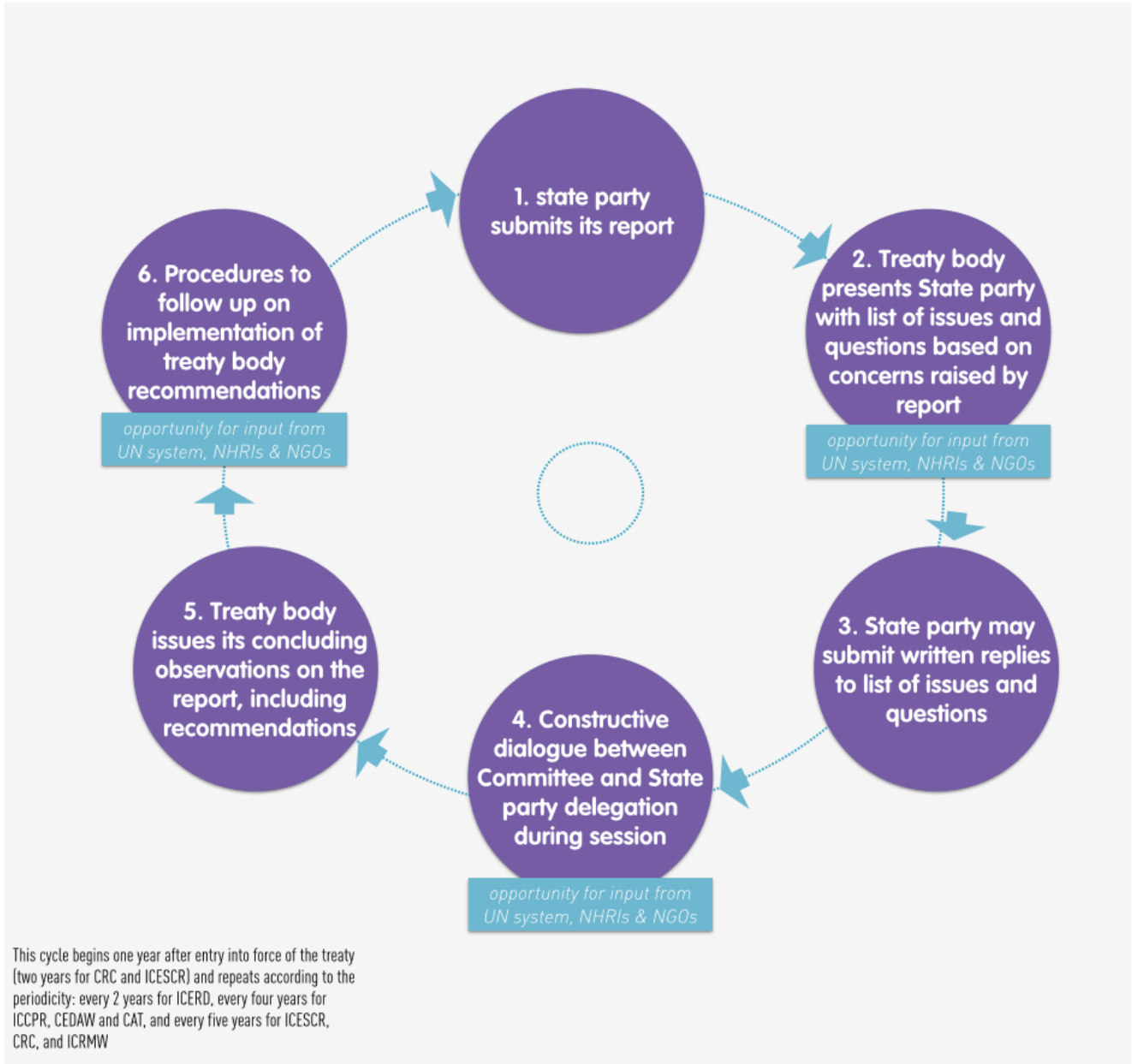


Figure 2: The reporting cycle under the human rights treaties, published by Tools for Rights (n.d.)

Article 16

Although, the Convention has other articles that mention the marital rights of women, such as article 9, where women should be allowed to pass their nationality on to their child, regardless of their marital status, or article 11(2), which considers marriage and maternity as grounds for non-

discrimination in the field of employment, article 16 harbours the general principles for women's rights to marriage. It primarily focusses on the relation of women to marriage, their entry into it, and at its dissolution, but also recognizes their rights in family life:

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

As set out in Chapter II, the research has been built upon the principle of equality, as applied to marital rights. It has focused on these rights from the perspective of a woman in and to marriage. Consequently, it has followed the rights of entry into marriage, during and at its dissolution, which are found in the first paragraphs sub-paragraphs (a) and (c). Forced marriage or the need for consent is seen in (b), the right to work in (g) and property rights in (h). Sub-paragraphs (d) to (f) will not be considered, seeing as they relate more to family life, which can be related to marriage, but is not necessarily connected.

Reservations to Article 16

Whenever a country is to accept an international treaty, they are often allowed to make reservations to certain articles. As laid down in article 2(1d) of the Vienna Convention on the Law of Treaties, a reservation is "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify

the legal effect of certain provisions of the treaty in their application to that State". States, thus, can become a party to a treaty, while not accepting the obligations under one or more articles. A treaty, however, does not always allow for a reservation to be lodged. A reservation is deemed impermissible when the treaty itself excludes this possibility, either for all of the articles, or the article in question, or "the reservation is incompatible with the object and purpose of the treaty" (art. 19, Vienna Convention on the Law of the Treaties) (Kirgis, 2003). To note, human rights treaties, like CEDAW, are generally not considered to be an obligation of one State Party to the other State Parties, but rather to the rights of individuals (Ziemele & Liede, 2013).

According to the German Institute for Human Rights (2018), CEDAW is one of the treaties with the most reservations lodged against its content. Although, the Convention allows a State Party to make a reservation to an article, these cannot be incompatible with the "object and purpose" of the treaty (UN Women, 2009c). The Committee considers article 16 to be such an article. Many State Parties have, nonetheless, made a reservation to either article 16 as a whole, or parts of the article. Out of the 25 countries that object to article 16, most state a religious or cultural reason for doing so (United Nations Treaty Collection, 2018). An example of this is Singapore's reservation to article 16: "In the context of Singapore's multi-racial and multi-religious society and the need to respect the freedom of minorities to practice their religious and personal laws, the Republic of Singapore reserves the right not to apply the provisions of...article 16, paragraphs 1(a), 1(c), 1(h), and article 16, paragraph 2, where compliance with these provisions would be contrary to their religious or personal laws" (United Nations Treaty Collection, 2018). The Committee does not accept these reservations and states: "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” (The Committee, 2013). Although, the Committee urges the State Parties who lodged a reservation against article 16 to withdraw these, most reservations still remain.

V. The Impact of CEDAW: An International Overview of the Marital Rights of Women

This chapter will examine the extent of the impact CEDAW has had on the marital rights of women. It will consider the Committee's assessment of the development in equality in marriage, by general recommendation, as well as the withdrawal of and remaining reservations. Furthermore, it will look at the positive changes that have been made, as well as the lack of improvement in women's marital rights. It will also review the possible other influences, besides the Convention, on the legislative reforms.

General Recommendations

As mentioned in the previous chapter (Ch.IV), the CEDAW Committee is allowed to make general recommendations when they believe the State Parties need to pay more attention to a specific issue involving women. In 1994, they issued at its 13th session general recommendation no. 21 on the equality in marriage and family relations. Furthermore, the Committee has also given further comments on the compliance with article 16 in 2013.

General Recommendation No. 21

In their general recommendation no. 21, the Committee stressed the importance of realizing equality within marriage between men and women to their State Parties, noting that not enough had been done yet. Their comments acknowledged the inferior position women often hold in private life and urged for this to be changed immediately.

Following these general remarks, the report separately mentions the sub-paragraphs of the first paragraph of article 16. For sub-paragraph (a) and (b), the Committee states that, although, most countries have asserted their legal compliance with the Convention, oftentimes the opposite is the case. They argue that "a woman's right to choose a spouse and enter freely into marriage is central to

her life and to her dignity and equality as a human being”, but that several reports by Member States show the existence of forced marriages, usually based on custom or religion, or arranged marriages in exchange for money or security. Article 16(1(c)) concerns the equal marital rights of women during and at the dissolution of marriage. The Committee notes that many countries do not comply with this sub-paragraph of the Convention, but rather leave religious law, customary law, or common law principles to deal with the issue of marriage. This discrepancy between the legal system and practice often causes women not being able to access these rights, leaving the control over the family to the husband. They press the State Parties to realize adequate legal protection for women in and at the end of marriage. Sub-paragraph (g) is discussed next, where the Committee recognizes that a woman should have the ability to provide for the family in the same way the husband can. Whenever a law or custom restricts a woman to do such things, there would not be full equality in marital rights. The property right, as laid down in 16(1(h)), should be easily accessible to women. According to the Committee, “any law or custom that grants men a right to a greater share of property at the end of a marriage... is discriminatory and will have a serious impact on a woman’s practical ability to divorce her husband...” (The Committee, 1994, para.28). There are, however, countries that do not grant women these rights, and even when they do, it is often difficult to make use of them. Oftentimes, women are not deemed to be needed to be consulted when it concerns common property, and the husband remains to have control over their marital property. All of the above practices, according to the Committee, consequently, need to be abolished if equality is to be accomplished.

Furthermore, the Committee asked for the standing reservations to, especially, article 16 to be withdrawn immediately. It was also noted that some countries, despite having ratified and having not put down any reservation, still have discriminatory legislation and, thus, do not adhere to the Convention (The Committee, 1994).

By putting out this general recommendation in 1994, the Committee showed that it was not satisfied with the progress made, or the lack thereof. It can be said that article 16 of the Convention had not been followed closely enough and, thus, the marital status of women had not improved enough by the 1990s, a decade after the adoption.

Further Comments

In 2013, the Committee once again issued several comments on the compliance with article 16, the equality within marriage, noting that the development in many countries had not been fully realized yet. It acknowledges that several State Parties still operate with discriminatory legislation, and repeatedly calls upon these States to withdraw their reservations, which they have found, are oftentimes linked. In addition, it states the problematic contradiction in use of laws in many countries. It declares the discrepancy between the constitutional provisions, which generally have some level of non-discrimination, and the customary or religious laws that regulate the rights in marriage, to be impermissible (The Committee, 2013). They urge the State Parties to create a unified legal system, eliminating any contradictions between the laws. This concern will be discussed more extensively in a later section within this chapter.

Withdrawal of Reservations

At the time of ratification or accession, many different State Parties lodged a reservation against article 16, either partially, so to certain (sub)-paragraphs, or fully, but some have been withdrawn later on. As mentioned above, they did so for a variety of reasons, but were often based on either religious reasons, the perceived incompatibility between the country's Constitution and the Convention or wanting to protect the customs practiced by minorities. Over the years, however, several countries have decided to withdraw, again partially or in full, their reservation to article 16, sometimes on the insistence of the Committee, or out of their own actions. Countries that have done so include, among

others, the withdrawal of reservations of article 16 partially by Singapore in 2011, and fully by Thailand in 2012 (Royal Thai Embassy, 2012), Turkey in 1999 and Morocco in 2011 (Freeman, 2009; United Nations Treaty Collection, 2018). The latter country will be discussed more in detail in the next chapter. The withdrawal of a reservation, however, does not necessarily mean that a State has now amended its legislation in accordance with article 16, as the Committee found in their general recommendation no. 21. It does imply a degree of willingness to change the situation and grant women partial or full access to equal marital rights. Despite these withdrawals, there are currently still 25-member States that have some form of reservation against article 16 (United Nations Treaty Collection, 2018).

A reason for these withdrawals can be found within the conversation held between the Committee and the State Party. Through the responses by the Committee to the country report, either when listing their issues, or at the end of the cycle in their concluding observations, they urged the State Party to get rid of their reservation on art.16. Some States have replied by re-visiting their reservations, to either completely or partly withdraw them (Pauw, 2013).

A Positive Development: Abolishing of Marital Rape and 'Marry-Your-Rapist' Laws

Despite the slow progress, many countries have currently criminalized marital rape and outlawed the possibility for rapists to marry their victims in order to avoid punishment. The first concerns the making illegal of un-consensual sexual intercourse between spouses and can be brought under article 16(1(b)), the prohibition of forced marriages, or (c) the same rights during and at the dissolution of marriage. When marital rape is considered to be legal, it allows for the husband to abuse his wife, and the wife is unable to prosecute or fight back against him. For years, countries have had these protections for rape within marriage laid down in their laws, usually as an exception to the punishable offence of rape. Although, some countries have abolished it even before the Convention was drafted, like Poland in 1970, it has taken well into the 21st century for the majority of the countries to do away

with this clause. Most of Europe and North and South America began taking out the provisions on marital rape in the second half of the 20th century, generally after the Convention: Spain did so in 1989, France in 1994, Mexico in 1991, and Germany, Peru and Colombia waited until 1997 (Michalska-Warias, 2016). For other countries, the law on criminalizing marital rape would not arrive until later, sometimes even after 2010. In 2000, Namibia would do away with their marital rape provision, while Thailand did so in 2007, Sierra Leone in 2012 (UN Secretary General, 2012) and South Korea in 2013 (YonHapNews Agency, 2013).

The same trend can be seen for the 'marry-your-rapist' laws. Such legislation would allow a rapist to avoid prosecution if they would marry their victim. This concern can be brought under article 16(1(a)), the entry into marriage, or 16(1(b)), with free and full consent, as women are often forced by their husband-to-be, as well as their surroundings, such as family, to enter into the marriage. This was done to preserve the honour to the family and limit loss of face. Reforms to these 'marry-your-rapist' laws started to occur in the second half of the 20th century and well into the 21st century. Italy had done away with this provision in 1981, Peru in 1998, and Egypt one year later, in 1999. In the 2000s, Romania got rid of their 'marry-your-rapist law' in 2000, Ethiopia in 2005, Uruguay in 2006 and Costa Rica in 2007. Recently, more countries have decided to repeal such legislation: Morocco in 2014, and Tunisia, Jordan and Lebanon in 2017 (UNHR, 2017) (Begum, 2017). The United Nations has considered these developments a sign for the end of these laws to exist.

Lack of Improvement: Legislation Discrepancies

As mentioned throughout the thesis, many countries have allowed and still allow the existence of a plurality of sources of law, such as a combination of national, religious and customary law. The Committee has, in their general recommendation, but also continuously in their responses to country reports, recognized this to be an obstacle to equality within marriage, as there is no clear protection for them (The Committee, 2013). Oftentimes, personal matters, such as rights in marriage, are

regulated by religious or customary law, and, although, the national legislation might have laid down non-discrimination principles, these laws often do not. Since they are based on a different division of roles than the Constitution of a country, they follow rules that match these. Usually, however, women are given less access to divorce and property. An example of this is Singapore, which allows their minorities to practice their own religious and customary laws and refuses to unify these (Khoo, 2017).

Furthermore, in some countries the national legislation might encourage equality within marriage in theory, but in practice these are regulated by customary and religious traditions. For example, those living in rural areas often do not have the awareness of the national women's marital rights, or simply refuse follow them, resulting in certain areas being ruled by tradition and custom. This obstacle to improvement is also discussed in the case study of Kenya, in Chapter VI.

Other Influences: Women's Rights Movements and NGO's

In the developments towards equal marital rights for women, women's rights movements, feminist activists and NGO's have proven to have played a crucial role. During the 1970s and 1980s, when the second wave of Feminism spread across the world, national NGO's and activists started to put pressure on their country to reform their discriminatory marriage laws. They tried to keep this political conversation going until equal marital rights for women were passed, something which was often met with resistance (Nazneen, 2017). This significant position of women's rights movement and NGO's can be seen in the events leading up to the 1982 reform of Venezuela. Women's rights activists in Venezuela had started to become active and organize themselves in the late 1960s. Their presence would seemingly increase when the international community turned their focus to the recognition of women's rights. With the arrival of the development of CEDAW and equality high on the international agenda, the women's rights movement seized the opportunity to push reforms through (Wagner, 2005). Both the case studies in Chapter VI also show the impact women's rights movements and NGO's have had on the development of equality within women's marital rights.

Cooperation between the Committee and NGO's

The importance of women's rights movements and NGO's to the discourse on equality between men and women has also been recognized by the Committee. They acknowledge that the efforts made by these activists are complementary to the Committee's work, as well as their role in raising awareness for compliance with CEDAW. The Committee, therefore, decided to invite the NGO's and women's rights activists into the conversation. They are asked to be present at Committee meetings, make up their own reports regarding the development of countries, and voice their opinions on issue that arise. In addition, women's rights movements and NGOs are able to give evidence that the country reports might not give (Shin, 2004).

Concluding Remarks on the Impact of CEDAW

After the adoption of CEDAW in 1981, several reforms to the marital rights of women have happened, but it has been a slow and difficult process. In 1994, just over 10 years after the Convention had come into force, the Committee expressed their concern over the development of equality within marriage between men and women in their general recommendation no. 21, stating that not enough had been done. A positive development would come to the prohibition of marital rape and the abolishing of 'marry-your-rapist' laws in many countries in the late 20th century, as well as the 21st century. Although, some countries had done away with these provisions relatively early on, most of Europe and the Americas did so in late 20th century, while other countries made these changes in the 21st century, with some recent reforms just over a year ago.

An obstacle to the improvement of women's marital rights are the plurality of sources of laws that exist in many countries. In 2013, the Committee acknowledged this problematic contradiction in their general comments. If a country has multiple sources of law, written and unwritten, there is a lack of clear protection for women, especially if they live in rural areas, which has proven hard to reach for the national legislation.

Although, some of the reservations to article 16 seems to have been removed upon conversation with the Committee, the legislative reforms have also known other influences. Women’s rights movements and NGO’s have proven to have played a significant role in the development of equality within marriage between men and women. The Committee has also recognized their important position within the public sphere, as well as their role in bringing awareness to CEDAW, consequently stimulating cooperation between the Committee, the State Parties and the NGO’s.

Lastly, as pointed out in Chapter III already, the legislative developments within women’s marital rights have not been uniform. An example of this is the right to work. While a majority of the countries had done away with the principle of the wife having to ask her husband for permission if she wished to work in the second half of the 20th century already (Ch.III), nowadays there still remain countries with such laws in place. Figure 3, shown below, states the 18 countries that have not yet done away with such legislation, and, thus, a wife requires, by law, their husband’s permission to work.

The 18 countries where women need to ask permission to get a job

Bahrain
Bolivia
Cameroon
Chad
Congo, Dem Rep.
Gabon
Guinea
Iran
Jordan
Kuwait
Mauritania
Niger
Qatar
Sudan
Syria
United Arab Emirates
West Bank and Gaza
Yemen

Source: Women, Business and the Law database

Figure 3: 18 countries where women need to ask permission to get a job, published by World Economic Forum (2015)

VI. The Impact of CEDAW: Case Studies of Morocco and Kenya

Chapter VI will consider the two case studies of Morocco and Kenya. The two case studies will adopt the same framework as earlier chapters, where the situation with women's marital rights prior to CEDAW accession will be discussed first, followed by the reforms, or lack thereof, that occurred after. It will also see whether the changes have been the result of CEDAW, or if other actors were of influence.

MOROCCO

Considered by the United Nations as a "CEDAW success" (Byrnes & Freeman, 2011), Morocco acceded to the CEDAW Convention in 1993, almost a decade after it had come into force. The country had initially put out a reservation against article 16, besides others:

The Government of the Kingdom of Morocco makes a reservation with regard to the provisions of this article, particularly those relating to the equality of men and women, in respect of rights and responsibilities on entry into and at dissolution of marriage. Equality of this kind is considered incompatible with the Islamic Shariah, which guarantees to each of the spouses rights and responsibilities within a framework of equilibrium and complementary in order to preserve the sacred bond of matrimony.

The provisions of the Islamic Shariah oblige the husband to provide a nuptial gift upon marriage and to support his family, while the wife is not required by law to support the family.

Further, at dissolution of marriage, the husband is obliged to pay maintenance. In contrast, the wife enjoys complete freedom of disposition of her property during the marriage and upon its dissolution without supervision by the husband, the husband having no jurisdiction over his wife's property.

For these reasons, the Islamic Shariah confers the right of divorce on a woman only by decision of a Shariah judge.

In 2011, Morocco, however, decided to withdraw these reservations (United Nations Treaties Collection, 2018). They had decided to do so after legislative changes, which will be discussed in a later paragraph.

Morocco prior to CEDAW

In 1912, Morocco had for the most part become a French protectorate under the *Treaty of Fez*, while Spain was granted power over the southern regions that same year (Hirschberg, 1981). Notably, the difference between a colony, like Kenya was under Great Britain, and a protectorate, like Morocco

was to France, is that a country under the latter remains a sovereign state, while the first does not. Despite this, Morocco had no real power, as France had taken over the authority (Ziccardi Capaldo, 1995). Similar to other African and Asian countries in the first half of the 20th century, nationalism greatly increased in Morocco in the 1920s. The fight for independence came to an end in 1956, when both France and Spain gave into the demands for self-government (Guermoudi, 2018) (Denoeux, 2011). A year after the separation, Morocco enacted the first Personal Status Code, also known as *Moudawana*. The Moroccan women's movement, which already called for increased equality within marriage in 1946, but had their sentiments side-lined during the struggle for independence, was not satisfied with this new law. The Moudawana of 1957 included provisions on the obedience of the wife to her husband, while he needed to provide financial care, as well as the wife's limited access to divorce (Sadiqi, 2011). Furthermore, a husband was regarded to be the head of the household, and a woman could be forced to marry (Harrak, 2009). To be noted, here, is that this Moroccan personal law is largely governed by the principles of Islamic Sharia law, with some minor French influences, remainders of the colonial period (Virkama, 2006). Over the following years, the Moudawana proved rather resistant to modification. During the 1960s and 1970s, the women's movement were gradually started to being involved in the political conversation, but the calls for change were largely ignored. In 1991, the Union for Female Action (UAF) started a campaign to improve the Moudawana. They faced a great deal of criticism from several groups who considered these developments to be a danger to the Islam. Together with the minimal support of King Hassan II, who had assumed political power and actively pushed for legal reforms but was also known for his grave human rights violations (Fisk, 1999), the Personal Status Code saw some reforms in 1993. Most prominently, it did away with forced marriages, now requiring a woman's consent to marry, as well as the prohibition on a father to make his daughter get married. These minor reforms were to the frustration of the women's movement, who had bargained for much more, however, it would eventually lead to greater legal equality within marriage (Deiana, 2009; (Harrak, 2009).

The Impact of CEDAW: Has Morocco Improved Women's Right to Marriage?

As mentioned previously, Morocco had acceded to the CEDAW treaty in 1993, with a specific reservation lodged against article 16. In its concluding comments of the 1997 country report by Morocco, the Committee stated their disappointment on the reservations made, and the continuous inequality within their laws, especially within marriage, that are in contradiction to the Convention, but applauded their commitment to realizing human rights by signing the treaty (The Committee, 1997). In 1998, the discussion continued to move forward when Abderrahmane Youssoufi, the then prime minister, decided to turn his attention towards equality between men and women. He proposed the "*Plan d'action national pour l'intégration de la femme au développement*" (or the Plan for the Integration of Women in Development) , linking it back to Morocco's international obligations. The plan included the common property rights upon divorce, as well as the prohibition of the repudiation of a wife. Again, such changes were criticized by those who deemed it to be going against religion, with some arguing that these suggestions are a reflection of the "westernization" and international pressure and to negatively transform the Moroccan identity. In 2000, the plan was both supported and detested in two separate rallies, attracting 500,000 people and 2 million respectively. The new King, Mohammed VI, who had taken to the throne in 1999, was of the opinion that the Islam and human rights are compatible with one another, neither of them excluding the other.

The Moudawana of 2004

In 2003, the King spoke to the Moroccan Parliament, introducing a new *Moudawana*, that would replace, rather than reform the original from 1957. This led to the adoption of a new code in 2004, which was deemed to be "an example to those who argue that equal status within marriage is compatible with *shari'a law*" (Deiana, 2009, p.73) and was "considered one of the most progressive legal texts in the Arab world" (Sadiqi, 2010, p.4). It laid down the principle of equality between men and women within the family, added the right to divorce by consent of both parties before a judge, and they are bound to the division of marital property when they separate. The code, however, did

not do away with the husband's possibility of repudiation of the wife, or the compensation a wife had to pay to her husband when she desired divorce (Sadiqi, 2010). Nevertheless, the United Nations believed this reform to be a "CEDAW success" (Byrnes et al., 2011), acknowledging the efforts by human rights advocates and the progressive stance taken by the "first feminist" King (Elboubkri, 2013). During the period after the code had taken force, the implementation of it seemed to lack severely behind. The judiciary system was either not familiar with, or simply did not want to follow the 2004 Family Code, and many women had not been made aware of their newly gained rights (Deiana, 2009) (Sadiqi, 2010). In 2008, the Committee applauded the adoption of the new Family Code in their concluding comments to Morocco's third and fourth periodic reports. It, however, did voice their concern over Morocco's lack of information on the implementation of earlier given recommendations by the Committee, and they, therefore, urged them to take priority on the new comments given. These included the worry about the disparity between the equality before the law and that within practice, urging them to enact legislation that would reach into both the public and private sphere, and bring awareness to these new rights, especially giving attention to rural women, who seem to lack behind, as well as the suggestion to withdraw the reservation on article 16. The Committee also called upon the country to remove any discriminatory laws that still obstruct the full equality between men and women in marriage, pointing to provisions on divorce and the distribution of property based on separation, "which often discriminates against women" (The Committee, 2008, p.8, para.39).

2011 Reforms

The Constitution would again be amended in 2011 to include the general protection of equality between men and women, but no change has been made to the *Moudawana* since 2004. Despite this, an outcry over the suicide of a 16-year-old girl following her forced marriage to the man who raped her, saw the 'marry-your-rapist law' being outlawed, which was part of the Penal code (Mariappuram, 2015). In 2012, Amina Filali was raped by a man, and she was, subsequently, forced to marry him by her parents and a judge to protect the family honour (Flock, 2012) (Al Jazeera, 2014). When she killed

herself soon after, national and international protests broke out against article 475 of the Moroccan penal code, which allowed the perpetrator to marry its victim to escape punishment. Two years of intense lobbying by human rights organizations resulted in the elimination of the ‘marry-your-rapist’ law in 2014 (Alami, 2014).

Withdrawal of Reservation

Although, Morocco had announced that they would withdraw the reservation to article 16 in 2008, they did not do so formally until 2011 (Unicef, 2011) (Zven Elliott, 2014). King Muhammed VI argued already for withdrawal in 2008 (Witte & Green, 2011), stating that these were no longer necessary in the light of the new legislation. No legitimate reasons have been given for this delay, other than that the government had to approve some further policies (Zvan Elliott, 2015). On the insistence of the women’s movement, called “Equality Without Reservation”, Morocco withdrew their reservations in 2011. It seemed that the Moroccan Spring in 2011 allowed these activists back into the conversation and to push for such a withdrawal to happen (Yachoulti, 2015).

Notably, Morocco has failed to submit any periodic reports to the Committee since 2006, even though they were respected to hand in reports in 2010 and 2014. According to the four-year reporting cycle of the Committee, another report should be due somewhere this year (Mariappuram, 2015).

Concluding Remarks Case Study Morocco

To summarize, ever since the accession to the CEDAW Convention, Morocco has considerably improved the marital rights of women, however, it should be noted that this seems to have been brought about by multiple factors, as well as recognizing the significant gap between the system and reality. Women have gained several rights in marriage in comparison to before the Convention had been accepted. Forced marriages have been prohibited, including the exception that a rapist could marry his victim, but could now freely and out of her own will marry, granted greater rights to divorce,

which was now possible for women either by mutual consent or via compensation, a wife no longer needed to obey her husband, and the division of marital property should be done by equal separation. Despite these developments, there is still much to gain for women's equality within marriage rights. Currently, a husband has more opportunity for divorce, or repudiation, and can even do so unilaterally, provided it be under the view of a judge (Hanafi, 2012), as well as the discriminatory way of separation of property, according to the Committee's report.

Furthermore, the case study of Morocco has shown that the progressive reforms in 1993 and 2004 to the *Moudawana* were made possible by the advocacy of civil society, especially women's rights organizations, as well as a "young-reform minded King", Muhammed VI (Byrnes et al., 2011). Although, Morocco has ratified the Convention in 1993, there have been conversations with the Committee through their country reports and there are references back to the Convention by politicians and organizations seeking change, for example King Hassan II's wish to comply with CEDAW by enacting reforms in 1993, it seems that these particular women's rights groups and NGO's have played a crucial role in realizing the development in women's marriage rights. They have been pressing for equality within marriage even before Morocco's independence in 1956 and were the main actors in the changes made to *Moudawana*. Even in the withdrawal of the reservation on article 16, NGO's such as the Democratic Association of Moroccan Women played a critical role (Sadiqi, 2010).

It should also be noted that national legislative reforms do not always coincide with what happens in reality. Despite Morocco's positive changes made to the marital rights of women, there is concern about the lack of effective implementation of these laws. Barriers include the judiciary system that was either unaware, or did not want to hold themselves to it, especially older judges and those in rural areas often went against it, by, for example, denying a wife's possibility to divorce. Additionally, the social and cultural traditions, more so in rural areas, that have favoured different roles for a husband and a wife, the first as the financial contributor, while the latter is in charge of domestic work, have

affected the effectiveness of the protection of women's rights in marriage in accordance with the *Moudawana* (Hanafi & Hites, 2017) (Eisenberg, 2011).

KENYA

Kenya acceded to the Convention just three years after it had come into force in 1981. They did so without any reservation, implying that they had no initial objectification to the rights of marriage stipulated in article 16. Kenya has participated in several country reports and Committee meetings since it has joined the CEDAW Convention (Byrnes et al., 2011).

Plurality of legal systems

As a country with multiple different legal systems interacting with and co-existing to each other, Kenya has had difficulty to reconcile these towards equality within marriage. Due to the great variety in religion, cultures and traditions, Kenya is made up of multiple sources, such as customary law, religious – Hindu and Islamic (Sharia) law – and statutory law. These all seemingly cover similar areas of life, including legislation on women's rights within marriage, or lack thereof. As they do not necessarily lay down the same exact rules, it can often lead to conflict between these sources and have, consequently, negative consequences for the marital rights of women (Kamau, 2011). Due to this plurality, it has proven complicated for women to realize their equal rights in marriage. The Constitution of 2010, which will be discussed in more detail later in this chapter, is to unify these systems and resolve any conflict between them. Although, section 45(4) allows for these multiple frameworks to exist, it requires them to adhere to the principles laid down in the Constitution, especially that of equality between men and women (Kamau, 2011, p.21). The rights and duties of spouses are dependent on the system of marriage applicable to the marriage.

Kenya prior to CEDAW

At the end of the 19th century, Great Britain established its colonial rule over Kenya. They introduced English law and Kenya was forced to follow their policies, which severely discriminated against and exploited the African communities economically, politically and socially. Great Britain, however, allowed some level of existence to the already present customary law in Kenya. A dual legal system divided the inhabitants into non-Africans and Africans, each governed by separate laws, the latter under customary law. It should be noted, nonetheless, that customary law was generally only applied in personal matters, such as marriage, whereas English law largely covered the rest (Kamau, 2011). Although, the Kenyan communities, like other African countries, allowed women a degree of freedom, such as performing agricultural work, before the colonial period, they were generally based upon a patriarchal system. The principles of customary law are derived from these traditions and, consequently, consists of certain elements of inequality between men and women in marriage. The coming of the European settlers only strengthened these views and took away the little power or protection a woman might have had.

Kenya's Independence

After a long struggle and several violent conflicts throughout the 1950s, Kenya became independent from Great Britain in 1963 (Ntarangwi, Ominde & Ingham, 2018). The newly established government of Kenya concerned itself with unifying the different legal systems in the country. In 1967, the judicial system was successfully brought back to one national court structure, and the native courts were done away with. That same year a Marriage commission was set up. They were tasked with creating a law that would unify all the existing laws into one, however, the 'Marriage Bill' was never realized. Further efforts to harmonize the plurality of sources of law long proved not to be successful. The 1969 Kenyan Constitution included several provisions unfavourable to the rights of women in marriage. It did not recognize discrimination based upon sex, and it contained the article 82(4(b)) that denied women equality to rights within personal law, including marriage and divorce.

The Impact of CEDAW: Has Kenya Improved Women's Rights to Marriage?

Kenya acceded to the Convention in 1984 and did so without any reservation. Nevertheless, the Committee has given Kenya recommendations over the years on how to comply with article 16, stating in their comments on Kenya's first and second country report that they have not done so sufficiently upon ratification (The Committee, 1993), despite the lack of reservation (Byrnes, et al., 2011).

Lack of Progress

In 1985, Kenya had another attempt at adopting a Marriage Bill, which would regulate matters on marriage, divorce and the matrimonial property. This law, however, failed to succeed, as it was met with resistance in Parliament, as well as within society (Mucai-Kattambo, Kabebere-Macharia & Kameri-Mbote, 1995). In their first and second periodic reports, Kenya recognized the concern of multiple laws regulating marriage and divorce as an obstacle to realizing equality, and that the Marriage Bill of 1985 was supposed to be an attempt to unify these, but that it had not been accepted by the male-dominated Parliament (The Committee, 1993). The Committee reiterated once again in their concluding comments on Kenya's fifth and sixth periodic report in 2007 that Kenya should get rid of the discriminatory provision art. 82(4(b)), which had not been amended since 1969. Additionally, they voiced their worry about that "the Convention has yet to be given central importance" (The Committee, 2007, p.3, para. 15) and encouraged them to "base its efforts to achieve gender equality and the advancements of women on the comprehensive scope of the Convention" (para. 16).

The 2010 Constitution

Notable change to the marital rights of women would, however, not happen until 2010. That year, Kenya would enact a new Constitution after the failed draft in 2005, following a referendum requesting reform. It was brought about through the spreading of political and social disagreement with the system that had been put in place after independence, and who had failed to progress since.

The women's movement in Kenya is regarded to have been a crucial actor in this development. Activists had been pushing for reform since the 1990s and, although, they were continuously met with criticism and opposition but had over time increased their grip on the political agenda in Kenya. They influenced the "wider normative content as well as advancing very concrete objectives relating to women's rights" (Domingo, McCullough, Simbiri & Wanjala, 2016, p.8). This new Constitution would do away with the discriminatory art. 82(4) and replaced this with the principle of equality throughout the document (Domingo et al., 2016). The article concerned with the rights of marriage is art. 45. This article prohibits forced marriages (45(2)) and lays down equal rights between men and women at "the time of marriage, during the marriage and at the dissolution of the marriage" (art.45(3)). It also recognizes the existing legal systems that regulate personal law or marriage law (art.45(4(a)) and art. (45(4(b))), while noting that these need to comply with the Constitution. Important to note here, is that the text of the Constitution has seemingly been inspired by the CEDAW Convention. Article 45, especially paragraphs (2) and (3) (Byrnes, et al., 2011), uses similar language to article 16 of CEDAW, where sub-paragraphs (a) and (c) coincide with paragraph (2), and sub-paragraph (b) with paragraph (3). In the Committee's 2011 concluding observations on Kenya's country report, they praised the 2010 Constitution for its inclusive nature, as well as the protection of women's rights (The Committee, 2011). Nevertheless, the Committee urges Kenya to adopt more progressive legislation, especially on marriage, which has been somewhat in motion since 2007, and can be traced back to the 1980s. It also encouraged the State Party to "harmonize religious and customary law with article 16 of the Convention" (p.3, para.12(d), as several discriminatory laws have remained in force, despite the Constitution's position against it.

Other Reforms

In 2014, the Kenyan government adopted a new Marriage Act. This legislative document was signed into law by President Kenyatta and was to unify all the existing laws on marriage. It enacted a more comprehensive framework of rules compared to that laid down in the Constitution of 2010. The

Marriage Act of 2014 repeated certain basic principles of the Constitution such as marriage is a “voluntary union” (art. 3(1)) (art.11(e)) and “parties to a marriage have equal rights and obligations at the time of the marriage, during the marriage and at the dissolution of the marriage” (art.3(2)). It stipulates ground for divorce, but as it recognizes the separate customary law and religious laws on marriage, it allows those rules to apply to certain groups, which have been oftentimes unfavourable to women. The Committee has not yet provided its concluding comments, as they have not reached that stage yet, but they have asked Kenya in their response to Kenya’s eighth periodic report, to stipulate the measures they will take to eradicate the discriminatory provisions against women within the Act, especially regarding the divorce rights in religious and customary legislation (The Committee, 2017).

Discriminatory Legislation

The same year the Marriage Act was enacted, Kenya passed the Matrimonial Property Act. Although, it changed the discriminatory principle that a wife’s property automatically transferred to her husband upon entry, as well as during marriage, a rule that had been taken from British colonial law, it regulates the distribution of property upon divorce in accordance with the contributions both spouses make. Contribution can include monetary and non-monetary, meaning that domestic work would also be able to count to that, however, the burden of proof seems to rely on women, which is often denied (Mwangi, 2017). The Committee has negatively responded to this Act, stating that it is discriminatory towards women (The Committee, 2017). In 2018, the Federation of Women Lawyers (Fida) went with this issue to the High Court in Kenya. They protested this distribution of property on the basis of contribution, but the judge dismissed the petition that was brought forward, saying that it would “open the door for a party to get into marriage and walk out of it in the event of divorce with more than they deserve” (Odhiambo & Nnoko-Mewanu, 2018). Additionally, the High Court has previously ruled that it should be based on the real distribution, disregarding non-monetary contribution.

Concluding Remarks Case Study Kenya

To put it shortly, women's marital rights in Kenya have seen some changes since they have acceded to the Convention. In 2010, Kenya adopted a Constitution that would lay down principles that state the equality to marriage, upon entry, during and after it, between a man and a woman, as well as the need for consent of both parties to marry. More comprehensive legislation for marital rights arrived in 2014, when the Marriage Act was passed. This act gave more rights to women in comparison with the Constitution, which established basic rules, expanding their rights in divorce and forced marriages. Despite these legislative changes, Kenyan women do not yet have full equality in their marital rights. For example, Kenyan women are discriminated against in property rights. Here, a wife has to prove, if she did not make any monetary contribution, which is often the case, that her non-monetary contribution has been significant in regard to the property.

The development of legal equality within marriage in Kenya has been a long and slow process. Kenya acceded to CEDAW in the 1980s, with virtually no equal marital rights for women, but significant reforms would not happen until roughly 25 years later, when it adopted the new Constitution in 2010. Despite these changes, the fight for equality within marriage has continued in the current society of Kenya. As mentioned in the previous paragraph, married women's rights still lack behind in certain areas, such as property law.

Kenya is a country that has a plurality of legal systems, something which has proven to be an obstacle in realizing the equality of women in marriage. Although, the Kenyan government has tried to reconcile these different sources of law, such as customary, religious and national legislation, in the Constitution of 2010, it has not been successful. Consequently, a gap between the law in theory and in practice remains. Despite the Constitution's provision that promotes equality between men and

women in marriage, discriminatory principles to this regard in religious and customary law have continued to exist.

Furthermore, the legislative reforms in Kenya concerning the equality within marriage between men and women seems to have been a combination of the impact by CEDAW, as well as the influence of feminist movements. Women's rights activists had been pushing for change since the 1990s, and when the Constitution of 2010 was drafted, they had a considerable role in the shaping of the content. The new provisions, however, followed the principles laid down in article 16 of the Convention, using similar language to it. Consequently, women's rights movements have seemingly used CEDAW as a vehicle for change, translating the content of the Convention into law.

VII. Discussion and Conclusion

This thesis has considered the marital rights of women. I have used the equality principle in article 16 as a starting point, analysing these rights against the legislative developments, or lack thereof, made by the State Parties to CEDAW, prior to it coming into force, as well as after it. The two case studies of Morocco and Kenya were done to offer a greater inside to the changes made and the possible impact CEDAW has had on it.

Legislative Developments: A Combined Effort

Considering the research question of the extent CEDAW has affected the state of women's marital rights, I would argue that the equality within women's marital rights has seen positive developments since the Convention has come into force, but that these changes mainly have come about through a combined effort between the Committee (and the Convention), and civil society. It has, however, sometimes proven difficult to establish a direct link between the Convention and its exact impact on the changes made in a country.

Development of Marital Rights

Since the Convention has come into force in 1981, several developments occurred in the marital rights of women in comparison to the years prior. The period before CEDAW had seen changes to property rights, the obedience clause, the rights to work, forced marriage and divorce rights. While Europe and the Americas changed their laws on property rights and forced marriage in the beginning of the 20th century, African and Asian countries struggled for independence from their colonizers, which sidelined the fight for equality within marriage between men and women, and, thus, saw a lack of reform. In the 1960s and 1980s, the second wave of feminism and an increase in international awareness resulted in the removal of the obedience clause, as well as the right to work for a woman without her husband's permission. After the adoption of CEDAW in 1981, more reforms to the marital rights of women occurred, namely to that of marital rape and 'marry-your-rapist' laws. During the late 20th

century, most of Europe and the Americas would start doing away with, while other countries, like Morocco (2014) would follow suit later.

It is important to note, however, that these changes have not been uniform in nature and that, as a consequence of the framework, generalizations have been made throughout the research. When some countries were expanding, for example, their right to divorce in the first and second half of the 20th century, prior to the creation of CEDAW, others lacked behind in doing so. The case study of Morocco has shown that, although they have made changes to the right to divorce, they still have not granted women the same opportunity to divorce as men have. Furthermore, while several countries already gave married women the right to work without their husband's permission, there remain 18 countries that do require this approval.

Impact CEDAW: Level of Influence

Looking at the research, it remains difficult to establish the exact impact CEDAW has had on the legislative development of women's marital rights, but some degree of influence can be directed towards the Convention, and its monitoring system, the Committee. Firstly, the case study of Kenya has showed the direct link between the Convention and reforms. In 2010, Kenya had adopted a new Constitution, which now harboured the principle of non-discrimination. This new provision had used similar language to that of article 16 of CEDAW. Furthermore, the Committee's conversations with the State Parties in their country reports led to some withdrawals of reservations on article 16, as well as statements of willingness to comply with the Convention. On the other hand, however, the Convention, nor the Committee does not always play a role in the change within a country. An example of this is the outlawing of the 'marry-your-rapist' law in Morocco. Here, the national outcry over the suicide of a girl after she had been forced to marry her rapist resulted in the change of legislation. The link between the Convention and this reform seemingly lacks.

CEDAW and Civil Society: A Vehicle for Change

Throughout the research, it has also become evident that the legislative developments have been brought about through either a combined effort of the Convention and civil society, or the latter using CEDAW as a tool to see change. Women's rights movements, NGO's and feminist activists had often been asking for reform within marriage equality even before the Convention had been adopted, which sometimes happened successfully during the second wave of feminism in the 1960s and 1980s. When the Convention came into force in 1981, many NGO's and women's rights movements seized this opportunity of increased international awareness of women's rights to ask for more change, ultimately using CEDAW as a vehicle for long-wanted improvements. This can be seen in the case of Venezuela, where the NGO's and women's rights activists started to gather together and push for legislation on marital rights for women when the political debate changed. Furthermore, the legal reforms have often also been the result of a conversation between the Committee and NGO's, seeing a combined effort to change. In the case study of Morocco, the "young-reform-minded" King Muhammed VI, his father's wish to comply to CEDAW, women's rights movements, as well as the Committee's responses to the intention for reform, were all influential to the positive developments that happened in Morocco and ultimately realized the reforms in the country. The Committee has also recognized the value of such conversations with movements, inviting NGO's and women's rights activists into their meetings.

Areas of Concern

Taking into consideration the previous chapters, the following general observations can be made. Firstly, while countries have promised much in terms of symbolic gestures, it often lacks in factual change. When a State Party to the Convention withdraws their reservation to article 16, it does not mean that this will translate into increased equality within marriage. Following the theory of Realism, such would be considered to be 'just talk', rather than actual implementation. Admittedly, the reforms made to the marital rights of women have been a step into the right direction, but contradictory

legislation, as well as the lack of awareness and implementation in, for example, rural areas, have a negative impact on these rights mapping out in practice. The answer might not have to come through legislative developments, but rather the changes have to come in society. A possible solution to this is that the UN, or the Committee could seek widespread support in civil society. Although, the Committee has already established a level of cooperation between itself and the national NGO's and women's rights activists, it could benefit from an even closer relationship. Through pursuing a bottom-up approach, starting at the local and individual level, the Convention could garner support for the legislative change originating on the national level.

Furthermore, the Convention's principle of equality, which has been criticized to be monolithic, might not be adequate enough in the fight for women's rights. While CEDAW is thought to present women as one universal group, who are more alike than they are different, the feminist theory of intersectionality, introduced by Kimberlé Crenshaw (1989), accounts for the various social layers, considering that each identity stands in relation with each other and determine the experience of women. The Committee, however, has started to adopt this approach in their general recommendations and responses to the efforts made by countries, over that of the initial framework. In order to realize equality that rightfully addresses the different inequalities faced by different women, instead of forcing one particular belief of equality on all, the Committee needs to be aware of these intersecting identities, and act accordingly.

Future Research

For future research, I suggest looking into three areas. Firstly, I have considered the legislative developments, but, as has become clear, reform in law does not necessarily lead to marriage equality between men and women in practice. Therefore, it can be valuable in the understanding of the exact impact of CEDAW for new studies to research how adopted legislation translates into society, why this has not been the case for many countries in regard to marital laws and how this

could possibly change. Following this line of thought, there could be more research done on alternative enforcement measures. As mentioned throughout the thesis, oftentimes contradictory legislation and customary practices have hindered the implementation of national legislation. Future research could look into ways to replace those customary laws with national legislation. Lastly, there are considerably more areas of concern in marital rights that need to be paid more attention in future research. Looking at the general equality of men and women, women's rights in marriage is one generalized aspect of a multitude of problems. New studies could, therefore, take a look into more specific areas, such as child marriage or domestic violence within the home, which might offer a clearer picture on the situation.

To conclude, CEDAW has changed a lot on a national legislative level, but in the grander scheme of women's rights, it has proven to be just one step on a continuous line of changes. It is a drop on a hot stone, but it is a drop that is necessary.

VIII. Reference List

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IX. Appendix A

Convention on the Elimination of All Forms of Discrimination against Women

Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979

entry into force 3 September 1981, in accordance with article 27(1)

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will

promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

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.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for

the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. 2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life. **Article 14**

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- (c) To benefit directly from social security programmes;
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

- (a) Within one year after the entry into force for the State concerned;
- (b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure. 2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.