

INTRODUCTION

Convention on the Elimination of all forms of Racial Discrimination

I. GENERAL INTRODUCTION

The phenomenon of racial discrimination was one of the purposes behind the establishment of the United Nations, hence, it was given focused attention. The ICERD was adopted by the General Assembly in 1965 and entered into force in 1969. Article 1 of the Convention defines the racial discrimination: any distinction, exclusion, restriction or preference based on race, colour, descent, national or ethnic origin with the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights in any field of public life, including political, economic, social or cultural life.

It is notable that this definition encompasses a much wider range of grounds on which discrimination can take place than that commonly referred to as “race”. It goes beyond non-discrimination in the context of colonialism and includes grounds in addition to race and color, such as descent and national and ethnic origin.

The definition uses the term “purpose or effect” hence emphasizing that discrimination can occur even when there are laws, norms and practices which appear neutral, but result in discrimination in their impact. This is termed indirect discrimination. The guarantee of equality and non-discrimination under ICERD covers not only individuals but also extends this guarantee right to the collective. In Article 2(a), it provides that each State Party undertakes to engage in no act or practice of racial discrimination against persons, *group of persons or institutions*.

The ICERD also expressly prohibits racial segregation; apartheid; and racist propaganda, organizations and activities. It expressly requires equality in civil, political, economic, social and cultural rights and list them accordingly.

The ICERD is monitored by the Committee on Elimination of Racial Discrimination. It has no optional protocols. However, Art. 14 of ICERD provides that CERD can review complaints or communications filed by individuals or groups for violation of a right in the Convention if State has made a declaration that it agreeing to such a procedure. As of June 2007, it has 173 States Parties. States Parties are required to submit reports to CERD one year after ratification and every two years thereafter.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979 and entered into force in 1981. Despite the existence of international instruments which affirm equality between men and women, a separate treaty was considered necessary to address

continuing discrimination against women. CEDAW provides a definition of discrimination against women in Art. 1. It obligates States to condemn all forms of discrimination and pursue this policy by: (a) embodying the principle of discrimination in the Constitution and law to ensure practical realization of equality; (b) refrain public authorities from discriminating; (c) provide legal protection and sanctions against discrimination; (d) eliminate discrimination by private actors; and (e) modify social, cultural patterns of conduct and practices that are discriminatory, among other.

CEDAW also names specific areas where discrimination exist and provides specific undertakings for the State, including, political and public life, education, employment, health care, economic and social life, rural women, marriage and family life.

CEDAW is monitored by the Committee on the Elimination of Discrimination against Women (also referred to in short form as CEDAW). As at June 2007, 185 States were parties to the Convention. States Parties are required to submit reports to CEDAW one year after ratification and every four years thereafter. The Convention has one optional protocol which grants individuals or groups of individuals the right to file communications or complaint against a State who violates a right in the Convention. It also provides for procedures to launch an inquiry in cases of grave or systematic violations.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was adopted with, as stated in its preamble, the purpose of making “more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world”. CAT was adopted in 1984 and it entered into force on 1987. Its Article 1 provides a definition of torture as follows: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

The Convention requires States parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture. Among its provisions are as follows: (a) no person shall be returned or extradited to another State if there are substantial grounds to believe that he will be tortured; (b) acts of torture are offenses under criminal law; (c) right to obtain redress for victims of torture; (d)

prevention of cruel, degrading and inhumane treatment.

The Convention is monitored by the Committee against Torture (also known in its short form as CAT). As of June 2007, 144 States were parties to the Convention. States Parties are required to submit reports to CAT one year after ratification and every four years thereafter. Under Art. 20 of CAT, procedure to launch an inquiry is provided. Procedures for the filing of individual complaints or communications are found in Article 22 and subject to declaration by the State that it agrees to the procedure. The Convention has one optional protocol which deals with visits to detention centres with the aim of preventing torture and other ill-treatment.

Convention on the Rights of the Child

Prior to the adoption of the Convention on the Rights of the Child (CRC), there were already existing provision in international law concerning children. This is clearly stated in the preamble of the CRC. However, reports of grave conditions of children around the world as well as specific needs to elaborate on rights of the child in particular difficult circumstances led many to call for an international treaty to codify the existing norms on children in a binding and comprehensive manner. As a result, the CRC was adopted in 1989 and entered into force in 1990.

The CRC defines a child as “every human being below 18 years unless, under the law applicable to the child, majority is attained earlier. It embodies four general principles to guide the implementation of the Convention. These are: (a) Non-Discrimination; (b) Best Interest of the Child; (c) Respect for the Views of the Child; and Right to Life, Survival and Development of the Child.

The principle of non-discrimination is contained in Art. 2 of the CRC which states that rights in the Convention are accorded to the child irrespective of the child, the parent or the guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. The principle of best interest of the child is in Art. 3 which provides that in all actions undertaken, by the State or private institutions involved with the child, the best interest of the child is a primary consideration. The third principle is found in Articles 5 and 12. It provides that the child’s view shall be respected in accordance with the age and maturity of the child. It shall however bear in mind the rights and responsibilities of parents and guardians as well as the evolving capacities of the child. Lastly, the child is entitled the right to life, survival and development which includes physical, mental, emotional, social and cultural development as guaranteed under Art. 6 of the CRC. Substantive rights in the CRC can be classified as survival rights, protection rights, participation rights, and development rights. Many rights can be classified under two or three categories.

Survival Rights				Protection rights
Article	6:	Survival	and	Article 11: Kidnapping

development Article 7:Registration, name, nationality, care Article 8: Preservation of identity Article 9: Separation from parents Article 10: Family reunification Article 18: Parental responsibilities; state assistance Article 20: Children deprived of family environment right to special care Article 22: Refugee children: have the right to special protection and help Article 23: Children with disabilities right to special care and support Article 24: Health and health services Article 25: Review of treatment in care Article 26: Social security Article 27: Adequate standard of living Article 30: Children of minorities/indigenous groups	Article 19: Protection from all forms of violence Article 20: Children deprived of family environment Article 21: Adoption Article 22: Refugee children Article 32: Child labour Article 33: Drug abuse Article 34: Sexual exploitation Article 35: Abduction, sale and trafficking Article 36: Other forms of exploitation Article 37: Detention and punishment Article 38: War and armed conflicts Article 39: Rehabilitation of child victims Article 40: Juvenile justice Article 41: Law most conducive to realization of rights are superior
Participation rights	Development Rights
Article 12: Respect for the views of the child Article 13: Freedom of expression Article 14: Freedom of thought, conscience and religion Article 15: Freedom of association Article 16: Right to privacy Article 17: Access to information; mass media	Article 6: Survival and development Article 14: Freedom of thought, conscience and religion Article 28: Right to education Article 29: Goals of education Article 31: Leisure, play and culture Article 42: Knowledge of rights

The CRC is monitored by the Committee on the Rights of the Child (CRC). States Parties are required to submit reports to CRC two years after ratification and every five years thereafter. The CRC has two optional protocols, the first covering children in situations of armed conflict, the second on the sale, of children, prostitution and pornography. The CRC has no procedures for the filing of individual complaints or for the setting up of any inquiry for violations of rights in the Convention.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) recognizes the existing international, regional and bilateral instruments provides, to some extent, protection to migrant workers. However it also points out the enormity of migration and how migrant workers are in positions of disadvantaged owing to a variety of reasons. It especially highlights the vulnerable position of undocumented and illegal migrants. Hence, to ensure international and comprehensive protection is the rationale behind the adoption of the treaty. The Convention was adopted in 1990 and will entered into force in 2003.

The ICRMW provides for the definition of a migrant worker that is: a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. Article 7 of the Convention stipulates that States Parties must ensure the right to all migrant workers without distinction of any kind such as sex, race, color, language, etc.

The Convention states that migrant workers are entitled to enjoy their human rights throughout the migration process, including (a) during preparation for migration, departure and transit, (b) during period of stay and work in the State which the migrant worker is not a national, and (c) upon return to the State of origin or habitual residence. Substantive rights are explicitly guaranteed to all migrant workers, including the right to leave any State, including their own, the right to enter and remain in their State of origin. The ICRMW also provides for the right to life, right against torture, freedom of thought, conscience and religion, right to privacy, right not to be arbitrarily deprived of property, right to be protected from violence, right against collective expulsion, right to urgent medical care, among others. With regard to conditions of employment, migrant workers are entitled to treatment no less favorable than those applicable to nationals of the State. The convention also states that States must consult and cooperate with a view to promoting sound, equitable and human conditions of international migration. specifically obliges the State to put in place measures on international migration.

THE ICRMW emphasizes thought that it does not relieve migrant workers and their families from complying with the laws of the State of transit or employment. Neither does it regularize the situation of migrant workers and their families who are undocumented or in an irregular situation.

The ICMRW is monitored by the Committee on Migrant Workers (CMW). The Convention has no optional protocols. The ICMRW has a procedure for the filing of individual complaints as per Art. 77. It is not yet in force yet as it requires 10 ratifications/accessions. As of June 2007, it has 37 States Parties. States Parties are required to submit reports to CMW one year after ratification and every five years

thereafter.

Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CPD) was adopted on December 13, 2006. As of June 2007, it had only one State Party. Twenty State Parties are required for it to enter into force.

The CPD recognizes the existing human rights treaties and commitments. However, it highlights in its preamble that despite the various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society. The preamble also states that persons with disabilities are subjected to multiple and aggravated forms of discrimination on the basis of race, color, sex, language, religion, etc.

The Convention defines persons with disabilities as “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”. The CPD in Art. 3 identifies the principles of the Convention, consisting of: (a) respect for inherent dignity, individual autonomy and independence of persons; (b) non-discrimination; (c) full and effective participation and inclusion in society; (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; (e) equality of opportunity; (f) accessibility; (g) equality between men and women; (h) respect for the evolving capacities of children with disabilities and the right of these children to preserve their identities. It enumerates areas requiring specific undertaking including accessibility; right to life; access to justice; liberty and security of person; freedom from torture; freedom from exploitation, violence and abuse; liberty of movement; freedom of expression; education; health; habilitation and rehabilitation; work and employment; adequate standard of living; participation in political, public and cultural life; among others.

The CPD is monitored by the Committee on the Rights of Persons with Disabilities (also known as CPD in its short form). States Parties are required to submit reports to CPD one year after ratification and every four years thereafter. It has an optional protocol which provides for individual communications and inquiry procedures. States parties can opt out of inquiry procedure.

International Convention for the Protection of All Persons from Enforced Disappearances.

The International Convention for the Protection of All Persons from Enforced Disappearances (CED) was adopted on December 20, 2006. As of June 2007, it had no State Party yet. Twenty State Parties are required for it to enter into force.

The Convention in its preamble highlights the seriousness of enforced disappearances. Its Article 1 emphasizes that “no one shall be subjected to enforced disappearances”. It also underscores that “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearances”. Its Art. 2 provides a definition for enforced disappearances which is: “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or group of persons acting with authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such person outside the protection of the law. It obligates States Parties, among others, to take necessary measures to constitute it as an offense.

The Committee on Enforced Disappearances will monitor the convention. States Parties are to report to the committee on their implementation of the Convention within two years from ratification or accession. A Conference of State Parties will take place between four to six years from the entry into force of the Convention to evaluate the functioning of the Committee, including whether it is appropriate to transfer the monitoring of (CED) to another body. The Convention has a procedure for individual communications or complaints in Arts. 30 and 31. Procedures for an inquiry are in Arts. 33 and 34.

III.4. Common Features of International Human Rights Treaties

The international human rights treaties above have common features, which enables them to be recognized as the main treaties on human rights. These features include:

World Conference on Human Rights and the Vienna Declaration and Programme of Action

On 14 June 1993, representatives of the international community gathered for an international conference in Vienna to discuss human rights. Members from 171 States, with the participation of some 7,000 delegates including academics, treaty bodies, national institutions and representatives of more than 800 non-governmental organizations, in this conference adopted by consensus the Vienna Declaration and Programme of Action (VDPA), which was later adopted as well by the General Assembly.

The VDPA significantly contributed to human rights standards. Among its contributions are: It highlighted that human rights are universal, indivisible, interdependent, interrelated and of equal footing. It reaffirmed the universality of human rights and that States must ensure human rights despite regional and cultural particularities. It proclaimed that democracy, development and respect for

human rights and fundamental freedoms as interdependent and mutually reinforcing. It also confirmed that women's rights are human rights. It made concrete recommendations for the strengthening and harmonizing of the monitoring capacity of the United Nations system. It recommended the establishment of a High Commissioner for Human Rights.

Fourth World Conference on Women and the Beijing Declaration and Platform for Action

The Fourth World Conference was preceded by three other conferences on women held in Mexico (1975), Copenhagen (1980) and Nairobi (1985). After Nairobi and in the implementation of its outcomes, the Forward Looking Strategies for the Advancement of Women, it was noted that although there were some progress on de jure equality, de facto equality was far behind. In 1990, the Commission on the Status of Women decided the need for a Fourth World Conference on Women (FWCW) and began preparations. The Beijing Declaration and the Beijing Platform for Action (BPFA) was unanimously adopted by 189 countries, thus reflecting immense global consensus.

The Beijing Declaration and the Platform for Action identifies 12 critical areas of concern as follows:

1. Women & Poverty
2. Education & Training of Women
3. Women & Health
4. Violence Against Women
5. Women & Armed Conflict
6. Women & Economy
7. Women in Power & Decision Making
8. Institutional Mechanisms for the Advancement of Women
9. Human Rights of Women
10. Women & the Media
11. Women & the Environment
12. The Girl-Child

Strategic objectives and actions to be taken are provided in the BPFA to assist stakeholders in the implementation of women's rights.

Among the many breakthroughs in Beijing was the reaffirmation that women's rights are human rights. It also elevated the issue of VAW from a private domestic concern to the level of public policy and subject to State intervention and action. It recognized women's unremunerated work at home. It brought women's sexual rights within the ambit of human rights. It emphasized the rights of the girl-child and of women migrant workers.

V. Regional Human Rights Systems

In other regions, there are also regional human rights systems which provides another layer of protection in the regions concerned. In Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) provides normative standards which are safeguarded by a European Court of Human Rights. In the Americas, the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights guarantees human rights. Cases can be filed by individuals and states with the Inter-American Commission on Human Rights and Inter-American Court of Human Rights for violations. The African Charter on Human and Peoples' Rights is monitored by the African Commission on Human and Peoples' Rights and African Court of Human Rights. Asia, however, does not have a regional system. There are some initiatives, however, at the sub-regional level for the establishment of a sub-regional human rights system. At the ASEAN level, several joint communiqués of the ASEAN senior officials meeting have stated that they are considering the establishment of an ASEAN human rights mechanism.

There are some arguments that points out that a regional human rights system is not needed, especially as national and international systems of protection are already in place. However, in many cases, regional systems enables further elaboration on human rights issues in a more contextualized manner than international systems. It also provides an additional layer of legal protection to victims of violations where the national systems are unable to do so, and the international system is not easily accessible.

VI. Complementarity of Instruments and Bodies within the UN Human Rights System

One question often asked is why is it necessary to know other human rights instruments and mechanisms when working with CEDAW or women's human rights. The answer is simple. The standards and institutions on human rights are complementary and mutually reinforcing. Knowing this, it enables us to better shaped our advocacy for women's human rights.

In working for example to eliminate underaged marriage. One does not only cite CEDAW as a reference. By knowing all the other human rights treaties, an advocate can cite all the treaties as this right is guaranteed explicitly by all. Many rights in CEDAW are also guaranteed by other treaties. Also, particular rights in CEDAW are elaborated further in the work of other treaties. For instance, CEDAW guarantees equality in health services in Article 12. The CESCR however has issued a General Comment on the right to health which elaborates further what are key elements to this right and the corresponding State obligation. Hence, it assist in the fulfillment of CEDAW obligations.

Another example of the mutually reinforcing nature of the instruments within the UN human rights system are the BPFA and CEDAW. CEDAW provides legally binding rights while BPFA provides a list of strategies objectives and actions to be taken for advancement of women.

It must always be borne in mind that the work on CEDAW, women's human rights and gender equality must not exclude other human rights instruments and bodies. Rather, a good understanding is necessary to be able to fully achieve women's human rights and gender equality.

To understand CEDAW, gender equality and discrimination on the basis of sex/gender, it is critical that one understands the concept of sex and gender. In ordinary usage, both terms are used interchangeably. However, there is a distinction between the two and a good grasp of this distinction allows one to be able to fully understand their implications on men and women.

Sex

Sex is linked to biology. It refers to biological attributes that distinguish a man from a woman, and a woman from a man. It is what makes a person male or female.

In biology, there are only three major differences between a man and a woman:

1. Reproductive organs and cells. This refers to different internal and external genitalia or sex organs. This also refers to the fact that males produce sperm cells and females produce egg cells.
2. Chromosomes. There are two types of chromosomes, X and Y chromosomes. Female egg cells contain two X chromosomes; while male sperms contain XY. Sex chromosomes determine whether the fetus/child is genetically male or female.
3. Hormones. These are secretions of the endocrine glands. Its function is basically to stimulate the development of primary sex characteristics so individuals can reproduce. They are also responsible for the development of secondary sex characteristics. The major female and male hormones can be classified as estrogens or androgens (1). All individuals produce both male and female hormones although in varying amounts. It is during puberty and all throughout sexual maturity that women produce more female hormones and males produce more male hormones.

As sex characteristics are biological, they are universal characteristics that distinguish males and females. They are the same regardless of one's nationality, culture and ethnicity.

Gender

Gender refers to culture and society. It refers to socio-cultural ascribed characteristics that makes a man different from a woman; or a woman different from a man. It is what makes a person feminine or masculine. These socio-cultural differences between a man and a woman in terms of their clothes, appearance, roles, behavior, professions, responsibilities, among others (differences other than biology for short) are constructed by society. They are not based on biology, but simply social constructions (i.e. constructed or made by society or culture).

We learn these social constructions through a process called socialization. Early on in our lives and in our daily interactions, rewards or restrictions are made on behavior or roles that is appropriate or inappropriate. For example, girls are supposed to help with the household chores but boys are not expected to do so. Girls can wear skirts, but boys cannot. Girls should not engage in fistfights; but it is alright or “natural” for boys to do so. We are also taught early that not conforming to social expectation lead to social disapproval, punishments and even danger or violence (e.g. women who do not do household chores well “deserve “to be beaten). These contribute to the shaping of our personality as well as to how we perceive appropriate roles for men and women. This is reinforced by institutions such as the mass media, education, and even by the State. When asked why there is such a difference between boys and girls or men and women, many people just justify the rationale as simply ‘the way things are done.’”

In Vietnam, the Law on Gender Equality provides a definition for these terms. It states under Article 5 on interpretation of terms that:

- “1. **Gender** indicates the characteristics, positions and roles of man and woman in all social relationships.
2. **Sex** indicates biological characteristics of man and women.”

Sex and Gender in Our Lives

Because sex is biological, they are therefore acquired naturally. It is not changeable or at least is difficult to change. On the other hand, gender differences is socially constructed. As a result they vary or is changeable. They vary from country to country, culture to culture, generation to generation, among persons of different classes and statuses. For example:

- It is acceptable for men in other countries and cultures to wear skirts while it may not be so in Vietnam.
- Women in Vietnam drive vehicles (especially motor bikes), while women in other countries (e.g. Saudi Arabia) are not permitted to drive.
- Particular cultures require women to follow the name of the father, while other culture impose the name of the mother.

-Professional women walking alone at night may invite social disapproval more than a woman working night shift in a factory.

-Upper class women are expected to be frail while rural women are expected to be capable of hard work.

-In the past, both men and women wear make up and jewelry in formal ceremonies, today only women are expected to do so.

Implications of Sex and Gender

Social construction tends to consider gender as a natural phenomenon derived from biological differences between men and women. This is what social scientists refer to as sex-gender system. As a result, societies have constructed roles, behaviors, rights, among others, based on one's sex. This has many manifestations, including the following:

1. Sex Roles and Gender Roles

Sex roles refer to biological functions which is necessary to belong to one particular sex category. For example, child bearing.

Gender roles are learned functions in given society or community that condition us to perceive particular tasks as male or female. For example, child rearing is perceived to be a woman's role even if biologically both men and women can rear a child.

2. Sexual Division of Labor and the Production/Reproduction Distinction. This refers to a division of labor between men and women, where men engage in productive work and women in reproductive work. Productive work refers to production of goods and services for personal or immediate consumption. These goods and services are given economic value. This is considered the male sphere. Reproductive work refers to biological reproduction and tasks usually association with housekeeping, care of children and relatives, which although necessary are not given economic value.

3. Gender Stereotypes. This refers to over-generalized beliefs in the characteristics of a person based simply on their gender. It is a rigidly held and oversimplified belief that all males and females possess such distinct emotional, psychological and behavioral traits. Some examples of stereotypes are: Women are emotional, men are not. Men are aggressive, women are passive. Men are family providers, women are housekeepers.

Social construction and the sex-gender system have implications for all of us. These can result in exclusion, disparity, disadvantage, exclusion, deprivation of rights, all of which are manifestations of discrimination. For example, in many societies, women are expected to take care of her husband and children while the man is considered the head of the household. This is reinforced by the fact that a

woman's value is mostly linked to being a good wife and mother while a man's value is linked to how well he can provide for his family. As a result, decisions are made at the education, employment and other settings based on these assumption, e.g. girls are taught to sew and cook while boys are not; women are not allowed to work at night so they can take care of the family; men cannot take care of the children hence they should not be given leave for sick children; issues on children and family are better led and participated by women, etc.

It is critical for us to question social construction and the sex-gender system and see its impact on men and women rather than simply use the excuse that "these are how things are being done". It is important to understand that both men and women are affected, however, in most cases, it is women who are more disadvantaged by the sex-gender system, because she is often relegated to a secondary or subordinate status to men. Most often, it is she who is being excluded, disadvantaged, deprived of rights and hence, discriminated.

When one discusses gender equality, one must recognize both sex and gender differences. By doing so, one can be able to fully comprehend the context of discrimination that women experience, and hence provide more responsive interventions.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article I

For the purposes of the present Convention, the term "discrimination against

women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school,

general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits

without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.
6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.
7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
8. The members of the Committee shall, with the approval of the General

Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the

International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

II. SHORT HISTORY OF CEDAW

This hand-out puts together excerpts from "Short History of CEDAW Convention" at <http://www.un.org/womenwatch/daw/cedaw/history.htm>. [Published by the United Nations Department of Public Information]

*The Preamble to the Charter of the United Nations sets as one of the Organization's central goals the reaffirmation of "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women". Article 1 proclaims that one of the purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to, inter alia, sex.

*The International Bill of Human Rights strengthens and extends this emphasis on the human rights of women. The Universal Declaration of Human Rights proclaims the entitlement of everyone to equality before the law and to the enjoyment of human rights and fundamental freedoms without distinction of any kind and proceeds to include sex among the grounds of such impermissible distinction. The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both of 1966, which translate the principles of the Declaration into legally binding form, clearly state that the rights set forth are applicable to all persons without distinction of any kind and, again, put forth sex as such a ground of impermissible distinction. In addition, each Covenant specifically binds acceding or ratifying States to undertake to ensure that women and men have equal right to the enjoyment of all the rights they establish.

*Since its establishment, the Commission on the Status of Women (CSW) has sought to define and elaborate the general guarantees of non-discrimination in these instruments from a gender perspective.

*Between 1949 and 1959, the Commission [CSW] elaborated the Convention on the Political Rights of Women, adopted by the General Assembly on 20 December 1952,

the Convention on the Nationality of Married Women, adopted by the Assembly on 29 January 1957, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages adopted on 7 November 1962, and the Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages adopted on 1 November 1965.

Although these instruments reflected the growing sophistication of the UN system with regard to the protection and promotion of women's human rights, the approach they reflected was fragmentary, as they failed to deal with discrimination against women in a comprehensive way. In addition, there was concern that the general human rights regime was not, in fact, working as well as it might to protect and promote the rights of women. Thus, the General Assembly, on 5 December 1963, adopted its resolution 1921 (XVIII), in which it requested the Economic and Social Council to invite the CSW to prepare a draft declaration that would combine in a single instrument international standards articulating the equal rights of men and women.

*Drafting of the declaration, by a committee selected from within the CSW, began in 1965, with the Declaration on the Elimination of Discrimination against Women ultimately being adopted by the GA on 7 November 1967. Although the Declaration amounted only to a statement of moral and political intent, without the contractual force of a treaty, its drafting was none the less a difficult process. Article 6, concerning equality in marriage and the family, and article 10, relating to employment, proved to be particularly controversial, as did the question of whether the Declaration should call for the abolition of the customs and laws perpetuating discrimination or for their modification or change.

*In 1972, five years after the adoption of the Declaration and four years after the introduction of a voluntary reporting system on the implementation of the Declaration by the Economic and Social Commission, the CSW considered the possibility of preparing a binding treaty that would give normative force to the provisions of the Declaration and decided to request the Secretary-General to call upon UN Member States to transmit their views on such a proposal. The following year, a working group was appointed to consider the elaboration of such a convention.

*In 1974, at its twenty-fifth session and in the light of the report of this working group, the Commission decided, in principle, to prepare a single, comprehensive and internationally binding instrument to eliminate discrimination against women.

*The text of the Convention on the Elimination of All Forms of Discrimination against Women was prepared by working groups within the Commission during 1976 and extensive deliberations by a working group of the Third Committee of the General Assembly from 1977 to 1979.

*Drafting work within the Commission was encouraged by the World Plan of Action for the Implementation of the Objectives of the International Women's Year, adopted by the World Conference of the International Women's Year held in Mexico City in 1975, which called for a convention on the elimination of discrimination against women, with effective procedures for its implementation. Work was also encouraged by the General Assembly which had urged the Commission on the Status of Women to finish its work by 1976, so that the Convention would be completed in time for the 1980 Copenhagen mid-decade review conference (World Conference on the United

Nations Decade for Women: Equality, Development and Peace).

*Although suggestions were made to delay completion of the text for another year, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979 by votes of 130 to none, with 10 abstentions. At the special ceremony that took place at the Copenhagen Conference on 17 July 1980, 64 States signed the Convention and two States submitted their instruments of ratification. On 3 September 1981, 30 days after the twentieth member State had ratified it, the Convention entered into force - faster than any previous human rights convention had done - thus bringing to a climax United Nations efforts to codify comprehensively international legal standards for women.

III. Framework and Structure of CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an international treaty adopted by the UN General Assembly on Dec. 18, 1979 and entered into force on September 3, 1981. It has 185 States Parties (2), thus being one of the most highly ratified treaty.

Rationale for a Women's Convention

At the time CEDAW was adopted, there were already several human rights treaties, in particular, the ICCPR and the ICESCR. CEDAW is cognizant of the contribution of these treaties, however, it also pointed out that despite their existence, discrimination against women still persist. There were also several treaties on specific areas on women's human rights (see hand-out 2.3 for details on these treaties), however, women sought an international document that would contain most, if not all of the rights that women are entitled to, a bill of rights for women. Furthermore, many feel that previous treaties did not really reflect the full experience by women of discrimination and inequality, hence there was a need for a specific treaty on women to bring these concerns at the forefront.

For example, ICCPR provides for the "right of men and women of marriageable age to marry and to found a family" but it is silent as to the consequence of women losing their nationality or citizenship on account of their marriage to foreigners. CEDAW explicitly provides that States-Parties must guaranteed that marriage to an alien or change of nationality by the husband shall not automatically change the nationality of the wife or force upon her the nationality of the husband.

As to the ICESCR, although it guarantees the right to work and the right to enjoy just and favorable conditions of work on an equal basis it does not explicitly provide for dismissals due to marriage or pregnancy. CEDAW, on the other hand, provides that maternity leave is introduced with pay without loss of former employment/benefits. It also prohibits dismissal on account of pregnancy, maternity leave and marital status.

Significant Aspects of CEDAW

CEDAW contributed greatly to the human rights framework as we know it today. It established a comprehensive set of rights for women- civil, political, economic, social, cultural and other fields. It puts forth a framework for addressing discrimination: (a) substantive equality; (b) non-discrimination and (c) state obligation [Kindly refer to Hand-outs 4.1, 4.2 and 4.3 on Non-discrimination, Substantive Equality and State Obligation for further elaboration]. It established a mechanism for monitoring women's human rights [Kindly refer to discussion below and to Session 7 for details]. Lastly, it significantly contributed in ensuring that women's concerns become central in the international and national agendas.

Main Divisions of the Convention

The Convention can be divided into four parts as follows:

1. General Substantive Undertakings (Arts. 1-5, 24). This refers to general substantive provisions, including: a definition of discrimination and the general obligations of the State. It contains provisions that apply to the whole convention. It embodies the conceptual framework of the convention and can be summarized as follows: (a) substantive equality; (b) non-discrimination; and (c) State obligation.
2. Specific Substantive Areas (Arts. 6-16). This contains specific undertakings for specific areas. This covers a wide range of fields, including trafficking and exploitation of prostitution, participation in political and public life, education, health, employment, etc. The enumeration of specific substantive areas by CEDAW should not be construed as excluding other fields. The General Undertakings (Arts. 1-5, 24) guarantees women's rights must be guaranteed in all fields.
3. CEDAW Committee and Mechanisms for Monitoring (Art. 17-22). This section provides elaboration on the CEDAW Committee, who they are, their composition and function. It also provides an overview of the reporting process through which the CEDAW Committee monitors implementation of the Convention. This section also provides the basis for the issuance of Concluding Comments and General Recommendations. See discussion below and Session 7 for details on mechanisms.
4. Matters Concerning Administration and Interpretation Part (Arts. 23, 25-30). This section discusses how a State can be a State Party to the Convention, matters on how to interpret CEDAW, reservations, referral of disputes to the ICJ and authentic languages of the CEDAW text.

Mechanisms for Monitoring

1. *CEDAW Committee*. The obligations under CEDAW is monitored by the CEDAW Committee. It is composed of 23 experts from various regions who are nominated by their respective governments and elected by States Parties for 4 years. They serve in their personal capacity. They exercise the function of monitoring: (a) by requiring States Parties to submit reports and engage in a constructive dialogue with the Committee (b) by issuing Concluding Comments and (c) by drafting general recommendations.

2. *Reporting Process*. States Parties to CEDAW are required to submit an initial report one year after its ratification or accession, and a periodic report every four years thereafter. After the submission of its report, a delegation of the State is then invited to a constructive dialogue with the CEDAW Committee to present the report, discuss its contents, exchange views on challenges to implementation and provide recommendations. The dialogue is held during a CEDAW session in Geneva or New York. In consideration of the report of the State Party, information, including alternative or shadow reports from NGOs and reports from specialized agencies, are welcomed by the CEDAW Committee.

3. *Concluding Comments*. Concluding Comments are observations and recommendations issued by the CEDAW Committee after its consideration of the State party report and the constructive dialogue with the State delegation. It is issued specific to a country and its context.

4. *General recommendations*. General recommendations are authoritative interpretations of the CEDAW Committee on (a) specific Articles of the treaty or (b) on contemporary or emerging issues. The CEDAW Committee presently has 25 General Recommendations as follows:

- GR 1: Reporting (1986)
- GR 2: Guidelines on Reporting (1987)
- GR 3: Urges State Parties to adopt education and public information programs (1987)
- GR 4: Reservations (1987)
- GR 5: Temporary Special Measures (1988)
- GR 6: Effective National Machinery and Publicity (1988)
- GR 7: Resources (1988)
- GR 8: Implementation of Art. 8 of the Convention (1988)
- GR 9: Statistical Data concerning the Situation of Women (1989)
- GR 10: Tenth Anniversary of the Adoption of CEDAW (1989)
- GR 11: Technical Advisory Services for Reporting Obligations (1989)
- GR 12: Violence Against Women (1989)
- GR 13: Equal Remuneration for Work of Equal Value (1989)
- GR 14: Female Circumcision (1990)
- GR 15: AIDS (1990)

- GR 16: Unpaid Women Workers in Rural and Urban Family Enterprises (1991)
- GR 17: Unremunerated Domestic Activities of Women (1991)
- GR 18: Disabled Women (1991)
- GR 19: Violence Against Women (1992)
- GR 20: Reservations (1992)
- GR 21: Equality in Marriage and Family Relations (1994)
- GR 22: Amending Art 20 (Meetings of the CEDAW Committee) (1995)
- GR 23: Political and Public Life (1997)
- GR 24: Women and Health (1999)
- GR 25: Temporary Special Measures (2004)

Vietnam and CEDAW

Vietnam ratified CEDAW in February 17, 1982. The Convention's entry into force in relation to Vietnam is on March 19, 1982. By ratifying, Vietnam becomes a State Party to CEDAW. As a result, it is legally bound to observe CEDAW. Its ratification also shows that Vietnam recognizes that inequality against women exists and that there is a need for State action to eliminate discrimination.

Vietnam has already submitted six State Party reports and engaged in a constructive dialogue with the CEDAW Committee three times, namely in March 13, 1986, July 1, 2001 and January 17, 2007. Corresponding concluding comments have been issued by the CEDAW Committee pointing out positive aspects of implementation, areas of concern and recommendations in relation to the Vietnamese context.

Vietnam's latest State Party report, the combined fifth and sixth periodic report was submitted in 2005. In January 17, 2007, it was invited to a constructive dialogue with the CEDAW Committee at its 37th CEDAW session for the consideration of the fifth and sixth State Party report. Vietnamese NGOs also submitted NGO reports to provide the CEDAW Committee with an alternative source of information on the status of CEDAW implementation. On February 2, 2007, the CEDAW Committee issued its latest Concluding Comments on Vietnam. It requested the State to respond to the concerns expressed in the present Concluding Comments and invites the State to submit its combined seventh and eighth periodic report in March 2011.

IV. CORE PRINCIPLES OF CEDAW

Non-Discrimination

The article below is fully reproduced from a section in: CEDAW and the Law: A Gendered and Rights-Based Review of Vietnamese Legal Documents through the Lens of CEDAW prepared by Rea Abada Chiongson for UNIFEM Vietnam (2008).

Non-discrimination is a core pillar of CEDAW. The title of the Convention itself suggests that all forms of discrimination must be eliminated. A definition of discrimination is provided in Art. 1 of CEDAW:

ARTICLE 1. For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

A key phrase in the definition of discrimination in Article 1 is "effect or purpose". From the phrase, it is clear that both direct and indirect discrimination is prohibited. *Direct discrimination* refers to an action or omission that is clearly intended to discriminate against women. This is evidenced by explicitly providing for different allocations or treatment that results in impairment or restriction of women's human rights. Examples of this form of discrimination include, explicit provisions terminating employment of women on the basis of her marriage or pregnancy, unequal retirement age, unequal inheritance rights, differential age of marriage between men and women, among others. In the past, discrimination was more blatant and intention to discriminate was clearly visible.

Presently, more subtle or hidden forms of discrimination occur. CEDAW, however, also prohibits *indirect discrimination*. It is clear from the language of Art. 1 that even if there was no intention to discriminate if the action or omission has the "effect" of discriminating, then discrimination exists. Indirect discrimination targets the effect or result of a particular action or omission. Thus an act or omission may appear to be apparently neutral or beneficial to women on its face, but once the effect is shown to be discriminatory, discrimination exists.

Indirect discrimination was used to contravene the law against discrimination, though in some cases, it is a result of lack of understanding and assessment of the possible impact of an action or inaction on women. Women as compared to men, face many obstacles sanctioned by culture, religious practices, by entrenched male interests in key institutions such as political parties, trade unions, religious institutions, the courts, hence what appears to be neutral rules or laws may disadvantage them. By not putting in place enabling conditions or not altering rules to benefit women and thus facilitating their access to opportunities, indirect discrimination occurs, even if no discrimination was intended.

To emphasize on this point, CEDAW General Recommendation 25 provides that: 'Indirect discrimination against women may occur when laws, policies and programmes are based on seemingly gender-neutral criteria which in their actual

effect have a detrimental impact on women. Gender-neutral laws, policies and programmes unintentionally may perpetuate the consequences of past discrimination. They may be inadvertently modeled on male lifestyles and thus fail to take into account aspects of women's life experiences which may differ from those of men. These differences may exist because of stereotypical expectations, attitudes and behaviour directed towards women which are based on the biological differences between women and men. They may also exist because of the generally existing subordination of women by men." Using the earlier example on access to credit (see Part III.2.1. Substantive Equality*) despite the apparently neutral equal rights to access credit, in effect, women were discriminated.**

Even legislation that appears to benefit women, may in fact be discriminatory. An example is legislation that requires that 10 percent of all advertised land should be given to women provided there is payment upfront of a high collateral which is nonrefundable. This was meant to address all previous land allocations were 100% of the advertised lands were given to men. In a context where women are generally poorer than men, many women cannot afford this amount and therefore are less likely to benefit from the policy. The law thus discriminates against women by failing to ensure their equal access to and enjoyment of the land policy, even if on its face it seems to be pro-women.

In addition to direct and indirect discrimination, there are a few notes to bear in mind relating to discrimination. First, it is important to recognize that discrimination stems from sources other than present discrimination. Often *past discrimination* such is not seen because the concentration is on the more immediate or current action or inaction. For example, some women do not believe there is discrimination when there are no women leaders as they feel this is due to lack of women with enough years in the company, even if there is a past discriminatory practice of not hiring women in the company. In this case, the present inability of women to be leaders is obviously a result of past discrimination.

On this note, CEDAW General Recommendation 25 points out that: "The Convention targets discriminatory dimensions of past and current societal and cultural contexts which impede women's enjoyment of their human rights and fundamental freedoms."

Second, discrimination in one field affects the enjoyment, exercise or recognition of a right in another field (inter-relatedness of discrimination). For example, discrimination in access to education results in their lack of access to decision making in the area of public policy, among others. Discrimination in access to credit opportunities is directly related to discrimination in the ownership of property, inheritance and ability to enter into contracts and often results in their lack of access to education and loss of opportunity to develop themselves, among others.

Third, gender discrimination may exist with other grounds of discrimination, such as on account of ethnicity, social status, religion, and age, among others. These grounds must not be ignored. Rather it is important to bear in mind that interventions should take into account *all forms of disadvantage*, to be able to appropriately address them. Examples of women experiencing discrimination in addition to gender discrimination are: elderly women, women with disabilities or ethnic minority women.

The CEDAW Committee has emphasized this in its General Recommendation 25 as follows: “Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such multiple discrimination may affect these groups of women primarily, or to a different degree or in different ways than men”.

With CEDAW’s definition of discrimination, it is clear that it requires the monitoring of impact and effect. Putting in place measures, whether gender-neutral or pro-women, is not sufficient, if it does not result in equality.

NOTE:

The comments below are from the author of this Manual and is not part of the original text of the article above.

*Part III.2.1 example is as follows: “Legislations that do not distinguish between men and women and appear neutral at its face (gender-neutral provisions), may be discriminatory in effect as they fail to recognize differences between men and women. An example is a law that provides equal rights to access credit appears non-discriminatory on its face. But if it is within a socio-cultural context where men are viewed as property holders and women are only seen as dependents of men and are constantly being denied by culture or tradition of their property and inheritance rights, by failing to provide positive interventions, women will have more difficulty in accessing credit as compared to men. Hence, similar treatment cannot be said to provide equality”.

**A good example, using the Vietnam context, of gender-neutral provisions which has discriminatory effects refers to the Land Law provisions on registration of land use certificates (LUCS). In the past, the law was gender-neutral in that it requires registration of land owned jointly by the husband and wife. However, by failing to provide any specific inclusive provision that it should be registered in the name of both spouses, the registration was usually made in the name of the husband as he is considered the head of the household. Hence, in reality, only 19% and 15% respectively of LUCs are registered in the women’s name or in the names of both spouses in certificates for agricultural land. For residential land, the percentages are 22% and 18%. Although this is simply registration and not ownership, this has

impacted as depriving women proof of ownership, especially when needed to access credit, as well as having control over transactions involving the property jointly owned by her. The new Land Law and the Law on Marriage and Family in Vietnam has already sought to correct this injustice and requires that property jointly owned by the husband and wife be registered in the name of both spouses. This however applies only to newly-issued certificates. As to previously issued ones, there is no automatic registration, rather, there is a need for the spouses to apply for the re-granting of the LUC.

Substantive Equality

I. Introduction

The second core pillar of CEDAW's framework is substantive equality.

There is no specific mention of substantive equality in the Convention, unlike non-discrimination (which is prominently in the title of the Convention as well as in Art. 1). However, it is the spirit behind all the provisions of CEDAW. This is the framework of equality that CEDAW itself espouses. Substantive equality and non-discrimination mirror each other. Equality and non-discrimination are often used interchangeably.

Like non-discrimination, the term equality is also widely recognized. Vietnam, like most countries in the world, explicitly provides for equality in its Constitutions, laws, other legal documents and international treaties (see Hand-out 4.3 for these provisions).

Much of the hindrance towards achieving real equality can come from two sets of people: (a) those who do not believe in equality between men and men; as well as (b) those who believe in equality but do not espouse an approach towards equality that benefit women and men on a equal basis.

II. Formal Equality

Most legal traditions equate equality with (a) equal (same) treatment of similar classes of persons, and (b) different treatment of different classes of people. This is termed as a formal approach to equality or *formal equality*.

II. 1. Men and Women are Similar

Sameness Approach. Men and women are often seen as belonging to a similar group of people hence, they are given similar treatment. As a result, differences based on biology (sex differences), such as pregnancy or maternity, are ignored. Social and cultural differences (gender differences), such as social perceptions of women as weak, son preference, overprotection of women, among others, are also

disregarded in the analysis. Legislation for example that provides maternity leave for women will be seen by this approach as discriminatory as it allows for different treatment between similar classes of people. Legislation on violence against women will also be considered discriminatory by this approach. It is then pointed out that if women want to be equal they should live up to the male standard and not ask for maternity leave or for “extra” measures.

By ignoring sex and gender differences, this approach to equality is not responsive to women’s needs. In fact, it ignores women’s needs and experience in favor of a “neutral” or “objective” standard. This standard is not really neutral or objective as it is based on males (do not require maternity leave) rather than females (require maternity leave).

The CEDAW Committee points out in its General Recommendation 25 that there is a need to go beyond purely formal legal obligation of simply equal treatment of women and men.

Equivalence Approach. Advocates of this approach claim men and women are the same; however, they apply equivalent treatment instead of same treatment. They state that there is a need for division of roles/ responsibilities in any undertaking. In the family, for example, they emphasize that everyone cannot do the same thing, hence men should earn a living and women should take care of the household. As a result, women are systematically excluded from many roles and responsibilities which are considered men’s realm. In most cases, although this approach espouses equivalence, women’s roles and responsibilities are actually valued less than men’s. This is shown in how men as breadwinners are considered head of the household rather than the women who cares for the household.

II. 2. Men and Women are Different

As mentioned above, the formal approach also may mean that men and women are not similar. They are different and hence, subject to different treatment. This approach is usually manifested in the protectionist approach.

Protectionist Approach. This approach seek to overprotect women, e.g., banning women from working at night to keep them safe or prohibiting women from working in dangerous occupations. Different treatment usually stems from the belief that women are fragile or weaker than men. There is a need to protect them or keep them from harm. As a result, their rights are restricted and their choices ignored under the guise of protection.

Also, under the protectionist argument, the intervention is always focused on excluding women, rather than at looking at the conditions or environment that make it difficult for women to enjoy her rights.

When women are targeted for sexual violence, women are blamed for going out at night or wearing seductive clothes rather than failure of law enforcement and public order. Women are blamed for being weak or unhealthy rather than lack of appropriate occupational health and safety measures, hence they are excluded. What is not seen by this protectionist approach is that in most cases, the environment is dangerous for both men and women. Instead of addressing this women are penalized for their perceived weakness and hence, they lose out on opportunities due to their exclusion. On the other hand, men are seen as not requiring any protection from danger or dangerous occupations.

Formal equality, including sameness, equivalence and protectionist approaches are clearly not espoused by CEDAW.

III. Substantive Equality

CEDAW espouses a substantive approach to equality or *substantive equality*. This is the second pillar of the CEDAW framework. General Recommendation 25 of the CEDAW Committee provides some guidance on substantive equality as follows:

1. *Substantive equality refers to ensuring equality of results.* The Committee also equates this as de facto equality or equality in practice. CEDAW requires that equality is guaranteed beyond merely ensuring equal opportunity or equal access. It challenges us to ensure that we monitor and ensure that laws, policies, programmes, activities and other interventions implemented actually result in equality. This is consistent with ensuring that no discrimination exist directly or indirectly.

The results sought after is that women enjoy their rights in various fields. These results can be quantitative or qualitative. For example, in relation to representation in the legislature, this means that women are there in sufficient numbers and can significantly contribute to law-making.

2. *Differences between men and women must be taken into account.* The Committee states that both biological (sex) differences and socio-cultural (gender) differences must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required to address these differences and achieve substantive equality.

3. *There is a need to ensure an enabling environment for women to exercise and enjoy rights.* The Committee states in General Recommendation 25 that the Convention requires that women are given an equal start and that they should be empowered through an enabling environment to achieve equality of results.

An equal start mean ensuring that women have equal opportunities as men and equal access to these opportunities. An enabling environment means recognizing sex and gender differences and putting in place appropriate conditions and measures to enable women to enjoy her rights.

Examples of how substantive equality operates is as follows:

1. A law that provides equal rights to access credit may appear equal on its face. But if it is within a socio-cultural context where men are viewed as property holders and women are only seen as dependents of men and are constantly being denied by culture or tradition of their property and inheritance rights, by failing to provide positive interventions, women will have more difficulty in accessing credit as compared to men. Hence, similar treatment cannot be said to provide equality.

Using the framework above, although an Equal Start (law on equal access to credit) is provided, there is no Enabling Environment (men are property holders, women are dependents, women are denied property and inheritance rights), hence there is no Equality of Results (women have less access than men). What is needed are further measures to correct the environment that disadvantage women, to equalize the situation and hence, to secure the practical realization of their right. This can include reform of culture and tradition to enable women to acquire, manage, control and inherit property coupled with provisions in the law that a proportion of beneficiaries are women.

2. A policy or law banning women from working at night to keep them safe may appear to be considering socio-cultural differences on its face, i.e. that gender based violence disproportionately targets women. However, this measure ends up restricting women's rights rather than enabling her to enjoy her rights.

Using the framework above, there appears to be recognition that an equal start entails recognition of differences and hence different treatment is necessary. However, no Enabling Environment was provided, hence no Equality of Results occurred (women can equally work at night with men; equal right to work). What is needed is a recognition of the need to correct the unsafe environment, e.g. more street lights, putting safe public transportation at night, requiring employers to put up sleeping rooms for night workers if they feel it is dangerous for them to go home at a particular hour, etc.

Provisions on Equality and Non-Discrimination on the Basis of Sex or Gender in Vietnam's Constitution and Legal Normative Documents.

The article below is fully reproduced from a section in: CEDAW and the Law: A Gendered and Rights-Based Review of Vietnamese Legal Documents through the Lens of CEDAW prepared by Rea Abada Chiongson for UNIFEM Vietnam (2008).

There are guarantees of equality and nondiscrimination on the basis of sex and gender in the Vietnamese Constitution and/or legal documents.

Article 63 of the Constitution provides that:

“Male and female citizens have equal rights in all fields- political, economic, cultural, social and family.

All acts of discrimination against women and all acts damaging women’s dignity are strictly banned.

Men and women shall receive equal pay for equal work. Women workers shall enjoy a regime related to maternity. Women who are State employees and wage earners shall enjoy paid prenatal and post-natal leaves during which they shall receive all their wages and allowances as determined by law.

The State and society shall create necessary conditions for women to raise their qualifications in all fields and full play their roles in society; they shall see to the development of maternity so as to lighten housework and allow women to engage more actively in work and study, undergo medical treatment, enjoy periods of rest and fulfill their maternal duties.”¹

It also states in Article 52 that: “All citizens are equal before the law”

In furtherance of the Constitution, the Law on Gender Equality provides as one of the State policies: “To ensure gender equality in all fields of politics, economy, culture, society and family; to support and provide man and woman with conditions for them to bring into play their abilities; to give them equal opportunities to take part in the process of development and to benefit from the achievements of development”. From Articles 11-18, the law proceeds to affirm equality between men and women in the field of politics; economy; labor; education and training; science and technology; culture, information and sports; public health; and the family.

The Law on Gender Equality also provides that the following acts are strictly prohibited” “acts impeding man and woman from exercising gender equality; (2) Gender discrimination in all forms; (3) gender-based violence; (4) other acts that are strictly prohibited”.² Further, it also provides a list of violations in the fields of politics, economy, labor, education and training, science and technology, culture, information, sport, public health and the family in Arts. 40-41.

¹ Constitution as amended, Art. 63.

² Law on Gender Equality, Art. 10.

There are further equality and non-discrimination guarantees found in the laws of Vietnam pertaining to matters within their scope such as:

(a) The Civil Code states in Article 5 that: “In civil relations, the parties shall be equal and shall not invoke differences in ethnicity, gender, social status, economic situation, belief, religion, educational level and occupation as reasons to treat each other unequally.

(b) The Marriage and Family Law in Article 2 states among its basic principles: “Voluntary, progressive and monogamous marriage in which husband and wife are equal.” and “The State and society shall not accept the discrimination among children..”.

(c) The Penal Code states in Article 3 as one of the handling principles that: “All offenders are equal before the law, regardless of the sex, nationality, beliefs, religion, social class and status”.

(d) Criminal Procedure Code in Art. 5 guarantees that all citizens are equal before law, regardless of their nationality, sex, belief, religion, social strata and social position.

(e) The Civil Procedure Code states in Article 8 that “All citizens are equal before law and courts regardless of their nationalities, sexes, social status, beliefs, religions, educational levels and occupations. All agencies and organizations are equal regardless of their forms of organization, ownership and other matters.”

(f) The Labor Code in Article 5 provides that “Every person shall have the right to work, to choose freely the type of work or trade, to learn a trade, and to improve his professional skill without being discriminated against on the basis of his gender, race, social class, beliefs, or religion.”

(g) The Education Law in Article 10 states that: “All citizens, regardless of their ethnicity, religion, belief, gender, family background, social status or economic conditions, are equal in learning opportunities”.

(h) The Law on the Protection, Care and Education of Children in Art. 4 provides that: “Children, whether female or male, born in or out of wedlock, biological or adopted, born to one or both parties of a marriage, and irrespective of their nationality, beliefs, religion, social background and position of their parents or guardians, shall be protected, cared for and educated, and shall enjoy their rights as prescribed by law”.

Although not legal normative documents but has high authority, pronouncements by the Communist Party of Vietnam, have also provided impetus for the guarantees of equality and nondiscrimination. For example, Resolution 11-NQ/TW

of the Political Bureau of the Communist Party of Vietnam dated 27/4/2007 on the Work for Women in the Period of Accelerating Industrialization and Modernization emphasizes that the Party has always paid attention to directing the work for women and implementing the goal of gender equality which is reflected in resolutions of the Party congresses, Party Central Committee's meetings, Political Bureau and the Party Secretariat. It enumerates key task under the resolution aimed at addressing gender equality, including raising awareness, implementing the Law on Gender Equality and improving the legal system to ensure women's human rights. This gives a strong push for ensuring the guarantees of gender equality and non-discrimination.

State Obligation

I. Introduction

The obligation under CEDAW is an obligation of the State (State obligation). This means that, although the responsibility to ensure equality and eliminate discrimination must be observed by all actors, State and non-state, it is the State which is primarily responsible and obligated to perform the obligations in the treaty. Also, CEDAW holds States primarily and directly accountable for violations of the treaty.

II. Binding Nature of CEDAW Obligations

CEDAW is an international treaty. By becoming a State Party to CEDAW, States Parties to the treaty are bound by its provisions and they must perform it in good faith³. This is provided for by the Vienna Convention on the Law of Treaties as well as international practice among States.

III. Identifying the State Party

When we speak of State obligation or State Party, which organ of the State are we referring to? The nature of the undertakings under CEDAW envisions obligation to be carried out by all organs of the State. Hence, the State or State Party refers to all state instrumentalities or organs and encompasses executive, legislative, judicial and administrative structures as well as both central and local units of the State. Internal divisions of powers cannot be invoked for non-compliance with the treaty.⁴ All organs of the State are therefore obligated to implement CEDAW. They must therefore work together for the fulfillment of the obligations under the treaty.

³ The Vienna Convention on the Law of Treaties, Art. 26 states that: "Every treaty is binding upon the parties to it and must be performed by them in good faith." The Vienna Convention is a treaty on the nature and procedures relating to treaties and is considered embodying international customary practices on treaties.

⁴ Vienna Convention on the Law of Treaties.

IV. Who is protected by CEDAW?

All those within the territory and jurisdiction of the State Party are protected by the Convention. This includes its women citizens as well as foreign women, including resident foreigners, migrant women, etc. As CEDAW has 185 States Parties, a women can rely on CEDAW's guarantee in 185 countries. This offers women broad protection if the Convention is implemented well.

V. General State Obligations

There are generally two sets of obligations under CEDAW: general and specific. General State obligations refer to obligations applicable to all texts of the treaty, in all areas of concern, and are found in Articles 2-5 and 24. Specific State obligations refer to obligations in particular areas of concern (e.g. health, education) and are from Arts. 6-16 of the Convention. (Specific obligations are discussed in Session 4).

V. 1. Article 2: Policy of Eliminating Discrimination

Art. 2 is the main State obligations article. It provides that the State Party must pursue by all appropriate means a policy of eliminating discrimination. It proceeds to enumerate how this can be done as follows.

1. Embody the principle of equality in constitution and laws. This means not just putting a general guarantee of equality and non-discrimination. It also means that a definition of equality and non-discrimination is provided in law or jurisprudence and such is compatible with CEDAW.
2. Ensure practical realization of the principle of equality (Art. 2a). This highlights substantive equality. It emphasizes that it is not sufficient to only have equality in our Constitution and laws. There is a need to put in place measures to ensure that equality is realized in practice (de facto or substantive equality).
3. Prohibit discrimination against women (Art. 2b). CEDAW obligates the State to prohibit discrimination against women. This can be done through laws and sanctions.
4. Legal protection of women (Art. 2c). CEDAW requires that women are legally protected through competent tribunals and public institutions. Hence, it requires that mechanisms are set up, where there are none, to guarantee women's human rights. It also requires that these mechanisms are effective.

5. Refrain from discrimination (Art. 2d). State Parties must not engage in discrimination and must ensure that public authorities and institutions act according to this obligation.

6. Eliminate discrimination by any person, organization or enterprise (art. 2e). CEDAW holds individuals accountable through the State by requiring the latter to take all appropriate measures to eliminate discrimination by these private individuals or entities. Specifically, the State is liable internationally if it fails to (a) prevent discriminatory acts by private individuals, (b) investigate acts of discrimination, (c) provide remedies, redress, compensation or sanctions, and (d) negate the consequences of the discriminatory act.

7. Modify or abolish laws, regulations, customs and practices that constitute discrimination (Art. 2f and 5). CEDAW recognizes that many forms of discrimination are linked to culture, traditions, customs and other practices. In fact CEDAW General Recommendation 21 stated that while most countries report that their national constitutions and laws comply with the convention, their customs, traditions and lack of implementation violate the treaty. CEDAW obligates States Parties to change these discriminatory practices, even if they are based on custom, culture and tradition to ensure gender equality.

8. Repeal discriminatory penal provisions (Art. 2g).

V.2. Article 3: Full Development and Advancement of Women

Art. 3 emphasizes that the State shall take all appropriate measures to ensure the full development and advancement of women for the purpose of enjoying equal rights with men.

V.3. Article 4: Special Measures

Art. 4 points out that special measures in favor of women, in particular (a) temporary special measures and (b) measures in favor of maternity, are not discriminatory.

V.3.1. Temporary Special Measures

Temporary Special Measures (Art. 4.1). Temporary special measures or TSMs are measures put in place in favor of a particular group (in case of CEDAW, in favor of women or groups of women) for the purpose of accelerating the achievement of substantive or de facto equality. These measures are in place on a temporary basis and will be removed once the objective of equality has been achieved and sustained.

TSMs include outreach or support programs; allocation of resources; targeted recruitment; preferential treatment; proportion and quotas. For example: (a) preferential hiring of women teachers to encourage girl students; (b) specialized training for women entrepreneurs; (c) credit facilities for women; (d) reserved seats or proportion of seats allocated to women in local councils or parliament, etc.

It must be noted that TSMs are only one kind of measure that CEDAW requires. (a) Special Measures in Favor of Maternity (Art. 4.2) are not TSMs as they address a biological difference between a man and a woman which is of a permanent nature. Women, over men, have the capability of giving birth and hence, measures to address this must be permanent, and not a TSM. (b) Measures to ensure an enabling environment are not TSMs. They are measures that are also of a permanent character because they need to be in place to enable women to exercise guaranteed rights. In most cases, they benefit men as well. (c) Measures that do not accelerate de facto equality are also not TSMs. They are measures that the State Party has to undertake to ensure equality.

Lastly, to be effective other interventions must supplement and support TSMs. A stand-alone TSM will not bring about change. For example, reserving 30% of the seats in the local village councils for women will not be effective if it is not accompanied by capacity building training for women candidates, capacity building for elected women, continuous awareness to deal with biases against electing women to public office, etc.

General Recommendation 25 of CEDAW provides guidance on temporary special measures. (Read General Recommendation 25 in Hand-out 4.6 for further details on TSMs).

V.4. Article 5: Modify Social and Cultural Patterns of Conduct and Stereotypes

Art. 5 is linked to Art. 2(f). It emphasizes the obligation of the State to modify social and cultural patterns of conduct based on inferiority and superiority of either sex as well as stereotypes.

VI. Obligation to Guarantee Results

In undertaking all these obligations, the State must always bear in mind substantive equality and non-discrimination. It is not enough that the State follows the measures listed, the State must ensure that measures chosen actually *result* in the elimination of discrimination.

CEDAW General Recommendation 25

General Recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women,

on temporary special measures

I. Introduction

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

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

II. Background: the object and purpose of the Convention

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

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

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

6. A joint reading of articles 1 to 5 and 24, which form the general interpretative

framework for all of the Convention's substantive articles, indicates that three obligations are central to States parties' efforts to eliminate discrimination against women. These obligations should be implemented in an integrated fashion and extend beyond a purely formal legal obligation of equal treatment of women with men.

7. Firstly, States parties' obligation is to ensure that there is no direct or indirect discrimination against women in their laws and that women are protected against discrimination — committed by public authorities, the judiciary, organizations, enterprises or private individuals — in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies. Secondly, States parties' obligation is to improve the de facto position of women through concrete and effective policies and programmes. Thirdly, States parties' obligation is to address prevailing gender relations² and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.

8. In the Committee's view, a purely formal legal or programmatic approach is not sufficient to achieve women's de facto equality with men, which the Committee interprets as substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women.

9. Equality of results is the logical corollary of de facto or substantive equality. These results may be quantitative and/or qualitative in nature; that is, women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision-making and political influence, and women enjoying freedom from violence.

10. The position of women will not be improved as long as the underlying causes of discrimination against women, and of their inequality, are not effectively addressed. The lives of women and men must be considered in a contextual way, and measures adopted towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns.

11. Women's biologically determined permanent needs and experiences should be distinguished from other needs that may be the result of past and present discrimination against women by individual actors, the dominant gender ideology, or by manifestations of such discrimination in social and cultural structures and institutions. As steps are being taken to eliminate discrimination against women, women's needs may change or disappear, or become the needs of both women and men. Thus, continuous monitoring of laws, programmes and practices directed at

the achievement of women's de facto or substantive equality is needed so as to avoid a perpetuation of non-identical treatment that may no longer be warranted.

12. Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.

13. In addition to the Convention on the Elimination of All Forms of Discrimination against Women, other international human rights instruments and policy documents adopted in the United Nations system contain provisions on temporary special measures to support the achievement of equality. Such measures are described in different terminology, and the meaning and interpretation given to such measures also differs. It is the Committee's hope that the present general recommendation on article 4, paragraph 1, will contribute to a clarification of terminology.³

14. The Convention, targets discriminatory dimensions of past and current societal and cultural contexts which impede women's enjoyment of their human rights and fundamental freedoms. It aims at the elimination of all forms of discrimination against women, including the elimination of the causes and consequences of their de facto or substantive inequality. Therefore, the application of temporary special measures in accordance with the Convention is one of the means to realize de facto or substantive equality for women, rather than an exception to the norms of non-discrimination and equality.

III. The meaning and scope of temporary special measures in the Convention on the Elimination of All Forms of Discrimination against Women

Article 4, paragraph 1

Adoption by States parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

Article 4, paragraph 2

Adoption by States parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

A. Relationship between paragraphs 1 and 2 of article 4

15. There is a clear difference between the purpose of the "special measures"

under article 4, paragraph 1, and those of paragraph 2. The purpose of article 4, paragraph 1, is to accelerate the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women, as well as to provide them with compensation. These measures are of a temporary nature.

16. Article 4, paragraph 2, provides for non-identical treatment of women and men due to their biological differences. These measures are of a permanent nature, at least until such time as the scientific and technological knowledge referred to in article 11, paragraph 3, would warrant a review.

B. Terminology

17. The *travaux préparatoires* of the Convention use different terms to describe the “temporary special measures” included in article 4, paragraph 1. The Committee itself, in its previous general recommendations, used various terms. States parties often equate “special measures” in its corrective, compensatory and promotional sense with the terms “affirmative action”, “positive action”, “positive measures”, “reverse discrimination”, and “positive discrimination”. These terms emerge from the discussions and varied practices found in different national contexts.⁴ In the present general recommendation, and in accordance with its practice in the consideration of reports of States parties, the Committee uses solely the term “temporary special measures”, as called for in article 4, paragraph 1.

C. Key elements of article 4, paragraph 1

18. Measures taken under article 4, paragraph 1, by States parties should aim to accelerate the equal participation of women in the political, economic, social, cultural, civil or any other field. The Committee views the application of these measures not as an exception to the norm of non-discrimination, but rather as an emphasis that temporary special measures are part of a necessary strategy by States parties directed towards the achievement of de facto or substantive equality of women with men in the enjoyment of their human rights and fundamental freedoms. While the application of temporary special measures often remedies the effects of past discrimination against women, the obligation of States parties under the Convention to improve the position of women to one of de facto or substantive equality with men exists irrespective of any proof of past discrimination. The Committee considers that States parties that adopt and implement such measures under the Convention do not discriminate against men.

19. States parties should clearly distinguish between temporary special measures taken under article 4, paragraph 1, to accelerate the achievement of a concrete goal for women of de facto or substantive equality, and other general social policies adopted to improve the situation of women and the girl child. Not all measures that potentially are, or will be, favourable to women are temporary special measures. The provision of general conditions in order to guarantee the civil, political, economic, social and cultural rights of women and the girl child, designed to ensure for them a life of dignity and non-discrimination, cannot be called

temporary special measures.

20. Article 4, paragraph 1, explicitly states the “temporary” nature of such special measures. Such measures should therefore not be deemed necessary forever, even though the meaning of “temporary” may, in fact, result in the application of such measures for a long period of time. The duration of a temporary special measure should be determined by its functional result in response to a concrete problem and not by a predetermined passage of time. Temporary special measures must be discontinued when their desired results have been achieved and sustained for a period of time.

21. The term “special”, though being in conformity with human rights discourse, also needs to be carefully explained. Its use sometimes casts women and other groups who are subject to discrimination as weak, vulnerable and in need of extra or “special” measures in order to participate or compete in society. However, the real meaning of “special” in the formulation of article 4, paragraph 1, is that the measures are designed to serve a specific goal.

22. The term “measures” encompasses a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems. The choice of a particular “measure” will depend on the context in which article 4, paragraph 1, is applied and on the specific goal it aims to achieve.

23. The adoption and implementation of temporary special measures may lead to a discussion of qualifications and merit of the group or individuals so targeted, and an argument against preferences for allegedly lesser-qualified women over men in areas such as politics, education and employment. As temporary special measures aim at accelerating achievement of de facto or substantive equality, questions of qualification and merit, in particular in the area of employment in the public and private sectors, need to be reviewed carefully for gender bias as they are normatively and culturally determined. For appointment, selection or election to public and political office, factors other than qualification and merit, including the application of the principles of democratic fairness and electoral choice, may also have to play a role.

24. Article 4, paragraph 1, read in conjunction with articles 1, 2, 3, 5 and 24, needs to be applied in relation to articles 6 to 16 which stipulate that States parties “shall take all appropriate measures”. Consequently, the Committee considers that States parties are obliged to adopt and implement temporary special measures in relation to any of these articles if such measures can be shown to be necessary and appropriate in order to accelerate the achievement of the overall, or a specific goal of, women’s de facto or substantive equality.

IV. Recommendations to States parties

25. Reports of States parties should include information on the adoption, or lack thereof, of temporary special measures in accordance with article 4, paragraph 1, of the Convention, and States parties should preferably adhere to the terminology

“temporary special measures”, to avoid confusion.

26. States parties should clearly distinguish between temporary special measures aimed at accelerating the achievement of a concrete goal of women’s de facto or substantive equality, and other general social policies adopted and implemented in order to improve the situation of women and the girl child. States parties should bear in mind that not all measures which potentially are or would be favourable to women qualify as temporary special measures.

27. States parties should analyse the context of women’s situation in all spheres of life, as well as in the specific, targeted area, when applying temporary special measures to accelerate achievement of women’s de facto or substantive equality. They should evaluate the potential impact of temporary special measures with regard to a particular goal within their national context and adopt those temporary special measures which they consider to be the most appropriate in order to accelerate the achievement of de facto or substantive equality for women.

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

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

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

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

32. The Committee draws the attention of States parties to the fact that temporary special measures may also be based on decrees, policy directives and/or administrative guidelines formulated and adopted by national, regional or local executive branches of government to cover the public employment and education sectors. Such temporary special measures may include the civil service, the political sphere and the private education and employment sectors. The Committee further draws the attention of States parties to the fact that such measures may also be negotiated between social partners of the public or private employment sector or be applied on a voluntary basis by public or private enterprises, organizations, institutions and political parties.

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

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

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

36. States parties should report on the type of temporary special measures taken in specific fields under the relevant article(s) of the Convention. Reporting under the respective article(s) should include references to concrete goals and targets, timetables, the reasons for choosing particular measures, steps to enable women to access such measures, and the institution accountable for monitoring

implementation and progress. States parties are also asked to describe how many women are affected by a measure, how many would gain access and participate in a certain field because of a temporary special measure, or the amount of resources and power it aims to redistribute to how many women, and within what time frame.

37. The Committee reiterates its general recommendations 5, 8 and 23, wherein it recommended the application of temporary special measures in the fields of education, the economy, politics and employment, in the area of women representing their Governments at the international level and participating in the work of international organizations, and in the area of political and public life. States parties should intensify, within their national contexts, such efforts especially with regard to all facets of education at all levels as well as all facets and levels of training, employment and representation in public and political life. The Committee recalls that in all instances, but particularly in the area of health, States parties should carefully distinguish in each field between measures of an ongoing and permanent nature and those of a temporary nature.

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

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

Vietnam and Temporary Special Measures

The article below is fully reproduced from a section in: CEDAW and the Law: A Gendered and Rights-Based Review of Vietnamese Legal Normative Documents through the Lens of CEDAW prepared by Rea Abada Chiongson for UNIFEM Vietnam (2008).

Indicator 27. Does the [Vietnamese] Constitution and [Vietnamese] laws contain provisions that allow the setting of temporary special measures to accelerate de facto equality?

Indicator 28. Is there a definition of temporary special measures in [Vietnamese] legislation?

Indicator 29. Is there a procedure for the implementation of temporary special measures?

Art. 63 of the Constitution which provides that the “State shall create all necessary conditions for women to raise their qualifications in all fields” creates a framework for temporary special measures. Specific mention of temporary special measures though can be found in the Law on Gender Equality. It is, however, termed “measures to promote gender equality”.

The Law on Gender Equality defines measures to promote equality as follows:

Article 5: Interpretation of Terms: (6) “Measure to promote gender equality is the measure aimed at ensuring substantial gender equality, set forth by the authorities in cases there remains considerable disparity between man and woman concerning the roles, positions, conditions, and opportunities for man and woman to bring into play all their capacities and to enjoy the achievement of the development where the application of equal regulations for man and woman can not remove this disparity. The measure to promote gender equality is to be implemented for a certain period of time and shall end when the target on gender equality has been achieved.”

The law also emphasizes, in its Art. 6, that measures to promote gender equality is not discrimination. It further elaborated by stating that:

Article 19: Measures to promote gender equality

1. The measures to promote gender equality include:

- a) To provide for the proportion of male and female or to ensure appropriate female to participate and benefit;
- b) To train, foster to improve the ability of man or woman;
- c) To support in providing the conditions and opportunities for woman or man;
- d) To provide for specific criteria and conditions for woman or man;
- e) To provide that woman has the right to be selected where woman has the equal qualifications and criteria with man;
- f) Measures to promote gender equality provided in Article 11 section 5, Article 12 section 2, Article 13 section 4, Article 14 section 5 of this Law.

2. The National Assembly, the National Assembly’s Standing Committee, the Government have the authority to stipulate measures to promote gender equality as provided in section 1 of this Article, have the responsibility to review the implementation of measures to promote gender equality and to decide to end these measures when the goals of gender equality has been achieved.

Article 11:

5. Measures to promote gender equality in the field of politics include:

- a) To ensure the appropriate proportion of the National Assembly female members and people’s committees female members in accordance with the national gender equality goals.
- b) To ensure the appropriate proportion of women in appointing officials to

hold titles in the professions in state agencies in accordance with the national gender equality goals

Article 12:

2. Measures to promote gender equality in the field of economy include:
- a) Enterprises employing many female workers shall be given tax and financial preferential treatment according to the regulations of the law.
 - b) Female workers in rural areas shall be given credit aid, encouraged to expand agriculture, forestry and fishery according to the law.

Article 13:

3. Measures to promote gender equality in the field of labour include:
- a) To provide for proportion of man and woman to be recruited;
 - b) To train and enhance capacity and capability for female workers;
 - c) Employers create safe and hygienic working condition for female workers in some hard and dangerous professions and occupations or those that have direct contact with harmful substances.

Article 14:

5. Measures to promote gender equality in the field of education and training include:
- a) To provide for the proportion of man and woman participating in the study and training;
 - b) To assist female workers in rural areas in vocational training under the law.

The Law on Gender Equality provides clarity as to what measures to promote equality are. It would have been preferable to have termed the measures temporary special measures to avoid confusion with other measures that promote equality are not of a temporary character. The definition in the law though has substantial similarity to what is provided for in GR 25.

It must be noted however that the concept of temporary special measures requires that the focus is not simply on “roles, positions, conditions and opportunities”. As temporary special measures seek to ensure substantive equality, this means that it should also look into disparities in “rights” as well as in “benefits” or “impact”. The latter is highlighted by international documents (especially CEDAW and CEDAW GR 25) when saying that these temporary special measures are to be set up to ensure de facto or substantive equality, hence focusing on impact or effect and not simply on legal equality.

Recommendation: It is recommended that the definition of measures to promote equality in the Law on Gender Equality, Art. 5.6, include ensuring equality in “rights” and “benefits” or “impact”.

Furthermore, a view of examples of measures to promote equality in Arts. 11-14 and 19 show that there is a need to better understand what temporary special measures are, especially in listing what temporary special measures are required. For example, Art. 13.3.c of the Law on Gender Equality (i.e. creating safe and hygienic working conditions for women worker in some hard, dangerous professions or those involving contact with harmful substances) should not be considered a temporary special measure. It is the obligation of the workplace to provide safe and hygienic working conditions for its employees, whether men or women, on a permanent, and not temporary basis. See also Part V.8.3, Indicator 72 for more discussion on this issue

CEDAW General Recommendation No. 19
Violence against women
Eleventh session (1992)*

Background

1. Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.
2. In 1989, the Committee recommended that States should include in their reports information on violence and on measures introduced to deal with it (General Recommendation 12, Eighth session).
3. At its tenth session in 1991, it was decided to allocate part of the eleventh session to a discussion and study on article 6 and other articles of the Convention relating to violence towards women and the sexual harassment and exploitation of women. That subject was chosen in anticipation of the 1993 World Conference on Human Rights, convened by the General Assembly by its resolution 45/155 of 18 December 1990.
4. The Committee concluded that not all the reports of States parties adequately reflected the close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms. The full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women.
5. The Committee suggested to States parties that in reviewing their laws and policies, and in reporting under the Convention, they should have regard to the following comments of the Committee concerning gender-based violence.

General comments

* Contained in document A/47/38.

6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

- (a) The right to life;
- (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- (d) The right to liberty and security of person;
- (e) The right to equal protection under the law;
- (f) The right to equality in the family;
- (g) The right to the highest standard attainable of physical and mental health;
- (h) The right to just and favourable conditions of work.

8. The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State's obligations under general international human rights law and under other conventions, in addition to breaching this Convention.

9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2 (e), 2 (f) and 5). For example, under article 2 (e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

Comments on specific articles of the Convention

Articles 2 and 3

10. Articles 2 and 3 establish a comprehensive obligation to eliminate discrimination in all its forms in addition to the specific obligations under articles 5-16.

Articles 2 (f), 5 and 10 (c)

11. Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to their low level of political participation and to their lower level of education, skills and work opportunities.

12. These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.

Article 6

13. States parties are required by article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.

14. Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries, and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.

15. Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.

16. Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures.

Article 11

17. Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

18. Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.

Article 12

19. States parties are required by article 12 to take measures to ensure equal access to health care. Violence against women puts their health and lives at risk.

20. In some States there are traditional practices perpetuated by culture and tradition that are harmful to the health of women and children. These practices include dietary restrictions for pregnant women, preference for male children and female circumcision or genital mutilation.

Article 14

21. Rural women are at risk of gender-based violence because traditional attitudes regarding the subordinate role of women that persist in many rural communities. Girls from rural communities are at special risk of violence and sexual exploitation when they leave the rural community to seek employment in towns.

Article 16 (and article 5)

22. Compulsory sterilization or abortion adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children.

23. Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.

Specific recommendations

24. In light of these comments, the Committee on the Elimination of Discrimination against Women recommends:

(a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act;

(b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;

(c) States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;

(d) Effective measures should be taken to ensure that the media respect and promote respect for women;

(e) States parties in their report should identify the nature and extent of attitudes, customs and practices that perpetuate violence against women, and the kinds of violence that result. They should report the measures that they have undertaken to overcome violence, and the effect of those measures;

(f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices which hinder women's equality (recommendation No. 3, 1987);

(g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;

(h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures, that have been taken to protect women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described;

(i) Effective complaints procedures and remedies, including compensation, should be provided;

(j) States parties should include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence or coercion in the workplace;

(k) States parties should establish or support services for victims of family violence, rape, sex assault and other forms of gender-based violence, including refugees, specially trained health workers, rehabilitation and counselling;

(l) States parties should take measures to overcome such practices and should take account of the Committee's recommendation on female circumcision (recommendation No. 14) in reporting on health issues;

(m) States parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control;

(n) States parties in their reports should state the extent of these problems and should indicate the measures that have been taken and their effect;

(o) States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities;

(p) Measures to protect them from violence should include training and employment opportunities and the monitoring of the employment conditions of domestic workers;

(q) States parties should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their need for and access to support and other services and the effectiveness of measures to overcome violence;

(r) Measures that are necessary to overcome family violence should include:

- (i) Criminal penalties where necessary and civil remedies in case of domestic violence;
- (ii) Legislation to remove the defence of honour in regard to the assault or murder of a female family member;
- (iii) Services to ensure the safety and security of victims of family violence, including refugees, counselling and rehabilitation programmes;
- (iv) Rehabilitation programmes for perpetrators of domestic violence;
- (v) Support services for families where incest or sexual abuse has occurred;

(s) States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken;

(t) That States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, *inter alia*:

- (i) Effective legal measures, including penal sanctions, civil remedies compensatory provisions to protect women against all kinds of violence, including, *inter alia*, violence and abuse in the family, sexual assault and sexual harassment in the workplace;
- (ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
- (iii) Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence;

(u) That States parties should report on all forms of gender-based violence, and that such reports should include all available data on the incidence of each form of violence, and on the effects of such violence on the women who are victims;

(v) That the reports of States parties should include information on the legal, preventive and protective measures that have been taken to overcome violence against women, and on the effectiveness of such measures. Hand-Out 5.2: CEDAW General Recommendation No. 21

Equality in Marriage and Family Relations **Thirteenth session (1994)****

1. The Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180, annex) affirms the equality of human rights for women and men in society and in the family. The Convention has an important place among international treaties concerned with human rights.

2. Other conventions and declarations also confer great significance on the family and woman's status within it. These include the Universal Declaration of Human Rights (General Assembly resolution 217/A (III)), the International Covenant on Civil and Political Rights (resolution 2200 A (XXI), annex), the Convention on the Nationality of Married Women (resolution 1040 (XI), annex), the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (resolution 1763 A (XVII), annex) and the subsequent Recommendation thereon

** Contained in document A/49/38.

(resolution 2018 (XX)) and the Nairobi Forward-looking Strategies for the Advancement of Women.

3. The Convention on the Elimination of All Forms of Discrimination against Women recalls the inalienable rights of women which are already embodied in the above-mentioned conventions and declarations, but it goes further by recognizing the importance of culture and tradition in shaping the thinking and behaviour of men and women and the significant part they play in restricting the exercise of basic rights by women.

BACKGROUND

4. The year 1994 has been designated by the General Assembly in its resolution 44/82 as the International Year of the Family. The Committee wishes to take the opportunity to stress the significance of compliance with women's basic rights within the family as one of the measures which will support and encourage the national celebrations that will take place.

5. Having chosen in this way to mark the International Year of the Family, the Committee wishes to analyse three articles in the Convention that have special significance for the status of women in the family:

Article 9

1. States parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States parties shall grant women equal rights with men with respect to the nationality of their children.

COMMENT

6. Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.

Article 15

1. States parties shall accord to women equality with men before the law.

2. States parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

COMMENT

7. When a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied legal autonomy. Any such restriction prevents her from holding property as the sole owner and precludes her from the legal management of her own business or from entering into any other form of contract. Such restrictions seriously limit the woman's ability to provide for herself and her dependants.

8. A woman's right to bring litigation is limited in some countries by law or by her access to legal advice and her ability to seek redress from the courts. In others, her status as a witness or her evidence is accorded less respect or weight than that of a man. Such laws or customs limit the woman's right effectively to pursue or retain her equal share of property and diminish her standing as an independent, responsible and valued member of her community. When countries limit a woman's legal capacity by their laws, or permit individuals or institutions to do the same, they are denying women their rights to be equal with men and restricting women's ability to provide for themselves and their dependants.

9. Domicile is a concept in common law countries referring to the country in which a person intends to reside and to whose jurisdiction she will submit. Domicile is originally acquired by a child through its parents but, in adulthood, denotes the country in which a person normally resides and in which she intends to reside permanently. As in the case of

nationality, the examination of States parties' reports demonstrates that a woman will not always be permitted at law to choose her own domicile. Domicile, like nationality, should be capable of change at will by an adult woman regardless of her marital status. Any restrictions on a woman's right to choose a domicile on the same basis as a man may limit her access to the courts in the country in which she lives or prevent her from entering and leaving a country freely and in her own right.

10. Migrant women who live and work temporarily in another country should be permitted the same rights as men to have their spouses, partners and children join them.

Article 16

1. States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

COMMENT

Public and private life

11. Historically, human activity in public and private life has been viewed differently and regulated accordingly. In all societies women who have traditionally performed their roles in the private or domestic sphere have long had those activities treated as inferior.

12. As such activities are invaluable for the survival of society, there can be no justification for applying different and discriminatory laws or customs to them. Reports of States parties disclose that there are still countries where *de jure* equality does not exist. Women are thereby prevented from having equal access to resources and from enjoying equality of status in the family and society. Even where *de jure* equality exists, all societies assign different roles, which are regarded as inferior, to women. In this way, principles of justice and equality contained in particular in article 16 and also in articles 2, 5 and 24 of the Convention are being violated.

Various forms of family

13. The form and concept of the family can vary from State to State, and even between regions within a State. Whatever form it takes, and whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people, as article 2 of the Convention requires.

Polygamous marriages

14. States parties' reports also disclose that polygamy is practised in a number of countries. Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some

States parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of article 5 (a) of the Convention.

Article 16 (1) (a) and (b)

15. While most countries report that national constitutions and laws comply with the Convention, custom, tradition and failure to enforce these laws in reality contravene the Convention.

16. A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties' reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on a woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law.

Article 16 (1) (c)

17. An examination of States parties' reports discloses that many countries in their legal systems provide for the rights and responsibilities of married partners by relying on the application of common law principles, religious or customary law, rather than by complying with the principles contained in the Convention. These variations in law and practice relating to marriage have wide-ranging consequences for women, invariably restricting their rights to equal status and responsibility within marriage. Such limitations often result in the husband being accorded the status of head of household and primary decision-maker and therefore contravene the provisions of the Convention.

18. Moreover, generally a de facto union is not given legal protection at all. Women living in such relationships should have their equality of status with men both in family life and in the sharing of income and assets protected by law. Such women should share equal rights and responsibilities with men for the care and raising of dependent children or family members.

Article 16 (1) (d) and (f)

19. As provided in article 5 (b), most States recognize the shared responsibility of parents for the care, protection and maintenance of children. The principle that “the best interests of the child shall be the paramount consideration” has been included in the Convention on the Rights of the Child (General Assembly resolution 44/25, annex) and seems now to be universally accepted. However, in practice, some countries do not observe the principle of granting the parents of children equal status, particularly when they are not married. The children of such unions do not always enjoy the same status as those born in wedlock and, where the mothers are divorced or living apart, many fathers fail to share the responsibility of care, protection and maintenance of their children.

20. The shared rights and responsibilities enunciated in the Convention should be enforced at law and as appropriate through legal concepts of guardianship, wardship, trusteeship and adoption. States parties should ensure that by their laws both parents, regardless of their marital status and whether they live with their children or not, share equal rights and responsibilities for their children.

Article 16 (1) (e)

21. The responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women. The number and spacing of their children have a similar impact on women’s lives and also affect their physical and mental health, as well as that of their children. For these reasons, women are entitled to decide on the number and spacing of their children.

22. Some reports disclose coercive practices which have serious consequences for women, such as forced pregnancies, abortions or sterilization. Decisions to have children or not, while preferably made in consultation with spouse or partner, must not nevertheless be limited by spouse, parent, partner or Government. In order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in article 10 (h) of the Convention.

23. There is general agreement that where there are freely available appropriate measures for the voluntary regulation of fertility, the health, development and well-being of all members of the family improves. Moreover, such services improve the general quality of life and health of the population, and the voluntary regulation of population growth helps

preserve the environment and achieve sustainable economic and social development.

Article 16 (1) (g)

24. A stable family is one which is based on principles of equity, justice and individual fulfillment for each member. Each partner must therefore have the right to choose a profession or employment that is best suited to his or her abilities, qualifications and aspirations, as provided in article 11 (a) and (c) of the Convention. Moreover, each partner should have the right to choose his or her name, thereby preserving individuality and identity in the community and distinguishing that person from other members of society. When by law or custom a woman is obliged to change her name on marriage or at its dissolution, she is denied these rights.

Article 16 (1) (h)

25. The rights provided in this article overlap with and complement those in article 15 (2) in which an obligation is placed on States to give women equal rights to enter into and conclude contracts and to administer property.

26. Article 15 (1) guarantees women equality with men before the law. The right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family.

27. In countries that are undergoing a programme of agrarian reform or redistribution of land among groups of different ethnic origins, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed.

28. In most countries, a significant proportion of the women are single or divorced and many have the sole responsibility to support a family. Any discrimination in the division of property that rests on the premise that the man alone is responsible for the support of the women and children of his family and that he can and will honourably discharge this responsibility is clearly unrealistic. Consequently, any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory and will have a serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person.

29. All of these rights should be guaranteed regardless of a woman's marital status.

Marital property

30. There are countries that do not acknowledge that right of women to own an equal share of the property with the husband during a marriage or de facto relationship and when that marriage or relationship ends. Many countries recognize that right, but the practical ability of women to exercise it may be limited by legal precedent or custom.

31. Even when these legal rights are vested in women, and the courts enforce them, property owned by a woman during marriage or on divorce may be managed by a man. In many States, including those where there is a community-property regime, there is no legal requirement that a woman be consulted when property owned by the parties during marriage or de facto relationship is sold or otherwise disposed of. This limits the woman's ability to control disposition of the property or the income derived from it.

32. In some countries, on division of marital property, greater emphasis is placed on financial contributions to property acquired during a marriage, and other contributions, such as raising children, caring for elderly relatives and discharging household duties are diminished. Often, such contributions of a non-financial nature by the wife enable the husband to earn an income and increase the assets. Financial and non-financial contributions should be accorded the same weight.

33. In many countries, property accumulated during a de facto relationship is not treated at law on the same basis as property acquired during marriage. Invariably, if the relationship ends, the woman receives a significantly lower share than her partner. Property laws and customs that discriminate in this way against married or unmarried women with or without children should be revoked and discouraged.

Inheritance

34. Reports of States parties should include comment on the legal or customary provisions relating to inheritance laws as they affect the status of women as provided in the Convention and in Economic and Social Council resolution 884D (XXXIV), in which the Council recommended that States ensure that men and women in the same degree of relationship to a deceased are entitled to equal shares in the estate and to equal rank in

the order of succession. That provision has not been generally implemented.

35. There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband's or father's property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased's property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished.

Article 16 (2)

36. In the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, States are urged to repeal existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child. Article 16 (2) and the provisions of the Convention on the Rights of the Child preclude States parties from permitting or giving validity to a marriage between persons who have not attained their majority. In the context of the Convention on the Rights of the Child, "a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier". Notwithstanding this definition, and bearing in mind the provisions of the Vienna Declaration, the Committee considers that the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result their economic autonomy is restricted.

37. This not only affects women personally but also limits the development of their skills and independence and reduces access to employment, thereby detrimentally affecting their families and communities.

38. Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or

undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a women's right freely to choose her partner.

39. States parties should also require the registration of all marriages whether contracted civilly or according to custom or religious law. The State can thereby ensure compliance with the Convention and establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy and the protection of the rights of children.

RECOMMENDATIONS

Violence against women

40. In considering the place of women in family life, the Committee wishes to stress that the provisions of General Recommendation 19 (Eleventh session) concerning violence against women have great significance for women's abilities to enjoy rights and freedoms on an equal basis with men. States parties are urged to comply with that general recommendation to ensure that, in both public and family life, women will be free of the gender-based violence that so seriously impedes their rights and freedoms as individuals.

Reservations

41. The Committee has noted with alarm the number of States parties which have entered reservations to the whole or part of article 16, especially when a reservation has also been entered to article 2, claiming that compliance may conflict with a commonly held vision of the family based, *inter alia*, on cultural or religious beliefs or on the country's economic or political status.

42. Many of these countries hold a belief in the patriarchal structure of a family which places a father, husband or son in a favourable position. In some countries where fundamentalist or other extremist views or economic hardships have encouraged a return to old values and traditions, women's place in the family has deteriorated sharply. In others, where it has been recognized that a modern society depends for its economic advance and for the general good of the community on involving all adults equally, regardless of gender, these taboos and reactionary or extremist ideas have progressively been discouraged.

43. Consistent with articles 2, 3 and 24 in particular, the Committee requires that all States parties gradually progress to a stage where, by its resolute discouragement of notions of the inequality of women in the

home, each country will withdraw its reservation, in particular to articles 9, 15 and 16 of the Convention.

44. States parties should resolutely discourage any notions of inequality of women and men which are affirmed by laws, or by religious or private law or by custom, and progress to the stage where reservations, particularly to article 16, will be withdrawn.

45. The Committee noted, on the basis of its examination of initial and subsequent periodic reports, that in some States parties to the Convention that had ratified or acceded without reservation, certain laws, especially those dealing with family, do not actually conform to the provisions of the Convention.

46. Their laws still contain many measures which discriminate against women based on norms, customs and sociocultural prejudices. These States, because of their specific situation regarding these articles, make it difficult for the Committee to evaluate and understand the status of women.

47. The Committee, in particular on the basis of articles 1 and 2 of the Convention, requests that those States parties make the necessary efforts to examine the de facto situation relating to the issues and to introduce the required measures in their national legislations still containing provisions discriminatory to women.

Reports

48. Assisted by the comments in the present general recommendation, in their reports States parties should:

(a) Indicate the stage that has been reached in the country's progress to removal of all reservations to the Convention, in particular reservations to article 16;

(b) Set out whether their laws comply with the principles of articles 9, 15 and 16 and where, by reason of religious or private law or custom, compliance with the law or with the Convention is impeded.

Legislation

49. States parties should, where necessary to comply with the Convention, in particular in order to comply with articles 9, 15 and 16, enact and enforce legislation.

Encouraging compliance with the Convention

50. Assisted by the comments in the present general recommendation, and as required by articles 2, 3 and 24, States parties should introduce measures directed at encouraging full compliance with the principles of the Convention, particularly where religious or private law or custom conflict with those principles.

Hand-Out 5.3: CEDAW General Recommendation No. 23

Political and public life Sixteenth session (1997)*

States parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referendums and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Background

1. The Convention on the Elimination of All Forms of Discrimination against Women places special importance on the participation of women in the public life of their countries. The preamble to the Convention states in part:

“Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.”

2. The Convention further reiterates in its preamble the importance of women’s participation in decision-making as follows:

“Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.”

3. Moreover, in article 1 of the Convention, the term “discrimination against women” is interpreted to mean:

* Contained in document A/52/38.

“any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

4. Other conventions, declarations and international analyses place great importance on the participation of women in public life and have set a framework of international standards of equality. These include the Universal Declaration of Human Rights [i], the International Covenant on Civil and Political Rights [ii], the Convention on the Political Rights of Women [iii], the Vienna Declaration [iv], paragraph 13 of the Beijing Declaration and Platform for Action [v], General Recommendations 5 and 8 under the Convention [vi] General Comment 25 adopted by the Human Rights Committee [vii], the recommendation adopted by the Council of the European Union on balanced participation of women and men in the decision-making process [viii] and the European Commission’s “How to Create a Gender Balance in Political Decision-making”. [ix]

5. Article 7 obliges States parties to take all appropriate measures to eliminate discrimination against women in political and public life and to ensure that they enjoy equality with men in political and public life. The obligation specified in article 7 extends to all areas of public and political life and is not limited to those areas specified in subparagraphs (a), (b) and (c). The political and public life of a country is a broad concept. It refers to the exercise of political power, in particular the exercise of legislative, judicial, executive and administrative powers. The term covers all aspects of public administration and the formulation and implementation of policy at the international, national, regional and local levels. The concept also includes many aspects of civil society, including public boards and local councils and the activities of organizations such as political parties, trade unions, professional or industry associations, women’s organizations, community-based organizations and other organizations concerned with public and political life.

6. The Convention envisages that, to be effective, this equality must be achieved within the framework of a political system in which each citizen enjoys the right to vote and be elected at genuine periodic elections held on the basis of universal suffrage and by secret ballot, in such a way as to guarantee the free expression of the will of the electorate, as provided for under international human rights instruments, such as article 21 of the Universal Declaration of Human Rights and article 25 of the International Covenant on Civil and Political Rights.

7. The Convention’s emphasis on the importance of equality of opportunity and of participation in public life and decision-making has led the Committee to review article 7 and to suggest to States parties that in reviewing their laws and

policies and in reporting under the Convention, they should take into account the comments and recommendations set out below.

Comments

8. Public and private spheres of human activity have always been considered distinct, and have been regulated accordingly. Invariably, women have been assigned to the private or domestic sphere, associated with reproduction and the raising of children, and in all societies these activities have been treated as inferior. By contrast, public life, which is respected and honoured, extends to a broad range of activity outside the private and domestic sphere. Men historically have both dominated public life and exercised the power to confine and subordinate women within the private sphere.

9. Despite women's central role in sustaining the family and society and their contribution to development, they have been excluded from political life and the decision-making process, which nonetheless determine the pattern of their daily lives and the future of societies. Particularly in times of crisis, this exclusion has silenced women's voices and rendered invisible their contribution and experiences.

10. In all nations, the most significant factors inhibiting women's ability to participate in public life have been the cultural framework of values and religious beliefs, the lack of services and men's failure to share the tasks associated with the organization of the household and with the care and raising of children. In all nations, cultural traditions and religious beliefs have played a part in confining women to the private spheres of activity and excluding them from active participation in public life.

11. Relieving women of some of the burdens of domestic work would allow them to engage more fully in the life of their communities. Women's economic dependence on men often prevents them from making important political decisions and from participating actively in public life. Their double burden of work and their economic dependence, coupled with the long or inflexible hours of both public and political work, prevent women from being more active.

12. Stereotyping, including that perpetrated by the media, confines women in political life to issues such as the environment, children and health, and excludes them from responsibility for finance, budgetary control and conflict resolution. The low involvement of women in the professions from which politicians are recruited can create another obstacle. In countries where women leaders do assume power this can be the result of the influence of their fathers, husbands or male relatives rather than electoral success in their own right.

Political systems

13. The principle of equality of women and men has been affirmed in the constitutions and laws of most countries and in all international instruments. Nonetheless, in the last 50 years, women have not achieved equality, and their inequality has been reinforced by their low level of participation in public and political life. Policies developed and decisions made by men alone reflect only part of human experience and potential. The just and effective organization of society demands the inclusion and participation of all its members.

14. No political system has conferred on women both the right to and the benefit of full and equal participation. While democratic systems have improved women's opportunities for involvement in political life, the many economic, social and cultural barriers they continue to face have seriously limited their participation. Even historically stable democracies have failed to integrate fully and equally the opinions and interests of the female half of the population. Societies in which women are excluded from public life and decision-making cannot be described as democratic. The concept of democracy will have real and dynamic meaning and lasting effect only when political decision-making is shared by women and men and takes equal account of the interests of both. The examination of States parties' reports shows that where there is full and equal participation of women in public life and decision-making, the implementation of their rights and compliance with the Convention improves.

Temporary special measures

15. While removal of *de jure* barriers is necessary, it is not sufficient. Failure to achieve full and equal participation of women can be unintentional and the result of outmoded practices and procedures which inadvertently promote men. Under article 4, the Convention encourages the use of temporary special measures in order to give full effect to articles 7 and 8. Where countries have developed effective temporary strategies in an attempt to achieve equality of participation, a wide range of measures has been implemented, including recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies. The formal removal of barriers and the introduction of temporary special measures to encourage the equal participation of both men and women in the public life of their societies are essential prerequisites to true equality in political life. In order, however, to overcome centuries of male domination of the public sphere, women also require the encouragement and support of all sectors of society to achieve full and effective participation, encouragement which must be led by States parties to the Convention, as well as

by political parties and public officials. States parties have an obligation to ensure that temporary special measures are clearly designed to support the principle of equality and therefore comply with constitutional principles which guarantee equality to all citizens.

Summary

16. The critical issue, emphasized in the Beijing Platform for Action,⁵ is the gap between the *de jure* and *de facto*, or the right as against the reality of women's participation in politics and public life generally. Research demonstrates that if women's participation reaches 30 to 35 per cent (generally termed a "critical mass"), there is a real impact on political style and the content of decisions, and political life is revitalized.

17. In order to achieve broad representation in public life, women must have full equality in the exercise of political and economic power; they must be fully and equally involved in decision-making at all levels, both nationally and internationally, so that they may make their contribution to the goals of equality, development and the achievement of peace. A gender perspective is critical if these goals are to be met and if true democracy is to be assured. For these reasons, it is essential to involve women in public life to take advantage of their contribution, to assure their interests are protected and to fulfill the guarantee that the enjoyment of human rights is for all people regardless of gender. Women's full participation is essential not only for their empowerment but also for the advancement of society as a whole.

The right to vote and to be elected (art. 7, para. (a))

18. The Convention obliges States parties in constitutions or legislation to take appropriate steps to ensure that women, on the basis of equality with men, enjoy the right to vote in all elections and referendums, and to be elected. These rights must be enjoyed both *de jure* and *de facto*.

19. The examination of the reports of States parties demonstrates that, while almost all have adopted constitutional or other legal provisions that grant to both women and men the equal right to vote in all elections and public referendums, in many nations women continue to experience difficulties in exercising this right.

20. Factors which impede these rights include the following:

(a) Women frequently have less access than men to information about candidates and about party political platforms and voting procedures, information which Governments and political parties have failed to provide. Other important factors that inhibit women's full and equal exercise of their right to vote include

their illiteracy, their lack of knowledge and understanding of political systems or about the impact that political initiatives and policies will have upon their lives. Failure to understand the rights, responsibilities and opportunities for change conferred by franchise also means that women are not always registered to vote;

(b) Women's double burden of work, as well as financial constraints, will limit women's time or opportunity to follow electoral campaigns and to have the full freedom to exercise their vote;

(c) In many nations, traditions and social and cultural stereotypes discourage women from exercising their right to vote. Many men influence or control the votes of women by persuasion or direct action, including voting on their behalf. Any such practices should be prevented;

(d) Other factors that in some countries inhibit women's involvement in the public or political lives of their communities include restrictions on their freedom of movement or right to participate, prevailing negative attitudes towards women's political participation, or a lack of confidence in and support for female candidates by the electorate. In addition, some women consider involvement in politics to be distasteful and avoid participation in political campaigns.

21. These factors at least partially explain the paradox that women, who represent half of all electorates, do not wield their political power or form blocs which would promote their interests or change government, or eliminate discriminatory policies.

22. The system of balloting, the distribution of seats in Parliament, the choice of district, all have a significant impact on the proportion of women elected to Parliament. Political parties must embrace the principles of equal opportunity and democracy and endeavour to balance the number of male and female candidates.

23. The enjoyment of the right to vote by women should not be subject to restrictions or conditions that do not apply to men or that have a disproportionate impact on women. For example, limiting the right to vote to persons who have a specified level of education, who possess a minimum property qualification or who are literate is not only unreasonable, it may violate the universal guarantee of human rights. It is also likely to have a disproportionate impact on women, thereby contravening the provisions of the Convention.

The right to participate in formulation of government policy (art. 7, para. (b))

24. The participation of women in government at the policy level continues to be low in general. Although significant progress has been made and in some

countries equality has been achieved, in many countries women's participation has actually been reduced.

25. Article 7 (b) also requires States parties to ensure that women have the right to participate fully in and be represented in public policy formulation in all sectors and at all levels. This would facilitate the mainstreaming of gender issues and contribute a gender perspective to public policy-making.

26. States parties have a responsibility, where it is within their control, both to appoint women to senior decision-making roles and, as a matter of course, to consult and incorporate the advice of groups which are broadly representative of women's views and interests.

27. States parties have a further obligation to ensure that barriers to women's full participation in the formulation of government policy are identified and overcome. These barriers include complacency when token women are appointed, and traditional and customary attitudes that discourage women's participation. When women are not broadly represented in the senior levels of government or are inadequately or not consulted at all, government policy will not be comprehensive and effective.

28. While States parties generally hold the power to appoint women to senior cabinet and administrative positions, political parties also have a responsibility to ensure that women are included in party lists and nominated for election in areas where they have a likelihood of electoral success. States parties should also endeavour to ensure that women are appointed to government advisory bodies on an equal basis with men and that these bodies take into account, as appropriate, the views of representative women's groups. It is the Government's fundamental responsibility to encourage these initiatives to lead and guide public opinion and change attitudes that discriminate against women or discourage women's involvement in political and public life.

29. Measures that have been adopted by a number of States parties in order to ensure equal participation by women in senior cabinet and administrative positions and as members of government advisory bodies include: adoption of a rule whereby, when potential appointees are equally qualified, preference will be given to a woman nominee; the adoption of a rule that neither sex should constitute less than 40 per cent of the members of a public body; a quota for women members of cabinet and for appointment to public office; and consultation with women's organizations to ensure that qualified women are nominated for membership in public bodies and offices and the development and maintenance of registers of such women in order to facilitate the nomination of women for appointment to public bodies and posts. Where members are appointed to advisory bodies upon the nomination of private organizations, States parties should encourage these

organizations to nominate qualified and suitable women for membership in these bodies.

The right to hold public office and to perform all public functions (art. 7, para. (b))

30. The examination of the reports of States parties demonstrates that women are excluded from top-ranking positions in cabinets, the civil service and in public administration, in the judiciary and in justice systems. Women are rarely appointed to these senior or influential positions and while their numbers may in some States be increasing at the lower levels and in posts usually associated with the home or the family, they form only a tiny minority in decision-making positions concerned with economic policy or development, political affairs, defence, peacemaking missions, conflict resolution or constitutional interpretation and determination.

31. Examination of the reports of States parties also demonstrates that in certain cases the law excludes women from exercising royal powers, from serving as judges in religious or traditional tribunals vested with jurisdiction on behalf of the State or from full participation in the military. These provisions discriminate against women, deny to society the advantages of their involvement and skills in these areas of the life of their communities and contravene the principles of the Convention.

The right to participate in non-governmental and public and political organizations (art. 7, para. (c))

32. An examination of the reports of States parties demonstrates that, on the few occasions when information concerning political parties is provided, women are under-represented or concentrated in less influential roles than men. As political parties are an important vehicle in decision-making roles, Governments should encourage political parties to examine the extent to which women are full and equal participants in their activities and, where this is not the case, should identify the reasons for this. Political parties should be encouraged to adopt effective measures, including the provision of information, financial and other resources, to overcome obstacles to women's full participation and representation and ensure that women have an equal opportunity in practice to serve as party officials and to be nominated as candidates for election.

33. Measures that have been adopted by some political parties include setting aside for women a certain minimum number or percentage of positions on their executive bodies, ensuring that there is a balance between the number of male and female candidates nominated for election, and ensuring that women are not consistently assigned to less favourable constituencies or to the least advantageous

positions on a party list. States parties should ensure that such temporary special measures are specifically permitted under anti-discrimination legislation or other constitutional guarantees of equality.

34. Other organizations such as trade unions and political parties have an obligation to demonstrate their commitment to the principle of gender equality in their constitutions, in the application of those rules and in the composition of their memberships with gender-balanced representation on their executive boards so that these bodies may benefit from the full and equal participation of all sectors of society and from contributions made by both sexes. These organizations also provide a valuable training ground for women in political skills, participation and leadership, as do non-governmental organizations (NGOs).

Article 8 (international level)

States parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Comments

35. Under article 8, Governments are obliged to ensure the presence of women at all levels and in all areas of international affairs. This requires that they be included in economic and military matters, in both multilateral and bilateral diplomacy, and in official delegations to international and regional conferences.

36. From an examination of the reports of States parties, it is evident that women are grossly under-represented in the diplomatic and foreign services of most Governments, and particularly at the highest ranks. Women tend to be assigned to embassies of lesser importance to the country's foreign relations and in some cases women are discriminated against in terms of their appointments by restrictions pertaining to their marital status. In other instances spousal and family benefits accorded to male diplomats are not available to women in parallel positions. Opportunities for women to engage in international work are often denied because of assumptions about their domestic responsibilities, including that the care of family dependants will prevent them accepting appointment.

37. Many Permanent Missions to the United Nations and to other international organizations have no women among their diplomats and very few at senior levels. The situation is similar at expert meetings and conferences that establish international and global goals, agendas and priorities. Organizations of the United Nations system and various economic, political and military structures at the

regional level have become important international public employers, but here, too, women have remained a minority concentrated in lower-level positions.

38. There are few opportunities for women and men, on equal terms, to represent Governments at the international level and to participate in the work of international organizations. This is frequently the result of an absence of objective criteria and processes for appointment and promotion to relevant positions and official delegations.

39. The globalization of the contemporary world makes the inclusion of women and their participation in international organizations, on equal terms with men, increasingly important. The integration of a gender perspective and women's human rights into the agenda of all international bodies is a government imperative. Many crucial decisions on global issues, such as peacemaking and conflict resolution, military expenditure and nuclear disarmament, development and the environment, foreign aid and economic restructuring, are taken with limited participation of women. This is in stark contrast to their participation in these areas at the non-governmental level.

40. The inclusion of a critical mass of women in international negotiations, peacekeeping activities, all levels of preventive diplomacy, mediation, humanitarian assistance, social reconciliation, peace negotiations and the international criminal justice system will make a difference. In addressing armed or other conflicts, a gender perspective and analysis is necessary to understand their differing effects on women and men [x].

RECOMMENDATIONS

Articles 7 and 8

41. States parties should ensure that their constitutions and legislation comply with the principles of the Convention, and in particular with articles 7 and 8.

42. States parties are under an obligation to take all appropriate measures, including the enactment of appropriate legislation that complies with their Constitution, to ensure that organizations such as political parties and trade unions, which may not be subject directly to obligations under the Convention, do not discriminate against women and respect the principles contained in articles 7 and 8.

43. States parties should identify and implement temporary special measures to ensure the equal representation of women in all fields covered by articles 7 and 8.

44. States parties should explain the reason for, and effect of, any reservations to articles 7 or 8 and indicate where the reservations reflect traditional, customary

or stereotyped attitudes towards women's roles in society, as well as the steps being taken by the States parties to change those attitudes. States parties should keep the necessity for such reservations under close review and in their reports include a timetable for their removal.

Article 7

45. Measures that should be identified, implemented and monitored for effectiveness include, under article 7, paragraph (a), those designed to:

(a) Achieve a balance between women and men holding publicly elected positions;

(b) Ensure that women understand their right to vote, the importance of this right and how to exercise it;

(c) Ensure that barriers to equality are overcome, including those resulting from illiteracy, language, poverty and impediments to women's freedom of movement;

(d) Assist women experiencing such disadvantages to exercise their right to vote and to be elected.

46. Under article 7, paragraph (b), such measures include those designed to ensure:

(a) Equality of representation of women in the formulation of government policy;

(b) Women's enjoyment in practice of the equal right to hold public office;

(c) Recruiting processes directed at women that are open and subject to appeal.

47. Under article 7, paragraph (c), such measures include those designed to:

(a) Ensure that effective legislation is enacted prohibiting discrimination against women;

(b) Encourage non-governmental organizations and public and political associations to adopt strategies that encourage women's representation and participation in their work.

48. When reporting under article 7, States parties should:

- (a) Describe the legal provisions that give effect to the rights contained in article 7;
- (b) Provide details of any restrictions to those rights, whether arising from legal provisions or from traditional, religious or cultural practices;
- (c) Describe the measures introduced and designed to overcome barriers to the exercise of those rights;
- (d) Include statistical data, disaggregated by sex, showing the percentage of women relative to men who enjoy those rights;
- (e) Describe the types of policy formulation, including that associated with development programmes, in which women participate and the level and extent of their participation;
- (f) Under article 7, paragraph (c), describe the extent to which women participate in non-governmental organizations in their countries, including in women's organizations;
- (g) Analyse the extent to which the State party ensures that those organizations are consulted and the impact of their advice on all levels of government policy formulation and implementation;
- (h) Provide information concerning, and analyse factors contributing to, the under-representation of women as members and officials of political parties, trade unions, employers' organizations and professional associations.

Article 8

49. Measures which should be identified, implemented and monitored for effectiveness include those designed to ensure a better gender balance in membership of all United Nations bodies, including the Main Committees of the General Assembly, the Economic and Social Council and expert bodies, including treaty bodies, and in appointments to independent working groups or as country or special rapporteurs.

50. When reporting under article 8, States parties should:

- (a) Provide statistics, disaggregated by sex, showing the percentage of women in their foreign service or regularly engaged in international representation or in work on behalf of the State, including membership in government delegations

to international conferences and nominations for peacekeeping or conflict resolution roles, and their seniority in the relevant sector;

(b) Describe efforts to establish objective criteria and processes for appointment and promotion of women to relevant positions and official delegations;

(c) Describe steps taken to disseminate widely information on the Government's international commitments affecting women and official documents issued by multilateral forums, in particular, to both governmental and non-governmental bodies responsible for the advancement of women;

(d) Provide information concerning discrimination against women because of their political activities, whether as individuals or as members of women's or other organizations.

Recommendations for government action

29. States parties should implement a comprehensive national strategy to promote women's health throughout their lifespan. This will include interventions aimed at both the prevention and treatment of diseases and conditions affecting women, as well as responding to violence against women, and will ensure universal access for all women to a full range of high-quality and affordable health care, including sexual and reproductive health services.

30. States parties should allocate adequate budgetary, human and administrative resources to ensure that women's health receives a share of the overall health budget comparable with that for men's health, taking into account their different health needs.

31. States parties should also, in particular:

(a) Place a gender perspective at the centre of all policies and programmes affecting women's health and should involve women in the planning, implementation and monitoring of such policies and programmes and in the provision of health services to women;

(b) Ensure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health, and, in particular, allocate resources for programmes directed at adolescents for the prevention and treatment of sexually transmitted diseases, including HIV/AIDS;

(c) Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce maternal mortality rates through safe motherhood services and prenatal assistance. When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion;

(d) Monitor the provision of health services to women by public, non-governmental and private organizations, to ensure equal access and quality of care;

(e) Require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice;

(f) Ensure that the training curricula of health workers include comprehensive, mandatory, gender-sensitive courses on women's health and human rights, in particular gender-based violence.

Concluding comments of the Committee on the Elimination of Discrimination against Women: Viet Nam

Committee on the Elimination of Discrimination against Women
Thirty-seventh session
15 January-2 February 2007

1. The Committee considered the combined fifth and sixth periodic report of Viet Nam (CEDAW/C/VNM/5-6) at its 759th and 760th meetings, on 17 January 2007 (see CEDAW/C/SR.759 and 760). The Committee's list of issues and questions is contained in CEDAW/C/VNM/Q/6, and the responses of Viet Nam are contained in CEDAW/C/VNM/Q/6/Add.1.

Introduction

2. The Committee expresses its appreciation to the State party for the combined fifth and sixth periodic report, which followed the Committee's guidelines and has taken into account the Committee's previous concluding comments. It also expresses its appreciation to the State party for the written replies to the list of issues and questions raised by the pre-session working group and for the oral presentation and further clarification in response to the questions posed orally by the Committee.

3. The Committee commends the State party for its high-level delegation headed by the Chairperson of the National Committee for the Advancement of Women in Viet Nam and which included women and men representing different ministries.

The Committee expresses its appreciation for the constructive dialogue held between the delegation and the members of the Committee.

Positive aspects

4. The Committee commends the State party for the adoption of a number of new laws that aim at eliminating discrimination against women and promoting gender equality in compliance with the State party's obligation under the Convention. In particular, the Committee welcomes the adoption of the Law on Gender Equality of November 2006, which will enter into force on 1 July 2007, the 2003 amendment to the Land Law and the Law on Marriage and Family.

5. The Committee also welcomes the recent adoption of the Law on Signing, Joining and Implementing International Conventions, which entered into force in January 2006, according to which all reports related to international treaties are to be submitted to the National Assembly for adoption prior to their submission to the relevant treaty bodies.

6. The Committee also commends the State party for the adoption of its National Strategy for the Advancement of Women for 2001-2010, which has been drawn up in accordance with the Beijing Platform for Action.

Principal areas of concern and recommendations

7. While recalling the obligation of the State party to systematically and continuously implement all the provisions of the Convention, the Committee views the concerns and recommendations identified in the present concluding comments as requiring the State party's priority attention between now and the submission of the next periodic report. Consequently, the Committee calls upon the State party to focus on those areas in its implementation activities and to report on action taken and results achieved in its next periodic report. It also calls upon the State party to submit the present concluding comments to all relevant ministries and to Parliament so as to ensure their full implementation.

8. While welcoming the adoption of the new Law on Gender Equality as an improvement of the legal regime and the implementation of the Convention as well as other legal and policy measures that have been put in place in different areas in recent years to eliminate discrimination against women and girls and to promote gender equality, the Committee regrets that the State party did not provide sufficient information or data on the actual impact of these laws and measures and the extent to which they have resulted in accelerating the advancement of women and girls and their enjoyment of their human rights in all areas covered by the Convention.

9. The Committee recommends that the State party focus on the implementation of existing laws and policies by: setting clearly defined and time-bound targets;

systematically collecting and analysing data; monitoring impact, trends over time and progress towards realizing goals and objectives, and results achieved; and allocating sufficient human and financial resources for the effective enforcement of existing laws. With regard to the Convention and the new Law on Gender Equality, the Committee encourages the State party to: ensure their wide dissemination within the country, including their translation into minority languages, in particular among policymakers across all sectors, mass organizations, civil society and the media; take measures towards the speedy harmonization of existing legislation with the objectives of the Convention and the Law on Gender Equality, particularly in the areas of employment, social security, education, the representation of women in political and decision-making bodies and within the public administration and healthcare services; and report in its next periodic report on the progress made. With regard to the Land Law, the Committee calls upon the State party to take the necessary steps to remove any administrative obstacles that may prevent the issuance of joint land use certificates to husbands and wives, particularly in rural areas.

10. The Committee is concerned about the State party's apparent lack of clarity about the difference between temporary special measures that are aimed at accelerating de facto or substantive equality of women, as called for under article 4, paragraph 1, of the Convention, and general social policies that are adopted to implement the Convention.

11. The Committee recommends that the State party take concrete measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation 25, in all sectors, with a view to accelerating the practical realization of the goal of women's de facto or substantive equality with men in all areas of the Convention.

12. The Committee reiterates its concern about the persistence of patriarchal attitudes and deep-rooted stereotypes, including the preference for male offspring, regarding the roles and responsibilities of women and men within the family and society at large. These stereotypes present a significant obstacle to the implementation of the Convention, are a root cause of violence against women and put women in a disadvantaged position in a number of areas, including in the labour market and in political and public life.

13. The Committee recommends that the State party take measures to bring about changes in traditional patriarchal attitudes and in gender-role stereotyping. Such measures should include awareness-raising and public educational campaigns addressing women and girls as well as men and boys, with a view to eliminating stereotypes associated with traditional gender roles in the family and in society, in accordance with articles 2 (f) and 5 (a) of the Convention. Special attention should

be given to the role of the media in perpetuating such stereotypes, as well as their role in contributing to a social and cultural change towards an environment that is supportive of gender equality. The Committee recommends, in particular, that the Convention be translated into those ethnic minority languages with their own alphabets and that radio programmes in the languages of ethnic minorities, among other forms of media, be used in regularly disseminating information on the Convention and on gender equality.

14. The Committee acknowledges the improvement of the representation of women in Parliament, which is among the highest in Asia, and takes note of the 2001 Law on the Election of National Assembly Deputies and the 2003 Law on the Election of Members of the People's Council, which established a quota system for female deputies, as well as the targets set by the State party for women's representation in public bodies at different levels. The Committee remains concerned about the underrepresentation of women in appointed public decisionmaking bodies, particularly at the district and commune/ward levels.

15. The Committee calls upon the State party to regularly review its targets for women's participation in public life and decision-making. It encourages the State party to develop concrete measures, with specific timelines, including the use of temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation 25, to accelerate women's full and equal participation in political life at all levels, in specially appointed and elected positions, including leadership positions in mass organizations and at commune/ward level. The Committee recommends that the State party implement training programmes and awareness-raising campaigns, with a special focus on mass organizations, on the right of women to full and equal participation at all levels of decision-making. It also calls on the State party to monitor the impact of measures taken, track trends over time, take necessary corrective measures and provide detailed information about results achieved in its next report.

16. Although the Committee welcomes the drafting of a new bill on domestic violence, it continues to be concerned about the lack of information and data on all forms of violence against women and girls, the insufficient information on measures taken to prevent and combat violence against women, including services provided to victims, and the prosecution and punishment of perpetrators of all forms of violence.

17. In accordance with its general recommendation 19, the Committee reiterates its recommendation that the State party give high priority to putting in place comprehensive measures to address all forms of violence against women and girls, including through the speedy adoption of the law on domestic violence. Such measures should ensure that women and girls who are victims of violence have

access to immediate means of redress and protection and that perpetrators are prosecuted and punished. The Committee urges the State party to conduct research on the prevalence, causes and consequences of all forms of violence against women, including domestic violence, to serve as the basis for comprehensive and targeted intervention. The Committee repeats its recommendation that the State party continue and increase the implementation of educational and awareness-raising measures aimed at law enforcement officials, the judiciary, health-care providers, social workers, community leaders and the general public, in order to ensure that they understand that all forms of violence against women and girls are unacceptable. It also recommends the establishment of a sufficient number of crisis centres, including shelters for victims of violence, in both urban and rural areas.

18. The Committee welcomes a number of measures, including the Ordinance on the Prevention and Suppression of Prostitution, bilateral and multilateral agreements and the Action Plan for the Prevention and Suppression of Trafficking in Women and Girls, but is concerned about the persistence of trafficking in women and girls and the exploitation of prostitution, both within the country and to other countries. The Committee is also concerned about the low rates of prosecution and conviction of traffickers and of others who exploit the prostitution of women. The Committee also notes with concern reports that trafficked women and girls face problems in enjoying their citizenship rights when returning to Viet Nam, as well as in conveying citizenship to their children born abroad. It is also concerned about reports that rehabilitation measures, such as administrative camps, may stigmatize girls and young women victims of prostitution and deny them due process rights. In addition, the Committee is concerned about the lack of systematic data collection on the phenomenon of trafficking and exploitation of prostitution.

19. The Committee urges the State party to consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementary to the United Nations Convention against Transnational Organized Crime, and to intensify its efforts to combat all forms of trafficking in women and girls, including by enacting specific and comprehensive legislation on the phenomenon. The Committee further calls upon the State party to increase its efforts at international, regional and bilateral cooperation to address more effectively the causes of trafficking, and to improve its efforts to prevent trafficking through information exchange. The Committee urges the State party to collect and analyse data from the police and international sources, prosecute and punish traffickers and ensure the protection of the human rights of trafficked women and girls. It urges the State party to pursue a holistic approach aimed at addressing the root causes of trafficking and improving prevention. Such efforts should include measures to improve the economic situation of women and girls and to provide them with educational and economic opportunities, thereby reducing and eliminating their

vulnerability to exploitation and traffickers. It should also facilitate the reintegration into society of women and girls who are victims of exploitation and trafficking, including children born to Vietnamese women abroad, by ensuring that they are neither criminalized nor penalized and fully enjoy their human rights. It should also enhance rehabilitation, social integration and economic empowerment programmes.

20. While noting progress towards reaching high levels of literacy in the country, the Committee notes with concern that a high proportion of girls still drop out of school and that girls in rural and remote areas do not have full access to education.

21. The Committee urges the State party to take all appropriate measures to eliminate the disparity in school enrolment rates and to achieve universal primary education for girls in accordance with article 10 of the Convention, the strategic objectives and actions of the Beijing Declaration and Platform for Action and Millennium Development Goals 2 and 3. It urges the State party to address effectively the obstacles that prevent girls from continuing their education, such as family responsibilities and the cost of education. It also recommends that teacher training programmes at all levels integrate the principles of gender equality and non-discrimination on the grounds of sex. The Committee also calls on the State party to support education programmes on the culture of ethnic minority groups.

22. The Committee expresses concern that insufficient information was provided about women's de facto situation in the formal and informal labour markets. It is also concerned at the concentration of women in the informal economy, which negatively affects their eligibility for social security and other benefits, including health care. The Committee continues to be concerned about the occupational segregation between women and men in the labour market and the persistent high gap in wages between women and men.

23. The Committee urges the State party to adopt effective measures in the formal labour market to eliminate occupational segregation, both horizontal and vertical, and to narrow and close the wage gap between women and men. It also encourages the State party to ensure the enforcement of regulations of the Labour Code for the benefit of women working in export processing zones, with a particular focus on women's access to social security and health-care services. Efforts to develop guidelines and regulations to provide women in the informal economy with access to such benefits and services should also be enhanced. The Committee requests the State party to assess the impact of economic restructuring processes on women, including women belonging to ethnic minorities and living in rural and remote areas. It requests the State party to ensure that all poverty reduction programmes and strategies are gendersensitive and also to provide targeted support to disadvantaged groups of women. The Committee invites the State party to monitor the impact of measures taken and trends over time and to report to the Committee

on results achieved in its next report.

24. The Committee expresses its concern about women's limited access to sexual and reproductive health-care services, and about the very high rate of abortions, in particular among adolescent and young women. The Committee is also concerned about the increase in HIV/AIDS infections among women.

25. The Committee urges the State party to take concrete measures to enhance women's access to health care, in particular to sexual and reproductive health services, in accordance with article 12 of the Convention and the Committee's general recommendation 24 on women and health. It requests the State party to strengthen measures aimed at the prevention of unwanted pregnancies, including through improved availability, acceptability and use of modern means of birth control, in order to eliminate the use of abortion as a method of family planning. The Committee recommends that the State party give priority attention to the sexual and reproductive health needs of adolescent and young women and men and that it provide age-appropriate sex education, including in school curricula, with special attention to the prevention of early pregnancies and sexually transmitted diseases and HIV/AIDS. The Committee also calls on the State party to ensure the effective implementation of its national strategy on the prevention and control of HIV/AIDS, including improved access to antiretroviral drugs, protection and care for babies born with HIV and training for medical personnel.

26. The Committee is concerned about the differential minimum legal age for marriage for women and men as well as about reports on underage marriages of girls, which limit their development and opportunities to fully develop their skills and capacities, especially in some ethnic minority areas.

27. The Committee urges the State party to set the same minimum age of marriage for women and men at 18 years, in line with article 1 of the Convention on the Rights of the Child and article 16 of the Convention and the Committee's general recommendation 21 on equality in marriage and family relations. It also calls on the State party to take measures to prevent and stop underage marriages.

28. The Committee expresses its concern about the situation of women in rural and remote areas, as well as the situation of ethnic minority women, who lack sufficient access to adequate health services, education opportunities, employment and credit facilities.

29. The Committee calls upon the State party to pay special attention to the needs of women living in rural and remote areas and women belonging to ethnic minorities by ensuring that they have equal access to health care, education, social security, income-generation opportunities and participation in decision-making processes at all levels. It also encourages the State party to use innovative methods

to improve information on and awareness of the provisions of the Convention and of relevant laws, including the Law on Gender Equality, among women and girls in rural and remote areas and women belonging to ethnic minorities. The Committee requests the State party to ensure that the draft law on ethnic minorities integrates the objectives of the Law on Gender Equality and that the draft law on ethnic minorities be passed as soon as possible. The Committee requests that comprehensive information be included in the next periodic report, including sex-disaggregated data and trends over time, on the de facto holistic position of rural and ethnic minority women and on the impact of measures taken and results achieved in the implementation of policies and programmes for these groups of women and girls.

30. The Committee encourages the State party to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and to accept, as soon as possible, the amendment to article 20, paragraph 1, of the Convention concerning the meeting time of the Committee.

31. The Committee urges the State party to utilize fully, in its implementation of its obligations under the Convention, the Beijing Declaration and Platform for Action, which reinforce the provisions of the Convention, and requests the State party to include information thereon in its next periodic report.

32. The Committee also emphasizes that a full and effective implementation of the Convention is indispensable for achieving the Millennium Development Goals. It calls for the integration of a gender perspective and explicit reflection of the provisions of the Convention in all efforts aimed at the achievement of the Millennium Development Goals and requests the State party to include information thereon in its next periodic report.

33. The Committee notes that the adherence of States to the seven major international human rights instruments¹ enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. Therefore, the Committee encourages the Government of Viet Nam to consider ratifying the treaties to which it is not yet a party, namely, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

34. The Committee requests the wide dissemination in Viet Nam of the present concluding comments in order to make the people, including government officials, politicians, parliamentarians and women's and human rights organizations, aware of the steps that have been taken to ensure de jure and de facto equality of women, as well as the further steps that are required in that regard. The Committee requests the State party to continue to disseminate widely, in particular to women's and human rights organizations, the Convention,

its Optional Protocol, the Committee's general recommendations, the Beijing Declaration and Platform for Action and the outcome of the twentythird special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century".

35. The Committee requests the State party to respond to the concerns expressed in the present concluding comments in its next periodic report under article 18 of the Convention. The Committee invites the State party to submit its seventh periodic report, which is due in March 2007, and its eighth periodic report, due in March 2011, in a combined report in March 2011.

WORKING METHODS OF THE CEDAW COMMITTEE

Ways and means of expediting the work of the Committee on the Elimination of Discrimination against Women

Overview of the working methods of the Committee on the Elimination of Discrimination against Women

I. Introduction

1. Since its first session in 1982, the Committee on the Elimination of Discrimination against Women has made a concerted effort to develop appropriate working methods. These methods continue to evolve.
2. The present overview is designed to update States parties and others interested in the implementation of the Convention, including United Nations programmes and funds, specialized agencies and civil society organizations, on the current working methods of the Committee.
3. As authorized by the General Assembly in its resolution 60/230 of 23 December 2005, the Committee will meet on an exceptional and temporary basis in 2006 and 2007 for up to seven days in parallel chambers during its third annual session in 2006 and its first and third annual sessions in 2007. The Committee has adopted a number of measures concerning its consideration of reports in parallel chambers which complement its other working methods.

II. Guidelines for reporting by States parties

4. The Committee has adopted reporting guidelines to assist States parties in the preparation of initial and subsequent periodic reports.[1] The Committee strongly encourages all States parties to submit reports in accordance with those guidelines. The Committee keeps the guidelines under review and updates them as appropriate.
5. Reports should be as concise as possible. Initial reports should be no more than

100 pages long and should deal specifically with every article of the Convention. Periodic reports should be no more than 70 pages long and generally should focus on the period between the consideration of the previous report and the current report, using the concluding comments on the previous report as their starting point and highlighting new developments. The State party may attach annexes, although they will not be translated. Where a State party has prepared a core document, it will be available to the Committee.

6. The Committee recommends that States parties involve national non-governmental organizations in the preparation of their reports. It requests that reports of States parties describe the situation of non-governmental organizations and women's associations and their participation in the implementation of the Convention and the preparation of the report.

III. Consideration of reports of States parties by the Committee

7. The Committee usually invites eight States parties to present their reports at each three week session. In making the selection, the Committee gives preference to reports that have been pending for the longest time, prioritizes initial reports and considers a balance of reports in terms of geographic and other factors. The Committee usually selects the reports at least two sessions in advance of consideration and, in general, considers a mix of initial and periodic reports at each session.

8. In order to enhance the effectiveness of the consideration of reports of States parties and to continuously improve the quality of the constructive dialogue with reporting States, the Committee designates from among its members a country rapporteur for the report(s) of each State party. The Committee has adopted guidelines on the role and function of the country rapporteur. The country rapporteur's responsibilities pertain to the following three phases of the consideration of reports: the preparation of a draft list of issues and questions for the pre-session working group; consideration of the report(s) of the State party, in particular the identification of issues and priorities to be raised during the constructive dialogue; and the preparation of draft concluding comments. All experts participate in the three stages of the consideration of a report, while the country rapporteur facilitates and coordinates the process.

A. Pre-session working group

9. On the basis of drafts prepared by the country rapporteurs concerned, a pre-session working group of the Committee, with the support of the secretariat, draws up short lists of issues and questions with regard to reports which the Committee will consider at upcoming sessions. In general, each list contains no more than 30 clear and direct questions that focus on major areas of concern with regard to the implementation of the Convention by the State party concerned. In preparing the lists of issues and questions for periodic reports, the pre-session working group pays particular attention to the State party's follow-up to the Committee's previous concluding comments. The lists of issues and questions are intended to facilitate

the preparations by the State party for the constructive dialogue with the Committee, to provide a focus for the dialogue with representatives of the reporting State and to improve the efficiency of the reporting system.

10. In order to provide the States parties with the lists of issues and questions well in advance, the pre-session working group meets for five days (in closed meetings) in advance of the session at which the reports will be considered. The pre-session working group is normally composed of five members of the Committee, taking account of the desirability of a balanced geographical distribution and other relevant factors. An expanded pre-session working group, composed of up to 10 members, prepares the lists of issues and questions for sessions when the Committee meets in parallel chambers. To the extent possible, the country rapporteurs are members of the pertinent pre-session working group.

11. The lists of issues and questions are promptly sent to the States parties concerned, usually within one week after the pre-session working group concludes its work. States parties are invited to provide their responses within six weeks thereafter. The lists of issues and questions, together with the responses from States parties, are circulated to members of the Committee prior to the session at which the reports are to be examined.

12. A State party's reply to the list of issues and questions should be short, precise and to the point and should not exceed the limit of 25 to 30 pages (Times New Roman type, 12 point font, single-spaced). States parties may attach a limited number of additional pages of statistical data only. Annexes are made available to the Committee in the language in which they are received.

B. Constructive dialogue

13. The Committee intends its consideration of a report, in accordance with its mandate under article 18 of the Convention, to take the form of a constructive dialogue with representatives of the reporting State, the aim of this dialogue being to improve the situation pertaining to Convention rights in that State. Therefore, not only are representatives of the reporting States entitled to be present, but indeed their presence and participation are necessary at the meetings of the Committee when their countries' reports are examined.

14. The Committee devotes two open meetings (of three hours each) to its consideration of initial reports. Representatives of the State party are invited to make introductory comments for a maximum of 30 minutes. Consideration of initial reports proceeds on an article-by-article basis, with the exception of articles 1 and 2, 7 and 8, and 15 and 16, which are considered as clusters. A group of questions posed by experts is followed by the State party's responses, followed by another group of questions and responses until all articles have been covered. Experts may include any general observations with their questions on articles 1 and 2. The method for consideration of initial reports is also used in cases where an initial report is combined with one or more subsequent periodic reports.

15. The Committee devotes two open meetings (of three hours each) to its consideration of periodic reports. Representatives of States parties presenting

periodic reports are invited to make introductory comments for a maximum of 30 minutes. In the consideration of periodic reports, questions by experts are clustered in accordance with the four substantive parts of the Convention, namely part I: articles 1 to 6; part II: articles 7 to 9; part III: articles 10 to 14; and part IV: articles 15 to 16. After several experts pose questions under a cluster, the State party is given an opportunity to respond; the next round of questions and answers follows until all clusters have been covered. Experts seek to avoid duplicating questions and to limit the number of their interventions, in general, to no more than two per State party, or no more than three when the Committee meets in parallel chambers. They also seek to focus on issues identified by the pre-session working group. Experts may pose follow-up questions, as time permits.

16. During the constructive dialogue, the Committee appreciates careful time management on the part of the State party and precise, short and direct responses to questions asked. It expects the State party to clearly indicate when a response to a question cannot be provided. Lack of or inadequate replies to questions raised may result in follow-up questions at the end of the dialogue and may be reflected in the concluding comments.

17. In cases where reports and/or responses to the list of issues and questions exceed the page limit indicated in the Committee's guidelines and decisions, the Chairperson raises this aspect during the constructive dialogue. This concern may also be reflected in the concluding comments. Some flexibility will be applied in regard to initial reports.

18. Interventions by experts during the constructive dialogue are limited to three minutes, or up to five minutes when the Committee meets in parallel chambers. The time limit is monitored by a speech timer but is enforced flexibly. For its consideration of periodic reports, the Committee has, on a number of occasions, established country task forces, whose members take the lead during the constructive dialogue with the State party. While the Committee does not yet have a formal follow-up procedure for its concluding comments, it routinely asks States parties about the steps taken to follow up on the concluding comments adopted following consideration of the State party's previous report.

19. The Committee does not, at this stage, consider a report in the absence of representatives of a State party. It will, however, consider implementation of the Convention by a State party, in the absence of a report, but only as a measure of last resort, in the presence of a delegation, and on a case-by-case basis. Before deciding to proceed to consideration in the absence of a report, the Committee will notify the State party concerned of its intention to take up implementation of the Convention at a designated future session and invite that State party to submit the requested report before the designated session.

20. The Committee is of the view that it may sometimes be necessary to request exceptional reports from States parties under paragraph 1 (b) of article 18 of the Convention. Such exceptional reports would aim to obtain and examine the information on an actual or potential violation of women's human rights where there is special cause for concern about such violation.

21. Individual members of the Committee refrain from participating in any aspect of the consideration of the reports of the States of which they are nationals in order to maintain the highest standards of impartiality, both in substance and appearance.

C. Concluding comments

22. The Committee adopts concluding comments on the reports of States parties that it considers. For this purpose, the Committee holds a closed meeting after the constructive dialogue with each State party to consider the main issues to be reflected in the concluding comments for that State, based on the proposals of the country rapporteur of the positive aspects as well as principal areas of concern and recommendations. The country rapporteur prepares the first draft of the concluding comments, with the support of the secretariat, and coordinates further comments and inputs by Committee experts before finalizing the draft. The Committee discusses and finalizes the draft concluding comments in closed meetings. Concluding comments reflect the issues agreed by the Committee and do not reflect the views of the individual country rapporteur. Only issues and concerns raised during the constructive dialogue are included in the concluding comments.

23. Concluding comments usually follow a standard format under the headings referred to below. The introduction usually indicates, *inter alia*, whether the report complied with the Committee's reporting guidelines; refers to any reservations to the Convention entered by the State party; and notes the level of the delegation and the quality of the dialogue. A section on positive aspects is generally organized in accordance with the order of the articles of the Convention. The last section of the concluding comments, on principal areas of concern and recommendations, is presented in the order of importance of the particular issues to the country under review and provides concrete proposals from the Committee on the concerns identified. In comparison with concluding comments on initial reports, the concluding comments on periodic reports highlight a limited number of priority areas of concern and recommendations and include a paragraph assessing the general framework for implementation of the Convention in the State party which may be followed by a paragraph highlighting issues of concern identified in previous concluding comments as well as action, or lack of action, taken in that regard by the State party.

24. All concluding comments include a recommendation relating to dissemination, requesting the wide dissemination of the concluding comments in the State party concerned, and also a paragraph requesting that information be included in the State party's next periodic report on the utilization of the Beijing Declaration and Platform for Action in the implementation of the Convention. The comments call for the integration of a gender perspective and reflection of the provisions of the Convention in efforts to achieve the Millennium Development Goals and request information thereon in the State party's next periodic report. They also note that the State party's adherence to the seven major international human rights instruments enhances women's enjoyment of their human rights in all spheres of life, and encourage the State to consider ratifying those to which they are not yet

party. Reference is also made to ratification of the Optional Protocol to the Convention if the State is not yet a party thereto, and to acceptance of the amendment to article 20, paragraph 1, of the Convention if the State party has not yet accepted it. The concluding comments set out the date when the State party's next periodic report is due and invite the State party to combine the next two reports in cases where the due date of the next report has already passed or is within the year.

25. Each concluding comment is country specific, and the Committee strives to achieve consistency and balance, particularly in terms of praise and expressions of concern, among the concluding comments elaborated at each session.

26. The concluding comments are transmitted to the State party concerned promptly after the close of the session. They are then made available to all interested parties and included in the Committee's annual report to the General Assembly. They are also made available on the website of the Division for the Advancement of Women of the United Nations Secretariat and distributed through the listserve on treaty body recommendations administered by the Office of the United Nations High Commissioner for Human Rights.

D. Consideration of reports in parallel chambers

27. The Committee usually invites 14 States parties to present their reports at the sessions when it meets in parallel chambers. Only periodic reports are considered by the Committee in parallel chambers. The Committee applies the following criteria for establishing parallel chambers, while also maintaining flexibility: fair geographical balance of experts between the two chambers; length of experience of experts on the Committee; assignment of experts who are nationals of a reporting State to the chamber that is not considering the report from that State party; assignment of office holders of the Committee to each chamber; and geographical balance, to the extent possible, of States whose reports are to be taken up in each chamber. In advance of each session, the Committee decides on the composition of chambers based on a proposal submitted by its Bureau. Efforts are made to ensure that the Committee's five office holders are assigned to each chamber in a balanced manner.

28. The Committee uses flexible working methods for consideration of reports in parallel chambers and continues to apply effective time management. Parallel chambers use and benefit from the experience gained with country task forces when preparing the constructive dialogue with each State party. The responsibilities of the country rapporteur continue when the Committee meets in parallel chambers. The country rapporteurs take a leading role as regards coordination among experts to ensure that all critical issues and priorities are raised in the constructive dialogues in parallel chambers. They also have a lead responsibility in identifying specific and priority issues for inclusion in the concluding comments. They continue to prepare the first draft of the concluding comments and coordinate further comments and inputs by Committee experts to the draft. All concluding comments are adopted by the Committee in plenary

meeting.

IV. Strategies to encourage reporting by States parties

29. The Committee has adopted a number of measures to address the challenges posed to the treaty monitoring process by the significant number of outstanding and overdue reports. On an exceptional basis and as a temporary measure in order to encourage States parties to fulfill their reporting obligations under article 18 of the Convention as well as to address the backlog of reports awaiting consideration, States parties are invited to combine all their outstanding reporting obligations into a single document. United Nations and other entities are encouraged to provide technical assistance in order to support States parties, at their request, in the implementation of their reporting obligations under the Convention. The Committee keeps these measures under review and modifies them as appropriate.

V. Documentation supplied by the Secretariat

30. The Committee is provided with documentation on the reporting State party, including the official report of the State party, the list of issues and questions prepared by the pre-session working group of the Committee and the reply by the State party, and other relevant documents.

31. In order to highlight information on each reporting State party, the following documentation is available on the website of the Division for the Advancement of Women: the report(s) of the State party; the list of issues and questions; the reply by the State party; any annexes submitted by the State party, where available; the introductory statement of the State party to the Committee, where available; the summary records pertaining to the consideration of the report(s) by the Committee, where available; the composition of the delegation, where available; and the concluding comments of the Committee.

VI. Interaction with specialized agencies and bodies of the United Nations

32. Since its second session, the Committee has invited specialized agencies of the United Nations system to cooperate in its work. The Committee underlines that the contributions of specialized agencies and United Nations funds, programmes and other entities are critical to the full implementation of the Convention at the national level. The Committee and the pre-session working group invite specialized agencies and United Nations bodies to provide country-specific information on States parties whose reports are before them, as well as information on the work of those entities in contributing to the implementation of the Convention. Representatives of those entities are invited to address the Committee in a closed meeting at the beginning of each of its sessions. They are also invited to address the pre-session working group. The Committee finds it most beneficial to be given written reports, the contents of which are highlighted by the representatives of the specialized agency or United Nations body concerned during the closed meetings with the Committee or working group. The Committee has issued guidelines for the submission of reports by specialized agencies and United

Nations bodies in order to clarify the content of those reports and their format and presentation to the Committee so as to enhance the Committee's cooperation with those entities. [2]

33. The Committee requests specialized agencies and United Nations bodies to contribute to the efforts of Governments and non-governmental organizations at the national level towards implementation of the Convention and encourages entities that so far have not, or only sporadically, contributed to the Committee's work to increase their involvement.

VII. Participation of non-governmental organizations and national human rights institutions in the activities of the Committee

34. Since its early sessions, the Committee has invited non-governmental organizations to follow its work. In order to ensure that it is as well informed as possible, the Committee invites representatives of national and international non-governmental organizations to provide country-specific information on States parties whose reports are before it. National and international non-governmental organizations are also invited to provide countryspecific information to the pre-session working group on those States parties whose reports are before the group. Such information may be submitted in writing prior to or at the relevant session or working group. In addition, the Committee sets aside time at each of its sessions, usually at the beginning of the first and second weeks of the session, to enable representatives of non-governmental organizations to provide oral information. The presession working group also provides an opportunity for non-governmental organizations to provide oral information, usually on the first day of the pre-session working group. The Committee encourages international non-governmental organizations and United Nations organizations, funds and programmes to facilitate attendance at Committee sessions by representatives of national non-governmental organizations.

35. An information note for non-governmental organizations is available on the website of the Division for the Advancement of Women. It gives an overview of procedures for submission of information and attendance at the Committee's sessions and those of the presession working group.

36. At a recent session, the Committee set aside time for representatives of national human rights institutions to present information to the Committee. The Committee is interested in establishing further interaction with such institutions and will continue to develop modalities for such interaction.

WHY AN OP CEDAW?

1. To improve on and add to existing enforcement mechanisms for women's human rights

Until the entry into force of the optional Protocol on 22 December 2000, there were two ways CEDAW was enforced:

The Reporting Procedure

States parties have to submit a national report to the Committee within one year of accession or ratification of CEDAW and thereafter every 4 years or when the Committee requests. In the reports, States must indicate the measures they have adopted to give effect to the provisions of the CEDAW. The Committee discusses these reports with Government representatives and explores areas for further action by the specific country.

The interstate procedure

Under article 29 of CEDAW, two or more State parties can refer disputes about the interpretation and implementation of CEDAW to arbitration, and if the dispute is not settled, it can be referred to the International Court of Justice. This procedure is subject to a large number of reservations and has never been used .

There are also other ways in which women's human rights are monitored by the United Nations [among others]:

The CSW Communications Procedure

Under this procedure, the CSW can receive confidential and non- confidential communications about discrimination against women. This procedure is a source of information for policy-making by the CSW but is not linked to the legal framework of CEDAW. It does not assist with individual cases or deal with urgent situations where individuals are suffering continued violations.

Special Rapporteur on Violence Against Women

The special rapporteur was appointed in 1994 by resolution 1994/45 of the Commission on Human Rights. Her mandate was renewed by resolution 1997/44 of the Commission. As well as considering the issue of violence against women generally, the special rapporteur has established procedures to seek information from governments concerning specific cases of alleged violence.

The First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)

The first Optional Protocol to the ICCPR allows individuals, whose countries are party to the ICCPR and the protocol, who claim their rights under the ICCPR have been violated, and who have exhausted all domestic remedies, to submit written communications to the UN Human Rights Committee.

Other Communication procedures

In addition to the procedure under the first Optional Protocol to the ICCPR, women can use existing procedures to complain about some violations of their rights, for example:

- The Convention on the Elimination of All Forms of Racial Discrimination (article 14)
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (communications procedure - article 22)
- The 1503 Procedure of the Commission of Human Rights.

The bodies which receive complaints under these procedures, unlike the Committee on the Elimination of Discrimination Against Women, are not specifically directed to gender issues.

2. To improve States' and individuals' understanding of CEDAW

Under a communications procedure, the Committee will be able to focus on individual cases when considering CEDAW. It would be able to say what is required from States in individual circumstances. This would help States to understand better the meaning of the obligations they have undertaken by acceding to CEDAW.

The Committee's views on communications would amount to what is called jurisprudence. Jurisprudence is the term used for a body of case law about any particular subject. It is used for guidance in interpreting laws. Jurisprudence from communications would provide clarification and guidance for States and for individuals about States' obligations under CEDAW. This has occurred with the ICCPR in regard to the publication of the Human Rights Committee's views on the cases that have been brought to it under the Optional Protocol to the ICCPR.

3. To stimulate States to take steps to implement CEDAW

The Optional Protocol should encourage States to implement CEDAW to avoid complaints being made against them. The possibility of complaints being made might also be an incentive for States to provide more effective local remedies.

4. To stimulate changes in discriminatory laws and practices

Under the Optional Protocol, the Committee would be able to request the State party concerned to take specific measures to remedy violations of CEDAW. Requests might include:

- the amendment of legislation,
- stopping discriminatory practices,
- implementing affirmative action measures.

5. To enhance existing mechanisms for the implementation of human rights within the UN system

The Optional Protocol to CEDAW is the first gender specific international complaints procedure. As well as putting CEDAW on a par with human rights treaties which have complaints procedures, it enhances existing mechanisms by specifically incorporating practices and procedures that have been developed under other complaints procedures. [see point 1 above for these complaint procedures.]

6. To create greater public awareness of human rights standards relating to discrimination against women

The Optional Protocol requires States to publicize the Optional Protocol and its procedures. Communications and inquiries under the Optional Protocol will receive publicity which will increase public awareness of CEDAW and the Optional Protocol. This has been the case with communications submitted under existing complaints procedures and in particular, communications under the first Optional Protocol to the ICCPR.

USES OF CEDAW

There are many ways that CEDAW can be used domestically. Although it is an international instrument, it can be utilized at the national level if we know how to do so. Some uses of CEDAW are as follows:

CEDAW as a Source of Standards

1. Law-making. In some countries, CEDAW is directly considered as part of the law of the land. In this case, no legislation or resolution from the legislature or parliament is needed for people to be able to claim rights under the treaty, especially in local courts and tribunals.

However, the position in most countries is that a legislation or resolution from parliament is needed for a treaty to be “operative” in the country itself. Hence, there is a need for a specific law that incorporates or transforms it into national law. In relation to CEDAW, this can be done by having a legislation that explicitly provides for the rights stated reform of a substantial number of legal documents to reflect CEDAW standards. In some cases though, this is not done in a holistic way, hence incorporation is done in a more piece-meal manner (e.g. changing

labor laws to incorporate CEDAW and then later changing education laws, and so on and so forth). In this case, using CEDAW then means using the Convention as a source of standards for law-making.

In Vietnam, the Law on Gender Equality is one of Vietnam's way of incorporating CEDAW into the domestic legal framework. The Law on Gender Equality tries to ensure that CEDAW is transformed into local law and hence, can be easily implemented and accessed by the people. One clear example of how CEDAW as a standard was used in the Law on Gender Equality is in relation to temporary special measures. Note the similarity in the language of "measures to promote equality" in Art. 5(6) and what are the elements of a temporary special measure as in CEDAW Art. 4(1) and General Recommendation 25.

To ensure that other CEDAW standards form part of the Law on Gender Equality, the law explicitly provides that in cases where a legal document and a treaty to which Vietnam is a State Party contains different provisions on the same matter, the treaty will prevail (which includes CEDAW).

Where there are no legal documents or where legal documents are inadequate, CEDAW can fill in the gap by providing standards. CEDAW can also be used to aid in interpretation or elaborating further on legal documents.

2. Judicial and Quasi-judicial decisions. CEDAW has also been useful in providing standards in case law. As an example of CEDAW's standard setting in this area, in the case of Vishaka vs. State of Rajasthan in India, the court ruled on the case by using the standards on sexual harassment set by CEDAW General Recommendation 19. It prepared guidelines which closely followed the recommendations in the said document.

3. Policy-making. CEDAW is useful in identifying what factors should be taken into account in policy-making. CEDAW, for example, was explicitly mentioned as one of the guiding principles of the draft National Policy for the Development and Empowerment of Women in India (2001 draft). Likewise, the National Strategy for the Advancement of Women in Vietnam by 2010 states that the implementation of the strategy is linked to national target programmes and strategies, the country's regional and international commitments on gender equality and CEDAW.

CEDAW as a Monitoring Mechanism

CEDAW can also be used as a mechanism to monitor status and progress on gender equality and women's human rights. In particular countries for examples, a periodic review of the status of women's human rights is made at the same time as the CEDAW reporting period. This is precisely the reason for the reporting process

of CEDAW, that is, for States to periodically monitor their compliance and to reassess periodically through the mechanism of State reports.

CEDAW as an Accountability Mechanism

CEDAW can also be used to hold States accountable to their obligation to respect, protect and fulfill women's human rights. In Nepal, for example, in 1999, the country was scheduled to report before the CEDAW Committee. Women's NGOs in Nepal in preparing the NGO report included inheritance rights as a priority issue for the country. This was because there were many discriminatory provisions in the inheritance laws, including the provision that daughters can only inherit if she is single and above 35. This does not apply to sons. The CEDAW Committee in its Concluding Comments urged the government to amend the present law which discriminated against women. The CEDAW Concluding Comments were used by women's rights advocates to strengthen their advocacy work on inheritance rights and to hold government accountable to their obligation to ensure gender equality. As a result of this and other interlocking strategies, the Parliament finally amended the discriminatory laws, which included the provision that entitles daughters, like sons, to be eligible to inherit property from birth.

Conclusion

Many people tend to think that simply ratifying CEDAW will automatically improve women's human rights. This is erroneous. CEDAW is a tool to improve women's human rights. To make this happen, we need to be able to know how to use appropriately.

Gender Mainstreaming

I. Definition

The Economic and Social Council (ECOSOC) Agreed Conclusions 1997/2 provides an authoritative definition of gender mainstreaming as follows: "...the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality."

II. Internal and External Aspects of Gender Mainstreaming

Gender mainstreaming is generally understood as occurring at both the internal and external levels. The former refers to altering systems and procedures within

agencies and organizations to meet mainstreaming goals. Examples include changes in personnel policies, such as staff appointments, hiring or firing, and staff evaluation to make it adhere to gender equality. The external aspect of gender mainstreaming refers to steps required to mainstream gender into projects, programs and activities, such as implementation, delivery of services, monitoring and evaluation of projects/programs.

III. Targeted Interventions

Gender mainstreaming does not mean removing the need for targeted, women-specific policies and program. The mainstreaming strategy should always be implemented in a manner which facilitates empowerment of women and thus enables them to achieve gender equality.⁵

Gender mainstreaming does not remove the need for temporary special measures that have as their primary goal the narrowing of gender gaps that disadvantage women. These interventions could include special research on the differential impact of trade patterns on women, support for a network of women's NGOs looking at women in the media, training to sensitize the judiciary on domestic violence or rape, or training for male politicians on discriminatory practices against women in politics. These types of targeted initiatives do not in any way contradict the mainstreaming strategy. Rather when based on sound gender analysis, complements and is part of the mainstreaming strategy.⁶

III. How did Gender Mainstreaming Came About?

Early efforts focused on separate targeted activities for women. Many of these efforts produced positive results, especially for a limited number of women who could benefit directly, however, this approach did not tackle the structural constraints to gender equality and continuously kept women on the sidelines of development.⁷ which in most cases resulted in keeping women on the sidelines of development.

Hence, in the 1970s, there was a shift from separate targeted activities for women to integrating women's concerns into all activities. However, it was also discovered that "the gains made through the integration strategy were limited by the fact that most efforts were undertaken too late in processes when...decisions on goals, strategies and resources had already been taken.

⁵ Fact Sheet 3: The Development Of The Gender Mainstreaming Strategy, Office of the Special Adviser on Gender Issues and the Advancement of Women, United Nations, 2001.

⁶ Gender Mainstreaming: An Overview, Office of the Special Adviser on Gender Issues and the Advancement of Women, United Nations, p2.

⁷ Fact Sheet 3: The Development Of The Gender Mainstreaming Strategy, Office of the Special Adviser on Gender Issues and the Advancement of Women, United Nations, 2001.

“In the 1980s a new approach evolved, the [gender] mainstreaming strategy, which aimed to make the goal of gender equality central to all development activities...An important element in the mainstreaming strategy is the ambition [and will] to give attention to gender equality from initial stages of processes so that there is potential to influence goals, strategies and resource allocations and thus bring about real changes in policies, programmes and other activities and make a real difference to gender equality”.⁸

In 1995, gender mainstreaming was clearly established by consensus as a major global strategy for the promotion of gender equality in the Beijing Platform for Action from the Fourth United Nations World Conference on Women in Beijing.

IV. Mandate for Gender Mainstreaming

IV. 1. Beijing Platform for Action

The Beijing Platform for Action in 1995 gave a clear mandate on the mainstreaming strategy where it was established as the main global strategy for promoting gender equality, required in the critical areas of concern.

The need to ensure that attention to gender perspectives is an integral part of interventions in all areas of societal development was made clear in that document. In each of the critical area of concern, gender mainstreaming is referred to in the following terms: “...Governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes so that before decisions are taken, an analysis is made of the effects on women and men, respectively.”

This paragraph is repeated almost verbatim in relation to strategic objectives in these critical areas of concern: (a) women and health, (b) violence against women, (c) women and armed conflict, (d) women and the economy, (e) women in power and decision-making, (f) women and education, (g) human rights of women, (h) women and media, (i) women and the environment, (j) the girl child as well as in (k) institutional mechanisms for the advancement of women.

IV.2 Economic and Social Council Agreed Conclusion 1997/2

Based on the Platform for Action, the ECOSOC Agreed Conclusions 1997/2 established some basic overall principles of mainstreaming, most especially in relation to gender mainstreaming in the United Nations. The Agreed Conclusions also emphasized:

⁸ *Ibid.*

1. Gender mainstreaming is a tool for effective policy making and not a substitute for targeted, women specific policies and programs, equality legislation, national machineries on women and the establishment of gender focal points.

2. Political will and commitment at all levels are crucial in the adoption and implementation of gender mainstreaming at all levels.

IV.3 Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has also explicitly urged States to ensure gender mainstreaming at all levels and in all sectors. A review of its concluding comments reveal that although the term gender mainstreaming is not mentioned in the text of the Convention itself, it is an obligation under CEDAW. The CEDAW Committee, the committee that monitors the implementation of the Convention and provides authoritative interpretations of its texts, has expressly encouraged and recommended State parties to pursue gender mainstreaming as part of its undertaking to fulfill its obligation under CEDAW. The CEDAW Committee has made several points relating to gender mainstreaming including specifically:

1. The Committee recommends that the State Party develop, adopt and implement at the national level a comprehensive and coordinated policy or plan of action to ensure gender mainstreaming at all levels and in all areas.⁹

2. The State Party should adequate coordination among all its sectoral programs so that there is a consistent approach with regard to gender mainstreaming. It should also ensure gender mainstreaming at the local level and into local policies.¹⁰

3. The Committee welcomes or urges the establishment or strengthening of institutions on gender mainstreaming in all ministries and in all levels of government, such as establishment of local gender equality committees¹¹; gender focal points in relevant entities, gender competence centres to support introduction and implementation of gender mainstreaming¹², inter-ministerial committees. It is concerned that weakness of the national machinery may have a negative impact on gender mainstreaming. It recommends the strengthening of National machineries by providing adequate decision making power and human and financial resources to increase its effectivity in gender mainstreaming¹³.

⁹ See for example CEDAW Concluding Comments on Venezuela (2006), par. 18; CEDAW Concluding Comments on DPRK (2005) par. 50; CEDAW Concluding Comments on Kuwait (2004) par. 69; CEDAW Concluding Comments on Ethiopia (2004) par. 245.

¹⁰ See for example CEDAW Concluding Comments on FYR Macedonia, (2006) par. 7.

¹¹ See for example CEDAW Concluding Comments on FYR Macedonia (2006) par. 7.

¹² See for example CEDAW Concluding Comments on Germany (2004) par. 378.

¹³ See for example CEDAW Concluding Comments on Lao PDR (2005) par. 91; CEDAW Concluding Comments on Guyana (2005) par. 296; CEDAW Concluding Comments on Ethiopia (2004) par. 246; CEDAW Concluding Comments on Angola (2004) par. 151; CEDAW Concluding Comments on Albania (2003) par. 67.

4. The Committee recommends the enhancement of the use of gender mainstreaming through gender training¹⁴.

5. Lack of clear division of responsibilities may have a negative impact on efforts at gender mainstreaming and effective implementation of CEDAW.¹⁵

6. The progress of gender mainstreaming should be monitored and the State Party should provide information on its scale and scope and procedures for assessing results and impact.¹⁶

7. More importantly, State Parties should promote gender mainstreaming and at the same time women-targeted projects aimed at gender mainstreaming¹⁷.

In the CEDAW Committee's Concluding Comments addressed to Vietnam in 2001, it recommended gender mainstreaming:

“The Committee recommends that the State party strengthen the existing national machinery and give it more visibility and the capacity to mainstream a gender perspective into all policies and programmes and to promote the advancement of women.”¹⁸

IV.4. Commission on the Status of Women

The Commission on the Status of Women, which provides recommendations and reports to the UN Economic and Social Council on women's rights in all fields and also monitors the implementation of the Beijing Platform for Action, has also many resolutions that tackles gender mainstreaming. Most recently, in its 49th annual session (2005), it issued a resolution entitled “Mainstreaming a gender perspective into all national policies and programmes”¹⁹.

In the Commission on the Status of Women's 50th session (2006), it urged government, among others, to incorporate gender perspectives into all national planning and reporting processes and mechanisms relating to national development strategies; increase understanding of and capacity to utilize gender mainstreaming; disseminate and replicate innovations in gender mainstreaming, etc.²⁰

¹⁴ See for example CEDAW Concluding Comments on Guyana (2005) par. 296; CEDAW Concluding Comments on Belarus (2004) par. 338; CEDAW Concluding Comments on Albania (2003) par. 67.

¹⁵ See for example CEDAW Concluding Comments on Latvia (2004) par. 49.

¹⁶ See for example CEDAW Concluding Comments on Cambodia, (2006) par. 14; CEDAW Concluding Comments on Uruguay (2002) PAR. 211; CEDAW Concluding Comments in Iceland (2002) par. 254.

¹⁷ See for example CEDAW Concluding Comments on Ireland (2005) par. 385.

¹⁸ CEDAW Concluding Comments on Vietnam 2001, par. 255.

¹⁹ Commission on the Status of Women. Resolution 49/4 (2005) in E/2005/27.

²⁰ Draft Agreed Conclusions of the Round Table Discussions on Enhanced Participation of Women in Development: An Enabling Environment for Achieving Gender Equality and the Advancement of Women, taking into account, inter alia, the Fields of Education, Health and Work. (21 February 2006) at <http://www.un.org/womenwatch/daw/csw/csw50/offdocs/Agreedconclusionsenableenv.pdf>.

V. Entry Points and Areas of Intervention to Gender Mainstreaming²¹

There are four possible entry points for gender mainstreaming in each of the four stages. Implementers can choose to begin with any one of these, but progressively move towards ensuring that all points are covered and addressed:

1. Policy- Policy is a good entry point. This refers to legal documents, official issuances, statements and pronouncement of support for gender mainstreaming issued by the agency.

2. People-There are four distinct roles that stakeholders assume and thus, their role as entry points in gender mainstreaming also vary:

- Sponsor- the individual or group who has the power to sanction or legitimize change. They are the heads of agencies. They express support mainly by issuing policies, installing mechanisms and releasing funds for gender mainstreaming activities.
- Change agent- the individual or group who is actually responsible for making the change. These are the gender focal points. They are critical as they are the catalyst for change, either as planners or implementers.
- Target- the individual or group who must actually change. People in the bureaucracy, the field workers and the clients of the different agencies serve as targets of gender mainstreaming.
- Advocate- the individual or group who wants to achieve change but lacks the power to sanction it. They monitor gender mainstreaming but do not have the power to mandate or sanction it within the agencies.

3. Processes, Procedures and Mechanisms- This refers to the systems and mechanisms installed in the agencies and the funds allocated for gender activities.

4. Programs, projects and activities- policy and top management support for gender mainstreaming is best reflected in the agency's programs, projects and activities. The flagship programs of most agencies are usually strategic entry points for gender mainstreaming.

Guidelines on National Policy Formulation and Implementation (Vietnam)

In 2004, the National Committee for the Advancement of Women in Vietnam (NCFAW) published "Gender Mainstreaming Guidelines in National Policy Formulation and Implementation". The aim of the guide is to assist all government officials to understand their roles, responsibilities and to equip them

²¹ This section is based on Applying the Tool to Assess Gender Mainstreaming (Book 2), National Commission on the Role of Filipino Women (Manila: 2001).

with initial skills needed to contribute to gender equality. It provides the following steps for gender mainstreaming:

Step 1: Building the Foundation

In this first step, it is emphasized that the following some of the critical foundations for gender mainstreaming:

- shared responsibility for gender mainstreaming is critical. It is not simply the responsibility of the Women's Union or NCFAW. Nor is it simply the responsibility of the Committees for the Advancement of Women (CAWAs). High levels leaders, all government staff must be responsible for gender mainstreaming
- ensuring basic understanding of gender concepts and gender mainstreaming
- strong committed leadership from senior management
- drafting of an organizational plan on gender mainstreaming
- clear roles and responsibilities for all actors (e.g. the government, the Party, NCFAW, CAWA, Women's Union, Senior Management, government officers, etc.)
- Skill on Using Tools to Implement Gender Mainstreaming
 - Gender awareness and gender sensitivity training programs
 - Sex-disaggregated and gender statistics
 - Gender analysis
 - Gender indicators and indexes
 - Gender budgeting and Gender audits
- Identification of resources
- Putting in place administrative accountability procedures

Step 2: Overview of the Policy Planning Cycle

It is critical to ensure that gender issues are key issues at each stage of the policy planning cycle- problem identification, design, appraisal, approval, resource allocation, implementation, monitoring, adjustments and evaluation.

Step 3: Getting Information from a Gender perspective and Gender Analysis

Sex disaggregated data is quantitative statistical information on male and female, that shows the difference between them. Obtaining this data is important. However, while sex-disaggregated data is essential, it cannot tell us why those differences exist. E.g. more men are diagnosed with tuberculosis than women. Thus obtaining gender statistics and analysis is important as it provides more data and explanations for the differences (e.g. less women received tests than men; more men complete their test than women; men are perceived to be at higher risks because of traditional belief of exposure to risk factors such as smoking, drinking, wider social network).

Step 4: Using the gender Analysis Information: Engendering Policy, Program, Project, Strategies

Information obtained from sex-disaggregated statistics, gender statistics and gender analysis are then used to promote gender equality in policy, program, projects and strategies. Policy, project, programs and strategies should:

- Involve both men and women in the process of planning
- Take into account women's and men's interest, needs and priorities
- Does not discriminate against men and women
- State the wider consequences of failing to adopt a gender-responsive option

Step 5: Gender-Responsive Monitoring

Several suggestions and tools are proposed, such as:

- Gathering of baseline information
- Use of targets and indicators
- Use of both quantitative and qualitative indicators

Step 6: Gender-Responsive Evaluation and Follow Up