

## 40th Anniversary of the Committee on the Elimination of Discrimination Against Women

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### < profile >

Patricia Schulz is a Swiss lawyer. She practiced law with the Geneva bar, worked with the International Labour Organisation in Madagascar and then as a lecturer with the Faculty of Law of Geneva, specializing in constitutional, public and administrative law. She headed the Swiss Federal Office for Gender Equality (FOGE), from 1994 to 2010. As such, she represented Switzerland at the UN (Commission on the Status of Women) and led the delegation to the 4<sup>th</sup> World Conference on Women, Peace and Development (Beijing 1995) and to ministerial conferences on gender equality of the Council of Europe. She served two mandates with the UN Committee on the Elimination of Discrimination against Women (CEDAW, 2011-2018). She was Rapporteur of the Committee and headed the Working Groups on Communications and Working Methods. She has lectured extensively and authored many articles on gender equality and non-discrimination. She is co-editor of the “Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, A Commentary”, 2<sup>nd</sup> ed., P. Schulz, R. Halperin-Kaddari, B. Rudolf, M. Freeman, Oxford University Press (forthcoming 2022). She holds doctorates honoris causa, from the University of Bern and of Geneva.

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It is a great honour for me to contribute to the celebration of the 40<sup>th</sup> Anniversary of the Committee on the Elimination of Discrimination Against Women in volume 36 of International Women. I thank the Editorial Committee of the Japanese Association of International Women’s Rights and their Chief Editor KAWAMATA Kazuko for giving me this opportunity.

### A. Introduction

In its 40 years, the Committee has monitored in various ways the implementation of the CEDAW Convention by the 189 States parties that have ratified it until now<sup>1</sup>. First, it examines in principle the reports of 24 States per year, during three sessions in Geneva, where it holds constructive dialogs with the delegations of these countries. Other sources complement the information at the disposal of the Committee, including UN agencies and civil society organizations. The Committee then adopts detailed, Concluding Observations and Recommendations (COs) for each State, aiming at helping them to apply the

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<sup>1</sup> Stand August 3, 2022, <https://indicators.ohchr.org/>

Convention. Second, the Committee adopts General Recommendations (GRs). It will soon adopt its 39<sup>th</sup> GR, on indigenous women. GRs give guidance to all States parties (and other stakeholders including the private sector). Third, since the entry into force of the Optional Protocol in 2000, presently ratified by 114 countries,<sup>2</sup> the Committee examines individual communications (claim by a woman or small group of women that a State party violated their rights) and conducts inquiries in cases of grave or systematic violations of the rights of women: both instruments have given more influence to the Committee, thanks to its in-depth analyses of these situations.

To illustrate the role consistently played by the Committee, I chose examples of its interpretation of the Convention, defining its meaning and contributing to the setting of the international standards on women's human rights (B). I also mention some of the challenges it faces (C), before reaching the conclusion (D).

## **B. The central role of the Committee as interpret of the Convention**

### **1 Sex, gender and intersectionality**

The text of the Convention mentions only sex as a prohibited ground of discrimination, but the Committee recognized that women could also be discriminated against based not only on the biological differences between women and men, but also on their gender, as expressed in GR 28.<sup>3</sup> It also stated that women could be exposed to multiple forms of discrimination. It now addresses them under the term of intersectional discrimination,<sup>4</sup> analyzing situations where women are discriminated based not only on their sex and/or gender but also on their sexual orientation and gender identity, race, ethnicity, refugee or migrant status, class, caste, religion, age, health, etc.

### **2 From silence to international customary law: the prohibition of gender-based violence against women**

Thanks to its progressive interpretation of the Convention, the Committee has played a central role in the evolution, at the national and international levels, of the treatment of

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<sup>2</sup> Stand August 3, 2022, <https://indicators.ohchr.org/>.

<sup>3</sup> GR 28 para 5, "Although the Convention only refers to sex-based discrimination, interpreting article 1 together with articles 2 (f) and 5 (a) indicates that the Convention covers gender-based discrimination against women. The term "sex" here refers to biological differences between men and women. The term "gender" refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women."

<sup>4</sup> Ibid para 18.

violence against women and girls. It addressed violence in its dialogs with State parties from the beginning. In 1989, it asked States to provide information on the situation of violence (legislation, practical measures, shelters) and statistics (GR 12). States complied. In 1992, in General Recommendation 19, the Committee boldly affirmed that violence against women was a form of discrimination, therefore prohibited by the Convention. It thus brought the issue to the forefront of the discussion on women’s rights and remedied the silence of the Convention – which addresses only trafficking and exploitation of prostitution, as forms of violence. Sexual relations imposed by a husband to his wife constitute marital rape; the central criteria of rape and other sexual abuses is lack of consent; GR 30 reminds States they must respect all the obligations arising from the Convention even in situations of conflicts; GR 32 on asylum seekers, refugee and stateless women, GR 34 on rural women and GR 36 on education detail the obligation of States to respect, protect and fulfill the rights in these fields. In 2017, the Committee updated its analysis of violence in General Recommendation 35. It celebrated the evolution that took place, noting that “For more than 25 years, in their practice, States parties have endorsed the Committee’s interpretation. The *opinio juris* and State practice suggest that the prohibition of gender-based violence against women has evolved into a principle of customary international law.”<sup>5</sup> The pioneering work of the Committee has evolved into a very complete framework<sup>6</sup> and has inspired regional conventions and national legislations on gender-based violence.

### **3 Sexual and reproductive health and rights**

The Committee deals with these issues with each State party. Depending on the situation, it will address the need for legalization/decriminalization of abortion; access to information and effective contraception and all further health services needed; increase of budget for sexual and reproductive health. In GR 35 and in an inquiry, the Committee went a step further regarding States’ obligations by stating that “forced sterilization, forced abortion, forced pregnancy, criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, forced continuation of pregnancy, and abuse and mistreatment of women and girls seeking sexual and reproductive health information,

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<sup>5</sup> GR 35, para 2.

<sup>6</sup> It is therefore difficult to understand why some women’s organizations are advocating for the adoption of a separate treaty on violence against women.

goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.”<sup>7</sup>

#### **4 From formal to substantive equality: participation in public life and care economy**

The Committee has progressively increased its requirements towards States regarding women’s participation in public life, the economy and politics, and the need for a balanced care economy. As in all other fields of the Convention, formal equality (same treatment of women and men in the legislation) is insufficient, States must take measures, including through legislation and budgets, to reach substantive equality, that is in real life. They must overcome the gender division of labour and the ensuing gender care gap<sup>8</sup> which are main obstacles towards the economic autonomy of women and their equal participation in public life. After being cautious towards compulsory measures including quotas, the Committee now recommends State parties to aim at parity (=equal numerical representation) for the participation of women in Parliament, the executive, the administration, the judiciary, in education and research institutions including at the tertiary level, etc., so that decision making power is equally shared at the national and infra-national level(s). The private sector is also concerned.

#### **C. Practical difficulties and backlash**

From 1982 onwards, insufficient resources, financial and personal have plagued the Committee as the other treaty bodies. The Office of the High Commissioner for Human Rights cannot offer the support needed to handle reports, individual communications, and inquiries, rapidly and efficiently. The Committee is thus prevented from offering the full protection that women and girls should receive under the Convention.

In addition, the Committee now operates in a context where (powerful) countries and other stakeholders contest the universality of human rights, attack multilateralism and democracy, promote a very conservative view of the family and the role of women, criminalize abortion and same sex relationships. The Committee addresses the increasing threats and violence against civil society, in particular women human rights defenders and activists. It also deals with the increased gender inequality, poverty and reversal of the

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<sup>7</sup> GR 35 para 18; Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Report of the Committee, para 41 and 65.

<sup>8</sup> Women continue worldwide to provide, without pay, most of the domestic and care work.

progress made in the last 20 years due to the COVID19 pandemic, and the increase in gender-based violence, and makes recommendations to States regarding their duties.

#### **D. Conclusion**

Despite the obstacles it faces, the Committee continues being a strong actor, offering a progressive interpretation of women's rights as human rights. It deals with new and enduring forms of discrimination, such as the increase in conflicts, the COVID 19 pandemic, environmental destruction, climate change and the rise of global, gender, inequality and poverty. The Committee's close collaboration with stakeholders such as UN agencies, national human rights institutions, and civil society organizations, and the commitment of its members, should enable it to carry on – unless the whole treaty body system is modified fundamentally in the coming years under financial and political pressure.