

**Sexual harassment as an equality and non-discrimination issue
The CEDAW approach**

**NORHED/SEARCWL seminar March 2017
Professor Anne Hellum, UoO**

The Convention on the Elimination of All Forms of Discrimination against women, 1979

- Prohibits all forms of discrimination against women
- Ratified by 189 states
- Zimbabwe, Kenya, Malawi, Zambia and Norway has ratified the Convention without reservations

State obligation to prohibit discrimination

- States are obliged to incorporate the principle of gender equality and non-discrimination in constitutions, pass equality and non-discrimination laws and remove discriminatory laws
- States are obliged to ensure that gender equality and non-discrimination legislation is effectively sanctioned
 - Complaint procedures must be in place
 - Complaint procedures must be accessible
 - Remedy for victims of discrimination/harassment
 - Sanctions for perpetrators of discrimination law

What is discrimination

- **CEDAW Article 1**

For the purposes of the present Convention, the term "discrimination against women" shall mean 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.

Sexual harassment a form of discrimination against women

- General Recommendation 19 was issued by the CEDAW Committee (1992) defines sexual harassment as a form of discrimination:
- Para 1: « Gender based violence is a form of discrimination against women that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men»
- Para 6. « It includes acts that inflict physical, mental or sexual harm or suffering, threats acts, coercion and other deprivations of liberty»

- Para 18. «Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or action. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when a woman has reasonable grounds to believe that her objection would disadvantage her in connection with the employment, including recruitment or promotions, or when it creates a hostile working environment.»
- Para 24, (i) States parties should take «Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including inter alia violence and abuses in the family, sexual assault and sexual harassment in the workplace.»

Sexual harassment in institutions of higher learning

- States that have ratified the CEDAW are obliged to put in place legal measures that respects, protects and fullfills women's right to protection against sexual harassment
- States are obliged to ensure that such measures are put in place in workplaces and educational institutions
 - Public and private educational institutions
 - Staff and students

The obligation to respect and protect

- The obligation to respect and protect implies that the state:
 - Put effective legal measures in place
 - Anti-discrimination law, labour law and criminal law must prohibit sexual harassment
 - Reparation for victims and sanctions of perpetrators
 - Access to have a case heard by independent complaint mechanism
 - Contested issue in many countries whether low threshold equality and anti-discrimination bodies should have the competency to address sexual harassment
 - CEDAW Committee's critique of the Gender Equality Act, Norway's 8th and 9th periodic report. The Committee recommends that the State should consider empowering the Discrimination Ombud or Appeals Board to entertain cases concerning sexual harassment

The obligation to fulfill

- Negative measures to respect and protect individuals that have been victims of sexual harassment is not sufficient
- Positive proactive and preventive measures are required
- States are obliged to put in place:
 - National gender policies encompassing proactive and preventive measures concerning sexual harassment
 - University policies addressing sexual harassment of employees and student
 - Code of conduct forbidding sexual harassment
 - Independent individual complaint procedure
 - Legal and psychological counselling for victims
 - Reparation for victims and sanctions for perpetrators
 - Campaigns to change attitudes
 - Integrate information about sexual harassment in curriculum

CEDAW committee's concluding comments to Kenya

- While noting that the Employment Act has introduced a specific provision on sexual harassment, the Committee is concerned that employers are only called upon to take positive measures to prevent sexual harassment where one has 20 or more employees (Kenya 2011, para 33)