



# **EQ**QUAL

The GQUAL Campaign  
promotes gender parity  
in international courts  
and monitoring bodies

## **ARTICLE 8**

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



**AN ESSENTIAL STEPPINGSTONE  
TOWARDS ENSURING GENDER PARITY  
IN INTERNATIONAL TRIBUNALS  
AND MONITORING BODIES**

A paper written for GQUAL by Professor  
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## About GQUAL

### **The GQUAL Campaign promotes gender parity in international tribunals and monitoring bodies.**

**GQUAL** is a global Campaign whose goal is to overcome the underrepresentation of women in international courts and monitoring entities. In order to achieve this, we want the selection processes at the national and international levels to include gender parity as the standard for representation.

Our foundational Declaration and subsequent Action Plan reflect our conviction that gender parity is key to guaranteeing diversity and gender balance in international institutions, which are essential to strengthen their legitimacy and the impact of international justice.

GQUAL stands firm in its conviction that women, in all their diversity, cannot be absent from decision-making places. Due to the fact that international bodies have a direct impact on the lives and rights of people and on the development of nations, women must have the same levels of representation as men have in these institutions.

Since its launch in 2015, GQUAL has played an important role in raising awareness about the underrepresentation of women in international courts and monitoring entities. In collaboration with various relevant parties, including, but not limited to, States, international organizations, civil society, and academia, we have mobilized for the creation of guidelines and practices to improve selection processes to international tribunals and monitoring bodies, and to strengthen States' compliance with their international obligations in respect of the achievement of gender parity in the women's participation and representation in decision-making processes. Furthermore, we have conducted research and held debates on the importance of gender parity, we serve as a network of experts, and we offer information about available vacancies, future selection processes, and updated data about the members of international bodies as well.

*The GQUAL Campaign is an initiative supported by the Center for Justice and International Law (CEJIL).*

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**<http://www.gqualcampaign.org/sobre-gqual-2/quienes-somos/>**

“Article 8 of the Convention on the Elimination of all Forms of Discrimination against Women.” An essential steppingstone towards ensuring gender parity in international tribunals and monitoring bodies.

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# ARTICLE 8 OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN AN ESSENTIAL STEPPINGSTONE TOWARDS GUARANTEEING GENDER PARITY IN INTERNATIONAL TRIBUNALS AND MONITORING BODIES

Article 8 of the Convention on the Elimination of all Forms of Discrimination against Women (hereinafter “The Convention”) requires States Parties to “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.” **In interpreting this Article, the Committee on the Elimination of Discrimination against Women (hereinafter “Committee” or “CEDAW Committee”) has pointed out that States have a duty to guarantee gender equality in access to positions in international tribunals and bodies that play a key role in the development of international law and human rights. To date, 189 States have ratified the Convention, thus making the obligations arising from Article 8 are an almost a universal requirement.** Accordingly, GQUAL’s purpose is to work with the States, international bodies, and civil society organizations, towards the effective implementation of the duties arising from these fundamental obligations.

**Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).  
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.**

The obligation to guarantee equal opportunities for women “to participate in the work of international organizations” pursuant to Article 8 is twofold. **At the international level, States must exercise influence when the rules of the procedure for the appointment of international positions are adopted to guarantee the compliance with the requirements of gender equality in accordance with the provision.<sup>1</sup> At the national level, States must establish transparent selection processes to guarantee that women benefit, in equal conditions, from the opportunity to work at an international level, mostly when those opportunities require that the states nominate candidate to be**

**appointed for such positions.**<sup>2</sup> Even though the obligation to ensure gender equality at the international level is of a positive nature, at the domestic level States have an immediate duty to set up the necessary conditions to guarantee de facto that women access those positions in equal terms. On the other hand, the duty to achieve gender equality in practice is considered to be of gradual implementation.

The notion of **“international organizations”** as contemplated by Article 8 of the Convention is understood to include not only international bodies such as the United Nations, but also regional organizations, such as the Organization of American States, the European Council, and the African Union, among others.<sup>3</sup> Indeed, all bodies within such organizations, including **“courts, accessory entities, funds and programs, specialized bodies and agencies created through treaty bodies are covered by this obligation.”**<sup>4</sup> As a result, States have a duty to guarantee gender equality in access to the positions at both, the international and regional levels, in all international bodies.

Additionally, Article 8 requires that state parties to the Convention **“take all appropriate measures”** to ensure gender equality in their representations to international organizations. According to the CEDAW Committee, the appropriate measures include the creation of objective criteria and processes for appointments,<sup>5</sup> the promotion of women to relevant positions and the temporary adoption of special measures focused on accelerating the equality of women<sup>6</sup> within the legal framework as set forth in Article 4 of the Convention.<sup>7</sup>

**The Committee has read this article to require state parties to adopt temporary measures such as special educational opportunities, recruitment policies, and quotas in order to expedite gender de facto equality in areas where women are chronically underrepresented.<sup>8</sup> Such temporary special measures are necessary to bypass entrenched cultural and structural issues that make it impossible for women to compete on an even playing field with men.<sup>9</sup>**

The CEDAW Committee’s interpretation of the Convention, through its Concluding Observations on state parties and its General Recommendations, is vital to understand the practical implications and obligations of the Convention. Even if Article 8 has not been extensively interpreted, the CEDAW Committee has repeatedly obligated States to take whatever measures necessary to ensure de facto gender equality in international representation. **Specifically, the Committee has repeatedly recommended that State parties establish temporary statutory quota systems to achieve substantive equality in both the diplomatic service and States’ representations to international organizations.<sup>10</sup> These quotas should be implemented in a similar manner to current quotas successfully used to reach de facto equality participation in domestic politics and should ensure that women participate in the highest levels and most vital aspects of the diplomatic service.**

**Finally, given the precise nature of the obligation to take all appropriate measures, this duty is of immediate application** and may be subject to enforcement at the domestic and international jurisdiction.<sup>11</sup>

“The CEDAW Convention establishes a duty to guarantee actual equality in the access to positions in international courts and other entities responsible for enforcing international law.”

In conclusion, Article 8 of the CEDAW clearly provides for a state duty to ensure women de facto equality to access positions at international tribunals and other organs in charge of applying and implementing international law. This duty is of almost universal validity given that the CEDAW is one of the widest ratified human right treaties at the universal level. To ensure women participation in the work of international organizations, states must take action at the international level to guarantee that rules and processes of appointment to international positions guarantee gender equality.<sup>12</sup> Also, states must ensure at the domestic level that the process to nominate candidates to those positions, when required, respect the right of women to access and benefit from those opportunities on an equal basis with men. Moreover, states must take all the appropriate measures to guarantee women’s substantive equality to access those positions, including through the passage of laws setting up objective criteria and processes for the appointment and promotion of women to international positions and the adoption of temporary special measures, in particular quotas, aimed at accelerating substantive equality for women. The duty to take all the appropriate measures to ensure women de facto equality to participate in the work of international bodies through the appointment in international tribunals and similar bodies is of immediate application and may be subject to enforcement at the domestic and international level in case of States’ failure to comply.

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1. Sarah Wittkopp, Article 8, in *The UN Convention on the Elimination of All Forms of Discrimination Against Women, A Commentary*, edited by Marsha A. Freeman, Christine Chinkin, and Beate Rudolf, *Oxford Commentaries on International Law* (2013), at 224.

2. *Id.*

3. *Id.*

4. *Id.*

5. CEDAW, General Recommendation No. 23, (1997), paras. 38, 50. 6.*Id.*, para. 43.

7. Article 4 provides: 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.

8. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory. 9. CEDAW, General Recommendation No. 25, (2004), para. 22.

10. *Id.* para. 14.

11. See generally, Concluding Observations, the Netherlands, CEDAW/C/NLD/CO/5, February 5, 2010, para. 33; Concluding Observations, Algeria, CEDAW/C/DZA/CO/3-4, March 23, 2012, para. 26; Concluding Observations, Tajikistan, CEDAW/C/TJK/CO/4-5, October 29, 2013, para. 22; Concluding Observations, Cambodia, CEDAW/C/ KHM/CO/4-5, October 29, 2013, para. 29; and Concluding Observations, Austria, CEDAW/C/AUT/C/7-8, March 22, 2013, para. 31.

12. Sarah Wittkopp, Article 8, *supra* note 1, at 231.