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**PROCEDURES SPECIALES DU CONSEIL DES
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**SPECIAL PROCEDURES OF THE UNITED
NATIONS HUMAN RIGHTS COUNCIL**

Téléfax: (41-22)-928 90 10
Télégrammes: UNATIONS, GENEVE
Télex: 41 29 62
Téléphone: (41-22)-928 92 99
Internet : www.ohchr.org/english/bodies/chr/special/index.htm
E-mail: jwendland@ohchr.org



Address:
Palais des Nations
CH-1211 GENEVE 10

State Responsibilities to Regulate and Adjudicate Corporate Activities under the United Nations' core Human Rights Treaties

**Individual Report on the United Nations Convention on the Elimination of
All Forms of Discrimination against Women**

Report No. 4

**Prepared for the Special Representative of the Secretary-General on Human
Rights and Transnational Corporations and
Other Business Enterprises**

**With the support of
The Office of the United Nations High Commissioner for Human Rights**

September 2007

PREFACE

The following report is part of a series examining States' obligations in relation to corporate activity under the United Nations' core human rights treaties.¹ A report summarizing the main findings and trends from the treaty-specific reports was submitted to the fourth session of the Human Rights Council.²

The series of reports maps the scope and content of States Parties' responsibilities to regulate and adjudicate the actions of business enterprises under the treaties and as elaborated by the respective treaty bodies.³ This mapping supports the work of the Special Representative of the United Nations Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises. The (then) United Nations Commission on Human Rights mandated the SRSG, *inter alia*, to:

“(b) elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation.”⁴

The reports analyze a representative sample of primary materials associated with each treaty:⁵ the actual treaty provisions; General Comments or Recommendations by the Committees; Concluding Observations on States Parties' periodic reports; and Views on Communications and under Early Warning Measures and Urgent Procedures.⁶

The reports are based on references by the treaties and treaty bodies to States Parties' duties to regulate and adjudicate corporate activities.⁷ However, as it is less common for

¹ The following treaties were considered as part of this series: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). The International Convention on the Rights of Persons with Disabilities (ICRPD) (adopted by the General Assembly in Dec. 2006) and the International Convention for the Protection of All Persons from Enforced Disappearances, which had not entered into force at the time of completing the research, have not been included. All reports will be made available as they are completed at <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>.

² A/HRC/4/35/Add.1.

³ The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. They are created in accordance with the provisions of the treaty that they monitor.

⁴ Commission on Human Rights Resolution 2005/69, para. (b). The SRSG now reports to the UN Human Rights Council.

⁵ The ICRMW report relies to some extent on secondary sources because of the scarcity of primary sources from the recently established Committee on Migrant Workers (CMW).

⁶ The ICCPR, CAT, ICERD, CEDAW and ICRMW all have associated individual complaints mechanisms. CEDAW and CAT also have procedures for urgent inquiries. ICERD has an early warning procedure.

⁷ Drawing on the SRSG's mandate, this report uses “regulation” to refer to treaty body language recommending legislative or other measures designed to prevent or monitor abuse by business enterprises, and “adjudication” to refer to judicial or other measures to punish or remediate abuse.

the treaty bodies to refer explicitly to corporations, the reports also highlight more general references to State obligations regarding acts by non-State actors, especially where they help identify patterns and measures relevant to business enterprises. The reports do not document references to non-State actors that are unrelated to the mandate, such as armed groups, educational institutions, family members and religious leaders. Further, the reports focus on States' obligations in relation to rights impacted by corporate activities, rather than on corporate entities as possible rights-holders.⁸

The decision to focus the research on the treaties reflects the global importance of the United Nations' human rights treaty machinery. Due to time and resource constraints, other domains of human rights law, such as the regional human rights systems and international customary law, have not been included in this particular series, though they are referenced briefly in the SRSG's report to the fourth session of the Human Rights Council.⁹ The same is true of other branches of international law that are relevant to the mandate, such as labor law.

Any views or recommendations expressed in this series do not necessarily represent the views of the Office of the United Nations High Commissioner for Human Rights or the various treaty monitoring bodies. The reports were completed purely for research purposes on behalf of the SRSG's mandate and do not represent his final views or recommendations in relation to the treaty bodies' consideration of business and human rights issues.

The reports are numbered chronologically according to the date of adoption of each treaty.

⁸ The UN human rights treaties have not been interpreted to protect the rights of corporate bodies. This is in contrast to e.g. the European Convention on Human Rights, many rights of which have been extended to benefit companies or other non-State legal entities.

⁹ A/HRC/4/35.

SUMMARY

This report outlines the nature of States Parties' obligations vis-à-vis corporate activities under the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (Convention/CEDAW), as elaborated by the Committee on the Elimination of Discrimination Against Women (Committee).

1. The duty to protect

The Convention contains provisions that explicitly and implicitly require States Parties to protect against abuse by business enterprises. Thus it is unsurprising that of the three duties usually ascribed to States Parties to human rights treaties (the duties to respect, protect and fulfill), the Committee focuses on the duty to protect when discussing State obligations to prevent and punish interference with rights by business enterprises.

(a) Art. 2 of the Convention

Under Art. 2 of the Convention, States Parties “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.” To this end, they agree to undertake a number of measures in order to protect against discrimination by both public and private actors.

Most relevant to this exercise, Art. 2(e) says that States Parties undertake to “take all appropriate measures to eliminate discrimination against women by any person, organization or **enterprise**.”

General Recommendations from the Committee support a wide-ranging State duty to protect vis-à-vis activities by business enterprises based on Art. 2(e). For example, they have called for States to ensure protection against discrimination in the private sphere, particularly in discussions concerning health services and the labor market. Other provisions also seem to necessitate wide ranging State measures to protect against abuses by non-State actors, including business enterprises. Examples include Art. 11 in relation to employment; Art. 12 in relation to health care; and Arts. 13 and 14 in relation to economic and social life, including financial services.

The Committee has said that reserving out of Art. 2 would indicate a State's unwillingness to fulfill its commitment to ensure women's full and equal participation in “all aspects of public and private life.”

Under the Optional Protocol to the Convention (Optional Protocol), States Parties to the Optional Protocol recognize the Committee's competence to receive and consider communications by or on behalf of individuals or groups of individuals, under the State's jurisdiction, who claim to be victims of a violation of any of the Convention rights by that State.

Decisions under the Optional Protocol confirm that States Parties' duties under Art. 2, especially paragraph (e), require them to protect women against abuse of their rights by

private parties. In particular, one Decision found the State Party in violation of its obligations because there was no legislation to combat sexual harassment and no adequate avenues of redress or recovery for victims.

The Optional Protocol's preamble also alludes to the duty to protect against private abuse when State Parties reaffirm their determination to ensure women's full and equal enjoyment of rights and to take "effective action to prevent violations of these rights ..."

(b) *Due diligence*

The "due diligence" concept is perhaps featured most notably in General Comment 31 by the Human Rights Committee, where it refers to States Parties being required to exercise "**due diligence** to prevent, punish, investigate or redress the harm caused by ... acts by private persons or entities."

References to "due diligence" in relation to the duty to protect generally imply that the duty is one of conduct rather than result. States will not be considered to have violated their treaty obligations simply because of proof of non-State abuse — there must be some State act or omission that evidences a failure to exercise due diligence in fulfilling the duty to protect.

The Committee discusses the concept of "due diligence" only in the context of protection against violence, although it also appears to support the concept's general applicability. In General Recommendation 19 on violence against women, the Committee provides that "under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."

(c) *Other duties*

Unlike some of the other treaty bodies, the Committee does not discuss in detail whether the State **duty to respect** requires States to consider the impact on rights of all commercial agreements entered into by the State. Nevertheless, Concluding Observations imply that States should report on the impacts of economic policies, including regional trade agreements, on women's rights, especially those living in rural areas. They also request information on State efforts to "neutralize" any negative effects of such agreements.

The Committee regularly discusses the promotion aspect of the duty to fulfill in the context of corporate activities when it calls on States to educate the public about rights, including private sector actors.

2. References to business enterprises

The Convention specifically refers to "enterprises" in Art. 2(e), and in fact was the first UN human rights treaty to do so. Other CEDAW provisions do not explicitly mention enterprises but as indicated above, deal with situations likely to involve business enterprises, such as employment, health and financial services' contexts. For instance, Arts. 13 and 14 require measures by States to eliminate discrimination against women in

economic and social life, including ensuring equal rights in relation to bank loans and other forms of financial credit.

The Committee has explicitly referred to private enterprises and also implicitly discussed them when speaking more generally about private actors. For example, General Recommendations emphasize that temporary special measures under Art. 4 should also cover the activities of private enterprises. Further, the Committee regularly refers to the need for States to combat abuse in the labor market and to regulate a wide range of employers, including publicly listed companies and smaller enterprises. Such discussions often express concern about employment conditions in certain sectors, including the tourism, light industry, apparel and agricultural sectors.

The Committee has also discussed the health industry, including States' duties to ensure equal access to services and to combat coercive procedures. It has implicitly referred to the need to regulate financial institutions in its calls to eliminate discrimination in the provision of credit and loans and it has recommended that States ensure that the media and advertising agencies respect and promote respect for rights. The Committee has also indicated that greater regulation of the tourism industry might be necessary to stop exploitation of prostitution. See below for more detail.

3. Regulation

(a) Types of measures contemplated

The Convention refers to the implementation of State obligations through all appropriate measures, including legislation, in order to prohibit all discrimination against women and to ensure women's development and advancement. It is clear that the Committee believes that such implementation will only be effective if these measures target both State and non-State actors, including business enterprises, where appropriate. While in line with the Convention the Committee often focuses on legislative measures, it has also noted the importance of administrative measures and the establishment of monitoring mechanisms to prevent abuse.

(b) Legislative measures

Legislative measures are referenced throughout the Convention. For instance, under Art. 2(a), States Parties undertake to embody equality principles in national constitutions or other appropriate legislation and must take all appropriate measures, including legislative measures, to modify existing practices which constitute discrimination. Under Art. 2(b) States Parties undertake to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women. Other provisions simply refer to "all appropriate measures" but as indicated by the Committee, should be read with the rest of the Convention that highlights the importance of implementation through legislative measures.

The Committee has consistently emphasized the importance of legislative measures or reforms where appropriate in giving effect to Convention rights. It has discussed the importance of States ensuring that legislation, among other measures, is in line with the duty to protect. In particular, in General Recommendation 24 on women and health, the

Committee provides that a failure to ensure that “legislation and executive action and policy” comply with the duties to respect, protect and fulfill rights could constitute a violation of the Convention.

Concluding Observations have called for legislative measures in a range of contexts and have particularly welcomed information from States about new labor legislation aiming to combat discrimination against women in the public and private sectors. Further, a Decision under the Optional Protocol found the State Party in violation of its obligations where among other things, it failed to legislate against violence and harassment.

The Committee has stressed that legislation must be enforced. In particular, the Committee has expressed concern about “equal pay for equal work” legislation that is not implemented in practice. Further, Concluding Observations have recommended regular reviews of employment legislation to ensure that barriers in the labor market continue to be reduced.

(c) *Temporary special measures*

Art. 4 of the Convention provides that States’ adoption of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination but should also not lead to the maintenance of unequal or separate standards. Further, temporary special measures should be discontinued following the achievement of the objectives of equality of opportunity and treatment.

To this end, the Committee has said that legislation implementing the Convention provisions must operate to prevent both *de jure* and *de facto* discrimination and has supported wide-ranging temporary special measures in order to stamp out *de facto* discrimination by private enterprises. The Committee believes that a State’s failure to adopt temporary special measures will not be justifiable merely based on “inaction through predominant market or political forces,” including obstacles inherent in the private sector.

The Committee has also said that temporary special measures may be achieved through administrative guidelines or even on a voluntary basis by private actors. The Committee suggests that such measures in the employment sphere could include targeted recruitment, hiring and promotion as well as quota systems and incentives.

(d) *Administrative measures*

Art. 18 provides that States Parties’ periodic reports should include administrative measures taken to give effect to rights. Further, Art. 2(c) requires States Parties to ensure effective protection through competent national tribunals and other public institutions.

The Committee clearly supports a wide range of administrative measures to protect rights, including the implementation of national plans of action to eliminate discrimination in the public and private sectors.

(e) *Monitoring*

The Committee sees monitoring mechanisms as essential tools for States to ensure that private actors comply with non-discrimination regulation, especially in the employment and health contexts. In fact, it has called for States to equip national institutions both with resources and authority to “monitor the situation of women comprehensively.”

Concluding Observations recommend strengthening labor inspectorates and other monitoring mechanisms in order to protect women from workplace discrimination. They also urge monitoring the privatization of services, particularly health services, to assess the impacts of privatization on women’s rights. Finally, the Committee has advised States to assess the impacts on rights of development projects and other social and economic policies.

4. *Adjudication*

(a) *The right to an effective remedy*

The Convention does not contain an equivalent provision to Art. 2(3) of the International Covenant on Civil and Political Rights (ICCPR), which establishes the right to an effective remedy. Nevertheless, the Convention clearly contemplates adjudication of the actions of public and private actors to eliminate discrimination. For example, Art. 2(c) requires effective protection through competent national tribunals and other public institutions. Further, two provisions explicitly refer to sanctions as discussed below.

The Committee has spoken of the importance of “a system that ensures effective judicial action” under the Convention. It discusses the use of “legal measures” to provide “effective protection,” including complaints mechanisms, penal sanctions, civil remedies and compensatory provisions. In other words, it expects States Parties to take steps not only to prevent abuse by third parties but also to punish and redress abuse. “Protective measures” for victims (including rehabilitation and support services) are also viewed as important.

(b) *Complaints mechanisms*

The Committee has recommended “fair and protective procedures” for hearing complaints about health rights. Further, the Committee has emphasized that States should provide effective complaints procedures and remedies for victims of violence, including compensation.

Concluding Observations have called for States to ensure that women have “access to means of redress, including legal aid” in relation to workplace discrimination. Further, a Decision under the Optional Protocol found the State Party in violation of its obligations where among other things, it failed to provide adequate access to redress and protective measures and failed to ensure that certain issues, including domestic violence, were given a high priority in court proceedings.

(c) *Reparation*

The Committee has mentioned that States may be responsible for facilitating the payment of compensation for private acts, especially in relation to violence against women. Further, the Committee has highlighted that civil remedies may be appropriate to protect women against violence, including sexual harassment in the workplace.

Concluding Observations specifically express concern about the lack of effective compensation for violations of rights in both the public and private sectors.

(d) *Sanctions and penalties*

Two Convention provisions explicitly refer to sanctions: Art. 2(b) requires States Parties to adopt legislative and other measures, including sanctions, to prohibit all discrimination. Art. 11(2)(a) requires States to take appropriate measures to “prohibit, subject to the imposition of sanctions,” dismissal and discrimination on the basis of pregnancy, maternity leave or marital status.

The Committee has recommended sanctions for public and private actors abusing rights, with Concluding Observations regularly calling for sanctions to punish rogue employers. One Decision under the Optional Protocol called for monitoring of public and private health centers to ensure fully informed consent is given before sterilization procedures, with appropriate sanctions where such procedures are not followed.

While the Committee clearly expects regulatory and adjudicative measures to extend to the actions of private enterprises, it is not always clear whether such measures should focus on the business enterprise itself or natural persons acting on its behalf.

5. Promotional measures and “business responsibilities”

(a) *Promotional measures*

Art. 5 requires States to take all appropriate measures to modify social and cultural patterns in order to eliminate prejudices and practices based on harmful stereotypes. Further, Art. 2(f) requires all appropriate measures to modify or abolish customs and practices that constitute discrimination. Thus it is unsurprising that the Committee has focused on the importance of promotional measures in combating discrimination, including for the private sector.

While it is more common for the Committee to suggest general promotional measures to reduce societal prejudices, it has also focused on promotion of rights amongst the private sector. For instance, it has recommended awareness-raising campaigns for the media and advertising agencies. It has also advocated rights-based training for health-care professionals.

Concluding Observations have called for dissemination of the Convention and the Committee’s General Recommendations to the private sector. They have also recommended enhanced cooperation with the private sector and have noted with appreciation policies to support gender mainstreaming in business, including through the establishment of administrative bodies responsible for implementing such policies.

(b) “Business responsibilities”

While the Committee has stressed the ultimate accountability of States Parties under the Convention, it has also implied that private actors, including business enterprises, may have some responsibilities. For instance, while it is more common for the Committee to discuss the media through recommendations to States, it has also directly addressed the media on some occasions, suggesting it might consider the media to have particular responsibilities in respecting and promoting rights. Concluding Observations have also encouraged the media to project positive images of women and to promote their equal status with men in the public and private spheres.

Further, General Recommendation 24 contains numerous recommendations concerning health care providers though it is unclear if the Committee believes that such actors have formal responsibilities, legal or otherwise, under the Convention.

As discussed below, it would be helpful to further understand the Committee’s views on the existence, if any, of roles or responsibilities of business enterprises under the Convention.

6. Business and rights specific information

The Committee’s commentaries imply that the duty to protect requires States Parties to regulate and adjudicate actions by all types of business enterprises in relation to all Convention rights capable of violation by private actors. Nevertheless, the research sample highlighted some trends suggesting that to date, the Committee mentions certain types of enterprises and rights more than others in discussing protection vis-à-vis corporate activities. This does not indicate that the Committee may or will focus only on certain types of abuses by certain types of business enterprises in the future.

In particular, the Committee has discussed the following:

Type of actor	Recommendations to States Parties
Employers	<p>States should do more to guarantee equal pay for equal work and monitor working conditions. They should also take steps to combat occupational segregation, including through temporary special measures to promote female representation in decision-making in the private sector.</p> <p>The Committee has discussed a wide range of employers in recommending State action to prevent and punish discrimination, from publicly listed companies to small, family owned enterprises.</p> <p>Concluding Observations express concern about the labor market in particular sectors in certain States. The Committee has referred to the tourism and hospitality sector; light industry; the apparel and clothing sector; and the agricultural sector. It has also recommended that States Parties strengthen control of employment agencies and ensure protection in export processing zones.</p>
Health care providers	<p>States should report on how private health care providers meet States’ duties regarding equal access to services. They should also enact laws and formulate policies to address violence against women, including through health care and hospital protocols.</p>

Type of actor	Recommendations to States Parties
	The Committee may be implicitly referring to pharmaceutical companies in General Recommendation 24 when it confirms that women should be fully informed when they agree to participate in research.
Media and advertising agencies	States should take measures to ensure that the media and advertising agencies respect and promote respect for women, including through positive portrayals of women.
Financial institutions	The Committee implicitly suggests regulation of private financial institutions may be necessary when it speaks of temporary special measures regarding credit and loans. Further, the Concluding Observations for one State explicitly recommended proactive steps to ensure financial institutions act in line with the interests of indigent women.
Tourism industry	The Committee has indicated that it might support greater regulation of the tourism industry in order to protect against exploitation of prostitution.
Companies affecting land resources	The Committee implies some necessary regulation of companies whose activities affect land resources when it calls for assessments before development projects and steps to ensure that women can access land and water resources without discrimination.

7. State-owned or controlled enterprises and privatization of government services

The Committee does not tend to differentiate between State duties regarding the activities of State owned or controlled companies as opposed to privately owned companies. For example, while Concluding Observations have called for increased female representation in decision-making in *State owned companies*, the same Concluding Observations recommend identical measures for non-State companies, including major listed companies.

Broader questions regarding State controlled companies remain unanswered, including under which conditions the Committee considers that a company's acts may be attributed directly to a State because it acts under the State's direction, control or instructions, and what such attribution might mean in practice.

The Committee has expressed concern about the lack of accountability which could result from the privatization of certain governmental functions. Especially in relation to health, the Committee confirms in General Recommendation 24 that "States parties cannot absolve themselves of responsibility in these areas by delegating or transferring these powers to private sector agencies." Further, Concluding Observations have expressed concern that privatization of health services could negatively impact women's access to these services.

8. Territorial scope of the Convention

The Convention does not specify any territorial or jurisdictional scope. Nevertheless, the Committee has interpreted the territorial scope of the Convention similar to the other treaty bodies – that is, States Parties' obligations apply to eliminate discrimination against women within their territory as well as those outside their national territory but within their jurisdiction or effective control.

The Committee has not yet addressed how the concept of “effective control” could work in the context of corporate activities. For example, it has not yet discussed whether a State could gain jurisdiction or effective control over individuals where a corporation acts on the State’s behalf (exercising elements of governmental authority or acting under the State’s instructions, direction or control) outside the national territory, and exercises a degree of control over the individuals to the extent that, were such control to be exercised by State agents, the State’s treaty obligations would likely apply in full.

9. Regulation with extraterritorial effect

The SRSG’s mandate looks specifically at the acts of transnational businesses. Thus an important question is whether a State Party has any duties under the Convention to regulate the acts of business enterprises which discriminate against women who are both outside the State’s national territory and effective control, particularly where the State has some influence over such enterprises.

At the outset, it is important to note that unlike the Convention against Torture and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Convention does not explicitly require States Parties to establish jurisdiction over acts occurring abroad.

The Committee has not yet provided guidance on this particular issue though it has indicated its support for extraterritorial regulation in certain situations. For example, the Committee has commended States for introducing penalties for nationals and residents who perform or assist in performing female genital mutilation abroad.

The Committee also recommends strategies to prevent trafficking, including prosecuting and punishing offenders. Some of these discussions have occurred within broader discussions concerning international cooperation.

More guidance would be helpful on whether the Committee expects States Parties to establish jurisdiction over perpetrators of trafficking wherever the abuse occurs provided there is a recognized basis of jurisdiction, such as where the perpetrator is a national. It would then be useful to understand whether such obligations apply to other abuses and whether the Committee expects that jurisdiction should be established over legal persons.

10. Issues which would benefit from further elaboration

This report shows that the Committee has increasingly considered the issue of States Parties’ duties regarding corporate activities and has provided guidance in relation to a number of different industries and sectors. Nevertheless, there remain several areas, set out below, which are key to the SRSG’s mandate and where further discussion could assist States, business enterprises and individuals to better understand these obligations. It is acknowledged that lack of detailed guidance on these issues to date may not only be attributed to limited information on these issues but also because they may not always be at the core of the Committee’s mandate.

The issues set out below should not be considered as comprising part of any formal recommendations from the SRSG. They simply highlight areas where further guidance could help to resolve difficult questions for States Parties, businesses, and civil society.

The duty to protect and other duties

- (a) the nature and scope of the duty to protect in relation to preventing interference with rights by business enterprises, including the relevance of the concept of “due diligence;”
- (b) the nature and scope of the duty to respect in relation to States considering the human rights impacts of agreements with business enterprises. For example, whether the Committee considers that States should not only consider the impacts of bilateral trade agreements and economic policies but also the impacts of any agreements they enter into with business enterprises, national or transnational and if so, what types of steps States should take in considering and minimizing the impacts of such agreements; and
- (c) the Committee’s views on human rights impact assessments more generally, including in which circumstances States should require or encourage companies to undertake such assessments.

Regulation and adjudication

- (d) whether the Committee interprets the Convention as requiring legislative or other measures to address legal persons, including business enterprises, where appropriate or whether it considers it sufficient for States to prosecute or ensure a right to seek reparation from individuals acting on behalf of the enterprise.

Business responsibilities

- (e) the nature and extent of any responsibilities for business enterprises under the Convention, including what legal and practical consequences the Committee sees in relation to such responsibilities. Guidance would also be helpful on what the Committee considers States are required to do in order to facilitate such enterprises to fulfill any responsibilities that exist.

State owned or controlled companies

- (f) when the Committee considers that a company, while not part of the State apparatus, may nevertheless be considered to directly engage the responsibility of the State because it acts under the State’s direction, control or instructions; and whether, if responsibility can be directly attributed, the State will be held to a different standard in relation to the company’s activities than under the duty to protect.

Territorial scope

- (g) whether the Committee might consider that a State could gain effective control outside its national territory where a corporation acts on the State’s behalf (exercising elements of governmental authority or acting under the State’s

instructions, direction or control) outside the national territory, and exercises a degree of control over individuals to the extent that, were such control to be exercised by State agents, the State's treaty obligations would likely apply in full.

Regulation with extraterritorial effect

- (h) whether the Committee considers that the Convention requires States Parties to protect against business abuses occurring outside their jurisdiction, including through extraterritorial regulation, and particularly where the abuse is committed by business enterprises considered to have their "nationality."

TABLE OF CONTENTS

PREFACE	2
EXECUTIVE SUMMARY	4
ABBREVIATIONS	17
INTRODUCTION	18
METHODOLOGY	18
PART 1 - THE DUTY TO PROTECT	19
A. Outlining the duty	19
B. Relevant provisions of the Convention and Optional Protocol	20
C. The Committee’s commentary on the existence of a State duty to protect	21
D. Reservations	22
E. Due diligence	23
F. Decisions under the Optional Protocol	24
G. Other duties	24
<i>Duty to respect</i>	24
<i>Duty to fulfill</i>	25
PART 2 - REFERENCES TO BUSINESS ENTERPRISES	25
A. Convention	25
B. Commentary from the Committee	26
PART 3 – REGULATION	27
A. Types of measures contemplated	27
B. Legislative measures	27
C. Temporary special measures	29
D. Administrative measures	32
E. Monitoring	33
PART 4 - ADJUDICATION	35
A. The right to an effective remedy	35
B. Complaints mechanisms and reparation	35
C. Reparation	37
D. Sanctions and penalties	38
PART 5 - PROMOTIONAL MEASURES AND “BUSINESS RESPONSIBILITIES”	40
A. Promoting awareness and understanding amongst the private sector	40
B. “Business responsibilities”	41
PART 6 - BUSINESS AND RIGHTS SPECIFIC INFORMATION	42
A. Employers	42
B. Health care providers and pharmaceutical companies	45
C. Media and advertising agencies	46
D. Financial institutions	47
E. Tourism industry	48
F. Companies affecting land resources	49
PART 7 - STATE OWNED OR CONTROLLED ENTERPRISES AND PRIVATIZATION OF GOVERNMENT SERVICES	51
A. State owned or controlled enterprises	51
B. Privatization	52
PART 8 - TERRITORIAL SCOPE	53
PART 9 - REGULATION WITH EXTRATERRITORIAL EFFECT	53

A. The nature of the issue	53
B. Guidance from the Committee.....	54
PART 10 - ISSUES FOR FURTHER ELABORATION	55
A. Scope and content of the duty to protect.....	56
B. Scope and content of the duty to respect when States contract with corporations	56
C. Regulation and adjudication of legal or natural persons.....	56
D. “Business responsibilities”.....	57
E. State controlled enterprises	57
F. Territorial scope	57
G. Regulation with extraterritorial effect.....	57
ANNEX 1 - SUBSTANTIVE ARTICLES OF CEDAW	59
ANNEX 2 – SUBSTANTIVE ARTICLES OF OPTIONAL PROTOCOL TO CEDAW	70
ANNEX 3 – STATES PARTIES TO CEDAW	74

ABBREVIATIONS

CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Committee against Torture
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women; Committee on the Elimination of all Forms of Discrimination against Women
CERD	Committee on the Elimination of all Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CMW	Committee on Migrant Workers
CRC	Convention on the Rights of the Child; Committee on the Rights of the Child
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
OHCHR	Office of the United Nations High Commissioner for Human Rights
SOE	State owned enterprise
SRSG	Special Representative of the Secretary-General

INTRODUCTION

1. This report outlines the nature of States Parties' obligations in relation to activities of business enterprises under the United Nations Convention on the Elimination of All Forms of Discrimination against Women (Convention) as elaborated by its treaty monitoring body, the Committee on the Elimination of Discrimination against Women. (CEDAW/Committee)

2. This report focuses on the Committee's commentary on State duties vis-à-vis business enterprises, with reference to broader discussions about non-State actors where parallels may be drawn in relation to business enterprises. Accordingly, it does not address in detail State duties regarding other actors who may impact women's rights such as spouses and other family members, religious groups, educational institutions and armed groups.

3. References to 'private actors, business enterprises or entities' or similar phrases using the word 'private' should be understood as references to non-State actors. Use of the word 'private' is not intended to denote the private/public distinction in the sense of private/proprietary companies versus publicly listed/owned companies. The phrase 'non-State actor' is understood as any actor that is not a State agent and that may indirectly or directly violate human rights (as enshrined in the relevant treaty).

4. This report focuses on States Parties' duties to regulate and adjudicate corporate activities - it discusses direct corporate responsibilities only to the extent discussed by the Committee and is **not** intended as an examination of direct obligations for business enterprises under international law.

5. Part 1 of this report examines the Committee's discussion of the duty to protect generally while Part 2 looks at its references to business enterprises. Part 3 explores the regulatory steps that the Committee has recommended States Parties take in order to protect against harm by business enterprises while Parts 4 and 5 look at adjudicative and promotional measures as well as the Committee's discussions about "business responsibilities." Part 6 highlights guidance from the Committee regarding specific types of corporate actors and rights. Part 7 discusses issues related to State-owned and controlled enterprises and privatization. Part 8 looks at whether States Parties' obligations may apply to situations where corporations acting on behalf of the State exercise control over individuals outside the State's national territory, while Part 9 examines whether the Committee has interpreted the Convention as requiring States Parties to regulate the acts of business enterprises abroad. Finally, Part 10 highlights issues which would benefit from further clarification. Annexes 1 and 2 contain the substantive articles of the Convention and the Optional Protocol respectively and Annex 3 lists States Parties to the Convention.

METHODOLOGY

6. Like the other treaty specific reports in this series, this report is based only on an examination of **primary materials** associated with the Convention, namely the treaty

provisions themselves; General Recommendations by the Committee; Concluding Observations on States' periodic reports; and Views on Communications under the Optional Protocol to the Convention. (Decisions)

7. General Recommendations and Decisions were examined in their entirety.¹⁰ Due to resource constraints, only Concluding Observations from Sessions 28 through 37 of the Committee were included in the research sample.¹¹ Of the sessions included, a search function was used to limit consideration to those Concluding Observations containing relevant terms, ranging from general words such as “business,” “company,” “corporation,” “protect” and “private” to more specific phrases once it was discovered that the Committee consistently mentions particular types of actors and sectors.¹²

8. Due to the number of Concluding Observations in the research sample, this report only refers to a selection of Concluding Observations rather than listing all Concluding Observations relevant to a particular subject. Further, examples tend to focus on concerns and recommendations by the Committee rather than positive feedback – readers should be aware that such recommendations are often preceded by the Committee noting or welcoming positive steps towards protection.

PART 1 - THE DUTY TO PROTECT

A. Outlining the duty

9. The three over-arching State duties associated with human rights treaties are the duties to respect, protect and fulfill rights. Simply stated, the duty to respect requires the State and its agents to refrain from violating rights. The duty to protect is generally defined as the duty to prevent, punish, investigate and redress harm by non-State actors.

10. For example, the Committee on Economic, Social and Cultural Rights (CESCR) has said that in relation to the right to work, the duty to protect requires States to prevent “third parties from interfering with the enjoyment of the right to work.”¹³ The Human Rights Committee (HRC) has said that States Parties' positive obligations to “ensure” rights under the International Covenant on Civil and Political Rights (ICCPR) “will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or

¹⁰ See <http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html> for a complete list of the Committee's General Recommendations. Note that under Arts. 8-10 of the Optional Protocol, the Committee may initiate inquiries if it receives reliable information indicating grave or systematic violations by a State Party of the Convention rights. It does not appear that to date, any such inquiries have dealt with corporate activities.

¹¹ See <http://www.un.org/womenwatch/daw/cedaw/sessions.htm> for a complete list of the Committee's sessions. Time constraints prevented examination of Concluding Observations from the Committee's 38th Session held from 14 May - 1 June 2007.

¹² The main sources used for searching treaty documentation were the United Nations Treaty Bodies Database and the Human Rights Index of United Nations Documents, provided by the Faculty of Law – Institute of Public Law at the University of Bern.

¹³ CESCR General Comment No. 18, ‘The Right to Work (art. 6),’ U.N. Doc HRI/GEN/1/Rev.8 (2006) 148, at para. 22 (hereinafter CESCR General Comment 18).

entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.”¹⁴

11. The duty to fulfill generally requires positive steps to *promote, facilitate* and in some cases *provide* for the enjoyment of rights.¹⁵

12. Given the duty to protect focuses on preventing abuse by third parties, it is unsurprising that the Committee has focused on this duty when discussing State obligations to prevent abuse by business enterprises.

B. Relevant provisions of the Convention and Optional Protocol

13. Under Art. 2 of the Convention, States Parties “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.” To this end, they agree to undertake a number of measures in order to protect against discrimination by both public and private actors.

14. For example, paragraph (b) of Art. 2 requires States to adopt legislative and other measures, including sanctions where appropriate, to prohibit **all** discrimination against women. Paragraph (c) requires the establishment of legal protection of women’s rights on an equal basis with men and necessitates that States ensure effective protection of women against **any** act of discrimination through competent national tribunals and other public institutions.

15. Even more relevant to this exercise, Art. 2(e) says that States Parties undertake to “take all appropriate measures to eliminate discrimination against women by any person, organization or **enterprise**.”

16. Provisions dealing more generally with protective and promotional measures also suggest that the State has a key role to play in protecting against both State and non-State abuse. For example, Art. 3 requires States to take appropriate measures in all fields, particularly the political, social, economic and cultural fields, to ensure women’s full development and advancement. Art. 4 provides that temporary special measures “aimed at accelerating *de facto* equality between men and women” will not be considered discrimination. As discussed below, the Committee has recommended that temporary special measures apply to both the public and private sectors. Art. 5 requires all appropriate measures to modify social and cultural patterns in order to eliminate harmful prejudices and practices.

17. Other provisions deal with contexts likely to involve business enterprises and indicate that States may only be able to fulfill their obligations if they take steps to regulate such

¹⁴ HRC General Comment No. 31, ‘The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,’ U.N. Doc HRI/GEN/1/Rev.8 (2006) 233, at para. 8 (hereinafter HRC General Comment 31).

¹⁵ See generally Henry J. Steiner & Philip Alston, *International Human Rights in Context: Law, Politics, Morals* 182 – 184 (Oxford University Press, 2nd ed. 2004).

actors in order to protect against discrimination. This view is supported by the Committee as discussed below. For example, Art. 11 requires States to take all appropriate measures to eliminate discrimination against women in employment in order to ensure equal rights with men including in relation to the right to work; the right to the same employment opportunities; the right to free choice of profession and employment; the right to equal remuneration; the right to social security; and the right to safe working conditions.

18. Further, Art. 12 requires elimination of discrimination in the health care field and Arts. 13 and 14 relate to economic and social life, including financial services. Under Art. 13, States must take all appropriate measures to eliminate discrimination against women in “other” areas of economic and social life to those already discussed. In particular, such measures should ensure the same rights for men and women in relation to the right to bank loans, mortgages and other forms of financial credit as well as the right to participate in recreational activities, sports and all aspects of cultural life.

19. Similarly, Art. 14 requires all appropriate measures to ensure the Convention’s application to women in rural areas, including ensuring the right to participate in development planning and to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform.

20. Finally, the preamble to the Optional Protocol also alludes to the duty to protect against public and private abuse when States Parties reaffirm their determination to ensure women’s full and equal enjoyment of rights and to take “effective action to prevent violations of these rights ...” Art. 11 of the Optional Protocol also requires appropriate steps to ensure that individuals are not subject to any intimidation as a result of communicating with the Committee.

C. The Committee’s commentary on the existence of a State duty to protect

21. The Committee regularly affirms the existence of a State duty to protect against abuse by non-State actors, including business enterprises. For example, in General Recommendation 24 on women and health, the Committee highlights its view that the duty to protect in relation to women’s health “requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations.”¹⁶ Further, the Committee provides that legislative and executive action and policy should comply with the State’s duty to respect, protect and fulfill rights in relation to health care.¹⁷ General Recommendation 24 also refers to the duty to protect when it says that the full realization of women’s health rights can only be achieved if “States Parties fulfill their obligation to respect, **protect** and promote” fundamental rights to nutritional well-being.¹⁸

¹⁶ General Recommendation No. 24, “Article 12 of the Convention (women and health),” U.N. Doc HRI/GEN/1/Rev.8 (2006) 329, at para. 15 (hereinafter General Recommendation 24).

¹⁷ *Id.* at para. 13.

¹⁸ *Id.* at para. 7.

22. General Recommendation 25 on temporary special measures explains that States Parties have three central obligations in relation to eliminating discrimination against women: (a) the duty to ensure that their laws do not discriminate and that women “are **protected** against discrimination – committed by public authorities, the judiciary, organizations, **enterprises** or private individuals, in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies;”¹⁹ (b) the obligation to improve women’s *de facto* position through policies and programmes; and (c) the duty to address gender-based stereotypes not only held by individuals but also present in legal and societal structures.

23. As discussed further in Part 3, the Committee clearly supports the wide application of temporary special measures to both public and private actors. In particular, the Committee indicates that it will reject arguments that temporary special measures have not been implemented in the private sector because of particular “market forces”²⁰ – it considers States accountable for preventing both *de jure* and *de facto* discrimination and that “relevant legislation on non-discrimination and temporary special measures should cover governmental actors as well as private organizations or enterprises.”²¹

24. In recognizing the duty to protect, the Committee has suggested that the Convention provisions should be read in light of Art. 2, including paragraph (e), which requires action to protect against interference by enterprises. For example, in making its above comments in General Recommendation 25 about private organizations and enterprises, the Committee reminds States Parties that Art. 2 “which needs to be read in conjunction with all other articles, imposes accountability on the State party for actions by these actors.”²² Further, General Recommendation 19 on violence against women refers to Art. 2(e) in particular when it emphasizes that States may be held responsible under the Convention for private acts of violence if they fail to prevent, punish, investigate or redress such acts.²³

25. Discussed throughout this report, Concluding Observations regularly recommend a wide range of measures to regulate and adjudicate the acts of enterprises in order to protect against interference with rights.

D. Reservations

26. While the Committee acknowledges that States Parties are primarily responsible for deciding the appropriateness of other States’ reservations to the Convention, it has expressed concern at reservations to Art. 2. It has suggested that such reservations are at odds with the Convention’s object and purpose.²⁴ In particular, the Committee has said

¹⁹ General Recommendation No. 25, “Article 4, paragraph 1 of the Convention (temporary special measures),” U.N. Doc HRI/GEN/1/Rev.8 (2006) 337, at para. 7 (hereinafter General Recommendation 25).

²⁰ *Id.* at para. 29.

²¹ *Id.* at para. 31.

²² *Id.* at para. 29.

²³ General Recommendation No. 19, “Violence against women,” U.N. Doc HRI/GEN/1/Rev.8 (2006) 302, at para. 9 (hereinafter General Recommendation 19).

²⁴ Art. 28(2) of the Convention provides that a reservation incompatible with the Convention’s object and purpose will not be permitted.

that Art. 2 is considered a “core” provision and that “States parties which ratify the Convention do so because they agree that discrimination against women in all its forms should be condemned and that the strategies set out in article 2, subparagraphs (a) to (g), should be implemented by States parties to eliminate it.”²⁵

27. Accordingly, the Committee has implied that reserving out of Art. 2 would indicate a State’s unwillingness to fulfill its commitment to ensure full and equal participation in women in “all aspects of public and private life.”²⁶ While consideration of the Committee’s pronouncements on reservations regarding Art. 2 was beyond the scope of this report, such comments do suggest that the Committee would be concerned about a State reserving out of Art. 2(e) in order to avoid taking measures to eliminate discrimination by business enterprises.

E. Due diligence

28. Amongst the UN human rights treaty bodies, the concept of “due diligence” is perhaps featured most notably in General Comment 31 by the Human Rights Committee, where it provides that “there may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties permitting or failing to take appropriate measures or to exercise **due diligence** to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”²⁷

29. References to “due diligence” generally imply that the State duty to protect is one of means rather than result. For instance, States will not be considered to have violated their treaty obligations simply because a private actor has abused rights — there must be some act or omission by the State that evidences a failure to exercise due diligence in fulfilling the duty to protect.

30. The Committee has discussed “due diligence” only in the context of protection against violence, although its comments do imply broader support for the concept’s general applicability. For example, in General Recommendation 19 on violence against women, the Committee provides that “under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with **due diligence** to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”²⁸

31. None of the other General Recommendations mention “due diligence” and references are also infrequent in Concluding Observations. *Ms. A.T. v Hungary* under the Optional Protocol refers to General Recommendation 19 and recommends that the State act with

²⁵ Emphasis added. See the Committee’s comments on reservations on its website, at <http://www.un.org/womenwatch/daw/cedaw/reservations.htm>.

²⁶ *Id.*

²⁷ HRC General Comment 31, *supra* note 14, at para. 8. See the other individual treaty reports in this series for an examination of how the other treaty bodies deal with the concept of “due diligence,” available at: <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>.

²⁸ General Recommendation 19, *supra* note 23, at para. 9.

“due diligence” to “prevent and respond” to violence against women but deals specifically with domestic violence.²⁹

32. As discussed in Part 10 below, it would be helpful to further understand what the Committee understands the concept of “due diligence” to mean in practice and whether it considers that it applies to the protection of all rights under the Convention.

F. Decisions under the Optional Protocol

33. For a communication to be admissible under the Optional Protocol, it must be submitted by individuals or groups of individuals under the State Party’s jurisdiction who claim to be victims of a violation of any of the Convention rights *by that State Party*. Thus there must be some wrongdoing by the State – authors of communications cannot simply complain about private acts without indicating how the State is at fault.

34. Decisions to date have illustrated that the State’s failure to protect against private abuse, including failing to prevent or redress abuse, may qualify as a violation by the State of the Convention even if it is not possible to directly attribute private acts to the State under international law.

35. In particular, one Decision found the State Party in violation of its obligations because there was no legislation to combat sexual harassment and no adequate avenues of redress or recovery for victims.³⁰ Another Decision regarding forced sterilization recommended the State Party to ensure all relevant personnel in public and private health centers comply with health rights.³¹ These Decisions are discussed in more detail below.

G. Other duties

Duty to respect

36. Other treaty bodies, such as CESCR, have provided that a State could breach its duty to respect if it fails to consider rights when entering into agreements with other States or multilateral entities.³² The Committee on the Rights of the Child has said that States should ensure that all government departments consider children’s best interests in their decisions,³³ and to this end has recommended that States Parties pay attention to rights when entering into trade or other commercial agreements.³⁴

37. The Committee has made similar remarks in relation to the Convention. For example, Concluding Observations suggest that States should report on the effects of

²⁹ See Communication No.: 2/2003, Ms. A. T. v. Hungary, (Views adopted on 26 January 2005, thirty-second session), at para. 9.6 (hereinafter *A.T. v Hungary*).

³⁰ *Id.*

³¹ See Communication No.: 4/2004, Ms. A. S. v. Hungary, (Views adopted on 14 August 2006, thirty-sixth session) (hereinafter *A.S. v Hungary*).

³² CESCR General Comment 18, *supra* note 13, at para. 33. See Part I of the ICESCR report in this series for more detail.

³³ See CRC General Comment No. 5, ‘General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6),’ UN Doc. HRI/GEN/1/Rev.8 (2006) 387, at para. 12.

³⁴ See Part I of the CRC report in this series for more detail.

macroeconomic policies, including regional trade agreements, on women's rights, especially those living in rural areas.³⁵ They also request information on State efforts to "neutralize" any negative effects of such policies and agreements.³⁶

38. For instance, the Concluding Observations for Colombia suggested that the State "study the impact of free trade agreements on the socio-economic conditions of women and consider adopting compensatory measures that take women's human rights into consideration."³⁷ It does not appear that the Committee has addressed in detail whether similar obligations apply to contracting with corporations as opposed to other States.

Duty to fulfill

39. In relation to the promotion aspect of the duty to fulfill, the Committee has advocated various promotional activities as part of the quest to educate society, including business, about human rights. See Part 5 below for more information.

40. It does not appear that the Committee has discussed whether other aspects of the duty to fulfill necessitate cooperation with or regulation of corporations to secure certain resources in order to fulfill rights.

PART 2 - REFERENCES TO BUSINESS ENTERPRISES

A. Convention

41. As suggested above, the Convention specifically refers to enterprises in Art. 2(e). While the International Convention on the Elimination of All Forms of Racial Discrimination requires States to prohibit and end discrimination by "persons, groups and organizations," CEDAW was the first UN human rights treaty to specifically refer to "enterprises." Since CEDAW, UN human rights treaties have increasingly referred to business enterprises in some way. Indeed, the recent International Convention on the Rights of Persons with Disabilities, though still not in force, refers to measures to protect against discrimination by private enterprises, private entities and the private sector.³⁸

42. Other CEDAW provisions do not explicitly mention enterprises but as indicated above, deal with situations likely to involve business enterprises, such as the employment, health, financial services and recreational contexts.

³⁵ See for example Concluding Observations for Costa Rica, UN Doc. A/58/38 (SUPP), 18 July 2003, at para. 63; and Concluding Observations for Mexico, UN Doc. CEDAW/C/MEX/CO/6, 25 August 2006, at para. 21.

³⁶ Concluding Observations for Costa Rica, *supra* note 36, at para. 63.

³⁷ Concluding Observations for Colombia, UN Doc. CEDAW/C/COL/6, 2 February 2007, at para. 29. See also examples in Part 6F below.

³⁸ See <http://www.ohchr.org/english/law/disabilities-convention.htm>. See generally A/HRC/4/35/Add.1 for a description of the various ways the UN human rights treaties explicitly or implicitly refer to business enterprises.

43. Further, Art. 15 refers to “**private instruments of any kind**” when it speaks of States Parties’ agreement that contracts, public or private, directed at restricting women’s legal capacity will be void. It is assumed that such private instruments include agreements with business enterprises.

B. Commentary from the Committee

44. The Committee has explicitly referred to private enterprises and also implicitly discussed them when speaking more generally about private actors. Indeed, General Recommendation 25 alone refers to the State duty to protect against interference by “enterprises;”³⁹ “private enterprises;”⁴⁰ the “private sphere;”⁴¹ “the private sector;”⁴² private organizations,⁴³ the “private employment sector,”⁴⁴ and “private institutions.”⁴⁵ Other General Recommendations follow similar patterns, making it clear that the Committee considers States Parties responsible for protecting against interference by a wide range of private actors and enterprises.

45. The Committee refers to a broad range of employers when discussing ways to eliminate workplace discrimination. Concluding Observations mention State regulation of enterprises ranging from publicly listed companies to family owned companies while General Recommendation 16 on unpaid workers in rural and family enterprises specifically focuses on smaller enterprises.⁴⁶ Further, Concluding Observations often express concern about employment conditions in certain sectors, including the tourism, apparel and agricultural sectors. See Part 6 for more detail.

46. The Committee has also discussed the health industry, including health care centers and hospitals, in highlighting States’ duties to ensure equal access to services and to combat coercive procedures. Further, it may be implicitly calling for regulation of: *pharmaceutical companies* when it emphasizes the importance of respect for rights in the conduct of medical research; *financial institutions* when it speaks of eliminating discrimination in the provision of credit and loans; and *companies affecting land resources* when it recommends State measures to ensure equal access to land and water resources.⁴⁷ The Concluding Observations for one State Party explicitly recommended proactive steps to ensure financial institutions protect the interests of indigent women.

47. The Committee has also indicated that greater regulation of the *tourism industry* might be necessary to stop exploitation of prostitution and has recommended that States take steps to ensure that the *media* respects and promotes respect for rights.

³⁹ General Recommendation 25, *supra* note 19, at para. 7.

⁴⁰ *Id.* at paras. 31 – 32.

⁴¹ *Id.* at para. 7.

⁴² *Id.* at paras. 23 and 29.

⁴³ *Id.* at paras. 29, 31 and 32.

⁴⁴ *Id.* at para. 32.

⁴⁵ *Id.*

⁴⁶ See General Recommendation No. 16, “Unpaid women workers in rural and urban family enterprises,” U.N. Doc HRI/GEN/1/Rev.8 (2006) 299 (hereinafter General Recommendation 16).

⁴⁷ See Part 6 for more detail.

PART 3 – REGULATION

A. Types of measures contemplated

48. As noted above, Art. 2 of the Convention contemplates States taking appropriate legislative and other measures in order to prohibit discrimination. Art. 3 also calls for all appropriate measures, including legislation, to ensure women’s full development and advancement. Numerous other provisions refer to States taking “all appropriate measures” or “all necessary measures” in order to eliminate discrimination in certain contexts. Under Art. 18, States Parties undertake to submit reports on the “legislative, judicial, administrative and other measures which they have adopted to give effect” to the Convention provisions.

49. In interpreting the Convention, it is clear that the Committee considers that States Parties should take a variety of measures to regulate the acts of non-State actors, including business enterprises, in order to eliminate discrimination. In accordance with the Convention, the Committee often focuses on legislative measures. However, it has also noted the importance of administrative measures, including the establishment of monitoring mechanisms to prevent abuse as discussed below.

B. Legislative measures

50. The Convention explicitly requires legislative measures in order to eliminate discrimination in a variety of areas. For example, Art. 2(a) requires States to embody equality principles in national constitutions or other appropriate legislation. Art. 2(b) requires States to adopt appropriate legislative **and** other measures to prohibit all discrimination. Article 2(f) requires all appropriate measures, including legislative measures, to modify, among other things, existing practices which constitute discrimination.

51. Art. 3 also calls for appropriate legislation and as discussed below, the Committee has said that the temporary special measures contemplated under Art. 4 should include legislative measures where appropriate.

52. The Convention also specifically discusses legislation in Art. 6 when it requires States to take all appropriate measures, including legislation, to suppress trafficking and exploitation of prostitution. Further, Art. 18 asks States to report on legislative measures adopted to give effect to the Convention.

53. The Committee regularly recommends legislative reform in order to protect women from discrimination by non-State actors, including enterprises. As mentioned above, General Recommendation 24 provides that a failure to ensure that “legislation and executive action and policy” comply with the duties to respect, protect and fulfill rights could constitute a violation of the Convention.⁴⁸ The Committee also highlights in General Recommendation 24 that in order to satisfy the “obligation to protect,” States

⁴⁸ General Recommendation 24, *supra* note 16, at para. 13.

Parties should, *inter alia*, enact and effectively enforce laws to address violence against women and the provision of appropriate health services.⁴⁹

54. Decisions under the Optional Protocol also confirm the importance of legislative measures. For example, in *Ms. A. T. v Hungary*, the Committee expressed concern that the State had no specific legislation to combat domestic violence and sexual harassment.⁵⁰ In *Ms. A.S. v Hungary*, the Committee recommended a review of domestic legislation in relation to informed consent in sterilization procedures to ensure that such consent conforms with international human rights and medical standards.⁵¹ It also recommended that the State consider amending the relevant provision in the existing Public Health Act which allowed physicians to sterilize patients without usual information procedures where considered appropriate.⁵²

55. It is clear that States must take steps to implement and enforce legislation.⁵³ For instance, General Recommendation 13 on equal remuneration for work of equal value considers that even though many States have legislated to ensure equal pay for work of equal value, “more remains to be done to ensure the application of that principle in practice, in order to overcome the gender-segregation in the labor market.”⁵⁴ To this end, the Committee recommends the creation of “implementation machinery” to assist the effective implementation and enforcement of relevant labor legislation. It also recommends that States encourage participants in collective agreements to abide by the principle of equal pay for equal work.⁵⁵

56. Similarly, Concluding Observations have recommended improved enforcement of legislation aimed at eliminating discrimination and regular legislative reviews, particularly in the employment context, to ensure that legislation prohibiting discrimination fully complies with the Convention.

In the **Concluding Observations for Guyana**, the Committee welcomed laws to eliminate discrimination against women but also expressed concern about the “lack of systematic enforcement of existing legislation, of mechanisms to monitor and ensure compliance, and of effective remedies in case of breach.”⁵⁶

⁴⁹ *Id.* at para. 15.

⁵⁰ See *A. T. v. Hungary*, *supra* note 29, at para. 9.3.

⁵¹ See *A.S. v Hungary*, *supra* note 31, at para. 11.5.

⁵² *Id.*

⁵³ See for example General Recommendation 24, *supra* note 16, at para. 15 which not only calls for the enactment of relevant legislation but also for it to be effectively enforced. See also General Recommendation No. 21, “Equality in marriage and family relations,” U.N. Doc HRI/GEN/1/Rev.8 (2006) 308, at para. 15 which notes that even though most States report that their national constitutions and laws comply with the Convention, States may still violate the Convention because of a failure to enforce those laws. Para. 49 also recommends that where necessary to comply with the Convention, States should enact and enforce legislation.

⁵⁴ General Recommendation No. 13, “Equal remuneration for work of equal value,” U.N. Doc HRI/GEN/1/Rev.8 (2006) 296, at preambular paragraph 3 (hereinafter General Recommendation 13).

⁵⁵ *Id.* at para. 3.

⁵⁶ Concluding Observations for Guyana, UN Doc. A/60/38, 22 July 2005, at para. 291.

In the **Concluding Observations for Samoa**, the Committee called on the State to bring non-discrimination legislation in employment “into compliance with article 11 of the Convention without delay and to ensure compliance with such legislation.”⁵⁷

In the **Concluding Observations for Morocco**, the Committee urged the State to “adopt and enforce appropriate legislation according to its commitments to the relevant conventions of the International Labor Organization to ensure equal opportunities for women and men in the public and private sectors of the labor market, and to prevent direct and indirect discrimination in employment, training and remuneration.”⁵⁸

In the **Concluding Observations for the Republic of Moldova**, the Committee recommended that the State “conduct regular reviews of its legislation in accordance with article 11, paragraph 3, of the Convention, with a view to reducing the number of barriers women face in the labor market.”⁵⁹

C. Temporary special measures

57. Art. 4(1) of the Convention provides that the States Parties’ adoption of temporary special measures “aimed at accelerating *de facto* equality between men and women shall not be considered discrimination” as defined in the Convention. It also says that adoption of temporary special measures “shall in no way entail as a consequence the maintenance of unequal or separate standards” and that temporary special measures “shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.”

58. Art. 4(2) provides that the adoption of “special measures, including measures contained within the present Convention, aimed at protecting maternity shall not be considered discriminatory.”

59. The Committee has emphasized that States should ensure that temporary special measures apply to the activities of non-State actors, especially in the employment context. It believes that temporary special measures should cover *all* situations where *de facto* discrimination prevails, including in situations involving private enterprises.

60. For instance, in General Recommendation 25, the Committee notes that one of the central obligations in eliminating discrimination is to protect women against discrimination by private enterprises in the public and private spheres.⁶⁰ It also says that States must address harmful stereotypes in societal structures and institutions.⁶¹

⁵⁷ Concluding Observations for Samoa, UN Doc. A/60/38, 28 January 2005, at para. 55.

⁵⁸ Concluding Observations for Morocco, UN Doc. A/58/38 (SUPP), 18 July 2003, at para. 174.

⁵⁹ Concluding Observations for Republic of Moldova, UN Doc. CEDAW/C/MDA/CO/3, 25 August 2006, at para. 29. See also Concluding Observations for Greece, UN Doc. CEDAW/C/GRC/CO/6, 2 February 2007, at para. 30.

⁶⁰ General Recommendation 25, *supra* note 19, at para. 7.

⁶¹ *Id.*

61. It is clear that the Committee is unlikely to accept a failure to adopt temporary special measures based on difficulty in convincing private parties to implement such measures: it has said that “such failures may not be justified simply by averring powerlessness, or by explaining inaction through predominant market or political forces, such as those inherent in the private sector, private organizations or political parties. States parties are reminded that article 2 of the Convention, which needs to be read in conjunction with all other articles, imposes accountability on the State party for action by these actors.”⁶²

62. The Committee has said that Art. 4 should be applied in relation to Arts. 6 – 16 of the Convention – it considers the terms “all appropriate measures” in those articles to include temporary special measures where necessary and appropriate.⁶³ Several of these provisions relate to situations or contexts likely to involve business enterprises, including Arts. 11, 12, 13 and 14 dealing with employment, health and social and economic life respectively.

63. In line with the discretion provided by Art. 4, the Committee provides that “the term ‘measures’ encompasses a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices.”⁶⁴ In relation to legislative measures, States are invited to report on whether such measures provide for the “mandatory or voluntary nature of temporary special measures.”⁶⁵

64. In relation to administrative measures, the Committee has emphasized that temporary special measures may be based on “decrees, policy directives and or administrative guidelines” and may include both the public and private employment sectors.⁶⁶

65. The Committee has also said that temporary special measures may be “negotiated between social partners of the public or private employment sector or be applied on a voluntary basis by public or private enterprises, organizations, institutions and political parties.”⁶⁷ Thus it appears that whether the State requires or encourages business enterprises to adopt temporary special measures in order to eliminate discrimination, it must play a key role in combating *de facto* discrimination in such enterprises. Further, it appears that in relation to any special temporary measures the State chooses to adopt, the Committee believes that there should be institutions responsible for creating, monitoring and implementing such measures. Indeed, General Recommendation 25 provides that “under article 3, States parties are invited to report on the institution(s) responsible for designing, implementing, monitoring, evaluating and enforcing such temporary special measures.”⁶⁸

66. General Recommendation 25 provides examples of the types of temporary special measures which might be applied in the employment context, including targeted

⁶² *Id.* at para. 29

⁶³ *Id.* at para. 24.

⁶⁴ *Id.* at para. 22.

⁶⁵ *Id.* at para. 30.

⁶⁶ *Id.* at para. 32.

⁶⁷ *Id.* at para. 32.

⁶⁸ *Id.* at para. 34.

recruitment, hiring and promotion; numerical goals connected with time-frames; and quota systems.⁶⁹ It also emphasizes that temporary special measures should be “implemented in the areas of credit and loans, sports, culture and recreation and legal awareness.”⁷⁰

67. Numerous Concluding Observations also discuss the importance of adopting and implementing temporary special measures in the public and private employment contexts as well as in relation to financial services and recreational activities. The Committee alternates between generally calling for temporary special measures, and providing more detailed guidance in some situations. Regardless, the implication is that States will need to regulate or at least monitor the acts of a wide range of public and private persons, enterprises and institutions in order to ensure an end to *de facto* discrimination through temporary special measures.

In the **Concluding Observations for Malta**, the Committee was concerned about women’s under-representation in “the labor market in general and in senior and decision-making positions in particular.”⁷¹ It also noted with concern occupational segregation and wage gaps between men and women. The Committee urged the State to ensure *de facto* equal opportunities in the employment sector.⁷² It said that “efforts should be made to eliminate occupational segregation in the public and private sectors through skills training and encouraging women to work in non-traditional fields and by the utilization of temporary special measures...”⁷³

In the **Concluding Observations for Australia**, the Committee was concerned about “the ongoing inequalities suffered by Aboriginal and Torres Strait Islander women, whose enjoyment of human rights remains unsatisfactory in many areas, particularly with regard to employment, education, health and political participation.”⁷⁴ Among other things, the Committee recommended that Australia “adopt and implement targeted measures, including temporary special measures ... to improve indigenous women’s enjoyment of their human rights in all sectors...”⁷⁵

⁶⁹ *Id.* at para. 22.

⁷⁰ *Id.* at para. 38.

⁷¹ Concluding Observations for Malta, UN Doc. A/59/38 (SUPP), 18 August 2004, at para. 109.

⁷² *Id.*

⁷³ *Id.* at para. 110. See also Concluding Observations for Greece, *supra* note 59, at para. 30; Concluding Observations for Tajikistan, UN Doc. CEDAW/C/TJK/CO/3, 2 February 2007, at para. 30; Concluding Observations for Republic of Moldova, *supra* note 59, at para. 29; Concluding Observations for Malaysia, UN Doc. CEDAW/C/MYS/CO/2, 31 May 2006, at para. 20; Concluding Observations for Venezuela, UN Doc. CEDAW/C/VEN/CO/6, 31 January 2006, at para. 30; Concluding Observations for Cambodia, UN Doc. CEDAW/C/KHM/CO/3, 25 January 2006, at para. 28; Concluding Observations for Germany, UN Doc. A/59/38, 18 March 2004, at para. 389; Concluding Observations for Ecuador, UN Doc. A/58/38 (SUPP), 18 July 2003, at para. 328; Concluding Observations for New Zealand, UN Doc. A/58/38 (SUPP), 18 July 2003, at para. 412; and Concluding Observations for El Salvador, UN Doc. A/58/38 (SUPP), 20 March 2003, at para. 274.

⁷⁴ Concluding Observations for Australia, UN Doc. CEDAW/C/AUL/CO/5, 3 February 2006, at para. 30.

⁷⁵ *Id.* at para. 31.

In the **Concluding Observations for Turkmenistan**, the Committee was concerned about the State's "apparent lack of understanding of the purpose of and need for temporary special measures..."⁷⁶ The Committee recommended the establishment of temporary special measures "in all sectors as part of a necessary strategy to accelerate the achievement of de facto equality between women and men."⁷⁷ It also called on the State "to consider implementing measures such as quotas, benchmarks, targets and incentives, in particular with regard to articles 7, 8, 10, 11 and 14 of the Convention."⁷⁸

In the **Concluding Observations for Mauritius**, the Committee expressed concern that the State had failed to "initiate the use of temporary special measures" provided for in sex discrimination legislation which applied to both the public and private sectors.⁷⁹ Accordingly, the Committee called on the State "to implement effectively temporary special measures without further delay ... in order to accelerate the realization of women's substantive equality with men in all areas."⁸⁰ It also recommended that Mauritius "include in the pending Equal Opportunities Bill a provision on temporary special measures, in particular with regard to women's participation in decision-making, education and access to economic opportunities, and to closely monitor its implementation after the adoption of the law."⁸¹

D. Administrative measures

68. Art. 18 provides that States Parties' periodic reports should include administrative measures taken to give effect to rights. Further, Art. 2(c) requires States Parties to ensure effective protection through competent national tribunals and other public institutions.

69. The Committee clearly supports a wide range of administrative measures to protect rights. As discussed further below, the Committee has supported the establishment of various complaints and monitoring mechanisms in order to eliminate discrimination by private actors, including enterprises. The Committee has also highlighted that temporary special measures may be achieved through administrative action.

70. The Committee has emphasized the importance of national policies and action plans to prevent discrimination and has called for such policies to be created with input from a variety of stakeholders. For example, in the Concluding Observations for Germany, the Committee noted with appreciation "the wide range of policies and programmes covering many areas of the Convention" It also noted with appreciation "the integrated approach to

⁷⁶ Concluding Observations for Turkmenistan, UN Doc. CEDAW/CTKM/CO/2, 2 June 2006, at para. 22.

⁷⁷ *Id.* at para. 23.

⁷⁸ *Id.* See also Concluding Observations for Cyprus, UN Doc. CEDAW/C/CYP/CO/5, 30 May 2006, at para. 22 which calls for temporary special measures in the labor market, including re-entry programmes for women after career breaks for family reasons.

⁷⁹ Concluding Observations for Malta, *supra* note 71, at para. 14.

⁸⁰ *Id.* at para. 15.

⁸¹ *Id.* See also Concluding Observations for Denmark, UN Doc. CEDAW/C/DEN/CO/6, 25 August 2006, at para. 13, where the Committee recommended that Denmark "include in its gender equality legislation provisions to encourage the use of temporary special measures, in both the public and private sectors;" and Concluding Observations for Suriname, UN Doc. CEDAW/C/SUR/CO/3, 2 February 2007, at para. 12.

gender mainstreaming and the recent inauguration of the Gender Competence Centre to support the introduction and implementation of gender mainstreaming at various levels, including business, politics and administration.”⁸²

71. As well as discussing the benefits of including corporate actors in the formulation of non-discrimination policies where appropriate, the Committee has also focused on the importance of ensuring that wider government policies, including economic policies, take into account impacts on women’s rights. For instance, General Recommendation 6 on effective national machinery and publicity recommends that States “establish and/or strengthen effective national machinery, institutions and procedures, at a high level of Government, and with adequate resources, commitment and authority to (a) advise on the impact on women of all government policies .. and (c) help formulate new policies and effectively carry out strategies and measures to eliminate discrimination.”⁸³ As discussed in Part 1, the Committee has highlighted the need for States to consider how macroeconomic policies, including regional trade agreements, impact on women’s rights.⁸⁴

E. Monitoring

72. The Convention does not explicitly discuss monitoring. Nevertheless, considering the Committee’s focus on implementation and enforcement of legislative and other measures designed to combat discrimination, it is unsurprising that it sees monitoring mechanisms as essential tools in ensuring compliance by public and private actors, especially in the employment and health contexts.

73. General Recommendation 6 calls for States to equip national institutions to comprehensively monitor the situation of women.⁸⁵ Read with the rest of the Committee’s General Recommendations, the implication is that such institutions should monitor situations in both the public and private spheres, including the private business sector where appropriate.

74. Concluding Observations especially recommend strengthening labor inspectorates and other monitoring mechanisms in order to protect women from discrimination in the workplace, including “closely monitoring” migrant workers’ contracts and work conditions. Mechanisms should also monitor the extent of child labor.

In the **Concluding Observations for Cambodia**, the Committee was concerned about the “weak enforcement” of labor laws and the “lack of effective monitoring mechanisms” in relation to employment conditions.⁸⁶ The Committee urged the State to “establish sanctions for discrimination against women in the employment field in both the public

⁸² Concluding Observations for Germany, *supra* note 73, at para. 378.

⁸³ General Recommendation No. 6, “Effective national machinery and publicity,” U.N. Doc HRI/GEN/1/Rev.8 (2006) 291, at para. 1 (hereinafter General Recommendation 6).

⁸⁴ See for example Concluding Observations for Costa Rica, *supra* note 35, at para. 63; and Concluding Observations for Mexico, *supra* note 35, at para. 21.

⁸⁵ General Recommendation 6, *supra* note 83, at para. 1(b).

⁸⁶ Concluding Observations for Cambodia, *supra* note 73, at para. 27.

and private sectors, including sexual harassment, to create effective enforcement and monitoring mechanisms and to ensure that women have access to means of redress, including legal aid.”⁸⁷

In the **Concluding Observations for Lebanon**, the Committee recommended the establishment of a “monitoring mechanism to ensure the enforcement of legislation requiring employers to provide equal pay for work of equal value.”⁸⁸

75. Concluding Observations have also called for States to monitor the success of measures, often directed at the media, to eradicate harmful stereotypes.

In the **Concluding Observations for Spain**, the Committee called for additional measures to eliminate harmful stereotypes, “including through awareness-raising and educational campaigns directed at both women and men and at the media,” and for the State to “carefully monitor the impact of such measures.”⁸⁹

In the **Concluding Observations for New Zealand**, the Committee urged the State to “monitor the impact of measures taken through the "Reducing Inequalities" programme on Maori and Pacific women and girls, in particular in the social, economic and political areas and in criminal justice.”⁹⁰

76. Further, Concluding Observations have recommended monitoring the privatization of services, particularly health services, to assess the impacts of privatization on women’s rights.

In the **Concluding Observations for India**, the Committee was concerned that the privatization of health services was adversely impacting the ability of women to access these services.⁹¹ Among other things, the Committee called on the State “to monitor the privatization of health care and its impact on the health of poor women and provide such information in its next periodic report.”⁹²

77. Finally, as discussed in Part 1, the Committee has also advised States to assess the impacts of development projects and other social and economic policies. It would be

⁸⁷ *Id.* at para. 28.

⁸⁸ Concluding Observations for Lebanon, UN Doc. A/60/38, 22 July 2005, at para. 110. See also Concluding Observations for Ghana, UN Doc. CEDAW/C/GHA/CO/5, 25 August 2006, at para. 30; Concluding Observations for Guyana, *supra* note 56, at para. 291; Concluding Observations for Paraguay, UN Doc. A/60/38, 28 January 2005, at para. 286; and Concluding Observations for Bangladesh, UN Doc. A/59/38 (SUPP), 18 August 2004, at para. 254.

⁸⁹ Concluding Observations for Spain, UN Doc. A/59/38 (SUPP), 18 August 2004, at para. 333.

⁹⁰ Concluding Observations for New Zealand, *supra* note 73, at para. 424. See also Concluding Observations for Japan, UN Doc. A/58/38, 18 July 2003, at para. 370; and Concluding Observations for Luxembourg, UN Doc. A/58/38, 20 July 2003, at para. 311.

⁹¹ Concluding Observations for India, UN Doc. CEDAW/C/IND/CO/3, 2 February 2007, at para. 40.

⁹² *Id.* at para. 41.

helpful to further understand whether in making such assessments the Committee expects States to monitor the activities of companies participating in such projects.

PART 4 - ADJUDICATION

A. The right to an effective remedy

78. The Convention does not contain an equivalent provision to Art. 2(3) of the ICCPR, under which States Parties undertake to ensure that persons whose rights are violated have an effective remedy. Nevertheless, the Convention clearly contemplates adjudication of public and private actors to eliminate discrimination and the Committee has spoken of the importance of effective complaints procedures, as well as judicial action in some situations, to protect rights.

79. The Committee discusses the use of “legal measures” to provide “effective protection,” including complaints mechanisms, penal sanctions, civil remedies and compensatory provisions.⁹³ It expects States Parties to take steps not only to prevent abuse by third parties but also to punish and redress abuse. “Protective measures” for victims (including rehabilitation and support services) are also considered important.⁹⁴

B. Complaints mechanisms and reparation

80. Art. 2(c) of the Convention requires effective protection through competent national tribunals and other public institutions and the Committee regularly emphasizes the importance of effective mechanisms to address complaints concerning both private and public acts.

81. In particular, the Committee has said that as part of the duty to protect against violations by private persons and organizations, States should ensure “fair and protective procedures” for hearing complaints about health rights.⁹⁵ It has also said that States must establish “a system that ensures effective judicial action” in order to comply with their duties to respect, protect and fulfill women’s rights to health care.⁹⁶ It explains that a failure to put such action into place could amount to a violation of Art. 12 of the Convention.⁹⁷

82. The Committee also calls for effective complaints mechanisms in relation to workplace discrimination and has requested more information from States on the number of complaints filed in relation to such discrimination.⁹⁸ In fact, it has said that lack of information in States’ periodic reports about women’s use of existing complaints

⁹³ See for example, General Recommendation 19, *supra* note 23, at para. 24(t).

⁹⁴ *Id.*

⁹⁵ General Recommendation 24, *supra* note 16, at para. 15.

⁹⁶ *Id.* at para. 13.

⁹⁷ *Id.*

⁹⁸ See for example, Concluding Observations for the Czech Republic, UN Doc. CEDAW/C/CZE/CO/2, 25 August 2006, at para. 26; and Concluding Observations for Croatia, UN Doc. A/60/38, 28 January 2005, at para. 189.

mechanisms, including their participation in court cases, could indicate women's lack of familiarity with anti-discrimination laws and complaints procedures.⁹⁹

83. Concluding Observations have called for States to ensure that women have “access to means of redress, including legal aid” in relation to workplace discrimination.¹⁰⁰ It appears that the Committee supports both complaints mechanisms run by States as well as complaints mechanisms within private enterprises where appropriate.

In the **Concluding Observations for the Netherlands**, the Committee was concerned about the “absence of proper procedures to deal with complaints from employees about discrimination...”¹⁰¹ The Committee called on the State “to adopt legislation designed to ensure that companies and organizations introduce proper complaints mechanisms...”¹⁰²

In the **Concluding Observations for Guyana**, the Committee urged the State to “strengthen its efforts to protect women against any act of discrimination, including strengthening existing complaints mechanisms such as the Ombudsman and Chief Labor Officer...”¹⁰³

In the **Concluding Observations for Croatia**, the Committee urged the State to “encourage women to use existing complaints mechanisms in cases of possible labor market discrimination.”¹⁰⁴

84. *Ms. A.T. v Hungary* concerned the availability of complaints mechanisms to remedy domestic violence. The Committee found the State Party in violation of its obligations because among other things, it failed to provide adequate access to redress and protective measures and failed to ensure that certain issues, including domestic violence, were prioritized in court proceedings.¹⁰⁵ The Committee recommended, *inter alia*, that the State “provide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure them available, effective and sufficient remedies and rehabilitation.”¹⁰⁶ While focused on domestic violence, the Committee’s comments also suggest wider support for effective complaints mechanisms beyond situations concerning domestic violence.

85. It is also interesting to note that under Art. 15(2), States must accord to women in civil matters identical legal capacity to men and the same opportunities to exercise that capacity. In particular, women should have equal rights to conclude contracts and administer property. In the context of actions against business enterprises or their

⁹⁹ Concluding Observations for Croatia, *supra* note 98, at para.188.

¹⁰⁰ Concluding Observations for Cambodia, *supra* note 73, at para. 28.

¹⁰¹ Concluding Observations for the Netherlands, UN Doc. CEDAW/C/NLD/CO/4, 2 February 2007, at para. 29.

¹⁰² *Id.* at para. 30.

¹⁰³ Concluding Observations for Guyana, *supra* note 56, at para. 292.

¹⁰⁴ Concluding Observations for Croatia, *supra* note 98, at para. 195.

¹⁰⁵ See *A. T. v. Hungary*, *supra* note 29, at para. 9.2.

¹⁰⁶ *Id.* at para. 9.6.

representatives, it thus appears that women should have the same rights as men to bring and participate in such actions.

C. Reparation

86. The Committee tends to discuss compensation in relation to redress for violence. For example, in General Recommendation 19, the Committee notes that under general international law and specific human rights covenants, States could be responsible for providing compensation for private acts of violence. The Committee indicates that in relation to the Convention, this obligation may be implied from Art. 2(e).¹⁰⁷

87. As mentioned above, General Recommendation 19 also refers to States implementing legal measures including civil remedies and compensatory provisions in order to provide effective protection against violence by public and private actors, including sexual harassment in the workplace.¹⁰⁸ The Committee emphasizes that States should provide effective complaints procedures and remedies for victims of violence, including compensation.¹⁰⁹

88. Concluding Observations also express concern about the lack of effective compensation for violations of rights in both the public and private sectors.

In the **Concluding Observations for Tajikistan**, the Committee was concerned that relevant laws guaranteeing equality were largely silent on how “cases of discrimination against women are to be resolved, damages awarded or other effective remedies given for violations of its provisions.”¹¹⁰ Among other things, it recommended that the State consider amending relevant laws in order to clarify such “operational aspects” and also strengthen existing complaints mechanisms.¹¹¹

In the **Concluding Observations for Peru**, the Committee was gravely concerned that investigation and prosecution for all acts of violence against women were not occurring and that individual victims could not readily obtain remedies.¹¹² The Committee thus called on the State “to investigate and prosecute all acts of violence committed against women and to provide individual reparations to the women who experienced various forms of violence.”¹¹³

In the **Concluding Observations for the Czech Republic**, the Committee was particularly concerned about reports of uninformed and involuntary sterilization of Roma women as well as the failure by the State to provide redress to victims.¹¹⁴ The Committee

¹⁰⁷ General Recommendation 19, *supra* note 23, at para. 9.

¹⁰⁸ *Id.* at para. 24(t).

¹⁰⁹ *Id.* at para. 24(i).

¹¹⁰ Concluding Observations for Tajikistan, UN Doc. CEDAW/C/TJK/CO/3, 2 February 2007, at para. 11.

¹¹¹ *Id.* at para. 12.

¹¹² Concluding Observations for Peru, UN Doc. CEDAW/C/PER/CO/6, 2 February 2007, at para. 20.

¹¹³ *Id.* at para. 21. See also Concluding Observations for the Democratic Republic of the Congo, UN Doc. CEDAW/C/COD/CO/5, 25 August 2006, at para. 14.

¹¹⁴ Concluding Observations for the Czech Republic, *supra* note 98, at para. 23.

urged the State to “elaborate measures of compensation to victims of involuntary or coercive sterilization.”¹¹⁵ It also called on the State “to provide redress to Roma women victims of involuntary or coercive sterilization and prevent further involuntary or coercive sterilizations.”¹¹⁶

89. Finally, Decisions under the Optional Protocol have recommended that States provide compensation to individual authors, including in situations where the State has failed to protect against abuse by private actors such as health care providers. For example, in *Ms. A.S. v Hungary* which concerned involuntary sterilization, the Committee recommended that Hungary “provide appropriate compensation to Ms. A. S. commensurate with the gravity of the violations of her rights.”¹¹⁷

D. Sanctions and penalties

90. Two provisions in the Convention explicitly refer to sanctions: Art. 2(b) requires States Parties to adopt legislative and other measures, including sanctions, to prohibit all discrimination; while Art. 11(2)(a) requires States to take appropriate measures to “prohibit, subject to the imposition of sanctions,” dismissal on the basis of pregnancy or maternity leave and discrimination in dismissals on the basis of marital status.

91. The Committee has recommended sanctions for public and private actors abusing rights. In particular, General Recommendation 24 provides that the duty to protect in relation to health requires States Parties to “take action to prevent and impose sanctions for violations of rights by private persons and organizations.”¹¹⁸ General Recommendation 19 also notes that legal measures used to ensure effective protection against violence could include penal sanctions.¹¹⁹ General Recommendation 25 provides that amongst States’ central obligations in eliminating discrimination is the obligation to protect women against discrimination, including violations by private enterprises, by “competent tribunals as well as sanctions and other remedies.”¹²⁰

92. While the Committee has suggested that sanctions for perpetrators of discrimination should be present in both criminal and civil instruments where appropriate,¹²¹ it rarely elaborates on what types of sanctions should or could be applied, particularly in situations likely to involve business enterprises.¹²² This may be due to the level of discretion provided by the Convention.

¹¹⁵ *Id.* at para. 24.

¹¹⁶ *Id.*

¹¹⁷ *A. S. v. Hungary*, *supra* note 31, at para. 11.5.

¹¹⁸ General Recommendation 24, *supra* note 16, at para. 15.

¹¹⁹ General Recommendation 19, *supra* note 23, at para. 24(t).

¹²⁰ General Recommendation 25, *supra* note 19, at para. 7.

¹²¹ See for example Concluding Observations for Cambodia, *supra* note 73, at para. 12.

¹²² Note though that the Committee does tend to provide more guidance in relation to sanctions for domestic violence and other crimes such as sexual abuse. For example, General Recommendation 19 recommends that States introduce criminal penalties and civil remedies where necessary in order to combat domestic violence. See

93. Concluding Observations call for sanctions for those violating anti-discrimination laws, including private entities.

In the **Concluding Observations for Guatemala**, the Committee was concerned that the State's definition of discrimination in its Criminal Code did not accord "with article 1 of the Convention, which prohibits both direct and indirect discrimination, as well as article 2 (e), which explicitly requires measures to eliminate discrimination against women by private actors."¹²³ The Committee encouraged the State "to ensure that a definition of discrimination that encompasses both direct and indirect discrimination, in line with article 1 of the Convention, is explicitly reflected in all appropriate legislation and to include effective sanctions and remedies for the violation of rights by public and private entities, and actors."¹²⁴

94. The Committee regularly calls for sanctions to punish employers abusing rights. As mentioned above, such comments tend to refer to a wide range of business enterprises, big and small, confirming that the Committee expects States to take action against all types of employers abusing rights.

In the **Concluding Observations for Saint Lucia**, the Committee encouraged the State "to ensure that provisions on sexual harassment in the workplace, including enforceable sanctions, are also included in the Labor Code."¹²⁵ It also called on the State "to ensure that effective mechanisms are in place against sexual harassment in the workplace and that women are informed of their rights not to be sexually harassed at work."¹²⁶

In the **Concluding Observations for Cambodia**, the Committee was particularly concerned about "... the weak enforcement of labor laws, the absence of sanctions for non-compliance and the lack of effective monitoring mechanisms infringe on women's enjoyment of their rights under article 4, paragraph 2, and article 11 of the Convention ..."¹²⁷ The Committee encouraged the State "to establish sanctions for discrimination against women in the employment field in both the public and private sectors, including

General Recommendation 19, *supra* note 23, at paras. 24 (r) and (s). Concluding Observations provide similar recommendations in relation to domestic violence, sexual abuse and trafficking but are not included here because they were considered less relevant to the imposition of sanctions on business enterprises.

¹²³ Concluding Observations for Guatemala, UN Doc. CEDAW/C/GUA/CO/6, 2 June 2006, at para. 11.

¹²⁴ *Id.* at para. 12. For more general remarks recommending punishments for those violating anti-discrimination laws see Concluding Observations for the Maldives, UN Doc. CEDAW/C/MDV/CO/3, 2 February 2007, at para. 14; Concluding Observations for Republic of Moldova, *supra* note 59, at para. 15; Concluding Observations for Malaysia, *supra* note 73, at para. 8; Concluding Observations for Cambodia, *supra* note 73, at para. 12; Concluding Observations for Guyana, *supra* note 56, at para. 292; and Concluding Observations for Benin, UN Doc. A/60/38 (SUPP), 22 July 2005, at para. 146.

¹²⁵ Concluding Observations for Saint Lucia, UN Doc. CEDAW/C/LCA/CO/6, 2 June 2006, at para. 30.

¹²⁶ *Id.* See also Concluding Observations for the Dominican Republic, UN Doc. A/59/38 (SUPP), 18 August 2004, at para. 307.

¹²⁷ Concluding Observations for Cambodia, *supra* note 73, at para. 27.

sexual harassment, to create effective enforcement and monitoring mechanisms and to ensure that women have access to means of redress, including legal aid.”¹²⁸

In the **Concluding Observations for Mali**, the Committee was concerned about discrimination and exploitation in employment, especially in domestic work.¹²⁹ The Committee recommended that the State “pass protective legislation regarding young women domestic workers and adequately punish abusive employers.”¹³⁰

95. Further, in *Ms. A.S. v Hungary*, the Committee specifically called for monitoring of public and private health centers to ensure fully informed consent is given before sterilization procedures, with “appropriate sanctions” where such procedures are not followed.¹³¹

96. While the Committee clearly expects that regulatory measures, such as legislation, and adjudicative measures, such as sanctions imposed in judicial proceedings, should extend to the actions of business enterprises, it is not always clear whether such measures should target the business enterprise itself, natural persons acting on its behalf or both.

PART 5 - PROMOTIONAL MEASURES AND “BUSINESS RESPONSIBILITIES”

A. Promoting awareness and understanding amongst the private sector

97. Art. 5 of the Convention requires States to take all appropriate measures to modify social and cultural patterns in order to eliminate prejudices and practices based on harmful stereotypes. Further, Art. 2(f) requires all appropriate measures to modify or abolish customs and practices which constitute discrimination. Thus it is unsurprising that the Committee has focused on the importance of promotional measures in combating discrimination. In fact, the Committee seems to view “preventive measures,” such as public awareness campaigns to change harmful attitudes, as just as important as legal and protective measures in most instances.

98. While it is more common for the Committee to suggest general measures to reduce societal prejudices, it has also focused on promotion of rights amongst the private sector. For instance, it has recommended measures to ensure the media respects and promotes respect for women, including awareness-raising campaigns for the media and advertising

¹²⁸ *Id.* at para. 28. See also Concluding Observations for China, UN Doc. CEDAW/C/CHN/CO/6, 25 August 2006, at para. 30; and Concluding Observations for Eritrea, UN Doc. CEDAW/C/ERI/CO/3, 3 February 2006, at para. 28.

¹²⁹ Concluding Observations for Mali, UN Doc. CEDAW/C/MLI/CO/5, 3 February 2006, at para. 29.

¹³⁰ *Id.* at para. 30.

¹³¹ See *A. S. v. Hungary*, *supra* note 31, at para. 11.5.

agencies.¹³² It has also advocated rights-based training for health-care professionals.¹³³ See Part 6 below for more detail.

99. Concluding Observations have called for dissemination of the Convention and the Committee's General Recommendations to the private sector.¹³⁴ They have also recommended enhanced cooperation with the private sector to ensure that key decision-makers in those sectors operate with knowledge of rights.

In the **Concluding Observations for the Czech Republic**, the Committee encouraged the State "to enhance cooperation with civil society, political parties, the private sector and the media with the aim of disseminating targeted information to specific audiences, such as decision makers, education professionals, youth, and marginalized groups, on the principles of non-discrimination and gender equality as laid out in the Convention."¹³⁵

100. Finally, Concluding Observations have commended State policies to support gender mainstreaming in business, including the establishment of administrative bodies to help implement such policies.

In the **Concluding Observations for Germany**, the Committee noted with appreciation "the integrated approach to gender mainstreaming and the recent inauguration of the Gender Competence Centre to support the introduction and implementation of gender mainstreaming at various levels, including business, politics and administration."¹³⁶

B. "Business responsibilities"

101. The Committee has emphasized that States remain ultimately accountable under the Convention for failing to protect against interference by non-State actors, include business enterprises. For instance, in discussing State responsibility for ensuring that temporary special measures apply to the private sector and private organizations where appropriate, the Committee reminds States that "article 2 of the Convention, which needs to be read in conjunction with all other articles, imposes accountability on the State party for action by these actors."¹³⁷

102. However, the Committee occasionally directs recommendations to private actors such as the media and health care providers, prompting questions as to whether it sees any responsibilities for such actors, as well as other types of private actors, under the Convention.¹³⁸

¹³² See for example General Recommendation 19, *supra* note 23, at para. 24(d); Concluding Observations for Italy, UN Doc. A/60/38 (SUPP), 28 January 2005, at para. 323; Concluding Observations for Germany, *supra* note 73, at para. 385.

¹³³ See for example General Recommendation 24, *supra* note 16, at paras. 15 and 31(f).

¹³⁴ See for example, Concluding Observations for Cape Verde, UN Doc. CEDAW/C/CPV/CO/6, 25 August 2006, at para. 12; and Concluding Observations for Cyprus, *supra* note 78, at para. 12.

¹³⁵ Concluding Observations for the Czech Republic, *supra* note 98, at para. 14.

¹³⁶ Concluding Observations for Germany, *supra* note 73, at para. 378.

¹³⁷ General Recommendation 25, *supra* note 19, at para. 29.

¹³⁸ See the other individual treaty reports in the series to learn how other treaty bodies deal with the issue of "business responsibilities," particularly the reports on the CRC and ICESCR.

103. In relation to the media, some Concluding Observations have directly addressed the media in encouraging the projection of positive images of women.

In the **Concluding Observations for Kenya**, the Committee encouraged the media “to project a positive image of women and to promote the equal status of women and men in both the public and private spheres.”¹³⁹

104. General Recommendation 24 contains numerous recommendations concerning the activities of private health care providers though most necessitate some form of State action to ensure compliance by such actors.¹⁴⁰ Thus it is unclear if the Committee believes that such actors have formal responsibilities, legal or otherwise, under the Convention.

105. It would be helpful to further understand the Committee’s views on whether any responsibilities exist for non-State actors, including business enterprises, under the Convention. General Recommendation 23 on political and public life suggests that at least in relation to organizations such as political parties and trade unions, the Committee does *not* believe that such actors have direct legal obligations under the Convention. For example, the Committee provides that States must ensure that organizations such as political parties and trade unions, “which may not be subject directly to obligations under the Convention, do not discriminate against women and respect the principles contained in articles 7 and 8.”¹⁴¹ However, more clarification in relation to this issue would be welcome.

PART 6 - BUSINESS AND RIGHTS SPECIFIC INFORMATION

106. The Committee’s commentaries imply that the duty to protect applies to regulating and adjudicating actions by all types of business enterprises in relation to all Convention rights capable of violation by private actors. Nevertheless, the research sample highlighted some trends suggesting that the Committee mentions certain types of enterprises and rights more than others in discussing protection vis-à-vis corporate activities. This Part simply suggests current trends and does not indicate that the Committee may or will focus only on certain types of abuses by certain types of business enterprises.

A. Employers

107. As illustrated throughout this report, it is clear that in accordance with Art. 2(e) and Art. 11 of the Convention, the Committee expects States Parties to regulate and adjudicate the acts of employers in order to protect against workplace discrimination and all forms of violence against women, including sexual harassment and coercive medical

¹³⁹ Concluding Observations for Kenya, UN Doc. A/58/38, 20 March 2003, at para. 210.

¹⁴⁰ See generally General Recommendation 24, *supra* note 16.

¹⁴¹ General Recommendation No. 23, “Political and public life,” U.N. Doc HRI/GEN/1/Rev.8 (2006) 318, at para. 42.

testing. For example, General Recommendation 24 provides that “States parties **should** not permit forms of coercion, such as non-consensual sterilization, mandatory testing for sexually transmitted diseases or mandatory pregnancy testing as a condition of employment that violate women's rights to informed consent and dignity.”¹⁴²

108. The Committee has said that States should do more to guarantee equal pay for equal work, including through encouraging collective agreements,¹⁴³ and to ensure non-discrimination in the provision of maternity benefits.¹⁴⁴ They should also take steps to combat occupational segregation, including through temporary special measures to promote female representation in decision-making in the private sector.¹⁴⁵

109. The Committee also expects States to take a key role in protecting women against harmful working conditions. In particular, Concluding Observations recommend that States monitor employment conditions in order to ensure that women work under safe and healthy conditions.

In the **Concluding Observations for Mexico**, the Committee urged the State to “strengthen the work of the general labor inspection directorate so that the working conditions of women are effectively monitored...”¹⁴⁶

In the **Concluding Observations for the Dominican Republic**, the Committee was concerned about “the working conditions of women in the free-trade zones, which violate health and industrial safety regulations.”¹⁴⁷ The Committee recommended steps “to ensure the implementation of labor legislation in free-trade zones, in accordance with article 11 of the Convention...”¹⁴⁸

In the **Concluding Observations for China**, the Committee was concerned “about the situation of women in the employment sector,” including “the toxic and harmful environment certain women workers might be exposed to...”¹⁴⁹ The Committee encouraged the State “to ensure that women workers are protected from hazardous working environments and that adequate sanctions are in place for discrimination against

¹⁴² General Recommendation 24, *supra* note 16, at para. 22. See also Concluding Observations for Mexico, *supra* note 35, at paras. 30 -31; and Concluding Observations for the Dominican Republic, *supra* note 126, at para. 306.

¹⁴³ General Recommendation 13, *supra* note 54, at para. 3.

¹⁴⁴ See for example, Concluding Observations for Cape Verde, *supra* note 134, at para. 28; Concluding Observations for Togo, UN Doc. CEDAW/C/TGO/CO/5, 3 February 2006, at para. 27; Concluding Observations for Samoa, *supra* note 57, at paras. 54 – 55; Concluding Observations for Bangladesh, *supra* note 88, at paras. 253 -254;

¹⁴⁵ See examples in Part 3C above dealing with temporary special measures.

¹⁴⁶ Concluding Observations for Mexico, *supra* note 35, at para. 31. See also examples concerning monitoring mechanisms in Part 3E above.

¹⁴⁷ Concluding Observations for the Dominican Republic, *supra* note 126, at para. 306.

¹⁴⁸ *Id.* at para. 307.

¹⁴⁹ Concluding Observations for China, *supra* note 128, at para. 29.

women in the employment field in both the public and private sectors, including sexual harassment.”¹⁵⁰

110. The Committee has discussed a wide range of employers in recommending State action to prevent and punish discrimination in employment, including enterprises of all sizes. In fact, General Recommendation 16 is devoted to unpaid women workers in rural and urban family enterprises and Concluding Observations also discuss smaller enterprises as well as major companies.¹⁵¹

In the **Concluding Observations for Latvia**, the Committee noted with concern the disadvantaged position of women in the labor market.¹⁵² Among other things, the Committee requested the State to include in its next report “data and information on women in decision-making positions in both private and public companies.”¹⁵³

In the **Concluding Observations for Norway**, the Committee commended the State for “its innovative strategy to increase the number of women on the executive boards of public joint stock companies and State-owned companies.”¹⁵⁴

111. Further, Concluding Observations express concern about particular sectors in certain States. As set out below, the Committee has referred to the tourism and hospitality; light industry; apparel and clothing; and agricultural sectors. It has also recommended that States Parties strengthen control of employment agencies, especially those hiring migrant workers, and that they ensure protection in export processing zones.

In the **Concluding Observations for Cape Verde**, the Committee was concerned that “employment in newly established sectors, such as tourism and light industry, may have a negative impact on women if their labor rights are not sufficiently guaranteed.”¹⁵⁵ The Committee requested the State “to pay particular attention to the impact on women of employment in the tourism and light industry sectors.”¹⁵⁶

In the **Concluding Observations for Mexico**, the Committee reiterated its concern about “the situation of women’s labor rights in the *maquiladora* industries, including lack of access to social security and the persistence of discriminatory practices such as pregnancy tests.”¹⁵⁷ The Committee urged stronger monitoring mechanisms to ensure that “violators

¹⁵⁰ *Id.* at para. 30.

¹⁵¹ See generally General Recommendation 16, *supra* note 46.

¹⁵² Concluding Observations for Latvia, UN Doc. A/59/38 (SUPP), 18 August 2004, at para. 67.

¹⁵³ *Id.* at para. 68.

¹⁵⁴ Concluding Observations for Norway, UN Doc. A/58/38, 20 March 2003, at para. 405.

¹⁵⁵ Concluding Observations for Cape Verde, *supra* note 134, at para. 27.

¹⁵⁶ *Id.* at para. 28. See also Concluding Observations for the Maldives, *supra* note 124, at pars. 29 – 30, where the Committee recommended that the State pay attention to women’s opportunities to seek employment in the tourism and fishing sectors.

¹⁵⁷ Concluding Observations for Mexico, *supra* note 35, at para. 30.

of the rights of women in the *maquiladora* industries are punished and women workers' access to justice is enhanced.”¹⁵⁸

In the **Concluding Observations for Colombia**, the Committee encouraged the State “to analyze the impacts of *maquiladora* and seasonal agricultural work on women’s economic situation.”¹⁵⁹

In the **Concluding Observations for China**, the Committee raised concern in relation to the Hong Kong Special Administrative Region about “the reported abuse perpetrated by employment agencies against domestic workers, such as lower wages, fewer holidays and longer working hours than what is prescribed by law.”¹⁶⁰ The Committee called on the State “to strengthen its control of employment agencies...”¹⁶¹

In the **Concluding Observations for Viet Nam**, the Committee encouraged the State “to ensure the enforcement of regulations of the Labor Code for the benefit of women working in export processing zones, with a particular focus on women’s access to social security and health-care services.”¹⁶²

112. The above recommendations generally apply to all women but the Committee has also indicated that special attention may be necessary in relation to certain vulnerable groups where appropriate, including indigenous women,¹⁶³ women from rural areas,¹⁶⁴ domestic workers,¹⁶⁵ migrant workers,¹⁶⁶ and girl children.¹⁶⁷

B. Health care providers and pharmaceutical companies

113. Also discussed throughout this report, the Committee expects States to report on how private health care providers meet States’ duties regarding equal access to services.¹⁶⁸ The Committee has said that in order to satisfy the duty to protect against

¹⁵⁸ *Id.* For similar remarks concerning eliminating discrimination in the *maquiladora* industries, see Concluding Observations for Guatemala, *supra* note 123, at para. 30 and Concluding Observations for Colombia, *supra* note 37, at para. 29. For comments in relation to the garment sector, see Concluding Observations for Cambodia, *supra* note 73, at para. 28.

¹⁵⁹ Concluding Observations for Colombia, *supra* note 37, at para. 29.

¹⁶⁰ Concluding Observations for China, *supra* note 128, at para. 41.

¹⁶¹ *Id.* at para. 42.

¹⁶² Concluding Observations for Viet Nam, UN Doc. CEDAW/C/VNM/CO/6, 2 February 2007, at para. 23.

¹⁶³ See for example Concluding Observations for Costa Rica, *supra* note 35, at paras. 62 - 63; and Concluding Observations for Australia, *supra* note 74, at paras. 30 – 31.

¹⁶⁴ See for example Concluding Observations for Costa Rica, *supra* note 35, at paras. 62 – 63; and Concluding Observations for Paraguay, *supra* note 88, at para. 290.

¹⁶⁵ See for example Concluding Observations for Costa Rica, *supra* note 35, at paras. 62 - 63; Concluding Observations for the Dominican Republic, *supra* note 126, at para. 302 – 303; Concluding Observations for Germany, *supra* note 73, at para. 394 – 395.

¹⁶⁶ See for example Concluding Observations for China, *supra* note 128, at para. 42; Concluding Observations for Malaysia, *supra* note 73, at para. 26; Concluding Observations for Costa Rica, *supra* note 35, at paras. 62 - 63; and Concluding Observations for Switzerland, UN Doc. A/58/38, 20 March 2003, at 123.

¹⁶⁷ See for example Concluding Observations for India, *supra* note 91, at para. 49.

¹⁶⁸ General Recommendation 24, *supra* note 16, at para. 14.

non-State interference, States should also enact laws and formulate policies to address violence against women in the health sector, including through health care and hospital protocols.¹⁶⁹ Further, the Committee has called for fair and protective procedures to hear complaints against health care professionals accused of sexual abuse.¹⁷⁰ It has also recommended monitoring of the provision of health services by private organizations.¹⁷¹ See Part 7 below for more detail regarding the Committee’s concerns about the privatization of core health functions.

114. Training and promotion of rights amongst health care professionals is also seen as key. For example, General Recommendation 24 emphasizes the importance of States facilitating gender-sensitive training for health-care workers.¹⁷² Further, in *Ms. A.S. v Hungary*, the Committee recommended that the State ensure that the relevant Convention provisions relating to reproductive health and rights were “known and adhered to by all relevant personnel in public and private health centers, including hospitals and clinics.”¹⁷³

115. To date, it does not appear that the Committee has explicitly discussed pharmaceutical companies. However, it would be helpful to understand whether the Committee is implicitly referring to pharmaceutical and bio-research companies in General Recommendation 24 when it confirms that women should be fully informed when they agree to participate in research. The Committee says that “women have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available alternatives.”¹⁷⁴

116. It would also be useful to gain further insights into whether the Committee’s calls in General Recommendation 24 for States to provide “information on positive measures taken to curb violations of women’s rights by third parties...”¹⁷⁵ indicate concerns about broader corporate activities affecting rights rather than just the actions of health-care providers.

C. Media and advertising agencies

117. The Committee believes that States should take measures to ensure that the media respects and promotes respect for women.¹⁷⁶ In discussing such “measures,” the Committee generally speaks of awareness-raising and collaborative programs in order to encourage the media and advertising agencies to work towards eliminating harmful stereotypes rather than discussing regulation or adjudication of media activities.

¹⁶⁹ *Id.* at para. 15(a).

¹⁷⁰ *Id.* at para. 15(c).

¹⁷¹ *Id.* at para. 31(d).

¹⁷² *Id.* at paras. 15(b) and 31(f).

¹⁷³ See *A. S. v. Hungary*, *supra* note 31, at para. 11.5

¹⁷⁴ General Recommendation 24, *supra* note 16, at para. 20.

¹⁷⁵ *Id.* at para. 17.

¹⁷⁶ General Recommendation 19, *supra* note 23, at para. 24(d).

In the **Concluding Observations for Suriname**, the Committee recommended that “the media be encouraged to project positive images of women and of the equal status and responsibilities of women and men in the private and public spheres.”¹⁷⁷

In the **Concluding Observations for Italy**, the Committee was “deeply concerned about the portrayal of women in the media and in advertising as sex objects and in stereotypical roles.”¹⁷⁸ The Committee recommended that “the media and advertising agencies be specifically targeted and encouraged to project an image of women as equal partners in all spheres of life...”¹⁷⁹

In the **Concluding Observations for the former Yugoslav Republic of Macedonia**, the Committee was concerned “that women continue to be portrayed in traditional stereotypical roles in the media.”¹⁸⁰ The Committee recommended that the State “encourage the media to project non-stereotypical and positive images of women, and promote the value of gender equality for society as a whole, including through further measures to sensitize members of the press on gender equality issues.”¹⁸¹

D. Financial institutions

118. The Committee rarely explicitly discusses private financial institutions, even when it emphasizes States Parties’ duties to ensure women have equal access to loans, credit and other aspects of economic life. Within the research sample, only the Concluding Observations for India explicitly mentioned financial institutions and highlighted the Committee’s apparent support for regulating the acts of such institutions in order to protect rights.

In the **Concluding Observations for India**, the Committee was “concerned by the absence of mechanisms to regulate financial institutions and protect the interests of poor women.”¹⁸² The Committee recommended that “the State party take proactive measures to bring financial institutions on board with the agenda of development and empowerment of women through issuance of microcredit.”¹⁸³ It urged the State “to establish, after consultation with women’s groups, appropriate mechanisms to regulate the functioning of microcredit finance institutions that protect interests of poor women.”¹⁸⁴

¹⁷⁷ Concluding Observations for Suriname, *supra* note 81, at para. 18. See also identical or almost identical comments in: Concluding Observations for the Maldives, *supra* note 124, at para. 18; Concluding Observations for Kazakhstan, CEDAW/C/KAZ/CO/2, 2 February 2007, at para. 14; and Concluding Observations for Bosnia & Herzegovina, CEDAW/C/BIH/CO/3, 2 June 2006, at para. 24. (Note that most Concluding Observations in the sample contained similar comments but could not all be included.)

¹⁷⁸ Concluding Observations for Italy, *supra* note 132, at para. 322.

¹⁷⁹ *Id.* at para. 323. See also Concluding Observations for Germany, *supra* note 73, at para. 384-385.

¹⁸⁰ Concluding Observations for the former Yugoslav Republic of Macedonia, UN Doc. CEDAW/C/MKD/CO/3, 3 February 2006, at para. 19.

¹⁸¹ *Id.* at para. 20.

¹⁸² Concluding Observations for India, *supra* note 91, at para. 36

¹⁸³ *Id.* at para. 37.

¹⁸⁴ *Id.*

119. Nevertheless, the Committee regularly calls for temporary special measures to eliminate *de facto* discrimination in relation to all aspects of economic life – it is difficult to see how such measures could operate effectively without also covering the activities of private lenders.

120. For instance, General Recommendation 25 provides that “temporary special measures should also be implemented in the areas of credit and loans ...”¹⁸⁵ Concluding Observations also generally recommend that States take measures to ensure access to credit facilities and loans, especially for women in rural areas.

In the **Concluding Observations for Burkina Faso**, the Committee called on the State to ensure that rural women have full access to education, health services and credit facilities, and can fully participate in decision-making processes.”¹⁸⁶

In the **Concluding Observations for Georgia**, the Committee urged the State to increase women’s access to bank loans and other forms of financial credit, in accordance with article 13 of the Convention.”¹⁸⁷

E. Tourism industry

121. The Committee has mentioned the tourism industry when expressing concerns about the links between prostitution and tourism.

In the **Concluding Observations for Mauritius**, the Committee was concerned about “the extent of prostitution ... and of the scale of this phenomenon in the tourism industry.”¹⁸⁸ It said it was concerned about “the exploitation of prostitution, despite the efforts to combat this phenomenon, such as sensitization campaigns for hotel personnel, community-level activities and neighborhood watch schemes.”¹⁸⁹ The Committee urged the State “to pursue a comprehensive approach in addressing the question of prostitution, including legislation to sanction the demand side of prostitution...”¹⁹⁰ It called on the State “to address the link between tourism and prostitution, including the demand for prostitution,” and said that the State “should ensure the effective prosecution and punishment of those who exploit prostitution.”¹⁹¹

¹⁸⁵ General Recommendation 25, *supra* note 19, at para. 38.

¹⁸⁶ Concluding Observations for Burkina Faso, UN Doc. A/60/38, 22 July 2005, at para. 348.

¹⁸⁷ Concluding Observations for Georgia, UN Doc. CEDAW/C/GEO/CO/3, 25 August 2006, at para. 28.

See also Concluding Observations for Morocco, *supra* note 58, at para. 175.

¹⁸⁸ Concluding Observations for Mauritius, UN Doc. CEDAW/C/MAR/CO/5, 25 August 2006, at para. 20.

¹⁸⁹ *Id.* at para. 20.

¹⁹⁰ *Id.* at para. 21.

¹⁹¹ *Id.* See the following Concluding Observations for comments from the Committee expressing concern generally about sex tourism and recommending measures to combat sexual exploitation linked to tourism: Concluding Observations for Cape Verde, *supra* note 134, at paras. 21 -22; Concluding Observations for Thailand, UN Doc. CEDAW/C/THA/CO/5, 3 February 2006, at para. 27 - 28; Concluding Observations for Gambia, UN Doc. A/60/38 (SUPP), 22 July 2005, at paras. 27 – 28; and Concluding Observations for Colombia, *supra* note 37, at para. 20.

In the **Concluding Observations for Saint Lucia**, the Committee was concerned “about the causes and extent of prostitution in the country, and the apparent lack of awareness on the part of the State party of the scale of this phenomenon in the tourism industry.”¹⁹² The Committee called on the State “to address the link between tourism and prostitution, including the demand for prostitution,” and said it “should ensure the effective prosecution and punishment of those who exploit prostitution.”¹⁹³

122. It would be helpful to understand whether such comments indicate that the Committee would support regulatory action against business enterprises in the tourism industry which encourage or facilitate prostitution in any way. The Committee’s reference to sensitization campaigns for hotel staff at least suggests that it would support greater awareness-raising of women’s rights in the tourism industry.

F. Companies affecting land resources

123. While the Committee does not specifically refer to companies when it discusses access to land resources, it implies that some regulation of companies whose activities affect such resources may be necessary when it calls for protective measures to ensure equal access to land, water and food resources. Comments calling for impact assessments before development projects also suggest that some regulation of, or collaboration with, participating business enterprises may be necessary in order to adequately assess such projects.

124. For example, in General Recommendation 24, the Committee provides that “the full realization of women's right to health can be achieved only when States parties fulfill their obligation to **respect, protect and promote** women's fundamental human right to nutritional well-being throughout their lifespan by means of a food supply that is safe, nutritious and adapted to local conditions. To this end, States parties should take steps to facilitate **physical and economic access to productive resources**, especially for rural women, and to otherwise ensure that the special nutritional needs of all women within their jurisdiction are met.”¹⁹⁴

125. Concluding Observations recommend protective measures to ensure women have non-discriminatory access to land and water resources.

In the **Concluding Observations for Ethiopia**, the Committee called on the State “to put in place policies to protect women's right to property and to ensure that women have access to land and water resources on an equal basis with men.”¹⁹⁵

126. Concluding Observations have also implied that the State should take action against actors creating industrial and agricultural waste.

¹⁹² Concluding Observations for Saint Lucia, *supra* note 125, at para. 19.

¹⁹³ *Id.* at para. 20.

¹⁹⁴ General Recommendation 24, *supra* note 16, at para. 7.

¹⁹⁵ Concluding Observations for Ethiopia, UN Doc. A/59/38, 18 March 2004, at para. 260.

In the **Concluding Observations for Paraguay**, the Committee was concerned “about the extensive use of fertilizers and pesticides, which, when improperly used, are harmful to the health of rural women and their families.”¹⁹⁶ The Committee encouraged the State “to ensure the participation of rural women in the development of policies aimed at benefiting rural areas and to enhance their access to environmentally sound technologies that are not harmful to their health.”¹⁹⁷

127. Further, Concluding Observations have called for States to consider the impacts on women’s rights of development projects and other economic policies.

In the **Concluding Observations for Samoa**, the Committee appreciated that “proposals submitted to the Cabinet Development Committee must include a report on the gender implications and a gender analysis of the proposed project,”¹⁹⁸ but also said that the State had provided insufficient information about the attention the Cabinet Development Committee gives to the Convention’s provisions. The Committee requested the State “to ensure that the Convention serves as the framework for assessing the suitability of development projects from a gender perspective.”¹⁹⁹

In the **Concluding Observations for Argentina**, the Committee recommended that the State “... incorporate gender perspectives in all its social and economic policies, programmes and projects so as to ensure that they support the goal of gender equality and women’s enjoyment of their human rights.”²⁰⁰ It invited the State to “periodically assess such measures and their impact on women so as to ensure that they do not perpetuate discrimination against women.”²⁰¹

128. It is difficult to see how a State could follow the above recommendations without some regulation of companies involved in development projects or more generally, companies which may be responsible for limiting or threatening access to land, food and water resources. Accordingly, it would be helpful to further understand whether the Committee considers that such recommendations require any regulation of relevant business enterprises or at least collaboration with such businesses in order to assess the impacts on women’s rights of corporate activities.

¹⁹⁶ Concluding Observations for Paraguay, *supra* note 88, at para. 289.

¹⁹⁷ *Id.* at para. 290.

¹⁹⁸ Concluding Observations for Samoa, *supra* note 57, at para. 62.

¹⁹⁹ *Id.* at para. 63.

²⁰⁰ Concluding Observations for Argentina, UN Doc. A/59/38 (SUPP), 18 August 2004, at para. 373.

²⁰¹ *Id.*

PART 7 - STATE OWNED OR CONTROLLED ENTERPRISES AND PRIVATIZATION OF GOVERNMENT SERVICES

A. State owned or controlled enterprises

129. The Committee does not tend to differentiate between State duties regarding the activities of State owned as opposed to privately owned companies. It appears to regard States as having the same types of obligations regarding both State and non-State owned companies.²⁰² Indeed, the same Concluding Observations discussing greater female representation in State-owned companies suggest identical measures for non-State owned companies, including major listed companies.

In the **Concluding Observations for Bosnia and Herzegovina**, the Committee was concerned “about the underrepresentation of women, particularly at high levels, ... in State-owned companies or in business and professional associations and in political parties.”²⁰³ The Committee urged the State to “strengthen and implement measures to increase the representation of women ... in positions in State-owned companies through, inter alia, the implementation of temporary special measures...”²⁰⁴ The Committee also encouraged the State “to sensitize private enterprises, trade unions and political parties as to the promotion of women in decision-making positions.”²⁰⁵

In the **Concluding Observations for Mauritius**, the Committee noted commitments to increase the number of women in decision-making but was still concerned “about the extremely low level or even absence of representation of women in many facets of political and public life and in decision-making positions, including .. as directors in State-owned companies...”²⁰⁶ The Committee was also concerned “about the level of representation of women in decision-making in the private sector.”²⁰⁷ The Committee urged awareness raising of the “importance of women’s participation in decision-making processes at all levels of society” and encouraged the State to “take measures that will lead to an increase in the number of women at the decision-making level in private sector organizations.”²⁰⁸

²⁰² Such an approach would be consistent with broader international law - there is international case-law to the effect that publicly owned companies, whose legal personality is distinct from that of the State, should be treated no differently than private companies: unless they are exercising elements of government authority or are acting under the instructions, or are under the direction or control of the State, in the conditions provided by Articles 5 and 8 of the International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts (ILC Articles) respectively, their acts will not be considered as attributable to the State (see for example *SEDO, Inc. v. National Iranian Oil Co.*, (1987) 15 Iran-U.S.C.T.R 23 and *International Technical Products Corp. v. Islamic Republic of Iran*, (1985) 9 Iran-U.S.C.T.R. 206).

²⁰³ Concluding Observations for Bosnia & Herzegovina, *supra* note 177, at para. 29.

²⁰⁴ *Id.* at para. 30.

²⁰⁵ *Id.*

²⁰⁶ Concluding Observations for Mauritius, *supra* note 188, at para. 22.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at para. 23.

In the **Concluding Observations for Norway**, the Committee commended the State for “its innovative strategy to increase the number of women on the executive boards of public joint stock companies and State-owned companies.”²⁰⁹

130. More guidance would be helpful in relation to the Committee’s view on State *controlled* enterprises. Similar to its comments regarding other enterprises, some Concluding Observations imply the need for States to increase female representation at the higher echelons of State-controlled companies. However, broader questions regarding State-controlled companies remain unanswered, including under which conditions the Committee might consider that a company, while not part of the State apparatus, may nevertheless be considered to engage directly the responsibility of the State because it acts under the State’s direction, control or instructions.

B. Privatization

131. It is clear that the Committee considers that the duty to protect requires States to prevent and punish any interference by private service providers with rights. It also emphasizes that States may not absolve themselves of their Convention duties by arguing that they have “contracted” out the provision of core services.

132. For instance, the Committee has expressed concern about the lack of accountability which could result from the privatization of certain governmental functions, especially in relation to the delegation of health services to private companies. General Recommendation 24 highlights States Parties’ duties to take appropriate measures to the maximum extent of their available resources to ensure realization of the right to health care and says that “States parties cannot absolve themselves of responsibility in these areas by delegating or transferring these powers to private sector agencies.”²¹⁰

133. General Recommendation 24 also emphasizes the need to monitor the provision of health services by private bodies to ensure rights protection. For example, the Committee comments that States Parties should “monitor the provision of health services to women by public, non-governmental and private organizations, to ensure equal access and quality of care.”²¹¹

134. As discussed above, Concluding Observations have expressed concern that privatization of health services without adequate monitoring could negatively impact women’s access to these services.²¹² They also call for awareness-raising for private service providers in order to foster rights protection.²¹³

²⁰⁹ Concluding Observations for Norway, *supra* note 154, at para. 405.

²¹⁰ General Recommendation 24, *supra* note 16, at para. 17.

²¹¹ *Id.* at para. 31(d).

²¹² See for example, Concluding Observations for India, *supra* note 91, at paras. 40 and 41.

²¹³ See for example, Concluding Observations for Colombia, *supra* note 37, at para. 23; Concluding Observations for Malawi, UN Doc. CEDAW/C/MWI/CO/5, 3 February 2006, at para. 22.

PART 8 - TERRITORIAL SCOPE

135. Unlike some of the other UN human rights treaties, the Convention does not specify any territorial or jurisdictional scope.²¹⁴ Nevertheless, the Committee has interpreted the territorial and jurisdictional scope of the Convention similar to the other treaty bodies – that is, States Parties’ obligations at the very least apply to individuals within their territory as well as to those outside their national territory but within their jurisdiction or effective control.²¹⁵ In Concluding Observations, the Committee has said that this view accords not only with the views of the other UN human rights treaty bodies but also the International Court of Justice.

In the **Concluding Observations for Israel**, the Committee regretted the State Party’s “position that the Convention does not apply beyond its own territory” and noted that this view “is contrary to the views of the Committee and of other treaty bodies, including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee against Torture, and also of the International Court of Justice, which have all noted that obligations under international human rights conventions as well as humanitarian law apply to all persons brought under the jurisdiction or effective control of a State party...”²¹⁶

136. However, it does not appear that the Committee has considered how this concept could work in the context of corporate activities. For example, the Committee has not yet addressed whether a State could gain jurisdiction or effective control over individuals where a corporation acts on the State’s behalf (exercising elements of governmental authority or acting under the State’s instructions, direction or control) outside the national territory, and exercises a degree of control over the individuals such that, were such control to be exercised by State agents, the State’s treaty obligations would likely apply in full.

PART 9 - REGULATION WITH EXTRATERRITORIAL EFFECT

A. The nature of the issue

137. Given that the SRSG’s mandate looks specifically at transnational businesses, an important question is whether a State Party must regulate the acts of corporations domiciled in its territory which affect the rights of individuals who are both outside the State’s national territory and effective control. Such regulation is generally labeled “prescriptive extraterritorial jurisdiction” – i.e. the regulation of persons or activities outside a State’s territory, usually through legislation. A related question is whether the Committee has encouraged or indicated that such regulation is at least permissible.

²¹⁴ For example, under Art. 2(1) of the ICCPR, States Parties undertake to respect and ensure rights to all individuals within their territory and subject to their jurisdiction.

²¹⁵ See in particular the reports for the ICCPR and ICESCR in this series, available at: <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>.

²¹⁶ Concluding Observations for Israel, UN Doc. A/60/38 (SUPP), 6 July 2005, at para. 243.

138. As noted in the SRSG’s report to the fourth session of the Human Rights Council, prescriptive extraterritorial jurisdiction is generally permissible under international law provided there is a recognized basis of jurisdiction: where the perpetrator or victim is a national; where the acts have substantial adverse effects on the State; or where specific international crimes are involved.²¹⁷ An overall reasonableness test must also be met, which includes non-intervention in other States’ internal affairs.²¹⁸

139. This Part focuses on guidance from the Committee in relation to the use of prescriptive extraterritorial jurisdiction based on the active personality principle – i.e. where the perpetrator is a national of the State. It is assumed that it is possible for a corporation to take on a particular “nationality” even though it is beyond the scope of this report to examine how corporate “nationality” may be formed or established.

B. Guidance from the Committee

140. At the outset, it is important to note that unlike the Convention Against Torture and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, CEDAW does not explicitly require States Parties to establish jurisdiction over acts occurring abroad.²¹⁹

141. The Committee has not provided guidance in relation to extraterritorial regulation of corporate activities though it has indicated its support for extraterritorial regulation in other situations. For example, the Committee has commended States for legislative reform introducing penalties for nationals and residents who perform or assist in performing female genital mutilation abroad.²²⁰

142. In line with Art. 6 of the Convention which requires States to take all appropriate measures, including legislation, to suppress all forms of trafficking in women, the Committee also regularly recommends strategies to prevent trafficking, including prosecuting and punishing offenders. Some of these discussions have occurred within broader discussions concerning international cooperation.

For example, in the **Concluding Observations for Malaysia**, the Committee urged the State “to intensify its efforts to combat all forms of trafficking in women and girls, including by enacting specific and comprehensive legislation on the phenomenon.”²²¹ The Committee also called on the State “to increase its efforts at international, regional and bilateral cooperation with countries of origin and transit so as to address more

²¹⁷ Under the principle of “universal jurisdiction” States may be obliged to exercise jurisdiction over individuals within their territory who allegedly committed certain international crimes. It is unclear whether and how such obligations extend jurisdiction over juridical persons, including corporations. See A/HRC/4/35/Add.2 and A/HRC/4/35, para. 15.

²¹⁸ The entire human rights regime may be seen to challenge the classical view of non-intervention. The debate here hinges on what is considered coercive. For more detail, see A/HRC/4/35/Add. 2, and Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, 2006), 98.

²¹⁹ See the CRC and CAT reports in this series.

²²⁰ Concluding Observations for Denmark, *supra* note 81, at para. 20.

²²¹ Concluding Observations for Malaysia, *supra* note 73, at para. 24.

effectively the causes of trafficking, and improve prevention of trafficking through information exchange.”²²² It urged the State to “collect and analyze data from the police and international sources, prosecute and punish traffickers, and ensure the protection of the human rights of trafficked women and girls.”²²³

In the **Concluding Observations for Uzbekistan**, the Committee urged the State to “intensify its efforts to combat all forms of trafficking in women and girls, including by speedily enacting specific and comprehensive national legislation on the phenomenon that ensures that offenders are punished and victims adequately assisted.”²²⁴ The Committee also called on the State to “increase its efforts at international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking through information exchange.”²²⁵

143. However, it is unknown if these comments indicate that States Parties should establish jurisdiction over perpetrators within their territory who have committed such abuses abroad. It is also unknown if the Committee sees any links between international cooperation and establishing extraterritorial jurisdiction over perpetrators of abuse in general or whether its references to international cooperation relate only to traditional forms of assistance such as information exchanges. Further, it is unclear how these discussions might relate to acts apart from trafficking which are more likely to involve business enterprises.

144. None of the Decisions in the sample complain about corporate acts affecting individuals outside the State Party’s territory or effective control. According to Art. 2 of the Optional Protocol, communications must be from individuals or groups of individuals *under the State Party’s jurisdiction* who claim to be victims of a violation *by that State Party* of any of the Convention rights. Thus it would seem difficult for an individual or group outside the State’s jurisdiction to complain about the State failing to take action against corporate actors breaching their rights. And it would seem just as difficult for individuals within the State’s jurisdiction to argue that their rights have been violated by a failure to regulate corporate acts affecting individuals abroad. Thus it would be helpful to understand how the Committee might deal with a communication alleging a State failure to protect against corporate abuses abroad.

PART 10 - ISSUES FOR FURTHER ELABORATION

145. This report shows that the Committee has increasingly considered the issue of States Parties’ duties regarding corporate activities and has provided guidance in relation to a number of different industries and sectors. However, questions remain as to the Committee’s expectations in terms of States preventing and punishing corporate abuse. It is acknowledged that some of these questions may be attributed to the fact that the Committee has not received sufficient information from States and other relevant

²²² *Id.*

²²³ *Id.*

²²⁴ Concluding Observations for Uzbekistan, UN Doc. CEDAW/C/UZB/CO/3, 25 August 2006, at para. 26.

²²⁵ *Id.*

stakeholders regarding this issue. It is also understood that these issues may not always be at the core of the Committee's mandate and as a result may not have been addressed in much detail.

146. Nevertheless, this Part identifies several areas which are key to the SRSG's mandate and where further discussion by the Committee could assist States, business enterprises and individuals to better understand State obligations vis-à-vis corporate activities. No judgment is made as to whether and how the Committee should consider all or some of these issues and this Part should not be considered as containing formal recommendations from the SRSG. It simply points out areas which could pose difficult questions for States Parties, businesses, individuals and civil society.

A. Scope and content of the duty to protect

147. While it is clear that the Committee considers that States have a duty to protect against abuse by business enterprises, it would be helpful to further understand the scope and content of the duty. In particular, it would be useful to understand whether the Committee considers that the concept of "due diligence" applies to all Convention rights as well as to gain further insight into what it believes the concept entails.

B. Scope and content of the duty to respect when States contract with corporations

148. The Committee has recommended that States Parties consider the impacts of economic policies and trade agreements on rights under the Convention. It has also emphasized the importance of impact assessments before the initiation of development projects, including the need to ensure that such projects facilitate equal access to land, water and food resources.

149. It would be helpful to understand whether the Committee considers that as part of the duty to respect, States should not only consider the impacts of bilateral trade agreements but also the impacts of any agreements they enter into with business enterprises, national or transnational. If so, it would be useful to understand what types of steps States should take in considering and minimizing the negative impacts on rights of such agreements. It would also be beneficial to gain further insight into the Committee's views on human rights impact assessments more generally, including when States should require or encourage companies to undertake such assessments.

C. Regulation and adjudication of legal or natural persons

150. The Committee expects States to take a variety of measures to prevent and punish non-State abuse against women, including acts by business enterprises. However, there is little discussion as to whether a State may fulfill its duty to protect by focusing on the acts of natural persons within a business enterprise or whether it could or should regulate or sanction the business enterprise as an entity.

151. Accordingly, it would be useful to gain further insight into whether the Committee interprets the Convention as requiring legislative or other measures to address legal persons, such as business enterprises, where appropriate or whether it considers it

sufficient for States to prosecute or ensure a right to seek reparation from individuals acting on behalf of such enterprises.

D. “Business responsibilities”

152. The Committee has emphasized that States remain ultimately accountable under the Convention for failing to protect against interference by business enterprises. However, it has also directed some comments to private actors such as the media and health care providers, implying that the Committee may also consider these actors to have certain responsibilities in respecting rights under the Convention.

153. It would be helpful to further understand the Committee’s views on whether any such responsibilities for business exist under the Convention, and if so, their nature and content, including related legal and practical implications. Further guidance would also be helpful on the steps States could or should take in order to facilitate business enterprises to fulfill any responsibilities that might exist.

E. State controlled enterprises

154. While there has been some discussion about decision-making positions in State owned enterprises, it would be helpful to further understand the Committee’s views on duties regarding the acts of State owned or controlled enterprises, both at home and abroad. In particular, more guidance would be helpful on when the Committee considers that a company, while not part of the State apparatus, may nevertheless be considered to engage directly the responsibility of the State because it acts under the State’s direction, control or instructions. In cases where responsibility can be directly attributed, it would be useful to further understand whether the State will be held to a different standard in terms of preventing abuse by that company than if the company was privately controlled.

F. Territorial scope

155. The Committee considers that the Convention obligations apply in relation to individuals who are within a State Party’s effective control even if they are outside the State’s national territory. This seems to include situations where the State’s agents exercise such effective control. However, it does not appear that the Committee has considered how this concept could work in the context of corporate activities.

156. Accordingly, it would be helpful to further explore the Committee’s thoughts on this matter, including its views on a situation where a corporation acts on the State’s behalf (exercising elements of governmental authority or acting under the State’s instructions, direction or control) outside the national territory, and exercises a degree of control over individuals such that, were such control to be exercised by State agents, the State’s treaty obligations would likely apply in full.

G. Regulation with extraterritorial effect

157. It would be useful to gain further insight into whether the Committee considers that there are any situations in which the Convention requires States Parties to protect against abuses occurring outside their jurisdiction, particularly where the abuse is

committed by their nationals, including corporations. The most guidance on this issue so far relates to prosecuting crimes such as trafficking, and even then it is not always clear if the Committee considers that the Convention requires or simply encourages the use of extraterritorial regulation.

158. It would also be helpful to learn more about the Committee's thoughts on any links between the concept of international cooperation and extraterritorial regulation. For example, could States be seen as violating any commitments in relation to international cooperation if they fail to regulate abuse abroad over which they have some influence?

ANNEX 1 - SUBSTANTIVE ARTICLES OF CEDAW²²⁶

Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979
entry into force 3 September 1981, in accordance with article 27(1)

The States Parties to the present Convention,

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

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

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

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

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

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

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

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

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

²²⁶ Note that most procedural Articles have been taken out of this version, leaving only the substantive Articles that are referred to in the report. Text sourced from the official site of the UN Office of the High Commissioner for Human Rights as at June 2007. See <http://www.ohchr.org/english/law/cedaw.htm>.

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

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

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

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

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

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

Have agreed on the following:

PART I

Article 1

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

Article 2

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

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

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

Article 4

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

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

Article 5

States Parties shall take all appropriate measures:

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

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

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

PART II

Article 7

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

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

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

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

Article 8

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

Article 9

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

PART III

Article 10

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

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

Article 11

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

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

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

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

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

Article 12

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

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

Article 13

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

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

Article 14

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

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

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;

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

PART IV

Article 15

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

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;

- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
 - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
 - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

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

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

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

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

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

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

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

Article 18

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

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

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

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

Article 19

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

Article 20

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

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

Article 21

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

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

Article 22

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

ANNEX 2 – SUBSTANTIVE ARTICLES OF OPTIONAL PROTOCOL TO CEDAW²²⁷

***Adopted by General Assembly resolution A/54/4 on 6
October 1999 and opened for signature on
10 December 1999, Human Rights Day
entry into force 22 December 2000***

The States Parties to the present Protocol,

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

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

Recalling that the International Covenants on Human Rights Resolution 2200 A (XXI), annex. and other international human rights instruments prohibit discrimination on the basis of sex,

Also recalling the Convention on the Elimination of All Forms of Discrimination against Women⁴ ("the Convention"), in which the States Parties thereto condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women,

Reaffirming their determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms,

Have agreed as follows:

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

²²⁷ Note that most procedural Articles have been taken out of this version, leaving only the substantive Articles that are referred to in the report. Text sourced from the official site of the UN Office of the High Commissioner for Human Rights as at June 2007. See <http://www.ohchr.org/english/law/cedaw-one.htm>.

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.

Article 6

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity to that State Party, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.
2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7

1. The Committee shall consider communications received under the present Protocol in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.
2. The Committee shall hold closed meetings when examining communications under the present Protocol.
3. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.
4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.
5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 18 of the Convention.

Article 8

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.
4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 9

1. The Committee may invite the State Party concerned to include in its report under article 18 of the Convention details of any measures taken in response to an inquiry conducted under article 8 of the present Protocol.
2. The Committee may, if necessary, after the end of the period of six months referred to in article 8.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 10

1. Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 8 and 9.
2. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 11

A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

ANNEX 3 – STATES PARTIES TO CEDAW²²⁸

CEDAW

185 ratifications, accessions and successions

(Latest Signature: **San Marino**, 26 September 2003

Latest Accession: **Cook Islands** , 11 Aug 2006)

a/ Accession; <u>b</u> / Declarations or reservations; <u>c</u> / Reservation subsequently withdrawn; <u>d</u> / Succession		
State	Date of signature	Date of receipt of the instrument of ratification, accession or succession
Afghanistan	14 August 1980	5 March 2003 <u>a</u> /
Albania		11 May 1994 <u>a</u> /
Algeria		22 May 1996 <u>a</u> / <u>b</u> /
Andorra		15 January 1997 <u>a</u>
Angola		17 September 1986 <u>a</u> /
Antigua and Barbuda		1 August 1989 <u>a</u> /
Argentina	17 July 1980	15 July 1985 <u>b</u> /
Armenia		13 September 1993 <u>a</u> /
Australia	17 July 1980	28 July 1983 <u>b</u> /
Austria	17 July 1980	31 March 1982 <u>b</u> /
Azerbaijan		10 July 1995 <u>a</u> /
Bahamas		6 October 1993 <u>a</u> / <u>b</u> /
Bahrain		18 June 2002 <u>a</u> /
Bangladesh		6 November 1984 <u>a</u> / <u>b</u> /
Barbados	24 July 1980	16 October 1980
Belarus	17 July 1980	4 February 1981 <u>c</u> /
Belgium	17 July 1980	10 July 1985 <u>b</u> /
Belize	7 March 1990	16 May 1990
Benin	11 November 1981	12 March 1992
Bhutan	17 July 1980	31 August 1981

²²⁸ As at 5 July 2007 – Sourced from the official site of the UN Office of the High Commissioner for Human Rights: see <http://www.un.org/womenwatch/daw/cedaw/states.htm> (CEDAW). For parties to the Optional Protocol, see <http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm>.

Bolivia	30 May 1980	8 June 1990
Bosnia & Herzegovina		1 September 1993 <u>d/</u>
Botswana		13 August 1996 <u>a/</u>
Brazil	31 March 1981 <u>b/</u>	1 February 1984 <u>b/</u>
Brunei Darussalam		24 May 2006 <u>a/</u>
Bulgaria	17 July 1980	8 February 1982 <u>c/</u>
Burkina Faso		14 October 1987 <u>a/</u>
Burundi	17 July 1980	8 January 1992
Cambodia	17 October 1980	15 October 1992 <u>a/</u>
Cameroon	6 June 1983	23 August 1994 <u>a/</u>
Canada	17 July 1980	10 December 1981 <u>c/</u>
Cape Verde		5 December 1980 <u>a/</u>
Central African Republic		21 June 1991 <u>a/</u>
Chad		9 June 1995 <u>a/</u>
Chile	17 July 1980	7 December 1989 <u>b/</u>
China	17 July 1980 <u>b/</u>	4 November 1980 <u>b/</u>
Colombia	17 July 1980	19 January 1982
Comoros		31 October 1994 <u>a/</u>
Congo	29 July 1980	26 July 1982
Cook Islands		11 Aug 2006 <u>a/</u>
Costa Rica	17 July 1980	4 April 1986
Cote d'Ivoire	17 July 1980	18 December 1995 <u>a/</u>
Croatia		9 September 1992 <u>d/</u>
Cuba	6 March 1980	17 July 1980 <u>b/</u>
Cyprus		23 July 1985 <u>a/ b/</u>
Czech Republic		22 February 1993 <u>c/ d/</u>
Democratic People's Republic of Korea		27 February 2001 <u>a/</u>
Democratic Republic of the Congo	17 October 1986	16 November 1986
Denmark	17 July 1980	21 April 1983
Djibouti		2 December 1998 <u>a/</u>
Dominica	15 September 1980	15 September 1980
Dominican Republic	17 July 1980	2 September 1982

Ecuador	17 July 1980	9 November 1981
Egypt	16 July 1980 <u>b/</u>	18 September 1981 <u>b/</u>
El Salvador	14 November 1980 <u>b/</u>	19 August 1981 <u>b/</u>
Equatorial Guinea		23 October 1984 <u>a/</u>
Eritrea		5 September 1995 <u>a/</u>
Estonia		21 October 1991 <u>a/</u>
Ethiopia	8 July 1980	10 December 1981 <u>b/</u>
Fiji		28 August 1995 <u>a/ b/</u>
Finland	17 July 1980	4 September 1986
France	17 July 1980 <u>b/</u>	14 December 1983 <u>b/ c/</u>
Gabon	17 July 1980	21 January 1983
Gambia	29 July 1980	16 April 1993
Georgia		26 October 1994 <u>a/</u>
Germany	17 July 1980	10 July 1985 <u>b/</u>
Ghana	17 July 1980	2 January 1986
Greece	2 March 1982	7 June 1983
Grenada	17 July 1980	30 August 1990
Guatemala	8 June 1981	12 August 1982
Guinea	17 July 1980	9 August 1982
Guinea-Bissau	17 July 1980	23 August 1985
Guyana	17 July 1980	17 July 1980
Haiti	17 July 1980	20 July 1981
Honduras	11 June 1980	3 March 1983
Hungary	6 June 1980	22 December 1980 <u>c/</u>
Iceland	24 July 1980	18 June 1985
India	30 July 1980 <u>b/</u>	9 July 1993 <u>b/</u>
Indonesia	29 July 1980	13 September 1984 <u>b/</u>
Iraq		13 August 1986 <u>a/ b/</u>
Ireland		23 December 1985 <u>a/ b/ c/</u>
Israel	17 July 1980	3 October 1991 <u>b/</u>
Italy	17 July 1980 <u>b/</u>	10 June 1985
Jamaica	17 July 1980	19 October 1984 <u>b/</u>
Japan	17 July 1980	25 June 1985
Jordan	3 December 1980 <u>b/</u>	1 July 1992 <u>b/</u>

Kazakhstan		26 August 1998 <u>a/</u>
Kenya		9 March 1984 <u>a/</u>
Kiribati		17 March 2004 <u>a/</u>
Kuwait		2 September 1994 <u>a/ b/</u>
Kyrgyzstan		10 February 1997 <u>a/</u>
Lao People's Democratic Rep.	17 July 1980	14 August 1981
Latvia		14 April 1992 <u>a/</u>
Lebanon		21 April 1997 <u>a/ b/</u>
Lesotho	17 July 1980	22 August 1995 <u>a/ b/</u>
Liberia		17 July 1984 <u>a/</u>
Libyan A. Jamahiriya		16 May 1989 <u>a/ b/</u>
Liechtenstein		22 December 1995 <u>a/ b/</u>
Lithuania		18 January 1994 <u>a/</u>
Luxembourg	17 July 1980	2 February 1989 <u>b/</u>
Madagascar	17 July 1980	17 March 1989
Malawi		12 March 1987 <u>a/ c/</u>
Malaysia		5 July 1995 <u>a/ b/</u>
Maldives		1 July 1993 <u>a/ b/</u>
Mali	5 February 1985	10 September 1985
Malta		8 March 1991 <u>a/ b/</u>
Marshall Islands		2 March 2006 <u>a/</u>
Mauritania		10 May 2001 <u>a/</u>
Mauritius		9 July 1984 <u>a/ b/</u>
Mexico	17 July 1980 <u>b/</u>	23 March 1981
Micronesia		1 September 2004 <u>a/</u>
Monaco		18 March 2005 /a
Mongolia	17 July 1980	20 July 1981 <u>c/</u>
Montenegro		23 October 2006 <u>d/</u>
Morocco		21 June 1993 <u>a/ b/</u>

Mozambique		16 April 1997 <u>a/</u>
Myanmar		22 July 1997 <u>a/ b/</u>
Namibia		23 November 1992 <u>a/</u>
Nepal	5 February 1991	22 April 1991
Netherlands	17 July 1980	23 July 1991 <u>b/</u>
New Zealand	17 July 1980	10 January 1985 <u>b/ c/</u>
Nicaragua	17 July 1980	27 October 1981
Niger		8 October 1999 <u>a/</u>
Nigeria	23 April 1984	13 June 1985
Norway	17 July 1980	21 May 1981
Oman		7 February 2006 <u>a/</u>
Pakistan		12 March 1996 <u>a/ b/</u>
Panama	26 June 1980	29 October 1981
Papua New Guinea		12 January 1995 <u>a/</u>
Paraguay		6 April 1987 <u>a/</u>
Peru	23 July 1981	13 September 1982
Philippines	15 July 1980	5 August 1981
Poland	29 May 1980	30 July 1980 <u>b/</u>
Portugal	24 April 1980	30 July 1980
Republic of Korea	25 May 1983 <u>b/</u>	27 December 1984 <u>b/ c/</u>
Republic of Moldova		1 July 1994 <u>a/</u>
Romania	4 September 1980 <u>b/</u>	7 January 1982 <u>b/</u>
Russian Federation	17 July 1980	23 January 1981 <u>c/</u>
Rwanda	1 May 1980	2 March 1981
Saint Kitts & Nevis		25 April 1985 <u>a/</u>
Saint Lucia		8 October 1982 <u>a/</u>
St. Vincent & the Grenadines		4 August 1981 <u>a/</u>
Samoa		25 September 1992 <u>a/</u>
San Marino	26 September 2003	10 December 2003
Sao Tome and Principe	31 October 1995	3 June 2003
Saudi Arabia	7 September 2000	7 September 2000 <u>b/</u>
Senegal	29 July 1980	5 February 1985

Serbia		12 Mar 2001 <u>d/</u>
Seychelles		5 May 1992 <u>a/</u>
Sierra Leone	21 September 1988	11 November 1988
Singapore		5 October 1995 <u>a/ b/</u>
Slovakia		28 May 1993 <u>d/</u>
Slovenia		6 July 1992 <u>d/</u>
Solomon Islands		6 May 2002
South Africa	29 January 1993	15 December 1995 <u>a/</u>
Spain	17 July 1980	5 January 1984 <u>b/</u>
Sri Lanka	17 July 1980	5 October 1981
Suriname		1 March 1993 <u>a/</u>
Swaziland		26 March 2004 <u>a/</u>
Sweden	7 March 1980	2 July 1980
Switzerland	23 January 1987	27 March 1997 <u>a/ b/</u>
Syrian Arab Republic		28 March 2003 <u>a/</u>
Tajikistan		26 October 1993 <u>a/</u>
Thailand		9 August 1985 <u>a/ b/ c/</u>
The former Yugoslav Republic of Macedonia		18 January 1994 <u>d/</u>
Timor-Leste		16 April 2003 <u>a/</u>
Togo		26 September 1983 <u>a/</u>
Trinidad and Tobago	27 June 1985 <u>b/</u>	12 January 1990 <u>b/</u>
Tunisia	24 July 1980	20 September 1985 <u>b/</u>
Turkey		20 December 1985 <u>a/ b/</u>
Turkmenistan		1 May 1997 <u>a/</u>
Tuvalu		6 October 1999 <u>a/</u>
Uganda	30 July 1980	22 July 1985
Ukraine	17 July 1980	12 March 1981 <u>c/</u>
United Arab Emirates		6 October 2004 <u>a/</u>
United Kingdom of Great Britain & Northern Ireland	22 July 1981	7 April 1986 <u>b/</u>
United Republic of Tanzania	17 July 1980	20 August 1985

United States of America	17 July 1980	
Uruguay	30 March 1981	9 October 1981
Uzbekistan		19 July 1995 <u>a/</u>
Vanuatu		8 September 1995 <u>a/</u>
Venezuela	17 July 1980	2 May 1983 <u>b/</u>
Viet Nam	29 July 1980	17 February 1982 <u>b/</u>
Yemen		30 May 1984 <u>a/ b/</u>
Zambia	17 July 1980	21 June 1985
Zimbabwe		13 May 1991 <u>a/</u>