

**General recommendation No. 25, on article 4, paragraph 1, of the
Convention on the Elimination of All Forms of Discrimination against
Women, on temporary special measures**

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I. Introduction

1. The Committee on the Elimination of Discrimination against Women decided at its twentieth session (1999), pursuant to article 21 of the Convention, to elaborate a general recommendation on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women. This new general recommendation would build, *inter alia*, on earlier general recommendations, including general recommendation No. 5 (seventh session, 1988), on temporary special measures, No. 8 (seventh session, 1988), on implementation of article 8 of the Convention, and No. 23 (sixteenth session, 1997), on women in public life, as well as on reports of States parties to the Convention and on the Committee's concluding comments to those reports.

2. With the present general recommendation, the Committee aims to clarify the nature and meaning of article 4, paragraph 1, in order to facilitate and ensure its full utilization by States parties in the implementation of the Convention. The Committee encourages States parties to translate this general recommendation into national and local languages and to disseminate it widely to the legislative, executive and judicial branches of government, including their administrative structures, as well as civil society, including the media, academia, and human rights and women's associations and institutions.

II. Background: the object and purpose of the Convention

3. The Convention is a dynamic instrument. Since the adoption of the Convention in 1979, the Committee, as well as other actors at the national and international levels, have contributed through progressive thinking to the clarification and understanding of the substantive content of the Convention's articles and the specific nature of discrimination against women and the instruments for combating such discrimination.

4. The scope and meaning of article 4, paragraph 1, must be determined in the context of the overall object and purpose of the Convention, which is to eliminate all forms of discrimination against women with a view to achieving women's *de jure* and *de facto* equality with men in the enjoyment of their human rights and fundamental freedoms. States parties to the Convention are under a legal obligation to respect, protect, promote and fulfil this right to non-discrimination for women and to ensure the development and advancement of women in order to improve their position to one of *de jure* as well as *de facto* equality with men.

5. The Convention goes beyond the concept of discrimination used in many national and international legal standards and norms. While such standards and norms prohibit discrimination on the grounds of sex and protect both men and women from treatment based on arbitrary, unfair and/or unjustifiable distinctions, the Convention focuses on discrimination against women, emphasizing that women have suffered, and continue to suffer from various forms of discrimination because they are women.

integrated fashion and extend beyond a purely formal legal obligation of equal treatment of women with men.

7. Firstly, States parties' obligation is to ensure that there is no direct or indirect¹ discrimination against women in their laws and that women are

ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.

13. In addition to the Convention on the Elimination of All Forms of

21. The term “special”, though being in conformity with human rights discourse, also needs to be carefully explained. Its use sometimes casts women

and adopt those temporary special measures which they consider to be the most appropriate in order to accelerate the achievement of de facto or substantive equality for women.

28. States parties should explain the reasons for choosing one type of measure over another. The justification for applying such measures should include a description of the actual life situation of women, including the conditions and influences which shape their lives and opportunities — or that of a specific group of women, suffering from multiple forms of discrimination — and whose position the State party intends to improve in an accelerated manner with the application of such temporary special measures. At the same time, the relationship between such measures and general measures and efforts to improve the position of women should be clarified.

29. States parties should provide adequate explanations with regard to any failure to adopt temporary special measures. Such failures may not be justified simply by averring powerlessness, or by explaining inaction through predominant market or political forces, such as those inherent in the private sector, private organizations, or political parties. States parties are reminded that article 2 of the Convention, which needs to be read in conjunction with all other articles, imposes accountability on the State party for action by these actors.

30. States parties may report on temporary special measures under several articles. Under article 2, States parties are invited to report on the legal or other basis for such measures, and their justification for choosing a particular approach. States parties are further invited to give details about any legislation concerning temporary special measures, and in particular whether such legislation provides for the mandatory or voluntary nature of temporary special measures.

31. States parties should include, in their constitutions or in their national legislation, provisions that allow for the adoption of temporary special measures. The Committee reminds States parties that legislation, such as comprehensive anti-discrimination acts, equal opportunities acts or executive orders on women's equality, can give guidance on the type of temporary special measures that should be applied to achieve a stated goal, or goals, in given areas. Such guidance can also be contained in specific legislation on employment or education. Relevant legislation on non-discrimination and temporary special measures should cover governmental actors as well as private organizations or enterprises.

32. The Committee draws the attention of States parties to the fact that temporary special measures may also be

that States parties provide in their reports details of any action plans which may be directed at creating access for women and overcoming their underrepresentation in certain fields, at redistributing resources and power in particular areas, and/or at initiating institutional change to overcome past or present discrimination and accelerate the achievement of de facto equality. Reports should also explain whether such action plans include considerations of unintended potential adverse side-effects of such measures as well as on possible action to protect women against them. States parties should also describe in their reports the results of temporary special measures and assess the causes of the possible failure of such measures.

34. Under article 3, States parties are invited to report on the institution(s) responsible for designing, implementing, monitoring, evaluating and enforcing such temporary special measures. Such responsibility may be vested in existing or planned national institutions, such as women's ministries, women's departments within ministries or presidential offices, ombudspersons, tribunals or other entities of a public or private nature with the requisite mandate to design specific programmes, monitor their implementation, and evaluate their impact and outcomes. The Committee recommends that States parties ensure that women in general, and affected groups of women in particular, have a role in the design, implementation and evaluation of such programmes. Collaboration and consultation with civil society and non-governmental organizations representing various groups of women is especially recommended.

35. The Committee draws attention to and reiterates its general recommendation No. 9, on statistical data concerning the situation of women, and recommends that States parties provide statistical data disaggregated by sex in order to measure the achievement of progress towards women's de facto or substantive equality and the effectiveness of temporary special measures.

36. States parties should report on the type of temporary special measures taken in specific fields under the relevant article(s) of the Convention. Reporting under the respective article(s) should include references to concrete goals and targets, timetables, the reasons for choosing particular measures, steps to enable women to access such measures, and the institution accountable for monitoring implementation and progress. States parties are also asked to describe how many women are affected by a measure, how many would gain access and participate in a certain field because of a temporary special measure, or the amount of resources and power it aims to redistribute to how many women, and within what time frame.

37. The Committee reiterates its general recommendations 5, 8 and 23, wherein it recommended the application of temporary special measures in the fields of education, the economy, po

38. States parties are reminded that temporary special measures should be adopted to accelerate the modification and elimination of cultural practices and stereotypical attitudes and behaviour that discriminate against or are disadvantageous for women. Temporary special measures should also be implemented in the areas of credit and loans, sports, culture and recreation, and legal awareness. Where necessary, such measures should be directed at women subjected to multiple discrimination, including rural women.

39. Although the application of temporary special measures may not be possible under all the articles of the Convention, the Committee recommends that their adoption be considered whenever issues of accelerating access to equal participation, on the one hand, and accelerating the redistribution of power and resources, on the other hand, are involved as well as where it can be shown that these measures will be necessary and most appropriate under the circumstances.

Notes

¹ Indirect discrimination against women may occur when laws, policies and programmes are based on seemingly gender-neutral criteria which in their actual effect have a

⁴ The term “affirmative action” is used in the United States of America and in a number of United Nations documents, whereas the term “positive action” is currently widely used in Europe as well as in many United Nations documents. However, the term “positive action” is used in yet another sense in international human rights law to describe “positive State action” (the obligation of a State to initiate action versus a State’s obligation to abstain from action). Hence, the term “positive action” is ambiguous inasmuch as its meaning is not confined to temporary special measures as understood in article 4, paragraph 1, of the Convention. The terms “reverse discrimination” or “positive discrimination” are criticized by a number of commentators as inappropriate.