

# RESERVATIONS IN INTERNATIONAL LAW

**Reservations to international treaties are statements in which States can place conditions on their ratification of a treaty. Allowing States to make reservations encourages ratification, but can also weaken the human rights protection of the treaty. Governments should be urged to withdraw their reservations, including those limiting girls' rights.**

In an analysis of reservations to a few of the main instruments forming the cornerstone of girls' rights, we see that States generally cite cultural and religious reasons to justify their reservations.<sup>1</sup> Reservations can demonstrate a State's lack of will to uphold human rights obligations—essentially undermining the universality of human rights and asserting a limited interpretation of girls' rights.<sup>2</sup>

**Reservations to CEDAW, CRC, ICPD, Beijing and the SDGs, are most frequently related to:**

- Sexual and reproductive health and rights (SRHR);
- Equality in marriage and the family;
- Nationality rights;
- Freedom of thought, conscience and religion;
- Adoption;
- Children deprived of liberty.

## RESERVATIONS TO CEDAW

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) promotes women's and girls' rights and requires countries to eliminate discrimination based on gender. CEDAW is oftentimes referred to as the international bill of women's rights, and is one of the key international agreements aimed at achieving gender equality and empowering all women and girls.

CEDAW, however, is also the human rights convention with the largest number of reservations, with 48 States having made reservations, in particular on the issues of

condemning all forms of discrimination (Art. 2), equal nationality rights (Art. 9), equality before the law (Art. 15), and equality in family life (Art. 16). This indicates that States parties to the Convention have varying levels of commitment to the principles of CEDAW—consequently limiting equal rights for girls.

**Reservations to international treaties are caveats to the agreements, and allow States parties to express their desire not to be bound by the preserved provision of the treaty.**

Article 16, for example, sets out that women and girls have the same rights as men and boys in family life, in marriage, and at its dissolution; regarding property and inheritance; and in deciding when and if to have children. It also stipulates that child marriage should not take legal effect. All of Article 16 is critical to girls' rights, as it makes clear that States have a duty to protect the rights of women and girls in the private sphere. Reservations to this article have broad consequences for SRHR (including forced sex/rape, early pregnancy, access to contraception and sexual and reproductive health services), child marriage, economic empowerment, and comprehensive sexuality education. Given the importance of this Article, the CEDAW Committee has called for States to withdraw their reservations, with some success.

Similarly, Article 2, a core article of the Convention, sets out measures to be taken to eliminate discrimination against women, including modifying or abolishing existing laws, regulations, customs, and practices that constitute discrimination against women. The majority, though not all, of the 16 States with reservations to this article, are Muslim States. These reservations show States' lack of will to tackle discrimination, and their reluctance to prioritise girls' rights over essentialist views of culture and religion. The CEDAW Committee has said that reservations to Article 2 are contrary to the object and purpose of the treaty, as it outlines States' core obligations necessary for the advancement of gender equality.

<sup>1</sup> For an in-depth exploration of reservations adversely impacting girls' rights, please read Chapter III of Plan International's report 'Girls' Rights are Human Rights' (2017).

<sup>2</sup> To view the reservations lodged by States, please refer to the UN Treaty Collection at <https://treaties.un.org/Pages/Index.aspx?clang=en>.

## RESERVATIONS TO THE CRC

The Convention on the Rights of the Child (CRC) is the most widely ratified human rights convention, with only the United States yet to ratify. Of the 196 States party to the Convention, 40 have reservations. The most frequently reserved articles are related to freedom of thought, conscience and religion; children deprived of liberty; and adoption. Seven States also have general reservations to the Convention, all citing Islam/Sharia.

**Declarations usually express the State's interpretation of a treaty provision. Depending on the text, declarations often have the same effect as reservations of allowing States parties to add certain conditions to their ratification.**

Article 14 of the CRC regarding the right to freedom of thought, conscience and religion has the highest number of reservations (15 States reserving). The question of compatibility and conflict between freedom of thought, conscience and religion, and gender equality is complicated, as religion and beliefs have often been misused to justify violations of girls' and women's rights. However, according to the UN Special Rapporteur on freedom of religion and belief, "*Freedom of religion or belief, in conjunction with freedom of expression, helps open up religious traditions to systematic questions and debates*", and if girls can exercise their right to freedom of thought, conscience and religion, they can be empowered to question discriminatory or patriarchal norms that exist in different religions and beliefs.

Eight States have reservations related to adoption or alternative care, the majority being Muslim countries. Some non-Muslim countries have reservations regarding (parts of) Article 21 on inter-country adoption, referring to aboriginal customs or citing child protection issues. This article is an effort to prevent unethical adoption practices, which often target vulnerable mothers, including poor, indigenous, and/or rural women and girls.

A further seven States have reservations to Article 37(c) on the separation of children and adults deprived of liberty. States justify these reservations based on feasibility or practicality, but according to the CRC Committee, "*There is abundant evidence that the placement of children in adult prisons or jails*

*compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate."*

## RESERVATIONS TO ICPD, BEIJING, AND THE SDGS

The majority of reservations and declarations to the SDGs, ICPD, and Beijing are related to SRHR, with reservations on abortion being most common. The definitions of 'gender' and 'family' have also become increasingly controversial over the years, demonstrating a generally 'conservative' stance on girls' rights. 'Gender' in particular, given its association with transgender rights and gender identity, saw an increased number of reservations in the SDGs. Opposition to sexuality education also increased at the time of adoption of the 2030 Agenda.

In explaining their positions, many States refer to cultural and religious beliefs (with 15 States citing Islam/Sharia), as well as traditional views of the family unit and parental rights and responsibilities.

There are some regional trends, with the African Group making reservations to the SDGs as a block, and many Latin American and Caribbean (LAC) States reserving on abortion, and many LAC States reserving on 'the family' in statements to ICPD.

## CONCLUSION

**There is significant overlap in reservations to CEDAW, the SDGs, ICPD and Beijing, though reservations to the CRC raise different issues due to its lack of a gender lens. Efforts to uphold the rights of women and girls in the private sphere are hindered by the high number of reservations to CEDAW, and to soft law agreements related to SRHR—with States attempting to justify their reservations based on religious and cultural differences. While CEDAW and CRC together have created a 'minimum-standard' framework for girls' rights, an analysis of reservations indicates clear resistance to some principles key to the promotion of those rights.**

## RECOMMENDATIONS:

- **All reservations to CEDAW, CRC, the SDGs, ICPD, and Beijing should be withdrawn immediately.** CSOs should advocate for the withdrawal of reservations either directly to the reserving government, or by influencing other governments to advocate for their withdrawal.
- **Regardless of reservations made, States should embrace, implement, and report progress on all Sustainable Development Goals and targets during review at the High Level Political Forum (HLPF),** in order not to leave girls behind.
- **In alternative reports to treaty bodies, CSOs should continue to address issues under all relevant articles, regardless of reservations,** to provide a more complete picture of the situation of girls' rights. Alternative reports also provide the opportunity to advocate for the withdrawal of reservations.