

Fact Sheet No.22, Discrimination against Women: The Convention and the Committee

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

VIENNA DECLARATION AND PROGRAMME OF ACTION, (part I, para. 18)
adopted by the World Conference on Human Rights, Vienna,
25 June 1993 (A/CONF. 157/24 (Part I), chap. III)

Contents:

Introduction

- I. Substantive provisions of the Convention on the Elimination of All Forms of Discrimination against Women
- II. Implementing the Convention: the Committee on the Elimination of Discrimination against Women

Annexes:

- I. Convention on the Elimination of All Forms of Discrimination against Women
- II. Reservations to the Convention on the Elimination of All Forms of Discrimination against Women

Introduction

Equality is the cornerstone of every democratic society which aspires to social justice and human rights. In virtually all societies and spheres of activity women are subject to inequalities in law and in fact. This situation is both caused and exacerbated by the existence of discrimination in the family, in the community and in the workplace. While causes and consequences may vary from country to country, discrimination against women is widespread. It is perpetuated by the survival of stereotypes and of traditional cultural and religious practices and beliefs detrimental to women.

Recent efforts to document the real situation of women worldwide have produced some alarming statistics on the economic and social gaps between women and men. Women are the majority of the world's poor and the number of women living in rural poverty has increased by 50 per cent since 1975. Women are the majority of the world's illiterate; the number rose from 543 million to 597 million between 1970 and 1985. Women in Asia and Africa work 13 hours a week more than men and are mostly unpaid. Worldwide, women earn 30 to 40 per cent less than men for doing equal work. Women hold between 10 and 20 per cent of managerial and administrative jobs worldwide and less than 20 per cent of jobs in manufacturing. Women make up less than 5 per cent of the world's heads of State. Women's unpaid housework and family labour, if counted as productive output in national accounts, would increase measures of global output by 25 to 30 per cent.⁽¹⁾

The concept of equality means much more than treating all persons in the same way. Equal treatment of persons in unequal situations will operate to perpetuate rather than eradicate injustice. True equality can only emerge from efforts directed towards addressing and correcting these situational imbalances. It is this broader view of equality which has become the underlying principle and the final goal in the struggle for recognition and acceptance of the human rights of women.

In 1979, the General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (see annex 1). The Convention sets out, in legally binding form, internationally accepted

principles on the rights of women which are applicable to all women in all fields. The basic legal norm of the Convention is the prohibition of all forms of discrimination against women. This norm cannot be satisfied merely by the enactment of gender-neutral laws. In addition to demanding that women be accorded equal rights with men, the Convention goes further by prescribing the measures to be taken to ensure that women everywhere are able to enjoy the rights to which they are entitled.

The Committee on the Elimination of Discrimination against Women was established under article 17 of the Convention. The Committee is entrusted with the task of overseeing the implementation of the Convention by States parties.

This Fact Sheet is divided into two main parts. Part I sets out and explains the substantive provisions of the Convention. Part II provides an overview of the structure and functioning of the Committee. Some background information on the Convention is provided below.

The United Nations and the human rights of women

Equality of rights for women is a basic principle of the United Nations. The Preamble to the Charter of the United Nations sets as a basic goal "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women". Furthermore, Article 1 of the Charter proclaims that one of the purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all people "without distinction as to race, sex, language or religion".

The International Bill of Human Rights strengthens and extends this emphasis on the equal rights of women. The International Bill of Human Rights is a term used to refer collectively to three instruments: the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. Taken together, these instruments form the ethical and legal basis for all of the human rights work of the United Nations and provide the foundation upon which the international system for the protection and promotion of human rights has been developed.

One of the first and most significant achievements of the Organization in the field of human rights was the Universal Declaration of Human Rights, which was adopted by the General Assembly in 1948. Based on the equal dignity and rights of every human being the Declaration proclaims the entitlement of everyone to enjoy human rights and fundamental freedoms "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (art. 2).

Immediately following the adoption of the Universal Declaration, work began on expanding upon the rights and freedoms proclaimed therein and codifying them in binding legal form. From this process emerged the two Covenants mentioned above, which were unanimously adopted by the General Assembly in 1966 and entered into force 10 years later. The Covenants are international legal instruments. When a State becomes a party to either Covenant, it undertakes to guarantee to all individuals in its territory or under its jurisdiction, without any discrimination, all the rights specified by that Covenant, and to provide for effective remedies in cases of violations.

The Covenants clearly state that the rights set forth therein are applicable to all persons without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In addition, States parties specifically undertake to ensure the equal right of men and women to the enjoyment of all rights set forth in each Covenant. The Committee on Economic, Social and Cultural Rights and the Human Rights Committee, set up to monitor the implementation of each of the two Covenants, are therefore competent to deal with issues of gender-based discrimination raised under the provisions of their respective instruments. The Human Rights Committee has been particularly active in the area of discrimination against women.

Despite the fact that there are two Covenants, each guaranteeing a separate set of human rights, the interdependence and indivisibility of all rights is a long-accepted and consistently reaffirmed principle. In practice, this means that respect for civil and political rights cannot be separated from the enjoyment of

economic, social and cultural rights, and, on the other hand, that genuine economic and social development requires the political and civil freedoms to participate in this process.

Universality is another important principle which guides the vision of human rights and fundamental freedoms advocated by the United Nations. While historical, cultural and religious differences must be borne in mind, it is the duty of every State, regardless of its political, economic and cultural systems, to promote and protect all human rights, including the human rights of women.

The validity of these principles-interdependence, indivisibility and universality-was most recently affirmed in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993.

Why a separate Convention for women?

The International Bill of Human Rights lays down a comprehensive set of rights to which all persons, including women, are entitled. Why then was it necessary to have a separate legal instrument for women?

Additional means for protecting the human rights of women were seen as necessary because the mere fact of their "humanity" has not been sufficient to guarantee women the protection of their rights. The preamble to the Convention on the Elimination of All Forms of Discrimination against Women explains that, despite the existence of other instruments, women still do not have equal rights with men. Discrimination against women continues to exist in every society.

The Convention was adopted by the General Assembly in 1979 to reinforce the provisions of existing international instruments designed to combat the continuing discrimination against women. It identifies many specific areas where there has been notorious discrimination against women, for example in regard to political rights, marriage and the family, and employment. In these and other areas the Convention spells out specific goals and measures that are to be taken to facilitate the creation of a global society in which women enjoy full equality with men and thus full realization of their guaranteed human rights.

To combat gender-based discrimination, the Convention requires States parties to recognize the important economic and social contribution of women to the family and to society as a whole. It emphasizes that discrimination will hamper economic growth and prosperity. It also expressly recognizes the need for a change in attitudes, through education of both men and women to accept equality of rights and responsibilities and to overcome prejudices and practices based on stereotyped roles. Another important feature of the Convention is its explicit recognition of the goal of actual, in addition to legal, equality, and of the need for temporary special measures to achieve that goal.

A short history of the Convention

In November 1967, the General Assembly adopted the Declaration on the Elimination of Discrimination against Women. In 1972, the Secretary-General of the United Nations asked the Commission on the Status of Women⁽²⁾ to request the views of Member States regarding the form and content of a possible international instrument on the human rights of women. The following year, a working group was appointed by the Economic and Social Council to consider the elaboration of such a convention. In 1974, the Commission on the Status of Women began drafting a convention on the elimination of discrimination against women. The work of the Commission was encouraged by the results of the World Conference of the International Women's Year, which was held in 1975. A Plan of Action adopted at that Conference called for a "convention on the elimination of discrimination against women, with effective procedures for its implementation".

For the next few years, the process of elaborating a convention continued within the Commission. In 1977, following submission to it of a draft instrument, the General Assembly appointed a special working group to finalize the draft.

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979. In 1981, after receiving the necessary 20 ratifications, the Convention entered into force and the Committee on the Elimination of Discrimination against Women was formally established.

The function of the Committee is to oversee the implementation of the Convention by States parties. Information on the practice of the Committee is contained in part II below.

I. Substantive provisions of the Convention on the Elimination of All Forms of Discrimination against Women

Defining discrimination

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.

Article 1 provides a comprehensive definition of discrimination which is then applicable to all provisions of the Convention. In contrast to the International Bill of Human Rights, which simply refers to "distinction" or "discrimination" on the basis of sex, article 1 gives a detailed explanation of the meaning of discrimination specifically against women. Such discrimination encompasses any difference in treatment on the grounds of gender which:

Intentionally or unintentionally disadvantages women;

Prevents society as a whole from recognizing women's rights in both the domestic and public spheres;

or which:

Prevents women from exercising the human rights and fundamental freedoms to which they are entitled.

In a number of countries throughout the world, women are denied their basic legal rights, including the right to vote and the right to own property. Such instances of legally entrenched differentiation will be easily identified as discriminatory. At the same time, not every differentiation will constitute discrimination. The definition set out above makes it clear that, in addition to establishing the criterion of differentiation (sex), it is also necessary to consider the outcome of the differentiation. If the result is a nullification or impairment of equal rights in any of the forms set out above then the differentiation is discriminatory and therefore prohibited under the Convention.

In 1992, the Committee on the Elimination of Discrimination against Women extended the general prohibition on sex discrimination to include gender-based violence. Further notes on this topic may be found at the end of part I.

Obligations of States parties

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 2 establishes, in a general way, the obligations of States under the Convention and the policy to be followed in eliminating discrimination against women. By becoming parties to the Convention, States accept the responsibility to take active steps to implement the principle of equality between men and women into their national constitutions and other relevant legislation. States should also eliminate the legal bases for discrimination by revising existing laws and civil, penal and labour codes.

It is not enough merely to insert anti-discrimination clauses into legislation. The Convention also requires States parties to protect women's rights effectively and provide women with opportunities for recourse and protection against discrimination. They should incorporate sanctions into legislation that deter discrimination against women, and establish a system for filing complaints within national tribunals and courts.

States parties to the Convention must take steps to eliminate discrimination in both public and private spheres. It is not enough to strive for "vertical" gender equality of the individual woman *vis-à-vis* public authorities; States must also work to secure non-discrimination at the "horizontal" level, even within the family.

Article 2 recognizes that legislative changes are most effective when made within a supportive framework, i.e. when changes in the law are accompanied by a simultaneous change in the economic, social, political and cultural spheres. To this end, subparagraph (f) requires States not only to modify laws, but also to work towards the elimination of discriminatory customs and practices.

Appropriate measures

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 3 defines the appropriate measures in all fields which should be taken to implement the policies set out in article 2. It also serves to demonstrate the indivisibility and interdependence of the rights guaranteed by the Convention and the basic human rights to which all persons are entitled. Other United Nations instruments already guarantee equal dignity and rights for all human beings. Article 3 recognizes that, unless States take active steps to promote the advancement and development of women, they will not be able to enjoy fully the basic human rights guaranteed in the other instruments.

Temporary special measures to combat discrimination

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 4 recognizes that, even if women are given legal (*de jure*) equality, this does not automatically guarantee that they will in reality be treated equally (de facto equality). To accelerate women's actual equality in society and in the workplace, States are permitted to use special remedial measures for as long as inequalities continue to exist. The Convention thus reaches beyond the narrow concept of formal equality and sets its goals as equality of opportunity and equality of outcome. Positive measures are both lawful and necessary to achieve these goals.

At its seventh session, in 1988, the Committee on the Elimination of Discrimination against Women noted that significant progress had been made in guaranteeing women's legal equality, but that further steps needed to be taken to promote their de facto equality. In its general recommendation No. 5 adopted at that session, the Committee recommended that

States parties make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment.

These special measures should be used simply to speed up the achievement of de facto equality for women, and should not create separate standards for women and men. In other words, the appropriateness of any special measures should be evaluated with regard to the actual existence of discriminatory practices. Consequently, once the objectives of equality of opportunity and treatment are reached, these special measures are no longer needed and should be discontinued.

There will, however, always be exceptional cases where special treatment is the only way to guarantee true equality. The individual and community interests of children, for example, require continuous consideration of the health, income and earnings of mothers. Special measures to protect maternity are therefore always necessary and should never be abandoned.

Modifying social and cultural patterns

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.

The importance of the Convention on the Elimination of All Forms of Discrimination against Women lies in the fact that it adds new, substantive provisions to the other instruments which also deal with equality and non-discrimination. Article 5 recognizes that, even if women's legal equality is guaranteed and special measures are taken to promote their de facto equality, another level of change is necessary for women's true equality. States should strive to remove the social, cultural and traditional patterns which perpetuate gender-role stereotypes and to create an overall framework in society that promotes the realization of women's full rights.

The prevalence of gender-role stereotypes is seen most particularly in the traditional concept of women's role in the domestic sphere. Many women are denied an education because their role is considered primarily as one of caring for the family. Moreover, this role is often viewed as unimportant and not, in itself, worthy of an education. Subparagraph (b) of article 5 calls on States parties to ensure that education includes a proper understanding of the important role of maternity as a social function. It also requires that States recognize the raising of children as a responsibility that should be shared by women and men, and not as a task that is borne by women alone. This may well require the development of social infrastructures (e.g. paternal leave schemes) which would make possible a sharing of parental duties.

Suppressing exploitation of women

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.

Article 6 urges States to take all appropriate measures to combat traffic in women and exploitative prostitution. In addressing these problems, it is essential for States to consider and act upon the conditions which are at the root of female prostitution: underdevelopment, poverty, drug abuse, illiteracy, and lack of training, education and employment opportunities. States parties should also provide women with alternatives to prostitution by creating opportunities through rehabilitation, job-training and job-referral programmes.

States which tolerate the existence of exploitative prostitution, girl-child prostitution and pornography (which are always exploitative), and other slave-like practices are in clear violation of their obligations under this article. It is not enough to enact laws against such injustices; in order adequately to discharge their responsibilities, States parties must ensure that measures are taken to implement penal sanctions fully and effectively.

Equality in political and public life at the national level

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 7 requires States parties to undertake two levels of action to create equality for women in political and public life. First, States must broaden the rights guaranteed in article 25 of the International Covenant on Civil and Political Rights and ensure to women the right to vote in all elections and public referenda. Of particular importance for women is the right to vote anonymously. Women who are not allowed to vote anonymously are often pressured to vote in the same way as their husbands and are thus prevented from expressing their own opinions.

Secondly, article 7 recognizes that, while it is essential, the right to vote is not in itself sufficient to guarantee the real and effective participation of women in the political process. The article therefore requires States to ensure to women the right to be elected to public office and to hold other government posts and positions in non-governmental organizations. These obligations can be realized by including women on lists of governmental candidates, affirmative action and quotas, eliminating gender restrictions for certain posts, increasing promotion rates for women and developing government programmes to attract larger numbers of women into meaningful (as opposed to merely nominal) political leadership roles.

Equality in political and public life at the international level

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.

While many of the decisions which directly affect the lives of women are made within their own countries, important political, legal and social trends are both forged and reinforced at the international level. For this reason it is essential that women are adequately represented in international fora as members of government delegations and as employees of international organizations.

The goal of equal representation of women at the international level is still far from being realized. In general recommendation No. 8 adopted at its seventh session, in 1988, the Committee on the Elimination of Discrimination against Women recommended that, in implementing article 8 of the Convention, States parties make use of temporary special measures such as affirmative action and positive discrimination as envisaged by article 4. States should also use their influence in international organizations to ensure adequate and equal representation of women.

Equality in nationality laws

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.

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

In the context of article 9, nationality means citizenship. Many human rights, particularly political rights, derive directly from citizenship.

There are two basic obligations contained in article 9. First, it requires States parties to guarantee women the same rights as men to acquire, change or retain their nationality. For example, many countries discriminate against female nationals who marry foreigners. Foreign wives of male nationals may be permitted to acquire their husband's nationality, but foreign husbands of female nationals are not granted the same right. The result in such cases is that men who marry foreigners are allowed to remain in their country of origin, whereas women who marry foreigners may be forced to move to their husband's country of origin. Such a law would be considered discriminatory and should therefore be amended.

Secondly, article 9 requires States parties to extend to women the same rights as men regarding the nationality of their children. In many countries, children automatically receive the nationality of the father. In implementing this article, States must establish formal legal equality between men and women with regard to acquiring, changing or retaining nationality and conferring it upon their spouse or children.

Equality in education

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 preschool, 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 10 recognizes that equality in education forms the foundation for women's empowerment in all spheres: in the workplace, in the family and in wider society. It is through education that traditions and beliefs which reinforce inequality between the sexes can be challenged, thereby helping to break down the legacy of discrimination handed from one generation to the next.

The obligations of States parties under article 10 can be conveniently divided into three categories.

The first obligation is equality of access. There are very few places in the world where women are denied a formal right to education. However, true equality in education requires the development of specific and effective guarantees to ensure that female students are provided with access to the same curricula and other educational and scholarship opportunities as male students. In many countries, parents do not expect their daughters to have careers outside the home. Consequently, girl-children are encouraged to leave school after completing only a basic or elementary education. Even at the elementary level, male students may be given a more rigorous and demanding curriculum than their female classmates. States parties should reform the education system so that it no longer creates or permits the existence of separate standards and opportunities for females and males. In addition, States should, where necessary, create special programmes to encourage female students to further their education and to encourage parents to permit this. Such encouragement could take the form of scholarship funds designed for female students attending universities and technical and vocational schools.

Secondly, States parties have an obligation to eliminate gender-role stereotyping in and through the education system. Textbooks used in schools often reinforce traditional, unequal stereotypes, particularly as these apply to employment and domestic and parenting responsibilities. Teachers may promote this type of gender-role stereotyping by discouraging female students from engaging in mathematics, sciences, sports and other so-called "male" areas of study or activity. States should, where necessary, revise textbooks and offer special training courses for teachers in order to combat gender-based discrimination.

A third obligation of States parties is to close the existing gap in education levels between men and women. States should create programmes which give women the opportunity to return to school or attend special training courses. In this way, women who did not have the benefit of an equal education in the past will be offered the opportunity to "catch up" and thus to enjoy an equal role in the workplace and in society as a whole.

Equality in employment and labour rights

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.

Equality in employment and labour rights has long been recognized as an important element in the struggle for women's human rights. A large part of the battle at the international level has thus far been fought by the International Labour Organisation (ILO). Article 11 builds upon and consolidates many of the rights claimed for women by ILO.

Article 11 states clearly that women shall enjoy the basic human right to work. It then sets out a comprehensive list of obligations of States parties in order to ensure that this right can be fully and effectively realized.

First, States parties must guarantee women the same employment rights and opportunities as men. It is not sufficient for a State to outlaw discriminatory hiring practices. Equal employment opportunities, for example, presume equality in opportunities to prepare for employment through education and vocational training. In the recruitment process, women must be subject to the same hiring criteria as men.

Secondly, women must have the right to free choice in selecting a profession, and must not be automatically channelled into traditional "women's work". To discharge this obligation, States parties must grant women full equality in education and employment opportunities and must work towards the creation of social and cultural patterns which allow all members of society to accept and work towards the presence of women in many different types of career.

Thirdly, women in the workplace must have the right to equal remuneration and all work-related benefits. States parties must guarantee women equal pay for equal work, as well as equal treatment for work of equal value and equal treatment in evaluating the quality of work. Women are also to enjoy the protection of social security. Provision should be made for paid leave as well as retirement, unemployment, sickness and old-age benefits.

Fourthly, women in the workplace must be protected from discrimination based on marital status or maternity. The wording of this provision is very clear. States parties must prohibit employers from using pregnancy or marital status as a criterion in the hiring or dismissal of women employees. States must also take measures that allow parents to combine family obligations with work responsibilities, by giving them benefits such as paid maternity leave, child-care subsidies and special health protection during pregnancy.

Finally, true equality in employment requires the implementation of measures to protect women from all forms of violence in the workplace. One of the most prevalent forms of violence against women in the workplace is sexual harassment of women by male co-workers. Instead of being treated as equal co-workers, women are often treated as sexual objects. In response to this widespread problem, the Committee on the Elimination of Discrimination against Women, in general recommendation No. 12 adopted at its eighth session, in 1989, called on States parties to include in their reports to the Committee information on legislation against sexual harassment in the workplace. In 1992, the Committee recommended that States parties adopt effective legal measures, including penal sanctions, civil remedies and compensatory provisions, to protect women against all kinds of violence, including sexual assault and sexual harassment in the workplace (general recommendation No. 19 (eleventh session), para. 24 (t) (i)).

It is important to note that the guarantees of equality and non-discrimination contained in article 11 are applicable only to women in formal employment. This leaves vulnerable a vast number of women whose labour in the home, on the land or elsewhere goes unrecognized and whose rights therefore remain unprotected (see also "Rural women", p. 25 below).

Equality in access to health facilities

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 1 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.

Access to health care is a problem affecting women, men and children in many areas of the world. However, as recognized in article 12, women in particular, by virtue of their unequal status and their special vulnerabilities, encounter a great many obstacles in obtaining adequate health care.

Paragraph 1 of article 12 specifically requires States parties to ensure the equality of women and men in access to health care services. This requires the removal of any legal and social barriers which may operate to prevent or discourage women from making full use of available health care services. Steps should be taken to ensure access to health care services for all women, including those whose access may be impeded through poverty, illiteracy or physical isolation (see also "Rural women", p. 25 below).

While not yet a universally recognized right in itself, the ability of a woman to control her own fertility is fundamental to her full enjoyment of the full range of human rights to which she is entitled, including the

right to health. In recognition of this fact, article 12 makes specific reference to the area of family planning. Both women and men must have a voluntary choice in planning their families, and States must accordingly make available information and education about medically approved and appropriate methods of family planning. Any laws which operate to restrict a woman's access to family planning or any other medical services (e.g. by requiring prior permission of her husband or a near relative as a prerequisite for treatment or for the provision of information) would be contrary to this article and consequently should be amended. Where laws requiring the spouse's authorization for medical treatment or for the provision of family planning services have previously existed and subsequently been amended, States parties should ensure that medical workers as well as the community are informed that such authorization is not required and that the practice is contrary to the rights of women.

Paragraph 2 of article 12 recognizes that women need extra care and attention during pregnancy and the post-natal period. States parties must recognize women's needs both as providers and receivers of health care during these times, and must ensure that they have access to adequate health care facilities and resources, including adequate nutrition during and after pregnancy.

It is estimated that, each year, at least half a million women die from causes related to pregnancy and childbirth, most of these deaths occurring in the developing countries of Asia and Africa.⁽³⁾ Implementation of the provisions of article 12 is an essential first step in reducing the high rate of maternal deaths.

In its examination of the scope and application of article 12, the Committee on the Elimination of Discrimination against Women has focused particularly on ending discrimination against women in national AIDS strategies. General recommendation No. 15, adopted by the Committee at its ninth session, in 1990, calls on States parties to enhance women's role as care providers, health workers and educators in the prevention of infection with HIV, and to give special attention to the subordinate position of women in some societies which makes them especially vulnerable to HIV infection.

Together with the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Committee on the Elimination of Discrimination against Women has paid special attention to the area of traditional practices harmful to the health of women. Such practices include, but are not limited to, genital mutilation, dangerous birth practices and son preference. In its general recommendation No. 14 (ninth session, 1990), the Committee called on States parties to take appropriate measures to eradicate the practice of female genital mutilation. Such measures could include the introduction of appropriate educational and training programmes and seminars, the development of national health policies aimed at eradicating female genital mutilation in public health facilities, and the provision of support to national organizations working for these goals.

Finance and social security

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 13 recognizes that, unless States parties guarantee women financial independence, they will not have true equality with men because they will not be able to head their own households, own their own homes, or start their own businesses. Many private businesses discriminate against women employees by not giving them the same access to family benefits and insurance as male employees; similarly, loan and mortgage companies often impose higher standards on women and require higher premiums or deposits for obtaining credit. Social security provisions may discriminate against single mothers by presuming dependence upon a

man. States must take steps to ensure that women have equal access with men to credit and loans, and that they also have equal access to family benefits.

Equal rights of participation in sporting, recreational and other cultural activities presumes the existence of real equality of access. To achieve this, States should ensure that all legal or social obstacles to the full participation of women in these areas are removed and that funding, grants or other forms of support are implemented under a principle of equality of opportunity.

Rural women

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 cooperatives 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.

In many parts of the world, women living in rural areas bear a disproportionate amount of the burden of labour. Moreover, they often receive little or no recognition for their participation, nor are they allowed to enjoy the fruits of their work or share in the benefits of development. In addition, many of these women workers, by remaining "invisible" and unacknowledged, are not entitled to the protections and benefits afforded those in formal employment.

Article 14 recognizes that rural women are a group with special problems needing careful attention and consideration by States parties. In addition, by extending the Convention to women in rural areas, States parties are explicitly recognizing the importance of the work of rural women and their contribution to the well-being of their families and the economy of their countries. This emphasis on development is unique in a human rights treaty and represents clear acknowledgement of the fundamental link between achieving equality and involving women in the development process.

Article 14 requires States parties to eliminate discrimination against women in rural areas; to implement their right to adequate living conditions; and to take special measures to ensure them, on a basis of equality with men, the same participation in and benefits of rural development. Special measures to achieve these goals could include: ensuring the participation of women, especially rural women, in the elaboration and implementation of development planning in order that they may work to create a better environment for themselves; encouraging and providing assistance for the establishment of self-help groups and cooperatives; and providing rural women with access to adequate health care, family planning facilities and social security programmes to give them greater financial and social control over their lives. States should also give women in rural areas the opportunity to break out of traditional roles and choose different lifestyles by ensuring them equal access to training and education programmes, as well as to agricultural credit, loans and marketing facilities.

Equality in legal and civil matters

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 15 confirms women's equality with men before the law, and additionally requires States parties to guarantee women equality with men in areas of civil law where women have traditionally been discriminated against. For example, in many countries, women do not have the same property rights as men: traditional property law often discriminates against women in that only male children are able to inherit the family land, and that husbands have automatic ownership over all of their wife's property upon marriage. Similarly, legislation in a number of countries establishes that the administration of family property is to be undertaken by the male head of the family—thereby excluding women. Many legal systems do not allow a woman to enter into contracts in her own right but require the signature of her husband before a contract is considered legally binding, even in cases relating to her own property or earnings. Article 15 requires States parties to take positive steps to ensure women full equality in civil law. States must therefore repeal or amend any laws or instruments which have the effect of restricting women's legal capacity.

Paragraph 4 of article 15 requires equality in the law regarding movement of persons and freedom to choose one's own residence and domicile. A law which makes a woman's domicile dependent upon her husband's would be considered discriminatory under this provision, as would a law which operated to restrict the right of a woman (including a married woman) to choose where she lives.

Equality in family law

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.

Article 16 addresses the problem of discrimination against women in the private sphere, including discrimination in the area of family law. Much discrimination against women takes place in their own homes by their husbands, their families and their communities. In some societies, young women or girls are forced into arranged marriages. In many areas of the world, married women are not permitted to participate equally in deciding how many children they will bear, how these children will be brought up, and when and whether or not they themselves should work. Even in countries where women enjoy a greater say in their family life, deeply ingrained stereotypes regarding the "proper" role of women as being that of housewife and homemaker may prevent them from pursuing outside careers or taking part in important decision-making with their husbands.

This area of discrimination is usually based on long-standing cultural or religious practices; it is thus one of the most difficult areas to penetrate and one of the most resistant to change. Yet the drafters of the Convention realized that change in this area is essential in order for women to attain full equality. To bring about this change, States parties must first take all appropriate measures to eliminate or amend existing laws or instruments relating to marriage and the family which discriminate against women. Such laws would include, for example, those which do not give women the same legal rights to divorce and remarriage as men; laws which do not allow women full property-ownership rights; and laws which do not grant them equal rights regarding the care and custody of children, whether in marriage or following divorce. Secondly, States parties must take steps actively to ensure that women are able to exercise the same rights as men, including the right freely to enter into marriage and to choose a spouse. In keeping with the freedom of a woman to choose when and whom she should marry, a minimum age for marriage should be guaranteed by law.

Although domestic violence is not specifically addressed in article 16, the Committee on the Elimination of Discrimination against Women has made it clear that violence and abuse in the family is a human rights problem which must be addressed by States parties. Additional information on gender-based violence is provided in the following commentary.

A note on gender-based violence

The issue of gender-based violence is not specifically addressed in the Convention, although it is clearly fundamental to its most basic provisions. In general recommendation No. 19 adopted at its eleventh session, in 1992, the Committee on the Elimination of Discrimination against Women took the important step of formally extending the general prohibition on gender-based discrimination to include genderbased violence, which it defined (para. 6) as

violence that is directed at 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 . . .

The Committee affirmed that violence against a woman constitutes a violation of her internationally recognized human rights-regardless of whether the perpetrator is a public official or a private person.

The responsibility of States parties under the Convention extends to eliminating gender-based discrimination by any person, organization or enterprise. State responsibility may therefore be invoked not only when a government official is involved in an act of gender-based violence, but also when the State fails to act with due diligence to prevent violations of rights committed by private persons or to investigate and punish such acts of violence, and to provide compensation.

In the same general recommendation (para. 24 (t)), the Committee called on States parties to take all measures necessary to prevent gender-based violence. Such measures would include not only legal sanctions, civil remedies and avenues for compensation, but also preventive measures such as public information and education programmes, as well as protective measures, including support services for victims of violence.

The work of the Committee in this area is being reinforced by other international developments. In 1993, the General Assembly adopted the Declaration on the Elimination of Violence against Women (resolution 48/104). The Declaration sets out the steps which States and the international community should take to ensure the elimination of all forms of violence against women, whether occurring in public or in private life.

Reservations to the Convention

Where a treaty permits-as is the case with the Convention on the Elimination of All Forms of Discrimination against Women-States parties may make a reservation, i.e. a formal declaration that they do not accept as binding on them a certain part or parts of the treaty.

Article 28 of the Convention states (para. 2):

A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

This provision restates a fundamental rule of the international law of treaties: that a reservation to a convention which is contrary to its object and purpose cannot be permitted.

The Convention on the Elimination of All Forms of Discrimination against Women has been the subject of more reservations than any other major international human rights treaty. As of October 1993, 41 States parties had made and not subsequently withdrawn reservations to the Convention. Some of these reservations concern matters which are not fundamental to the object and purpose of the treaty. Others are to the dispute-settlement provisions of the Convention (art. 29). Some reservations are so broad and vague that it is difficult to determine exactly what States are reserving. A relatively large number of States parties have made substantive reservations to basic articles, including those provisions relating to non-discrimination in family law, legal capacity and citizenship. Some States have even entered reservations to the very important article 2, which contains the central commitment of parties to eradicate all forms of discrimination against women, including gender-based discrimination. Many reservations are directed at those provisions which seek to eliminate discrimination in the "private" sphere of work, home and family.

Such substantive reservations have the potential to limit significantly the obligations undertaken by the reserving States and in this way they clearly undermine the object and purpose of the Convention.

In the course of its work, the Committee on the Elimination of Discrimination against Women regularly encourages States parties to review and withdraw their reservations. The Committee does not have the power to decide whether or not reservations are incompatible with the object and purpose of the Convention. The question of incompatibility can be answered by the International Court of Justice, but so far no State has sought an advisory opinion from the Court on the compatibility of reservations or on how specific they have to be, or challenged another State in this forum.

As recognized by the 1993 World Conference on Human Rights, the matter of reservations to the Convention on the Elimination of All Forms of Discrimination against Women is a serious one. The number and nature of reservations and the failure to invoke the formal procedure set out in the 1969 Vienna Convention on the Law of Treaties

for deciding on the validity of reservations have provoked considerable controversy. Some States parties have expressed strong objections to many reservations on the ground that they are clearly incompatible with both the letter and the spirit of the Convention, while others have strongly defended their right to make reservations.

At its thirteenth session, in 1994, the Committee on the Elimination of Discrimination against Women voiced its agreement with the view of the World Conference that States should consider limiting the extent of any reservations they make to international human rights instruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the treaty concerned and regularly review any reservations with a view to withdrawing them. At the same session, the Committee took a number of concrete steps to bring the issue of reservations to the attention of other United Nations bodies, including the Commission on the Status of Women and the Commission on Human Rights. The Committee also drafted specific guidelines for reporting by States parties on reservations which they have entered to the Convention on the Elimination of All Forms of Discrimination against Women.

A table of reservations to the Convention is contained in [annex II](#) to this Fact Sheet.

II. Implementing the Convention: the Committee on the Elimination of Discrimination against Women

Establishment and composition of the Committee

Article 17 of the Convention on the Elimination of All Forms of Discrimination against Women establishes the Committee on the Elimination of Discrimination against Women to oversee the implementation of its provisions.

In accordance with the Convention, the Committee is composed of 23 experts who are elected by secret ballot from a list of persons "of high moral standing and competence in the field covered by the Convention" nominated by States parties. In the election of persons to the Committee, consideration is given to equitable geographical distribution and to the representation of different civilizations and legal systems. The members of the Committee serve four-year terms. Although nominated by their own Governments, members serve in their personal capacity and not as delegates or representatives of their countries of origin.

The composition of the Committee is noticeably different from that of other human rights treaty bodies. In the first place the Committee has, since its inception, and with only one exception, been composed entirely of women. Members have been and continue to be drawn from a wide variety of professional backgrounds. The breadth of experience in the Committee is reflected favourably in the process by which reports from States parties are examined and commented upon.

What does the Committee do?

The Committee acts as a monitoring system to oversee the implementation of the Convention by those States which have ratified or acceded to it. This is done principally by examining reports submitted by those States parties. The Committee considers these reports and makes suggestions and recommendations based on their consideration. It may also invite United Nations specialized agencies to submit reports for consideration and may receive information from non-governmental organizations. The Committee reports annually on its activities to the General Assembly through the Economic and Social Council, and the Council transmits these reports to the Commission on the Status of Women for information.

The Committee meets for two weeks each year. This is the shortest meeting time of any Committee established under a human rights treaty.

How does a State party report to the Committee?

Under article 18 of the Convention, States parties are required to submit reports to the Secretary-General of the United Nations on legislative, judicial and other measures which they have taken in accordance with the provisions of the Convention. These reports are for consideration by the Committee.

A State party must submit its first report within one year after it has ratified or acceded to the Convention; subsequent reports must be submitted at least every four years or whenever the Committee so requests.

In ratifying or acceding to the Convention, States parties accept a legal obligation to submit timely and complete reports. Many States have failed to discharge this obligation. Whatever the reason for this failure, the end result is a large number of overdue reports and a significant proportion of incomplete or inadequate ones. As of October 1993, 72 States parties to the Convention (almost two thirds of the total number of States parties) had failed to submit reports by the due date.

The reporting process is a difficult one and the preparation of reports can be a time-consuming and complex task. Some problems in the process arise from a lack of personnel, experience and resources within the relevant ministry or department. The process of collecting information can be facilitated by ensuring collaboration between the reporting agency and those government departments from which statistics or other information must be obtained. The ability of nongovernmental organizations to assist in the preparation of reports should not be overlooked.

Unfortunately, the Committee cannot effectively address all difficulties which may arise in the reporting process. It has, however, developed two sets of general guidelines for reporting in an effort to provide practical technical assistance to States parties. These guidelines suggest that initial reports could be usefully divided into two parts: the first on the country's political, legal and social framework and general measures used to implement the Convention, and the second part a detailed description of steps taken to comply with individual articles. Unfortunately, many States parties have not followed these guidelines, a fact which implies that the guidelines are too general to be especially helpful. It has been suggested that, in order to make the reporting process more effective, the Committee should develop detailed guidelines offering more concrete guidance to States parties.

How does the Committee work.?

Procedural aspects

Under article 20 of the Convention, the Committee meets once a year for "a period of not more than two weeks". It is serviced by the United Nations Division for the Advancement of Women, which moved from Vienna to New York in 1993.

In accordance with article 19 of the Convention, the Committee has adopted its own rules of procedure. These rules have established that the meetings of the Committee are generally held in public; that 12 members constitute a quorum; and that the presence of two thirds of the members is required for taking a decision. The rules of procedure further establish that the Committee shall endeavour to reach its decisions by consensus.

The Committee elects a chairperson, three vice-chairpersons and a rapporteur from among its members. These persons hold office for a period of two years. To facilitate its work, the Committee has established the following working groups:

(a) Pre-sessional working group

In response to the problems encountered due to the lack of time and resources to consider adequately States parties' reports, the Committee established a pre-sessional working group to prepare the consideration of second and subsequent periodic reports. The pre-sessional working group is composed of

five members of the Committee and its mandate is to prepare a list of issues and sets of questions to be sent in advance to the reporting States. This enables reporting States to prepare replies for presentation at the session and thus contributes to a speedier consideration of second and subsequent reports.

(b) Two standing working groups

In addition to the pre-session working group, the Committee has established two standing working groups which meet during the regular session of the Committee. Working Group I considers and suggests ways and means of expediting the work of the Committee. Working Group II considers ways and means of implementing article 21 of the Convention, which gives the Committee the power to issue suggestions and general recommendations on implementation of the Convention.

Consideration of reports by the Committee

1. Submission of reports

Individual States parties first submit a written report to the Committee. State representatives are then given the opportunity orally to introduce the report to the Committee. These introductions tend to provide a very general overview of the content of the report.

2. General observations

After the introduction, the Committee makes general observations and comments regarding the report's form and content. In some cases, the Committee will also comment on any reservations to the Convention which have been made by the reporting State party and may also enquire as to whether such reservations could be reconsidered.

3. Consideration of individual articles

The Committee members then ask questions relating to specific articles of the Convention. They focus on the actual position of women in society in an effort to understand the true extent of the problem of discrimination. The Committee will accordingly request specific statistical information on the position of women in society, not only from the Government, but also from non-governmental organizations and independent agencies.

The State party presenting its report may decide to answer some of these questions immediately, and usually will provide other answers a day or two later. At this point, the Committee may ask additional questions, or may request that further information be sent to the Secretariat before the next report is due.

4. Concluding observations

The Committee will then prepare concluding comments on the reports of individual States parties so that these can be reflected in the report of the Committee. At its thirteenth session, in 1994, the Committee decided that these comments should deal with the most important points, covered in a constructive dialogue, emphasizing both positive aspects of a State's report and matters on which the Committee had expressed concern, and clearly indicating what the Committee wished the State party to report on in its next report.

5. Encouraging a constructive dialogue between the Committee and States

The examination of States parties' reports by the Committee is not meant to be an adversarial procedure. Instead, all efforts are made to develop a constructive dialogue between States parties and Committee members. Although some Committee members may criticize a State in a particular area, other members will go to great lengths to encourage the progress made by the State in other areas. The overall atmosphere of the Committee's sessions is one of a free exchange of ideas, information and suggestions.

One aspect of this cordial environment is that the Committee never formally pronounces a State to be in violation of the Convention, but instead points out the State's shortcomings through a series of questions and comments. However, this approach also means that the Committee does not put itself in a position to exert strong pressure on States who are in outright violation of the Convention to change their policies and legislation.

Interpreting and applying the Convention

Article 21 of the Convention provides that the Committee may make suggestions and general recommendations based on its examination of the reports and information received from States parties. To date, the general recommendations issued by the Committee have not been addressed to individual States. Instead, the Committee has restricted itself to making recommendations to all States parties on specific steps which may be taken to fulfil their obligations under the Convention.

The general recommendations made by the Committee are limited in both range and effect. Because they are geared to all States parties rather than to individual States, the scope of these recommendations is often very broad-making compliance difficult to monitor. Such recommendations, along with any other suggestions made by the Committee to individual States parties, are not legally binding.

Until recently, the Committee had not offered any substantive interpretation or analysis of the scope and meaning of the articles of the Convention. Indeed, the Convention does not specifically accord the Committee such interpretive authority. However, most of the other treaty-monitoring bodies (most notably the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights) have made substantive interpretations of their respective Conventions in the absence of an express authority to do so. These interpretations have made a major contribution to the development of substantive human rights law.

They have proved to be very useful for States in compiling their reports, and for non-governmental organizations working for change at the national level.

In general recommendation No. 19 adopted at its eleventh session, in 1992, the Committee on the Elimination of Discrimination against Women explored the coverage of gender-based violence in the various articles of the Convention. At its twelfth session, in 1993, the Committee undertook an analysis of article 16 and other articles relating to the family, which is expected to lead to a general recommendation. The Committee has established a work programme under which the various substantive articles of the Convention will be examined in turn during its annual sessions.

Improving the work of the Committee

In fulfilling effectively its mandate of overseeing the implementation of the Convention by States parties, the Committee faces many challenges. It must strive to expand the information base available to it-not only for compiling but for reviewing reports; it must, where necessary, offer an interpretation of the norms embodied in the articles of the Convention; and it must endeavour to create a more effective monitoring system.

1. Expanding the information base of the Committee

At present, the Division for the Advancement of Women provides Committee members with analysis based upon statistical indicators relevant to specific articles of the Convention for each periodic report of States parties.

Article 22 of the Convention provides that the Committee may invite specialized agencies of the United Nations to submit reports for consideration by the Committee on the implementation of the Convention in areas falling within the scope of their activities. This is a useful opportunity for the Committee to receive detailed information on the implementation of the Convention in specific areas. A number of specialized agencies and other United Nations bodies, including the Food and Agriculture Organization of the United Nations (FAO), the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Children's Fund (UNICEF), are directly involved

in issues which affect the human rights of women. To date, only the International Labour Organisation (ILO), the World Health Organization (WHO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) have submitted reports to the Committee.

In order to take full advantage of the vast store of relevant, country-specific information available within United Nations agencies, the Committee continues actively to seek their cooperation. Such information is, of course, most useful if it relates to the situation in a country being discussed by the Committee at the session during which the information is submitted.

Another valuable source of information for the Committee is non-governmental human rights and women's organizations and independent agencies. Reports submitted by States parties do not always accurately reflect the human rights situation of women in the country concerned, nor do they always identify specific problem areas. Information and statistics from independent organizations are extremely useful to the Committee in assessing the actual situation of women in individual States. Submissions which are prepared in the context of the purposes of reporting, as outlined above, will be the most useful to Committee members in their task of scrutinizing States parties' reports. Submissions should, where possible, identify the precise articles of the Convention which relate to the problems or issues being addressed. Non-governmental organizations and other groups may write to the Committee, care of the Division for the Advancement of Women, at the following address: Room DC2-1220, P.O. Box 20, United Nations, New York, NY 10017, United States of America. The Division for the Advancement of Women can also provide information on which States parties' reports are to be considered at a particular session. It should be noted that accredited representatives of non-governmental organizations may attend sessions of the Committee as observers.

2. Clarification of provisions of the Convention

The Convention on the Elimination of All Forms of Discrimination against Women is a legal document and, for this reason, its provisions may require clarification and even elaboration in order that the obligations assumed by States will be perfectly clear. This process of a developing jurisprudence is an ongoing one because the Convention is a dynamic document. It must be flexible enough to take account of changing international attitudes and circumstances, while at the same time retaining its spirit and integrity.

Although in its general observations the Committee has made broad statements on the form and structure of States parties' reports, and has underscored the need to remedy discrimination against specific groups of women and in relation to specific traditional practices, it had not, until recently (see "Interpreting and applying the Convention", p. 40 above), attempted formally to interpret the rights guaranteed in the Convention. The experience of other treaty-monitoring bodies has shown that a proactive approach to monitoring can be extremely useful in assisting States parties to understand their obligations. Clarification of the norms contained in the Convention would also be extremely valuable for women in understanding the rights to which they are entitled. The process of interpreting substantive articles of the Convention was begun by the Committee at its tenth session, in 1991, and has been given new impetus by the adoption of a programme of work under which substantive articles will be examined in turn.

3. Development of an effective monitoring system

By expanding its information base and by attempting to clarify norms contained in the Convention, the Committee has taken some important first steps in developing an effective monitoring system.

However, a number of challenges remain. One of these is to improve the timeliness and efficiency of the reporting process. To assist States which are overdue in reporting, the Committee has adopted procedures by which States are allowed to combine reports. Nevertheless, the fact that the Committee has the shortest meeting time of any treaty-monitoring body (two weeks) has meant that a considerable backlog of reports has built up. There is now an average of three years between the time a State party submits a report and the consideration of that report by the Committee. This is itself a disincentive to report and leads to the need for the State to present additional information to update its report.

As a temporary measure, three-week sessions have been mandated until the backlog is removed. However, despite the best efforts of the Committee it has become clear that the temporary extension of ses-

sions cannot be expected to eliminate the backlog. At its thirteenth session, in 1994, the Committee therefore recommended that States parties amend article 20 of the Convention in order to allow it to "meet annually" to consider reports (deleting the words "normally... for a period of not more than two weeks"). It further recommended that, pending this amendment, the General Assembly authorize the Committee to meet for two sessions of three weeks' duration, starting in 1995 and continuing into the 1996-1998 biennium.

Outside the Committee, suggestions have been made that all treaty-monitoring bodies in the United Nations human rights system should work together to improve the timeliness and quality of States' reports by coordinating the different guidelines for reporting. If a standardized method for reporting under all conventions were in place, this would decrease the administrative burden on States. A uniform system of reporting would also increase the speed and efficiency with which the various committees could review and evaluate reports during their annual sessions.

The timeliness and quality of States parties' reports to the Committee on the Elimination of Discrimination against Women can also be improved through training of government officials responsible for their compilation. The Division for the Advancement of Women regularly conducts such training exercises. Training courses on reporting under all major human rights conventions are also organized by the United Nations Centre for Human Rights as part of its technical assistance programme.

4. An individual complaints procedure?

The possibility of introducing the right of petition through the preparation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women (similar to the Optional Protocols to the International Covenant on Civil and Political Rights) was recommended in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993. As part of the follow-up to that Conference, the Committee on the Elimination of Discrimination against Women and the Commission on the Status of Women will study the possibility. Such a protocol would permit citizens of States parties to lodge complaints with the Committee alleging violation of their rights as set out in the Convention. It might also permit the lodging of complaints between States. It is apparent that such a development would considerably increase the strength of the Committee and its ability to have a direct impact on the problem of gender-based discrimination.

In the meantime, there are several avenues by which women may draw international attention to cases of discrimination. The Commission on the Status of Women is a United Nations body charged with, *inter alia*, developing recommendations and proposals for action on urgent problems in the field of women's rights. The Commission may receive communications from individuals and groups concerning discrimination against women. No action is taken on individual complaints. Instead, the procedure aims to discern emerging trends and patterns of discrimination against women in order to develop policy recommendations aimed at solving widespread problems. Communications may be sent to the Commission care of the United Nations Division for the Advancement of Women (address under 1, at p. 42 above).

In addition, the Human Rights Committee, which oversees implementation of the International Covenant on Civil and Political Rights, may receive complaints of violations of the sex equality provisions of the Covenant in particular article 26. The prohibition of discrimination on the basis of sex has been extended to rights set out in other instruments, for example the right to social security guaranteed in the International Covenant on Economic, Social and Cultural Rights (art. 9).^{4/} The individual complaints procedure of the Human Rights Committee is available to individuals in 76 countries which have ratified the Optional Protocol to the Covenant on Civil and Political Rights. Women in these countries are thereby able to bring complaints about violations of their rights of equal entitlements protected by that Covenant as well as by the Covenant on Economic, Social and Cultural Rights and possibly other international human rights conventions, provided their country is also a party to those treaties.

Notes:

1. *The World's Women 1970-1990: Trends and Statistics* (United Nations publication, Sales No. E.90.XVII.3).

2. The Commission on the Status of Women was established by the Economic and Social Council in 1946. Its function is to prepare reports and recommendations to the Council on promoting women's rights in the political, economic, civil, social and educational fields and to develop recommendations and proposals for action on urgent problems in the field of women's rights with the object of implementation, the principle that men and women shall have equal rights. The Commission has been given the task of monitoring, reviewing and appraising the implementation of the Nairobi Forwardlooking Strategies for the Advancement of Women adopted by the 1985 World Conference on Women. The Commission may receive communications from individuals and groups concerning discrimination against women (see under "An individual complaints procedure?", at P. 44 below).

3. World Health Organization, *Maternal Mortality: A Global Factbook* (Geneva, 1991), p. 3.

4 See, for example, *S. W. M. Broeks v. the Netherlands*, Communication No. 172/1984 (9 April 1987), *Selected Decisions of the Human Rights Committee under the Optional Protocol, International Covenant on Civil and Political Rights, Volume 2, Seventeenth to Thirty-second Sessions (October 1982-April 1988)* (United Nations publication, Sales No. E.89.XIV. 1), p. 196.