

Use of CEDAW to Invalidate Discriminatory Laws and Promote Equality Examples of Domestic Cases

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination against women and requires states not only to prohibit discrimination but also to take affirmative steps in order to achieve gender equality. The Convention is legally binding upon States that have ratified the Convention and any laws in violation of CEDAW must be struck down.

CEDAW has been used to support affirmative action policies and programs as well as to strike down laws that are in violation of the Convention. These cases carry significant import: the application of CEDAW in domestic courts gives CEDAW legitimacy globally and reinforces the principal that domestic courts are bound by international treaties such as CEDAW.

India, Supreme Court of India - *Municipal Corporation of Delhi v. Female Workers*

The court held that the provisions of *Article 11* of CEDAW *must* “be read into the contract of service between [the Corporation] and the women employees.” Under CEDAW a corporation must provide its female employees with maternity benefits.

Article 11: Requires States to eliminate discrimination against women in employment and to ensure, “*The right to work as an inalienable right of all human beings; The right to the same employment opportunities...; The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service...; The right to equal remuneration, including benefits...; The right to social security...; The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.*”

South Africa, Constitutional Court - *Bhe v. Magistrate*

The court overruled a law that excluded women and extra-marital children from inheriting property. The court acknowledged that given the development “of African communities into urban and industrialized communities, and the role that women play in...society, the exclusion of women from succeeding to the family head can no longer be justified.” The court found that these changes in society must also be examined against international conventions such as CEDAW, which require South Africa “to ensure, amongst other things, the practical realisation of the principle of equality between men and women and to take all appropriate measures to modify or abolish existing laws, regulations, customs and practices that constitutes discrimination against women.” *Articles 2 and 5* of CEDAW.

Article 2: Requires State parties to undertake: “*To embody the principle of the equality of men and women in their national constitutions...; To adopt appropriate legislat[ion]...prohibiting all discrimination against women; To establish legal protection of the rights of women on an equal basis with men...; To refrain from engaging in any act or practice of discrimination against women...; To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;...[T]o modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; To repeal all national penal provisions which constitute discrimination against women.*”

Nigeria, Court of Appeal - *Muojekwo & Ors v Ejikeme & Ors*

The court found two Nigerian customs that effectively prevented female family members from inheriting property “repugnant to the principles of natural justice, equity and good sense “ and a violation of *Article 5* of CEDAW, which calls on States Parties to modify prejudices, customs and practices that discriminate.

Article 5: Requires States Parties to take appropriate measures: “*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...; To ensure that family education includes a proper understanding of maternity...and the recognition of the common responsibility of men and women in the upbringing and development of their children...*”

Uganda, High Court of Uganda at Kampala - *Uganda v. Matovo*

The court held that a rape law requiring a victim’s testimony to be corroborated violated *Article 1* of CEDAW as well as Uganda’s constitution because it unfairly discriminated against women as the most frequent victims of rape.

Article 1: “*[D]iscrimination against women’... mean[s] 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.*”