

Appendix I: Legal texts

NATIONAL LEGAL INSTRUMENTS

EXCERPTS FROM THE NAMIBIAN CONSTITUTION

Article 6 Protection of life

The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia.

Article 8 Respect for human dignity

- (1) The dignity of all persons shall be inviolable.
- (2)
 - (a) In any judicial proceedings or in any other proceedings before any organ of the State, during the enforcement of a penalty, respect for human dignity shall be guaranteed.
 - (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

Article 10 Equality and freedom from discrimination

- (1) All persons shall be equal before the law.
- (2) No person may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed, or social or economic status.

Article 14 Family

- (1) Men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religion, creed, or social or economic status shall have the right to marry and found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 16 Property

- (1) All persons shall have the right in any part of Namibia to acquire, own and dispose of all forms of immovable and movable property individually or in association with others and to bequeath their property to their heirs or

legatees: provided that Parliament may by legislation prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens.

Article 19 Culture

Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected by this Article do not impinge upon the rights of others or the national interest.

Article 21 Fundamental freedoms

- (1) All persons shall have the right to:
 - (a) freedom of speech and expression, which shall include freedom of the press and other media;
 - (b) freedom of thought, conscience and belief, which shall include academic freedom in institutions of higher learning;
 - (c) freedom to practise any religion and to manifest such practice;
 - (d) assemble peaceably and without arms;
 - (e) freedom of association, which shall include freedom to form and join associations or unions, including trade unions and political parties;
 - (f) withhold their labour without being exposed to criminal penalties;
 - (g) move freely throughout Namibia;
 - (h) reside and settle in any part of Namibia;
 - (i) leave and return to Namibia;
 - (j) practise any profession, or carry on any occupation, trade or business.
- (2) The fundamental freedoms referred to in Sub-Article (1) hereof shall be exercised subject to the law of Namibia, in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said Sub-Article, which are necessary in a democratic society and are required in the interests of the sovereignty and integrity of Namibia, national security, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

Article 22 Limitation upon fundamental rights and freedoms

Whenever or wherever in terms of this Constitution the limitation of any fundamental rights or freedoms contemplated by this Chapter is authorised, any law providing for such limitation shall:

- (a) be of general application, shall not negate the essential content thereof, and shall not be aimed at a particular individual;
- (b) specify the ascertainable extent of such limitation and identify the Article or Articles hereof on which authority to enact such limitation is claimed to rest.

Article 66 Customary and common law

- (1) Both customary law and common law of Namibia in force on the date of Independence shall remain valid to the extent to which such customary or common law does not conflict with this Constitution or any other statutory law.
- (2) Subject to the terms of this Constitution, any part of such common law or customary law may be repealed or modified by Act of Parliament, and the application thereof may be confined to particular parts of Namibia or to particular periods.

Article 95 Promotion of welfare of the people

The State shall actively promote and maintain the welfare of the people by adopting, *inter alia*, policies aimed at the following:

- (a) enactment of legislation to ensure equality of opportunity for women, to enable them to participate fully in all spheres of the Namibian society; particular, the Government shall ensure the implementation of the principle of non-discrimination in remuneration of men and women; further, the Government shall seek, through appropriate legislation, to provide maternity and related benefits for women;
- (b) enactment of legislation to ensure that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited for they age and strength;
- (c) active encouragement of the formation of independent trade unions to protect workers' rights and interests, and to promote sound labour relations and fair employment practices;
- (d) membership of the International Labour Organisation (ILO) and, where possible, adherence to and action in accordance with the international Conventions and Recommendations of the ILO;
- (e) ensurance that every citizen has a right to fair and reasonable access to public facilities and services in accordance with the law;
- (f) ensurance that senior citizens are entitled to and do receive a regular pension adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities;
- (g) enactment of legislation to ensure that the unemployed, the incapacitated,

the indigent and the disadvantaged are accorded such social benefits and amenities as are determined by Parliament to be just and affordable with due regard to the resources of the State;

- (h) a legal system seeking to promote justice on the basis of equal opportunity by providing free legal aid in defined cases with due regard to the resources of the State;
- (i) ensurance that workers are paid a living wage adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities;
- (j) consistent planning to raise and maintain an acceptable level of nutrition and standard of living of the Namibian people and to improve public health;
- (k) encouragement of the mass of the population through education and other activities and through their organisations to influence Government policy by debating its decisions;
- (l) maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future; in particular, the Government shall provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.

Article 140 The law in force at the date of Independence

- (1) Subject to the provisions of this Constitution, all laws which were in force immediately before the date of Independence shall remain in force until repealed or amended by Act of Parliament or until they are declared unconstitutional by a competent Court.
- (2) ...

Article 144 International law

Unless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.

EXCERPTS FROM THE 1997 NATIONAL GENDER POLICY

- 1.7 The cultural differences, which are the basis for the women's image are the strongest source of gender bias. These biases need to be rectified. Under the cover of culture all sex discrimination is based on the concept of stereotype roles and activities. Socialisation is an extension of the cultural expectations and aspirations expected of the different sexes.

Appendix I: Legal texts – Namibia

1.8 It should be recognised that women constitute a large part of the population in Namibia. The benefits or the positions women hold in the Namibian society as well as access to development and resources is not put proportionate with their input, that is, their responsibilities. They are the backbone of rural economy, health and education, the pillars upon which the country stand. Their vital role in society has been ignored, and their input has not been appropriately ‘valued’ in terms of money. ...

1.11 It is important to recognise that, Namibia has been and continues to be a stratified society, and that inequality between cultural groups, and regional groups, as well as, urban and rural, continues to be observable. This situation has directly and indirectly affected the position of men and women in the country in a negative way. The situation becomes worse in the case of women and the girl child. ...

2.3 It is herewith noted that due to traditional attitudes and gender stereotyping, women continue to be under represented in senior positions in all sectors of the Namibian society. ...

5.8 Strategies to Address Issues Related to Women and Health
Through this policy the Government shall: ...

5.8.15 Enact legislation to combat and protect women against socio-cultural practices that make them susceptible to HIV/AIDS, and contribute to the spread of HIV/AIDS. ...

6.3 The Beijing Platform for Action, Section 113-115 states that violence against women encompasses among others:

6.3.1 Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, traditional practices harmful to women, and violence related exploitation. ...

Violence against women and girls originates essentially from cultural and traditional patterns and harmful practices, language or religion that perpetuates the lower status accorded to women in the family, workplace, the community and society at large. Violence against women and children is made worse by social pressures, women’s lack of access to legal information, aid or protection; the lack of laws that effectively and strictly prohibit violence against women and children; inadequate efforts in enforcing existing laws; and absence of educational programmes to address violence at all levels.

EXCERPTS FROM THE COMBATING OF RAPE ACT, 2000 (NO. 8 OF 2000)

Section 2 Rape

(1) Any person (in this Act referred to as a perpetrator) who intentionally under coercive circumstances-

- (a) commits or continues to commit a sexual act with another person; or
- (b) causes another person to commit a sexual act with the perpetrator or with a third person,

shall be guilty of the offence of rape.

(2) For the purposes of subsection (1) “coercive circumstances” includes, but is not limited to-

- (a) the application of physical force to the complainant or to a person other than the complainant;
- (b) threats (whether verbally or through conduct) of the application of physical force to the complainant or to a person other than the complainant;
- (c) threats (whether verbally or through conduct) to cause harm (other than bodily harm) to the complainant or to a person other than the complainant under circumstances where it is not reasonable for the complainant to disregard the threats;
- (d) circumstances where the complainant is under the age of fourteen years and the perpetrator is more than three years older than the complainant;
- (e) circumstances where the complainant is unlawfully detained;
- (f) circumstances where the complainant is affected by-
 - (i) physical disability or helplessness, mental incapacity or other inability (whether permanent or temporary); or
 - (ii) intoxicating liquor or any drug or other substance which mentally incapacitates the complainant; or
 - (iii) sleep,
to such an extent that the complainant is rendered incapable of understanding the nature of the sexual act or is deprived of the opportunity to communicate unwillingness to submit to or to commit the sexual act;
- (g) circumstances where the complainant submits to or commits the sexual act by reason of having been induced (whether verbally or through conduct) by the perpetrator, or by some other person to the knowledge of the perpetrator, to believe that the perpetrator or the person with whom the sexual act is being committed, is some other person;

- (h) circumstances where as a result of the fraudulent misrepresentation of some fact by, or any fraudulent conduct on the part of, the perpetrator, or by or on the part of some other person to the knowledge of the perpetrator, the complainant is unaware that a sexual act is being committed with him or her;
- (i) circumstances where the presence of more than one person is used to intimidate the complainant.

(3) No marriage or other relationship shall constitute a defence to a charge of rape under this Act.

Section 5 Abolition of cautionary rule relating to offences of a sexual or indecent nature

No court shall treat the evidence of any complainant in criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature with special caution because the accused is charged with any such offence.

Section 9 Special duties of prosecutor where accused is charged with sexual offence

In criminal proceedings at which an accused is charged with an offence of a sexual nature, it shall be the duty of the prosecutor to consult with the complainant in such proceedings in order –

- (a) to ensure that all information relevant to the trial has been obtained from the complainant, including information relevant to the question whether the accused should be released on bail and, if the accused were so released, whether any conditions of bail should be imposed; and
- (b) to provide all such information to the complainant as will be necessary to lessen the impact of the trial on the complainant.

Section 10 Special duties of member of police in respect of bail applications where accused is charged with sexual offence

In criminal proceedings at which an accused is charged with an offence of a sexual nature, it shall be the duty of the member of the Namibian Police Force in charge of the investigation –

- (a) to forthwith inform the prosecutor in such proceedings of any reason to believe that the complainant would be at risk if the accused is released on bail and of any other investigations involving the accused (if any); and
- (b) if bail has been granted to the accused, to forthwith, after becoming aware thereof, inform that prosecutor of any failure by the accused to comply with his or her conditions of bail.

EXCERPTS FROM THE COMBATING OF DOMESTIC VIOLENCE ACT, 2003 (NO. 4 OF 2003)

Section 2 Definition of domestic violence

(1) For the purposes of this Act, “domestic violence”, within the context of a domestic relationship, means engaging in any of the following acts or courses of conduct-

- (a) physical abuse, which includes-
 - (i) physical assault or any use of physical force against the complainant;
 - (ii) forcibly confining or detaining the complainant; or
 - (iii) physically depriving the complainant of access to food, water, clothing, shelter or rest;
- (b) sexual abuse, which includes-
 - (i) forcing the complainant to engage in any sexual contact;
 - (ii) engaging in any sexual conduct that abuses, humiliates or degrades or otherwise violates the sexual integrity of the complainant;
 - (iii) exposing the complainant to sexual material which humiliates, degrades or violates the complainant’s sexual integrity; or
 - (iv) engaging in such contact or conduct with another person with whom the complainant has emotional ties;
- (c) economic abuse, which includes-
 - (i) the unreasonable deprivation of any economic or financial resources to which the complainant or dependant of the complainant is entitled under any law, requires out of necessity or has a reasonable expectation of use, including household necessities, and mortgage bond repayments or rent payments in respect of a shared household;
 - (ii) unreasonably disposing of moveable or immovable property in which the complainant or a family member or dependant of the complainant, has an interest or a reasonable expectation of use;
 - (iii) destroying or damaging, property in which the complainant, or a family member or a dependant of the complainant, has an interest or a reasonable expectation of use; or
 - (iv) hiding or hindering the use of property in which the complainant, or a family member or dependant of the complainant, has an interest or a reasonable expectation of use;

Appendix I: Legal texts – Namibia

- (d) intimidation, which means intentionally inducing fear in the complainant, or a family member or dependant of the complainant by-
 - (i) committing physical abuse against a family member or dependant of the complainant;
 - (ii) threatening to physically abuse the complainant, or a family member or dependant of the complainant;
 - (iii) exhibiting a weapon; or
 - (iv) any other menacing behaviour, including sending, delivering or causing to be delivered an item which implies menacing behaviour;
- (e) harassment, which means repeatedly following, pursuing or accosting the complainant, or a family member or dependant of the complainant, or making persistent unwelcome communications, and includes but is not limited to-
 - (i) watching, or loitering outside or near the building or place where such person resides, works, carries on business, studies or happens to be;
 - (ii) repeatedly making telephone calls or inducing a third person to make telephone calls to such person, whether or not conversation ensues; or
 - (iii) repeatedly sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects or messages to such person's residence, school or workplace;
- (f) entering the residence or property of the complainant, without the express or implied consent of the complainant, where the persons in question do not share the same residence;
- (g) emotional, verbal or psychological abuse which means a pattern of degrading or humiliating conduct towards a complainant, or a family member or dependant of the complainant, including-
 - (i) repeated insults, ridicule or name calling;
 - (ii) causing emotional pain; or
 - (iii) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's, or the complainant's dependant or family member's privacy, liberty, integrity or security; or
- (h) where applicable, threats or attempts to do any of the acts referred to in this subsection.

(2) For the purposes of subsection (1)(g), a person psychologically abuses a child if that person repeatedly-

- (a) causes or allows that child to see or hear the physical, sexual, or psychological abuse of a person with whom that child has a domestic relationship; or
- (b) puts that child, or allows that child to be put, at risk of seeing or hearing the abuse referred to in paragraph (a), but the person who suffers such abuse is not culpable in terms of this subsection.

(3) With the exception of harassment as described in subsection (1)(e) and emotional, verbal or psychological abuse as described in subsection (1)(g), any single act described in this section may amount to domestic violence.

(4) A number of acts that form part of a pattern of behaviour may amount to domestic violence, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

Section 4 Who may apply for protection order

- (1) Any person who is in a domestic relationship may, in the manner provided for in section 6, apply for a protection order against another person in that domestic relationship.
- (2) Notwithstanding any other law, an application may be brought on behalf of a complainant by any other person who has an interest in the well-being of the complainant, including but not limited to a family member, a police officer, a social worker, a health care provider, a teacher, traditional leader, religious leader or an employer.
- (3) An application made under subsection (2), must be taken to have been made by the complainant.
- (4) An application made under subsection (2) must be made with the written consent of the complainant, except in circumstances where the complainant is-
 - (a) a minor;
 - (b) mentally incapacitated;
 - (c) unconscious;
 - (d) regularly under the influence of alcohol or drugs; or
 - (e) at risk of serious physical harm,but, in the case of paragraph (d) or (e), the court must approve the making of the application.
- (5) Notwithstanding any other law, a minor may apply for a protection order without the assistance of an adult person if the court is satisfied that the minor has sufficient understanding to make the proposed application, but the court must not proceed with the application unless the court is satisfied that the alleged domestic violence consists of the conduct contemplated in section 2(1)(a), (b) or (d).

(6) A person on whose behalf an application for a protection order is made under this section must not be compelled to give testimony in any subsequent proceedings relating to the same matter.

EXCERPTS FROM THE COMBATING OF IMMORAL PRACTICES ACT, 1980 (NO. 21 OF 1980)

Section 5 Procuration

Any person who –

- (a) procure or attempts to procure any female to have unlawful carnal intercourse with any person other than the procurer or in any way assists in bringing about such unlawful carnal intercourse; or
- (b) inveigles or entices any female to a brothel for the purpose of unlawful carnal intercourse or prostitution or conceals any female so inveigled or enticed in a brothel; or
- (c) procures or attempts to procure any female to become a prostitute; or
- (d) procures or attempts to procure any female to become an inmate of a brothel; or
- (e) applies, administers to or causes to be taken by any female any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower her so as thereby to enable any person other than the procurer to have unlawful carnal intercourse with such female,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Section 6 Assistance for purposes of unlawful carnal intercourse

Any person who, with intent that any male may have unlawful carnal intercourse with a female, whether a particular female or not, performs any act or does anything or furnishes any information which is calculated or likely to enable such male to communicate with or to establish the whereabouts of or to trace any such female, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

Section 7 Enticing to commission of immoral acts

Any person who –

- (a) in any public street or place entices, solicits or importunes or makes any proposals to any other person for immoral purposes;
- (b) wilfully and openly exhibits himself in an indecent dress or manner at any door or window within view of any public street or place or in any place to which the public have access,

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Section 13 Detention for purposes of unlawful carnal intercourse

- (1) Any person who –
 - (a) takes any female to any house or place or detains her there against her will so that any male, whether a particular male or not, may have unlawful carnal intercourse with her; or
 - (b) takes any female to a brothel or detains her there against her will,
shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding seven years.
- (2) When in any prosecution in terms of subsection (1) it is proved that a female was in any house or at any place so that any male, whether a particular male or not, could have unlawful carnal intercourse with her, or was in any brothel, it shall be deemed that she was taken or detained there against her will–
 - (a) if she is under the age of sixteen years; or
 - (b) if she is sixteen or older but under the age of twenty one years and was taken thereto or is detained therein against her will or against the will of her father or mother or any person having the lawful care or charge of her.

Section 14 Sexual offences with youths

Any person who –

- (a) commits or attempts to commit a sexual act with a child under the age of sixteen years; or
- (b) commits or attempts to commit an indecent or immoral act with such a child; or
- (c) solicits or entices such a child to the commission of a sexual act or an indecent or immoral act,
and who –
 - (i) is more than three years older than such a child; and
 - (ii) is not married to such a child (whether under the general law or customary law),

shall be guilty of an offence and liable on conviction to a fine not exceeding N\$40 000 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

Section 15 Sexual offences with female idiots or imbeciles

Any person who –

- (a) has or attempts to have unlawful carnal intercourse with any female idiot or imbecile in circumstances which do not amount to rape; or
- (b) commits or attempts to commit with such a female any immoral or indecent act; or
- (c) solicits or entices such a female to the commission of any immoral or indecent act,

shall, if it be proved that such person knew such female was an idiot or imbecile, be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six years with or without a fine not exceeding three thousand rand in addition to such imprisonment.

Section 16 Use of certain means to stupefy or overcome female for immoral purposes

Any person who applies, administers to or causes to be taken by any female any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower her so as thereby to enable him to have unlawful carnal intercourse with her, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

EXCERPTS FROM THE MAINTENANCE ACT, 2003 (NO. 9 OF 2003)

Section 3 Parental duty to maintain children

- (1) Subject to section 26 and to the law relating the duty of a parent to maintain a child who is unable to support himself or herself, both parents of a child are liable to maintain that child regardless of whether the
 - (a) child in question is born inside or outside the marriage of the parents;
 - (b) child is born of a first, current or subsequent marriage; and
 - (c) parents are subject to any system of customary law which does not recognise both parents' liability to maintain a child.
- (2) For the purpose of determining whether or not a person who is subject to customary law is legally liable to maintain another person, a maintenance court must, notwithstanding anything to the contrary at customary law, have regard to the following principles –
 - (a) husbands and wives are primarily responsible for each other's maintenance;

- (b) subject to subsection (1), the parents of a child are primarily and jointly responsible for the maintenance of that child;
- (c) subject to section 4(2), the legal principle, which imposes a legal duty on children to maintain their parents must be applied to children and parents who are subject to customary law.

(3) The parental duty to maintain a child includes the rendering of support which the child reasonably requires for his or her proper living and upbringing and this includes provision of food, accommodation, clothing, medical care and education.

(4) From the date of coming into operation of this Act, any law which requires a parent to give priority to the maintenance of children of a first marriage becomes invalid.

Section 4 Principles to be applied in respect of maintenance

- (1) Where a beneficiary is a child, the maintenance court must, in determining the nature or amount of maintenance payable to that beneficiary, have regard to the following principles –
 - (a) both parents of the child are primarily responsible for the maintenance of that child;
 - (b) the parents must, in accordance with their respective means, fairly share the duty to maintain their child or children;
 - (c) the parental duty to maintain one particular child does not rank any higher than the duty to maintain any other child of that parent or any other person;
 - (d) where a parent has more than one child, all the children are entitled to a fair share of that parent's resources; and
 - (e) the duty of a parent to maintain a child has priority over all other commitments of the parent except those commitments which are necessary to enable the parent to support himself or herself or any other person in respect of whom the parent has a legal duty to maintain.
- (2) Where a beneficiary is a parent, the maintenance court must, in determining the liability of a child to maintain a parent or the nature or amount of maintenance payable to the beneficiary, have regard to the following principles –
 - (a) the liability of the child arises where the parent is unable to maintain himself or herself due to circumstances beyond that parent's control;
 - (b) the child must, having regard to his or her own needs, be able to support the parent; and
 - (c) the right of a parent to be maintained arises only where that

parent's spouse or other person who is legally liable to maintain that parent is unable to do so.

Section 40 Offences relating to misuse of maintenance money

Any person who receives payment of money or payment in kind on behalf of a beneficiary in terms of a maintenance order and misuses the said payment by failing to use it for the benefit of the beneficiary, commits an offence and is liable to a fine which does not exceed N\$4 000 or imprisonment for a period which does not exceed 12 months.

Section 41 Offences relating to intimidation

Any person who with intent to compel or induce a complainant not to file a complaint at the maintenance court or not to lay a criminal charge against a defendant for his or her failure to support a specific person, in any manner threatens by whatever means, including the use of witchcraft, to kill, assault, injure the complainant or any other person or to cause damage to that complainant or any other person, or that complainant's property or another person's property, commits an offence and is liable to a fine which does not exceed N\$20 000 or to imprisonment for a period which does not exceed five years.

EXCERPTS FROM THE MARRIED PERSONS EQUALITY ACT, 1996 (NO. 1 OF 1996)

Section 2 Abolition of marital power

- (1) Subject to the provisions of this Act with regard to the administration of a joint estate-
 - (a) the common law rule in terms of which a husband acquires the marital power over the person and property of his wife is hereby repealed; and
 - (b) the marital power which any husband had over the person and property of his wife immediately before the commencement of this Act, is hereby abolished.
- (2) The abolition of the marital power by paragraph (b) of subsection (1) shall not affect the legal consequences of any act done or omission or fact existing before such abolition.

Section 5 Equal powers of spouses married in community of property

Subject to this Part, a husband and wife married in community of property have equal capacity –

- (a) to dispose of the assets of the joint estate;
- (b) to contract debts for which the joint estate is liable; and
- (c) to administer the joint estate.

Section 12 Domicile of married women

The domicile of a married woman shall not –

- (a) by virtue only of the marriage; or
- (b) where applicable, by virtue only of the provisions of Article 41 of the Schedule to the Recognition of Certain Marriages Act, 1991 (Act 18 of 1991),

be considered to be the same as that of her husband, but shall be ascertained by reference to the same factors as apply in the case of any other individual capable of acquiring a domicile of choice.

Section 13 Domicile of minor children

- (1) (a) The domicile of a child shall be the place with which that child is most closely connected.
(b) If, in the normal course of events, a child resides with his or her parents or with one of them, it shall be presumed, unless the contrary is shown, that such child's domicile is where he or she so resides.
- (2) For the purposes of subsection (1) –
“child” means any person under the age of 18 years, excluding such a person who by law has attained the status of a major; and
“parents” includes the adoptive parents of a child and the parents of a child who are not married to each other.

Section 15 Liability of spouses married out of community of property for household necessaries

- (1) Spouses married out of community of property are jointly and severally liable to third parties for all debts incurred by either of them in respect of necessaries for the joint household.
- (2) Unless the parties agree otherwise, a spouse married out of community of property before or after the commencement of this Act is liable to contribute to necessaries for the joint household pro rata according to his or her financial means, and, in the case of a marriage subsisting at the commencement of this Act, a spouse shall, notwithstanding the provisions of section 3 of the Matrimonial Affairs Ordinance, 1955 (Ordinance 25 of 1955) which were in force immediately before the commencement of this Act, be deemed to have been so liable as from the beginning of such marriage.

- (3) A spouse married out of community of property has a right of recourse against the other spouse in so far as he or she has contributed more in respect of necessaries for the joint household than for which he or she is liable in terms of subsection (2), and, in the case of a marriage subsisting at the date of commencement of this Act, such right of recourse is enforceable also with respect to the period of the marriage before the commencement of this Act, but without prejudice to the provisions of subsection (4).
- (4) In any action commenced by the issue of process on or before the date of commencement of this Act, a claim based on the right of recourse conferred by the proviso to section 3 of the Matrimonial Affairs Ordinance, 1955, shall, notwithstanding the repeal of that section by this Act, not be affected by any provision of this section, and such claim shall be justifiable as if this Act had not been passed.
- (5) This section shall not be construed as conferring on the husband a right to reclaim anything that he had already paid at the date of commencement of this Act in satisfaction of a right of recourse exercised by his wife by virtue of section 3 of the Matrimonial Affairs Ordinance, 1955, before the repeal of that Ordinance by this Act.

Section 16 Provisions not applicable to marriages by customary law

The provisions –

- (a) regarding the abolition of the marital power and the consequences of that abolition as set out in Part I;
- (b) regarding marriages in community of property as set out in Part II; and
- (c) regarding marriages out of community of property as set out in Part IV, do not apply to marriages by customary law.

EXCERPTS FROM THE CHILDREN'S STATUS ACT, 2006 (NO. 6 OF 2006)

Section 15 Children born outside marriage as a result of rape

- (1) Perpetrators of rape which results in the conception of a child outside marriage have no rights to custody, guardianship or access in terms of this Act, unless a competent court, on application made to it, orders otherwise.
- (2) For the purposes of this section, “rape” means the common law crime of rape and the crime of rape referred to in section 2 of the Combating of Rape Act, 2000 (Act 8 of 2000), where the perpetrator has been convicted of the crime.

Section 16 Inheritance

- (1) For the purposes of subsection (5), “rape” means the common law crime of rape and the crime of rape referred to in section 2 of the Combating of Rape Act, 2000 (Act 8 of 2000), where the perpetrator has been convicted of the crime.
- (2) Despite anything to the contrary contained in any statute, common law or customary law, a person born outside marriage must, for purposes of inheritance, either intestate or by testamentary disposition, be treated in the same manner as a person born inside marriage.
- (3) It must be presumed that the words “children” or “issue” or any similar term used in a testamentary disposition, apply equally to persons born outside marriage and children born inside marriage, unless there is clear evidence of a contrary intention on the part of the testator.
- (4) Nothing in this section is to be understood or interpreted as affecting the freedom of testamentary disposition.
- (5) With respect to rape which results in the conception of a person born outside marriage, the person who committed the crime has no right to inherit intestate from the person born as a result of the rape, but the person born as a result of the rape may inherit intestate from the perpetrator, and will be deemed to be included in the terms “children” or “issue” or any similar term used in a testamentary disposition.

Section 17 Duty to maintain

- (1) Despite anything to the contrary contained in any law, a distinction may not be made between a person born outside marriage and a person born inside marriage in respect of the legal duty to maintain a child or any other person.
- (2) Despite subsection (1), a person conceived as a result of rape has no legal duty to maintain a parent who was convicted of the rape, nor any legal duty to maintain that parent’s relations.

EXCERPTS FROM THE DRAFT RECOGNITION OF CUSTOMARY LAW MARRIAGES BILL

Section 2 Recognition of customary law marriages

- (1) A customary law marriage is for all purposes in law regarded as a valid marriage and –
 - (a) any reference to “marriage” in any law is construed so as to include a customary law marriage unless the customary law nature of the marriage has the effect that the provision concerned is clearly inappropriate for a customary law marriage;

- (b) any reference in any agreement (including any insurance policy or the rules of a pension fund) to a marriage is construed to include a reference to a customary law marriage, unless it is clearly demonstrated that the parties intended to exclude a customary law marriage from the agreement in question.
- (2) The provisions of this section apply to a law or agreement that exists at the time of the commencement of this Act as well as to a law that is made or an agreement that is concluded after the commencement of this Act.

Section 3 Requirements for customary law marriage

- (1) A customary law marriage must –
 - (a) in the case of a marriage concluded before the commencement of this Act, comply with the provisions of subsection (2); and
 - (b) in the case of a marriage concluded after the commencement of this Act, comply with the provisions of subsections (2) and (3).
- (2) A customary law marriage must be concluded in accordance with the customs applicable to the traditional community to which the parties belong, or if the parties do not belong to the same traditional community, be concluded in accordance with the customs of that community to which one of the parties belong, as preferred by the parties.
- (3) A customary law marriage concluded after the commencement of this Act may only be concluded if –
 - (a) both parties to that marriage have freely consented thereto;
 - (b) any party who is a minor has obtained the consent from the persons and institutions that are required by the provisions of the Marriage Act, 1961 (Act No. 25 of 1961);
 - (c) the parties who contract such marriage are not related to each other by affinity or blood to such a degree that their marriage would not be valid in terms of applicable customary law;
 - (d) neither prospective spouse is a party to an existing customary law marriage or a marriage under the common law.

Section 4 Party to existing marriage prohibited from concluding another marriage

- (a) No person may, while married under customary law or under the common law, conclude a marriage with another person under the customary law or under the common law.
- (b) A person who contravenes the provisions of paragraph (a) shall be guilty of the common law offence of bigamy.

Section 5 Registration of new customary law marriages

- (1) If a customary law marriage that complies with the provisions of section 3 is concluded, such marriage must be registered in the prescribed manner for it to be legally recognised as a valid marriage.
- (2)
 - (a) (i) The Permanent Secretary may appoint persons to act as customary law marriage officers for a traditional community for which a traditional authority has been established in terms of section 2 of the Traditional Authorities Act, 2000 (Act No. 25 of 2000).
(ii) The appointment of a person in terms of subparagraph (i) may be limited to the carrying out of only some of the powers, duties and functions that vest in customary law marriage officers in terms of this Act.
 - (b) The Permanent Secretary may, in a particular case or generally, and subject to such directions as he or she may deem fit, delegate the power conferred upon him or her by paragraph (a) to a staff member in his or her Ministry.
- (3) If a customary law marriage has been concluded, it is the duty of the customary law marriage officer appointed for the relevant traditional community to determine whether the provisions of this Act have been complied with: Provided that the customary law marriage officer must determine the question whether the marriage complies with the customs of the relevant traditional community in consultation with the traditional authority of that traditional community.
- (4) If a customary law marriage officer is satisfied that the provisions of this Act have been complied with, he or she has such duties relating to the registration of the marriage concerned as are prescribed and is subject to such penalties as may be prescribed for the failure to comply with such duties.
- (5) If a customary marriage officer registers a customary law marriage, he or she must issue a certificate in the prescribed form to the parties to that marriage.

Section 6 Registration of existing customary law marriages

- (1) Any person -
 - (a) who alleges that he or she is a party to an existing customary Law marriage which was concluded before the commencement of this Act;
 - (b) who alleges that he or she is a child born from parents who have concluded a customary law marriage before the commencement of this Act; or

- (c) who has a substantial interest in the question whether two persons have concluded a customary marriage before the commencement of this Act;
may apply to the relevant customary law marriage officer to register that marriage.
- (2) The customary law marriage officer may request such further information as may be necessary to determine whether the customary law marriage complies with the relevant provisions of this Act and must consult, where appropriate, the traditional authority of that traditional community.
- (3) If the customary law marriage officer is satisfied that the customary law marriage concerned complies with all the relevant provisions of this Act, he or she must issue a certificate to the effect that the parties concerned have concluded a customary law marriage and he or she has such further duties relating to the registration of the marriage concerned as are prescribed and is subject to such penalties as may be prescribed for the failure to comply with such duties.
- (4) The requirements with which an application in terms of subsection (1) must comply as well as the procedure to be followed by the customary law marriage officer when such an application is considered, must be prescribed: Provided that such requirements and procedure must give every person who has a substantial interest in the matter an adequate opportunity to present relevant information to the customary law marriage officer.
- (5) Any person who has a substantial interest in a decision by the customary law marriage officer to register a customary law marriage or to refuse to register a customary law marriage may appeal to the High Court within the prescribed period in the prescribed manner.
- (6) For two years after the commencement of this section, or such longer period as the Minister may determine by notice in the Gazette, no fee must be charged for the registration of an existing customary law marriage.

Section 8 Unregistered customary law marriages

An unregistered customary law marriage concluded before the commencement of this Act is regarded as a valid customary law marriage if it complies with all the provisions of section 3(1)(a) or if such marriage is deemed to be valid as a result of the provisions of section 9(3).

Section 9 Consent

- (1) A customary law marriage officer may only register a customary law marriage concluded after the date of commencement of this Act, if the express consent of all the persons and institutions whose consent is required under the provisions of this Act, has been obtained.
- (2) Subject to the provisions of subsection (3), a customary law marriage officer may only register a customary law marriage concluded after the commencement of this Act, if both parties to such a marriage have consented to such registration.
- (3) If the person whose consent has not been obtained is one of the parties to the marriage that is to be registered and the person concerned refuses to consent to the registration or the consent of that person cannot be obtained, then it is deemed that the consent of such person has been validly obtained if it is clear that such person has tacitly given his or her free and voluntary consent to the marriage or voluntarily ratified the marriage.
- (4) Where the consent of the person or institution that was not obtained, was required due to the minority or youth of a party to the marriage, that party may apply to a court having jurisdiction for a declaration that such marriage is void.

Section 10 Matrimonial property consequences of customary law marriage

- (1) Subject to the provisions of subsections (2) and (3), a customary law marriage concluded after the commencement of this Act will have the consequences of a marriage in community of property.
- (2) If the parties have concluded an agreement or made a declaration that complies with the prescribed requirements, regulating the matrimonial consequences of the marriage concerned, then that contract or declaration will regulate the matrimonial property consequences of the marriage concerned.
- (3) The matrimonial property consequences of a customary law marriage concluded before the commencement of this Act are regulated by the applicable customary law.
- (4) The parties to a customary law marriage concluded before the commencement of this Act, and provided that the husband is not married to any other woman too, may cause their marriage to be in community of property by the execution and registration of a notarial contract to that effect within two years from the commencement of this section, or such longer period, but not less than six months, determined by the Minister of Justice by notice in the *Gazette*.

Section 11 No rule of law diminishing legal capacity of persons subject to customary law to operate

- (1) A person married under customary law, whether before or after the commencement of this Act, and if married before the commencement of this Act, whether such marriage is registered or not, has the same legal capacity as a person married under common law.
- (2) The effect of subsection (1) is that any person who is a major according to the rules of the common law, may institute or defend proceedings in any court of law, (whether such proceedings are brought under the customary law or under the common law) without the assistance of any other person and also that such person has full capacity to perform a juristic act and to own property (whether under the common law or under the customary law).

Section 12 Dissolution of customary law marriages

- (1) (a) A customary law marriage may be dissolved on the ground of irretrievable breakdown.
(b) A customary marriage may be dissolved in the manner and procedure determined by the applicable customary law, provided the manner and procedure are not unconscionable or unreasonable in terms of the Namibian Constitution or any other law.
- (2) The dissolution of a valid customary law marriage will only take effect after a certificate is issued by a customary law marriage officer to that effect.
- (3) A customary law marriage officer may only issue a certificate provided for in subsection (2) -
 - (a) if he or she is satisfied that the dissolution concerned has taken place in accordance with the applicable customary law;
 - (b) if an agreement contemplated in subsection (4) has been reached or, if no such an agreement has been reached, a court has made an order under subsection (5).
- (4) If the dissolution of a valid customary law marriage is accompanied by an agreement relating to the division of property or the custody or maintenance of any children, such agreement must be recorded in the certificate referred to in subsection (2).
- (5) A person who had been a party to a valid customary law marriage that was dissolved in accordance with the provisions of this section may approach the High Court to settle any dispute or enforce any agreement that resulted from the dissolution of the marriage concerned.

REGIONAL LEGAL INSTRUMENTS

EXCERPTS FROM THE AFRICAN CHARTER FOR HUMAN AND PEOPLES' RIGHTS

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.

3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

Article 27

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

Article 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

Article 29

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defense in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

EXCERPTS FROM THE PROTOCOL ON THE RIGHTS OF WOMEN IN AFRICA

Article 2 Elimination of discrimination against women

1. States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:
 - a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;
 - b) enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women;
 - c) integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;
 - d) take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist;
 - e) support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.
2. States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices 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 women and men.

Article 3 Right to dignity

1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.
2. Every woman shall have the right to respect as a person and to the free development of her personality.
3. States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women.

4. States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

Article 4 The rights to life, integrity and security of the person

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.
2. States Parties shall take appropriate and effective measures to:
 - a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;
 - b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;
 - c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
 - d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;
 - e) punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;
 - f) establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;
 - g) prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk;
 - h) prohibit all medical or scientific experiments on women without their informed consent;
 - i) provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;
 - j) ensure that, in those countries where the death penalty still exists, not to carry out death sentences on pregnant or nursing women;
 - k) ensure that women and men enjoy equal rights in terms of access to refugee status determination procedures and that women

refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.

Article 5 Elimination of harmful practices

States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognised international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:

- a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes;
- b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them;
- c) provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting;
- d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

Article 6 Marriage

States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

- a) no marriage shall take place without the free and full consent of both parties;
- b) the minimum age of marriage for women shall be 18 years;
- c) monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;
- d) every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised;
- e) the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;
- f) a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband's surname;
- g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;

- h) a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;
- i) a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;
- j) during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

Article 7 Separation, divorce and annulment of marriage

States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that:

- a) separation, divorce or annulment of a marriage shall be effected by judicial order;
- b) women and men shall have the same rights to seek separation, divorce or annulment of a marriage;
- c) in case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance;
- d) in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.

Article 21 Right to inheritance

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.
2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.

EXCERPTS FROM THE SADC DECLARATION ON GENDER AND DEVELOPMENT

WE the Heads of State or Government of the Southern African Development Community, ...

F. ENDORSE the decision of Council on:

- i. The establishment of a policy framework for mainstreaming gender in all SADC activities, and in strengthening the efforts by member countries to achieve gender equality.
- ii. Putting into place an institutional framework for advancing gender equality consistent with that established for other areas of co-operation, but which ensures that gender is routinely taken into account in all sectors.
- iii. The establishment of a Standing Committee of Ministers responsible for Gender Affairs in the region.
- iv. The adoption of the existing Advisory Committee consisting of one representative from Government and one member from Non-Governmental Organisations in each member state whose task is to advise the Standing Committee of Ministers and other Sectoral Committees of Ministers on gender issues.
- v. The establishment of Gender Focal Points whose task would be to ensure that gender is taken into account in all sectoral initiatives, and is placed on the agenda of all ministerial meetings.
- vi. The establishment of a Gender Unit in the SADC Secretariat consisting of at least two officers at a senior level.

G. RESOLVE THAT: As leaders, we should spearhead the implementation of these undertakings and ensure the eradication of all gender inequalities in the region: and

H. COMMIT ourselves and our respective countries to, inter alia,

- i. Placing gender firmly on the agenda of the SADC Programme of Action and Community Building Initiative;
- ii. Ensuring the equal representation of women and men in the decision making of member states and SADC structures at all levels, and the achievement of at least 30 percent target of women in political and decision making structures by year 2005;
- iii. Promoting women's full access to, and control over productive resources such as land, livestock, markets, credit, modern technology, formal employment, and a good quality of life in order to reduce the level of poverty among women;

- iv. Repealing and reforming all laws, amending constitutions and changing social practices which still subject women to discrimination, and enacting empowering gender sensitive laws;
- v. Enhancing access to quality education by women and men, and removing gender stereotyping in the curriculum, career choices and professions;
- vi. Making quality reproductive and other health services more accessible to women and men;
- vii. Protecting and promoting the human rights of women and children;
- viii. Recognising, protecting and promoting the reproductive and sexual rights of women and the girl child;
- ix. Taking urgent measures to prevent and deal with the increasing levels of violence against women and children;
- x. Encouraging the mass media to disseminate information and materials in respect of the human rights of women and children.

EXCERPTS FROM THE SADC CHARTER OF FUNDAMENTAL AND SOCIAL RIGHTS

Article 3 Basic human rights and organisational rights

- 1. This Charter embodies the recognition by governments, employers and workers in the Region of the universality and indivisibility of basic human rights proclaimed in instruments such as the United Nations Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, the Constitution of the ILO, the Philadelphia Declaration and other relevant international instruments.
- 2. Member States undertake to observe the basic rights referred to in this Charter.

Article 6 Equal treatment for men and women

Member States shall create an enabling environment consistent with ILO Conventions on discrimination and equality and other relevant instruments so that:

- (a) Gender equity, equal treatment and opportunities for men and women are ensured;
- (b) Equal opportunities for both men and women shall apply, in particular, to access to employment, remuneration, working conditions, social protection, education, vocational training and career development; and
- (c) Reasonable measures are developed to enable men and women to reconcile their occupational and family obligations.

GLOBAL LEGAL INSTRUMENTS

EXCERPTS FROM THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All

children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

EXCERPTS FROM THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary

steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

EXCERPTS FROM THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

- (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 10

The States Parties to the present Covenant recognize that:

- 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
- 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
- 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

DECLARATION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Article 1

Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.

Article 2

All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in particular:

- (a) The principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law;
- (b) The international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.

Article 3

All appropriate measures shall be taken to educate public opinion and to direct national aspirations towards the eradication of prejudice and the abolition of customary and all other practices which are based on the idea of the inferiority of women.

Article 4

All appropriate measures shall be taken to ensure to women on equal terms with men, without any discrimination:

- (a) The right to vote in all elections and be eligible for election to all publicly elected bodies;
- (b) The right to vote in all public referenda;
- (c) The right to hold public office and to exercise all public functions. Such rights shall be guaranteed by legislation.

Article 5

Women shall have the same rights as men to acquire, change or retain their nationality. Marriage to an alien shall not automatically affect the nationality of the wife either by rendering her stateless or by forcing upon her the nationality of her husband.

Article 6

1. Without prejudice to the safeguarding of the unity and the harmony of the family, which remains the basic unit of any society, all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law, and in particular:
 - (a) The right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage;
 - (b) The right to equality in legal capacity and the exercise thereof;
 - (c) The same rights as men with regard to the law on the movement of persons.
2. All appropriate measures shall be taken to ensure the principle of equality of status of the husband and wife, and in particular:
 - (a) Women shall have the same right as men to free choice of a spouse and to enter into marriage only with their free and full consent;

- (b) Women shall have equal rights with men during marriage and at its dissolution. In all cases the interest of the children shall be paramount;
- (c) Parents shall have equal rights and duties in matters relating to their children. In all cases the interest of the children shall be paramount.

3. Child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Article 7

All provisions of penal codes which constitute discrimination against women shall be repealed.

Article 8

All appropriate measures, including legislation, shall be taken to combat all forms of traffic in women and exploitation of women.

Article 9

All appropriate measures shall be taken to ensure to girls and women, married or unmarried, equal rights with men in education at all levels, and in particular:

- (a) Equal conditions of access to, and study in, educational institutions of all types, including universities and vocational, technical and professional schools;
- (b) The same choice of curricula, the same examinations, teaching staff with qualifications of the same standard, and school premises and equipment of the same quality, whether the institutions are co-educational or not;
- (c) Equal opportunities to benefit from scholarships and other study grants;
- (d) Equal opportunities for access to programmes of continuing education, including adult literacy programmes;
- (e) Access to educational information to help in ensuring the health and well-being of families.

Article 10

1. All appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life, and in particular:

- (a) The right, without discrimination on grounds of marital status or any other grounds, to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement;

- (b) The right to equal remuneration with men and to equality of treatment in respect of work of equal value;
- (c) The right to leave with pay, retirement privileges and provision for security in respect of unemployment, sickness, old age or other incapacity to work;
- (d) The right to receive family allowances on equal terms with men.

2. In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective right to work, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave, with the guarantee of returning to former employment, and to provide the necessary social services, including child-care facilities.

3. Measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory.

Article 11

- 1. The principle of equality of rights of men and women demands implementation in all States in accordance with the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights.
- 2. Governments, non-governmental organizations and individuals are urged, therefore, to do all in their power to promote the implementation of the principles contained in this Declaration.

EXCERPTS FROM THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

Article 1

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

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.

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.

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.

EXCERPTS FROM THE DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN

Article 1

For the purposes of this Declaration, the term “violence against women” means any act of genderbased violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Article 3

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, *inter alia*:

- (a) The right to life;
- (b) The right to equality;
- (c) The right to liberty and security of person;
- (d) The right to equal protection under the law;
- (e) The right to be free from all forms of discrimination;
- (f) The right to the highest standard attainable of physical and mental health;
- (g) The right to just and favourable conditions of work;
- (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

Article 4

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

- (a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;
- (b) Refrain from engaging in violence against women;
- (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;
- (d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;
- (e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;
- (f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;
- (g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;
- (h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;

Appendix I: Legal texts – United Nations

- (i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;
- (j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;
- (k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;
- (l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;
- (m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;
- (n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;
- (o) Recognize the important role of the women's movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women;
- (p) Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;
- (q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

EXCERPTS FROM THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Article 1

A State Party to the present Protocol (“State Party”) recognizes the competence of the Committee on the Elimination of Discrimination against Women (“the Committee”) to receive and consider communications submitted in accordance with article 2.

Article 2

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 3

Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

Article 4

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.
2. The Committee shall declare a communication inadmissible where:
 - (a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
 - (b) It is incompatible with the provisions of the Convention;
 - (c) It is manifestly ill-founded or not sufficiently substantiated;
 - (d) It is an abuse of the right to submit a communication;
 - (e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 5

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.
2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

EXCERPTS FROM THE BEIJING PLATFORM FOR ACTION

Section 112

Violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed. Knowledge about its causes and consequences, as well as its incidence and measures to combat it, have been greatly expanded since the Nairobi Conference. In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. The low social and economic status of women can be both a cause and a consequence of violence against women.

Section 113

The term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Accordingly, violence against women encompasses but is not limited to the following:

- a. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non- spousal violence and violence related to exploitation;
- b. Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

c. Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Section 114

Other acts of violence against women include violation of the human rights of women in situations of armed conflict, in particular murder, systematic rape, sexual slavery and forced pregnancy.

Section 115

Acts of violence against women also include forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection.

Section 116

Some groups of women, such as women belonging to minority groups, indigenous women, refugee women, women migrants, including women migrant workers, women in poverty living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women, displaced women, repatriated women, women living in poverty and women in situations of armed conflict, foreign occupation, wars of aggression, civil wars, terrorism, including hostage-taking, are also particularly vulnerable to violence.

Section 224

Violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms. Taking into account the Declaration on the Elimination of Violence against Women and the work of Special Rapporteurs, gender-based violence, such as battering and other domestic violence, sexual abuse, sexual slavery and exploitation, and international trafficking in women and children, forced prostitution and sexual harassment, as well as violence against women, resulting from cultural prejudice, racism and racial discrimination, xenophobia, pornography, ethnic cleansing, armed conflict, foreign occupation, religious and anti-religious extremism and terrorism are incompatible with the dignity and the worth of the human person and must be combated and eliminated. Any harmful aspect of certain traditional, customary or modern practices that violates the rights of women should be prohibited and eliminated. Governments should take urgent action to combat and eliminate all forms of violence against women in private and public life, whether perpetrated or tolerated by the State or private persons.

Section 232

Actions to be taken by Governments:

- a. Give priority to promoting and protecting the full and equal enjoyment by women and men of all human rights and fundamental freedoms without distinction of any kind as to race, colour, sex, language, religion, political or other opinions, national or social origins, property, birth or other status;
- b. Provide constitutional guarantees and/or enact appropriate legislation to prohibit discrimination on the basis of sex for all women and girls of all ages and assure women of all ages equal rights and their full enjoyment;
- c. Embody the principle of the equality of men and women in their legislation and ensure, through law and other appropriate means, the practical realization of this principle;
- d. Review national laws, including customary laws and legal practices in the areas of family, civil, penal, labour and commercial law in order to ensure the implementation of the principles and procedures of all relevant international human rights instruments by means of national legislation, revoke any remaining laws that discriminate on the basis of sex and remove gender bias in the administration of justice;
- e. Strengthen and encourage the development of programmes to protect the human rights of women in the national institutions on human rights that carry out programmes, such as human rights commissions or ombudspersons, according them appropriate status, resources and access to the Government to assist individuals, in particular women, and ensure that these institutions pay adequate attention to problems involving the violation of the human rights of women;
- f. Take action to ensure that the human rights of women, including the rights referred to in paragraphs 94 to 96 above, are fully respected and protected;
- g. Take urgent action to combat and eliminate violence against women, which is a human rights violation, resulting from harmful traditional or customary practices, cultural prejudices and extremism;
- h. Prohibit female genital mutilation wherever it exists and give vigorous support to efforts among non-governmental and community organizations and religious institutions to eliminate such practices;
- i. Provide gender-sensitive human rights education and training to public officials, including, *inter alia*, police and military personnel, corrections officers, health and medical personnel, and social workers, including people who deal with migration and refugee issues, and teachers at all levels of the educational system, and make available such education and training also to the judiciary and members of parliament in order to enable them to better exercise their public responsibilities;

Appendix I: Legal texts – United Nations

- j. Promote the equal right of women to be members of trade unions and other professional and social organizations;
- k. Establish effective mechanisms for investigating violations of the human rights of women perpetrated by any public official and take the necessary punitive legal measures in accordance with national laws;
- l. Review and amend criminal laws and procedures, as necessary, to eliminate any discrimination against women in order to ensure that criminal law and procedures guarantee women effective protection against, and prosecution of, crimes directed at or disproportionately affecting women, regardless of the relationship between the perpetrator and the victim, and ensure that women defendants, victims and/or witnesses are not revictimized or discriminated against in the investigation and prosecution of crimes;
- m. Ensure that women have the same right as men to be judges, advocates or other officers of the court, as well as police officers and prison and detention officers, among other things;
- n. Strengthen existing or establish readily available and free or affordable alternative administrative mechanisms and legal aid programmes to assist disadvantaged women seeking redress for violations of their rights;
- o. Ensure that all women and non-governmental organizations and their members in the field of protection and promotion of all human rights - civil, cultural, economic, political and social rights, including the right to development - enjoy fully all human rights and freedoms in accordance with the Universal Declaration of Human Rights and all other human rights instruments and the protection of national laws;
- p. Strengthen and encourage the implementation of the recommendations contained in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, paying special attention to ensure non-discrimination and equal enjoyment of all human rights and fundamental freedoms by women and girls with disabilities, including their access to information and services in the field of violence against women, as well as their active participation in and economic contribution to all aspects of society;
- q. Encourage the development of gender-sensitive human rights programmes.