

## Full Length Research Paper

# Gender rights in post-colonial societies: A comparative study of Kenya and India

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**This paper is a comparative legal study undertaken to determine the current status of gender rights in two countries: India and Kenya. The countries were selected on the basis of their similar legal systems, colonial heritage and the demographic dispersion of women in rural areas. Using the *Convention on the Elimination of All forms of Discrimination against Women (CEDAW)* as the international benchmark for state behaviour, it examines the existing legal framework, institutions and state policies in both countries to draw similarities and identify differences in each country's gender rights framework. Drawing from the comparative analysis, the main areas of reform for Kenya are the enactment of anti-discriminatory legislation, new institutions with separate investigative and enforcement powers and an approach away from 'mainstreaming' towards gender 'empowerment.' For India, the challenge seems to be land reform, particularly with respect to land ownership for women in rural areas. Both countries would benefit from three common measures: a new conceptual legal theory, progressive anti-discrimination legislation and gender awareness education to fight the embedded problem of deep-rooted negative socio-cultural norms.**

**Key words:** Gender rights, CEDAW, Mainstreaming, Empowerment, India and Kenya.

## INTRODUCTION

Two post-colonial countries: India and Kenya. The same fervor for freedom paved the way as they attained independence from Britain in 1945 and 1963 respectively. But how did these two countries deal with the issue of ensuring human rights and freedoms in their societies after independence. In particular, how were gender rights, as a dimension of the wider human rights paradigm, perceived, established and developed within each country's new legal framework?

This paper examines the current status of gender rights based on the respective legislative and policy measures taken post independence. It also examines whether there are any impediments to achieving de facto gender equality in light of the various measures taken.

So let us pitch India and Kenya in juxtaposition (outside the cricket ground for once!) to see how well they fare in the arena of gender justice.

## RESEARCH METHODOLOGY

The principal methodology employed is legal research of primary

sources. Literature review was conducted to understand how legal norms fit within the wider society. The two countries were selected on three common factors: (i) colonization by Britain, (ii) Common law legal system and (iii) current demographics. About 62% of women live in rural areas in Kenya (National Gender Policy, 2000), and 71% of the same live in India (People Statistics, 2012). Despite the huge population divide, the three factors were sufficient to use India and Kenya as comparative models.

A neutral comparative methodology was selected to analyse how a common social problem was legally resolved in two countries belonging to the same legal family. How did India and Kenya identify, protect and perceive gender rights in their respective jurisdictions? The comparativism is functional in nature with the aim to understand the specific legal and policy solutions that were developed to promote gender justice in each country. In this regard the comparison will be conducted across the following five parameters: (i) constitutions, (ii) institutions, (iii) policy initiatives and (iv) jurisprudence for both India and Kenya.

## The comparative needle – gender rights

A purview of the literature revealed that there is no specific body of law called 'gender rights' per se and rather

gender was a cross cutting theme across other substantive areas of law. Gender rights were distilled into two separate legal norms: (i) *gender equality* and (ii) *prohibition against discrimination*. Therefore to gauge the current status of gender rights, a Kelsenian view needed to be taken to see where the grundnorm for gender actually exists; first at the meta level (internationally) and then at the micro level (domestically) that is, where should the comparative needle be placed?

The Kelsen approach was adopted since it was difficult to pinpoint a single underlying legal principle or legal basis for gender justice that was applicable to both countries today. Therefore to determine appropriate legal norms, the rights and obligations embedded in CEDAW were distilled using Kelsen's Pure Theory of Law, which aims to describe law as binding norms while at the same time refusing, itself, to evaluate those norms. The theory posits that 'legal science' is to be separated from 'legal politics'. Central to the Pure Theory of Law is the concept of a 'basic norm (*Grundnorm*)' - a hypothetical norm, presupposed by the jurist, from which follow a hierarchy of all 'lower' norms within a particular area of law. So using this approach within the gender rights sphere the two grundnorms extracted are the principle of gender equality and the prohibition against discrimination against women.

The *Convention on the Elimination of All forms of Discrimination against Women (CEDAW)* (UN Women, 2012) is the basis for international norms (Appendix A). The micro level analysis is dependent on the meta-level analysis and this paper will use CEDAW as the basis for judging each country's performance in gender justice.

Therefore, gender specific legal norms and practices will be discerned from CEDAW reports, constitutions, institutional framework, policy initiatives and jurisprudence.

## THE COMPARATIVE THERMOMETER – SOURCES

### Convention on the elimination of all forms of discrimination against women (CEDAW) reports

Convention on the elimination of all forms of discrimination against women (CEDAW) country reports were selected since CEDAW is the longest standing international convention with respect to gender rights that was signed by the most number of signatories. Furthermore, country reports are produced as a direct obligation under article 18 of the convention and there is the added incentive of each country to report their legislative, administrative and other measures to show compliance. However there is also a trend towards specific CEDAW indicators or an amalgam of indicators, see for example the harmonized indicator developed in Krygstan.

Article 18 of CEDAW obliges signatories to submit a report on the *legislative, judicial, and administrative or*

*other measures* that they have adopted to implement the convention, first within one year after the convention came into force, and then every four years thereafter. CEDAW came into force in India and Kenya in 1993 and 1984 respectively.

So despite the temporal difference in the date of independence of India and Kenya (18 years), both countries adopted CEDAW within the same decade and have followed a similar trajectory to its implementation.

Since adopting CEDAW, India lodged its Initial report on 10 March 1999, its combined second and third periodic reports on 19 October 2005 and its Fourth Periodic report on 8 August 2006.

Since adopting CEDAW, Kenya lodged its Initial report on 8 April 1985, its second periodic report on 8 April 1989, its combined third and fourth periodic reports on 14 February 2000 and its combined fifth and sixth periodic reports on 16 October 2006.

Only the last two reports for each country were selected. For India, the combined second and third reports lodged on 19 October 2005 and the fourth periodic report lodged on 8 August 2006 were examined. For Kenya, the combined second and third reports lodged on 19 October 2005 and the combined fifth and sixth periodic reports lodged on 8 August 2006 were examined.

The last report of each country is of particular importance as it was submitted in the same year (2006) and so provides another common basis for comparison. Further, each report reflects the most up to date state of affairs in respect of state action, is cumulative in nature, builds upon preceding reports and addresses any criticisms of the CEDAW Committee.

Appendix B shows a full comparison showing *all* measures taken by both countries up to the date of preparation of their last reports.

However, it is important to bear in mind that Kenya's last report is largely outmoded since it adopted a new constitution on 27 August 2010. Therefore, that report will be discussed in this article in light of the applicable provisions in the new constitution.

### Constitutions

Kenya's Constitution (Attorney General's Department of Kenya, 2010)<sup>1</sup> enshrines the right to equality in Article 27, which stipulates that, "every person is equal before the law and has the right to equal protection and benefit of the law."

The prohibition against discrimination is contained in Article 27, subsections (4) and (5). Articles 21(3) and 27(6) impose mandatory obligations on the state to take "legislative and other measures, to redress any disadvantage suffered by individuals or groups because of past discrimination."

<sup>1</sup>Constitution of Kenya dated 6 May 2010, Attorney General's Department - <http://www.attorney-general.go.ke/>

A key feature of Article 27 (2) is that equality is defined as *the full and equal enjoyment of all rights and fundamental freedoms*, presumably those enunciated in the Bill of Rights contained in Chapter Four. This is laudable considering the fact that there was no definition of “equality” under law to give effect to Article 1 of CEDAW. The closest judicial statement was contained in *Mary Rono – v – Jane Rono and William Rono* (Civil Appeal No. 66 of 2002, Court of Appeal sitting in Eldoret). Practically this means that gender equality will be viewed contextually along with the other rights and freedoms of Kenya’s Bill of Rights and not as an exclusive legal norm.

Another key provision is Article 60 (1) (f) that regulates land use such that all land rights must give effect to the principle of anti-discrimination against women. This provision is pioneering in its nature and scope and is anticipated to have a far-reaching effect in Kenya’s, often discriminatory, customary practices that restrict land ownership by women.

Political representation is envisaged across all levels of government such that no more than two-thirds of any elected body shall be of the same gender [Articles 81 (B), 175 (C), 250 (11) and 100 (A)].

The Indian Constitution (Government of India, 2012)<sup>2</sup> guarantees the right to equality under Article 14 and prohibits gender discrimination under Article 15. It also provides for positive discrimination under Articles 15(3) and 16(4) imposing a burden on the state to take measures to ensure de facto equality is achieved. It then elaborates the notion of equality within different spheres - “the right to employment or appointment to any public office” (Article 16(1)), “the right to an adequate means of livelihood” (Article 39) and the provision of “just and humane conditions of work and for maternity relief” (Article 42).

Political representation is only guaranteed at the local and municipal levels. This was given effect by the 73rd and 74th Amendments to the Indian Constitution in 1993 where women were given a 30% representative quota in the local governance structures, mainly Panchayats in local communities.

In addition, Article 51A (e) imposes a fundamental duty on every citizen of India “to renounce practices derogatory to the dignity of women.”

## Institutions

The key institution in Kenya is the National Commission on Gender and Development (NCGD). The NCGD was previously established as the Women’s Bureau in 1976, then in 2002 under its current name by the Ministry of Gender, Children and Social Development and under Article 26 (1) of the new Kenyan Constitution it will become the Kenya National Commission on Human

Rights on the implementation date of the Constitution. NCGD has a broad mandate and is essentially the one-stop shop for all gender related issues in Kenya.

The NCGD formulates national policies, oversees the implementation of the National Policy on Gender and Development (NPGD) and advocates against discrimination in legal practice and policy. It also determines strategic priorities in socio-economic, political and development policies that have a gender impact and investigates violations of gender rights and protections. If any gender infringements are found, it then reports these to the relevant authorities. On the other hand, India’s institutional apparatus comprises of:

- 1) Department of Women and Child Development (DWCD) – 1985
- 2) National Commission for Women (NCW) – 1992
- 3) Parliamentary Committee on the Empowerment of Women (PCEW) – 1996
- 4) Inter-Ministerial Committee- May 2005.

The DWCD “formulates policies, enacts legislation and coordinates efforts of both governmental and non-governmental stakeholders” (Indian Ministry of Women and Children, 2012).

The NCW is a key statutory body responsible for reviewing existing legislation with a view to making recommendations to PCEW and investigating complaints against transgressions of constitutional guarantees.

The PCEW considers reports submitted by NCW and then suggests measures that should be taken by the government to improve the status of women. As part of its monitoring function, it also examines past actions and measures taken by the government to improve equality and socio-economic status of women and makes further recommendations, if necessary.

The Inter-Ministerial Committee reviews and reports on any legislation that has a potential discriminatory impact on women.

## Policy initiatives

Since independence, Kenya’s approach to policy has been single policy initiative that culminated in the *National Gender and Development Policy* (NGDP) in 2000 (National Gender and Development Policy, Kenya, 2000). The NGDP is the principal guiding instrument that drives government action in all sectors ranging from the economy, law and political participation of women.

It aims to provide a single framework for including gender issues by “mainstreaming gender in all sectors and levels of development,” (National Gender and Development Policy, Kenya, 2000: 3). Practically, it achieves this by creating silos within government Ministries called Units of Gender Issues (UGIs) that are responsible for ensuring that “gender issues are considered in sectoral policies, projects and programmes,”

<sup>2</sup>The Constitution of India, Government of India - <http://indiacode.nic.in/coiweb/welcome.html>

(National Gender and Development Policy, Kenya, 2000: 36).

In contrast, the Planning Commission of India has issued a number of initiatives from the 1950s, such as the following:

- a) Tenth Five Year Plan (2002 to 2007) (the Tenth Plan)
- b) Women Component Plan in 2003 (WCP)
- c) National Empowerment of Women Policy 2001 (NEWP).

The first Five Year Plan commenced in 1950 and the current Plan is the Tenth Plan. The genesis of which is to “empower women as agents of social change and development” (Tenth Plan, India, 2002: 241) and to adopt a sector-specific strategy in social, economic and gender justice empowerment. The focus is on creating “an enabling environment through various affirmative developmental policies that would encourage women to act as catalysts, participants and recipients in the country’s development process” (Tenth Plan, India, 2002: 239).

The WCP directs governmental budgets to allocate at least 30% of received funds to “women-specific schemes” (Tenth Plan, India, 2002: 226) so that benefits from other sectors do not by-pass women (Tenth Plan, India, 2002: 228), reinforcing the government’s budgetary commitments for gender development.

The NEWP, mirroring the “empowerment” language of the Tenth Plan, establishes policy principles in the economic and social spheres together with guideline strategies that will assist in achieving gender specific goals such as micro financing for women in rural areas.

### Case law

Both countries have taken a highly progressive stance in respect of gender justice, with a particular focus on ameliorating discrimination. However, legal and practical impediments act as deterrents to the expansion of gender-based jurisprudence.

In Kenya, cases such as *Mary Rono – v – Jane Rono and William Rono* (Civil Appeal No. 66 of 2002, Court of Appeal sitting in Eldoret) are landmark decisions in gender jurisprudence. The fundamental issues in relation to the actual enforcement of gender norms are the complex legal technicalities associated with initiating a constitutional challenge and the absence of CEDAW protections under domestic law. This lacuna in legal rights existed because Kenya did not have a formal mechanism for incorporating rights and protections provided under CEDAW into domestic law until the new constitution was adopted. It therefore relied on piecemeal legislative attempts for incorporation, which resulted in a number of failed bills and delays in the actual realization of rights conferred by CEDAW. For example, the following bills were introduced but failed to receive assent

in Parliament: *Sexual Offences Bill, Equality Bill 2001, HIV/Control Bill, Domestic Violence (Family Protection Bill) and Affirmative Action Bill* (Cedaw Country Reports, Kenya, Combined Fifth and Sixth periodic report, paragraph 28)

Practically, the issue identified in both countries was a lack of resources of indigent litigants and insufficiency of the national legal aid system.

India’s Supreme Court has been particularly vigorous in entrenching fundamental rights for women and has delivered a series of positivist judgments. See for example the following cases where discrimination was found: *C.B.Muthamma -vs- Union of India* (All India Reports 1979 SC 1868), where public service rules that required a female employee to obtain government permission in writing before her marriage ceremonies were held to be discriminatory; *Air India -vs- Nargeesh Meerza* (All India Reports 1981 SC 1829), where a service condition terminating the services of an airhostess when she became pregnant were discriminatory; and the *Daniel Latiff’s case* (2001 (7) SCC 740), where a Muslim woman was permitted to seek maintenance from her divorced husband under Mohammedan law.

## COMPARATIVE ANALYSIS

### Commonalities

Both countries have incorporated the two fundamental gender norms within their constitutions and have institutions and policies in place to give effect to CEDAW.

However, a crucial gap remains in the absence of any anti-discriminatory legislation in both countries. This is disconcerting as there is no immediate legislative recourse for women to protect entrenched constitutional rights and guarantees. This is bearing in mind that despite judicial positivism shown by appellate courts of both countries, court decisions are still amenable to being tampered by subsequent legislative policy. This situation is particularly acute for turbulent political systems that change political leaders frequently, as is the case in both India and Kenya. Further, the cost of mounting constitutional cases is highly prohibitive compared to other second-tier legislation. It is submitted that any putative anti-discriminatory act should also establish an informal anti-discrimination tribunal that acts as a cheap and accessible mechanism for ensuring gender justice (such as those existing in Australia).

### Differences

Kenya currently faces three challenges in its legislative, policy and institutional framework to fully comply with CEDAW.

Firstly, constitutional reform is the key but given its

history of failed gender-related bills in its parliament, it will need to ensure that there is sufficient political will so that legislation giving effect to Article 27 is actually enacted.

Secondly, there is a “focus” problem with respect to gender issues in the country. Gender equality is often viewed as “gender equity, “which may sound trivial but in reality has grave repercussions in calibrating development policy” (Asiema, 2000: 561). The NGDP employs a “mainstreaming” approach to bring gender to the fore that is; gender is a sub-issue within a larger issue. This is different to India’s WEP that moved away from mainstreaming in the early 1980s, instead adopting an empowerment approach where the focus is on creating an enabling environment for women to “freely exercise their rights as equals with men.” (Tenth Plan, India, 2002: 241).

The shift in approach from ‘welfare’ to ‘development’ of women only took place in India in the Sixth Plan (1980 to 1985). Accordingly, the sixth plan adopted a multi-disciplinary approach with a special thrust on the three core sectors of health, education and employment. In the Seventh Plan (1985 to 1990), the developmental programmes continued with the major objective of raising their economic and social status and bringing them into the mainstream of national development (Tenth Plan, India, 2002: 218).

The empowerment approach puts the focus back on women as actors in their development and gives them a central stage in development policy.

Thirdly, Kenya needs better institutions to deal with the different tenets of its gender strategy. It is submitted that the NCGD does too much and too little at the same time since it lacks the political clout or enforcement powers to conduct its functions properly. This is different to India’s sophisticated institutional edifice that divides tasks between the DWCD, NCW, PCEW and Inter-Ministerial Committee. Each institution specializes on its core functions whilst leveraging on the synergies of the other. Importantly, all institutions are conferred with broad enforcement powers and reporting obligations to increase accountability.

India’s main challenge lies in land reform. Its last CEDAW report conceded that, “Women’s unequal access to land rights is one of the most important forms of persistent gender inequalities since effective access to land determines economic and social status in India.” [(CEDAW) Country Report, Fourth Periodic Report, India: 82 - 84].

The situation in rural areas is exacerbated by women’s lack of land ownership that restricts their ability to obtain credit from financial institutions or agricultural co-operatives due to insufficient collateral. In contrast, Kenya’s Article 60 (1) (f) is innovative as it creates and interprets land rights in accordance with the gender norm against discrimination. It states that land rights will be construed in accordance with the principle of “*elimination of gender discrimination in law, customs and practices*

*related to land and property in land*” (Constitution of Kenya, 2010). A constitutional amendment of this nature would create the necessary legislative impetus to reform India’s land law and archaic customary practices in respect of land ownership. The Government of India submitted in its Fourth Periodic Report that it intended to make special efforts during the Tenth Plan to consider/encourage the necessary amendments in legislations relating to ownership of property and inheritance. It will address the problem by generating consensus on the subject and thus make the laws more gender-just, as the evolution of property rights in the patriarchal system has contributed to the subordinate status of women.

### Other factors

Since independence, both countries have made tremendous efforts to garner de jure equality for women, however de facto equality has not risen in tandem with legislative and policy measures. What has halted the tide of progress and why has growth been sporadic? The answer lies in the murky depths of prevailing socio-cultural norms that either permit or diminish the operation of legal norms. It is submitted that “deep rooted socio-cultural norms” [(CEDAW) Country Report, Fourth Periodic Report, India: 93] is the primary cause of gender inequality in both countries.

Socio-cultural norms are zealously defended on the basis of minorities’ cultural autonomy and their “right to culture” (Parashar, 2008: 110). However, using religious personal laws as an example, Parashar persuasively argues that modern legal theory should be revised to strike a balance between “the compatibility of group rights and individual rights” (Parashar, 2008: 110).

There are no logical reasons for rejecting this approach in contemporary legal thinking of a liberal polity as the presumption is in favour of a discourse that facilitates greater “fairness in the law” (Parashar, 2008:111).

Both countries’ CEDAW reports have repeatedly cited anachronistic socio-cultural norms as the main hurdle to improving the status of women and securing compliance. It is useful to note that this is in violation of both countries’ obligations under Article 5(a) of CEDAW as they are both required to “take all appropriate measures to modify social and cultural patterns” to remove prejudices and stereotypes. This positive burden is yet to be fulfilled. Interestingly, both have only taken legislative measures to overrule harmful socio-cultural practices on matters of health. India enacted a raft of legislation to prevent the practice of sati (widow emulations), devadasi (throning of girls to deities) and selective sex abortion. These legislative efforts include *Sati Prevention Act and Devadasi Prohibition Act, The Dowry Prohibition Act, 1961, PNMT Act, 1994 and the Medical Termination of Pregnancy Act, 1971.*

Similarly, Kenya enacted the *Children's Act 2001* to prevent female genital mutilation. The inference is that a woman needs to be either burnt, thronged or scalped before receiving state intervention.

This legislative silence can be seen as a tacit form of approval for negative socio-cultural norms (Maina, 1976). Maina et al. (1976) contend that, "areas where discriminatory legal provisions do not exist, social practices discriminate and are not discouraged by the law." (Maina, 1976: 206). Kung'u (2011) has analyzed the treatment of marital rape in Kenya, arguing for its criminalization and application of additional measures to effectively protect married women from spousal rape. After analysing the international, regional, national and customary framework applicable in Kenya, she argues that a number of measures need to be undertaken to adequately protect women from marital rape. These measures include criminalisation of marital rape, the provision of reconciliation options and the need to remove the underlying gender stereotype of married women being perceived as the sexual property of their husbands. She cites the last factor of gender stereotyping as harmful because "it denies married women sexual autonomy and implies that married women have given perpetual consent to sexual relations with their husbands" (Kung'u, 2011: 37). Further, the stereotype is perpetuated by several factors such as "traditions, the law and statements by legislators" (Kung'u, 2011: 37). Implicit in her thesis is the suggestion that legal change must be accompanied by changes at the social and cultural level for the legal changes to be sustainable and effective.

How should this continuing social problem be addressed? Asiema posits that stereotypical conceptions and discriminatory cultural laws and practices must be changed using education and public awareness. She concludes that, "the ultimate weapon in redeeming gender lies in mental disarmament" (Asiema, 2000: 581). Ironically, both countries have only tackled this issue using a reactive media policy and censorship, instead of a pro-active educational strategy. It is noteworthy that in its Tenth Plan India contended that it had "*an integrated media campaign - covering electronic, print and film media - which projects a positive image of both women and the girl child is the most important component of the Government's communication strategy*" (Tenth Plan, India, 2002: 222). However details of this strategy were not provided in its most recent 2006 CEDAW Country report. India has enacted legislation such as the *Indecent Representation of Women's (Prohibition) Act 1986* and Kenya uses the Association of Media Women to regulate media content. Practically, this achieves little because it fails to understand or challenge prevailing socio-cultural norms - the main reason for gender inequality.

In light of the aforementioned discussion, it is reasonable to conclude that to achieve meaningful progress both countries need to take additional measures in the three areas identified so far. The holy trinity of a new inclusive legal theory, progressive anti-discrimination

legislation and education may just be the solution for both Kenya and India.

## Conclusion

So why did the indignation disappear after independence, and why did the lathis and machetes not garner de fact equality for women? This is a complex question and the reasons are multifarious in nature and extend beyond law. In both countries, deep-rooted negative socio-cultural norms emerged as the predominant reason for stalling progress in gender justice. The aforementioned analysis demonstrates that given the commonalities of their inherited legal systems and demographics there are opportunities for both countries to learn and leverage from one other, particularly in their quest to counter negative socio-cultural norms pervading the psyche of their societies.

Namwera in Kenya or Naytri in India, women in both countries need to push for progress in gender justice as their countries make progress towards improving gender equality. Both still have a long road ahead before they can say that they have truly achieved independence. As Fannie Hamer eloquently states, '*nobody's free until everybody's free!*'

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## APPENDIX A

### Convention on the elimination of all forms of discrimination against women.

#### *The states parties to the present convention.*

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

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex, Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

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

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

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

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

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

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

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

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of

the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

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

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

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

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

Have agreed on the following:

## PART I

### *Article 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 2*

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

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



including sanctions where appropriate, prohibiting all discrimination against women;

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

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

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

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

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

### **Article 3**

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

### **Article 4**

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

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

### **Article 5**

States Parties shall take all appropriate measures:

a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

b) To ensure that family education includes a proper

understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

### **Article 6**

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

## **PART II**

### **Article 7**

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

a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

### **Article 8**

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

### **Article 9**

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

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

## **PART III**

### **Article 10**

States Parties shall take all appropriate measures to

eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- d) The same opportunities to benefit from scholarships and other study grants;
- e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- g) The same opportunities to participate actively in sports and physical education;
- h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

### **Article 11**

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

- a) The right to work as an inalienable right of all human beings;
- b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the

quality of work;

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

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

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

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

b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

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

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

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

### **Article 12**

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

2) Notwithstanding the provisions of paragraph 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.

### **Article 13**

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

- a) The right to family benefits;
- b) The right to bank loans, mortgages and other forms of financial credit;
- c) The right to participate in recreational activities, sports and all aspects of cultural life.

#### **Article 14**

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

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

- a) To participate in the elaboration and implementation of development planning at all levels;
- b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- c) To benefit directly from social security programmes;
- d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- f) To participate in all community activities;
- g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

### **PART IV**

#### **Article 15**

- 1) States Parties shall accord to women equality with men before the law.
- 2) States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and

to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

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

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

#### **Article 16**

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

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

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

### **PART V**

#### **Article 17**

1) For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of

Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2) The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3) The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4) Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6) The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8) The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and condi-

tions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

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

#### **Article 18**

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

- a) Within one year after the entry into force for the State concerned;
- b) Thereafter at least every four years and further whenever the Committee so requests.

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

#### **Article 19**

- 1) The Committee shall adopt its own rules of procedure.
- 2) The Committee shall elect its officers for a term of two years.

#### **Article 20**

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

2) The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee (Amendment, status of ratification).

#### **Article 21**

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

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

**Article 22**

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

**PART VI****Article 23**

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

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

**Article 24**

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

**Article 25**

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

**Article 26**

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

**Article 27**

- 1) The present Convention shall enter into force on the

thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

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

**Article 28**

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

**Article 29**

- 1) Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
- 2) Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
- 3) Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

**Article 30**

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

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