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Item 3 (a) of the provisional agenda*

**Follow-up to the Fourth World Conference on Women
and to the special session of the General Assembly
entitled “Women 2000: gender equality, development
and peace for the twenty-first century”: review of gender
mainstreaming in entities of the United Nations system**

Results of the thirtieth session of the Committee on the Elimination of Discrimination against Women

Note by the Secretary-General**

Summary

The present note reflects the results, including decisions taken, of the thirtieth session of the Committee on the Elimination of Discrimination against Women, which was held in New York from 12 to 30 January 2004.

* E/CN.6/2004/1.

** The present note was prepared after the conclusion of the thirtieth session of the Committee on the Elimination of Discrimination against Women, which ended on 30 January 2004.

I. Introduction

1. In its resolution 47/94 of 16 December 1992, the General Assembly recommended that the sessions of the Committee on the Elimination of Discrimination against Women be scheduled, whenever possible, to allow for the timely transmission of the results of the Committee's work to the Commission on the Status of Women, for information.

2. The Committee held its twenty-eighth session from 13 to 31 January 2003 and its twenty-ninth session from 30 June to 18 July 2003. The results of those sessions are contained in the report of the Committee submitted to the General Assembly at its fifty-eighth session.¹

3. The Committee held its thirtieth session from 12 to 30 January 2004. At that session, the Committee adopted three decisions and took action on items 6 (implementation of article 21 of the Convention), 7 (ways and means of expediting the work of the Committee) and 8 (activities of the Committee under the Optional Protocol to the Convention) of its agenda (CEDAW/C/2004/I/1).

4. On 30 January 2004, the closing date of the thirtieth session, there were 175 States parties to the Convention. A total of 59 States parties had ratified or acceded to the Optional Protocol, and 43 States had accepted the amendment to article 20, paragraph 1, of the Convention concerning the meeting time of the Committee.

II. Reports considered by the Committee

5. The Committee considered the reports of eight States parties submitted under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, namely those of Bhutan, Belarus, Ethiopia, Germany, Nepal, Nigeria, Kuwait and Kyrgyzstan. Bhutan, which ratified the Convention in 1981, reported for the first time in a combined initial through sixth periodic report. Kuwait, which had acceded to the Convention in 1994, also reported for the first time in a combined initial and second periodic report. The delegations of several reporting States were headed by Ministers and included representatives with specialized technical expertise.

6. Ms. Ama Frema Coker Appiah, who had been nominated to complete the term of office of Ms. Akua Kuenyehia, participated for the first time in a session of the Committee.

A. Decisions

7. The Committee took three decisions brought to the attention of States parties. These are reflected below.

Decision 30/I
General recommendation 25 (thirtieth session)

The Committee adopted general recommendation 25 on article 4, paragraph 1, of the Convention, on temporary special measures (see annex I).

Decision 30/II
Twenty-fifth anniversary of the adoption of the Convention on the Elimination of All Forms of Discrimination against Women

The Committee notes that 2004 marks the twenty-fifth anniversary of the adoption, by the General Assembly, of the Convention on the Elimination of All Forms of Discrimination against Women. A total of 175 States have since become parties to the Convention. The Committee agrees that this occasion should be marked with a celebratory event at the fifty-ninth session of the General Assembly. The Committee recommends that one meeting in the Plenary of the General Assembly, in close proximity to the dates of consideration of the item on the advancement of women in the Third Committee, be set aside for this purpose, and encourages Member States to participate in this event at a high level.

Decision 30/III
Situation of women in Iraq

The Committee adopted a statement on the situation of women in Iraq (see annex II).

B. Action in relation to item 6

8. The Committee took action on agenda item 6, as follows:

(a) The Committee took note with appreciation of the revised draft of the Committee's general recommendation on article 4, paragraph 1, of the Convention on temporary special measures, which had been completed by Ms. Schöpp-Schilling, Ms. Patten and Mr. Flinterman. The Committee adopted the draft, as further revised.

(b) The Committee reviewed its procedure for preparation of general recommendations,² its long-term programme of work, and topics that had been identified for elaboration of general recommendations. The Committee agreed that the next general recommendation would be on article 2 of the Convention, and work thereon would commence at the Committee's thirty-first session, in July 2004. Accordingly, the first stage of the process, that is, general discussions and exchange of views on the subject of the proposed general recommendation during an open meeting of the Committee, would be held at the thirty-first session. Specialized agencies and other United Nations bodies, as well as non-governmental organizations, would be encouraged to participate in the discussion and to prepare informal background papers as appropriate. The secretariat was requested to make that decision widely known so as to facilitate the contributions of those entities to the preparatory work.

C. Action in relation to item 7

9. The Committee took note of the dates of its thirty-first and thirty-second sessions (6 to 23 July 2004 and 10 to 28 January 2005, respectively). The pre-session working group for the thirty-second and thirty-third sessions would meet from 26 to 30 July 2004 and from 31 January to 4 February 2005, respectively. The fourth and fifth sessions of the Working Group on Communications under the Optional Protocol would meet from 30 June to 2 July 2004 and from 31 January to 4 February 2005, respectively.

10. The Committee confirmed that, at its thirty-first session, it would consider the following reports:

- (a) Initial, second and third periodic reports:
 - Angola;
 - Malta;
 - Latvia;
- (b) Second and third and fourth and fifth periodic report:
 - Equatorial Guinea;
- (c) Fifth periodic reports:
 - Bangladesh;
 - Dominican Republic;
 - Spain;
- (d) Follow-up report:
 - Argentina.

11. The Committee also agreed to consider the following reports at its thirty-second session:

- (a) Initial reports:
 - Samoa (combined initial, second and third periodic report);
 - Laos (combined initial, second, third, fourth and fifth periodic report);
- (b) Periodic reports:
 - Algeria (second periodic report);
 - Croatia (combined second and third periodic report) ;
 - Gabon (combined second, third, fourth and fifth periodic report);
 - Italy (combined fourth and fifth periodic report);
 - Paraguay (combined third and fourth periodic report);
 - Turkey (combined fourth and fifth periodic report);

12. The Committee identified meetings to be attended by its Chairperson or an alternate during 2004, namely: the forty-eighth session of the Commission on the Status of Women; the sixtieth session of the Commission on Human Rights; the third inter-committee meeting of the human rights treaty bodies and the sixteenth meeting of chairpersons of human rights treaty bodies; and the fifty-ninth session of the General Assembly (Third Committee and the commemorative event for the twenty-fifth anniversary of the adoption of the Convention by the General Assembly).

13. The Committee continued consideration of measures to enhance the effectiveness of its working methods. In particular, it discussed the option of considering periodic reports submitted under article 18 of the Convention in parallel working groups, on the basis of a background note prepared by the secretariat on the implications, and possible modalities, of this option (CEDAW/C/2004/I/4/Add.2). Other alternatives, such as extending the Committee's two annual sessions by one week each, and exceptional (third) sessions, were also mentioned. The Committee agreed to consider further its working methods at the informal meeting scheduled to be held in May, in Utrecht, the Netherlands (see below), where it will also give further consideration to the modalities of considering periodic reports in parallel working groups.

14. The Committee welcomed with appreciation the invitation of the Government of the Netherlands to hold an informal meeting of the Committee from 5 to 7 May 2004 in Utrecht, the Netherlands, to be hosted by the Netherlands Institute for Human Rights (SIM). It expressed its gratitude to Mr. Cees Flinterman for his initiative in obtaining that invitation, and his willingness to prepare the meeting, in coordination with the secretariat. It was agreed that the major focus of the meeting would be the Committee's working methods. In particular, the Committee will discuss: consideration of reports of States parties; concluding comments; option of meeting in parallel working groups for consideration of periodic reports; and expanded core document and harmonized reporting guidelines. Time will also be set aside for brainstorming on the content and approach of the Committee's next general recommendation, on article 2 of the Convention.

15. In follow-up to its closed meeting held on 16 July 2003 with States parties whose reports were more than five years overdue, and to further clarify its incremental measures to encourage reporting, including the letter addressed by the Chairperson to those 29 States whose initial reports were more than five years overdue as at 18 July 2003,³ the Committee noted that a few States had submitted their initial reports. Several others had informed either the Chairperson or the secretariat of the status of preparation of their reports. The Committee decided to further assess the situation with regard to non-submission of initial reports at its thirty-first session, and to postpone, for the time being, the follow-up meeting planned for the thirty-first session with those States whose initial reports would be more than five years overdue as of May 2004. Further action in that regard would also be influenced by the Committee's ability to consider, within a reasonable period of time, reports received.

16. The Committee expressed disappointment that no reply had been received from the Government of India in response to the Committee's request at its last session. The Committee therefore decided to request the Government once again to provide the anticipated date of submission of its combined second and third periodic reports (due on 8 August 1998 and 8 August 2002, respectively), including information on

the events in Gujarat and their impact on women. The Committee also decided that its Chairperson would request a meeting with the Permanent Representative of India to the United Nations while attending the forty-eighth session of the Commission on the Status of Women in March 2004 in order to seek clarification from the Government on the status of the preparation of the above-mentioned reports.

17. The Committee agreed to include in its annual report an overview of its current working methods in order to make them more transparent and readily accessible to States parties and others interested in the implementation of the Convention, including United Nations agencies, programmes and funds and civil society organizations.

D. Action in relation to item 8

18. The Committee's Working Group on Communications under the Optional Protocol held its third session from 7 to 9 January 2004. Among other matters, it reviewed the practice of other human rights treaty bodies concerning interim measures, based on a background note prepared by the secretariat (CEDAW/C/2004/I/WGCOP/WP.2). The Working Group decided, inter alia, to register its third communication, and that requests for interim measures would include a request for a reply on steps taken from the State party concerned within a specified time period. The Committee took note of the report of the Working Group on Communications under the Optional Protocol (CEDAW/C/2004/I/WGCOP/L.1) and of the decisions adopted by the Working Group.

19. The Committee continued its work under article 8 of the Optional Protocol.

E. Other matters

20. At the 629th session, the Chairperson of the Commission on the Status of Women, Ms. Kyung-wha Kang, addressed the Committee.

21. At the 642nd session, on 22 January, the Chief of the Treaties and Commission Branch of the Office of the High Commissioner for Human Rights, Ms. Maria Francisca Ize Charrin, addressed the Committee. She provided an update on recent developments, including the restructuring of the servicing of Geneva-based treaty bodies; work under way in follow-up to the recommendations of the second inter-committee meeting and the meeting of chairpersons of human rights treaty bodies concerning an expanded core document and targeted reports; and activities undertaken by the Office of the High Commissioner for Human Rights.

22. On 29 January, the Committee met in closed meeting with Ms. Yakin Ertürk, Special Rapporteur on violence against women, its causes and consequences.

Notes

¹ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 38 (A/58/38).*

² See *Official Records of the General Assembly, Fifty-second Session, Supplement No. 38 (A/52/38/Rev.1)*, para. 482.

³ See *ibid. Fifty-seventh Session, Supplement No. 38 (A/57/38)*, para. 369, and *ibid. Fifty-eighth Session, Supplement No. 38 (A/58/38)*, paras. 453-456.

Annex I

General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures

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I. Introduction

1. The Committee on the Elimination of Discrimination against Women decided at its twentieth session (1999), pursuant to article 21 of the Convention, to elaborate a general recommendation on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women. This new general recommendation would build, inter alia, on earlier general recommendations, including general recommendation No. 5 (seventh session, 1988), on temporary special measures, No. 8 (seventh session, 1988), on implementation of article 8 of the Convention, and No. 23 (sixteenth session, 1997), on women in public life, as well as on reports of States parties to the Convention and on the Committee's concluding comments to those reports.

2. With the present general recommendation, the Committee aims to clarify the nature and meaning of article 4, paragraph 1, in order to facilitate and ensure its full utilization by States parties in the implementation of the Convention. The Committee encourages States parties to translate this general recommendation into national and local languages and to disseminate it widely to the legislative, executive and judicial branches of government, including their administrative structures, as well as civil society, including the media, academia, and human rights and women's associations and institutions.

II. Background: the object and purpose of the Convention

3. The Convention is a dynamic instrument. Since the adoption of the Convention in 1979, the Committee, as well as other actors at the national and international levels, have contributed through progressive thinking to the clarification and understanding of the substantive content of the Convention's articles and the specific nature of discrimination against women and the instruments for combating such discrimination.

4. The scope and meaning of article 4, paragraph 1, must be determined in the context of the overall object and purpose of the Convention, which is to eliminate all forms of discrimination against women with a view to achieving women's de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms. States parties to the Convention are under a legal obligation to respect, protect, promote and fulfil this right to non-discrimination for women and to ensure the development and advancement of women in order to improve their position to one of de jure as well as de facto equality with men.

5. The Convention goes beyond the concept of discrimination used in many national and international legal standards and norms. While such standards and norms prohibit discrimination on the grounds of sex and protect both men and women from treatment based on arbitrary, unfair and/or unjustifiable distinctions, the Convention focuses on discrimination against women, emphasizing that women have suffered, and continue to suffer from various forms of discrimination because they are women.

6. A joint reading of articles 1 to 5 and 24, which form the general interpretative framework for all of the Convention's substantive articles, indicates that three obligations are central to States parties' efforts to eliminate discrimination against women. These obligations should be implemented in an integrated fashion and

extend beyond a purely formal legal obligation of equal treatment of women with men.

7. Firstly, States parties' obligation is to ensure that there is no direct or indirect¹ discrimination against women in their laws and that women are protected against discrimination — committed by public authorities, the judiciary, organizations, enterprises or private individuals — in the public as well as the private spheres by competent tribunals as well as sanctions and other remedies. Secondly, States parties' obligation is to improve the de facto position of women through concrete and effective policies and programmes. Thirdly, States parties' obligation is to address prevailing gender relations² and the persistence of gender-based stereotypes that affect women not only through individual acts by individuals but also in law, and legal and societal structures and institutions.

8. In the Committee's view, a purely formal legal or programmatic approach is not sufficient to achieve women's de facto equality with men, which the Committee interprets as substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women.

9. Equality of results is the logical corollary of de facto or substantive equality. These results may be quantitative and/or qualitative in nature; that is, women enjoying their rights in various fields in fairly equal numbers with men, enjoying the same income levels, equality in decision-making and political influence, and women enjoying freedom from violence.

10. The position of women will not be improved as long as the underlying causes of discrimination against women, and of their inequality, are not effectively addressed. The lives of women and men must be considered in a contextual way, and measures adopted towards a real transformation of opportunities, institutions and systems so that they are no longer grounded in historically determined male paradigms of power and life patterns.

11. Women's biologically determined permanent needs and experiences should be distinguished from other needs that may be the result of past and present discrimination against women by individual actors, the dominant gender ideology, or by manifestations of such discrimination in social and cultural structures and institutions. As steps are being taken to eliminate discrimination against women, women's needs may change or disappear, or become the needs of both women and men. Thus, continuous monitoring of laws, programmes and practices directed at the achievement of women's de facto or substantive equality is needed so as to avoid a perpetuation of non-identical treatment that may no longer be warranted.

12. Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women

primarily, or to a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them.

13. In addition to the Convention on the Elimination of All Forms of Discrimination against Women, other international human rights instruments and policy documents adopted in the United Nations system contain provisions on temporary special measures to support the achievement of equality. Such measures are described in different terminology, and the meaning and interpretation given to such measures also differs. It is the Committee's hope that the present general recommendation on article 4, paragraph 1, will contribute to a clarification of terminology.³

14. The Convention, targets discriminatory dimensions of past and current societal and cultural contexts which impede women's enjoyment of their human rights and fundamental freedoms. It aims at the elimination of all forms of discrimination against women, including the elimination of the causes and consequences of their de facto or substantive inequality. Therefore, the application of temporary special measures in accordance with the Convention is one of the means to realize de facto or substantive equality for women, rather than an exception to the norms of non-discrimination and equality.

III. The meaning and scope of temporary special measures in the Convention on the Elimination of All Forms of Discrimination against Women

Article 4, paragraph 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.

Article 4, paragraph 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.

A. Relationship between paragraphs 1 and 2 of article 4

15. There is a clear difference between the purpose of the "special measures" under article 4, paragraph 1, and those of paragraph 2. The purpose of article 4, paragraph 1, is to accelerate the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women, as well as to provide them with compensation. These measures are of a temporary nature.

16. Article 4, paragraph 2, provides for non-identical treatment of women and men due to their biological differences. These measures are of a permanent nature, at least until such time as the scientific and technological knowledge referred to in article 11, paragraph 3, would warrant a review.

B. Terminology

17. The *travaux préparatoires* of the Convention use different terms to describe the “temporary special measures” included in article 4, paragraph 1. The Committee itself, in its previous general recommendations, used various terms. States parties often equate “special measures” in its corrective, compensatory and promotional sense with the terms “affirmative action”, “positive action”, “positive measures”, “reverse discrimination”, and “positive discrimination”. These terms emerge from the discussions and varied practices found in different national contexts.⁴ In the present general recommendation, and in accordance with its practice in the consideration of reports of States parties, the Committee uses solely the term “temporary special measures”, as called for in article 4, paragraph 1.

C. Key elements of article 4, paragraph 1

18. Measures taken under article 4, paragraph 1, by States parties should aim to accelerate the equal participation of women in the political, economic, social, cultural, civil or any other field. The Committee views the application of these measures not as an exception to the norm of non-discrimination, but rather as an emphasis that temporary special measures are part of a necessary strategy by States parties directed towards the achievement of de facto or substantive equality of women with men in the enjoyment of their human rights and fundamental freedoms. While the application of temporary special measures often remedies the effects of past discrimination against women, the obligation of States parties under the Convention to improve the position of women to one of de facto or substantive equality with men exists irrespective of any proof of past discrimination. The Committee considers that States parties that adopt and implement such measures under the Convention do not discriminate against men.

19. States parties should clearly distinguish between temporary special measures taken under article 4, paragraph 1, to accelerate the achievement of a concrete goal for women of de facto or substantive equality, and other general social policies adopted to improve the situation of women and the girl child. Not all measures that potentially are, or will be, favourable to women are temporary special measures. The provision of general conditions in order to guarantee the civil, political, economic, social and cultural rights of women and the girl child, designed to ensure for them a life of dignity and non-discrimination, cannot be called temporary special measures.

20. Article 4, paragraph 1, explicitly states the “temporary” nature of such special measures. Such measures should therefore not be deemed necessary forever, even though the meaning of “temporary” may, in fact, result in the application of such measures for a long period of time. The duration of a temporary special measure should be determined by its functional result in response to a concrete problem and not by a predetermined passage of time. Temporary special measures must be

discontinued when their desired results have been achieved and sustained for a period of time.

21. The term “special”, though being in conformity with human rights discourse, also needs to be carefully explained. Its use sometimes casts women and other groups who are subject to discrimination as weak, vulnerable and in need of extra or “special” measures in order to participate or compete in society. However, the real meaning of “special” in the formulation of article 4, paragraph 1, is that the measures are designed to serve a specific goal.

22. The term “measures” encompasses a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems. The choice of a particular “measure” will depend on the context in which article 4, paragraph 1, is applied and on the specific goal it aims to achieve.

23. The adoption and implementation of temporary special measures may lead to a discussion of qualifications and merit of the group or individuals so targeted, and an argument against preferences for allegedly lesser-qualified women over men in areas such as politics, education and employment. As temporary special measures aim at accelerating achievement of de facto or substantive equality, questions of qualification and merit, in particular in the area of employment in the public and private sectors, need to be reviewed carefully for gender bias as they are normatively and culturally determined. For appointment, selection or election to public and political office, factors other than qualification and merit, including the application of the principles of democratic fairness and electoral choice, may also have to play a role.

24. Article 4, paragraph 1, read in conjunction with articles 1, 2, 3, 5 and 24, needs to be applied in relation to articles 6 to 16 which stipulate that States parties “shall take all appropriate measures”. Consequently, the Committee considers that States parties are obliged to adopt and implement temporary special measures in relation to any of these articles if such measures can be shown to be necessary and appropriate in order to accelerate the achievement of the overall, or a specific goal of, women’s de facto or substantive equality.

IV. Recommendations to States parties

25. Reports of States parties should include information on the adoption, or lack thereof, of temporary special measures in accordance with article 4, paragraph 1, of the Convention, and States parties should preferably adhere to the terminology “temporary special measures”, to avoid confusion.

26. States parties should clearly distinguish between temporary special measures aimed at accelerating the achievement of a concrete goal of women’s de facto or substantive equality, and other general social policies adopted and implemented in order to improve the situation of women and the girl child. States parties should bear in mind that not all measures which potentially are or would be favourable to women qualify as temporary special measures.

27. States parties should analyse the context of women's situation in all spheres of life, as well as in the specific, targeted area, when applying temporary special measures to accelerate achievement of women's de facto or substantive equality. They should evaluate the potential impact of temporary special measures with regard to a particular goal within their national context and adopt those temporary special measures which they consider to be the most appropriate in order to accelerate the achievement of de facto or substantive equality for women.

28. States parties should explain the reasons for choosing one type of measure over another. The justification for applying such measures should include a description of the actual life situation of women, including the conditions and influences which shape their lives and opportunities — or that of a specific group of women, suffering from multiple forms of discrimination — and whose position the State party intends to improve in an accelerated manner with the application of such temporary special measures. At the same time, the relationship between such measures and general measures and efforts to improve the position of women should be clarified.

29. States parties should provide adequate explanations with regard to any failure to adopt temporary special measures. Such failures may not be justified simply by averring powerlessness, or by explaining inaction through predominant market or political forces, such as those inherent in the private sector, private organizations, or political parties. States parties are reminded that article 2 of the Convention, which needs to be read in conjunction with all other articles, imposes accountability on the State party for action by these actors.

30. States parties may report on temporary special measures under several articles. Under article 2, States parties are invited to report on the legal or other basis for such measures, and their justification for choosing a particular approach. States parties are further invited to give details about any legislation concerning temporary special measures, and in particular whether such legislation provides for the mandatory or voluntary nature of temporary special measures.

31. States parties should include, in their constitutions or in their national legislation, provisions that allow for the adoption of temporary special measures. The Committee reminds States parties that legislation, such as comprehensive anti-discrimination acts, equal opportunities acts or executive orders on women's equality, can give guidance on the type of temporary special measures that should be applied to achieve a stated goal, or goals, in given areas. Such guidance can also be contained in specific legislation on employment or education. Relevant legislation on non-discrimination and temporary special measures should cover governmental actors as well as private organizations or enterprises.

32. The Committee draws the attention of States parties to the fact that temporary special measures may also be based on decrees, policy directives and/or administrative guidelines formulated and adopted by national, regional or local executive branches of government to cover the public employment and education sectors. Such temporary special measures may include the civil service, the political sphere and the private education and employment sectors. The Committee further draws the attention of States parties to the fact that such measures may also be negotiated between social partners of the public or private employment sector or be applied on a voluntary basis by public or private enterprises, organizations, institutions and political parties.

33. The Committee reiterates that action plans for temporary special measures need to be designed, applied and evaluated within the specific national context and against the background of the specific nature of the problem which they are intended to overcome. The Committee recommends that States parties provide in their reports details of any action plans which may be directed at creating access for women and overcoming their underrepresentation in certain fields, at redistributing resources and power in particular areas, and/or at initiating institutional change to overcome past or present discrimination and accelerate the achievement of de facto equality. Reports should also explain whether such action plans include considerations of unintended potential adverse side-effects of such measures as well as on possible action to protect women against them. States parties should also describe in their reports the results of temporary special measures and assess the causes of the possible failure of such measures.

34. Under article 3, States parties are invited to report on the institution(s) responsible for designing, implementing, monitoring, evaluating and enforcing such temporary special measures. Such responsibility may be vested in existing or planned national institutions, such as women's ministries, women's departments within ministries or presidential offices, ombudspersons, tribunals or other entities of a public or private nature with the requisite mandate to design specific programmes, monitor their implementation, and evaluate their impact and outcomes. The Committee recommends that States parties ensure that women in general, and affected groups of women in particular, have a role in the design, implementation and evaluation of such programmes. Collaboration and consultation with civil society and non-governmental organizations representing various groups of women is especially recommended.

35. The Committee draws attention to and reiterates its general recommendation No. 9, on statistical data concerning the situation of women, and recommends that States parties provide statistical data disaggregated by sex in order to measure the achievement of progress towards women's de facto or substantive equality and the effectiveness of temporary special measures.

36. States parties should report on the type of temporary special measures taken in specific fields under the relevant article(s) of the Convention. Reporting under the respective article(s) should include references to concrete goals and targets, timetables, the reasons for choosing particular measures, steps to enable women to access such measures, and the institution accountable for monitoring implementation and progress. States parties are also asked to describe how many women are affected by a measure, how many would gain access and participate in a certain field because of a temporary special measure, or the amount of resources and power it aims to redistribute to how many women, and within what time frame.

37. The Committee reiterates its general recommendations 5, 8 and 23, wherein it recommended the application of temporary special measures in the fields of education, the economy, politics and employment, in the area of women representing their Governments at the international level and participating in the work of international organizations, and in the area of political and public life. States parties should intensify, within their national contexts, such efforts especially with regard to all facets of education at all levels as well as all facets and levels of training, employment and representation in public and political life. The Committee recalls that in all instances, but particularly in the area of health, States parties should

carefully distinguish in each field between measures of an ongoing and permanent nature and those of a temporary nature.

38. States parties are reminded that temporary special measures should be adopted to accelerate the modification and elimination of cultural practices and stereotypical attitudes and behaviour that discriminate against or are disadvantageous for women. Temporary special measures should also be implemented in the areas of credit and loans, sports, culture and recreation, and legal awareness. Where necessary, such measures should be directed at women subjected to multiple discrimination, including rural women.

39. Although the application of temporary special measures may not be possible under all the articles of the Convention, the Committee recommends that their adoption be considered whenever issues of accelerating access to equal participation, on the one hand, and accelerating the redistribution of power and resources, on the other hand, are involved as well as where it can be shown that these measures will be necessary and most appropriate under the circumstances.

Notes

¹ Indirect discrimination against women may occur when laws, policies and programmes are based on seemingly gender-neutral criteria which in their actual effect have a detrimental impact on women. Gender-neutral laws, policies and programmes unintentionally may perpetuate the consequences of past discrimination. They may be inadvertently modelled on male lifestyles and thus fail to take into account aspects of women's life experiences which may differ from those of men. These differences may exist because of stereotypical expectations, attitudes and behaviour directed towards women which are based on the biological differences between women and men. They may also exist because of the generally existing subordination of women by men.

² "Gender is defined as the social meanings given to biological sex differences. It is an ideological and cultural construct, but is also reproduced within the realm of material practices; in turn it influences the outcomes of such practices. It affects the distribution of resources, wealth, work, decision-making and political power, and enjoyment of rights and entitlements within the family as well as public life. Despite variations across cultures and over time, gender relations throughout the world entail asymmetry of power between men and women as a pervasive trait. Thus, gender is a social stratifier, and in this sense it is similar to other stratifiers such as race, class, ethnicity, sexuality, and age. It helps us understand the social construction of gender identities and the unequal structure of power that underlies the relationship between the sexes." *1999 World Survey on the Role of Women in Development*, United Nations, New York, 1999, page ix.

³ See, for example, the International Convention on the Elimination of All Forms of Racial Discrimination, which mandates temporary special measures. The practice of treaty monitoring bodies, including the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, and the Human Rights Committee, shows that these bodies consider the application of temporary special measures as mandatory to achieve the purposes of the respective treaties. Conventions adopted under the auspices of the International Labour Organization, and various documents of the United Nations Educational, Scientific and Cultural Organization also explicitly or implicitly provide for such measures. The Subcommission on the Promotion and Protection of Human Rights considered this question and appointed a Special Rapporteur to prepare reports for its consideration and action. The Commission on the Status of Women reviewed the use of temporary special measures in 1992. The outcome documents adopted by United Nations world conferences on women, including the Platform for Action of the 1995 Fourth World Conference on Women and its follow-up review of 2000, contain references to positive action as a tool for achieving de facto equality. The use

of temporary special measures by the Secretary-General of the United Nations is a practical example in the area of women's employment, including through administrative instructions on the recruitment, promotion and placement of women in the Secretariat. These measures aim at achieving the goal of 50/50 gender distribution at all levels, but at the higher echelons in particular.

⁴ The term "affirmative action" is used in the United States of America and in a number of United Nations documents, whereas the term "positive action" is currently widely used in Europe as well as in many United Nations documents. However, the term "positive action" is used in yet another sense in international human rights law to describe "positive State action" (the obligation of a State to initiate action versus a State's obligation to abstain from action). Hence, the term "positive action" is ambiguous inasmuch as its meaning is not confined to temporary special measures as understood in article 4, paragraph 1, of the Convention. The terms "reverse discrimination" or "positive discrimination" are criticized by a number of commentators as inappropriate.

Annex II

Statement by the Committee on the Elimination of Discrimination against Women on the situation of women in Iraq

The Committee on the Elimination of Discrimination against Women, during its thirtieth session, held at United Nations Headquarters in New York from 12 to 30 January 2004, noted with concern recent developments with regard to the situation of women's human rights in Iraq. In particular, the Committee noted a decision by the Governing Council of Iraq dated 29 December 2003 to repeal existing civil statutes governing issues related to marriage, divorce, child custody and inheritance.

The Committee notes the fact that Iraq is a State party to the Convention on the Elimination of All Forms of Discrimination against Women. In this regard, the Committee, at its twenty-ninth session, held from 30 June to 18 July 2003, had already sent a letter to the then Special Representative of the Secretary-General for Iraq and High Commissioner for Human Rights, the late Mr. Sergio Vieira de Mello, on the need to take into consideration the Convention with regard to the situation of women in post-war Iraq.

The Committee welcomes the resolve of the international community to assist Iraq in the reconstruction process. The Committee calls upon all parties concerned to place special emphasis in all their actions and activities on the respect for and protection of international human rights standards and norms, in particular those that specifically guarantee the rights of women and girls, and which are an inalienable, integral and indivisible part of universal human rights. The Committee considers such emphasis essential to the development of Iraqi society.

The Committee wishes to emphasize that women must be full and equal participants in all post-war reconstruction activities and in all spheres of life of Iraqi society and its development, and in particular in the drafting of Iraq's new Constitution and any revision of its legislative framework. All legislative reforms and decisions of all responsible authorities in Iraq must conform fully with the Convention on the Elimination of All Forms of Discrimination against Women so as to ensure de jure and de facto equality between women and men, and their full enjoyment of all human rights and fundamental freedoms.

The Committee calls on the international community and all responsible authorities in Iraq to ensure full compliance with and implementation of all the provisions of the Convention on the Elimination of All Forms of Discrimination against Women.
