17. Convention on the Elimination of All Forms of Discrimination against Women

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,

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

PHOTOCOPY PRESERVATION

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 responsiblity 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, particulary 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 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

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

(*a*) The right to family benefits;

(*b*) The right to bank loans, mortgages and other forms of financial credit;

(*c*) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

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

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

(*a*) To participate in the elaboration and implementation of development planning at all levels;

(*b*) To have access to adequate health care facilities, including information, counselling and services in family planning;

(*c*) To benefit directly from social security programmes;

(*d*) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;

(*e*) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;

(*f*) To participate in all community activities;

(*g*) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(*h*) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

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

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

Article 16

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

(*a*) The same right to enter into marriage;

(*b*) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(*c*) The same rights and responsibilities during marriage and at its dissolution;

(*d*) The same rights and responsibilites 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.

PART VI

Article 23

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

(*a*) In the legislation of a State Party; or

(*b*) In any other international convention, treaty or agreement in force for that State.

Article 24

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

Article 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

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

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

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

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

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

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

United States Department of State

Washington, D.C. 20520

June 3, 1994

MEMORANDUM

TO:	National Security Council	- Mr. Kreczko
	Department of Agriculture	- Mr. Gilliland
	Commission on Civil Rights	- Ms. Rosalind Gray
	Department of Defense	- Mr. McNeill
	Department of Education	- Ms. Winston
	Equal Employment Opp. Cmm'n.	- Mr. Neely
	Department of HHS	- Ms. Rabb
	Department of HUD	- Mr. Diaz
	Department of the Interior	- Mr. Leshy
	Department of Justice	- Mr. Dellinger
		- Mr. Patrick
	Department of Labor	- Mr. Williamson

FROM: Jamison S. Borek, Deputy Legal Adviser

RE: Convention on the Elimination of All Forms of Discrimination Against Women

Enclosed for your review and comment is our proposed analysis of the Women's Convention and the various reservations, understandings and declarations upon which we believe ratification should be conditioned. We believe we have taken into account the concerns and suggestions provided by many of your offices in response to my memorandum of January 21. In some cases, we have identified a need for additional information or analysis from your agencies as indicated in the enclosed text. Because there is a strong desire to move ahead with this treaty as quickly as possible, we would ask for your response within the next two weeks, i.e., no later than Friday, June 17.

I should note that with respect to several issues (in particular, women in combat, comparable worth and free health care services), we have proposed a reservation or understanding which may, upon further research into the negotiating history and subsequent interpretation of the treaty, turn out to be unnecessary. The necessity of taking the reservation or understanding may also depend on whether, in the views of the

PHOTOCOPY
PRESERVATION

relevant departments and agencies, U.S. law and practice can clearly be said to meet the requirements of the Convention. The current version reflects the more cautious approach to these issues.

If you have any questions, please contact David P. Stewart, Assistant Legal Adviser for Human Rights and Refugees, at (202) 647-9328 (fax no. 736--7116) or me at 647-7942.

6/3/94 **DRAFT**

Dear Mr. Chairman:

I am writing on behalf of the President to convey the Administration's strong support for early ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.

As you are aware, the United States signed this important human rights treaty in 1980 and it has been pending before the Senate ever since. Despite the expression of strong support for ratification by a wide spectrum of the non-governmental community at several Congressional hearings, prior Administrations did not embrace the Convention and consequently the process of ratification has languished. Over 130 States are now parties to the Convention; the United States is not. It is time to remedy this situation.

The Clinton Administration has placed particular emphasis on the protection and advancement of women's rights in the international community. We strongly supported inclusion of provisions on women's rights in the Vienna Declaration and Program of Action adopted at the Second World Conference on Human Rights last summer. We have taken steps to incorporate women's concerns into U.S. assistance programs, refugee programs, and population policy. We are funding projects around the world to assist women's groups and promote women's rights, ranging from expanding literacy and promoting health care to protecting refugee women. We are working closely with the United Nations to promote the systematic integration of women's issues into UN programs, the training of UN personnel to ensure sensitivity and competence in addressing gender-based abuses, and the appointment of more women to positions of responsibility in the UN. We strongly supported the appointment of a Special Rapporteur on Violence Against Women at the last session of the UN Human Rights Commission. Another

The Honorable
Claiborne Pell, Chairman
Committee on Foreign Relations
United States Senate

PHOTOCOPY
PRESERVATION

top priority is to ensure that the War Crimes Tribunal investigating the former Yugoslavia addresses the systematic rape of women as an instrument of ethnic cleansing.

Ratification of the Convention at this time would serve both to underscore our commitment to women's rights and to enhance our ability to protect and promote those rights internationally. In particular, participation by the United States in the work of the Committee on the Elimination of Discrimination Against Women, which oversees implementation of the treaty by States Parties, would provide an opportunity for the United States to play an even more active and effective role in the articulation and advancement of the principles of non-discrimination and equality for women around the world.

These principles find clear expression, of course, in our own domestic law. At both the federal and state levels, current U.S. law provides strong guarantees of equal protection, as well as effective protections against discriminatory conduct. As a result, our law largely complies with the requirements of the Convention. Ratification can therefore be premised on a relatively small number of reservations, understandings and declarations. They are set forth in the attached list.

To assist the Committee in its consideration of these proposals, I am enclosing a detailed memorandum analyzing the requirements of the Convention in relation to the relevant provisions of current U.S. law and explaining the reasoning behind each of the proposed reservations, understandings and declarations.

On behalf of the President, I urge the Senate to give its advice and consent to ratification of this important human rights treaty.

Sincerely,

Warren Christopher

Enclosures: a/s

PHOTOCOPY
PRESERVATION

Convention on the Elimination of
All Forms of Discrimination Against Women

Proposed Reservations, Understandings and
Declarations of the United States

1. Reservations

Private Conduct

"The Constitution and laws of the United States establish extensive protections against discrimination, reaching all forms of governmental activity as well as significant areas of non-governmental activity. However, individual privacy and freedom from governmental interference in private conduct are also recognized as among the fundamental values of our free and democratic society. The United States understands that by its terms the Convention requires broad regulation of private conduct, in particular under Articles 3 and 5. The United States does not accept any obligation under the Convention to enact legislation or to take any other action with respect to private conduct except as mandated by the Constitution and laws of the United States."

Combat Assignments

"The United States reserves the right not to apply the Convention, in particular Articles 2 and 7(b), with respect to service by women in military units and positions which may require engagement in direct combat."

Comparable Worth

"U.S. law provides strong protections against gender discrimination in the area of remuneration, including the right to equal pay for equal work in jobs that are substantially similar. However, the United States does not accept any obligation under this Convention to enact legislation establishing the doctrine of comparable worth as that term is understood in U.S. practice."

Paid Maternity Leave

"Current U.S. law does not provide, and the United States does not accept an obligation under Article 11(2)(b) to introduce, maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances."

PHOTOCOPY
PRESERVATION

2. Understandings

Federal-State Implementation

"The United States shall implement its obligations under this Convention by legislative, executive or judicial means, as appropriate under its federal system of government." OR "The United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of this Convention."

Freedom of Speech, Expression and Association

"The Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under Articles 5, 7, 8 and 13, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States."

Free Health Care Services

"The United States understands that Article 12 permits States Parties to determine which health care services are appropriate in connection with pregnancy, confinement and the post-natal period, as well as when the provision of free services is necessary, and does not mandate the provision of particular services (including abortion) on a cost-free basis."

3. Declarations

Non-Self-Executing

"The United States declares that, for purposes of its domestic law, the provisions of the Convention are non-self-executing."

PHOTOCOPY
PRESERVATION

Declarations (cont'd)

Dispute Settlement

"With reference to Article 29(2), the United States declares that it does not consider itself bound by the provisions of Article 29(1). The specific consent of the United States to the jurisdiction of the International Court of Justice concerning disputes over the interpretation or application of this Convention is required on a case-by-case basis."

PHOTOCOPY
PRESERVATION

Convention on the Elimination of All Forms of Discrimination Against Women

Analysis of Provisions and Explanation for Proposed Reservations, Understandings and Declarations

The Convention on the Elimination of All Forms of Discrimination Against Women was adopted by the United Nations General Assembly on December 18, 1979 and came into force on September 3, 1981. As of May 1, 1994, there were 132 States Parties. The United States signed the treaty on July 17, 1980 and President Carter transmitted it to the Senate for advice and consent to ratification on November 12, 1980. It has remained before the Senate since that time. The Senate Committee on Foreign Relations held a hearing on the Convention on August 2, 1990.

I. Overview of the Convention

While gender discrimination is firmly condemned by the Universal Declaration of Human Rights and by the International Covenant on Civil and Political Rights (which the United States ratified in 1992), the Convention on the Elimination of All Forms of Discrimination Against Women contains the most specific prohibitions yet adopted by the international community in this area.

Definition of Discrimination. Article 1 of the Convention defines the term "discrimination" as encompassing any distinction, exclusion or restriction made on the basis of sex which has the purpose or effect of impairing or nullifying human rights "in the political, economic, social, cultural, civil or any other field." Articles 2 through 16 set forth the substantive obligations of the Convention, requiring States Parties to undertake to eliminate such discrimination in all its forms and in every field of human endeavor, including politics, law, employment, education, health care, commercial transactions, and domestic relations.

General Obligations. At the heart of the Convention is the obligation of States Parties, set forth in Article 2, to pursue a policy of eliminating discrimination against women and, toward that end, to embody the principle of equality of men and

PHOTOCOPY
PRESERVATION

women in their national constitutions or other appropriate legislation, to adopt legislation and other measures prohibiting discrimination against women, to establish legal protections for women, and to ensure that no public authorities or institutions engage in any act or practice of discrimination against women.

Under Article 2, States Parties also agree to take "all appropriate measures" to eliminate discrimination against women by any person, organization or enterprise, to modify or abolish existing laws, regulations, customs and practices constituting discrimination against women, and to repeal all national penal provisions that discriminate against women.

Similarly, Article 3 requires States Parties to take all appropriate measures in "all fields" to ensure the development and advancement of women for the purpose of guaranteeing their exercise of human rights and fundamental freedoms on a basis of equality.

Article 4(1) permits, but does not require, "temporary special measures" (i.e., affirmative action measures) to accelerate equality of men and women but prohibits the maintenance of unequal or separate standards. Article 4(2) permits special measures aimed at protecting maternity and declares that they shall not be considered discriminatory.

Specific Undertakings. Articles 5-16 set forth specific steps States Parties shall take to give effect to their undertakings under the Convention.

Article 5(a) obligates States Parties to take all appropriate measures to modify social and cultural patterns of conduct among their citizens for the purpose of eliminating sexual prejudices and stereotypes. Article 5(b) calls for "family education" to include "a proper understanding of maternity as a social function" and a recognition of the common responsibility of men and women for raising children.

Article 6 requires adoption of legislative or other measures to suppress all forms of traffic in women and exploitation of prostitution of women.

Pursuant to Article 7, States Parties to the Convention shall take all appropriate measures to eliminate discrimination against women in political activities and to ensure to women, on equal terms with men, the right to vote, to run for and hold public office, and to particiapte in formulating and implementing government policy.

PHOTOCOPY
PRESERVATION

Article 8 calls for equality of men and women with respect to the opportunity to represent their governments in international activities. Article 9 requires such equality with respect to their nationality and that of their children.

Article 10 obligates States Parties to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education, including in particular in the areas of access to different types and levels of education, equal curricula and facilities, scholarships, programs of continuing education and for school drop-outs, opportunities for athletic participation, and access to family education information.

In the field of employment, Article 11(1) obligates States Parties to eliminate discrimination in order to ensure equal rights including in particular the right to work, to the same employment opportunities, to equal remuneration for work of comparable value, to social security, retirement, unemployment and diability benefits, to safe working conditions, to free choice of employment and profession, and to promotion, job security and training. Article 11(2) requires that appropriate measures be taken to prevent discrimination against women in employment on the basis of marital status or maternity, including introduction of maternity leave with pay or comparable social benefits, promoting childcare facilities, and special protection to pregnant women in types of work proved to be harmful to them. Article 11(3) requires periodic review and, as necessary, revision of protective legislation in this area.

In accordance with Article 12(1), States Parties must eliminate discrimination against women in the delivery of health care services in order to ensure equal access. Article 12(2) requires States Parties to provide "appropriate" and, where necessary, free services in connection with pregnancy, confinement, and the post-natal period, including adequate nutrition during pregnancy and lactation.

Under Article 13 States Parties shall take all appropriate measures to ensure equal rights to family benefits, financial credit, and participation in all aspects of cultural life and recreational activities. Article 14 sets forth a variety of rights and special programs for women living in rural areas.

Pursuant to Article 15, States Parties must accord women equality with men before the law, a legal capacity identical to men in civil matters, equal rights to conclude contracts and

PHOTOCOPY
PRESERVATION

administer property, equal procedural rights before all courts and tribunals, and equal rights with regard to freedom of movement and choice of residence and domicile.

With respect to domestic relations, Article 16 requires States Parties to take all appropriate measures to ensure equality of men and women in all matters relating to marriage and its dissolution, parenthood and other legal relationships with children, and property ownership, administration and disposition. It also requires a minimum age for marriage, marriage registration and the prohibition of child marriages.

The Committee. Articles 17 through 22 contain the administrative and supervisory provisions of the Convention. Most importantly, Article 17 establishes a Committee on the Elimination of Discrimination Against Women (CEDAW), consisting of twenty-three experts of high moral standing and competence. Members of the Committee are elected by States Parties to four year terms but serve in their personal capacities. The basic function of the Committee is to consider detailed reports from States Parties describing the legislative, judicial, administrative or other measures they have adopted to give effect to the provisions of the Convention and the progress they have made in this respect. The first such report is due within one year of the entry into force of the Convention for the State concerned; supplementary reports are due thereafter every four years or whenever the Committee requests. The Committee also submits an annual report to the UN General Assembly.

The Convention provides that the Committee shall "normally" meet for a a single two-week session each year. The Committee may make recommendations based on the reports and information received from States Parties. In contrast to other supervisory bodies established to monitor implementation of human rights treaties (such as the Committee Against Torture or the Committee on the Elimination of Racial Discrimination), the Committee on the Elimination of Discrimination against Women has no competence to consider complaints or petitions from either individuals or governments.

Final Clauses. The final clauses of the Convention are contained in Articles 23 through 30. Significantly, under Article 24, States Parties undertake to adopt "all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention." Article 28 specifically provides that a reservation which is incompatible with the object and purpose of the Convention "shall not be permitted." In point of fact,

PHOTOCOPY
PRESERVATION

States Parties have entered more reservations to this Convention than to any other widely-accepted human rights treaty.

With respect to dispute settlement, Article 29(1) provides that any dispute between two or more States Parties concerning the interpretation or application of the Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of such request the parties have been unable to agree on the organization of such an arbitration, any of those parties may refer the dispute to the International Court of Justice. However, Article 29(2) permits a State Party to declare, at the time of signature or ratification, that it does not consider itself bound by the preceding provision.

II. Relevant U.S. Law

Existing U.S. constitutional and statutory law and practice provide broad and effective protections and remedies for women against gender-based discrimination.

a. U.S. Constitution

The Equal Protection Clause of the Fourteenth Amendment precludes any state from denying its citizens "the equal protection of the laws." Through the Due Process Clause of the Fifth Amendment, that prohibition is also applicable to the Federal Government. See Bolling v. Sharpe, 347 U.S. 497 (1954). The Supreme Court has interpreted the Equal Protection Clause as a "direction that all persons similarly situated should be treated alike." Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985). In essence, it precludes governments from adopting unjustifiable legal distinctions between groups of people. See Plyler v. Doe, 457 U.S. 202, 216-219 (1982). When subjected to court challenge on equal protection grounds, gender-based distinctions must satisfy the requirements of "intermediate scrutiny." Under that standard, a gender-based distinction is justifiable only if it serves an "important governmental objective" and is "substantially related" to the achievement of that objective. See Craig v. Boren, 429 U.S. 190, 197 (1976). While not as searching as the strict scrutiny that courts apply to racial or ethnic distinctions, this standard of review nevertheless requires that gender-based distinctions be supported by an "exceedingly persuasive justification." Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 724 (1978). Absent such a showing, gender-based distinctions violate the Equal Protection Clause.

PHOTOCOPY
PRESERVATION

The Equal Protection Clause has been interpreted to apply only to intentional discrimination. Accordingly, its prohibitions do not reach laws or practices which are on their face gender-neutral but which have a disparate impact on women. See, e.g., Personnel Administrator v. Feeney, 442 U.S. 256 (1979). In addition, its strictures are violated only when there is sufficient governmental involvement for the discrimination to constitute "state action." See Civil Rights Cases, 109 U.S. 3 (1883), and Lugar v. Edmonson, 457 U.S. 922 (1982).

The Constitution also expressly protects a woman's right to vote. The Nineteeth Amendment, adopted in 1920, provides that the right of citizens of the United States to vote shall not be denied or abridged on account of sex.

b. Federal Legislation

Over the years, Congress has enacted a number of statutes prohibiting discrimination on the basis of sex in a host of fields.

In the field of education, for example, the constitutional prohibitions against gender-based classifications are supplemented by a broad network of federal statutes and regulations designed to preclude discrimination on the basis of sex and to promote educational equity for women. Although they apply only to public institutions and certain private institutions that receive federal financial assistance, as a practical matter these laws and regulations cover most educational institutions in the United States. This is particularly the case with respect to higher education institutions.

Most significantly, Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., prohibits sex discrimination in certain federally assisted education programs or activities. The Women's Educational Equity Act of 1978, 20 U.S.C. §§ 3041-47, provides educational equity for women in the United States as well as financial assistance to enable educational agencies and institutions to meet the requirements of Title IX. The Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. § 2301 et seq., provides for the development of programs to eliminate sexual stereotyping in vocational education and career steering. The Equal Educational Opportunities Act, 20 U.S.C. § 1701 et seq., prohibits states from denying equal educational opportunities to an individual on account of his or her race, color, sex or national origin.

PHOTOCOPY
PRESERVATION

The actual administration of public elementary and secondary schools is a responsibility of the states, not the federal government, and textbook revision is generally regulated by state commissions. There is no federal law that requires revision of textbooks to eliminate sexual stereotyping.

Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e et seq., is the primary federal statute addressing discrimination in employment. Subject to certain exceptions, it provides a minimum standard of protection for both men and women by prohibiting discrimination by employers (including public employers) against any individual "because of such individual's race, color, religion, sex, or national origin" in hiring, firing, compensation, terms, conditions, or privileges of employment and in limiting, segregating or classifying employees or applicatants. It prohibits such discrimination by employers, labor organizations and employment agencies affecting commerce. Complaints under this statute are initially filed with the Equal Employment Opportunity Commission or, in the case of federal government employees, with the equal employment officer at the employee's agency. In 1991, Congress amended Title VII to provide additional remedies for intentional discrimination in the workplace.

Title VII also prohibits gender based discrimination in job training and apprenticeship programs. See 42 U.S.C. § 2000e-2(d). Programs and activities receiving federal assistance are subject to the same prohibition under § 167(a)(2) of the Job Training Partnership Act, 29 U.S.C. § 1577(a)(2).

The Equal Pay Act of 1963, 29 U.S.C. §206(d), requires equal pay for equal work on jobs requiring equal skill, effort and responsibility which are performed under similar working conditions. Title VII also prohibits gender-based discrimination in compensation more broadly than the Equal Pay Act. See County of Washington v. Gunther, 452 U.S. 161 (1981). Contemporary U.S. non-discrimination law does not, however, include the concept of "comparable worth," i.e., the requirement of equal compensation for jobs of the same value in the same place of employment (jobs judged to be of comparable worth according to measurements such as knowledge, skill and effort required, level of responsibility, and working conditions). See, e.g., International Union, UAW v. Michigan, 886 F.2d 766 (6th Cir. 1989); American Nurses' Association v. State of Illinois, 783 F.2d 716 (7th Cir. 1986); AFSCME v. State of Washington, 770 F.2d 1401 (9th Cir. 1985).

PHOTOCOPY
PRESERVATION

The Pregnancy Disability Act, codified at 42 U.S.C. § 2000e(k), prohibits employers from providing less favorable treatment of pregnancy-related conditions in comparison to other conditions. The Family and Medical Leave Act of 1993, codified at 29 U.S.C. §§ 2601 et seq., provides among other things that certain public and private sector employees have the right of up to twelve weeks of unpaid leave per year for the birth or adoption of a child, acquiring a foster child, or the serious illness of a child, spouse, parent or the employee him or herself.

The Equal Credit Opportunity Act, codified at 15 U.S.C. § 1691, prohibits discrimination on account of sex or marital status in the granting or terms of credit, including approval, denial, renewal or extension. It applies to all creditors who regularly extend credit, including banks, small loan and finance companies, retail and department stores, credit card companies and credit unions. Creditors may not require a married woman to apply in her husband's name, refuse her credit in her name, or inquire about fertility or family planning. They may not ask for information concerning her spouse unless joint credit is sought, the spouse will use the account, or the applicant is relying on the spouse's income or support in seeking the credit.

The Fair Housing Act, 42 U.S.C. § 3604, prohibits sex discrimination in connection with the sale or rental of housing.

c. State and Local Anti-Discrimination Measures

The constitutions of sixteen states now include provisions for the protection of women's rights. In addition, most of the states and many large cities have adopted their own statutory and administrative schemes for protecting individuals from discrimination on the basis of gender in fields actively regulated by state and local governments. For example, state constitutions and statutes typically protect individuals from discrimination in housing, employment, public accommodations, government contracting, credit transactions and education. As a result, a particular discriminatory act might well violate federal, state and local law -- each with its own sanctions. To varying degrees, states may provide protections which differ from or exceed the minimum requirements of federal law. Where such protections exist, state or municipal law also provides judicial or administrative remedies for victims of discrimination.

PHOTOCOPY
PRESERVATION

d. Enforcement and Remedial Mechanisms

Existing U.S. law provides extensive remedies and avenues for seeking redress for acts of discrimination, including those based on gender. A person claiming to have been denied a constitutionally protected right, for example under the Due Process or Equal Protection Clauses of the Fifth or Fourteenth Amendments, may assert that right directly in state or federal court. The federal Civil Rights Acts typically provide statutory remedies; for example, under the 1871 Act, 42 U.S.C. § 1983, a person complaining of discrimination resulting from actions taken under color of state law may seek civil damages and injunctive relief against the responsible state official. Federal officials may be sued for damages directly under provisions of the Constitution. See, e.g., Davis v. Passman, 442 U.S. 228 (1979) (damages suits against federal officials arising out of alleged sex discrimination in violation of equal protection requirements may be brought directly under the Fifth Amendment).

The Civil Rights Division of the Department of Justice has principal responsibility for the effective enforcement of federal civil rights laws, in particular for the Civil Rights Acts of 1964 and 1991 and Executive Order No. 12250 (which requires all executive departments and agencies to eliminate racial, religious and sex discrimination). Primary responsibility for administration of the Fair Housing Act is vested with the Secretary of Housing and Urban Development. Where Congress has so provided, the federal government may itself bring civil actions to enjoin acts or patterns of conduct that violate constitutional rights, and in some instances is empowered to prosecute those who use force or threat of force to violate a person's rights to non-discrimination.

The Equal Employment Opportunity Commission, an independent agency within the executive branch established by the Civil Rights Act of 1964, has oversight and compliance responsibilities concerning the elimination of discrimination based on race, color, religion, sex, national origin, disability or age by private employers in all aspects of the employment relationship. The U.S. Commission on Civil Rights collects information on discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin or in the administration of justice in such areas as voting rights, enforcement of federal civil rights laws, and equality of opportunity in education, employment and housing. It evaluates federal laws and makes recommendations to the President and the Congress concerning

PHOTOCOPY
PRESERVATION

the effectiveness of governmental equal opportunity and civil rights programs.

Other federal departments and agencies also have enforcement responsibilities. For example, within the Department of Education, the Office for Civil Rights is charged with administering and enforcing the civil rights laws related to education. The Office of Civil Rights within the Department of Health and Human Services administers laws prohibiting discrimination in federally-assisted health and human services programs. Authorities within the Department of Labor administer programs dedicated to equality in government contracting.

III. Article-By-Article Analysis

A careful comparison of the substantive provisions of the Convention against existing provisions of U.S. law and practice reveals both a very substantial degree of compliance with the treaty's requirements as well as the need for a limited number of reservations, understandings and declarations addressed to specific provisions of the Convention.

Article 1 -- Definition

Article 1 defines "discrimination against women" as including:

> "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."

Private Conduct. The definition of discrimination in Article 1 is sufficiently broad to apply not only to activities of the federal or state governments but also to those of private organizations, associations and individuals. The effect of this definition, especially when read in conjunction with the substantive obligations imposed by Articles 3 and 5 concerning patterns of conduct, is to reach into areas that are not regulated by the federal government, either because of constitutional constraints or as a matter of public policy. First, as indicated above, the constitutional prohibitions on gender discrimination only apply where there is sufficient governmental involvement so as to satisfy the "state action"

PHOTOCOPY
PRESERVATION

requirement. Second, a number of federal anti-discrimination statutes that apply to private conduct do not extend to all such conduct. For example, Title VII of the 1964 Civil Rights Act does not apply to private employers with fewer than 15 employees, religious institutions, or tax-exempt private clubs. Similarly, Title IX of the Education Act Amendments of 1972 does not apply to private institutions that receive no federal funds. Moreover, certain types of private institutions that do receive federal funds are exempted from the strictures of Title IX.

Accordingly, it is appropriate to condition U.S. ratification upon a reservation, similar to the one proposed in connection with the Convention on the Elimination of All Forms of Racial Discrimination, which acknowledges the limitations imposed by the U.S. Constitution and laws upon the ability of the federal government to regulate private conduct. The text of that reservation is as follows:

> "The Constitution and laws of the United States establish extensive protections against discrimination, reaching all forms of governmental activity as well as significant areas of non-governmental activity. However, individual privacy and freedom from governmental interference in private conduct are also recognized as among the fundamental values of our free and democratic society. The United States understands that by its terms the Convention requires broad regulation of private conduct, in particular under Articles 3 and 5. The United States does not accept any obligation under the Convention to enact legislation or to take any other action with respect to private conduct except as mandated by the Constitution and laws of the United States."

<u>What Constitutes Discrimination</u>. Read broadly, the Article 1 definition of discrimination would appear to reach any "distinction, exclusion or restriction" that is based on gender. The definition must, however, be construed against general principles of international law. Under those principles, the definition would not bar each and every gender-based distinction, but only those that cannot be justified. Most obviously, an unjustified distinction would be one that is arbitrary or invidious. A gender-based distinction that is not intended to achieve some important purpose would also constitute discrimination that is prohibited by the Convention. This construction of the Article 1 definition of discrimination is consistent with U.S. law: a gender-based distinction can withstand constitutional challenge if it serves an important objective and is substantially related to the

PHOTOCOPY
PRESERVATION

achievement of that objective. In other words, a distinction that is supported by a weighty justification does not constitute impermissible discrimination. Similarly, under federal anti-discrimination statutes, gender-based distinctions are permissible in certain circumstances. For example, under Title VII, such distinctions can be justified in some cases as "bona fide occupational qualifications."

Another key point is that the Article 1 definition of discrimination only covers distinctions that are "based" on gender. In short, a distinction must specifically classify women differently from men before it will trigger concern under the Convention. Accordingly, the definition does not reach gender-neutral distinctions that have an adverse effect on women. This is consistent with U.S. constitutional law: the equal protection standard of intermediate scrutiny generally only applies to gender-based distinctions, not gender-neutral distinctions. A gender-neutral distinction will be subjected to intermediate scrutiny only if it can be demonstrated that the distinction was motivated by discriminatory intent. See Personnel Administrator v. Feeney, 442 U.S. 256, 273-74 (1979).

In some respects, however, U.S. law is broader than Article 1 of the Convention: some federal laws proscribe gender-neutral practices that have a disparate impact on women where such practices cannot be justified. This is true of Title VII of the 1964 Civil Rights Act (as modified by the 1991 Civil Rights Act), which provides that gender-neutral employment practices that have an adverse effect on women in the workplace must be job-related and consistent with business necessity. See 42 U.S.C. § 2000e-2(k); Dothard v. Rawlinson, 433 U.S. 321 (1977). It is also true of the Fair Housing Act. See R. Schwemm, Housing Discrimination Law and Practice § 10.04 (1990) (noting that although the Supreme Court has yet to address the issue, lower courts have uniformly held that the Fair Housing Act reaches practices that have a disparate impact on groups protected by the statute). And it is true of certain portions of the regulations implementing Title IX of the Education Act Amendments of 1972. See 34 C.F.R. §§106.21(a)(2), 106.51(a)(2). Furthermore, even in constitutional cases, gender disparities arising out of gender-neutral practices may give rise to an inference of the discriminatory intent that is necessary to prove an equal protection violation. See Personnel Administrator v. Feeney, 442 U.S. at 274.

Marital Status. Marital status is not a protected category under exisiting federal law, although several states prohibit discrimination on that basis. However, the phrase "irrespective of their marital status" in the definition in

PHOTOCOPY
PRESERVATION

Article 1 does not require identical treatment of married and unmarried women, but rather that married or unmarried women may not be treated differently from similarly situated men. Such distinctions are subject to challenge under the constitutional doctrine of equal protection.

Appropriate Measures. The Convention affords States Parties a measure of flexibility and discretion in implementing its substantive obligations. The principal undertaking of State Parties is to take "all appropriate measures" to ensure equality in the various fields covered by the Convention. The only exceptions are Article 9, which provides that states shall grant women equal rights with men to acquire, change or retain their nationality, as well as equal rights with respect to the nationality of their children, and Article 15, regarding equality before the law; current U.S. law satisfies both obligations.

Article 2 -- General Obligations

The general obligation of States Parties to the Convention is, under Article 2, "to pursue by all appropriate means ... a policy of eliminating discrimination against women." The article identifies seven specific steps States shall take toward this end.

Article 2(a) requires a State Party to embody the principle of equality of men and women in its constitution or legislation and to ensure the "practical realization of this principle." Articles 2(b) and (c) require a State Party to adopt "appropriate legislation and other measures" prohibiting discrimination against women, to establish "legal protections" of the rights of women on an equal basis with men, and to ensure the "effective protection of women from any act of discrimination." Under Article 2(d), States Parties must refrain from acts or practices of discrimination and ensure that public authorities and institutions do likewise. Article 2(e) further requires them to take "all appropriate measures to eliminate discrimination against women by any person, organization or enterprise" and under Article 2(f) they must take "all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women." Finally, Article 2(g) requires the repeal of "all national penal provisions" which constitute discrimination against women.

PHOTOCOPY
PRESERVATION

U.S. Implementation. As a matter of law and national policy, the United States does condemn and seek to eliminate discrimination against women. The principle of the equality of men and women is reflected in the Fourteenth Amendment to the Constitution, as well as in federal and state legislation. As discussed in more detail elsewhere in this analysis, current U.S. law at the federal, state and local levels includes an increasing array of provisions of the type generally contemplated by this article. While few would argue that gender-based discrimination does not exist in the United States or that there is no room for additional legislative and other steps in this regard, it is not open to serious debate that the legislation and other measures currently in force in the United States are sufficient to meet the general requirements set forth in Article 2. Article 2 would not, therefore, require an Equal Rights Amendment to the United States Constitution.

However, Article 2 does implicate several issues of importance.

Federalism. The first is the question of compliance by state and local governments. Article 2(d) imposes an obligation to ensure that "public authorities and institutions" refrain from discriminating against women; read in conjunction with Article 24, this provision would require the Federal Government to ensure that governments at all levels comply with the Convention. Many of the specific areas covered by subsequent articles of the Convention (in particular, Articles 5, 6, 10, 13 and 16) are within the purview of state and local governments, rather than the federal government. Nothing in U.S. law prohibits the Federal Government from committing its constituent units to the goal of non-discrimination; by the same token, there is no desire to "federalize" such areas or to take them out of the hands of the state and local governments. It is for this reason that the Administration proposes to condition ratification of the Convention upon a "federalism" understanding similar to the one adopted in connection with the ratification of the International Covenant on Civil and Political Rights and proposed in connection with the Convention on the Elimination of All Forms of Racial Discrimination:

> "The United States shall implement its obligations under this Convention by legislative, executive or judicial means, as appropriate under its federal system of government." OR "The United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the

PHOTOCOPY
PRESERVATION

matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of this Convention."

Private Conduct. The second issue concerns the limitations on governmental regulation of private conduct under the U.S. constitutional system. Specifically, Article 2(e) requires States Parties to take "all appropriate measures to eliminate discrimination against women by any person, organization or enterprise." The Committee on the Elimination of Discrimination Against Women, in its General Recommendation No. 19, has emphasized that "discrimination under the Convention is not restricted to actions by or on behalf of Governments." While U.S. law is not so limited, the plain meaning of Article 2(e) would reach areas of individual activity protected by the principles of freedom of religion, speech and association and other privacy rights guaranteed under the U.S. Constitution. Similar concerns are raised by Articles 3, 5, 7 and 13. For this reason, a reservation is required concerning "private conduct" as indicated above in the discussion of Article 1.

Effect on the Military. Third, current U.S. law contains a number of provisions reflecting gender-based preferences and restrictions related to military service. For example, the males-only Selective Service Act, 50 App. U.S.C. § 451 et seq., remains in force, and although it is inactive, the selective service infrastructure remains available should it be required for the national defence. See Rostker v. Goldberg, 453 U.S. 57 (1981). In addition, although the principal statutory exclusion (10 U.S.C. § 6015) has been repealed and women are now permitted by federal law to volunteer for all non-combat and many combat positions, the Department of Defense and the Military Services retain certain policies that preclude women from serving in units and positions whose mission requires routine engagement in direct combat on the ground. See, e.g., P.L. 103-160, § 542. Therefore, it is considered appropriate to condition ratification upon a reservation as follows:

"The United States reserves the right not to apply the Convention, in particular Articles 2 and 7(b), with respect to service by women in military units and positions which may require engagement in direct combat."

PHOTOCOPY
PRESERVATION

Article 3 -- Development and Advancement of Women

Under Article 3, States Parties are broadly required to take "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." This obligation is expressly applicable "in all fields, in particular the political, social, economic and cultural fields."

The Committee has taken the view that, like Article 2, the general language of Article 3 creates substantive obligations on States Parties in addition to those imposed by the more specific provisions of Articles 5-16. See General Recommendation No. 19. To date, however, it has not relied upon Article 3 to reach areas which are not covered by other articles of the treaty.

Private Conduct. Because of its breadth, this Article could be interpreted as obligating the Federal Government to prohibit discriminatory acts in areas of private conduct beyond the permissible reach of governmental regulation. Accordingly, ratification should be conditioned upon the "private conduct" reservation proposed above.

Article 4 -- Temporary Special Measures

Article 4 provides that "temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination" within the meaning of the Convention. Such measures shall "in no way entail as a consequence the maintenance of unequal or separate standards." They must be discontinued "when the objectives of equality of opportunity and treatment have been achieved." Moreover, adoption of "special measures ... aimed at protecting maternity" shall not be considered discriminatory.

Although the Committee has encouraged States Parties to make more use of "temporary special measures," Article 4 does not require them but provides only that they shall not be considered discriminatory. Whether such measures are in fact necessary, and which measures might be appropriate, is left to the discretion of each State Party.

Affirmative Action. A number of existing governmental and private affirmative action measures would be considered

PHOTOCOPY
PRESERVATION

"special measures" for purposes of Article 4 of the Convention. These measures include gender preferences in education, employment, and public contracting. Under U.S. law, such measures must satisfy applicable constitutional and/or statutory requirements. See Johnson v. Transportation Agency, 480 U.S. 616 (1987) (employers may adopt affirmative action plans providing employment preferences for women in order to eliminate gender imbalance in traditionally segregated job category without offending Title VII of Civil Rights Act of 1964, so long as plans are temporary measures that do not create an absolute bar to advancement of men); Lamprecht v. FCC, 958 F.2d 382 (D.C. Cir. 1992) (government affirmative action programs that establish preferences for women satisfy constitutional requirements if they promote an important governmental objective and are substantially related to that objective); see also 29 C.F.R. § 1608 (Equal Employment Opportunity Commission guidelines on establishment of affirmative action measures in the workplace); Executive Order 11,478 (requiring federal government agencies to establish affirmative action plans in employment); Executive Order 11,246 (requiring federal government contractors to take affirmative action measures).

Article 4 of the Convention does not impose any obligation that would require the United States to adopt any affirmative action measures for women that are inconsistent with constitutional or statutory requirements. Nor would it prevent the adoption of affirmative action measures that are consistent with those requirements.

Maternity. Under Article 4(2), "special measures ... aimed at protecting maternity shall not be considered discriminatory." This provision does not require adoption of such measures. There is currently no provision of federal law that either forbids or mandates the establishment of special measures to protect maternity. Federal law provides for a number of programs specifically benefiting pregnant women and contributing to improved fetal health and child-bearing. Discrimination in employment on the basis of pregnancy or related disabilities is addressed by the Pregnancy Discrimination Act of 1978, 42 U.S.C. §2000e(k), which prohibits employers from taking special measures to protect the fetus unless pregancy interferes with the woman's ability to perform her job. In International Union, UAW v. Johnson Controls, Inc., --- U.S. ---, 111 S. Ct. 1196 (1991), the Supreme Court held invalid an employer's fetal protection policy under this statute.

PHOTOCOPY
PRESERVATION

Article 5 - Gender Stereotyping and Family Education

Article 5 obliges States Parties to take "all appropriate measures" (a) to modify the social and cultural patterns of conduct among their citizens to eliminate prejudices and conduct based on the idea of gender superiority or sex-role stereotyping, and (b) to ensure that "family education" includes "a proper understanding of maternity as a social function" and the equal roles of men and women in raising children. The Article emphasizes that the "interest of the children is the primordial consideration in all cases."

The Committee has adopted several General Recommendations interpreting this Article. In General Recommendation No. 3, the Committee urged States Parties to adopt education and public information programs to help eliminate prejudices and practices that hinder "the full operation of the principle of the social equality of women." In General Recommendations 12 and 19, the Committee emphasized that violence against women constitutes a form of social and cultural discrimination which seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men, and recommended that States Parties undertake a series of specific measures (such as providing criminal penalties and civil remedies for gender-based violence, as well as support and rehabilitation services) to overcome violence against women.

U.S. Implementation. At the federal level, there currently exist a number of public education, information and grant programs regarding gender equality. These include initiatives authorized by the Women's Educational Equity Act ("WEEA"), 20 U.S.C. § 3041 et seq., under which the U.S. Department of Education undertakes studies that examine the nature and extent of sex bias, sex discrimination and sex role development. Sex education research is administered by the Department's Office for Educational Research and Improvement. The Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. § 2301 et seq., as amended by P.L. 101-392 (1990), contains broad provisions addressing gender equity, including allocation of funds for programs and activities at the state level that eliminate sex bias and stereotyping in vocational education. The Even Start Family Literacy Programs Act, 20 U.S.C. § 2741 et seq., as amended by the National Literacy Act of 1991, P.L. 102-73, provides funds for family-centered education programs to help parents become full partners in the education of their children. In addition, a number of public programs concern violence against women, for example **(NEED EXAMPLES)**. Moreover, [**NEED EXAMPLES** of programs concerning recognition of the common responsibility of male and female parents??]

PHOTOCOPY
PRESERVATION

However, the Convention may be interpreted as requiring the Federal Government to implement additional programs of this nature in order to meet its obligations under Article 5.

Private Conduct. The federal government does not regulate family education or interpersonal relationships. Although the obligation is limited to "appropriate measures," the proposed reservation on private conduct, discussed above, also ensures that Article 5 is not construed so broadly as to require the Federal Government to regulate private interpersonal relationships in order to eradicate culturally prevalent, gender-based prejudices and stereotypes.

Speech. Although the Convention does not contain a specific provision barring discriminatory speech, it is important to clarify that Article 5 is not construed as imposing obligations on States Parties to take action against those who advocate "the idea of inferiority or the superiority of either of the sexes." Under U.S. law, the free speech guarantees of the First Amendment permit individuals to disseminate such "ideas." See, e.g., American Booksellers Association, Inc. v. Hudnut, 771 F.2d 323 (7th Cir. 1985), aff'd, 475 U.S. 1001 (1986). (Of course, employers do not have a First Amendment right to harass their female employees, and such conduct is barred by Title VII of the 1964 Civil Rights Act.)

For this reason, the Administration proposes to clarify for the Committee and all other States Parties the limits imposed on governmental action in this regard by the Constitution, through adoption of an understanding as follows:

> "The Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under Articles 5, 7, 8 and 13, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States."

Article 6 - Prostitution

Under Article 6, States Parties must take "all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." Prostitution of women as such is not prohibited; rather, it is

PHOTOCOPY
PRESERVATION

the "exploitation of prostitution" and "traffic in women" which must be suppressed in all their forms. See General Recommendation No. 19.

No federal statute prohibits the expolitation of prostitution (or prostitution itself); generally, these are matters left to state regulation. However, every state jurisdiction prohibits prostitution (with the sole exception of Nevada, which prohibits street prostition but authorizes state-licensed houses of prostitution) and criminalizes related acts which constitute its exploitation, such as soliciting or patronizing a prostitute and procuring (i.e., pimping and pandering).

ISSUE: Are brothel owners in Nevada allowed by law to "exploit" prostitutes for money? If so, could Nevada be forced by the Federal Gov't to comply? Reservation needed?

Existing federal law provides a measure of regulation over "traffic in women." Transportation of an individual in interstate or foreign commerce for the purpose of prostitution is a federal crime, as is knowingly persuading an individual to travel in interstate or foreign commerce for that purpose. See the "White Slave" or "Mann Act," codified at 18 U.S.C. § 2421-2424. Anyone travelling in, or using a facility in, interstate commerce for the purpose of prostitution would violate 18 U.S.C. § 1952. Prostitution is also forbidden near military bases. See 18 U.S.C. § 1384. These laws, together with state prohibitions of prostitution, are sufficient to meet the requirements of Article 6.

Article 7 -- Political and Public Life

Under Article 7, States Parties must take "all appropriate measures" to eliminate discrimination against women in the political and public life of the country. In particular, they must assure women an equal right with men to vote in all elections and referenda, to be eligible for election to all publicly elected bodies, to participate in the formulation and implementation of government policy, to perform all public functions at all levels of government, and to participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 7 expands upon the operative provisions of the 1952 Convention on the Political Rights of Women, to which the United States has been a party since 1976 (TIAS 8289, 27 UNTS 1909), by adding the right to vote in public referenda and to

PHOTOCOPY
PRESERVATION

participate in the formulation and implementation of government policy.

U.S. Implementation. The right to vote, to be a candidate for and to hold public office, and to participate in the public process are all accorded by existing U.S. law to women on the basis of equality with men. The Nineteenth Amendment to the U.S. Constitution affirmatively protects the right to vote and is sufficient to cover all elections and referenda at all levels of government. There are no limitations in federal law on the eligibility of women to run for and hold public office; any restrictions at the state and local levels would have to be consistent with the Equal Protection Clause of the Fourteenth Amendment. These protections also serve to secure women's right to participate in the public and political process.

Military Service. Since the statutory basis for the males-only selective service system remains intact, and the Department of Defense and the Military Services retain policies precluding women from serving in units and positions whose mission requires routine engagement in direct combat on the ground, a reservation to this provision is considered necessary, as indicated above.

Private Organizations. The requirement to ensure women an equal right to participate in non-governmental (i.e., private) organizations concerned with public and political affairs is generally satisfied by existing federal non-discrimination law. Although political parties are generally non-governmental in nature and not subject to federal regulation or control, their activities would likely be considered within the ambit of "state action" for purposes of the Fourteenth Amendment. See Terry v. Adams, 345 U.S. 461 (1953); Bode v. National Democratic Party, 452 F.2d 1302 (D.C. Cir. 1971), cert. denied, 404 U.S. 1019 (1972). Non-discrimination laws at state and local levels provide additional protections.

Nonetheless, here as elsewhere, the Convention could require regulation of activities either beyond the scope of the federal government's authority or protected by privacy rights under the Constitution, for example private social clubs or the internal affairs of political parties. This issue is addressed by the proposed reservation concerning private conduct.

Article 8 - Representation

Under Article 8, States Parties must take "all appropriate measures" to ensure equal opportunities for women to represent

PHOTOCOPY
PRESERVATION

their countries at the international level and to participate in the work of international organizations.

Existing U.S. law is entirely consistent with these requirements. Most women representing the United States at the international level are appointees in or officers or employees of the federal government. Title VII and Executive Order 11478 generally prohibit sex discrimination in federal employment. Under the Foreign Service Act of 1980, equality of opportunity and representation is a stated goal and a number of measures have been mandated to increase the number of women serving at all levels of the Foreign Service. See, e.g., 22 U.S.C. §§ 3901(a)(4), 3905(b)(2)(B), and 3931(b).

As of early 1994, 11% of Senior Foreign Service officers were women. Fourteen women, including three minority women, were "at post" as ambassadors and another seven were in the process of being confirmed. Eighteen senior women, including two minorities, were assigned as deputy chiefs of mission (out of a total of 128). Women comprise approximately 34% of the total career Foreign Service generalists and specialists. Over 44% of the combined Civil Service and Foreign Service workforce of the U.S. Agency for International Development are women, including 17% of senior level management. Approximately 51% of Peace Corps volunteers are women. Within the United Nations system, women hold about 37% of the professional positions staffed by U.S. citizens. Among the 175 U.S. citizens employed as professional staff by the various Inter-American Organizations are 71 women.

Article 9 - Nationality

Article 9 requires States Parties to grant women equal rights to acquire, change or retain their nationality. Neither marriage to an alien nor a husband's change of nationality may automatically change the wife's nationality, render her stateless or force her husband's nationality upon her. States Parties must grant women equal rights with men with respect to the nationality of their children.

U.S. Implementation. Existing U.S. law is fully adequate to meet these obligations. Under the Immigration and Nationality Act ("INA"), women are granted the same rights as men to acquire U.S. nationality at birth, and discrimination on the basis of gender in the acquisition of nationality through naturalization is specifically prohibited. See 8 U.S.C. § 1401-1409, 1422.

PHOTOCOPY
PRESERVATION

Under the INA, neither marriage to an alien nor a husband's change of nationality operate to deprive a woman of her U.S. nationality; indeed, none of the acts upon which a deprivation of citizenship may be predicated relates to marriage. Women no longer risk losing their U.S. citizenship if they marry aliens or if their husbands are deprived of their U.S. citizenship.

With respect of nationality of children, U.S. law grants equal rights to women and is fully consistent with Article 9. Any child born in the United States becomes a citizen, regardless the parents's nationalities. Indeed, there are fewer requirements for transmission of U.S. citizenship to children born abroad to a U.S. citizen parent and an alien parent if the U.S. citizen is the mother than if the parent is the father. See 8 U.S.C. § 1409. (A nineteenth century statute, repealed in 1934, precluded women from transmitting their U.S. citizenship to their foreign-born children but permitted men to do so; that law was invalidated on equal protection grounds in Wauchope v. United States Department of State, 985 F.2d 1407 (9th Cir. 1993)).

Article 10 - Education

The basic obligation of States Parties under Article 10 is to take "all appropriate steps" to eliminate discrimination against women in the field of education. More particularly, Article 10 addresses eight specific steps States Parties must take to achieve this goal. They are discussed in detail below.

U.S. Implementation. Education in the United States remains largely in the hands of state and local governments. In particular, regulation of the content of curricula, textbooks and programs of instruction are matters for state and local educational authorities. See Department of Education Organization Act, 20 U.S.C. § 3403(b). Gender-based educational classifications are subject to challenge, however, under the Equal Protection Clause of the Fourteenth Amendment. See Mississippi University for Women v. Hogan, 458 U.S. 718 (1982); United States v. Commonwealth of Virginia, 976 F.2d 890 (4th Cir. 1992).

In terms of statutory law, Congress has adopted a number of significant federal initiatives to end discrimination against women and to contribute to the advancement of women at all levels of education. Most significantly, Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., prohibits sex discrimination in federally assisted education programs or activities. Since the overwhelming majority of

PHOTOCOPY
PRESERVATION

colleges, universities and public elementary and secondary school systems receive some form of federal financial assistance, the prohibitions of Title IX are broadly applicable. (The principal exclusions involve schools controlled by religious organizations, military institutions, traditional and continuous single sex institutions, and certain types of school activities.) Pursuant to this statute, the U.S. Department of Education has adopted comprehensive regulations which address sex education in admissions, in education programs including housing, access to course offerings, counseling, financial aid, health and insurance benefits, and athletics. See 34 C.F.R. Part 106. Under Title IX, sexual harassment is a form of sex discrimination and thus is prohibited in educational institutions receiving federal financial assistance. See Franklin v. Gwinnett County Public Schools, 112 S. Ct. 1028 (1992).

The Women's Educational Equity Act of 1978, 20 U.S.C. §§ 3041-3047, is intended to provide educational equity for women in the United States and to provide assistance to enable educational agencies and institutions to meet the requirements of Title IX.

The Equal Educational Opportunities Act, 20 U.S.C. § 1701 et seq., prohibits the denial of equal educational opportunity to an individual on account of his or her race, color, sex or national origin. Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c et seq., provides funds for technical assistance to state and local educational agencies for desegregation activities including sex equity activities, i.e., providing students with a full opportunity for participation in all educational programs regardless of their sex. The Dwight D. Eisenhower Mathematics and Science Education Act, 20 U.S.C. § 2981 et seq., provides financial assistance to states to improve the quality of instruction in mathematics and science in elementary and secondary schools. The Higher Education Amendments Act of 1992, P.L. 102-325, contain many provisions relating to the advancement of women. In particular, Title IX of the Act provides funding to foster and support professional education for students from underrepresented groups, including incentives to women to complete doctoral degree programs leading to academic careers.

With regard to vocational and applied education, the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. § 2301 et seq., contains broad provisions addressing sex equity and sterotyping in vocational education and career steering. States receiving grants under that Act are required to assign a full time coordinator to administer sex equity

PHOTOCOPY
PRESERVATION

programs, identify and recommend ways to eliminate sex bias in vocational educational programs, and develop programs of outreach to women concerning vocational and educational opportunities, including employment as skilled workers in technical fields.

Co-Education. In the past several years, males-only public institutions at both the secondary and higher education levels have been charged on constitutional grounds with sex discrimination in a number of cases. However, the Supreme Court has not yet considered the merits of any of these cases. In one case, a federal district court precluded the Detroit public school system from establishing all-male institutions for students in pre-school grades through the fifth grade; the court ordered the school system to allow females into the institutions. Garrett v. Board of Education, 775 F. Supp. 1004 (E.D. Mich. 1991). In the past two years, the Fourth Circuit has issued rulings in separate cases involving publicly-funded all-male military academies. In the first case, the court held that it was permissible for the State of Virginia to operate a males-only academy at Virginia Military Institute (VMI), but that the State had to afford similar educational opportunities to females establishing a parallel institution for women. United States v. Commonwealth of Virginia, 976 F.2d 890 (4th Cir. 1992), cert. denied, 113 S. Ct. 2431 (1993). In the second case, the Fourth Circuit allowed a female to enroll in the "cadets" program at the Citadel, a state-funded institution in South Carolina, pending resolution of her equal protection challenge to the institution's policy of only admitting men to the program. In granting the injunction, the court admonished that on the record before it, the holding in the VMI case would appear to be applicable to the cadets program at the Citadel. Faulkner v. Jones, 10 F.3d 226 (4th Cir. 1993).

Article 10 does not compel co-education or prohibit single sex institutions. As indicated below, Article 10(b) refers only to guaranteeing women access to the same curricula and examinations, equally qualified teaching staff, and school premises and equipment of the same quality. Article 10(c) encourages coeducation as well as other types of education which will help achieve the aim of eliminating stereotyped concepts of the roles of men and women in education. These provisions are aimed at ensuring equal educational opportunities for women, not at compelling coeduation.

The eight specific steps required of Parties under Article 10 are as follows:

PHOTOCOPY
PRESERVATION

Vocational Training. Under Article 10(a), States Parties must ensure the same conditions for career and vocational guidance and access to and achievement of diplomas in all educational establishments in rural as well as urban areas, including pre-school, general, technical, professional and higher technical education as well as vocational training and apprenticeship progams. Title IX, the Women's Educational Equity Act, and the Carl D. Perkins Vocational and Applied Technology Education Act are sufficiently comprehensive to constitute "appropriate steps" in this regard. Even though there is no special federal program to address the educational needs of "rural women," all programs are open to women from rural as well as urban areas.

Quality of Education. Under Article 10(b), States Parties must provide equal access to curricula, examinations, teaching staff, premises and equipment. This requirement is met by the provisions of Title IX and the Equal Protection Clause.

Gender Stereotyping. In accordance with Article 10(c), States Parties must ensure the elimination of gender stereotyping at all levels and in all forms of education, including through revision of textbooks and teaching methods. This provision encourages but does not require coeducation; all male schools appear not to violate Article 10 so long as schools of equal quality are available to women. As indicated above, several federal programs encourage the elimination of stereotyping of women. However, questions related to textbooks and curricula are outside the federal government's purview, and there are additional limits on the actual reach of Title IX. (**Issue**: is the federalism understanding sufficient in the event states fail to act appropriately?)

Scholarships and Grants. Article 10(d) requires States Parties to provide women the "same opportunities to benefit from scholarships and other study grants." Title IX requires equal access to all federally funded scholarships and other study grants; most state and local educational assistance is also subject to non-discrimination proscriptions, including the Equal Protection Clause.

Continuing Education. Article 10(e) requires equal opportunities for women to have access to programs of continuing education, including adult and functional literacy programs, particularly those aimed at reducing any gap in education between men and women. Subject to certain limitations, Title IX requires equal access to continuing education programs. Federal assistance for such programs is intended to assist specific categories of women. The Women's

PHOTOCOPY
PRESERVATION

Educational Equity Act is also aimed at enhancing continuing education opportunities for women.

Drop-Outs. Article 10(f) concerns reduction in female drop-out rates and the organization of programs for girls and women who have left school prematurely. Some programs adminstered under the authority of the Women's Educational Equity Act are aimed at the reduction of drop-out rates of female students. Federal law also requires creation of programs for girls and women who have left the workforce prematurely, see 20 U.S.C. § 1011(a)(2).

Sports. Article 10(g) requires provision of "the same opportunities to participate actively in sports and physical education." Title IX ensures women those opportunities at schools and institutions within the ambit of that statute.

Family Health and Planning. Article 10(h) requires States Parties to ensure equality of "access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning." Although federal law does not currently address the provision of health-related or family planning information, any restrictions imposed by the states or local governments on women's access to educational information or advice would be subject to constitutional challenge. The federal government provides a measure of assistance under Title X of the Public Health Service Act, 42 U.S.C. §§ 300 et seq.

Article 11 - Employment

Article 11 addresses the issue of discrimination against women in the field of employment by requiring States Parties to take "appropriate measures" in two overlapping areas: (i) ensuring equal rights in employment, in particular with reference to a series of ennumerated employment practices and policies, and (ii) preventing discrimination against women on the grounds of marriage or maternity, including the provision of special protection to pregnant women. Article 11 also requires that protective legislation accomplishing these goals must be reviewed periodically and revised, repealed or extended as necessary.

In its various General Recommendations, the Committee has addressed issues of equal pay, sexual harassment, affirmative action and performance of unpaid work by women in the context of Article 11. Specifically, in General Recommendation No. 12, it interpreted Article 11 to prohibit sexual harassment

PHOTOCOPY
PRESERVATION

(broadly defined) in the workplace. In General Recommendation No. 13 it encouraged States Parties to ratify ILO Convention No. 100 (Equal Remuneration for Men and Women Workers for Work of Equal Value) if they have not already done so, "in order to implement fully the Convention on the Elimination of All Forms of Discrimination Against Women." It also called upon States Parties to support the creation of implementation machinery and efforts of parties to collective agreements "to ensure the application of the principle of equal remuneration for work of equal value."

U.S. Implementation. Existing U.S. law provides extensive protection against gender discrimination in the field of employment. Equal protection principles are applicable to issues of gender discrimination in public employment. The principal federal statute is Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. §§ 2000e et seq. Administrative enforcement of Title VII is the responsibility of the Equal Employment Opportunity Commission. Title VII provides a minimum standard of protection for both men and women by prohibiting discrimination by employers against any individual "because of such individual's race, color, religion, sex, or national origin" in hiring, firing, compensation, terms, conditions, or privileges of employment and in limiting, segregating or classifying employees or applicants. It prohibits such discrimination by employers, labor organizations and employment agencies affecting commerce. It includes sexual harassment, see Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986), and discrimination on the basis of pregnancy, childbirth or related medical conditions. Under Title VII, women are able to sue their employers for both compensatory and punitive damages in cases of intentional discrimination, including cases of sexual harassment in the workplace.

Title VII also prohibits sex discrimination in the area of employee benefits. See, e.g., Arizona Governing Committee v. Norris, 463 U.S. 1073 (1983). In addition, Title VII proscribes gender-based discrimination in job training and apprenticeship programs. 42 U.S.C. § 2000e-2(d). See also 29 C.F.R. §§ 30-30.19. Programs and activities receiving federal assistance are subject to the same prohibition under § 167(a)(2) of the 1982 Job Training Partnership Act, 29 U.S.C. § 1577(a)(2).

Sexual Harassment. As interpreted by the Committee, Article 11 prohibits sexual harassment in the workplace as a form of gender-specific violence. In General Recommendation No. 19, it defined the term to include unwelcomed conduct such

PHOTOCOPY
PRESERVATION

as "physical contacts and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions." Such conduct is discriminatory, it said, when the woman "has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment."

Title VII prohibits both the conditioning of job benefits on sexual favors and conduct creating a hostile work environment. See, e.g., Harris v. Forklift Systems, Inc., 114 S. Ct. 367 (1993). Sexual harassment by government agents or officials or by a governmental entity may also be actionable under the Equal Protection Clause or the Civil Rights Acts of 1866 and 1871.

As indicated in the discussion of Article 10, Title IX of the Education Amendments Act of 1972 prohibits gender-based discrimination against employees in education programs or activites receiving federal financial assistance.

The specific undertakings required of States Parties under Article 11 are as follows:

Article 11(1) obliges States Parties to take "all appropriate measures" to eliminate discrimination against women in the field of employment in order to ensure equality in a series of ennumerated employment practices and policies:

Right to Work, Free Choice of Profession. Under Article 11(1)(a), States Parties are obliged to ensure women an equal right to work "as an inalienable right of all human beings." Article 11(1)(c) requires States Party to ensure women "the right to free choice of profession and employment, job security and all benefits and conditions of service." In addition, they are entitled to receive without discrimination vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.

Article 11(1)(a) does not create an "inalienable right" to work as such. Rather, it simply prohibits gender discrimination with respect to choice of profession, job training, and employment benefits. This is consistent with U.S. law. Specific provisions of Title VII prohibit discrimination against women in these areas. See 42 U.S.C. § 2000e-2(a)(2), 2000e-2(d); Arizona Governing Committee v. Norris, 463 U.S. 1073 (1983) (holding that gender-based distinction in employee retirement benefits program violated Title VII). The Title VII prohibitions on discrimination in

PHOTOCOPY
PRESERVATION

job training are supplemented by anti-discrimination provisions in the Job Training Partnership Act, 29 U.S.C. § 1577(a)(2), and the regulations implementing that statute, 29 C.F.R. Part 30. Finally, where public employers are involved, the Equal Protection CLause prohibits discrimination in the areas covered by Articule 11(a)(1) of the Convention.

Equal Employment Opportunity. Article 11(1)(b) guarantees non-discrimination against women with respect to "the right to the same employment opportunities" as men, including "the application of the same criteria for selection in matters of employment." Title VII guarantees women this right by prohibiting discriminatory hiring criteria. In addition, facially-neutral hiring criteria which have an adverse impact on women and are not job-related or justified by business necessity violate Title VII. See 42 U.S.C. § 2000e2(k); Dothard v. Rawlinson, 433 U.S. 321 (1977).

Comparable Worth. Under Article 11(1)(d), women are entitled to non-discrimination with respect to "equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in evaluation of the quality of work."

This provision reflects a broad definition of the concept of equal pay for women, requiring equal compensation for jobs judged to be of comparable worth according to requisite knowledge, skill, effort and responsibility, and considering the working conditions under which the work is performed. While the Convention nowhere uses the term "comparable worth," the negotiating history makes clear that the term "equal remuneration" in this provision has the same meaning as it does in ILO Convention No. 100. Article 1(b) of that convention provides that "the term 'equal remuneration for men and women workers for work of equal value' refers to rates of remuneration established without discrimination based on sex." The Committee has encouraged States Parties to ratify ILO Convention No. 100. See General Recommendation No. 13.

The concept of comparable worth is not accepted in U.S. law and practice. The Equal Pay Act of 1963, 29 U.S.C. § 206(d)(1), mandates equal pay for men and women performing jobs of equal skill, effort and responsibility under similar working conditions unless the pay differential is justified by one of four exceptions: seniority system, merit system, system based on the quality or quantity of production, or any factor other than sex. Fringe benefits are treated as wages under the Act, and failure to offer equal fringe benefits to men and women amounts to unlawful sex discrimination. See 29 C.F.R §§

PHOTOCOPY
PRESERVATION

1620.10 and 1620.11(b). Courts have interpreted the Act to mandate equal pay for "substantially similar" jobs; claims of unequal pay for comparable but unequal work are inapplicable under the statute. See, e.g., Thompson v. Sawyer, 678 F.d2 257 (D.C. Cir. 1982); Spaudling v. University of Washington, 740 F.2d 686 (9th Cir.), cert. denied, 469 U.S. 1036 (1984). In County of Washington v. Gunther, 452 U.S. 161 (1981), the Supreme Court held that under Title VII, jobs need not be "substantially equal" to be compared for purposes of determining whether differential wage rates are discriminatory.

The Equal Employment Opportunity Commission has concluded that the concept of comparable worth is not cognizable under Title VII. The EEOC found that sole reliance on a comparison of the intrinsic value of dissimilar jobs with different rates of compensation does not prove a violation of Title VII. See 20th Annual Report, U.S. Equal Employment Opportunity Commission, FY 1985. Similarly, the Federal Courts have consistently rejected the concept of comparable worth. See, e.g., International Union, UAW v. Michigan, 886 F.2d 766 (6th Cir. 1989); American Nurses' Association v. State of Illinois, 783 F.2d 716 (7th Cir. 1986); AFSCME v. State of Washington, 770 F.2d 1401 (9th Cir. 1985).

Accordingly, it is considered appropriate to condition ratification upon a reservation as follows:

> "U.S. law provides strong protections against gender discrimination in the area of remuneration, including the right to equal pay for equal work in jobs that are substantially similar. However, the United States does not accept any obligation under this Convention to enact legislation establishing the doctrine of comparable worth as that term is understood in U.S. practice."

Article 11(1)(d) also includes a right to non-discrimination with respect to "equal treatment in the evaluation of the quality of work." The right of non-discrimination in this area is also assured by Title VII.

Social Benefits. Article 11(1)(e) provides that States Parties must eliminate discrimination in order to ensure women an equal "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."

Title VII and the Pregnancy Disability Act provide the required protection with regard to those aspects of Article 11(1)(e) that fall within their purview. 42 U.S.C. §

PHOTOCOPY
PRESERVATION

2000e-2(a). The same is true of the Equal Pay Act. See 29 C.F.R. § 1620.11(b). Section 202 of the Employee Retirement Income Security Act provides that absence from work because of pregnancy and childbirth shall not be considered a break in service in determining plan eligibility. 29 U.S.C. § 1052(b)(5)(A).

Furthermore, some pregnancy-related distinctions with respect to the allocation of social benefits violate constitutional guarantees of equal protection. See, e.g., Turner v. Department of Employment Security of Utah, 423 U.S. 44 (1975) (holding invalid a state law making pregnant women ineligible for unemployment benefits for the period extending from twelve weeks before until six weeks after birth).

Health and Safety. Article 11(1)(f) calls for equality in the right to protection of health and safety in working conditions, including "the safeguarding of the function of reproduction." It would appear to permit gender-based protective legislation only where it can be justified on the basis of the "function of reproduction."

Protection of occupational health and safety is the goal of the Occupational Safety and Health Act, which is codified at 29 U.S.C. § 651 et seq. In protecting against health hazards caused by exposure to toxic materials or harmful physical agents, the Act requires OSHA "to set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health of functional capacity" even if exposed to the hazard for his or her entire working life. See 29 U.S.C. § 655(b)(5); American Textile Mfrs. Inst. v. Donovan, 452 U.S. 490 (1981). OSHA has consistently interpreted this mandate as including the protection of the reproductive health of both men and women. This position has been upheld by the only Federal court to have specifically considered the issue. Steelworkers v. Marshall, 647 F.2d 1189, 1256 n. 96 (D.C. Cir. 1980). Thus current U.S. law generally, and particularly with regard to safeguarding the "function of reproduction," is consistent with Article 11(1)(f).

In light of the Supreme Court's decision in International Union v. Johnson Controls, Inc. that gender-specific fetal protection policies violate Title VII, protective legislation to implement Article 11(1)(f) which did not reflect a bona fide occupational qualification would appear to be unlawful.

Article 11(2) is addressed to the prevention of discrimination against women "on grounds of marriage or

PHOTOCOPY
PRESERVATION

maturity." It requires States to take "all appropriate measures" in respect of four specific aspects of the employment relationship:

Protection Against Dismissal. Under Article 11(2)(a), States Parties must take appropriate measures to prohibit dismissal on the grounds of pregnancy or of maternity leave as well as discrimination against women in dismissals on the basis of marital status.

Title VII was amended by the Pregnancy Disability Act of 1978 to protect women from dismissals on the basis of pregnancy, childbirth or related medical conditions. 42 U.S.C. § 2000e(k). Pursuant to the Act, pregnancy must be treated in a manner similar to any other temporary disability with respect to leave of absence from work. An employer with temporary disability or paid sick leave policies may not exclude maternity-related disabilities from coverage. See 29 C.F.R. § 1604.10(b). However, an employer who does not maintain temporary disability or paid sick leave plans is not required by law to provide maternity leave or paid maternity leave. Simply put, if maternity-related conditions are treated the same as other disabling conditions, the Act is satisfied. See Wimberly v. Labor and Industrial Relations Commission of Missouri, 479 U.S. 511 (1987).

No federal law explicitly prohibits "discrimination in dismissal on the basis of marital status." However, under EEOC guidelines applying Title VII, an employer may not forbid or restrict the employment of married women if the rule is not also applicable to married men. See 29 C.F.R. §1604.4(a); EEOC v. Rath Packing Co., 787 F.2d 318 (8th Cir.), cert. denied, 479 U.S. 910 (1986). Under 29 U.S.C. § 7202, employees of the Federal Government may not be discriminated against on the basis of marital status.

Maternity Leave and Benefits. Article 11(2)(b) provides that States Parties shall take appropriate measures "to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances."

No federal or state law requires employers to provide paid leave or leave with comparable social benefits in connection with pregnancy or childbirth. As discussed above, the Pregnancy Disability Act, 42 U.S.C. § 2000e(k), prohibits employers from providing less-favorable treatment of pregnancy-related conditions in comparison to other conditions. The Family and Medical Leave Act of 1993, 29

PHOTOCOPY
PRESERVATION

U.S.C. §§ 2601 et seq., provides, among other things, that public and private sector employees who have been employed by an employer of fifty or more employees for one year and worked at least 1,250 hours may take up to twelve weeks of unpaid leave in any twelve-month period for: the birth or adoption of a child, acquiring a foster child, the serious illness of a child, spouse or parent, or the serious illness of the employee. The employee maintains any pre-existing benefits for the duration of the leave at the level and under the same conditions as provided prior to commencement of the leave and is of course entitled to return to her job. The FMLA creates a Commission on Leave which is to study the impact on employers and employees of policies which provide temporary wage replacement during periods of family or medical leave. Similarly, no federal law requires employers to hold vacant the position of a woman who has taken maternity leave or to reinstate her without loss of seniority or allowances.

Accordingly, ratification should be conditioned upon an express reservation to the requirements of Article 11(2)(b), as follows:

> "Current U.S. law does not provide, and the United States does not accept an obligation under Article 11(2)(b) to introduce, maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances."

Child Care. Pursuant to Article 11(2)(c), States Parties shall take appropriate measures to encourage 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 childcare facilities."

This provision does not establish a right to child care or require a federal day care system. Rather the undertaking is to "encourage the provision of" such assistance, "in particular by promoting the establishment and development of a network of child-car facilities." Congress has in fact made funds available to the states for this very purpose; the Internal Revenue Code provides tax incentives designed to enable parents to combine work responsibilities and family obligations.

Although it is unclear whether Article 11(2)(c) was intended to prohibit differential treatment of men and women in the provision of time off from work for child care purposes, existing U.S. law already contains such a rule. See 29 C.F.R.

PHOTOCOPY
PRESERVATION

§ 1604.9(a)-(b); see also EEOC Policy Guidance on Parental Leave (1990).

Protection of Pregnant Women. Under Article 11(2)(d), States Parties must take appropriate measures to provide "special protection to women during pregnancy in types of work proved to be harmful to them."

Although the general health and safety of women in the workplace are protected, and information concerning risks is made available to women, current federal law does not mandate special protections for pregnant women in the workplace. To the contrary, Title VII prohibits exclusion of women from hazardous jobs because of reproductive concerns. In International Union v. Johnston Controls, Inc., 499 U.S. 187 (1991), the Supreme Court invalidated an employer's exclusion of fertile women from jobs that involved exposure to lead in ammounts that could harm a fetus. The Court reasoned that Title VII's prohibition of discrimination based on sex required that women who are pregnant or potentially pregnant must be given the same opportunity as others with similar ability to perfom a job. It expressly rejected the assertion that this fetal protection policy constituted a "bona fide occupational qualification," noting that the exception has been invoked successfully only when the qualification had a direct bearing on an employee's ability to perform a job. 499 U.S. at 201-03. It is, therefore, a violation of Title VII to deny a woman an employment opportunity because of her ability to bear children. The Court's decision does leave open the possibility that some nonsex-specific fetal protection policies could satisfy Title VII. Id. at 211.

The Convention has not been interpreted, however, to require employers (or governments) to exclude pregnant women from jobs which pose reproductive hazards; to the contrary, the Committee has on occasion expressed concern about overly protective or restrictive policies, favoring instead the provision of sufficient information about the hazards to enable women to make informed choices. In this regard, existing U.S. law does provide protection for women's reproductive health sufficient to meet the "appropriate measures" obligation of the Convention. **Issue: Does U.S. law permit/provide "special protection" short of exclusion?**

Article 12 -- Health Care

Article 12(1) requires States Parties to take "all appropriate measures" to eliminate discrimination against women

PHOTOCOPY
PRESERVATION

in the field of health case in order to assure equal access to health care services "including those related to family planning." Under Article 12(2), States Parties must also 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."

Equal Access to Health Care. The Equal Protection Clause prohibits public institutions from discriminating against women with respect to access to health care, and in practice women do have equal access to such care.

Family Planning and Abortion. Under Article 12(2), States Parties must provide "appropriate services in connection with pregnancy ... granting free service where necessary." Article 12 does not require States Parties to guarantee access to abortion. Whether abortion is an "appropriate service" is left to each State Party in its discretion. If abortion is considered an "appropriate service," then Article 12(2) would appear to require that abortions be provided without cost "where necessary." Under U.S. law, the constitutional right to privacy in the Fourteenth Amendment encompasses a woman's right to choose to have an abortion. See Roe v. Wade, 410 U.S. 113 (1973). However, there is no constitutional rights to a government-funded abortion. See Harris v. McRae, 448 U.S. 297 (1980) (upholding federal restriction on use of federal funds to pay for abortions); Maher v. Roe, 432 U.S. 464 (1977) (upholding state restriction on use of state funds to pay for abortions); see also Planned Parenthood v. Casey, 112 S. Ct. 2791, 2819 (1992) (abortion funding restrictions do not impose an undue burden on the exercise of a woman's right to choose to have an abortion). Accordingly, it is appropriate to assert the following understanding with respect to Article 12:

> "The United States understands that Article 12 permits States Parties to determine which health care services are appropriate in connection with pregnancy, confinement and the post-natal period, as well as when the provision of free services is necessary, and does not mandate the provision of particular services (including abortion) on a cost-free basis."

Assistance to Pregnant Women. Federal law currently does not guarantee health care coverage and nutrition during pregnancy, nor do state Medicaid programs cover all pregnant women who cannot afford adequate insurance on their own. Most state insurance laws allow employers to exclude new employees from insurance policies on the basis of a preexisting

PHOTOCOPY
PRESERVATION

condition, such as pregnancy. However, there are numerous programs at the federal and state levels for ensuring that pregnant women and infants are able to attain adequate health care. (**DOJ/HHS/AGR:** Is current U.S. law sufficient to satisfy the Convention in this regard or is a reservation required? Please provide additional specific information.)

Maternal and Infant Care. Congress has provided a number of programs concerning maternal and infant care, including the Maternal and Child Health Service Block Grant Act, 42 U.S.C. § 701 (grants to enable states to establish programs promoting prenatal, delivery and postpartum care for low income women), the Child Nutrition Act of 1986, 42 U.S.C. §1786 (distribution of supplemental foods and nutritional education under the Women, Infants and Children Program), § 9121 of the Comprehensive Omnibus Budget Reconciliation Act, 42 U.S.C. § 1395dd (mandatory care for women in labor regardless of their ability to pay), and the Social Security Amendments of 1965, 42 U.S.C. § 1396 (prenatal care for low income mothers).

Article 13 - Economic and Social Benefits

Under Article 13, States Parties must take "all appropriate measures" to eliminate discrimination against women in other areas of "economic and social life," in particular with respect to the right to (a) family benefits, (b) bank loans, mortgages and other forms of financial credit, and (c) participate in recreational activities, sports and all aspects of cultural life.

U.S. Implementation. As a general matter, the protections of the Equal Protection Clause and federal anti-discrimination statutes apply to gender-based discrimination in the "economic and social" spheres to the extent that state action is involved. In addition, there are federal statutes that prohibit gender discrimination in the areas covered by Article 13.

Family Benefits. Although no federal statute or regulation generally prohibits gender-based discrimination in the provision of public assistance, provision of such assistance by the states on an gender-discriminatory basis is subject to equal protection challenge. Family benefits distributed under the federal Social Security Act (including the Old-Age, Survivor and Disability Insurance program and the Aid to Families with Dependent Children program) are subject to the Equal Protection Clause. See, e.g., Califano v. Goldfarb, 430

PHOTOCOPY
PRESERVATION

U.S. 199 (1977); Califano v. Westcott, 443 U.S. 76 (1979). **NOTE: DOJ, HHS, DOL: are there still gender distinctions in federal and state laws in this area?**

Lending and Credit. The Equal Credit Opportunity Act makes it unlawful for any creditor to discriminate against women with respect to any aspect of a credit transaction. 15 U.S.C. § 1691(a). The Fair Housing Act prohibits lenders providing financial assistance for housing from discriminating against women. 42 U.S.C. § 3605.

Sports, Recreation, Cultural Activity. Although most such activity in the United States falls within the area of private conduct protected against governmental regulation, gender-based discrimination will be prohibited where there is sufficient governmental involvement. For example, Title IX of the Education Amendments of 1972, discussed above, prohibits discrimination against women in the sports and recreational activities of schools which are subject to that act. One exception to this rule involves contact sports. See 45 C.F.R. Part 86.41(b); Yellow Springs Exempted Village School Dist. Bd. of Education v. Ohio High School Athletic Ass'n, 647 F.2d 651 (6th Cir. 1981). However, a number of cases have vindicated the Equal Protection right of women to participate in formerly all male sports even where no federal funding was involved. See, e.g., Fortin v. Darlington Little League, Inc., 524 F.2d 344 (1st Cir. 1975); Brenden v. Independent School District, 742, 477 F.2d 1291 (8th Cir. 1973); Hoover v. Meiklejohn, 430 F.Supp. 164 (D. Colo. 1977).

Nearly a third of the states have constitutional protections against gender-based discrimination which would provide a basis for challenging restrictions on access by women to sports, recreation and cultural activities. Most if not all states have some form of "public accomodation" laws prohibiting sex discrimination in facilities made available to the public.

Article 14 - Rural Women

Article 14 essentially provides for the specific application of the Convention's substantive rights to women residing in rural areas. However, there are two additions: the right to benefit from social security and the right to adequate housing.

Specifically, Article 14(1) requires States Parties to take into account the particular problems faced by rural women, the significant roles they play in the economic survival of their

PHOTOCOPY
PRESERVATION

families, and the work they perform in non-monetized sectors of the economy. Article 14(2) requires States Parties to "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 to provide equal rights to (a) participate in development planning and implementation, (b) access to adequate health care facilities, including information, counselling and services in family planning, (c) social security programs, (d) training and education to increase their technical proficiency, (e) organize self-help groups to improve employment opportunities, (f) participate in community activities, (g) access to "agricultural credits and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes," and (h) "adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."

U.S. Implementation. **NOTE: DOJ, HHS, AGR, DOI: Please provide additional citations, revisions as appropriate. Are U.S. laws compliant? To what extent are farm women treated differently from farm men in ways that might conflict with this Article?**

Development Planning. Women can participate on a basis of equality in the Department of Agriculture's Extension Service, which deals in planning and development. Title VII of the Housing Act of 1954, 40 U.S.C. § 460 *et seq.*; Title I of the Housing and Community Development Act of 1974, 42 U.S.C. § 5301 *et seq*.

Health Care Facilities. The Fifth and Fourteenth Amendments prevent intentional gender discrimination in the provision of health care services by federal and state governments. Rural Health Outreach Program (1991). Grants for Community Health Services, 42 C.F.R. § 51c. Special rules under Medicaid governing qualification of rural health clinics to receive federal assistance.

Social Security. The Social Security Act conditions eligibility for old age benefits on an individual's status as a wage earner, not on gender. Rural women who work in the home or whose wages fall under the agricultural labor exceptions may be entitled to benefits accruing to husbands, 42 U.S.C. § 402(b).

Training and Education. Rural women have an equal right to participate in federally funded educational programs under Title IX. The Public Health Service Act prohibits gender

PHOTOCOPY
PRESERVATION

discrimination in training programs for health care professionals targets rural areas to receive grants for various programs, 42 U.S.C. § 292d, 295j, 298b-2. Grants for literacy training, vocational education and programs designed to assist farm families, 7 U.S.C. § 2662(f)(D). Land Grant Colleges, 7 U.S.C. §§3101-3336.

Cooperatives and Self-Employment. Constitutional protections suffice here. U.S. Department of Agriculture programs to assist agricultural cooperatives, 7 U.S.C. §§ 451-457; Agricultural Marketing Act, 12 U.S.C. §§ 1141-1141j.

Community Activities. Constitutional protections suffice here.

Agricultural Credit, Marketing, Technology and Land Reform. Federal law provides agricultural credit to all qualified persons regardless of gender, see Equal Credit Opportunity Act. Special programs for rural areas: Emergency Agricultural Credit Act of 1984, 7 U.S.C. § 1921 et seq.; Agricultural Credit Act of 1978, 7 U.S.C. § 1941.

Living Conditions. Federal programs aimed at improving living conditions in rural areas, such as Farm Labor Housing Loans and Grants, 7 C.F.R. § 10.212; Very Low and Low Income Housing Loans, 7 C.F.R. § 10.410; Rural Rental Housing Loans and Grants, 7 C.F.R. § 10.415; and Very Low Income Housing Repair Loans and Grants, 7 C.F.R. § 10.417. National Housing Act, 12 U.S.C. § 1735f-5.

Article 15 - Legal Capacity

Article 15(1) requires States Parties to accord men and women equality before the law. Article 15(2) requires equal treatment "in civil matters," including the equal rights to conclude contracts and to administer property and "in all stages of procedure in courts and tribunals." Under Article 15(3), all contracts and other private instruments "directed at restricting the legal capacity of women shall be deemed null and void." Article 15(4) requires States to accord women equal rights regarding movement of persons and the freedom to choose their residence and domicile.

Equality Before the Law. The Equal Protection Clause protects the right of women to equality before the law; all states now provide the same age of majority for men and women. See Stanton v. Stanton, 421 U.S. 7 (1975).

PHOTOCOPY
PRESERVATION

Contracts and Property Rights. Legal issues concerning the creation and execution of contracts are generally governed by state rather than federal law. However, distinctions made in state law on the basis of sex are subject to challenge under the Equal Protection Clause. Thus, in the United States, men and women have equal rights in respect of the creation and execution of contracts.

Movement of Persons, Residence and Domicile. Generally, all individuals in the United States have a legal right to free movement, residence and domicile. In some states, however, there continue to be limitations on a married woman's right to acquire domicile.

Article 16 - Marriage and Family Life

Article 16(1) requires States Parties to take "all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations."

In particular, State Parties must guarantee equal rights to women and men: (a) to enter into marriage, (b) to choose a spouse and enter a marriage only with free and full consent, (c) during marriage and its dissolution, (d) as parents in matters relating to their children, whose interests must be paramount, (e) to decide on the number and spacing of their children and to have access to information, education and the means to exercise these rights, (f) with respect to guardianship, wardship and the adoption of children, (g) as husband and wife, including the right to choose a family name, a profession and an occupation, and (h) in respect of property, including ownership, acquisition, management, administration, enjoyment adn disposition.

Article 16(2) provides that "the betrothal and the marriage of a child shall have no legal effect" and requires the establishment (by legislation, if necessary) of a minimum age for marriage and the official registration of marriages.

Federalism. Issues related to marriage, divorce, child custody and family relations are primarily a matter for regulation by the state and not federal governments. As the following discussion demonstrates, gender-based distinctions and qualifications are still found in the law of some states. However, any classifications or distinctions based on gender that are not substantially related to an important government objective would violate the Equal Protection Clause. See Craig

PHOTOCOPY
PRESERVATION

v. Boren, 429 U.S. 190 (1976); Orr v. Orr, 440 U.S. 268 (1979). Not all such distinctions which might be considered contrary to the Convention appear to have been challenged on the basis of the Equal Protection Clause.

Marriage. There is no legal limitation in the United States on the right of adult women to marry when and whom they choose. The right to marry is considered a "fundamental right" and therefore subject to the Equal Protection Clause. Zablocki v. Redhail, 434 U.S. 374 (1978). Every jurisdiction requires consent for marriage. All states specify a minimum age for marriage (18 years for both sexes without parental consent). However, the law in several states still provides different statutory age limits for girls in the case of marriage with parental consent, arguably in violation of Article 16(a) as well as the Equal Protection Clause. See Stanton v. Stanton, 421 U.S. 7 (1975). All states require the official registration of marriages.

With respect to equal rights during marriage and its dissolution, some states continue to place different support obligations on men, generally more favorable to women. These may be constitutionally invalid under the Supreme Court's decision in Orr v. Orr, 440 U.S. 268 (1979) (a state statute providing alimony only for wives violated the equal protection clause). In any event, all states have now adopted some type of gender-neutral "no fault divorce" provision. The right to dissolve a marriage is a fundamental right, subject to equal protection principles. Boddie v. Connecticut, 401 U.S. 371 (1971).

Parental Rights. Generally, state law accords equal rights and duties to both parents in respect of their children, giving special consideration to the best interests of the child. With regard to custody following divorce, many states have enacted joint custody laws intended to give equal treatment to husbands and wives, to replace earlier laws which favored mothers especially with regard to younger children of "tender years;" some have criticized these laws as favoring the interests of fathers with greater economic resources. State law generally accords women equal rights with men with respect to guardianship, wardship, trusteeship and adoption.

Family Planning. As indicated above, women have equal or greater rights than men in U.S. law to decide the number and spacing of their children and to have access to family planning information. State laws requiring a woman to notify or obtain the consent of her husband before having an abortion have been struck as a matter of constitutional law. See Planned

PHOTOCOPY
PRESERVATION

Parenthood v. Casey, 112 S. Ct. 2791 (1992). In certain circumstances, states may accord greater rights to unwed mothers than to unwed fathers. See Lehr v. Robertson, 463 U.S. 248 (1983).

Right to Choose Name, Occupation. Generally, state law permits adult women the right to choose their surname on the same basis as adult men; it is still customary but not compulsory for women to take their husband's surname upon marriage. However, there is some precedent to the contrary. See Forbush v. Wallace, 341 F.Supp. 217 (M.D. Ala. 1971), aff'd without opinion, 405 U.S. 970 (1972); People ex rel. Rago v. Pipsky, 63 N.E.2d 642 (Ill. App. 1945).

Property Rights. State laws concerning property vary widely. Most are gender-neutral; none limit the right of women to acquire or hold property on their own. However, most states recognize the right of the spouse holding the property to control it during the marriage and to retain it after dissolution, often subject to rules concerning equitable distribution to take into account the frequently less favorable economic position of the wife. Eight states define all property acquired during marriage as "community property" with the result that it is divided equally at dissolution or death.

Final Clauses

Non-Self-Executing

Under Article VI, cl. 2, of the Constitution, a duly ratified treaty becomes the supreme law of the land, equivalent to a federal statute. Its provisions are clearly intended to impose impose immediate obligations upon the constituent States. In considering previous human rights treaties, in particular the U.N. Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1990), the International Covenant on Civil and Political Rights (1992), and the Convention on the Elimination of All Forms of Racial Discrimination (1994), both the Executive Branch and the Senate have considered it prudent to declare those treaties to be non-self-executing. The intent is to clarify that the treaty in question will not create a new or independently enforceable cause of action in U.S. courts.

As was the case with the prior treaties, existing U.S. law provides extensive protections against gender-based discrimination and remedies sufficient to satisfy most of the

PHOTOCOPY
PRESERVATION

requirements of the present Convention. Moreover, federal, state and local laws already provide a comprehensive basis for challenging discriminatory statutes, regulations and other governmental actions in court, as well as certain forms of discriminatory conduct by private actors. Given the extensive protections already present in U.S. law, there is no discernible need for the establishment of additional causes of action or new avenues of litigation in order to enforce the essential requirements of the Convention. Declaring the Convention to be non-self-executing in no way lessens the obligation of the United States to comply with its provisions as a matter of international law.

The text of the proposed declaration is as follows:

> "The United States declares that the provisions of the Convention are not self-executing."

Dispute Settlement

Article 29(1) of the Convention provides for the referral of any dispute between States Parties concerning the interpretation or application of the Convention, which is not settled by negotiation, to arbitration. If the parties to the dispute are unable to agree to the organization of such arbitration within six months, any such party may refer the dispute to the International Court of Justice in confomity with the statute of the Court. Article 29(2) provides that a State Party may declare, at the time of signature, ratification or accession, that it does not consider itself bound by the provisions of Article 29(1).

The general practice in recent Administrations with respect to such "compulsory submissions" to ICJ jurisdiction, which are common in virtually all U.N. treaties, has been to enter a reservation to such provisions or, where the treaty so provides, to make a declaration declining to accept the Court's jurisdiction in all such cases. It is not proposed to change this general practice with respect to the current treaty at this time. The Administration strongly supports the use of international dispute resolution mechanisms in appropriate cases, but believes it is prudent for the United States Government to retain the ability to decline participation in a case which may be brought by another country for frivolous or political reasons.

In fact, recourse to the International Court of Justice is only an ancillary possibility for dispute resolution and has

PHOTOCOPY
PRESERVATION

not played an important role in implementing the treaty (indeed, no state has ever brought a claim to the Court under this Convention). Instead, the principal oversight functions are performed by the Committee on the Elimination of Discrimination Against Women (CEDAW), and the United States fully accepts the competence of the Committee in that regard.

The Administration does not believe the following declaration will significantly curtail the possibility of effective resolution of any disputes, should they arise, or undermine the oversight of implementation of the treaty's provisions.

> "Wtih reference to Article 29(2), the United States declares that it does not consider itself bound by the provisions of Article 29(1). The specific consent of the United States to the jurisdiction of the International Court of Justice concerning disputes over the interpretation or application of this Convention is required on a case-by-case basis."

PHOTOCOPY
PRESERVATION