

# Human Rights of Women

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## I. HUMAN RIGHTS—ITS DEFINITION IN THE INTERNATIONAL SPHERE

Freedom, justice, and peace are based on the recognition of the dignity inherent to the human family and to its equal and inalienable rights. It is thus emphasized in the third paragraph of Article 1 of the United Nations Charter when referring to the endeavor of the international community to achieve international cooperation in “solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” It is also declared in the first paragraph of the preamble of the international covenants on civil and political rights and on economic, social, and cultural rights.

For more than fifty years, the definition of the comprehensive issue of “human rights” has been studied and discussed. Efforts have been made to identify the differences between the two main groups of human rights, which according to the terminology used by experts on the subject, are: 1) civil and political rights; and 2) social rights, that,

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This essay is also a part of a book that is under preparation on the human rights of women and their promotion and protection at the international level. For further detailed information on the topics approached and the documents mentioned in this essay, see THE UNITED NATIONS AND HUMAN RIGHTS 1945-1995; THE UNITED NATIONS AND THE DEVELOPMENT OF WOMEN, 1945-1996 (revised in order to incorporate the results of the IV World Conference on Women, Beijing, 1995). Both volumes are a part of the Series of Blue Books of the United Nations.

according to UN terminology, are further divided into categories of economic, social and cultural rights.

From the analyses and studies undertaken up to date, it is confirmed that the classifications do not imply different levels of importance or that one group of rights might deserve a different degree of attention and respect. It is also recognized that both groups comprise an integral and indivisible whole. They cannot be separated, except in regard to their promotion forms and to the protection system that each one requires. Civil and political rights cannot be fully and effectively enjoyed if, in parallel, there is not a system allowing the enjoyment of economic, social, and cultural rights. However, without the real promotion and respect of civil and political rights, the true meaning of economic and social rights cannot be understood. Their enjoyment would have little value without freedom—the essential principle of fundamental human rights. The interdependence and indivisibility is stated implicitly in the Preamble of the UN Charter. It was also confirmed fully by the Universal Declaration of Human Rights in 1948 and legally ratified in the Universal Covenants on Human Rights, in force since 1975.

The Declaration of Tehran of 1968 and the General Assembly Resolution 32/130 of December 16, 1977 establish criteria and enunciate the necessary measures to improve the effective enjoyment of human rights and fundamental freedoms. These documents give political support to the general process of promoting and protecting human rights. The World Conference on Human Rights, held in Vienna in 1993, reaffirmed that “all human rights are universal, indivisible and interdependent and related to each other.” Therefore, it was reiterated that the international community must treat, promote, protect, and respect human rights globally in a fair and equal manner, on the same footing and with the same emphasis.

## II. CIVIL AND POLITICAL RIGHTS ARE BOTH COLLECTIVE AND INDIVIDUAL

According to the classifications noted and based on a careful reading of the various international instruments already described, civil and political rights are both collective and individual. The following collective rights are found in the Covenant on Civil and

Political Rights (Covenant):

1. the right of self-determination;
2. the sovereign right over natural resources;
3. the right of all individuals or persons to have the rights recognized in the Covenant respected and guaranteed without discrimination of any kind, such as that based on race, color, sex, language, religion, political opinion, or ideology, national or social origin, class, economic status, or any other social status; and
4. the right to the remedies of defense and protection of human rights before the competent judicial, administrative, or legislative authorities.

The following individual rights are also found in the Covenant:

1. the equal rights of women and men to the enjoyment of all civil and political rights set forth in the Covenant;
2. the right to life;
3. the right to freedom and to personal security, which implies the abolition of slavery and the elimination of punishment, torture, and cruel, inhumane, and degrading treatment;
4. the right to liberty of movement within and outside the territory of the state and freedom to choose residence;
5. the right to be considered equal before the law and tribunals, and the right to enjoy legal status and the protection of the law without any discrimination;
6. the right to family and individual privacy;
7. the right to freedom of thought, conscience, and religion;
8. the right to freedom of expression;
9. the right of peaceful assembly;
10. the right of association and to form and join trade unions;
11. the right to acquire a nationality;
12. the right to found a family and to marry; and
13. the right to take part in the conduct of public affairs, including the right to vote and to be elected.

In various cases, collective or individual human rights should complement each other by means of freedoms or subsequent rights.

For example, the right to life also includes the abolition of capital punishment, which should be maintained only for the most serious crimes, as judged according to the legislation of each country. In this case, all persons sentenced to death have the right to seek pardon or commutation of the sentence.

The Covenant includes a provision that prevents the imposition of the death penalty on underage children or on pregnant women. To that effect, the UN General Assembly adopted Resolution 44/128, approving the Second Optional Protocol of the International Covenant on Civil and Political Rights tending to abolish the death penalty.

The abolition of slavery, closely related to the rights of personal freedom and security, includes prohibitions on enforced servitude and the prohibition of forced or compulsory labor, other than labor related to prison sentences that specify forced hard labor pursuant to sentences imposed by competent tribunals. The rights of freedom and personal security are also closely related to the right of equality before the law and to the right to be judged by competent tribunals and to receive legal defense in the corresponding criminal or civil proceedings.

Included in this same field is the right to be treated with dignity and humanity in case of detention by judicial authorities and the right to receive sentences based on the legislation in force at the time when the crime for which they were judged, or sentenced, was committed.

### III. INDIVIDUAL AND COLLECTIVE ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

In the same manner, among the economic, social, and cultural rights stipulated in the 1966 Covenant, some could also be considered individual rights, even if the rights are enjoyed by groups or communities, such as:

1. the equal rights of women and men to the enjoyment of all economic, social, and cultural rights set forth in the Covenant;
2. the right to work, under just and favorable conditions, to receive fair wages for work of equal value—men and

- women—and the right to safe and healthy working conditions;
3. the right to form trade unions;
  4. the right to social security and social insurance;
  5. the right to protection for maternity and to the protection of children and young people from economic and social exploitation;
  6. the right to an adequate standard of living, including food, clothing, and housing;
  7. the right to be free from hunger and diseases;
  8. the right to an education, including all levels of education, in any system and at any age;
  9. the right to protect one's health, to medical attention, and to medical services; and
  10. the right to cultural scientific, and technological development.

There are also certain rights which are collective in nature, including: (1) the right to form and join trade unions; (2) the right to strike; (3) the right of trade unions to establish federations and confederations; and (4) the right of the family to receive protection and assistance.

On the other hand, it can be deduced that the economic, social, and cultural rights are so closely related to each other that it would be very difficult to define them as purely social, economic, or cultural. For example, it would be difficult to argue that the right to work is merely a social right and not an economic right, as it implies the right to receive wages and corresponding benefits. This right, in turn, allows an individual the necessary means to acquire basic consumer goods, complementary or sumptuary. Moreover, the right to syndication can not be considered exclusively a social right without considering the economic aspects derived from a collective representation in the defense of working conditions and an orderly scheme of labor relations, including the political aspects, that imply the freedom of association.

In sum, it is very difficult in even the most detailed review to isolate, from each one of the economic and social rights, the political aspect that, in some cases, all of them include. Therefore, their

indivisibility is confirmed. It is also confirmed that they compel the state to take the necessary steps, including legislative ones, “to the maximum of its available resources” in order to “[a]chieve progressively . . . the full realization of the rights” recognized in Article 2 of the Covenant.

Several years ago there was an emerging thesis, intended to be applied in practice, that social rights were a part of the goals and objectives of development and, consequently, that they “existed” to the extent that development policies either were or were not successful. Before such a hypothesis, it was instead argued—rightfully in my opinion—that social rights, including economic and cultural rights, should be a part of the “commanding axis” of sociopolitical systems. As human rights, they are not and can not be merely desirable goals, but rather must be considered demanding imperatives.

In view of the complexity inherent in an attempt to characterize a clear delineation between them, some experts in the matter pointed out at the time that the bipartite classification responds to two different state attitudes. First, in the case of the civil and political rights, the state should assume a passive attitude. That is, the state is compelled to do nothing in order to abstain from adopting measures that may hinder the full enjoyment of such rights by civil society. Second, in the case of social, economic, and cultural rights, the attitude of the state must be active, and the state has a duty to promote programs and adopt measures that propitiate the statutory or administrative framework necessary for the full effectiveness of such rights.

Even though the differing state attitudes were accepted at that time, some groups or associations currently may not accept it. These groups or associations declare that the state is equally obliged to act in either case and its responsibility cannot be diminished in either instance. Such a declaration seems more valid when analyzing the contents of the Convention for the Elimination of All Forms of Discrimination Against Women, which is the main instrument of this analysis.

In the effort to achieve the full force of human rights, it has been recognized that the enjoyment of such rights by social groups with specific characteristics and peculiar modalities of social insertion

demands particular treatment in order to eliminate existing gaps between groups. To that effect, the definition and adoption of specific norms has been required, and will still be required, in order to allow the establishment of ad hoc conditions necessary to give real force to those rights.

Among the social groups with defined characteristics are children and women. This is so, in the case of children, because of the undeniable defenseless condition and the vulnerability of being underaged. As for women, the differences in treatment, the frank exclusion, and the flagrant discrimination they have suffered for many years only because they are women has resulted in a situation of clear inequality, especially in the legislative sphere, in spite of the undoubted advances reached in the last decades.

#### IV. THE HUMAN RIGHTS OF WOMEN

The work done for the promotion and respect for fundamental human rights, including their definition, has set the framework for women's rights to be analyzed and promoted as a set of rights of a particular, but interdependent, nature. This was confirmed fifty-two years ago in the Universal Declaration of Human Rights, which declared the equality of men and women. It was ratified in the Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights.

##### *A. International Instruments for the Promotion and Protection of the Rights of Women*

Since the beginning of the twentieth century, several international treaties and conventions have made reference to the condition and protection of women, particularly regarding issues such as health, work, and nationality. Those international instruments have already been revised, amended, or replaced by other instruments. These latter instruments, in turn, have been the result of analyses, negotiations, and political decisions adopted during the fifty year span of the UN and the specialized agencies of its system. If they were examined in a comparative manner, according to the precedence of elaboration and adoption of each instrument, we would find that as time has elapsed, such international agreements have tended to protect women less and

are oriented more toward the correction of still-existing forms of discrimination. Among the main issues that the international treaties and agreements related to women have covered, several bear mention.

*Prostitution.* The international treaties that proscribed “white slave traffic,” or the slave trade of women and children, between 1904 and 1933 were merged in 1949 into the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, that described prostitution as “traffic in persons.” At the same time, the practices and related activities, such as exploitation and induction to prostitution, were prohibited.

*Maternity.* The International Labor Organization (ILO) has been generous in the adoption of treaties tending to protect the maternity of working women and since 1919, it has adopted several such treaties. Some have already been revised and exceeded by new instruments recently adopted. The last was the Convention for the Protection of Maternity, revised by the International Labor Conference in 1999 and adopted with its corresponding recommendation in 2000.

*Nationality.* The nationality of married women was protected by the Convention adopted by the General Assembly in 1957, and has been the subject of more recent conventions, although with a protection framework that is much more comprehensive.

*Marriage and the minimum age for marriage.* The minimum age for marriage was the subject of the Convention adopted by the General Assembly in 1962, in which the obligation of all states parties to fix a minimum age for marriage was established. However, the exact minimum age was not defined.

*Employment and working conditions.* At the beginning of its legislative work, the ILO adopted international norms to protect women at work, especially during night work, in the mining industry and in underground work. It also tried to protect women’s conditions as mothers and wives, in line and in accord with the traditional stereotypes of the first decades of this century. Nonetheless, these years observed that several of those norms meant to protect women also propitiated women to be kept away from many economic activities or working areas, thus limiting their availability for promotion or advancement and maintaining them at a disadvantage in



relation to men. In the opinion of many groups, this “over-protection” made them the object of discrimination instead of protection. For this reason, the international action of the last twenty years has been oriented to seek international norms based on nondiscrimination, thus avoiding the overdone “protection” of women.

*Equal pay and equal opportunities.* The ILO has sought to legislate concerning the right to equal pay for working women and men for the same work, with the aim of promoting equal opportunities and equal treatment. Recently, the ILO undertook a review of cases of workers with family responsibilities in order to prevent discrimination at work on account of such responsibilities.

*Education.* UNESCO also participated in the fight against discrimination when it adopted the Convention regarding discrimination in the sphere of education in 1960, entered into force in 1962. This Convention guarantees the equality of access to all kinds and degrees of education for all persons, men and women, and prohibits discrimination due to sex—including that in the designation of classrooms or education facilities.

### *B. Regional Action*

In the regional sphere, the Inter-American Women’s Commission, established in 1928, advocated in favor of norms devoted to achieve the equality of women and men by promoting her condition in the political, economic, and social area.

In general, none of the international or regional instruments adopted, including the Covenants on Human Rights already referenced, that equally protect women and men could eliminate the persisting de jure and de facto discrimination against women the-world-over. This led to the call for of an instrument that would guarantee women universal recognition of their right to equality.

## V. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Since the first years of the 1970s, the international community was convinced of the need to gather, in one single compulsory instrument, the great bulk of norms enunciated in the resolutions, declarations, and recommendations of the international organizations

and the provisions of Conventions and Covenants already adopted. This included the principles contained in the Declaration on the Elimination of All Forms of Discrimination Against Women, approved by the UN General Assembly in 1967 (Declaration of 1967). The purpose was to consolidate a political, legal, and administrative structure that would promote the eradication of discrimination against women and, at the same time, propitiate and promote the necessary measures and programs for their inclusion in society on the same footing as men—within political, social, economic and cultural spheres.

In this manner, in March, 1980 the UN General Assembly opened to the signature of states members the Convention on the Elimination of All Forms of Discrimination Against Women (the Convention). This ended over five years of negotiations and activities of various working groups of the Women's Commission and of the General Assembly itself. In the year of its signature, the Convention was the most recent instrument of contractual and global character adopted to protect women and to promote their condition. It was also the only one referring to the rights of women that included, for the first time, a monitoring system for its implementation. This represented an important achievement, since it implied a concrete commitment of the parties, contrary to other instruments that only reflected a certain political will, to guarantee the adoption of necessary measures to eliminate discrimination against women and submitted the commitment to multilateral surveillance.

This Convention has been rightly called the "Charter of the Human Rights of Women." In sixteen articles legally related to one another, several principles that had been set forth at the international level in the Declaration of 1967 are confirmed. Also, it emphasizes those established in the Covenants of Human Rights, or in some other specific conventions, such as the 1952 Convention on the Political Rights of Women.

It is important to point out that the Convention, once opened to the signature and ratification of states, was one of three multilateral instruments to achieve in the least time the greatest number of ratifications or accessions, thereby surpassing the International Covenants on Human Rights of 1966. Thus, since 1980, the year in which it was opened to signature, thru October, 2000, 166 states have

ratified or acceded to it.

The Convention is structured in six parts. Part I is devoted to general principles and commitments. Part II refers to the civil and political rights of women. Part III corresponds to the social areas, with special attention to rural women. Part IV is devoted to equality before the law and within the family. Part V contains the follow-up and surveillance provisions for the implementation of the Convention and also establishes the Committee on the Elimination of Discrimination Against Women (CEDAW). Finally, Part VI refers to issues of procedure, entering into force, solution of controversies, and presentation of reservations.

The Convention has its own characteristics that make it a *sui generis* instrument among those dealing with the rights of women. It not only refers to state actions, but it includes the acts of individuals and legal entities, as stipulated in Article 2(e). Therefore, it enhances the framework of state responsibilities and binds the state to take action in order to guarantee the implementation of the provisions of the Convention, both in the public and the private sphere.

The first Article defines discrimination against women. The next two Articles establish the commitment of the states parties to condemn discrimination against women in all its forms. Additionally, states parties are to set forth in their national constitutions, or in appropriate legislation, the principle of the equality of the rights of women and men in political, economic, social, cultural, and civil life. Moreover, if necessary, states parties should abolish existing laws and norms contrary to that objective, including the adoption of the essential administrative measures to change the habits and practices still existing. States parties should promote the full development and advancement of women of any social condition. According to these Articles, states should establish the legal protection of “the rights of women on an equal basis with men and . . . ensure, through national competent tribunals and other public institutions, the effective protection of women against any act of discrimination.”

The main objective of Article 2 is to achieve the establishment of an appropriate legal structure that will guarantee de jure and de facto equality, the necessary resources for its implementation, and a definition of the necessary punishment for “public and private discrimination acts.” The measures that the states parties could adopt

for the enforcement of Article 3 will depend on the situation existing in each country and on the degree of equality between women and men in the fields of activity dealt with by the Convention. These are related to the range and competence of the institution or national mechanism responsible for the promotion of the advancement of women. As can be observed, the three Articles of the Convention either specifically describe or confirm the provisions of Articles 2(1), 3, 14 and 16 of the Covenant on Civil and Political Rights, and Articles 3 and 10 of the Covenant on Economic, Social and Cultural Rights.

In Articles 4, 5, and 6 of Part I, three very important issues are dealt with; temporary measures, stereotypes, and sexual violence. In Article 4, the Convention allows the adoption of “affirmative action” measures while also guaranteeing that, when necessary, states may adopt special temporary measures that will shorten the inequality gap between men and women. It must be clear that the measures adopted to protect maternity are not considered discriminatory. In this case, General Recommendation 5 of CEDAW demands states parties “make better use of the special measures of temporary character such as positive action, preferential treatment, or quota systems, in order to advance in the integration of women in the fields of education, economy, politics and employment.”

Article 5 recognizes the impact of culture and traditions on the condition of women. Provisions are made for the modification of sociocultural patterns of conduct. These patterns assign functions and specific or stereotyped roles to women and men, founded on ideas of inferiority and superiority of either of the two sexes. The same Article 5 establishes the common responsibility of women and men in the education of children and recognizes that family education should include the teaching and comprehension of maternity as a social function.

Even though the text of Article 5 does not itself mention it, it is understood that this provision refers also to the important function of the social media in the diffusion of stereotypes and improper, if not openly offensive, images of representation and participation of women in society.

Article 5 is considered one of the most important provisions of the Convention. Traditions and customs inherited in different countries

have affected and still obstruct progress towards equality and full participation of women in their community and in the national society. Added to those traditions and customs are false concepts regarding the inferiority or superiority of one or the other sex, or stereotyped social functions assigned to women and men, that in a direct or indirect way are relayed, even in the education systems through textbooks.

The last Article of Part I, Article 6, refers to sexual abuse of women and to the need to eliminate “all forms of traffic in women and exploitation of prostitution of women.” This Article deals precisely with the battle against individuals making a profit on the prostitution of others and benefitting from the sexual exploitation of women of any age. For the enforcement of this Article, it is hoped that states parties adopt measures to protect prostitutes from exploitation and violence, and to provide them with health care services and the prevention of sexually transmitted diseases without considering it an act of discrimination. It also is hoped that efforts will be undertaken to reincorporate prostitutes in society and that measures will be established to fight against traffic of women as well as sexual tourism. None of the three Articles aforementioned has a similar provision in the Covenants on Human Rights. These are a part of the specific provisions that characterize the Convention.

The Convention points out in Articles 7, 8 and 9 of Part III the specific provisions that should be adopted to guarantee women the full enjoyment of their civil and political rights on equal terms with men, both at national and international levels. These include equal rights to acquire, change or preserve their nationality, as well as to transmit their nationality to their sons and daughters. Thus, the rights of women are specified within the framework of the rights stipulated in Articles 24 and 25 of the Covenant on Civil and Political Rights. The enforcement of Articles 7 and 8 could require states parties to adopt measures of affirmative action centered on the promotion of wider participation of women in political activities. Such measures would affect areas of public administration and sectors such as unions, business organizations, and, in general, social institutions and organizations. The measures would emphasize the goal of achieving a larger incorporation of women in executive functions or in decision-making posts.

In Part III, five Articles guarantee, according to the definition previously mentioned, women's social rights, all of which are protected by Articles 6, 7, 12, and 13 of the Covenant on Economic, Social, and Cultural Rights.

Article 10 contains a series of detailed provisions tending to guarantee women the right to education under equal conditions to those of men, beginning with basic education up to professional education in both formal and informal education systems. The same Article establishes the obligation to eliminate stereotyped concepts of the feminine and masculine roles at all levels. This Article was included with the idea in mind that education is an important instrument of public action in the promotion of change and is necessary to transform power relations. It is possible to transform these power relations by recognizing the right of women to equal access to information, knowledge, and aptitudes.

Article 11 stipulates the obligation to eliminate women's discrimination at work and to ensure equality in the workplace. This is based on the fundamental rights to work and to freely choose a profession and employment; to receive equal pay and equal treatment for equal work; to receive social security; to obtain the necessary social benefits for family members, including training and knowledge updated according to the scientific and technological advances; to take maternity leave; and to be protected during pregnancy. These elements are intrinsic to the right to work and to training covered by Articles 6 and 7 of the Covenant on Economic, Social, and Cultural Rights.

Article 12 refers, in a very precise manner, to the equality of rights to health care, including family planning. While elaborating Article 12, it was taken into consideration that women's health conditions are directly linked to their family's condition and, therefore, to that of society. It was also taken into consideration that women habitually make use of the health services for their families and very often provide primary health care for their families. Within a strict analysis, some would qualify the contents of Article 12 as "stereotyped," because they refer in a limited way to the integral health care of women and emphasize more family planning services or pregnancy, childbirth, and post-delivery services, making reference to nutrition only in relation to pregnancy and the nursing

period. The right to health care is stipulated in Article 12 of the Covenant on Economic, Social, and Cultural Rights. Article 12 of the Convention does not take into consideration, as hoped and in accord with present circumstances, other women's health problems such as malnutrition and diseases, qualified as psychosomatic, that derived from stress or sexually transmitted diseases.

Article 13 provides for the equality of rights of women and men in economic and social life including family benefits, equal access to credit, and access to all sport and cultural activities. The implementation of this Article could require, in many countries, the regulation of activities that are not carried out by governmental organizations, but instead by entities of the private sector.

The fact that Article 14 of the Convention provides measures tending to ensure that the Convention is applied to women in rural areas is a recognition that they constitute a group that faces specific problems and that requires special attention. Therefore, Article 14 calls for women's participation in rural development, the adoption of measures to ensure corresponding benefits, and an opportunity to find relief for problems relating to employment, education, health, training, credits, and trade.

Part IV of the Convention includes Articles 15 and 16. Article 15 deals with the equality of women and men before the law and equal legal capacity concerning civil matters, judicial proceedings, contracts, administration of property, and other questions related to civil rights. The objective of this Article is for women to exercise fully their legal autonomy and their capacity to administrate their goods and those of their families in order to eliminate the serious limitations they face in providing for their own needs and those of their relatives under their care.

Article 16 also includes equal legal rights related to matrimony and to family relations, including the right of women to freely get married, to decide the number and timing of their children, to exercise their rights as progenitors independent of their civil status, and to administer their property without any interference. In the concrete case of women, the provisions of Article 2, paragraph 3 and of Article 23 of the Covenant on Civil and Political Rights are complemented in this manner.

Thus, we reach the conclusion that the fundamental provisions of

the Convention, as related to those of the Covenants on Human Rights, are provisions that make evident the universality, indivisibility, interdependence, and interrelation of all human rights for women and men equally. The provisions of the Convention also make it possible to eliminate the long-time division between the human rights of women in public and private spheres.

## VI. COMMITTEE FOR THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW)

The implementation of the Convention's provisions, even though they constitute legal commitments for states parties, is subject to international analysis. That is, it does not confer upon only the state itself the responsibility to decide whether or not those obligations have been fulfilled, as is the case of other human rights instruments. For this reason, Part V of the Convention, that comprised of Articles 17 through 20 establishes a system of control and supervision of implementation that is similar in general terms to the systems stipulated in both Covenants on Human Rights.

Article 17 provides for the creation of the Committee for the Elimination of Discrimination Against Women (CEDAW) comprised of twenty-three male and female experts elected by the Conference of States Parties every two years in their personal capacity. This means that they are not government representatives, but that they are experts with a sound knowledge of the issues dealt with in the Convention, in particular, knowledge about the condition of women.

According to Article 18, the states parties must present to the Secretary-General of the UN initial and periodic reports concerning legislative, judicial, and administrative measures, including measures of any other kind that might have been adopted in order to carry out the provisions of the Convention.

CEDAW examines such reports and presents, in turn, an annual report to the General Assembly through the Economic and Social Council (ECOSOC) regarding the development of its work.

### *A. Activities of CEDAW*

During its first period of sessions in October, 1982, CEDAW decided first to define the guidelines for the formulation of the



reports and to elaborate on its own rules of procedure as indicated in Article 19 of the Convention. In the second session in 1983, CEDAW initiated the examination of the states parties reports. By July, 2000 the Committee accomplished the consideration of more than 250 reports from all geographical regions, different levels of regional development, various cultures, and various socioeconomic systems. The analysis of the reports of states parties has allowed CEDAW to develop a fruitful dialogue with the states representatives. This dialogue, developed by means of questions and comments formulated by expert members of CEDAW, is at times critical and in most occasions performed with the purpose of going deeper into the real fact situation of women in each of the countries.

### *B. Organization of the Work of CEDAW*

Due to the bulk of CEDAW's work and to the reduction in time available for its sessions to only two weeks, CEDAW established the first permanent Working Group with the mandate to examine and propose the necessary measures to facilitate its work and achieve greater efficiency in the results. On account of the number of Reports to be examined and the lack of time and resources to discuss them adequately, CEDAW also decided to create a Working Group responsible for the study of periodic reports to be reviewed by CEDAW along with a series of prepared questions and proposals for states parties as a basis for the examination of such reports. The Working Group met for the first time in 1990 with excellent results.

In 1999, CEDAW decided to change the dates of the previous Working Group meetings in order that states parties might receive with greater anticipation CEDAW's questions, enabling them to provide answers in advance, and ensuring that female and male experts might analyze and study responses with sufficient time. This new working system helps speed along the dialogue between CEDAW and the states parties, with greater subject courage.

### *C. Functions and Competence of CEDAW*

Article 17 of the Convention indicates that the member experts of CEDAW shall be elected taking into consideration not only traditional "equitable geographical distribution," but also the

“representation of different forms of civilization, as well as the principle legal systems.” This has permitted a comprehensive and integral analysis of the different systems and forms of implementing the Convention in various countries. It is also now possible for CEDAW to thoroughly debate some of the main issues, including:

1. the scope of the provision of Article 21 regarding the suggestions and recommendations of general character that CEDAW might make based on examination of the Reports and on data transmitted by states parties;
2. the contents of the reports, authorized by Article 22 and requested of the specialized agencies, regarding the implementation of the Convention in the areas corresponding to the scope of activities, as well as the degree of participation of those specialized agencies in sessions of CEDAW;
3. reservations of states parties when ratifying or acceding to the Convention, and the competence of CEDAW to analyze their scope and, eventually, to decide whether or not to present a recommendation to the state making the reservations in order to withdraw them; and
4. the scope and significance of the Articles of the Convention and their due implementation.

For the purpose of analyzing and discussing these issues, CEDAW decided to establish an open Working Group of a permanent nature (Group II), the results of which are reflected in their annual Report of CEDAW.

#### *D. Article 21*

The implementation of Article 21 had been carefully discussed by CEDAW since the first Session, always without doubting that CEDAW could, and should, make suggestions and general recommendations. In the opinion of some female experts, CEDAW, based on the stipulations of Article 21, would have the authority to “exhort” states parties to implement various measures tending to promote women’s conditions, or else have the authority to question states parties directly.

As for the degree of the specialized agencies' participation and the contents of their reports to CEDAW, it was decided to request summary reports from each one in order to gain a wider panoramic view of the programs underway in the states parties.

Another source of information for CEDAW, in the mandate regarding the surveillance of the implementation of the Convention, came from nongovernmental organizations representing human rights and women. Likewise, the Division for the Advancement of Women, which acts as Secretariat of CEDAW, provides it with analytical documents based on statistical indicators related to the Articles of the Convention, referred to in each periodic report of the states parties.

### *E. Reservations*

The issue of the reservations of states parties was the object of long debates by CEDAW beginning in the Third Period of Sessions when CEDAW examined initial reports of a country that presented a number of reservations when ratifying the Convention. A large number of CEDAW experts considered then, and still consider, that the majority of the reservations presented by the states were inconsistent with the fundamental objectives of the Convention.

Based on the deliberations of CEDAW and on the concern for the number and substance of the reservations presented to the Convention, this issue was also discussed at the World Conference on Human Rights held in Vienna in 1993. At that time, a call to all states was included in the Program of Action, approved by the Conference, for their accession to, or ratification of, the Convention without reservations as well as a request to consider the possibility of limiting the scope of those reservations or formulating them, in any case, in the most precise way possible.

Nevertheless, CEDAW continued to be concerned, not only because of the large number of reservations presented when subscribing or ratifying the Convention, but because of their content. For this reason, an analysis regarding the impact that the reservations had, or might have, in the implementation process of the Convention was carried out. CEDAW adopted a declaration that it submitted to the General Assembly in its 1998 Report, as its contribution to the commemoration of the fiftieth anniversary of the Universal

### Declaration of Human Rights.

In the Declaration, CEDAW was of the opinion that “Article 2 has fundamental importance for the object and purpose of the Convention” and that upon ratifying the Convention, the states parties expressed their “agreement that all forms of discrimination against women should be condemned” and further agreed “to put into practice the strategies provided for in items (a) to (g) of Article 2 to eliminate discrimination.” CEDAW further stated that “[n]either the traditional, religious or cultural practices nor the national laws and policies, incompatible with the Convention, can justify the violation of the provisions of the Convention.”

#### *F. Analysis of the Provisions of the Convention Carried Out By CEDAW*

Throughout its first fifteen sessions, Working Group of CEDAW analyzed and debated several general recommendations dealing with the specific agenda item entitled “Implementation of Article 21 of the Convention.” Up until 1991, CEDAW adopted twenty-two general recommendations of different natures and concerning different questions, including: reservations to the Convention; convenience to establish special or temporary measures for the protection of women; education and orientation programs to eliminate prejudice and other traditional practices hindering the promotion of women; prevention of and combat against Acquired Immunodeficiency Syndrome (AIDS); the problem of female genital mutilation, as one of the traditional practices that has serious consequences on the health of mother and child; the need to include in the national statistics systems indicators regarding the condition of women; effective national mechanisms and the necessary promotion of the Convention and the activities of CEDAW; the problem of violence against women; the condition of women at work and equal pay for equal work; the condition of women who work without remuneration in urban and rural family enterprises; the measurement and appraisal of non-remunerated domestic work; and the condition of disabled women.

### *G. Interpretation of the Provisions of the Convention*

Since 1992, CEDAW has initiated a more comprehensive and substantive analysis of the scope and importance of the provisions of the Convention. Other treaty bodies, or surveillance bodies, in charge of the implementation of Conventions, particularly those of Human Rights, have done the same, such as the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, the Committee on Human Rights, as well as the Committee on Economic, Social, and Cultural Rights. These Committees have made substantive interpretations of each Convention under their surveillance. CEDAW has proceeded to undertake such interpretative analysis, trusting that it most certainly will be in support of a better implementation of the Convention and of a greater promotion, among the interested groups and persons, of its importance and scope.

In 1992, the Eleventh Period of Sessions, CEDAW analyzed several Articles of the Convention and discussed the importance of their implementation in order to combat violence against women. This was designated in General Recommendation No. 12, that was adopted during the Eighth Period of Session in 1989. According to it, CEDAW had considered that Articles 2, 5, 11, 12 and 16 of the Convention “require States’ Parties to act to protect women against violence of any kind.” Based on those studies and discussions, CEDAW decided to approve General Recommendation No. 19 that included observations regarding Articles of the Convention related to the question of violence against women, sexual harassment, and the exploitation of women. CEDAW also reached the conclusion that “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.” In Recommendation No. 19, CEDAW also noted that “gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.” Therefore, the Convention applies equally to “violence perpetrated by public authorities,” as well as “by any person, organization or enterprise” by means of discrimination. It also affirmed that “family violence is one of the most insidious forms of violence against

women” and that “it is prevalent in all societies,” recognizing that 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.”

On that same occasion, CEDAW examined its future contribution to the World Conference on Human Rights and decided to approve Suggestion No. 4 containing several proposals, including:

In light of General Recommendation No. 19, it is confirmed that violence against women is proscribed by the Convention, as it constitutes a form of discrimination. Therefore, measures must be taken to increase women’s international protection against violence; states parties must be requested to take positive measures to prevent and eliminate violence against women in public and private life.

In 1994, during the Thirteenth Session, Articles 9, 15, 16 and other provisions related to family condition were studied, and Recommendation No. 21 was adopted. This Recommendation reaffirms that:

1. nationality is critical to full participation in society. Therefore, 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;
2. when a women cannot enter into a contract at all, or have access to financial credit, or can do so only with their husbands’ or a male relative’s concurrence or guarantee, she is denied legal autonomy;
3. 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;
4. 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; and
5. 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 as head of household and primary decision maker and therefore contravene the provisions of the Convention.

Also, in 1994, CEDAW initiated an analysis of Articles 7 and 8. The analysis was related to the political rights of women and their full participation in national and international political life, as well as to the concept of discrimination and the necessary measures to eliminate prejudices and traditional practices. CEDAW performed the study of the impact on the implementation of Articles 7 and 8 until 1997 when it approved Recommendation No. 23. It observed in Paragraph 8 this Recommendation that:

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 . . . Men historically have both dominated public life and exercised the power to confine and subordinate women within the private sphere.

It is further added: "Relieving women of some of the burdens of domestic work would allow them to engage more fully in the life of their communities." It points out in Paragraph 11 that "women's economic dependence on men often prevents them from making important political decisions and from participating actively in public life." It also states in Paragraph 17 that "to achieve broad representation in public life, women must have full equality in the exercise of political economic power; they must be fully and equally involved in decision-making at all levels."

CEDAW identified various factors that, to a greater or lesser degree, make it difficult in many countries for women to exercise the right to vote and to be elected, currently set forth in Article 7, item (a), including the following in Paragraph 20 and 21:

Less access than men to information about candidates and about party political platforms and voting procedures; . . . women's double burden of work, as well as financial constraints, will limit women's time or opportunity to follow electoral campaigns; . . . in many countries, traditions and

social and cultural stereotypes discourage women from exercising their right to vote. . . . 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.

CEDAW initiated the study of Article 12 and its relation to other provisions of the Convention in 1997. Following a three stage procedure, and by means of collegiate analysis sharing comments and points of view with specialists from WHO, other UN agencies, and nongovernmental organizations, CEDAW finished the study of the right to health and its protection through the Convention in 1999. Recommendation 24 was then adopted. Among other things, it pointed out therein:

1. the full realization of women's right to health can be achieved only when states parties fulfill their obligation to respect, protect and promote women's fundamental human right to nutritional well-being throughout their life span. On this matter CEDAW clearly stated that, in regard to the effects of General Recommendation 24, when speaking of women, it must also be understood that it includes the child and the young girl;
2. while biological differences between women and men may lead to differences in health status, there are societal factors that are determinative of the health status of women and men and can vary among women themselves;
3. states parties cannot be exempted of their responsibility to provide health care services by means of transferring their faculties to organizations in the private sector; and
4. young girls and adult women lack sufficient access to information and to the necessary services to guarantee sexual health, in particular, information regarding HIV/AIDS and other sexually transmitted diseases.



### *H. Evaluation of the Implementation of the Convention*

CEDAW prepared a report on the implementation of the 1995 Beijing Platform for Action, based on the analysis of national reports regarding the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women. This report was presented as CEDAW's contribution in preparation for the Twenty-Third Extraordinary General Assembly of the United Nations. The General Assembly evaluated the implementation of the Declaration and Platform for Action adopted by the IV World Conference on Women held in Beijing in 1995.<sup>1</sup>

In the introduction of its report, CEDAW drew attention to the fact that "the Platform is directly linked to the Convention on the Elimination of All Forms of Discrimination Against Women, which establishes obligations legally binding on States' Parties and establishes also an international guideline in order to clear up the concept of equality among women and men." CEDAW noted that the central place "that the Convention has as far as the advancement of women and the achievement of equality is underlined in the Sphere I of special concern of the Platform for Action," entitled the Human Rights of Women, which places its first strategic objective in the promotion and protection of the human rights of women by means of the full implementation of all human rights' instruments.

Among the advancements identified in its analysis of the reports, CEDAW indicated:

1. the national mechanisms in charge of the promotion and advancement of women have been established or strengthened;
2. measures have been adopted for mainstreaming the gender perspective, including through the collection of sex disaggregated data in order to closely observe the effects of the policies and programs on women and girls;
3. in the sphere of human rights, several constitutions have included provisions to guarantee the enjoyment of human rights without discrimination due to sex, in which some of

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1. U.N. Doc. E/CN.6/1999/PC.4.

- them define discrimination;
4. in some states parties, international treaties, including the Convention, have precedence over domestic legislation, while in others, specific legislation has been approved for the implementation of the Convention;
  5. in several states parties, efforts have been undertaken to address traditional stereotypes, including through revisions of textbooks and teaching methods, in order to eliminate prejudices based in gender;
  6. the traditional stereotypes and the discrimination against women have been dealt with in the media; and
  7. many of the states parties have adopted far-reaching measures to address the different forms of violence against women, granting them high priority in the national strategy for the prevention of delinquency. Legislation has been introduced with respect to penalizing intrafamily violence and marital rape.

CEDAW also identified some problems that hinder the execution of the Platform for Action and, consequently, the implementation of the Convention. Among these problems are:

1. new and ongoing questions, such as the unfavorable economic consequences for women as the result of the transition to a market economy, especially with regard to employment, health, and social services;
2. traffic of women and the exploitation of prostitution have become serious obstacles for the implementation of the Convention. Prostitutes are still affected as a result of the discriminatory application of the law, including forced medical examinations and the absence of protection and rehabilitation mechanisms; and

3. the persistence of stereotyped attitudes regarding the functions of men and women, according to gender, is a critical obstacle for the implementation of the Convention and the execution of the Platform. These attitudes perpetuate traditional customs and practices that are harmful to women and they create an all-embracing discriminatory environment. They incorporate strict social codes that reaffirm stereotyped ideas related to the role of women within the family and their participation in public life, preventing them from obtaining employment without discrimination and further discouraging women from going into public life and looking for nontraditional jobs.

*I. Communications Procedure: Complaints of Nonfulfillment or Violation of the Provisions of the Convention*

Another important element to which a great number of CEDAW members have given attention, and that was discussed thoroughly in 1992, is the fact that when elaborating the Convention, the drafters overlooked the inclusion of a provision related to the possibility that CEDAW will examine complaints about violations of provisions of the Convention. This question was raised by several nongovernmental organizations that argued the treaty bodies had not granted sufficient attention to the violations of the principle of non-discrimination due to sex. This was because all efforts were focused on the elimination of violations of fundamental human rights set forth in the Covenants, especially those committed against the physical integrity of people by state officers or authorities. As a matter of fact, these are the two elements that constitute a violation of human rights, because otherwise such assaults to the physical integrity by private individuals constitute offenses or crimes of common law. Further, it must be added that the recent trend includes the sense of giving priority or preferential attention to the promotion and protection of civil and political rights, isolating economic, social and cultural rights and, thus, pretending to ignore the indivisibility of both categories of human rights in which the rights of women are integrated in an indisputable manner.

The discussions among the Committee's experts and the ideas of the NGOs brought about results at the World Conference on Human Rights held in Vienna that included in the Program for Action an appeal to the United Nations Commission on the Status of Women and to CEDAW to examine urgently the possibility of introducing the right of petition preparing an Optional Protocol to the Convention. In this respect, it must be noted that CEDAW, as a Committee of Experts or Treaty Body, is not competent to elaborate or prepare any international instrument and the most it could do, as was done, would be to make a recommendation to the pertinent bodies like the Commission on the Status of Women.

After a very fruitful meeting of female and male academic experts and members of NGOs and with the participation of several women members of CEDAW, CEDAW adopted Suggestion No. 7 that it then submitted to the UN's Commission on the Status of Women and included practically all the proposals of the meeting.

The 1995 IV World Conference on Women, encouraged by previously noted actions, decided to incorporate among their recommendations for the measures to be adopted on the human rights of women, by governments, paragraph 230(k), requesting governments to:

give support to the process initiated by the Commission on the Status of Women, with the aim of preparing a draft Optional Protocol for the Convention on the Elimination of All Forms of Discrimination against Women, that might enter into force as soon as possible, regarding a procedure related to the right of petition . . . .

The Commission on the Status of Women established a Working Group, open to all states, that held its meetings at the same time as the Commission itself, between 1996 and 1999, to elaborate on the draft of the Optional Protocol of the Convention, submitted by the Commission to the Fifty-Fourth United Nations General Assembly. It was adopted in October and was open for the signature of states parties on December 10, 1999. That day it was signed by twenty-three states parties and should go into force when ratified by ten additional states parties.

To this date, the Optional Protocol of the Convention on the

Elimination of all Forms of Discrimination Against Women has sixty-two signatures of states parties and eleven ratifications: Namibia, Senegal, Austria, Bangladesh, New Zealand, Denmark, Thailand, France, Ireland, Italy and Bolivia. It will enter into force on December 22, 2000.

The Optional Protocol of the Convention complements the implementation procedures already in the Convention established to safeguard women's human rights with a communications procedure and an inquiry mechanism. The Optional Protocol will assist in insuring the enjoyment by women of their rights under the Convention in all areas of activity: health, education, employment and training, political participation, and family. The Optional Protocol to the Convention is also an excellent instrument for building awareness of equality between women and men and of the negative effects of sociocultural stereotypes that perpetuate discriminatory attitudes towards women. It should be remembered, however, that the mechanisms in the Optional Protocol will always remain subsidiary to national remedies and their greatest value will be their national influence. I am convinced that the Optional Protocol will inspire states parties to examine their domestic remedies currently available, and their effectiveness, for preventing and redressing violations of the rights of women. It is action at the national level that creates an environment in which women and girls are able to fully enjoy their human rights and where their grievances are addressed speedily and seriously.

According to the procedure for communications established by the Optional Protocol, CEDAW is authorized to receive communications related to violations of rights set forth in the Convention, as well as to issue opinions and recommendations. In the inquiry procedure, CEDAW could initiate investigations regarding severe or systematic violations of the provisions of the Convention perpetrated by a state party.

Both procedures have already been contemplated in similar international legal instruments or in the provisions of some of the Conventions on Human Rights. At present, CEDAW has initiated a study of the procedures that it might adopt to fulfill the obligations assigned to it by the Optional Protocol. To that end, CEDAW held an extraordinary working meeting in Berlin, at the generous invitation of

the Government of the Federal Republic of Germany, from November 27 to 30, 2000.

*J. Evaluation of the Development of CEDAW*

During the first years of its functioning, in the opinion of some people, CEDAW was considered a very modest treaty body in the feminist field and conservative in the political framework. It was argued that CEDAW should “face” the governments of states parties to the Convention with their own prejudices, practices, and traditions, and convince them of the need to reexamine them.

There was another tide of opinion at the end of the 1980s that considered after almost ten years of being in force that the Convention, with eight years of CEDAW work behind it was only the beginning of the legislative task, of the creation of norms, and of the education and diffusion of labor. This could not have been developed fully if CEDAW did not have the necessary resources or the joint support of the NGOs and governments.

Although CEDAW worked very hard to fulfill its responsibilities under the Convention and its reports were submitted in due time to the UN General Assembly, its work until 1992 was only known and recognized by specialized NGOs functioning in the United States, Canada, and some other developed countries. In a great number of countries, women were not aware of the existence of an international Convention that set forth their human rights and their right to equality.

Fortunately, various factors contributed to a wide diffusion of the Convention. Women’s associations acquired more experience and cohesion so that more women could be made aware of their equal condition and of their individual development options.

Currently, the Convention for the Elimination of All Forms of Discrimination Against Women is a text for study and consultation. Likewise, CEDAW is known and recognized in the spheres of women organizations NGOs and in the academic and research spheres for its defense of human rights. It is also a course for an academic degree and a master’s degree in professional or university teaching centers. They are the law and the ombudsman, in the international sphere, for the protection of the human rights of women.

Unfortunately, a campaign of discredit has arisen recently against CEDAW, using, in a twisted and tendentious manner, in my personal opinion, the suggestions and recommendations that have been included in the concluding comments of CEDAW in regard to the reports of the states parties. The discreditors confer upon them a different meaning than the one they have, and the one CEDAW itself wished to give them when approving its conclusions. For example, CEDAW has been accused of promoting abortion or of promoting prostitution and sexual trade. What CEDAW has sought, however, is to encourage the adoption of sexual education programs, the development of actions to support women who are obliged to resort to abortion, not only in order to avoid risking their lives, but to illuminate new options as opposed to returning that extreme measure in the face of unwanted pregnancies. In the case of the condition of prostitutes, CEDAW pointed out the need to combat trafficking of women and young girls, both in their places of origin and in the places of final destiny. It also pointed out the need to punish the exploitation and the prostitution of others and, therefore, has recommended the penalization of those making use of the services of prostitutes. Finally, it has recommended the adoption of programs of orientation, information, and protection of women that are dedicated to ending prostitution, against sexual abuse, violence, sexual exploitation, and infectious and sexually transmitted diseases.

## VII. CONCLUSION

The root of the substantive or fundamental value of the Convention is the impact that it has had in creating awareness in women of the legitimacy or validity of their rights and, with that, an awareness of living out and publicly expressing their demands for institutions and national mechanisms in order to protect themselves and to serve as forums for expression of their claims and defenses of their fundamental human rights.

At the same time, the Convention and its follow-up mechanism, CEDAW, have propitiated that women also claim the adoption of international measures as means by which their rights can be better protected and their condition of life promoted, while they fully exercise and enjoy all their human rights in the civil, political,

economic, social, and cultural spheres. That is the reason why the implementation of the Convention at the national and international level is so significant. It not only constitutes the most important legally binding instrument addressing the equality of women, but also functions as the basic mechanism for the eradication of discrimination due to sex and, consequently, for the achievement of the substantive equality of women, both *de jure* and *de facto*.

Judging from a summarized review of the status of the rights of women, their actual condition, and the development of the work of CEDAW, it could be affirmed that the equality of men and women in all spheres of life cannot fully be achieved through the mere signature, ratification, or accession to an international treaty. However, such a review does witness an effective instrument for the promotion of social and political awareness, the reach of which is conditioned according to the degree of social advancement, education, and information in each country.

It is also clear that no resolution, declaration, or convention can impose patterns of conduct or social and political models if its beneficiaries and actors do not decide by themselves and for themselves. To that end, a conscientious information and education process is essential. This can be accomplished through an enhanced program of diffusion of information on the rights of women, of the provisions of the Convention for the Elimination of All Forms of Discrimination Against Women, and of the existing surveillance mechanisms for its application, including the communications and inquiry procedures guaranteed by the Optional Protocol of the Convention.

For that reason, I would like to express to Washington University School of Law in St. Louis, Missouri, my deepest gratitude and sincere congratulations for establishing the Institute for Global Legal Studies and for including within its inaugural program the issue of the human rights of women.







