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## Rise and fall of the CEDAW in Finland: time to reclaim its impetus

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### 1 Introduction

This chapter is premised on considering the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as one of the most interesting human rights treaties due to its several special characteristics: its broad approach to equality (and non-discrimination), its broad, substantive coverage calling for specific actions to overcome discrimination against women in a number of spheres of life, and the Convention's reach beyond the public-private divide in human rights norms. It is the only human rights treaty that directly addresses the dimension of human reproduction by touching upon family planning (the right to decide freely on the number and spacing of children).<sup>1</sup> Additionally, the CEDAW appears to be the only human rights treaty that targets culture and tradition as influential forces shaping gender roles and family relations as well as restricting women's enjoyment of their fundamental rights. This aspect of the Convention deserves our attention, and these structural forms of discrimination should be addressed. Altogether, the CEDAW provides a comprehensive framework for challenging the various forces that have created and sustained discrimination against women.

This chapter considers the impact of the CEDAW on Finnish law and practices.<sup>2</sup> After its ratification, the CEDAW influenced Finnish equality

<sup>1</sup> The *Beijing Declaration and Platform for Action* 1995 (*Beijing Document*) is a particularly important international instrument elaborating the issue of reproductive rights, but as this instrument is not made in a treaty format, it is not legally binding.

<sup>2</sup> The analyses of the significance of the CEDAW and the work of the CEDAW Committee included in this chapter are partly based on a number of interviews conducted in 2009 by the authors. The interviewed experts were: Pia Puu Oksanen and Maarit Pihkala (Finnish branch of Amnesty International), Paula Havu (Finnish UN Association), Tanja Auvinen

law to a great extent. Finland did not use sweeping reservations, and has not neglected its reporting duties under the Convention. After the end of the Cold War, Finland's membership the Council of Europe in 1989 and accession to the EU in 1995 brought a new type of 'rights discourse' to Finland. A reform of the Finnish Constitution introduced the stronger protection of constitutional rights, and allowed the courts to refer to human rights instruments. It would seem safe to assume that the new constitutional constellation gave an opening to even more extensive use of the potential of the CEDAW. Yet quite the opposite seems to be the case. The CEDAW seems to have become marginalised as a source of Finnish legal reform and in court praxis. The stronger emphasis on constitutional and human rights did not enhance the role of the Women's Rights Convention.

The aim of this chapter is to explain this paradox, by considering the political and legal trajectories of human rights and gender equality policies in Finland. The explanation is sought in the specific political and social circumstances of the country during the Cold War period and in the following decades. The turn in the national tide of the CEDAW seems to have taken place around 1990. Attention here is focused on showing how changing geopolitical circumstances have played a role in this. This chapter illuminates social and political factors behind the historical rise and decline of the national reception of the Convention in Finland.

The specific features of the Finnish women's movement and equality policies are used to explain why certain issues, especially those related to equality in the labour market, take pride of place in national politics, and why other issues covered by the CEDAW tend to be left aside. Both the initial success at ratification, which led to the adoption of the first piece of anti-discrimination law in Finland, and the weaker interest and impact of the Convention later on, are understood in the light of features of 'state feminism' typical for the Nordic societies.

Due to the paucity of references to the CEDAW in both Finnish legislative work and court practice after 1990, the main focus of this chapter is on Finnish periodical reports to the CEDAW Committee in the post-Cold War period. The very 'state feminism' that eased the adoption of equality

(Coalition of Finnish Women's Associations (NYTKIS)), Pirkko Mäkinen (Finnish Ombudsman on Gender Equality), Sinikka Mustakallio (expert on gender equality, World of Management (WoM)), Leena Ruusuvoori (National Council of Women of Finland), Milla Aaltonen and Johanna Lampinen (Finnish League for Human Rights), Kati Kivistö (Ministry of Justice), Pasi Mustonen (Ministry of Social Affairs and Health) and Riitta Martikainen (Ministry of Social Affairs and Health).

legislation in the context of ratification of the CEDAW has made later civil society engagement with the Convention ambiguous. Women's organisations are invited by the government to participate in the national reporting procedure to the CEDAW Committee, but cooperation with state officials seems to curtail, to some extent, independent activities by NGOs. This chapter shows that the Finnish reports concentrate on issues that are largely outside the scope of mandatory EU equality law, such as violence against women. The Committee hearings have opened a channel to Finnish women's organisations to stress the national shortcomings in combating violence against women. Because a recent European Council Convention also concentrates on violence against women, the combined pressure towards due diligence may lead to better recognition of violence against women as discrimination. Reclaiming the significance of the CEDAW may hopefully take place through a coincidence of European and United Nations (UN) instruments addressing the same issues that are problematic in the Finnish human rights discourse.

## 2 Ratification of the CEDAW: legal and political background

### 2.1 Gender equality in Finland prior to the CEDAW

Finnish women were politically emancipated quite early, when general suffrage in Parliamentary elections was introduced in 1906. Political rights provided the 'first-wave' feminists with an opening for legislative reform, but the number of women in Parliament remained limited for decades.<sup>3</sup> Political parties in the first half of the twentieth century were based on civic activism, and women could present their political agendas through independent women's organisations within each party.<sup>4</sup> Cooperation across party lines between women in Parliament became and has remained a feature of Finnish politics even after the number of

<sup>3</sup> In the first Parliament of the independent state of Finland of 1917, the number of women MPs was 18. In the subsequent Parliament, this figure was reduced. See I. Sulkunen, M. Lähtenmäki and A. Korppi-Tommola, *Naiset eduskunnassa* [Women in Parliament] (Helsinki: Edita, 2007). In 2012 the Finnish Parliament had 85 women Members (out of 200).

<sup>4</sup> T. Skard and E. Haavio-Mannila, 'Naiset parlamenteissa' [Women in the Parliament] in E. Haavio-Mannila *et al.* (eds.), *Keskeneräinen kansanvalta. Naiset Pohjoismaiden politiikassa* [Unfinished Democracy. Women in Nordic Politics] (Oslo: Nordic Council of Ministers, 1983) 87–129 at 87; R. Ruusala, *Vasemmiston naisjärjestöjen tavoitteet ja toimintamenetelmät* [Aims and Working Methods of Left-Wing Women's Organisations] (Tampere: Tampereen yliopiston politiikan tutkimuksen laitos, 1967).

women Parliamentarians has risen. Formally, equal rights for women were largely achieved by 1960.

Finnish women were required to perform heavy tasks in agriculture and industry both before and during the Second World War and in the post-war era. Finland differed from its Nordic neighbours by having a strong presence of women in the labour market. In this respect Finland resembled its eastern neighbour, the Soviet Union, more than its western neighbour, Sweden.<sup>5</sup> Accordingly, the ideal of breadwinner–homemaker nuclear families was a realistic option in Finland, less often than in most Western societies. Rapid socio-economic changes since the 1960s brought issues related to social and economic rights to the fore in Finland.<sup>6</sup> The shift from agriculture to an industrial and service-based economy accelerated, and women were at least as eager as men to move to urban areas. ‘Second-wave’ feminist activism rose at this period of structural change.<sup>7</sup>

The Scandinavian models of social welfare, modestly introduced in the pre-Second World War period, were now appearing in Finland on a larger scale. Due to both political and economic reasons and losses caused by the war, welfare state development in Finland lagged behind in comparison with Sweden and other Nordic states. From the 1960s onwards both economic and political conditions existed for adopting Nordic welfare state institutions. These changes introduced a corporatist type of governance, based on cooperation between the central administration, trade unions and business, with a range of councils, boards and committees.<sup>8</sup> This

<sup>5</sup> E. Haavio-Mannila and R. Jallinoja, *Changes in the Life Patterns of Families in Finland: National Report based on Statistics and Earlier Studies* (Department of Sociology, Helsinki University, 1980).

<sup>6</sup> R. Julkunen, ‘Suomalainen sukupuolimalli – 1960-luku käänteenä’ [The Finnish gender model – with 1960s as a turning-point] in A. Anttonen, L. Henriksson and R. Nätkin (eds.), *Naisten hyvinvointivaltio* [Women’s Welfare State] (Tampere: Vastapaino, 1994) 179–201.

<sup>7</sup> In political terms, feminism in Europe and the USA is often divided into three ‘waves’: the first occurring in the late nineteenth and early twentieth centuries, with a focus on women’s legal equality; the second taking place from the 1960s to the 1990s and focusing on women’s actual position in the private and public spheres; and the third, beginning in the 1990s, with a focus on differences among women and their identities. For the first- and second-wave feminism, see R. Jallinoja, *Suomalaisen naisliikkeen taistelukaudet. naisialiike naisten elämäntilanteen muutoksen ja yhteiskunnallisen aatteellisen murroksen heijastajana* [The Fighting Periods of the Finnish Women’s Movement. Women’s Movement as the Reflection of the Changing Life Conditions of Women and Societal–Ideological Break] (Porvoo: WSOY, 1983).

<sup>8</sup> L. Karvonen, ‘Trade unions and the feminization of the labour market’ in L. Karvonen and P. Selle (eds.), *Women in Nordic Politics: Closing the Gap* (Aldershot: Dartmouth, 1995) 133–53.

kind of corporatist governance had little constitutional foundation, as it evolved through agreements between major institutions. Women found this corporatist system more difficult to access than the Parliament.<sup>9</sup> In 1964 the so-called ‘incomes policy’ was introduced – a centralised settlement under which wages rose in line with the growth of gross national income – which resulted in the institutionalisation of negotiation authorities and statistics production.<sup>10</sup> When party machinery became more professional and the corporatist machinery developed, the losers in the power game were representatives of civic activism, including women’s organisations. Because formal equality of women was already largely achieved, the women’s movement had also lost its former common goal.

In this new setting, interest turned to issues of de facto equality. Gender equality goals concentrated on women’s efficient participation in the labour market. The new focus was on social and economic issues rather than formal rights, which had been the target of many ‘first-wave feminists’. Culture, social issues, health, family and education policies had earlier been areas where women politicians had been considered to be ‘at home’, and thus there was continuity with first-wave policies. Grievances connected to gender segregation and lower pay for women in the labour market, difficulties with childcare and other issues important for working mothers became the core of new gender equality politics.<sup>11</sup>

In 1966 the Finnish government set up a committee to consider the position of women, and the committee report was published in 1970.<sup>12</sup> The committee emphasised a gender-neutral approach and paid special attention to the obstacles that blocked women’s full participation in the labour market as well as the promotion of dual-breadwinner families.

<sup>9</sup> H. M. Hernes and E. Hänninen-Salmelin, ‘Women in the corporate system’ in E. Haavio-Mannila *et al.* (eds.), *Unfinished Democracy: Women in Nordic Politics* (Oxford: Pergamon Press, 1985) 106–33 at 118–20.

<sup>10</sup> The first national incomes policy agreement, where a collective agreement between the main national-level labour market organisations was linked to government promises on price and taxation policies, was established in 1968.

<sup>11</sup> S. Sinkkonen and E. Haavio-Mannila, ‘Naisliikkeen heijastuminen kansanedustajien lainsäädäntötoiminnassa. Mies- ja naiskansanedustajien 1907–1977 valtiopäivillä tekemien aloitteiden vertailu’ [The impact of women’s movement to the legislative work of MPs. Comparison of legislative initiatives by male and female MPs], *Politiikka* 22:2 (1980) 101–17.

<sup>12</sup> *Committee Report on the Position of Women* (1970). As to the contents, see Julkunen ‘Suomalainen sukupuolimalli’ at 179–201 and K. Nousiainen, ‘Utility-based equality and disparate diversities’ in D. Schiek and V. Chege (eds.), *European Non-Discrimination Law: Comparative Perspectives on Multidimensional Equality Law* (London: Routledge, 2008) 187–214 at 188.

Measures for these aims were individual taxation, childcare services and other social welfare strategies. Gender equality was considered useful for national prosperity, rather than as an end in itself.<sup>13</sup> Anti-discrimination laws and policies held no special place on the agenda presented by the committee. One of the few references to anti-discrimination measures was to the UN Declaration on the Elimination of Discrimination against Women of 1967.<sup>14</sup>

## 2.2 *Towards the ratification of the CEDAW*

Finland's international position during the Cold War after the Second World War era was precarious.<sup>15</sup> The country's international orientation was limited by the imperative to remain as neutral as possible to the divisions caused by the Cold War. The situation encouraged a political orientation associated with Western values under international commitments that were neutral to global bipolarisation. Accordingly, Finland did not join the Council of Europe and remained outside the European Community (EC), but did join the European Free Trade Association (EFTA). In the post-Second World War period, Finland became internationally active through two channels particularly – the UN and Nordic institutions, especially the Nordic Council.<sup>16</sup> The emphasis on Nordic cooperation influenced the manner of implementation of the UN conventions. From 1975 onwards, Finland played an active role in setting up the détente between Cold War parties through the so-called Helsinki Process, which also introduced human rights into the East–West dialogue.<sup>17</sup>

<sup>13</sup> Nousiainen, 'Utility-based equality and disparate diversities'.

<sup>14</sup> *Committee Report on the Position of Women* (1970) at 65–70.

<sup>15</sup> While not *de jure* one of the Axis powers, Finland fought against the Soviet Union on the side of Nazi Germany, and was classified as a co-belligerent by the Paris Peace Treaty of 1947. The country remained unoccupied and retained its democratic rule through the war period, and did not become a part of the Socialist Bloc. Yet Finland tried to avoid any disagreements with the Soviets during the Cold War, which limited the country's international options considerably, as the Soviet Union opposed Finland's Western commitments.

<sup>16</sup> In 1955 Finland joined both the UN and the Nordic Council, which had been established in 1952 as a tool for inter-Parliamentary cooperation and consultation among the Nordic states (including Denmark, Finland, Iceland, Norway and Sweden). The Nordic Council of Ministers and a number of Nordic conventions, as well as various more or less formal institutions of cooperation, were active especially during the Cold War era. See B. Sundelius, *Managing Transnationalism in Northern Europe* (Boulder: Westview Press, 1978).

<sup>17</sup> The Conference on Security and Co-operation in Europe (CSCE) was established by the adoption of the Helsinki Final Act in 1975. The CSCE was renamed as the Organization

Finland's general international orientation was also important for gender equality politics. Because Finland did not join the European Convention on Human Rights (ECHR), and was not bound by the EC gender equality law, the UN instruments became the major international influence on Finnish national legislation and practices. Finnish women's organisations took advantage of the governments' international politics. These organisations, as well as public opinion in general, seem to have believed that the level of gender equality in Finland was already high. The UN policies for the advancement of women thus offered an opportunity for the Finnish government to highlight the country's achievements in equality internationally. These governmental strivings gave women's organisations an opening for requiring further national equality reforms by claiming that they were needed for maintaining the country's international image.

At the UN level, Finnish protagonists for women's rights had a fore-runner, Ms Helvi Sipilä. An advocate by training, Sipilä was an activist in the International Council of Women and International Federation of Women Lawyers, and she represented Finland in various UN functions and meetings. She played a prominent role in promoting women's rights at the UN as Deputy Secretary-General, and was an important figure in the efforts that led to both the establishment of the UN Development Fund for Women (UNIFEM) and the adoption of the CEDAW, as well as in putting into effect the 1975 (International Women's Year) World Action Plan.<sup>18</sup> Sipilä and other Finnish activists for women's rights may have seen a greater need for promoting women's rights outside Finland rather than within, but Sipilä's prominent position was useful for feminists at home who wished to refer to the UN gender equality instruments in Finnish national policies.

Nordic orientation was, as already stated, favoured in the post-Second World War period for reasons of international politics, but rapid economic growth and urbanisation also made Nordic welfare state ideology both

for Security and Co-operation in Europe (OSCE) as of the beginning of 1995. The 1975 Helsinki Final Act remains its founding document.

<sup>18</sup> Helvi Sipilä represented Finland in a number of UN organisations between 1960 and 1972. She became a member of the Commission on the Status of Women in 1960, and she continued her career as a Rapporteur and finally as the Deputy Secretary-General of the UN in 1972. Issues related to the position of women, such as the preparation of the UN Women's Year and the Mexico Conference 1975, were delegated to Sipilä. See A. Winter-Mäkinen, *Naisjuristien vuosisata: Poimintoja naisjuristien historiasta* [Century of Women Lawyers: Excerpts from the History of Women Lawyers] (Helsinki: Lakimiesliitto, 1995) 135–6.

feasible and desirable. Considerable Nordic cooperation in many matters, including law preparation, was already common in the pre-Second World War era, but this cooperation intensified during the Cold War. From the 1960s on, welfare state institutions developed quickly. In 1978 cooperation on gender equality issues at the Nordic level was formalised when the Nordic Council of Ministers approved an Action Programme for Nordic cooperation. Nordic Ministers responsible for gender equality issues were to meet regularly, and a committee was established to prepare equality issues. The main areas of cooperation were working life, social and family policies, education, housing and social planning, and political participation.<sup>19</sup> In the 1970s two-breadwinner families became an acceptable goal rather than a necessity in all Nordic states. Women also gained political power, as their number in the Nordic Parliaments grew and formed the 'critical mass' needed for political initiative.<sup>20</sup> This orientation strengthened a new type of feminism, known as 'state feminism'.

The term 'state feminism' refers to cooperation between women's movements and state authorities, especially through specialised bodies to promote gender equality.<sup>21</sup> The rise of bodies devoted to national equality increased rapidly in the UN Member States, since the UN International Women's Year 1975 delegates had recommended that such bodies be established.<sup>22</sup> The Nordic states were forerunners in setting up such bodies. In the 1970s, equality councils or delegations were set up in all Nordic states (in 1972 in Finland,<sup>23</sup> Norway and Sweden; in 1975 in Denmark; and

<sup>19</sup> E. Haavio-Mannila, 'Convergences between East and West: tradition and modernity in sex roles in Sweden, Finland and the Soviet Union', *Acta Sociologica* 14 (1971) 114–25.

<sup>20</sup> D. Dahlerup, *The New Women's Movement: Feminism and Political Power in Europe and the USA* (London: Sage Publications, 1986).

<sup>21</sup> The idea of 'state feminism' and the idea that the Scandinavian welfare states may be 'women friendly' was introduced by Norwegian political scientist Helga Hernes in 1987. See H. Hernes, *Welfare State and Woman Power. Essays in State Feminism* (London: Norwegian University Press, 1987).

<sup>22</sup> This launched what is described as 'state feminism' in many UN Member States. See J. Lovenduski, 'Introduction: state feminism and the political representation of women' in J. Lovenduski (ed.), *State Feminism and Political Representation* (Cambridge University Press, 2005) 1–19.

<sup>23</sup> The Council for Equality between Women and Men still exists, but other equality bodies have been established and have overtaken some of its old functions. The office of the Ombudsman for Equality and the Equality Board was established in 1986 to monitor the Act on Equality between Women and Men. It is situated at the Ministry of Social Affairs and Health, which has since then housed all Finnish gender equality bodies. An Equality Unit was established to prepare the government's equality policies. For the time being, the Council for Equality functions as a consultative body for equality politics with mem-



in 1976 in Iceland). A Nordic Gender Equality Programme was adopted in 1982, and a central task presented to national equality councils was to draft gender equality legislation.<sup>24</sup>

The Finnish Council for Equality between Women and Men was established in the Prime Minister's Office to propose and prepare reforms for gender equality. The Council was a permanent government advisory body 'with a secretariat and a small budget', consisting of politically nominated members.<sup>25</sup> In spite of its scarce resources, the Council became an important activist force pushing for legislative changes and political action, able to channel the traditional cooperation among women politicians to new challenges and activities. In 1973 it established a labour market subcommittee to prepare an assessment of gender discrimination in Finland and to make a proposal on how discrimination in the labour market was to be prevented.<sup>26</sup> The subcommittee report, delivered in 1975, contained an analysis of different forms of discrimination in working life.<sup>27</sup> The Council in its report to the Ministry of Justice insisted that such discrimination was to be prohibited in law.<sup>28</sup> Thus, the Council became a forum

bers who represent parties in the Parliament, and thus are capable of policy and opinion building on a wider political basis than those represented in the government.

<sup>24</sup> M. Eduards, B. Halsaa and H. Skjeie, 'Equality: how equal' in E. Haavio-Mannila *et al.* (eds.), *Unfinished Democracy* 134–60 at 138–45.

<sup>25</sup> A. Holli and J. Kantola, 'A politics for presence: state feminism, women's movements and political representation in Finland' in J. Lovenduski (ed.), *State Feminism and Political Representation* 62–84 at 67.

<sup>26</sup> In a sense, the CEDAW is conceptually connected to two terms, sex and gender, as the Convention presupposes both that certain biological features of women are to be given consideration, and requires policies to eradicate cultural and social practices that put women as a gender at disadvantage. In this chapter the terms sex and gender are used interchangeably, where the choice of term has no special relevance. The choice reflects the fact that the distinction sex/gender is difficult to make in Finnish, as the language lacks grammatical gender. Consequently, the Finnish term *sukupuoli* is translated, often rather haphazardly, either as sex or as gender.

<sup>27</sup> The majority of the members of the subcommittee were representatives of the labour market organisations. Discrimination was considered in the light of the definitions of discrimination in ILO Conventions No. 100 (concerning Equal Remuneration for Men and Women Workers for the Work of Equal Value) and No. 111 (concerning Discrimination in Employment and Occupation), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the UNESCO Convention Against Discrimination in Education. See *Sukupuoleen kohdistuva syrjintä työmarkkinoilla* [Discrimination against Women in the Labour Market], *Tasa-arvoasiain neuvottelukunta, työmarkkinajaosto, valtioneuvoston kanslian julkaisuja* [Publications of the Prime Minister's Office] 3 (1974) 21–3.

<sup>28</sup> *Sosiaali- ja terveysministeriön selonteko Suomen hallituksen tasa-arvo-ohjelman toteuttamisesta vuosina 1980–86 ja sen jälkeisistä tasa-arvon edistämistoimenpiteistä*

for claims regarding gender inequality that were otherwise difficult to present in the corporatist regime, where women were underrepresented in decision-making bodies.

The Council for Equality between Women and Men also played an important role in the ratification of the CEDAW in Finland. In 1972, its first year of operation, when the Council considered legislation against gender discrimination, it also discussed the plans in the UN for a Women's Rights Convention. An official Finnish delegation took part in the World Conference on the Status of Women held in 1975 in Mexico. The publicity that the conference received in Finland was 'uncertain and confused', as it was difficult for the public to conceive that relatively independent, working Finnish women could be discriminated against.<sup>29</sup> The activists in the Council for Equality thought otherwise. In 1977 the Council stated that it was important that the CEDAW be accepted by the UN and ratified by Finland as soon as possible. Typically for the Nordic type of 'state feminism', Finnish women's organisations promoted this agenda in cooperation with the state equality body. Women's sections in the political parties remained important feminist political players, as feminist groups in civil society had little visibility and impact.<sup>30</sup> Altogether, a sharp distinction between state and society was not made in the Finnish welfare context.

The first real Gender Equality Programme of the Government of Finland was presented in May 1980,<sup>31</sup> as part of the UN Decade for Women and as preparation for the World Conference on the UN Decade for Women held in 1980 in Copenhagen.<sup>32</sup> This government programme targeted state administration, which was obliged to take measures

[Report by the Ministry of Social Affairs and Health on the Implementation of the Government's Gender Equality Programme in 1980–86 and on Later Equality Policy] sarja B: Tiedotteita 1/1987, Ministry of Social Affairs and Health, 48–55.

<sup>29</sup> Winter-Mäkinen, *Naisjuristien vuosisata* at 166.

<sup>30</sup> R. Jallinoja, *Suomalaisen naisliikkeen taistelukaudet. naisasialiike naisten elämäntilanteen muutoksen ja yhteiskunnallis-aatteellisen murroksen heijastajana* [The Fighting Periods of the Finnish Women's Movement. Women's Movement as the Reflection of the Changing Life Conditions of Women and Societal-Ideological Break] (Porvoo: WSOY, 1983).

<sup>31</sup> A very modest programme for gender equality policies had already been adopted in the Prime Minister's Office Programme for the UN Decade for Women for 1978–79, but the 1980 Government Programme was the first one to contain comprehensive aims and measures for such policies.

<sup>32</sup> *Suomen hallituksen ohjelma sukupuolten tasa-arvon edistämiseksi YK:n naisten vuosikymmenen jälkipuoliskolla 1980–1985* [The Finnish Government's Programme for Promoting Gender Equality at the Latter Half of the UN Decade for Women] 29 April 1980, Valtioneuvoston kanslia [Prime Minister's Office] 1980:2.

concerning education, working life, women's positions in state administration, family law, social policies, community policies, participation in society and international cooperation. Two points were considered crucial: the commitment that Finland would sign the CEDAW and start the reforms needed for its ratification, and that anti-discrimination law would be developed to combat discrimination in working life. The two points were intertwined, because an Act on gender equality was presented as a *conditio sine qua non* for the ratification of the CEDAW.<sup>33</sup> The 'state feminists', or women's organisations and the equality body in cooperation, saw the CEDAW as a means to push for an Act prohibiting gender discrimination.

Most Finnish governments since 1980 have had a Gender Equality Programme and many programmes have referred to issues related to the UN instruments. While government programmes as such have contained relatively short texts on gender equality policies, a more detailed equality programme has often been prepared by the Ministry responsible for gender equality.<sup>34</sup> The government Gender Equality Programme adopted in 1980 was explicitly named as a programme for the UN Decade for Women. A detailed government programme adopted in 1997 was named *From Beijing to Finland (Pekingistä Suomeen)*, in reference to the *Beijing Declaration and Platform for Action* of 1995.

In all Nordic states gender equality and discrimination against women were focuses of interest earlier than other forms of discrimination-related inequalities. Consequently, no other inequalities associated with discrimination were given much attention in Finland at the time that gender equality was brought to the agenda. All Nordic states had signed the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1966 and ratified it by 1972. The ratification of ICERD in 1970 in Finland was considered to require few measures, especially in terms of legislation.<sup>35</sup> The CEDAW had a much deeper

<sup>33</sup> *Ibid.*, Chapter 2.6.

<sup>34</sup> Up until 1987 the Prime Minister's Office was responsible for preparing these more detailed programmes, and since then they have been prepared by the Ministry of Social Affairs and Health.

<sup>35</sup> In 1970 an amendment to the Penal Code, motivated by ICERD, criminalised ethnic agitation. A provision that obligated employers to treat employees equally irrespective of a number of grounds was included in the Employment Contracts Act of 1970. This provision was also motivated by ILO Conventions Nos. 100 and 111. Criminalisation of work-related discrimination on several grounds was also considered necessary by a committee in 1973, but again the main motivation was the ratification of ILO Convention No. 111.

impact on Finnish society, not least in the form of the first piece of anti-discrimination law in Finland – the Act on Equality between Women and Men. This is discussed in more detail below.

### 3 Reception of the CEDAW in the Finnish legal system

#### 3.1 Ratification in the context of Nordic ‘state feminism’

Finland signed the CEDAW in July 1980, together with fifty other states, in connection with the World Conference on the UN Decade for Women held in Copenhagen. The Council for Equality between Women and Men was given the task of assessing what kinds of legal measures were required for ratification. In its report in 1981, the Council divided these measures into those that were to be fulfilled before ratification and others that could be performed afterwards. Modifications to certain family law provisions and the enactment of a new Anti-discrimination Act were considered necessary before ratification could take place.<sup>36</sup>

Left-wing politics and corporatism for the fair distribution and redistribution of resources was characteristic for Finland as well as the Nordic welfare states of the time.<sup>37</sup> The Nordic legal systems did not allow direct reference to human rights treaties by the courts. Rights were more or less subordinated to concerns regarding representative democracy and state-centred ideas of the common good, and authorities had no strong commitment to legally protected individual and minority rights.<sup>38</sup> The Nordic states were agnostic towards ‘high-voltage constitutionalist rights talk’ and judicial activism.<sup>39</sup> They adhered to the dualist model of international law, and the impact of human rights treaties was largely based on what the government and legislature considered necessary at ratification.

<sup>36</sup> *Syrjintäsopimustyöryhmän selvitys YK:n naisten syrjinnän poistamista koskevan yleis-sopimuksen ratifioinnin edellytyksistä ja tarvittavista lainsäädännöllisistä ja muista toimenpiteistä* [The Report of the Working Group on Discrimination on the Conditions of Ratification of the UN CEDAW Convention, and on Legislative and Other Action Needed] (Helsinki: Valtioneuvoston kanslia, tasa-arvoasiain neuvottelukunta [Prime Minister’s Office, Council for Equality], 1981).

<sup>37</sup> D. Bradley *et al.*, ‘Distribution and redistribution in post-industrial democracies’, *World Politics* 55:2 (2003) 193–228.

<sup>38</sup> J. Lavapuro, T. Ojanen and M. Scheinin, ‘Rights-based constitutionalism in Finland and the development of pluralist constitutional review’, *International Journal of Constitutional Law* 9:2 (2011) 505–31 at 506.

<sup>39</sup> R. Hirshl, ‘The Nordic counter-narrative: democracy, human development and judicial review’, *International Journal of Constitutional Law* 9:2 (2011) 449–69.

Rights under ratified international human rights instruments were not given constitutional protection, and the Finnish Constitution at that point did not even allow judicial review. The Constitution was protected through Parliamentary preview by the Parliament's Constitutional Committee, and civil rights protection relied on the principle of legality, overseen by ombudsman-type authorities.

Thus, legislative measures undertaken prior to ratification of the CEDAW were crucial to its impact at the Finnish national level. The legislation held to be contrary to the CEDAW, and thus in need of amendment, included norms regarding custody, citizenship and choice of family name.<sup>40</sup> The provisions on child custody were altered by the Act on Custody of and Access to Children, which repealed norms on custody that privileged fathers in representing the child legally. Under the Act on Citizenship, mothers were not able to transmit their citizenship to their children, and the reform gave equal rights to both parents. A new Act on Family Names was also passed. It repealed the earlier family name provisions that had forced women to adopt the name of their husbands upon marriage, either as such or as a part of a double name. Somewhat surprisingly, repealing family name provisions caused much political controversy. In spite of the fact that wives had been obliged to assume their husband's name as the mutual family name relatively late in history in Finland, the opponents to the amendment lamented the loss of a tradition and suspected that allowing the wife to retain her family name would ruin family unity and lead to the dissolution of family life. Despite such reservations, amendments were introduced enabling the wife to retain her family name and allowing the spouses to choose the family name of either of them as the mutual family name.

The Act on Equality between Women and Men (*tasa-arvolaki*) 1986 was the most important and visible legislative outcome of the ratification of the CEDAW. Thereby, the CEDAW also became the catalyst for the introduction of the first piece of anti-discrimination law to Finnish society – the former few prohibitions of discrimination had been added to existing labour and penal law. The Council for Equality between Women and Men claimed that a separate Act on gender equality, containing prohibitions against discrimination, was a prerequisite for the ratification

<sup>40</sup> The working group that assessed the preconditions on ratification proposed a provision on gender equality in the Constitution. Such a provision was not introduced before ratification, but later, when the provisions on fundamental rights in the Constitution were amended as a part of constitutional reform in 1995.

of the CEDAW. In March 1982 the Prime Minister's Office nominated a committee to prepare such an Act. The committee presented a report in October that year, and after further preparatory work, a Government Bill for an Act was presented to the Parliament.<sup>41</sup> The preparatory work refers to various human rights instruments, including the CEDAW.<sup>42</sup> The Act on Equality prohibited discrimination on the grounds of sex and set positive duties for authorities and employers to promote equality. The Articles on the prohibition of discrimination in general and in working life in particular were drafted in relation to Articles 2 and 11 of the CEDAW.

Among the main features of the Act were that it prohibited discrimination against both women and men, especially in working life. The CEDAW is literally concerned with discrimination against women, but it was not considered appropriate in Finland to single out women or men in legislation. Rather, gender-neutral formulations had gained ground for a long time. Most second-wave feminists in Finland<sup>43</sup> were also committed to gender-neutral policies.<sup>44</sup> Perhaps even more than in most countries, the Finnish prohibition of discrimination on the grounds of sex/gender was conceived from the beginning as a symmetrical prohibition, needed by both women and men. Finnish gender equality policies reflected a persistent feature of Finnish gender relations, an emphasis on marginalisation and alleged discrimination of men as a counterweight to promoting the position of women.

It has been claimed that the CEDAW accelerated the adoption of equality legislation in Finland. However, since all women's organisations had demanded such legislation and all other Nordic states had already adopted equality acts, the Finnish Act on Equality between Women and Men would probably have been enacted, irrespective of the CEDAW. There was much reluctance to adopt anti-discrimination policies. Employers' organisations opposed non-discrimination law in general and tried to overturn all

<sup>41</sup> *Committee Report Containing a Draft Proposal for an Act on Equality between Women and Men* (1982). The committee report was severely criticised by labour market organisations. Provisions against discrimination were held to go against the right to regulate labour issues by means of collective agreements. The preparatory work was finalised by a small working group. *Prime Minister's Office Working Group Report on a Draft Proposal for an Act on Equality between Women and Men* (1982).

<sup>42</sup> Other international instruments mentioned include ILO Convention No. 100 and Article 4 of the European Social Charter.

<sup>43</sup> See the remarks in *supra* note 7.

<sup>44</sup> R. Jallinoja, *Suomalaisen naisliikkeen taistelukaudet* and R. Jallinoja, 'Independence or integration: the women's movement and political parties in Finland' in D. Dahlerup (ed.), *The New Women's Movement* 158–78.

legal proposals to that end. Small employers in particular were set against an Anti-discrimination Act on gender discrimination, and even launched media campaigns against it. However, in the 1980s, Finnish political actors were acutely aware of the aim of creating a positive international image of the country in the UN, and a coalition of women's organisations and other equality actors could benefit from referring to the UN conventions in promoting their aims. Thus, the CEDAW offered important support for the proponents of the Act on Equality between Women and Men.<sup>45</sup>

The fact that the CEDAW motivated the Act on Equality also had a profound impact on the formulation of the Act. The material scope of the Finnish Act on Equality was broad from the beginning. The approach is based on the CEDAW, which clearly differs from, for example, the narrower scope of the EC equality law. The broad scope of the prohibition of discrimination was offset by the fact that remedies and sanctions were offered mainly against discrimination in employment.<sup>46</sup> Positive duties and measures introduced by the Act also reflect the impact of the CEDAW. The provisions of the Act on Equality between Women and Men obligating employers, authorities and educational institutions to promote equality by positive measures were 'programmatic', however, and not backed by sanctions. The Finnish implementation thus shows a limited willingness to introduce justiciable rights to combat discrimination, or mandatory positive duties or measures monitored by authorities.

The strong emphasis on discrimination in the labour market may be understood against the background of the work done by the Labour Market Subcommittee of the Council for Equality and the state feminists' attempts to find remedies for gender segregation in the labour market, pay and other forms of discrimination neglected by the corporatist decision-making. In spite of the general scepticism regarding individual rights, combating discrimination against working women was considered necessary.

While gender equality matters were organised somewhat similarly under Nordic 'state feminism', the Equality Acts passed at that time differed from country to country. In Denmark, Norway and Sweden, national legislation on gender equality was enacted before these states ratified the CEDAW. The Danish legislation was enacted to transpose EC law, since

<sup>45</sup> N. Bruun and P. K. Koskinen, *Tasa-arvolaki* (Act on Equality between Women and Men), 2nd revised edn (Helsinki: Lakimiesliiton Kustannus, 1997) at 31.

<sup>46</sup> N. Bruun and P. K. Koskinen, *Tasa-arvolaki* (Act on Equality between Women and Men), 1st edn (Helsinki: Lakimiesliiton Kustannus, 1986).

Denmark, as a European Economic Communities (EEC) Member State, was obligated to implement the EC Directives on equal pay and equal treatment, which were limited to working life in their material scope.<sup>47</sup> The Swedish Act on Equality between Women and Men at Work of 1979 was limited to employment issues, but it contained positive duties for employers.<sup>48</sup> The Norwegian Act on Equal Status of 1978 prohibited discrimination on the grounds of sex with a wider scope. Like the later Finnish Act on Equality, the Norwegian Act had a broad material scope, but both made exceptions regarding family life and religious communities. Under Norwegian law, 'private' discrimination was not excluded as such, but the sanctions could not be applied to such discrimination. The Finnish solution was to exclude relations in private life altogether from the material scope of the Act on Equality. The criticism of the feminists towards a gender-neutral formulation of the Norwegian Act on Equal Status was known in Finland, but unlike in Norway, a gender-neutral approach had wide approval, even by feminists.<sup>49</sup> Although the Norwegian and Swedish Equality Acts were used as models when the Finnish Act on Equality was drafted (as regards the structure of the Act, the concepts used and solutions adopted), the Finnish Act of 1986 differed from its Nordic counterparts in many ways.<sup>50</sup>

When the Finnish Parliament decided on the ratification of the CEDAW in the summer of 1986, Finland was the last Nordic state to ratify this Convention.<sup>51</sup> While the CEDAW has been the target of numerous (sometimes even sweeping) reservations by the States Parties to it, Finland ratified it without reservations. This was possible due to the above-mentioned changes introduced to the Finnish legislation, supported by 'state feminist' activists.

The orientation of Finland, both to the UN and towards the Nordic Council during the Cold War era, was important in shaping the manner in which Finland joined and implemented the CEDAW. The Nordic point of reference from which the CEDAW was presented to Finnish politics was important, partly in terms of the type of provisions introduced on the

<sup>47</sup> The pertinent EC Directives were those on equal pay (75/117/EEC) and equal treatment (76/207/EEC).

<sup>48</sup> M. Eduards *et al.*, 'Equality: how equal' at 144–7.

<sup>49</sup> H. Ellilä *et al.*, 'Meillekin tasa-arvolaki?' [An Equality Act also for Finland], *Oikeus* 2 (1983) 115–19.

<sup>50</sup> Bruun and Koskinen, *Tasa-arvolaki*, 1st edn at 43.

<sup>51</sup> Sweden submitted the instrument of ratification in July 1980; Norway in May 1981; Denmark in April 1983; Iceland in June 1985; and Finland in September 1986.



basis of the Convention, but also because all the other Nordic states had introduced gender equality laws before Finland, and prior to Finland's ratification of the CEDAW. References to Nordic solutions that paid attention to working life in particular were important for framing the Finnish legislative solutions politically.

Over the years, all Nordic pieces of legislation on gender equality have undergone extensive amendments, and at present are being reformed in the context of a wider development in Europe. Due to the increasing number of grounds to be protected against discrimination, and the requirement to establish equality bodies to monitor these prohibitions, a pan-European tendency to unify equality law and these bodies has been influencing Nordic equality policies.<sup>52</sup>

### 3.2 *The CEDAW and the arrival of 'rights discourse' in Finland*

The end of the Cold War had strong impact on the development of Finnish law in general, including gender equality law. Finland joined the Council of Europe in 1989 and ratified the European Convention on Human Rights (ECHR) in 1990. The ratification of this Convention was a turning point in legal attitudes to human rights instruments in Finland. It was only after this time that human rights conventions accepted by Finland gained more concrete attention, for example in Finnish law schools. The ECHR had an impact on the reform of the Finnish Constitution<sup>53</sup> and it also introduced the first judicial review of any kind to the Finnish legal tradition.

The Finnish Constitution underwent a complete reform in the 1990s. First, a new chapter on basic rights and liberties entered into force in 1995, and at the overall reform of the Constitution in 2000, a stronger protection of rights was introduced. Constitutional rights were drafted to reflect international development in the area of human rights and European constitutional development after the Second World War. International human rights norms binding Finland were taken as a starting point. Finland's adherence to EC/EU law had an even more fundamental impact

<sup>52</sup> J. Kantola and K. Nousiainen, 'Institutionalising intersectionality in Europe: introducing the themes', *International Journal of Feminist Politics* 11:4 (2009) 459–77.

<sup>53</sup> Issues related to fair trial and freedom of speech in particular have been brought to the fore. M. Pellonpää, 'Euroopan ihmisoikeustuomioistuimen ja EY:n tuomioistuimen vaikutuksista Suomen valtiosäännön kannalta' [On the impact of the European Court of Human Rights and EC-Court in the light of the Finnish Constitution] in H. Kanninen *et al.* (eds.), *Puhuri käy* [Strong Wind Blowing] (Helsinki: Edita, 2009) 103–27.

on Finnish law. During the accession period in the early 1990s, and since EU membership in 1995, Finnish constitutional law has been influenced greatly by European law.<sup>54</sup>

Both the European Court of Human Rights and the EU Court assert judicial protection of a pan-European set of rights in the Member States.<sup>55</sup> The adoption of a modest form of judicial review in the constitutional reform of 2000 further boosted the 'rights discourse' in Finland. Stronger protection of constitutional rights has met with criticism in all Nordic states, including Finland.<sup>56</sup> Increasing emphasis on rights is criticised as detrimental to popular sovereignty. They are seen to go hand in hand with globalisation and economic liberalisation, and also as an ideological veil over increasing social differentiation and poverty. Interestingly, criticism has emerged in the context of defining the position of the CEDAW in the Nordic setting. In a Norwegian Parliamentary power inquiry, the granting of special legal standing to the CEDAW above ordinary legislation was especially criticised.<sup>57</sup>

In Finland there has been no open questioning of the relevance of the CEDAW. International development has otherwise deflected its influence. Here, the Finnish accession to the EU had a fundamental impact. Since the early 1990s Finnish non-discrimination law has been deeply influenced by the *acquis communautaire* in the field. As early as 1994, the preparations to join the European Economic Area (EEA)<sup>58</sup> brought a need to strengthen protection against discrimination on the grounds of sex.

The history of outlawing discrimination on grounds other than gender by a separate Act of anti-discrimination law is quite recent in Finland and has been strongly influenced by European non-discrimination law. Since Article 13 of the 1997 Treaty of Amsterdam gave the EU powers to combat discrimination on the grounds of gender, race, ethnicity, religion, belief,

<sup>54</sup> T. Ojanen, 'The impact of EU membership on Finnish constitutional law', *European Public Law* 9:2 (2004) 449–69.

<sup>55</sup> A. Follesdal and M. Wind, 'Introduction – Nordic reluctance towards judicial review under siege', *Nordisk Tidsskrift for menneskerettigheter* 27:2 (2009) 131–41.

<sup>56</sup> K. Tuori, 'Judicial review as a last resort' in T. Campbell, K. D. Ewing and A. Tomkins (eds.), *The Legal Protection of Human Rights: Sceptical Essays* (Oxford University Press, 2011) 365–91.

<sup>57</sup> See the chapter by A. Hellum in this book.

<sup>58</sup> The EEA was created in 1994 to allow the EFTA countries to participate in the European Single Market without joining the European Community. The EFTA countries were to adopt EC law. Of the Nordic states that joined the EEA Treaty, Iceland and Norway remain bound by it, but since Finland and Sweden joined the EU in 1995, they became bound by EU law directly and not through the EEA obligations.

age, disability and sexual orientation, the European anti-discrimination law could move beyond discrimination grounds of Member State nationality and sex.<sup>59</sup> Legislative measures were soon undertaken against discrimination on the grounds mentioned in the Amsterdam Treaty. In many EU Member States, including Finland,<sup>60</sup> national anti-discrimination law and monitoring bodies needed to be levelled out.<sup>61</sup> Unifying equality legislation into a single piece of legislation, and establishing a single equality body became a European trend.<sup>62</sup> In Finland a committee was nominated in 2008 to propose a reform of anti-discrimination and equality law, including both the Act on Equality between Women and Men and the Non-Discrimination Act (*yhdenvertaisuuslaki*), which prohibits discrimination on other grounds.<sup>63</sup> Since the unification of the Act on Equality with anti-discrimination law on other grounds was criticised by the labour market and women's organisations, gender equality law was left outside the reform.<sup>64</sup>

While the CEDAW was given particular attention at the time of its ratification in Finland, it has received less attention in the legislative field in the era of strong European influences from the 1990s on, despite its impact in the context of the constitutional rights reform of 1995. The basic rights provisions of the Constitution came to include a revised provision (section 6) on equality, which was expanded to cover not only formal equality before the law, but also a general prohibition of discrimination (including a reference to sex as a prohibited ground), a provision on the equal rights

<sup>59</sup> M. Bell, *Anti-Discrimination Law and the European Union* (Oxford University Press, 2000) at 157.

<sup>60</sup> Finland became a member of the EU in 1995, together with Austria and Sweden.

<sup>61</sup> Two Directives based on Article 13 of the Amsterdam Treaty, the Council Directive (2000/43/EC) on equal treatment between persons irrespective of racial or ethnic origin and the Council Directive (2000/78/EC) establishing a general framework for equal treatment in employment and occupation (which bans discrimination on several grounds), were implemented in Finland by a single piece of legislation, the Non-Discrimination Act of 2004.

<sup>62</sup> K. Nousiainen, 'Unification (or not) of equality bodies and legislation', *European Gender Equality Law Review* 2 (2008) 24–33; Kantola and Nousiainen, 'Institutionalising intersectionality in Europe'.

<sup>63</sup> J. Kantola and K. Nousiainen, 'Pussauskoppiin: Tasa-arvo- ja yhdenvertaisuuslakien yhdistämisestä' [Into the kissing booth? Working toward uniformity in the Finnish Gender Equality and Non-Discrimination Acts], *Naistutkimus* 2 (2008) 6–20.

<sup>64</sup> J. Kantola and K. Nousiainen, *Institutionalising Intersectionality with a Separate Strands Approach: The Case of Finland*, paper presented in the European Consortium for Political Research (ECPR), Joint Sessions 14–18 April 2009, Workshop 14, Institutionalising Intersectionality: Comparative Analyses.

of children and a provision on the promotion of equality of the sexes.<sup>65</sup> The aim of the amended provision was to guarantee not merely formal but also substantive equality. The preparatory work refers to the CEDAW as a 'special convention against discrimination' that was taken into account as a motivation for the constitutional provision on discrimination.<sup>66</sup> The constitutional provision on the promotion of gender equality was also motivated by a reference to Article 2(a) of the CEDAW, which obligates the States Parties to include the principle of equality between men and women in their legislation.

While, according to its preparatory work, the Finnish Act on Equality between Women and Men has similar aims to those of the Constitution, the constitutional provision does not refer to any single act, but contains a general obligation to develop legislation. The means of promoting equality are not limited by the Constitution, but are to be chosen by the legislature. Legislation enacted to fulfil the obligation is open to judicial review, and, in principle, its interpretation should take into account the obligations under the CEDAW. Yet references to the CEDAW in case law have remained few. Two possible explanations for this may be offered. First, judicial review is very seldom used in practice, and second, the Finnish case law since the 1990s concerning gender equality mainly concerns issues related to EU law.

The CEDAW has been a point of reference in Finnish post-1990 legal discourse at times in the Parliamentary preview of Government Bills, especially concerning section 6 of the Constitution (on equality). Nevertheless, the Parliament's Constitutional Committee seems to refer to other human rights instruments rather than the CEDAW in its opinions on section 6. For example, in 2006 a Government Bill proposed a higher parental leave benefit for fathers than for mothers, with the motivation that this would encourage fathers to use their right to parental leave, which would eventually lead to a more-balanced sharing of parental leave. The Parliament's Constitutional Committee was asked for an assessment of the constitutionality of the proposal. The Committee heard a number of experts, who referred to international human rights instruments including the CEDAW, and who held that the amendment violated section 6 of the Constitution.<sup>67</sup> The Parliament's Constitutional Committee merely

<sup>65</sup> Section 6(4) of constitutional rights reads as follows: 'Equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and other terms of employment, as provided in more detail by an Act.'

<sup>66</sup> See *Preparatory Works for the Constitution*, in Government Bill (HE) 309/1993, 43.

<sup>67</sup> Government Bill (HE) 112/2006 vp.

referred to Article 26 of the International Covenant on Civil and Political Rights (ICCPR) and to ECHR Protocol 12, but not to the CEDAW, as a motivation for its assessment that the amendment needed to be passed by qualified majority procedure.<sup>68</sup>

#### 4 The CEDAW supervisory process and Finland

The most visible supervision of the implementation of the CEDAW takes place in the context of the reporting procedure established within the framework of the Convention. The Optional Protocol to the CEDAW adopted in 1999, introducing the individual communication procedure and allowing the CEDAW Committee to receive communications from individuals or groups of individuals, was ratified by Finland, among the first states to do so, in 2000 when the Protocol also entered into force. At the time of writing no communications have been filed against Finland. To a large extent, this can be explained by the general lack of information on this communication procedure in Finland. Furthermore, the Finnish 'state feminism' discussed above has engaged major women's organisations in close cooperation with the government, which has clearly diminished the interest of these organisations in resorting to this supervisory mechanism.

##### 4.1 National reports

At the time of writing, the CEDAW Committee had considered six governmental (state) reports of the Finnish government. The first report was submitted in 1988 and the sixth report in 2007.<sup>69</sup> The Committee

<sup>68</sup> *Report of the Parliament's Constitutional Standing Committee* 38/2006 vp.

<sup>69</sup> *Suomen ensimmäinen raportti kaikkinaisen naisten syrjinnän poistamista koskevan yleissopimuksen toteuttamisesta*, sosiaali- ja terveysministeriö, tasa-arvojulkaisu, Helsinki 1/1988 [Initial Report of the Government of Finland on the Implementation of the CEDAW, Ministry of Social Affairs and Health]; *Suomen toinen raportti YK:n naisten oikeuksien sopimuksen toteuttamisesta*, ulkoasiainministeriön julkaisu, 26/1992, Helsinki 1992 [Second Report of the Government of Finland on the Implementation of the CEDAW, Ministry for Foreign Affairs, 1992]; *Suomen kolmas raportti YK:n naisten oikeuksien sopimuksen toteuttamisesta*, ulkoasiainministeriön julkaisu, 6/1997, Helsinki 1997 [Third Report of the Government of Finland on the Implementation of the CEDAW, Ministry for Foreign Affairs, 1997]; *Fourth Periodic Report by Finland to the Convention on the Elimination of All Forms of Discrimination against Women*, February 2000, available at: [www.formin.fi/public/default.aspx?contentId=67770&nodeId=31460](http://www.formin.fi/public/default.aspx?contentId=67770&nodeId=31460) (last accessed 1 February 2012); *Fifth Periodic Report of the Government of Finland on the Implementation of the Convention on the Elimination of All Forms of Discrimination*

considered Finland's fifth and sixth reports jointly in 2008. While the Committee requested Finland to respond to the concerns expressed in the Concluding Observations in its seventh periodic report due in 2011,<sup>70</sup> it also asked Finland to provide, within two years, detailed written information on the implementation of the recommendations the Committee had made on the problem of violence against women. This separate special report on violence against women was submitted in 2010.<sup>71</sup> Despite the delayed submission of the most recent report, in general the Finnish government has followed the reporting timetable set for governmental reports quite well. It has also responded to the requests of the CEDAW Committee to provide further information on specified topics.

Regarding the substance of the governmental reports, in its first report the Finnish government provided some basic information under each Article of the CEDAW and shed light on the legislative changes made in the national ratification process of the Convention. In the subsequent reports, the government has focused on reporting on certain issues, for example those on which the CEDAW Committee had requested additional information. Information is provided especially on violence against women, women belonging to certain minority groups (Sámi and Roma women, women with disabilities and women of immigrant background), trafficking in human beings and exploitation of prostitution of women, women in political and public life, women's position in the labour market and discrimination in employment (including difficulties in combining work and family life and the wage difference between women and men) and women's health. In the sixth report information was also given on the legislative reform that aimed at consolidating the Act on Equality between Women and Men and the Non-Discrimination Act,<sup>72</sup>

*against Women*, October 2003, available at: [www.formin.fi/public/default.aspx?contentId=67770&nodeId=31460](http://www.formin.fi/public/default.aspx?contentId=67770&nodeId=31460) (visited on 1 February 2012); *Sixth Periodic Report of the Government of Finland on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women*, October 2007, available at: [www.formin.fi/public/default.aspx?contentId=67770&nodeId=31460](http://www.formin.fi/public/default.aspx?contentId=67770&nodeId=31460) (last accessed 1 February 2012); *Seventh Periodic Report of the Government of Finland*, May 2012, available at: <http://formin.finland.fi/public/default.aspx?contentid=67770> (last accessed 9 June 2012).

<sup>70</sup> The seventh report was submitted to the CEDAW Committee in May 2012. It was not possible to include references to its substance in this chapter.

<sup>71</sup> *Response by Finland to the Recommendations Contained in the Concluding Observations of the Committee Following the Examination of the Fifth and Sixth Reports of Finland on 9 July 2008*, CEDAW/C/FIN/CO/6/Add1.

<sup>72</sup> See also the remarks on this above.

mainstreaming gender equality into the Finnish state administration, promoting equality in the media and equality in education.

The increase of the number of substantive issues addressed in the reports over the years has rendered governmental reports quite lengthy. Since the second report, the reports have also included an annex with useful statistical information on the situation of women in Finland. The more recent reports are loaded with information that makes them rather burdensome to read. Finland's seventh periodic report was prepared by taking into account the CEDAW Committee's new reporting guidelines setting a maximum length to the report and requiring that the information in the report address the Committee's observations point by point.<sup>73</sup> Thus, the seventh governmental report by Finland should include more precise information on both legislative and other measures and should be more concise, thereby enhancing the readability of the report.

It may be observed that while the first Finnish governmental reports were rather self-critical, in the subsequent reports the government's self-criticism has decreased to some extent. Despite this, the Finnish government may be credited for being somewhat frank and open with regard to the problems existing in Finland. It neither denies the existence of the problems nor exercises the kind of window-dressing that is sometimes typical of governmental reporting.

A notable change in the Finnish government's reports to the CEDAW Committee took place in the mid 1990s, that is at the time when Finland joined the EU. The reports submitted after 1995 include remarks on the effects of EU policies and EC legislation in Finland. They also contain references to the implementation of the *Beijing Declaration and Platform for Action (Beijing Document)* adopted at the Fourth World Conference on the Status of Women held in 1995.<sup>74</sup> These references to a variety of

<sup>73</sup> HRI/GEN/2/Rev.6.

<sup>74</sup> It is notable that the CEDAW Committee has asked the States Parties to the CEDAW to also report on their implementation of the *Beijing Document*, which the Committee considers to reinforce the provisions of the CEDAW. In this way, the CEDAW Committee has made the implementation review of the *Beijing Document* part of its review work. In fact, this echoes the practice of the Committee on the Elimination of Racial Discrimination, which has made the follow-up to the Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in 2001 in Durban as part of its review work. See also M. Pentikäinen, *Creating an Integrated Society and Recognising Differences: The Role and Limits of Human Rights, with Special Reference to Europe* (Rovaniemi: Acta Universitatis Lapponiensis 140, Lapland University Press, 2008) at 127. Additionally, the CEDAW Committee has also referred to the importance of the Millennium Development Goals in its implementation review.

international sources in the reports have made it increasingly difficult to distinguish the role of both the CEDAW and the remarks of the CEDAW Committee in the national-level developments in Finland. The very fact that nowadays the governmental reports of Finland to the CEDAW Committee also contain remarks on these other developments – not merely those relating to the CEDAW – in fact calls for an increasingly analytical approach in reports. Although reporting broadly on the effects of various international norms on the Finnish legislation and practices is very useful for getting an overall picture of the state of affairs, the reports to the CEDAW Committee would benefit from focusing on the implementation requirements stemming from the CEDAW, that is reporting on the measures linked particularly to the obligations under this Convention.

#### *4.2 Involvement of civil society in the supervisory process*

In Finland, actors in civil society participate in the CEDAW reporting procedure in two visible ways: the government has involved non-governmental organisations (NGOs) in the process of compiling governmental reports, in addition to which NGOs prepare their own reports ('shadow reports') to the CEDAW Committee. At the time of initiating the preparation of a governmental report, NGOs are consulted about the themes that should be included in the governmental report. NGOs are also invited to a discussion on the draft governmental report before the final report is submitted to the CEDAW Committee. In these NGO hearings, organisations have both voiced their concerns for the issues falling within the scope of the CEDAW and have reported on their own activities in promoting equality between women and men.<sup>75</sup> While this process has been generally welcomed by NGOs, it has also resulted in including remarks on the NGO activities on advancing equality between women and men in the governmental reports. This reporting method is not unproblematic, since it is not always clearly indicated which of the activities reported are solely those of NGOs and which NGO activities are supported by the government (by public funds). In practice, this reporting strategy has blurred the primary role and responsibility of the government with respect to the implementation of the CEDAW.

<sup>75</sup> In practice, these hearings are organised by the Ministry for Foreign Affairs, which is responsible for the national coordination of the governmental report. In this process the Ministry for Foreign Affairs consults a number of authorities, NGOs and individual experts on whether the CEDAW Committee's observations and recommendations have been addressed by the Finnish government.



The compiling of 'shadow reports' by NGOs has been supported by the increased positive attitude of the CEDAW Committee to include civil society actors in information gathering on actual situations in the States Parties to the CEDAW. The NGO reports are considered by the Committee together with the governmental reports, and the particular added value of these NGO reports has been linked to their role of creating dialogue in the Committee.<sup>76</sup> Finnish NGOs have prepared their own (joint) reports for the CEDAW Committee on two occasions when the periodical state report has been considered by the Committee. The first NGO report was prepared in 2004, not only as a reaction to the Finnish government's fifth report to the CEDAW Committee and including civil society actors' views on the implementation problems in Finland, but also to draw particular attention to the twenty-fifth anniversary of the CEDAW. The second joint NGO report was prepared in 2008 to be considered together with the Finnish government's sixth report to the CEDAW Committee.<sup>77</sup> Finnish NGOs also submitted their views in the process of the consideration of the Finnish government's special report on violence against women in 2010.<sup>78</sup> Compared to the Finnish governmental reports, the Finnish NGO reports are much more concise with a clearer focus on reporting on the problems of implementation. NGOs have raised concern particularly for the following problems: violence against women, trafficking in women and exploitation of women within prostitution, increased pornographic visualisations in the media, advertising and culture in general, inequality in working life as well as in political and public life, insufficiency of resources channelled to the promotion of equality, legislation and particularly gender equality in legislative reform, women belonging to minorities,<sup>79</sup> equality planning in educational establishments and gender-sensitive budgeting. The NGOs have also drawn attention to the narrow interpretation of the govern-

<sup>76</sup> C. Flinterman, Professor of Human Rights, Utrecht University, member of the CEDAW Committee, Panel discussion on the CEDAW Committee at the Workshop on Human Rights Treaties and Treaty Bodies, University of Helsinki, 22 April 2009.

<sup>77</sup> The preparation of the first joint NGO report involved eighteen different organisations, including the major Finnish women's organisations. The second joint NGO report combined the views of eleven organisations.

<sup>78</sup> Finnish NGOs' parallel report to the UN Committee monitoring the Convention on the Elimination of All Forms of Discrimination against Women, July 2010. The report is on file with the authors.

<sup>79</sup> This concerns the proposals of consolidating the Act on Equality between Women and Men and the Non-Discrimination Act (discussed in section 3.2) in which the NGOs see the danger of the loss of visibility of the issue of discrimination against women.

mental obligations under the CEDAW in Finland that has led to insufficient national implementation of the Convention.

The Finnish NGOs that have participated in the processing of the Finnish government's reports to the CEDAW Committee have commended the procedure of involving NGOs in the supervisory work. According to them, the Committee also appears to pay special attention to the views of and concerns raised by NGOs. A look at the remarks put forth by the Committee in its Concluding Observations on Finland supports this: the Committee often echoes the concerns of NGOs.

### 4.3 *The CEDAW Committee's observations on Finland*

The CEDAW Committee's observations and comments on state reports have become increasingly concrete over the years, and thereby also more helpful in the efforts to improve the implementation of the provisions of the CEDAW. In its Concluding Observations on Finland, since the beginning of and throughout the review process the Committee has mostly voiced its concern for violence against women, the situation of women belonging to various groups (immigrant women, Roma and Sámi women, women with disabilities), discrimination of women in working life (including the wage gap between men and women) and unequal participation of women in political and public life. In its most recent Concluding Observations on Finland (based on the fifth and sixth governmental reports), the CEDAW Committee also drew attention to the following issues as principal areas of concern and recommendation: gender equality in legislative reform, gender mainstreaming, invisibility of the CEDAW and its Optional Protocol in Finland, trafficking and exploitation of women in prostitution, stereotypes in media and advertising, education (concern, for example, for the overall gender neutrality of the educational curriculum and teaching materials) and the health of girls (for example, alcohol abuse).

Of various concerns raised by the CEDAW Committee with respect to Finland, violence against women appears to be a serious and persistent problem. Violence against women was already being discussed by Finnish feminists in the late 1970s, thus prior to Finland's ratification of the CEDAW, but it was only in the 1990s that it was recognised as a problem by official Finnish equality bodies. The attention of the CEDAW Committee and other UN (as well as Council of Europe) bodies and instruments to this violence prompted the Finnish Council for Equality between Women and Men to put this problem on its agenda.

One of the major challenges to addressing the problem of violence against women in Finland is that in the Finnish context this has not been considered as a form of discrimination, as defined under the CEDAW in accordance with the CEDAW Committee's General Recommendation No. 19 on violence against women. In Finland, this kind of violence is usually discussed under some other heading, such as domestic violence or violence in intimate-partner relations. Resources earmarked for anti-violence policies and especially for the actors who are important in crime prevention in the field are highly insufficient.<sup>80</sup> The CEDAW Committee has drawn attention to several problematic aspects in Finnish policies, such as insufficient services to victims (including the lack of shelters for victims) and the use of mediation in the context of violence against women.<sup>81</sup>

The attention of the international supervisory bodies, including the CEDAW Committee, to the problem of violence against women has had a decisive impact on the inclusion of this issue on the broader political agenda and activating discussions on this problem at the Finnish domestic level. It was this attention that resulted in the compilation of the first studies on the issue and initiating the debate on the prevalence of the general culture of violence, including violence against women, in Finland. After the 1995 Beijing Conference on the Status of Women, the Finnish government adopted a strategy against violence against women, and since then different aspects of violence against women have been on the governmental agenda.

Despite this, the consideration of the problem of violence against women remains highly insufficient in Finland and the political programmes adopted have had only a limited impact on the actual situation. The special report on violence against women requested from Finland by the CEDAW Committee in 2008 was an important signal of concern from the international level. This report and the CEDAW Committee's observations on the shortcomings of the Finnish government's measures to combat violence against women helped to introduce new national initiatives in the area, including a new *Action Plan to Reduce Violence against*

<sup>80</sup> This was raised by the Finnish NGOs, for example, in their joint report of 2008 to the CEDAW Committee.

<sup>81</sup> *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Finland*, United Nations, Convention on the Elimination of All Forms of Discrimination against Women, Advanced unedited version, 18 July 2008, CEDAW/C/FIN/CO/6, paras. 15 and 16.

*Women*.<sup>82</sup> The Action Plan is comprehensive and based on cooperation of authorities, but – again – the actual resources allocated to it are very limited. The coordination among authorities continues to be in the hands of social welfare and health authorities. The emphasis is on preventive measures. Legislative measures, such as amendment of the Penal Code, take a secondary place in the Action Plan.

It is still too early to say whether the more recent international attention to violence against women has had more concrete effects on the Finnish national practices. There is room for some optimism, however, since the adoption of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in May 2011 and the ongoing ratification process in Finland now keeps the issue firmly on the agenda of the Finnish domestic authorities.

Another issue that has been repeatedly raised by the CEDAW Committee and that deserves to be noted in this context is the situation of minority women. As discussed above, Finland has been a latecomer in addressing discrimination on grounds other than gender. Multiple and intersectional discrimination has received very little attention in Finland, and CEDAW reporting has been an important channel for voicing the problems met by women belonging to older minorities (such as Roma and Sámi women) and the increasing number of immigrant women. The Finnish reform and unification of equality law and equality bodies that began in 2008 (discussed above) was partly motivated by the assumption that such a reform would make it easier to address multiple discrimination. Although the CEDAW Committee has emphasised the need to take the problems of minority women seriously, the Committee has also taken the side of Finnish NGOs in that it has warned about the danger of marginalisation of gender issues, if equality law and bodies were unified to encompass all grounds of discrimination, with gender merely as one among them.<sup>83</sup> Thus, on this account the CEDAW Committee has clearly adhered to the concerns raised by the civil society actors. Anti-discrimination law reform now proceeds on a two-track model, consisting of two separate Acts and separate bodies for gender and other equality strands. It remains unclear if this outcome improves protection against intersectional discrimination.<sup>84</sup>

<sup>82</sup> *Action Plan to Reduce Violence against Women*, Ministry of Social Affairs and Health, Helsinki 2011.

<sup>83</sup> *Concluding Observations*, paras. 9 and 10.

<sup>84</sup> Many EU Member States have opted for unification of equality law and bodies. See Kantola and Nousiainen, *Institutionalising Intersectionality with a Separate Strands Approach*.

## 5 Concluding remarks

Ratification of the CEDAW was used effectively by Finnish women's organisations in pushing for anti-discrimination and equality legislation. However, Finnish equality policies of the 1980s were already inherent in the Nordic political climate of the time. The wide scope covered by the CEDAW parallels similar ambitions by Finnish activists in the 1970s. Yet the most visible piece of national legislation adopted at the time of the ratification of the CEDAW, that is the Act on Equality between Women and Men, concentrated on working life, especially when remedies and sanctions are considered. This emphasis written into this Act has contributed to a highly limited understanding of the significance of the CEDAW in Finland and has tended to blur the wide coverage of the CEDAW incorporating a broad principle of equality.

The Finnish corporatist type of governance has channelled the labour market and related issues to a tripartite cooperation between labour market organisations and the government. This tradition has promoted a definition of equal pay, reconciliation of work and family life, and similar issues as matters to be negotiated rather than as areas involving discrimination to be combated. It has also resulted in the blurring of the human rights relevance of these questions. For instance, the issue of unequal pay is not usually seen as a human rights issue in Finland. Furthermore, the strong nexus between the agendas of gender and social equality, the latter understood in terms of social and economic utility, may also make it difficult to introduce issues that are important to minority women, if such issues are not seen to enhance employment or other utilitarian goals.<sup>85</sup>

The general problem today is the loss of focus in anti-discrimination work. Finnish gender equality policies in the 1990s concentrated on the issues specified by the *Beijing Document*. It introduced gender mainstreaming, which in many ways resembled the Nordic approach to gender equality. But, as the report on the Government Gender Equality Programme 1997–9 remarked, monitoring and assessment were not a part of the original Nordic model.<sup>86</sup> Violence against women received

In general, addressing multiple discrimination is challenging due to the functioning of non-discrimination law, which makes it difficult to deal with the cases in which various grounds of discrimination cumulate. See Pentikäinen, *Creating an Integrated Society* at 170.

<sup>85</sup> Nousiainen, 'Utility-based equality'.

<sup>86</sup> Report on the Government Gender Equality Programme, *Tasa-arvo valtaviirtaan. Sukupuolten tasa-arvon tila vuosituhanen kynnyksellä*. Sosiaali- ja terveysministeriö, työryhmämuistioita [Equality Against the Stream: The State of Gender Equality at the

attention in the 1990s in Finland due the developments at the international level and the criticism Finland received from international bodies and actors. However, the problem was not defined domestically in terms of discrimination as interpreted by the CEDAW Committee. What is particularly important is that, while the Finnish Act on Equality between Women and Men has a broad material scope, it is limited by two important exceptions: family and other private life, and religious practices of religious communities are excluded from its scope of application. Since no similar exceptions are made to the scope of the CEDAW, the Convention provides an extremely useful tool for addressing these legal lacunae. The importance of the nexus between religions and human rights, including the human rights of women, has acquired unprecedented reference in modern societies that are becoming increasingly diverse in terms of religious differences. In this context, the provisions of the CEDAW deserve special attention.

In Finland the CEDAW and human rights in general have been emphasised more in the context of Finnish foreign policies and international cooperation rather than as matters of relevance at home. It is quite telling that in the area of state administration, the CEDAW appears particularly in the work of the Ministry for Foreign Affairs. The visibility given to the CEDAW in the work of this Ministry is explained by the foreign policy emphases of the Finnish government in the area of human rights highlighting the rights of women. The text of the CEDAW as well as some information on the work of the CEDAW Committee have been placed on the website of the Ministry for Foreign Affairs.<sup>87</sup> The Ministry of Social Affairs and Health, which bears the main responsibility for gender equality issues internally in Finland, also pays some attention to the CEDAW in its work. It is noteworthy that the visibility given to the CEDAW on the website of this Ministry is more limited than that on the website of the Ministry for Foreign Affairs.<sup>88</sup>

It may be said that the human rights culture has been and still is quite thin at the domestic level in Finland and is waiting to be rooted firmly in national practices. The Finnish paradox is that gender equality is considered a self-evident value and a goal already achieved. This attitude makes it difficult to efficiently address gendered practices that are disadvantageous

Turn of the Millennium, Working Group Report No. 33 of the Ministry of Social Affairs and Health, 1999] (Helsinki: Edita, 1999) at 7.

<sup>87</sup> See [www.formin.fi](http://www.formin.fi) (last accessed 9 June 2012).

<sup>88</sup> See [www.stm.fi](http://www.stm.fi) (last accessed 9 June 2012).

to women, let alone to define them as discrimination, even where such practices are rather obvious.<sup>89</sup> The potential of the CEDAW has remained underused, both by the Finnish government and civil society actors, including NGOs. The cooperation between state equality bodies and women's organisations has been a mixed blessing, as it seems to preclude forms of independent NGO activism, for example, in the form of individual communications. The government also partly relies on civil society organisations to carry out tasks for which the government is responsible. However, many measures required by the Convention can only be taken up by the government and executed by governmental actions. From the viewpoint of the state obligations under the CEDAW, it may be said that domestic actions by the Finnish government clearly remain insufficient. The implementation of the CEDAW requires both long-term work on gender equality and combating discrimination against women, as well as sufficient resources. All this has been lacking in Finland.

Promotion of equality in Finland has been further complicated and rendered increasingly unclear by the nature of the contemporary debate on equality and non-discrimination at the domestic level. On the one hand, all possible problems are easily labelled as equality and non-discrimination issues in Finnish public debate. On the other hand, the experts on equality issues wrestle with detailed anti-discrimination legislation (e.g. EU legislation), and there is little questioning of the real impact, effectiveness and flaws of this legislation. The 'big picture' has been lost. Drawing attention to the CEDAW, and putting this Convention in the limelight, may help us to see this 'big picture' again. This requires taking the CEDAW from the margins to the centre of human rights work.

<sup>89</sup> See also the report on the Government Gender Equality Programme, *Tasa-arvo valtaviir-taan* at 8.