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CAMPAIGN FOR GENDER PARITY IN  
INTERNATIONAL REPRESENTATION

CAMPAÑA POR LA PARIDAD DE GÉNERO  
EN LA REPRESENTACIÓN INTERNACIONAL

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# ARTICLE 8 OF THE CONVENTION TO ELIMINATE ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A STEPPING STONE IN ENSURING GENDER PARITY IN INTERNATIONAL ORGANS AND TRIBUNALS

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Article 8 of the Convention for the Elimination of All Forms of Discrimination against Women (hereinafter, “the Convention”) requires state parties to the treaty 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.” Given the plain text of the provision and its subsequent interpretation by Convention’s enforcement body, the Committee for the Elimination of Discrimination against Women (hereinafter, “Committee” or “CEDAW Committee”), it is clear that state parties have a duty to ensure gender equality in the access to positions in international tribunals and international bodies that play key roles in developing international law and human rights. As of today, 189 states have ratified the Convention, thereby making the obligations arising out of Article 8 an almost universal requirement. The goal of GQUAL is to work with states, international bodies, and civil society organizations towards the effective implementation of this duty.

The obligation to ensure equal opportunity “to participate in the work of international organizations” under Article 8 is two-fold. At the international level, states must exert influence when the rules regulating processes of appointment to international positions are adopted to guarantee that they conform to the gender equality requirements of that provision.<sup>1</sup> At the domestic level, states must establish transparent selection processes to ensure that women benefit on an equal basis from the opportunity to work at the international level, particularly when such opportunity requires states to nominate candidates to be appointed to those 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 women de facto equality to access those opportunities. On the other hand, the duty to achieve in practice gender equality is considered to be of gradual implementation.

When Article 8 speaks of “international organizations,” it is understood that that notion encompasses not only international bodies such as the United Nations, but also regional organizations, including the Organization of American States, the Council of Europe, and the African Union to mention a few.<sup>3</sup> Moreover, all organs within those organizations are covered by this obligation, including “courts, subsidiary bodies, funds and programmes, specialized agencies, and treaty bodies.”<sup>4</sup> Consequently, states have a duty to ensure gender equality in access to positions at both levels and to all international organs.

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 the appointment and promotion of women to relevant positions<sup>5</sup> and the adoption of temporary special measures aimed at accelerating substantive equality for women,<sup>6</sup> as provided by 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>

In conclusion, Article 8 of the Convention 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 Convention is one of the widest ratified human right treaty 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. 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 substantive equality to access those positions, including through the passing 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.

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.

8 CEDAW, General Recommendation No. 25, (2004), para. 22.

9 Id, para. 14.

10 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.

11 Sarah Wittkopp, Article 8, supra note 2, at 231.