



# INTERNATIONAL ACTION NETWORK FOR GENDER EQUITY & LAW

## CEDAW's Approach to Equality

The UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) is known as the "international bill of rights for women."<sup>1</sup>

CEDAW defines discrimination against women as "...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."<sup>2</sup>

**CEDAW asks governments to require formal equality between women and men, ensure substantive equality between women and men, and strive for transformative equality.**

### FORMAL EQUALITY

To achieve formal equality, governments should ensure that women and men have legal equality or "de jure" equality, that is, that the laws in place expressly hold that women and men are equal and protect women from discrimination.<sup>3</sup>

### Did you know?

Women in the United States do not have a constitutional guarantee of equality with men. The Equal Rights Amendment (ERA) is a proposed amendment to the U.S. Constitution intended to address this gap.<sup>4</sup>

The U.S. was one of the first signatories to CEDAW, but has failed to ratify the treaty. It is the only country in the Western hemisphere and the only industrialized democracy that has not ratified CEDAW.<sup>5</sup>

### SUBSTANTIVE EQUALITY

To achieve substantive equality, governments must ensure that women have de facto equality, that is, women must be treated as equal citizens in reality and in practice. Laws or policies that appear neutral on their face might in reality discriminate against women, such as laws that fail to take pregnancy into account; in other cases, laws which promise equality may go unenforced in practice.<sup>6</sup>

### TRANSFORMATIVE EQUALITY

Transformative Equality involves a redistribution of power and resources and a change in the institutional structures which perpetuate women's oppression, to ensure women's full participation in society. For example, child care and parenting should be valued by women and men and society as a whole.<sup>7</sup> Another example is the #MeToo movement, which "is eroding the two biggest barriers to ending sexual harassment in law and in life: the disbelief and trivializing dehumanization of its victims."<sup>8</sup>

<sup>1</sup> [www.un.org/womenwatch/daw/cedaw/cedaw.htm](http://www.un.org/womenwatch/daw/cedaw/cedaw.htm) <sup>2</sup> *Id.* <sup>3</sup> UN General Recommendation 19, paragraph 7. <sup>4</sup> See Equality NOW Factsheet and Toolkit on supporting ERA Ratification: <https://www.equalitynow.org/era> <sup>5</sup> [https://www.amnestyusa.org/files/pdfs/cedaw\\_fact\\_sheet.pdf](https://www.amnestyusa.org/files/pdfs/cedaw_fact_sheet.pdf); see also <http://citiesforcedaw.org/wp-content/uploads/2018/01/CEDAW-USFact-Sheet-01-2018-1.pdf> <sup>6</sup> See Andrew Byrnes, "Article 1" in *The UN Convention on the Elimination of All Forms of Discrimination Against Women, A Commentary*, eds. Marsha Freeman, Christine Chinkin, Beate Rudolf (Oxford 2012). <sup>7</sup> *Id.* <sup>8</sup> Catherine A. MacKinnon, #MeToo Has Done What the Law Could Not, *The New York Times*, Feb. 4, 2018, <https://www.nytimes.com/2018/02/04/opinion/metoo-law-legal-system.html>.