



“The Role of the Convention on the Elimination of All Forms of Discrimination Against Women and its Monitoring Procedures for Achieving Gender Equality in Political Representation”

Hanna Beate Schöpp-Schilling
Expert Member of the CEDAW Committee

A paper presented at the International Institute for Democracy and Electoral Assistance (IDEA)/CEE Network for Gender Issues Conference

The Implementation of Quotas: European Experiences

Budapest, Hungary, 22–23 October 2004

Introduction

A discussion on the application of quota systems to achieve and maintain gender balance in public and political life must be positioned in a human rights framework. The most important and legally binding international human rights instrument in this respect is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).¹ Since 1982, its implementation has been monitored by the CEDAW Committee, comprising 23 independent experts.² Due to its composition and mandate, this body is different from inter-governmental organizations at the United Nations (UN), such as the Commission on the Status of Women, the Commission on Human Rights or the Sub-Commission on the Promotion and Protection of Human Rights, which, in their work over the past few decades, have also examined the issue of temporary special measures and sometimes recommended the utilization of quota systems.

The following remarks will concentrate on the Convention, the General Recommendations and Concluding Comments of the CEDAW Committee, as well as on some aspects of the Beijing Platform for Action, which constitute a human rights framework for the application of quota systems to guarantee the political participation of women.³

The Convention

CEDAW is the most important human rights treaty for women. The Convention's states parties are legally obliged, firstly, to eliminate all forms of discrimination against women in all areas of life, and, secondly, to ensure women's full development and advancement in order that they can exercise and enjoy their human rights and fundamental freedoms in the same way as men. Thirdly, a state party must allow the CEDAW Committee to scrutinize its efforts to implement the treaty, by reporting to the body at regular intervals.⁴

The Convention currently has 180 states parties.⁵ Thus, the vast majority of the member states of the UN (more than 90 percent⁶) has voluntarily agreed to respect, protect, promote and fulfil the human rights of women under all circumstances—unless they

made known their reservations about certain articles on depositing their instruments of ratification.⁷

In 1999, the General Assembly adopted an Optional Protocol to the Convention, thereby allowing for a communication and an inquiry procedure to be added to the list of monitoring systems.⁸ The Optional Protocol currently has 69 states parties.⁹

Articles 7 and 8 of CEDAW explicitly cover the right of women to non-discrimination in a country's public and political spheres, as well as their right to equality with men with regard to the following: the right to vote; the right to be eligible for election to all publicly elected bodies; the right to participate in the formulation of government policy and its implementation; the right to hold public office and to perform all public functions at all levels of government; the right to participate in non-governmental organizations (NGOs) and associations concerned with the public and political life of the country; and the right to represent the national government at the international level and to participate in the work of international organizations.¹⁰ In addition, the preamble of the Convention links the 'full and complete development of a country, the welfare of the world and the cause of peace' with the need for the 'maximum participation of women on equal terms with men in all fields', implicitly including the public and political realms.

In order to fully understand Articles 7 and 8, one must read them in conjunction with the agreement's so-called Framework Articles (1–5 and 24). These contain obligations with respect to conduct and results for states parties as regards their actions (legislation, policies and programmes) to empower women and engender cultural change. Thus, states parties are obliged:

- to eliminate direct and indirect discrimination;
- to implement the concepts of both formal equality and substantive or de facto equality;
- to embody the principles of equality and non-discrimination in their constitutions and laws; to pursue the realization of these principles in practice by taking appropriate measures against persons, organizations and enterprises that discriminate against women; and to protect women from discrimination both through legal proscriptions, including sanctions, and competent national tribunals and other public institutions;
- to act without delay (and without considering financial resources);
- to undertake all appropriate measures to ensure the full development and advancement of women in all fields; and
- to modify and eliminate social and cultural patterns based on prejudice, customary and traditional practices, sex-role stereotypes and the alleged inferiority or superiority of either of the sexes.

The concept of substantive equality takes into account the facts concerning, and the consequences of, biological differences between women and men, as well as socially constructed differences as regards the roles and tasks that have been ascribed to them; thus, the Convention also forbids discrimination based on gender.¹¹ Substantive equality allows for non-identical treatment of women (as compared to men) both for reasons of protection (maternity functions) and correction (acceleration of the achievement of de facto equality). Such action, according to Article 4 of CEDAW, is not discriminatory. To achieve substantive equality women must be granted not merely formal equal opportunities but also a truly equal start, plus an enabling environment in which they can attain equality of results. These aspects, as well as the obligations outlined above, must be kept in mind when trying to achieve substantive equality with men in public and political life.

Relevance of the Beijing Platform for Action and the Outcome Document of Beijing+5

The Beijing Platform for Action is the most ambitious action plan to empower women and to eliminate discrimination against them. Since 1995, many governments have attempted to implement the Platform as a whole or in parts. National and international NGOs have been monitoring these efforts. It must be recalled, however, that the platform, as compared to the Convention, is not a legally binding document. Nonetheless, it can be argued that the Platform's 12 areas of concern and its recommendations can be linked to various articles of the Convention. In fact, the Platform spells out in detail the steps that need to be taken in order to satisfy the legal obligations of the Convention. Consequently, the goals and actions spelt out in area 'G' of the Platform – 'women in power and decision-making' – correspond with Articles 1, 2, 3, 4 (1), 5, 7, 8, 9, 10, 14 and 24 of the Convention. Although there is no explicit reference to the concept of quota systems, the aims of 'gender balance' and having the 'same proportion' of both sexes in, for example, governmental bodies, administrative entities and elective and non-elective public positions are set out and the application of 'positive action'¹² to achieve them is suggested.¹³ The focus is on governments, political parties, non-governmental organizations and the UN system itself.

Five years later, however, only incremental progress can be seen. The Outcome Document of the Beijing+5 conference in 2000 summarizes achievements regarding the full participation of women in decision-making and power positions at all levels and in all forums made through 'affirmative action and positive action policies, including quota systems or voluntary agreements ... and measurable goals and targets'. It also refers to the enabling conditions (training programmes, and programmes to reconcile family duties with work responsibilities) that facilitate such accomplishments. The document, though, concludes that, despite the progress made in some countries, 'the actual participation of women at the highest levels of national and international decision-making has not significantly changed since ... 1995'.¹⁴

General Recommendations of the CEDAW Committee

Of importance for the discussion on quota systems to increase the participation of women in public and political life are the General Recommendations 5, 8, 23 and 25 of the CEDAW Committee. General Recommendations/General Comments, as formulated by UN treaty bodies, are interpretations of an accord to assist states parties in implementing their obligations.¹⁵ General Recommendations 5 and 8 of 1988 are important due to the fact that the instrument of temporary special measures, including quota systems, was suggested at such an early stage of the Committee's work.¹⁶

General Recommendation 23 of 1997 explicitly deals with Articles 7 and 8. It echoes relevant paragraphs of the Beijing Platform for Action and points to the historical and structural causes of discrimination against women in public and political life.¹⁷ It lists a number of requirements and obligations that states parties have to fulfil. A specific paragraph, which must be read in conjunction with these commitments, is devoted to the justification for, and the application of, temporary special measures. These requirements and obligations include: special recruiting efforts; financial assistance for women and the training of women candidates; amending electoral procedures; campaigns aimed at ensuring equal participation; targeting women for appointment to public positions; and setting numerical goals and quotas.

Of even greater relevance to the application of quota systems is General Recommendation 25 of 2004 concerning Article 4 (1). This article is of a descriptive nature. It states that temporary special measures are not discriminatory when their application is aimed at accelerating the attainment of de facto equality between women and men. General Recommendation 25 explains the meaning of this definition in the context of the Convention as a whole and provides an in-depth analysis of the justification for applying Article 4 (1), as well as when and how to do so. While it is worth familiarizing oneself with the full argument, the most salient messages that are of

relevance for the application of quota systems in public and political life are set out below.

The CEDAW Committee:

- reaffirms the concept of substantive equality between women and men;
- recognizes the concept of multiple or intersectional discrimination of women (that is, discrimination based on sex and gender and additional grounds like race, ethnic identity, religious belief, disability, age, class and caste). This must also be taken into account when striving for gender balance in the political sphere;
- argues that Article 4 (1) must be read in conjunction with the Convention's other Framework Articles (1, 2, 3, 5 and 24), and that its application must be considered in relation to all of those other articles, including Articles 7 and 8, which stipulate that states parties 'shall take all appropriate measures';
- contends that states parties, as a consequence, are obliged to adopt and implement temporary special measures in relation to any of these articles, if such measures can be shown to be necessary and appropriate in order to accelerate the achievement of substantive equality for women;
- underlines the fact that temporary special measures are 'temporary' and should not be confused with general policies, that is, they should not be applied forever. The duration of their application, though, should be determined by functional results in response to a concrete problem and not by the passage of time determined independently of the problem to be solved;
- defines the term 'measures' as encompassing a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as: outreach and support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with timeframes; and quota systems;
- cites, while respecting national contexts, the area of public and political life at the national and international levels as one potential field in which temporary special measures should be applied;¹⁸ and
- highlights various aspects of those processes that states parties will have to go through when applying temporary special measures, including quotas.¹⁹

Thus, the application of quotas, as one kind of temporary special measure, can be seen as part of a necessary strategy directed towards the *acceleration* of the attainment of substantive equality between women and men in the public and political spheres. The application of such quota systems, however, can also be of a general policy nature, when, according to Article 3 of the Convention, the purpose is to ensure the continuing diverse representation of the two sexes in these areas.²⁰

Opponents and Criticism

Opponents of temporary special measures, including quota systems, point to the factors of 'qualification' and 'merit' as obstacles to the application of preferential treatment for individuals or groups. With regard to the employment of women in the civil service and in the wider public and private sectors, the CEDAW Committee believes that the factors of 'qualification' and 'merit', which may be culturally determined, must be carefully reviewed to assess whether there is a potential gender bias. At the same time, the Committee is of the opinion that, regarding the appointment or election of individuals to, or their selection for, public and political office, factors other than 'qualification' and 'merit', including the application of principles of democratic fairness and electoral choice, must be considered. In addition, the application of quotas can be justified by arguments concerning distributive and compensatory justice.²¹

CEDAW Committee Practice

The reporting obligation under the Convention is an important instrument for states parties to reflect on the application or non-application of quota systems by governments or political parties, to (re)consider the justification for the application or non-application of such systems and to evaluate whether the intended results are being achieved. The reporting obligation also offers an important opportunity for NGOs to comment on this issue in their shadow reports, to monitor the discussion between the CEDAW Committee and their respective governments and, subsequently, to lobby for the implementation of relevant recommendations in the CEDAW Committee's Concluding Comments. The potential of the Optional Protocol to deal with discrimination against women in public and political life has not yet been taken advantage of.

During its discussion of states parties' reports and in its Concluding Comments, the CEDAW Committee always refers to the application of temporary special measures, including quota systems in public and political life (and in other areas), either in a laudatory way, when they are being applied by the state party, or by recommending their application.²² Since the early 1990s, the CEDAW Committee has been confronted with both a decisive drop in the number of women representatives in the parliaments of post-socialist countries in Central, Eastern and Southeast Europe and in Western Asia and reluctance among newly elected governments (and individual women and non-governmental organizations) to apply the quota. This reluctance is connected to the past practice of applying quotas for various social groups (women, trade unions and youth) that did not have democratic legitimacy. The Committee, while discussing the reports of the respective states parties, continued to argue in favour of the application of quotas to counteract the decrease in the number of women in parliament and to hasten progress towards the achievement of gender balance in them. It recommended that these states parties review and, where necessary, amend their constitutions and electoral laws to allow for such measures. It also suggested that they encourage their political parties to introduce quotas for male and female candidates.²³

Conclusion

CEDAW establishes a human rights framework for the application of quotas to attain and maintain gender balance in public and political life. While lobbying for their utilization or while evaluating the results of existing systems, it is advisable, therefore:

- to refer to the Convention and to the CEDAW Committee's General Recommendations, as well as to the Beijing Platform for Action;
- to make use of the Convention's reporting process (including the submission of shadow reports) and the Concluding Comments of the CEDAW Committee; and
- to consider the application of quotas to ensure the participation of women in all realms of public and political life as a positive indicator of compliance with the Convention and of adherence to the principles of good governance.

At the same time, a number of issues must be resolved by states parties. Measures need to be designed, adopted and implemented in order:

- to overcome resistance to quota systems, particularly in countries in Central, Eastern and Southeast Europe;
- to establish conditions that enable women to employ quota systems and to maintain resultant gains;
- to move beyond the 30 percent concept (in terms of women's representation), which begins to act as a 'glass ceiling'; and
- to shift the focus from the quantitative aspect of quotas to consideration of changes in political culture and institutions, so that laws and policies reflect women's actual lives, needs and concerns without perpetuating existing sex-role stereotypes.

Endnotes

¹ The Convention was adopted by the General Assembly of the United Nations on 18 December 1979 and entered into force on 3 September 1981.

² These experts are nominated by their respective countries and are elected every four years by representatives of states parties to the Convention.

³ The argument could also be based on the International Covenant on Civil and Political Rights (ICCPR), in particular on Article 3 itself and in conjunction with Articles 2(1) and 26, as well as on the Human Rights Committee's General Comments 4, 18 and 28.

⁴ According to Article 18 of the Convention, states parties have to report 'within a year after the Convention went into force, thereafter at least every four years and further whenever the Committee so requests'.

⁵ As of June 2005. There is one additional signature to the Convention: the United States of America. Its decision to sign the Convention signifies a willingness to do nothing to contravene its terms.

⁶ The following UN member countries are not CEDAW states parties: Brunei Darussalam, Iran, Marshall Islands, Monaco, Nauru, Oman, Palau, Qatar, Somalia, Sudan, Tonga and the United States of America.

⁷ Unfortunately, many states parties entered reservations to the Convention, including those connected to Articles 2 and 7. See Schöpp-Schilling, Hanna B. 2004. 'Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women: An Unresolved Issue or (No) new Developments?' In I. Ziemele, ed. *Reservations to Human Rights Treaties and the Vienna Convention Regime*. Boston: Leiden. pp. 3–39.

⁸ The Optional Protocol was adopted on 6 October 1999 and entered into force on 22 December 2000.

⁹ As of 5 November 2004. There are additional signatories to the Optional Protocol, signifying a willingness to ratify.

¹⁰ The Convention thus partly incorporates the 1952 Convention on the Political Rights of Women, the implementation of which, however, has not been monitored by a treaty body.

¹¹ 'The term "gender" refers to the socially constructed roles of women and men that are ascribed to them on the basis of their sex, in public and private life. The term "sex" refers to the biological and physical characteristics of women and men. Gender roles are contingent on a particular socio-economic, political and cultural context, and are affected by other factors, including age, race, class or ethnicity. Gender roles can be learned, and vary between cultures. As social constructs they can change. Gender roles shape women's access to rights, resources and opportunities'. 'Integrating the Gender Perspective into the Work of the United Nations Treaty Bodies. Report by the Secretary-General'. 1998. HRI/MC/1998/6. p. 5.

¹² In the European Union, temporary special measures are called 'positive measures'; in the United States, they are called 'affirmative action'. The CEDAW Committee prefers the terminology of the Convention.

¹³ United Nations. 2001. *Beijing Declaration and Platform for Action with the Beijing+5 Political Declaration and Outcome Document*. New York: United Nations. pp. 111–113 (in particular paragraphs 190 (a and b)).

¹⁴ *Ibid.* p. 200 (paragraphs 22 and 23).

¹⁵ Their legal status is that of 'soft law'. Some states parties do not accept General Recommendations as legally binding, although UN treaty bodies, including the CEDAW Committee, expect states parties to act on them in good faith.

¹⁶ General Recommendation 5 deals with Article 4(1) and calls for the application of temporary special measures in, for example, the area of politics. General Recommendation 8 deals with Article 8 and recommends the utilization of Article 4(1) as regards the representation of women at the international level.

¹⁷ The causes lie in: the public/private division; the non-recognition and even devaluation of women's work in the private sphere; the impact of sex-role stereotypes; and the structures of political systems.

¹⁸ The other areas cited are: education; employment; the economy; and all other fields (including health, modification of cultural stereotypes, legal awareness, credit and loans, sport and culture).

¹⁹ These encompass: the inclusion of affected women in the processes of designing, implementing, enforcing, monitoring and evaluating the action plans for such measures, as well as consultations and collaboration with women's and human rights groups in these efforts; the setting of concrete goals, to be achieved through the application of such measures, in a way that is appropriate to the

respective national or international context, including the setting of a timetable that is deemed necessary for achieving these goals; the creation, if necessary, of a legal or administrative basis within the respective national or international context for adopting such measures (constitution, national legislation, decrees, executive orders and administrative guidelines), or clarification of the basis and framework for voluntary adoption of such measures by state and non-state actors; the establishment of a monitoring and enforcement institution; and the creation of a guarantee to ensure access to such measures for the affected women, as well as enabling conditions conducive to maintaining the advances made. When fulfilling their reporting obligations to the CEDAW Committee, states parties should provide adequate explanations if they have failed to adopt temporary special measures. In the event that they have adopted them, but have only applied them in the public sector, they should explain why they do not cover actors other than state actors. The application of temporary special measures also implies the collection of statistics disaggregated by sex in order to be able to measure the effectiveness of such measures. Lastly, temporary special measures should be applied in a number of fields as the necessary strategy to accelerate the achievement of substantive equality between women and men with regard to equal access to politics and equal distribution of resources and power.

²⁰ I am grateful to former CEDAW member, Frances Raday, for this clarification.

²¹ Raday, F. 2003. 'Systematizing the Application of Different Types of Temporary Special Measures under Article 4 of CEDAW'. In I. Boerefijn et al., eds. *Temporary Special Measures. Accelerating de facto Equality of Women under Article 4 (1) UN Convention on the Elimination of All Forms of Discrimination Against Women*. Oxford and New York: Antwerpen. pp. 35–44.

²² A survey of CEDAW Committee practice up to 2000 can be found in CEDAW/C/2001/II/5.

²³ See the Concluding Comments of the CEDAW Committee to states parties from these regions. They can be found in the Committee's reports on each session and can be accessed via the Committee's website (<http://www.un.org/womenwatch/daw/cedaw>).